ANDERSON MÖRI & TOMOTSUNE

LABOR AND EMPLOYMENT LAW BULLETIN

July 2020 (No.47)/2020年7月(No.47)

Taking Time Off for Child Care (ko-no-kango-kyūka) and Time Off for Family Care (kaigo-kyūka) on an Hourly Basis

Nobuhito Sawasaki / Ryo Ko / Maki Kaneda

The revised Ordinance for Enforcement of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members will become effective on January 1, 2021. This newsletter describes the key amendments to that Ordinance, and the necessary procedures for compliance.

1. Key amendments

The Ordinance for Enforcement of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members, and certain related guidelines have been amended to allow workers providing child care and family care to flexibly take time off to provide that care. From January 1, 2021, workers will be able to take time off for child care (*ko-no-kango-kyūka*) and time off for family care (*kaigo-kyūka*) on an hourly basis.

[Before amendment]

- Time off available on a half-day basis
- Workers with prescribed working hours of four hours or less per day are not eligible.



[After amendment]

- Time off available on an hourly basis
- All workers are eligible.
- "Hour" means an integral multiple of one hour, and no employer may require its employees to take time off for child care and for family care only in units of, for example, two hours, or one hour and 30 minutes.
- Even after January 1, 2021, an employer will not be required to allow its employees to "take some time off from work (*nakanuke*)" (i.e., taking time off for child care or for family care on an hourly basis in the middle of working hours, and returning to work during working hours).
- Upon execution of a labor-management agreement that designates workers engaged in "work from

which they will have difficulty taking time off in units of less than one day in light of the nature of their work and the system to perform their $work^{(*)}$," an employer may refuse a request from such a worker to take time off for child care or for family care on an hourly basis.

- (*) Examples (from the revised Guidelines for Measures to be Taken by Employers to Help Workers Who Care for or Will Care for Children or Other Family Members Balance Their Work Life and Family Life):
- A. the work of cabin attendants, etc. in aircraft flying international routes, etc. for whom it would be difficult to take time off for child care or for family care during the prescribed working hours;
- B. the work at a remote location requiring a long travel time that would be difficult to handle during working hours before or after taking time off for child care or for family care on an hourly basis; or
- C. the work on an assembly-line system or on a shift system for which it would be difficult to incorporate into the working system any person who would take time off for child care or for family care on an hourly basis.

2. Necessary procedures

- Matters related to time off constitute mandatory information that must be stated in the rules of employment (Article 89, Item 1 of the Labor Standards Act), so employers must amend the provisions concerning time off for child care and for family care in the rules of employment, and/or the rules on child care and family care leave, etc.
- If an employer intends to refuse an application from an employee to take time off for child care or for family care on an hourly basis because the employee is engaged in "work from which they will have difficulty taking time off in units of less than one day in light of the nature of their work and the system to perform their work," that work must be specified in a labor-management agreement. Even if the existing labor-management agreement specifies workers who may not take time off on a half-day basis, a new labor-management agreement must be executed because there may be a difference in scope between the work from which an employee will have difficulty taking time off for child care or for family care on a half-day basis, and the work from which an employee will have difficulty taking time off for child care or for family care on an hourly basis.

3. Related links to the homepage of the Ministry of Health, Labour and Welfare (only Japanese is available)

- Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000130583.html
- Leaflet "Time off for child care and time off for family care will be available on an hourly basis!" https://www.mhlw.go.jp/content/11900000/000582033.pdf
- Q&A regarding time off for child care and time off for family care taken on an hourly basis https://www.mhlw.go.jp/content/11900000/000582061.pdf
- Ministerial Ordinance Partially Amending the Ordinance for Enforcement of the Act on Childcare

- Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (Ordinance of the Ministry of Health, Labour and Welfare No.89 of 2019) https://www.mhlw.go.jp/content/11900000/000582065.pdf
- ➤ Partial Amendments to the Guidelines for Measures to be Taken by Employers to Help Workers Who Care for or Will Care for Children or Other Family Members Balance Their Work Life and Family Life (Ministry of Health, Labour and Welfare Notification No.207 of 2019)

 https://www.mhlw.go.jp/content/11900000/000582066.pdf

子の看護休暇・介護休暇の時間単位での取得について

<u> 沢崎 敦一</u> / <u>高 亮</u>/ 金田 真喜

2021(令和3)年1月1日に改正育児・介護休業法施行規則が施行されます。本稿では、改正のポイントと必要な手続きについて述べます。

1. 改正のポイント

育児や介護を行う労働者が子の看護休暇や介護休暇を柔軟に取得することができるよう、育児・介護休業法施行規則等が改正され、2021(令和3年)1月1日より、子の看護休暇及び介護休暇が時間単位で取得できるようになります。

