ANDERSON MŌRI & TOMOTSUNE

LABOR AND EMPLOYMENT LAW BULLETIN

April 2017 (No.37)／2017 年 4 月(No.37)

Amendments to the Child Care and Family Care Leave Act, etc.

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The Act on Child Care Leave, Family Care Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (Act No. 76 of May 15, 1991, the "Child Care and Family Care Leave Act" (*Ikuji-Kaigo-Kyugyo-Ho*)), and certain related laws and regulations have recently been amended. The amendments came into effect on January 1, 2017. In order to comply with the amendments, employers are required to update their systems, such as their rules of employment, and improve the working environment.

1. Family care related amendments

In order to prevent employees from quitting their job for taking care of their family members, and to enable employees to balance work with family care, the Child Care and Family Care Leave Act has been amended as follows.

(1) Broadened definition of "Subject Family Members" (*Taisho-Kazoku*)

The range of family members covered by the family care system ("Subject Family Member(s)") has been expanded.

Before the amendment, Subject Family Members included the employee's spouse (including a partner in common-law marriage), parents, children and the spouse's parents. The definition also included the employee's grandparents, siblings and grandchildren, provided that they lived with and were dependent on the employee. After the amendment, the employee's grandparents, siblings and grandchildren are included in the definition of Subject Family Members regardless of whether they live with or are dependent on the employee or not.

(2) Possibility to split the "Family Care Leave" (*Kaigo-Kyugyo*)

Before the amendment, in principle, an employee could only take a Family Care Leave for one continuous period of up to 93 days for a single care-requiring condition of a Subject Family Member who was in need of care. Under the amended Child Care and Family Care Leave Act, an employee may split the Family Care Leave and take up to three separate periods of leave each time a Subject Family Member is in need of care, as long as the total number of days of leave does not exceed 93.

(3) Possibility to take half-days off as "Time Off for Family Care" (*Kaigo-Kyuka*)

Under the Child Care and Family Care Leave Act, an employee who nurses or otherwise takes care of a Subject Family Member can request Time Off for Family Care in order to take care of a Subject Family Member, accompany a Subject Family Member to a hospital, or take the steps necessary for receiving nursing-care services, etc. The maximum number of days for Time Off for Family Care is 5 days per year (in the case there are two or more Subject Family Members, the maximum number of days is 10).

Before the amendment, employees could, as a minimum, take one day off as Time Off for Family Care, but under the amended Child Care and Family Care Leave Act, it is possible to take a half day off. However, employers may be exempt from granting this right to certain employees who will have difficulty in taking a half day off due to the nature of, or the mechanism for performing, such employees' duties, provided that the exemption is addressed in a labor-management agreement.

(4) Prolonged period for right to claim benefits

Under the Child Care and Family Care Leave Act, employers must, in relation to employees who take care of a Subject Family Member in need of nursing care, offer one of the following benefits:

(i) Taking measures to shorten the employees' prescribed working hours;
(ii) Introducing a flextime system;
(iii) Adjusting the employees' working hours (e.g. postponing the starting time and/or advancing the finishing time); or
(iv) Offering a subsidy of the cost of daycare or any other similar care services.

Before the amendment, an employee was only allowed to claim the benefit provided by the employer during 93 days (furthermore, the number of days the employee took a Family Care Leave was subtracted from the 93 days). Under the amended Child Care and Family Care Leave Act, in addition to a Family Care Leave for a total period of up to 93 days, an employee may claim the benefit once (in case of the benefit indicated in item (iv) above) or twice (in case of the benefits indicated in items (i) through (iii)) during a period of three years (the three year period begins the day the employee started to use one of the benefits for the first time).

(5) Right to be exempted from working overtime

Under the amended Child Care and Family Care Leave Act, an employee who takes care of a Subject Family Member in need of care has the right to be exempted from being requested by his/her employer to

work outside of the prescribed working hours. This right applies until the employee no longer takes care of the Subject Family Member.

