



Labor Update No. 90 June 26, 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) A self-reporting system for work hours in second and side jobs: companies not to be held responsible

At a meeting of the Future Investment Conference, the government has announced their intention to introduce a system whereby workers who have second or side jobs would report their own working hours in such jobs. One of the reasons some companies do not allow second jobs is because of difficulties this presents for labor management (including management of work hours). Under the proposed system, companies would not be held responsible for failures to report, nor for false reports. This could encourage more companies to lift their bans on side work.

This will be discussed at the MHWL's Labor Policy Council, and a final decision will be made within the year. More and more people are becoming interested in doing second jobs on the side, but many companies are still hesitant to allow it. Prime Minister Shinzo Abe stated in the meeting that "I would like to begin preparing rules for work hours and extra wage calculations so that workers' main employers need not be affected by side work".

In the Future Investment Conference's proposal, someone working at two companies would adjust their working hours at both so that the total would come in under the maximum limit for overtime. If their hours at the main job increase, they would cut back their hours at the other job. If the total sum of working hours exceeds the legal limit, both companies would have to pay extra wages: this rule would not change.

Future Investment Conference (39<sup>th</sup> Mtg.) Documents--June 16, Reiwa 2 [2020]  
<http://www.kantei.go.jp/jp/singi/keizaisaisei/miraitoshikaigi/dai39/siryou1.pdf>

### (2) Expansion of workers'-comp enrollment for freelancers under consideration: planning meeting on a social security system oriented to all generations, 2<sup>nd</sup> interim report

The government has held its "planning meeting on a social security system oriented to all generations" and put together a second draft interim report. In regard to people

who do freelance work, the report included plans for protections such as revising the industrial accident insurance system to make it easier for such people to be enrolled.

By the government's estimate, the nationwide number of freelancers, who take on work without signing an employment contract with any one company, is as high as 4.62 million. The report points out that, in order to diversify work styles and expand employment of the elderly, it is "crucial" that freelancing "expand in an appropriate manner". It says that guidelines will be drawn up within this fiscal year aimed at improving work environments.

It also states that, in cases where the person *de facto* amounts to an employed worker, labor-related laws will apply.

Also, in regard to industrial accident insurance, it says the government will give consideration to broadening the scope of applicability of the "special enrollment system" that has allowed some freelancers to enroll.

"Second Interim Report (Draft), Planning Meeting on a Social Security system Oriented to All Generations", June 25, 2020

[https://www.kantei.go.jp/jp/singi/zensedaigata\\_shakaihoshou/dai9/siryou1.pdf](https://www.kantei.go.jp/jp/singi/zensedaigata_shakaihoshou/dai9/siryou1.pdf)

(3) Revision of special exception for standard monthly remuneration in cases where pay has declined considerably owing to closings due to the effects of COVID-19: ordinary "4<sup>th</sup>-month revision" to become "starting the next month"

<https://www.nenkin.go.jp/oshirase/topics/2020/0625.html>

## **2. Legal Violations/Disputes**

(1) "Give us back our classes!" major yoga studio instructors' union demands compensation

Instructors who work at Studio Yoggy, a major yoga studio chain with 23 locations nationwide, complained in a press conference they held on June 12 that they had had their classes reduced because of COVID-19, and had not received any compensation for the loss of work.

The Yoggy Instructors' Union, representing instructors who sign outsourcing (*gyomu itaku*) contracts with the managing company Yoggy, was formed in April of 2019.

The union insists that, although the instructors are on outsourcing contracts, the reality is that they have one-year contracts renewed every year, and take orders from the company regarding their time and place of work, a work manual, etc., and that therefore they are actually workers under the Labor Standards Law.

The studio was one of the businesses that closed in April amid the pandemic. But on June 1, they began a step-by-step reopening of all their locations. However, the number of classes was cut to 50% of what it had been before they closed. In particular, the union's officers saw their classes cut to zero.

