



Labor Update No. 89 June 12, 2020

This bulletin contains information on law changes that have either passed, or are being discussed, in parliament, court decisions, and other labor issues in Japan that are of interest to activists.

1. Law/Policy

(1) *Kosei Nenkin* enrollment inspection powers strengthened: aim to enforce companies' enrollment obligations

The pension reform bill, centered on the expansion of *Kosei Nenkin* to cover non-regular workers such as part-timers, has passed. The current situation is that many companies are intentionally not enrolling employees in *Kosei Nenkin* in order to escape their part of the pension cost (which is meant to be shared between employer and employee). To deal with this, the powers of on-site inspection have been strengthened. The aim is to thoroughly enforce the obligation to enroll so that working people can be sure of having a pension in the future.

If someone works full-time, companies are required to enroll them in *Kosei Nenkin*. For part-timers and other short-hours workers, currently the criteria for enrollment are to work at least 20 hours a week at a company with 501 or more employees. Under the new law, the company-size criterion will be loosened to 101 or more employees in October of 2022, and then again in October of 2024 to 51 or more.

“Summary of Bill to Amend Part of the National Pension Act, Etc., in Order to Strengthen the Functioning of the Pension System”

<https://www.mhlw.go.jp/content/000601826.pdf>

(2) Second supplementary budget worth ¥32 trillion passes: COVID-19 relief

The Diet has passed a second supplementary budget for 2020 to deal with effects of the coronavirus pandemic. The budget passed a plenary session of the Upper House the afternoon of June 12, with support from major parties including the LDP, Komeito, CDP, and DPP.

The second supplementary budget contains a total of ¥31.9114 trillion in general account expenditure. This includes a rent-support benefit for small and mid-size businesses (up to 6 million yen per business) and an increase in the daily upper limit for employment adjustment subsidies (from ¥8,330 per worker per day to ¥15,000). It also adds ¥42.1 billion for disease prevention measures involved in reopening schools, as

well as setting up a reserve fund of ¥10 trillion. The whole amount will be paid for by issuing government bonds.

At a meeting of the upper-house Budget Committee prior to the plenary session, Prime Minister Shinzo Abe sought understanding of the huge reserve fund amount, explaining that “it is a necessary expense to protect employment from whatever circumstances may occur from now on”.

“Summary of Supplementary Budget, Reiwa 2 [2020](No.2)”--Finance Ministry
https://www.mof.go.jp/budget/budger_workflow/budget/fy2020/sy020407/hosei020527b.pdf

2. Legal Violations/Disputes

(1) Part-time teacher at one-on-one tutoring cram school goes on strike: “I won’t suffer in silence”

A man who works as a part-time (*arubaito*) teacher at cram school Eisai Kobetsu Gakuin has gone on strike against Kabushiki Kaisha D-ai, which runs the school as a franchisee.

The union he belongs to, Black-Baito Union, explained this in a press conference. The strike began on that same day, and they say he will continue striking until his demands are met.

After graduating university, the man began working last September in the hope of going on to graduate school. According to the union, the cram school was closed from April 8-30 due to COVID-19. Part-time teachers lost their shifts, but no compensation was paid to them during this period.

The union believes that D-ai alone cannot make the decision to pay, and will be demanding the payments also from the cram school headquarters company, Eisai Communication.

(2) Yamaha English school introduces employment system for teachers

Yamaha Music Japan, a subsidiary of leading musical instrument maker Yamaha which runs English schools all over Japan, has mentioned to a union of their teachers that they intend to introduce an employment system for them. The teachers follow directions from the company and work in the same way as employees, but were considered “independent contractors” who did not have the rights of workers. So they formed a union and negotiated with the company. It is rare for independent contractors to open a path for themselves to be hired as employees.

According to the Yamaha English Teachers’ Union, to which about one in ten of the approximately 1,200 teachers belong, the teachers work at Yamaha English Schools. They sign a one-year outsourcing contract with the company, follow directions from

the company as to what teaching materials to use and where and when to work, and have almost no discretion of their own over their work style. Since they are not considered as workers, they are not covered by regulations on things such as absence allowances or even minimum wage.

To deal with these circumstances, some of the teachers formed the union in 2018. They insisted that they were in reality workers, held collective bargaining to demand employment contracts, and in February of this year the company notified them in writing of their basic plan to give teachers employment contracts within the 2021 fiscal year. The union is currently continuing negotiations with an aim of having the company sign employment contracts with all their teachers.

Independent administrative body the Japan Institute for Labor Policy and Training has for the first time now calculated that workers who do work outsourced from a company to receive remuneration number about 1.7 million. This seems to include some who are independent contractors in name only.

(3) “Large disparity in cold-area allowance not paid to contract workers”: difference with regular staff an “illegal disparity”--opening arguments in suit against Japan Post

Opening arguments have been heard at Sapporo District Court in the case of a former contract employee (*keiyaku shain*) of Japan Post, who sued JP for compensation claiming illegal disparities with the regular staff (*seishain*) in such conditions as allowances and time off.

Although contract staff at JP do the same work as the regular staff, there are large differences in the amounts of their bonuses and holiday work allowances. Also, such things as housing allowances, end-of-year work allowances, and family allowances are paid only to regular employees.

The plaintiff asserts that this constitutes an “unreasonable disparity” of the kind forbidden by the Labor Contract Act, and is seeking ¥5.5 million in compensation.

Such suits have been filed all over the country, with about 150 people being plaintiffs.

