



Labor Update No. 98 October 16, 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) Employment adjustment subsidies top ¥1.5 trillion; government considers other sources of funding

Payments of “employment adjustment subsidies” since February have, as of October 2, exceeded the amount of ¥1.5 trillion—about 450 times the original plan—that was budgeted for COVID-19 relief.

As an emergency economic measure to deal with the coronavirus crisis, the government has drawn up supplementary budgets twice. The amount budgeted for employment adjustment subsidies was increased from the initial ¥3.5 billion to approximately ¥1.5663 trillion. The total paid out since February reached ¥1.64 trillion on October 2, in excess of the budget. Most of this was paid out from April onwards.

The subsidies are paid from the Labor Insurance Special Account. As the excess can be paid from money that was originally budgeted for other uses of this account, the subsidies will continue being able to be paid.

(2) Public servants’ bonuses cut for first time in 10 years, due to coronavirus effects

The National Personnel Authority has made a recommendation to the Cabinet and Diet to lower public servants’ bonuses (year-end and diligence allowances) for the 2020 fiscal year by 0.05 months’ worth, to 4.45 months. This is the first time in 10 years that the NPA has asked for a downward revision of bonuses, meaning that yearly pay is likely to decrease by an average of ¥21,000. The decision was based on the decrease in bonus payment standards in the private sector caused by the effects of the COVID-19 pandemic.

According to a survey by the NPA, the average private-sector bonus is 4.46 months’ worth. Public servants’ bonus of 4.50 months is higher, so the NPA judged it necessary to correct the disparity.

Of the bonuses, it will not be the diligence allowance, paid in accordance with work performance, that is reduced, but rather the year-end allowance that is paid to everyone equally across the board.

The government will soon hold a Cabinet meeting on salaries and discuss how to deal with the recommendation. If they decide to carry it out, they plan to submit a bill to the special session of the Diet, to be convened on the 26th, to amend the Regular Service Remuneration Act. This is likely also to have an effect on bonuses paid to local public servants, which generally are revised along the lines of the national recommendations.

Along with this recommendation, although the amendment bill to raise the retirement age for public servants in stages to 65 failed at the regular Diet session, the NPA requested once again that this be carried out soon.

“Reiwa 2 [2020] National Personnel Authority Recommendations”, National Personnel Authority

https://www.jinji.go.jp/kankoku/r2/r2_top.html

(3) “Condolences for joint Cabinet-LDP funeral for Mr. Nakasone”: MEXT sends notice nationwide

In connection with the funeral service held jointly by the Cabinet and the LDP for the late former Prime Minister Nakasone Yasuhiro, a notice was sent by the Ministry of Education, Culture, Sports, Science and Technology (MEXT) to national universities and prefectural boards of education telling them how to express their condolences. It has also become known that the Interior Ministry sent a message to governors and mayors asking them to observe a moment of silence during the funeral.

2. Legal Violations/Disputes

(1) Corona-related: fired for moonlighting in nightlife job, woman to file for labor tribunal

It has come to light that a woman living in Takasaki, Gunma, will soon be filing for a labor tribunal at Maebashi District Court. She is seeking confirmation of her employee status from a company that runs a sports gym in Takasaki, claiming that their termination of her employment contract on grounds of her working a second job at a *Kyabakura* [a type of hostess bar], in connection with the coronavirus pandemic, is invalid. The gym says that “the infection prevention measures at her other job were inadequate”, but the woman insists it is “unilateral job discrimination” against her for working in the nightlife world, which has been under harsh public pressure due to the pandemic.

The woman began working at the sports gym in July of 2015. She did office work; her employment contract was renewed every six months. She was a single mother who has one child, of pre-school age. She made ends meet by also working nights at the *kyabakura*. She had informed the gym about this second job.

At the end of July this year, the gym notified the woman they would be terminating her contract on September 15, saying “It has been confirmed that you work at a ‘night-time food-and-drink establishment with entertainment’ which has not taken disease

prevention measures". The notice conveyed that the gym would pay 60% of her wage as an allowance for absence and asked that she not come to work after the end of August.

After that, since she had been working in limited-term contracts for a total of more than five years, the woman exercised her right to apply for an unlimited-term contract. She insists that "I got a contract with no term limit. It's unfair to order me not to come to work". The gym, however, did not change their stance. So she is now preparing to file a request for a labor tribunal.

(2) Former limited-term Social Welfare Council staff members settle over dismissal: contracts canceled to avoid switch to unlimited-term

A lawsuit filed by two women who worked as temporary staff for the City Social Welfare Council in Mita, Hyogo, in which the two had sought confirmation of employee status claiming they were let go unfairly in order to avoid the "unlimited-term conversion rule", has ended in a settlement at the Kobe District Court. The "conversion rule" is the legal principle that an employee, even part-time or temporary, who is employed for five years or more gains the right to work without a term limit. The Social Welfare Council will let the two women return to work in November, this time as unlimited-term contract employees, and pay a financial settlement equivalent to the back wages since the dismissal.

The trial has been going on since June of 2020, but at the court's recommendation, has now been settled.

(3) Former contract employees seeking severance pay have claim rejected: Supreme Court

In a lawsuit filed by former contract employees of Tokyo Metro subsidiary Metro Commerce, who complained of disparity in treatment between themselves and the *seishain* (full-time regular staff), the Supreme Court, Third Petty Bench, has ruled that differences of work conditions involving the presence or absence of severance pay "could not be evaluated as wholly unreasonable".

The Third Petty Bench confirmed the judgment of the lower Superior Court in regard to housing allowances and other conditions, granting the plaintiffs' claims on these. On the other hand, in regard to the question of severance pay, deemed an important point of contention, the Supreme Court accepted appeals from both plaintiff and defendant.