The union had also sought compensation from the company for the closing, including using employment adjustment subsidies, but they say the company has still not given them this.

(2) Over 10% of registered childcare facilities give no compensation to non-regular staff for coronavirus furloughs

At nursery schools and early-childhood education centers, many teachers had no choice but to be off work due to the effects of the novel coronavirus. But a survey carried out by a Tokyo University's graduate school has made it clear that even at registered facilities, where the normal wages should have been paid, more than one in ten gave their non-regular (part-time etc.) staff no pay at all during their furloughs.

The survey asked 200 principals or heads of institutions whether they compensated staff for income lost when they had to have time off either because the amount of work decreased due to closing or children refraining from attendance, or because their own children's schools were closed. For *jokin* (full-time) staff, 8.1% of the answers were "No". This rose to 10.2% for *hijokin*, and 14.7% for *paato-taimu*. (Translator's note: these last two terms can both be "part-time" in English, but they usually have different contracts and conditions. In particular, *hijokin* often implies a limited-term contract).

Even if the number of children attending declined due to the effects of the pandemic, registered nursery schools and certified Centers for Early Childhood Education are subsidized for expenses, including labor costs, by national and local governments in about the same amount as they were before. Therefore the government has notified them that they should pay normal wages even to those staff who are off work, whether regular or non-regular.

In the survey, 78.7% of those answering said they "paid the full wage" to regular *jokin* staff members; 64.6% paid in full to *hijokin*, and 50.4% to *paato-taimu* employees.

(3) Non-prosecution in *karoshi* case judged "inappropriate" by Kobe #2 Committee for the Inquest of Prosecution

In February 2015 a male employee of West Nippon Expressway Co. died from overwork. His mother pressed charges, claiming the man's death was the company's fault for leaving his long working hours unrectified, but the Kobe District Prosecutor decided not to prosecute the 8 accused people who were the man's supervisors at the time. The Kobe #2 Committee for the Inquest of Prosecution has now issued a decision that this was an "inappropriate failure to prosecute".

The man's overtime work reached a maximum of more than 169 hours in a month, and he sometimes worked overnight shifts of 36 hours straight. After he committed suicide from depression, work accident compensation was granted.

(4) Tokyo District Court verdict orders limousine company to pay all ¥14.54 million of unpaid overtime: "modified work hours system" at issue

If a so-called “modified work hours system” is found to be invalid, how should overtime pay be calculated? In a court case that was fought over this question, an epoch-making verdict has been reached.

In a case filed by three employees of a limousine-for-hire company that transports ANA staff to and from Haneda Airport, who sought payment of overtime (augmented wages) and surcharges, Tokyo District Court has decided in favor of the plaintiffs, ordering the company to pay a total of about ¥14.54 million in back overtime wages and about ¥13 million in surcharges.

The ruling first noted that the company’s work rules made no mention at all of such a “modified work hours system”, and also that no measures were taken to inform employees of it in the office where the plaintiffs work. Therefore it judged the “modified work hours system” to be invalid.

Accordingly, the prescribed working hours would be eight hours per day. Any amount of time exceeding this would be overtime work, and would require overtime pay (1.25 times hourly pay; 1.5 times for late-night work).

The court ruled that what the company had paid was the wage for the eight hours per day, and that nothing had been paid at all for the hours worked in excess of that.

### **3. Situation/Statistics**

#### **(1) June Reuters survey: over 50% have cut pay or employment because of COVID-19**

A business survey conducted by Reuters in June has made it clear that, due to the effects of the novel coronavirus disease (COVID-19), over half of the companies surveyed had made cuts to wages, employment, etc. Regarding the future, it predicts that about seven in ten companies will see their business performance hit bottom within this year, then have a gradual recovery.

