Introduction

Recent Tendencies of Labor Legislations

In this issue, a number of amendments as well as enactment of new laws made in the field of labor in recent years are presented, together with comments on the contents of the amendments and new laws.

(1) Equal Employment Opportunity Act

According to Nakakubo, the Equal Employment Opportunity Act, which was first enacted in 1985, made a significant transformation from a stage where there were noticeable compromises, such as businesses were only required to "make an endeavor" in equal treatment of men and women in recruitment and employment, to the amendment of 1997 that reinforced the provisions on equality and set down additional provisions on sexual harassment, and finally to the amendment of 2006 that prohibited sexual discrimination. Nakakubo says that by the amendment of 2006, the Equal Employment Opportunity Act has entered into its third stage.

The main features of the amendment of 2006 are as follows. First, it brought about a change from prohibition of discrimination against women to prohibition of sexual discrimination *per se*, including discrimination against men. Second, it widened the scope of discrimination that it prohibits. Third, it prohibited indirect discrimination. On this point, employers had been firmly opposed, claiming that the definition of indirect discrimination was unclear, and this opposition made it the most contentious issue of the amendment. Finally, it was decided that indirect discrimination cases would be limited to those specifically set down in ministerial ordinances. Nakakubo says that the fact that prohibition of indirect discrimination was provided for in spite of the tough opposition was a significant step forward. The amendment also includes prohibition of disadvantageous treatment of woman workers on grounds of pregnancy, birth, etc., prohibition of sexual harassment committed against men, and requirement of employers not just to take into consideration the prevention of sexual harassment, which was the case before, but also to take actual measures

for prevention.

Nakakubo points out that there are still criticisms that the amendments do not go far enough. However, he says that rather than make negative statements about the law, he prefers to watch with anticipation how the amendment would bring about positive changes in corporate behavior.

(2) Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave

The Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, which originated in the Child Care Leave Act of 1991, steadily transformed itself through a number of amendments and against the backdrop of the declining birthrate and aging of the population, so that the system can now more readily be used by workers (Kanno paper). In the amendment of 2004, in particular, the child care leave and family care leave, which were not allowed for limited-term contract workers before, were allowed for such workers on certain conditions. To apply, they must have been in continuous employment for a year or longer. In addition, in the case of child care leave, they must be expected to continue to be in employment beyond the point where the child in care will reach a year of age and, in case of family care leave, they must be expected to continue to be in employment beyond 93 days counting from the day on which the family care leave is to commence. The amendment of 2004 also allowed, under certain conditions, extension of a child care leave, which previously was to terminate at a point where the child in care reached a year of age, to a point where the child is a year and six months old. The amendment also provided that workers looking after a preschool child may take up to five days of leave within a single business year for nursing the child.

Kanno points out that although the number of workers who take child care leave is rising due to the amendments of the law, the majority of such workers are women and that even though it is now well recognized that women have the justifiable right to take child care leave, it is still regarded that child care is the work of women. Kanno is pessimistic about the child care leave system alone being able to put a stop to the declining birthrate. On the other hand, a

higher percentage of men are taking family care leave, in comparison with child care leave, and this, Kanno points out, “is an important step towards gender equality in society.”

(3) Industrial Safety and Health Act and Other Related Acts

In the autumn of 2005, a series of amendments was made to “reflect the reality of workers’ diversified lives (Obata).” Particularly noteworthy is the provision on consultation with a physician introduced into the Industrial Safety and Health Act to deal with an increase in brain and heart diseases and mental diseases arising from overwork. By this provision, if a worker engages in more than 100 hours of overtime a month (overtime is considered as hours worked in excess of 40-hour workweek), it is clear that fatigue is accumulated in the worker, and the worker so requests, the worker must be seen by a physician and receive instructions from the physician.

The amendment of the Industrial Accident Compensation Insurance Act also changed the provision on compensation for an accident that occurs while a worker is commuting. It was provided for before the amendment that such an accident must arise from a worker’s travel between the worker’s residence and place of work. By the amendment, commuting now includes travel from a place of work to another place of work and for workers who have been transferred to a new location without their families, from the worker’s residence in that location to the residence of his or her family.

The “Act on Temporary Measures Concerning the Promotion of the Reduction of Working Hours” was amended and became the “Act on Special Measures Concerning the Improvement of the Establishment of Working Hours.” The new act provides that an employer must establish a labor-management “Committee for Improving the Establishment of Working Hours,” which will have “a purpose to investigate and examine on measures for improving the establishment of working hours, etc. and other matters related to the improvement of the establishment of working hours, etc. and to express its views to the employer.” An employer must also endeavor to introduce necessary systems for effectively improving the establishment of working hours, etc.

(4) Act Concerning Stabilization of Employment of Older Persons

In June 2004, the Act Concerning Stabilization of Employment of Older Persons was amended. The main points of the amendment include (1) obligation of employers to implement measures for securing the employment of older persons up until the age of 65, (2) obligation of employers to clearly indicate measures they will implement in helping older persons find reemployment and of employers to prepare documents for assisting in older persons' job search activities, and (3) disclosure by employers of reasons for setting age restrictions in recruitment and employment. Yamashita says that in recent years the government policy, which is at the base of the amendment, has stressed the importance of "society in which people can work regardless of age." As a result, Yamashita points out, in lieu of the element of a worker's "age," which has had a significant impact on the treatment of workers, other elements such as "competence" and "performance" will determine how workers are treated, and the transformation of the system will be promoted in this direction.

The most noteworthy point about the amendment of 2004 is the obligation of employers to implement measures for securing the employment of older persons up until the age of 65. By this provision, an employer must implement either one of raising the mandatory retirement age, introducing a continuous employment system, or eliminating the mandatory retirement age. In practice, many firms have apparently introduced a continuous employment system. A recent survey has shown, however, that it is difficult to secure jobs that meet the needs of older persons. Yamashita points out that there needs to be in-house mechanisms for employment of older workers as well as awareness raising among young and prime-aged workers on the subject, and that for this purpose, the concept of "age discrimination" will be an important frame of reference.

(5) Whistleblower Protection Act

As an increasing number of corporate scandals were exposed through employees blowing the whistle, discussions began on protecting employees' whistleblowing in order to promote firms' compliance. Formally, whistleblowing was often subject to disciplinary action or dismissal on grounds that the act of whistleblowing constituted violation of employees' obligation to maintain

confidentiality or that it resulted in damaging a company's credibility. On this point, the courts judged individual cases, and, if whistleblowing was found to be justifiable, they tended to rule the company's disciplinary action or dismissal as an abuse of rights and therefore voidable. However, as these court rulings were not enough to set down a clear standard of judgment, the Whistleblower Protection Act was enacted clearly determine by statute the conditions for whistleblower protection and its effect.

The act prohibits dismissal and other disadvantageous treatment of a worker on grounds that the worker disclosed facts about a certain criminal act that is occurring or is about to occur at a workplace in which the worker is providing his or her services and such disclosure is made to that workplace, the administrative organ with jurisdiction, or a third party outside the business operator's organization to whom the disclosure needs to be made. The specific conditions for protection differ depending on to whom the disclosure is made.

Mizutani speaks positively about the fact that whistleblower protection was clearly enacted into statue by the act. On the other hand, he is critical about the act in that its coverage is too narrow and in that it sets rigorous conditions for external disclosure in order to promote internal disclosure within companies.

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