In their oral arguments made in September, the plaintiffs asserted that "it was unfair to have our severance pay set at one-fourth of that of a *seishain*"; while the company as defendant insisted that "the severance allowance is a part of the wage set aside for payment later, and is not a reward for distinguished service".

(4) Conditions for non-regular contract staff at post offices "illegal due to unreasonable disparity" as judged by Supreme Court

In its verdict on the case where non-regular contract employees working at post offices around the country, who do the same tasks as *seishain*, claimed the disparities in their treatment were unfair, the Supreme Court has ruled that year-end work allowances and family allowances do indeed show unreasonable disparities, and that this is illegal.

There more than 180,000 non-regular employees doing postal work. It is possible that Japan Post may be forced to reconsider their working conditions from now on.

The Supreme Court, First Petty Bench, has made a ruling that there are unreasonable disparities in year-end work allowances, sick leave, summer and year-end holidays, pay for work on holidays, and family allowances; and that this is illegal.

3. Situation/Statistics

(1) Amid virus crisis, total assets of the super-wealthy set new high record: ¥1.08 quadrillion as of end of July

The total amount of assets held by so-called billionaires or the super-wealthy, those whose asset holdings are over 1 billion dollars (or about 106 billion yen), set a new high record this year, seemingly unaffected by the worldwide coronavirus crisis. This was reported on the 7th by Swiss finance giant UBS and international accounting firm PricewaterhouseCoopers (PwC).

According to the report, the number of billionaires was 2,189 worldwide as of the end of July 2020. The total amount of their assets was 10.2 trillion dollars (approximately ¥1.08 quadrillion). This was higher than the previous high record of 8.9 trillion dollars (¥940 trillion), set in 2017.

(2) Coronavirus pandemic “speeds up the widening of the education gap”: of those with yearly income less than ¥4 million, three in ten have no computer or tablet

The spread of COVID-19 is having a large effect on the children of impoverished households, and causing disparities in education to widen: this is the analysis released by a major think-tank (research company). At the same time their parents' employment and livelihoods are becoming unstable due to the pandemic, their educational opportunities are being lost due to school closings. The think-tank points out that the loss of educational opportunity must be kept to a minimum.

The analysis was done by UFJ Research and Consulting. From June 8 to 12, the company carried out a survey of two thousand households that had children from elementary-school to high-school age.

“Educational Disparities Widening Due to COVID-19”, Mitsubishi UFJ Research and Consulting

https://www.murc.jp/wp-content/uploads/2020/08/seiken_200821.pdf

(3) Number of non-regular workers higher than ever; dissatisfaction with bonuses

According to the Interior Ministry's Labor Force Survey, the number of non-regular workers (such as dispatched workers and part-timers) as a yearly average for 2019 increased in by 450,000 compared to the year before, reaching 21.65 million. This was an all-time record high. The proportion of these workers to the total of all working people also set a new high record at 38.3%.

Meanwhile, according to the MHWL's Basic Survey on Wage Structure, the average monthly pay in June of 2016, excluding overtime pay, etc., was ¥325,400 for *seishain* (full-time regular employees) and ¥211,200 for non-regular workers.

Furthermore, the average amount of bonus, etc., paid to *seishain* over the past year was ¥1,084,200; while for non-regular workers this figure was ¥224,200.

Independent administrative body The Japan Institute for Labor Policy and Training carried out a questionnaire survey of companies around the country and their non-regular employees in July of 2019.

Of the 5,574 non-regular workers who replied to this survey, 1,967 (or 35.3%) answered that "there are *seishain* whose duties are the same [as mine]" or "there are *seishain* whose duties and degree of responsibility are the same [as mine]".

Among these respondents, when asked "are there systems or conditions you are unsatisfied with, in comparison to *seishain*?", with multiple answers allowed, the highest number--37%--answered "bonuses". Second highest was "regular pay raises" with 26.6%, followed by "severance pay" with 23.3%.

"Employed Persons, by Type of Employment", Interior Ministry Statistics Bureau
<https://www.dropbox.com/s/a93z5okpu08npx8/Employment%20status.xlsx?dl=0>

"Summary of Reiwa 1 [2019] Basic Survey on Wage Structure", MHWL
<https://www.mhlw.go.jp/toukei/itiran/roudou/chingin/kouzou/z2019/dl/14.pdf>

(4) Opposition parties confer on non-regular workers

Reacting to the Supreme Court's ruling that a lack of severance pay or bonuses for non-regular (part-time, limited-term, etc.) workers "could not be judged wholly unreasonable", the Diet Policy Committee Chairs of four opposition parties--the CDP, JCP, DPP and SDP--have held a meeting and agreed unanimously on a plan to submit a bill that would require the payment of severance and bonuses to these workers. They say they are aiming to pass a nonpartisan bill from the Diet floor.

(5) Collection of signatures begins on petition for LGBT equality law: "a law as a legacy of the Tokyo Olympics"

Three groups composed of athletes and others seeking advancement of the rights of sexual minorities (LGBT etc) began a campaign on the 15th to collect signatures for a

petition to establish an “LGBT Equality Law” that would forbid discrimination against such people. The groups held a press conference in Tokyo to make their case that, with over 80 countries having similar laws in place, “as a legacy of the Tokyo Olympics and Paralympics, with their stated commitment to diversity, Japan should make a law too”.

The three groups are “Athlete Ally”, which promotes diversity on the sports world, the LGBT Legal Association (*LGBT Ho Rengo Kai*), and Human Rights Watch. On a website inaugurated the same day they began inviting signatures, and will submit the petition to political parties at the start of the new year. They hope to have legislation pass the Diet by the time the Olympics begin next July.