But among other problems, four in ten companies are unable to make any predictions at all about their business performance this fiscal year. So the feeling of uncertainty is as strong as ever. More than nine-tenths of companies have taken steps to go digital, such as by using online meetings and contactless sales methods: adaptation to an age of “life with coronavirus” is progressing.

About business performance, voices of optimism are few. The voices that come to the fore are those saying, for example “with economic activity only now finally starting again, and with fears of a second wave or more to come, the situation is totally unpredictable, and we can’t see the future at all” (precision instruments industry). Even the non-manufacturing sector is voicing caution, for example saying “currently our sales are healthy. But a tendency to buy in advance (stock up) is being seen. So sales might actually tend to go down as things gradually return to a normal mode” (retail industry).

(2) 900 pairs gain official recognition in “partnership system”: rapid increase in numbers of sexual minority couples

A Kyodo News survey of the 47 municipalities that have introduced systems for granting official “partnership” recognition to LGBT and other sexual minority couples has found that, by the end of fiscal 2019, the number of couples having received such recognition had reached 900. It also showed that the number grew rapidly within the one-year period up to March 2020, increasing by 406. It has become clear just how much this system, which began in November of 2015, has spread in the short span of four-and-a-half years. On the other hand, there are still practical issues facing the system, such as that gives eligibility for too few administrative services.

(3) “Developing and developed countries alike hit hard by COVID-19”: IMF revises prospects downward for world economy

The economic blow dealt by the coronavirus is more severe than the International Monetary Fund (IMF) had thought at first, and is now predicted to last for a long time. Developing countries in Latin America, Asia, etc. will be hit by the spread of the disease and by economic chaos at the same time. This worldwide recession has economic crises in developed and developing countries amplifying each other on an unprecedented scale.

In India, whose growth rate forecast for 2020 has been lowered 6.4 points by the IMF, predicting a 4.5% downturn, downtown areas of the capital New Delhi are still quiet.

India has continued its country-wide lockdown since the late March. The unemployment rate in urban areas in May reached 26%. Nationwide, 120 million people have lost their jobs; 84% of families are facing decreases in income. Several million migrant workers have lost jobs in cities such as New Delhi; infections have spread as they have returned home to rural areas.

Later, the government relaxed the lockdown restrictions; at the start of June, restaurants and other businesses reopened. It seems they judged that continuing the lockdown any longer would be economically difficult. But this sped up the spread of the disease; as of late June, India had 450,000 infected. This was the fourth-largest number in the world, after the U.S., Brazil and Russia.

Unlike the “Lehman Shock”, whose impact was mainly felt in economically developed countries, the COVID-19 crisis is throwing developing countries into chaos at the same time.

Meanwhile, in more developed countries, economic reopening began in earnest at the start of June; these countries have moved to the stage of thinking how to return their economies to growth. But since there is still no vaccine or other decisive measure for treatment, people and companies still tend to be cautious about consuming and investing. Provision of goods and services is constrained by measures such as physical

distancing while doing business, so recovery will not be easy.

In the U.S., the infection numbers are still going up. There are also growing fears of a “second wave” when the developed countries of the Northern Hemisphere enter autumn. If the downturn continues too long, it could spread to developing countries as well, repeating the vicious cycle.

“IMF World Economic Outlook, June 2020”

<https://www.imf.org/ja/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020>

(4) Toppan Printing introduces same-sex partner system

(Toppan Printing Co., Ltd.)

Systems to be revised so that same-sex and “common-law” couples can have the same benefits as spouses: toward further promotion of “diversity and inclusion”

“(snip)To support our employees’ diverse lifestyles, not only from the point of view of education, but also from the systems point of view, to realize ideas of building a mentally safer workplace, starting on July 1, 2020, part of the spouse system has been revised. Same-sex couples and those in *de facto* marriages are now able to make use of the benefits of the system.

“At Toppan Printing, labor and management together will continue to build an even more mentally safe workplace, where the human rights of each and every employee are respected, and where one can feel at ease to speak and act.”