(6) Requirements for fixed-term employees to take Family Care Leave

Before the amendment, a fixed-term employee could take a Family Care Leave only if the following requirements were fulfilled:

(i) he/she had been employed for one year or more (requirement 1);
(ii) there was a prospect that he/she would still be employed after 93 days had passed from the first day of the Family Care Leave ("Day 93") (requirement 2); and
(iii) it was not obvious that the employee would no longer be employed after one year from Day 93, as the fixed-term employment contract would have expired by then and would not be renewed (requirement 3).

Under the amended Child Care and Family Care Leave Act, the requirements have been lowered; if a fixed-term employee fulfills requirement 1 above, and if it is not clear that the employment contract will expire, without renewals, within approximately nine months from the first day of the Family Care Leave, the fixed-term employee is entitled to take a Family Care Leave.

2. Child care related amendments

In order to improve the systems for supporting employees with various family backgrounds and various work arrangements in balancing work with parental responsibility, the Child Care and Family Care Leave Act has been amended as follows.

(1) Broadened definition or "Subject Children"

The range of children covered by the child care system ("Subject Children") has been expanded. Before the amendment, Subject Children only included biological children and adopted children who have parent-child relationship with the employee under the law. Under the amended Child Care and Family Care Leave Act, children who have *quasi* legal parent-child relationship with the employee, for example children during the custodial period of special adoption or those entrusted to adoptive foster parents, have been included in the definition of Subject Children.

(2) Possibility to take half-days off for "Time Off for Child Care" (*Ko-no-Kango-Kyuka*)

The regime for Time Off for Child Care of preschool children has been amended in a similar way to the regime for Time Off for Family Care.

Under the Child Care and Family Care Leave Act, an employee who is raising preschool children can request "Time Off for Child Care" for taking care of his/her sick/injured children or for taking his/her children to vaccinations or medical check-ups. The maximum number of days for Time Off for Child Care is 5 days per year (in the case there are two or more children, the maximum number of days is 10).

Before the amendment, employees could, as a minimum, take one day off, but under the amended Child Care and Family Care Leave Act, it is possible to take a half day off. However, employers may be exempt from granting this right to certain employees who will have difficulty in taking a half day off due to the nature of, or the mechanism for performing, such employees' duties, provided that the exemption is addressed in a labor-management agreement.

(3) Requirements for fixed-term employees to take "Child Care Leave" (*Ikuji-Kyugyo*)

The requirements for fixed-term employees to be able to take a Child Care Leave have been lowered in a similar way to the requirements for taking a Family Care Leave.

Before the amendment, a fixed-term employee could take a Child Care Leave only if the following requirements were fulfilled:

(i) he/she had been employed for one year or more (requirement 1);
(ii) there was a prospect that he/she would still be employed on and after the date on which his/her child reached one year of age (requirement 2); and
(iii) it was not obvious that the employee would no longer be employed on and before the child's second birthday, as the fixed-term employment contract would have expired by then and would not be renewed (requirement 3).

Under the amended Child Care and Family Care Leave Act, a fixed-term employee that fulfills requirement 1 above may take a Child Care Leave, provided that it is not clear that the employment contract will expire, without renewals, on or before the date his/her child reaches 1.5 years old.

3. Improvement of the working environment in relation to child care and family care

For the purpose of improving the working environment of employees who intend to work after pregnancy, childbirth, maternity leave, Child Care Leave, Family Care Leave, etc., an obligation to prevent so-called "maternity harassment", etc., has been imposed on employers.

(1) Obligation to prevent harassment, etc., due to pregnancy, childbirth, maternity leave, Child Care Leave, Family Care Leave, etc.

Even before the legal reforms, employers were prohibited from dismissing or otherwise treating employees disadvantageously due to pregnancy, childbirth, maternity leave, Child Care Leave, Family Care Leave, etc. In addition, the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (Act No.113 of July 1, 1972) has now been amended to impose an obligation on employers to take measures to prevent actions by any superiors or colleagues of an employee which negatively affect the employee's working environment, such as harassments due to his/her pregnancy, childbirth, use of maternity leave, etc. The Child Care and Family Care Leave Act has also been amended in this respect, and an obligation to take measures to prevent actions by any superiors or colleagues of an employee which negatively affect the employee's working environment, such as harassments due to

his/her use of Child Care Leave, Family Care Leave or any other child care or family care systems, has also been imposed on employers.