【改正前】 【改正後】

- 半日単位での取得が可能
- 1日の所定労働時間が 4 時間以 下の労働者は取得できない



- 全ての労働者が取得できる

時間単位での取得が可能

- ▶ 「時間」とは 1 時間の整数倍の時間をいい、2 時間単位や 1 時間 30 分単位でしか認めないといった取扱いはできません。
- ▶ 法令上は「中抜け」(就業時間の途中から時間単位の看護休暇及び介護休暇を取得し、就業時間中に 再び戻ること)を認めることは求められていません。
- ▶ 「業務の性質や実施体制に照らし1日未満の単位で休暇を取得することが困難と認められる業務(※)」に従事する労働者として労使協定を締結した場合は、子の看護休暇及び介護休暇の時間単位での取得の申出を拒むことができます。
 - ※の例(改正 子の養育又は家族の介護を行い、又は行うこととなる労働者の職業生活と家庭生活との 両立が図られるようにするために事業主が講ずべき措置に関する指針 より)
 - イ 国際路線等に就航する航空機において従事する客室乗務員等の業務等であって、所定労働時間 の途中まで又は途中から子の看護休暇又は介護休暇を取得させることが困難な業務
 - ロ 長時間の移動を要する遠隔地で行う業務であって、時間単位の子の看護休暇又は介護休暇を取得した後の勤務時間又は取得する前の勤務時間では処理することが困難な業務
 - ハ 流れ作業方式や交替制勤務による業務であって、時間単位で子の看護休暇又は介護休暇を取得する者を勤務体制に組み込むことによって業務を遂行することが困難な業務

2. 必要な手続き

休暇に関する事項は就業規則の絶対的必要記載事項とされているため(労基法89条1号)、看護休暇及び介護休暇に関する就業規則の規定、あるいは、育児・介護休業等に関する規則を変更する必要が

あります。

▶ 「業務の性質や実施体制に照らし1日未満の単位で休暇を取得することが困難と認められる業務」に従事する労働者であるとして子の看護休暇及び介護休暇の時間単位での取得の申出を拒むこととする場合は、当該業務について労使協定で定める必要があります。なお、従前より半日単位の取得ができない労働者として労使協定で定めている場合でも、半日単位で看護・介護休暇を取得することが困難と認められる業務と、時間単位で看護・介護休暇を取得することが困難と認められる業務の範囲が異なる可能性があるため、改めて労使協定を締結する必要があります。

3. 厚生労働省 HP 関連リンク集

- ▶ 育児・介護休業法について
 - https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000130583.html
- → リーフレット「子の看護休暇・介護休暇が時間単位で取得できるようになります!」 https://www.mhlw.go.jp/content/11900000/000582033.pdf
- ➤ 子の看護休暇·介護休暇の時間単位での取得に関する Q&A https://www.mhlw.go.jp/content/11900000/000582061.pdf
- ▶ 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施行規則の一部を改正する省令(令和元年厚生労働省令第89号)
 - https://www.mhlw.go.jp/content/11900000/000582065.pdf
- > 子の養育又は家族の介護を行い、又は行うこととなる労働者の職業生活と家庭生活との両立が図られるようにするために事業主が講ずべき措置に関する指針の一部を改正する件(令和元年厚生労働省告示第 207 号)

https://www.mhlw.go.jp/content/11900000/000582066.pdf

■ 本ニュースレターの内容は、一般的な情報提供であり、具体的な法的アドバイスではありません。お問い合わせ等ございましたら、下記弁護士までご遠慮なくご連絡下さいますよう、お願いいたします。

This newsletter is published as a general service to clients and friends and does not constitute legal advice. Should you wish to receive further information or advice, please contact the authors below.

■ 本ニュースレターの執筆者は、以下のとおりです。

弁護士 <u>沢崎 敦一(nobuhito.sawasaki@amt-law.com</u>)

弁護士 <u>高</u> 亮(<u>ryo.ko@amt-law.com</u>)

リーガルスタッフ 金田 真喜

Authors:

Nobuhito Sawasaki (nobuhito.sawasaki@amt-law.com)

Ryo Ko (ryo.ko@amt-law.com)

Maki Kaneda, legal staff

■ ニュースレターの配信停止をご希望の場合には、お手数ですが、<u>お問い合わせ</u>にてお手続き下さいますようお願いいたします。

If you wish to unsubscribe from future publications, kindly contact us at General Inquiry.

■ ニュースレターのバックナンバーは、<u>こちら</u>にてご覧いただけます。

Previous issues of our newsletters are available here.

ANDERSON MÖRI & TOMOTSUNE Otemachi Park Building 1-1-1 Otemachi, Chiyoda-ku, Tokyo 100-8136, Japan TEL:+81-3-6775-1000 www.amt-law.com