(4) Hotel room cleaning staff unfairly pressured to quit, unable to get paid leave or absence allowance

It has become known that at least seven employees who cleaned guest rooms at hotels in Naha, Okinawa, and who stayed home from work due to the effects of COVID-19, were pressured to resign by the contracting company that employed them on condition of buying out the unused portion of their paid vacation days. The employers say that “we have not made anyone write a resignation by the company’s choice. They can take their paid leave if they apply for it”. They deny forcing anyone to quit.

Due to hotels’ closing or curtailing operations, the employees saw their number of working days plummet beginning in March. In May there was no work for them, but

they were not paid an allowance for absence either. Some of the workers were not enrolled in employment insurance or in health and pension insurance (*Shakai Hoken*). Some applied for paid leave on days they could not work, but were refused, told “we will call you when there’s work”, and made to stand by.

At the end of May there was suddenly a phone call from the person in charge, saying “bring your uniform and come to the office”. The next day when they went in, they were recommended to quit, and told “we want you to sign and submit a resignation”. Since the resignation form was written as being by their own choice, they refused to accept and said “we can’t sign”. But in June there was another reminder call saying “hurry up and hand in your resignations”. When the person in charge told them that “if you sign, we’ll give you priority in paying out your unused vacation days”, some of them signed.

(5) Woman wins suit: Utsunomiya District Court decides “[firing] cannot be seen as reasonable”

Utsunomiya District Court handed down a verdict on the 10th in a lawsuit filed by a woman who was a limited-term contract staff member at Green Trust Utsunomiya, a public-interest incorporated foundation located in Utsunomiya City. The woman had claimed it was unfair for her to have been dismissed from work right before it became possible for her to apply for a switch to an unlimited contract. She had sued for confirmation of status. The court granted the plaintiff’s claim, ruling that “the woman’s dismissal cannot be seen as reasonable”.

(6) Industrial accident compensation for “executive in name only” at building maintenance firm: suffered cerebral hemorrhage after working 143 hours of overtime a month

The Central Labor Standards Inspection Office has granted industrial accident compensation to a man who was a director at a building maintenance company in Tokyo. The Office judged that the man’s cerebral hemorrhage was caused by his long hours of work.

The man joined the company in 1993 at the invitation of a representative. Later, he became a director. However, he was not involved in the company’s management decisions, but did the same type of facilities management work as other employees.

The man had the title of director, but for the granting of compensation, the issue was whether he was a worker or not.

Based on the situation that (1) after his promotion to executive, his duties remained unchanged from before; (2) he was paid a salary, not executive compensation; (3) he had unemployment insurance up until the hemorrhage occurred; he was judged overall to be actually a worker.

Furthermore, since his work hours were not kept track of with a timecard, they were

hard to calculate, but the representative did so on the basis of the history recorded in the map app (Google Maps) in the man's smartphone. Afterward this was compared to the daily work reports submitted by the company, and there was no discrepancy.

3. Situation/Statistics

(1) More people off work than ever before, poverty sneaking up: COVID-19 deals a blow to economy and employment

The effect of the novel coronavirus (COVID-19) on employment in Japan has become very clear. When the emergency declaration paused the economy in April, the effective openings-to-applicants ratio and the unemployment rate both worsened, and the number of people off work soared to its highest number ever. From May on, the impact on the economy and on employment has continued worsening faster and faster, and experts warn that "the real crisis is still to come".

The number of people off work, including both those who were told by their employer to take the time off and those who have closed their own businesses, reached 5.97 million. This is 4.2 million more than the same month of last year, about four times the peak number of 1.53 million from right after the Lehman Shock, and the highest figure ever recorded. If these people are unable to return to their jobs, the employment situation will become even worse.

(2) Situation of COVID-19 bankruptcies

As of 17:00 on June 3, the number of business failures related to COVID-19 nationwide reached a total of 210 (152 bankruptcies; 58 entrusted to lawyers or preparing to). The number grew rapidly from 2 in February to 23 in March and 84 in April. The May number remained high at 83. In June there were 5 on the 1st, only 1 on the 2nd but then on the 3rd there were 12, the highest ever daily total.

Businesses that failed suffered from the four causes at once: the labor shortage, the increase in consumption tax, the mild winter, and the coronavirus. In addition to business failures that are apparent, one must also not neglect to pay attention to less obvious factors.

With the state of emergency lifted, the requests to businesses to close have been greatly relaxed. But there are still many restrictions in order to prevent spreading the virus, and it will take some time yet for sales to recover to pre-COVID levels.

(3) Mie to pass regulation to ban "outing" of sexual minority persons--first of any prefecture

The prefecture of Mie has announced a plan to establish a regulation forbidding discrimination against LGBT and other sexual-minority individuals. The regulation would include a clause to ban "outing", or revealing to others that someone is of a sexual minority without permission from the person concerned. This would be a first for any prefectural regulation. It would also forbid forcing anyone to "come out" about

their sexual orientation, etc. A panel of experts will be set up to discuss details of penalties and so on, with an aim to pass the regulation within the 2020 fiscal year.

(4) Unemployment doubles to over 20,000 due to COVID-19: employment situation deteriorating rapidly

The number of workers terminated or dismissed from their jobs (including those who expect to be in the near future) has gone over 20,000, according to statistics released by the Ministry of Health, Welfare and Labor. In May the number increased by 13,000 over just one month, showing how rapidly the employment situation is deteriorating.

The MHWL has been gathering statistics from local Labor Bureaus since February. As of the end of April, the total number was 3,774; but this increased quickly after the end of the vacation in May. The figure went over 10,000 as of May 21, and by the end of May it stood at 16,723.

Looking at the one week ending on June 5, there was an increase of 4,210, of whom 2,577 (over 60%) were part-time and other non-regular workers. By industry, numbers were especially high in the restaurant business, with 1,362 new dismissals or firings. Of these, 1,075 (nearly 80%) were non-regular workers.