(2) Obligation for business operators using dispatched workers

The Act for Securing the Proper Operation of Worker Dispatching Undertakings and Ensuring the Protection of Dispatched Workers (Act No. 88 of July 5, 1985) has been amended to ensure that dispatched workers are covered by the regulations described in (1) above. Under the amended Act, business operators using dispatched workers are classified as “employers” when it comes to the prohibition from treating employees disadvantageously and the obligation to prevent harassment, etc., as set forth in (1) above.

育児･介護休業法等の改正

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「育児休業、介護休業等育児又は家族介護を行う労働者の福祉に関する法律」（平成３年５月15日法律第 76 号。以下「育児･介護休業法」といいます。）及びその関係法令等が改正され、平成29 年 1 月 1 日から施行されました。事業者は、今回の改正を受け、就業規則等社内の諸制度を見直し、労働者の就労環境を整備することを求められることとなります。

1. 介護関連制度

（1）対象家族の範囲拡大

介護関連制度の対象となる家族（「対象家族」）の範囲が拡大されました。

従来、対象家族の範囲は、配偶者（事実婚関係の者を含む）、父母、子、及び配偶者の父母のほか、同居しかつ扶養している祖父母、兄弟姉妹及び孫に限られていましたが、改正により、同居や扶養をしていない祖父母、兄弟姉妹及び孫も新たに含まれることとなりました（同居･扶養要件の撤廃）。

（2）介護休業の分割取得

従来は、労働者は、同一要介護状態にある対象家族 1 人について、最大 93 日を限度として原則として 1 回しか介護休業を取得できないものとされていましたが、改正により、最大 3 回まで分割して介護休業を取得することが認められることとなりました。

(3) 半日単位の介護休暇取得(介護休暇の取得単位の柔軟化)

育児・介護休業法では、要介護状態にある対象家族の介護その他の世話を行う労働者について、1 年に 5 日(要介護家族が二人以上の場合は計 10 日)まで、対象家族の介護や通院の付き添い、介護サービスを受けるために必要な手続等を行うための休暇の取得が認められています。

従来、介護休暇の取得単位は、1 日とされていましたが、改正により、半日単位での取得が認められることとなりました。ただし、業務の性質又は業務の実施体制に照らして、半日単位の取得が困難と認められる業務に従事する労働者については、労使協定で定めることにより、半日単位の介護休暇取得の適用対象から除くことができるとされています。

(4) 介護のための所定労働時間の短縮措置等の利用可能期間の拡張等

育児・介護休業法上、事業者は、要介護状態にある対象家族を介護する労働者に関して、(ⅰ)所定労働時間の短縮措置、(ⅱ)フレックスタイム制度、(ⅲ)始業・終業時刻の繰上げ・繰下げ、(ⅳ)介護サービス費用の助成その他これに準じる制度のいずれかを講じなければならないとされています。

従来、これらの制度の利用可能期間は、介護休業の日数と通算して 93 日までとなる期間とされていましたが、改正により、(ⅳ)以外の制度については、介護休業期間とは別に、利用開始日から 3 年の間で、2 回以上利用できるようにすべきこととなりました。他方、(ⅳ)の制度については、介護休業期間とは別に、利用開始日から 3 年の間で利用できるようにすれば足り、2 回以上の利用ができることは必要とされません。

(5) 介護のための所定時間外労働の免除

改正により、要介護状態にある対象家族を介護する労働者から請求があった場合、介護が終了するまでの間、所定労働時間を超えて労働をさせてはならないという制度が新設されました。

(6) 有期契約労働者の介護休業取得要件の緩和

従来、育児・介護休業法上、有期契約労働者については、①引き続き雇用された期間が過去 1 年以上であり、②介護休業開始日から 93 日経過後も雇用継続の見込みがあり、③その時点から更に 1 年の間で労働契約期間が満了し、更新されないことが明らかでない労働者に限り介護休業取得が認められていました。改正により、有期雇用労働者は、①の要件に加えて、介護休業開始日から約 9 ヶ月経過する時点までに、労働契約期間が満了し、更新されないことが明らかでない者に該当すれば、介護休業の取得が認められることとなり、取得要件が緩和されました。

2. 育児関連制度

育児関連制度については、多様な家族形態・雇用形態に対応した育児期の家庭と仕事の両立支援制度等の整備を目的とし、次のような改正が行われました。

(1) 育児関連制度の対象となる子の範囲の拡大

従来、育児関連制度の対象となる子の範囲は、法律上の親子関係がある実子及び養子に限られていましたが、改正により、特別養子縁組の監護期間中の子、養子縁組里親に委託されている子等も新たに含まれることとなり、法律関係に準じると言えるような関係のある子についても育児関連制度の対象とすることとされました。

(2) 半日単位の子の看護休暇取得(子の看護休暇の取得単位の柔軟化)

介護休暇と同様に、子の看護休暇取得についても取得単位が柔軟化されました。

育児・介護休業法では、小学校就学の始期に達するまでの子を養育する労働者について、1 年に 5 日(子が二人以上の場合は計 10 日)まで、病気、けがをした子の看護のための休暇又は子に予防接種、健康診断を受けさせるための休暇の取得が認められています。

従来、子の看護休暇の取得単位は、1 日とされていましたが、改正により、半日単位での取得が認められることとなりました。ただし、業務の性質又は業務の実施体制に照らして、半日単位の取得が困難と認められる業務に従事する労働者については、労使協定で定めることにより、半日単位の子の看護休暇取得の適用範囲から除くことができるとされています。

(3) 有期契約労働者の育児休業取得要件の緩和

介護休業と同様に、有期契約労働者の育児休業取得要件が緩和されました。

育児・介護休業法上、有期契約労働者については、①引き続き雇用された期間が過去 1 年以上であり、②養育する子が 1 歳に達する日以後も雇用継続の見込みがあり、③その時点から更に 1 年の間に労働契約期間が満了し、更新されないことが明らかでない労働者に限り育児休業取得が認められていました。

改正により、要件が緩和され、①の要件に加えて、養育する子が 1 歳 6 ヶ月に達する日までに、労働契約期間が満了し、更新されないことが明らかでなければ、育児休業の取得が認められることとなりました。

3. 育児・介護等に関する就業環境の整備

妊娠・出産、産前産後休業、育児休業、介護休業をしながら継続して就労しようとする労働者の就業環境の整備を目的として、以下のとおり、いわゆる「マタニティ・ハラスメント」等の防止措置が事業主等に対して義務付けられることになりました。

(1) 妊娠・出産、産前産後休業、育児休業、介護休業等を理由とする嫌がらせ等の防止措置義務

従前より、妊娠・出産、産前産後休業、育児休業、介護休業をしたこと等を理由とする解雇その他不利益取り扱いは禁止されていました。

今回、「雇用の分野における男女の均等な機会及び待遇の確保等に関する法律」(昭和 47 年 7 月 1 日法律第 113 号)が改正され、妊娠・出産、産前産後休業をしたこと等を理由とする嫌がらせ等、上司・同僚による就業環境を害する行為を防止する措置を講じる義務が、事業者に対して新たに課されることとなりました。

これと同時に、育児・介護休業法も改正され、育児休業、介護休業等、育児・介護休業法上の制度を利用したことを理由とする嫌がらせ等、上司・同僚による就業環境を害する行為を防止する措置を講じる義務も、事業者に対して新たに課されることとなりました。

(2) 派遣労働者の派遣先事業者への適用

「労働者派遣事業の適正な運営の確保及び派遣労働者の保護等に関する法律」(昭和 60 年 7 月 5 日法律第 88 号)が改正され、育児・休業等に関する就業環境の整備をすべき事業者に、労働者派遣の役務の提供を受ける者も含まれることとなりました。これにより、(1)で述べた不利益取扱いの禁止及び嫌がらせ等の防止措置義務に

ついて、労働者派遣の役務の提供を受ける者が、当該派遣労働者を雇用する事業主とみなされ、同様の規制を受けることとなりました。

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