

Amendments to the Child Care and Family Care Leave Act in 2021 ~ A New Framework for Encouraging Male Employees to Take Child Care Leave

Yuka Kamio / Ai Nishiuchi

On June 9, 2021, the "Act for Partial Amendments to the Act on Child Care Leave, Family Care Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members and the Employment Insurance Act" was promulgated ("**2021 Amendment**"). These new acts after the 2021 Amendment are referred to as the "**Amended Child Care and Family Care Leave Act**" and the "**Amended Employment Insurance Act**" respectively. The Act on Child Care Leave, Family Care Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members before the 2021 Amendment is referred to as the "**Child Care and Family Care Leave Act before the Amendment**"). Specific details will be determined later by an Ordinance of the Ministry of Health, Labour and Welfare. In this Newsletter, we provide an outline of the 2021 Amendment, as well as practical measures required by the amended acts.

1. Major Contents of the 2021 Amendment

The major changes made by the 2021 Amendment are as follows:

- (1) Establishment of a framework for flexible child care leave immediately following the birth of a child;
- (2) Enabling the taking of child care leave in installments and flexible commencement of child care leave after the child is one year old;
- (3) Imposing an obligation on employers to take measures to improve the employment environment so as to encourage employees to take child care leave and to inform employees who have notified the employers that the employee or the employee's spouse is pregnant, or has given birth to a child, of said system and confirm the employee's intention to take child care leave;

- (4) Mandatory disclosure of the status of employees taking child care leave;
- (5) Relaxation of requirements to take child care leave and Family Care leave for fixed-term employees; and
- (6) Establishing new provisions in the Employment Insurance Act to include the new system described in (1) in the eligibility of child care leave benefits.

2. Outline of Each Amendment

The following is an outline of each of the amendments described in 1 above.

(1) Establishment of a framework for flexible child care leave immediately following the birth of a child (“Child Care Leave at Birth”)

Media reports have especially focused attention on the establishment of so-called "male maternity leave" to encourage male employees to take child care leave. This leave is called "Child Care Leave at Birth" from a legal perspective, and it allows employees to take child care leave of up to four weeks in total within the eight weeks following childbirth, in addition to the existing child care leave system (Article 9-2 through Article 9-5 of the Amended Child Care and Family Care Leave Act).

Under the current act, if an employee takes child care leave within eight weeks following birth, the employee is allowed to take additional child care leave (so-called "father's child care leave") (Article 5, Paragraph 2 of the Child Care and Family Care Leave Act before the Amendment). This system will be revised in accordance with the 2021 Amendment, and will be replaced with a system that allows employees to take Child Care Leave at Birth and “enabling the taking of child care leave in installments” (see (2) below).

Child Care Leave at Birth will be newly introduced as a flexible system by which employees are allowed to take child care leave up to two separate times and work during the leave period in accordance with their wishes.

The following is an outline of the characteristics of Child Care Leave at Birth:

	Child Care Leave at Birth (Available in addition to current child care leave entitlements)	Current child care leave
Target period	Up to four weeks in total within eight weeks following the birth of a child.	In principle, until a child reaches one year (maximum two years) old.
Available days		
Application deadline	In principle, two weeks before the leave (*1).	In principle, one month before the leave.
Taking leave in installments	Can be taken twice in separate installments.	In principle, taking in installments is not permitted

		-> Can be taken in up to two separate installments due to amendment (see (2) below).
Work during leave	Employees may work during leave to the extent agreed to by the employees (*2), if a labor-management agreement has been concluded.	In principle, work during leave is not allowed.
Child care leave benefits	Eligible.	Eligible.

(Prepared based on the chart on page 1 of the Ministry of Health, Labour and Welfare's leaflet "Amendments to the Child Care and Family Care Leave Act" (prepared by the Employment / Equal Opportunity Division (Office), Municipal Labour Bureau, Ministry of Health, Labour and Welfare in June, 2021))

- *1 If a labor-management agreement stipulates the implementation of measures specified by an Ordinance of the Ministry of Health, Labour and Welfare (such as improvement of a working environment to promote applications for Child Care Leave at Birth), the application deadline may be set as two weeks to one month before the leave.
- *2 Procedures relating to work during leave are set out in Article 9-5, Paragraphs 2 through 5 of the Amended Child Care and Family Care Leave Act. The upper limit will be stipulated by an Ordinance of the Ministry of Health, Labour and Welfare regarding the number of days an employee may work during leave, and that upper limit will likely be up to half of regular working days and working hours.

(2) Enabling the taking of child care leave in installments and flexible commencement of child care leave after the child is one year old

Under the current act, employees are not allowed to take child care leave in installments in principle. However, under the Amended Child Care and Family Care Leave Act, employees will be able to take child care leave in up to two installments, in addition to Child Care Leave at Birth (Article 5, Paragraph 2 of the Amended Child Care and Family Care Leave Act).

Under the current Act, if the period of child care leave is extended after the child reaches one year old for reasons such as inability to enroll in a daycare center, the day on which an employee may commence the extended child care leave is limited to the day after the day on which the child reaches one year old (i.e., the first birthday) and the day after the day on which the child reaches 18 months old. However, after the 2021 Amendment, employees will be able to commence child care leave by alternating with the spouse on, or after, the day after the day on which the child reaches one year old and the day after the day on which the child reaches 18 months old (Article 5, Paragraphs 3, 4 and 6 of the Amended Child Care and Family Care Leave Act).

(3) Imposing an obligation on employers to take measures to improve the employment environment so as to encourage employees to take child care leave, and to inform employees who have notified their employers that the employee or the employee's spouse is pregnant, or has given birth to a child, of the system and confirm the employee's intention to take child care leave

In order to encourage employees to take child care leave, employers are required to take the following measures (Article 21, Paragraph 1, Article 21-2, Paragraph 1, and Article 22, Paragraph 1 of the Amended Child Care and Family Care Leave Act):

- (i) Measures to improve the employment environment so as to encourage employees to apply for and take child care leave (e.g. via the provision of training for employees on child care leave, and the establishment of a system for consultation regarding child care leave)
- (ii) Measures to inform employees who have notified employers that the employee or the employee's spouse is pregnant, or has given birth to a child, of the child care leave system individually (via one of several options such as explanation the system via a meeting, or the provision of information on the system in writing) and to confirm the employee's intention to take child care leave

In addition, dismissal or any other disadvantageous treatment due to the notification described in (ii) above will be prohibited (Article 21, Paragraph 2 of the same Act).

Specific details and methods will be determined later by an Ordinance of the Ministry of Health, Labour and Welfare.

(4) Mandatory disclosure of the status of employees taking child care leave

In order to encourage companies to take measures to promote the taking of child care leave amongst employees, employers with more than 1,000 full-time employees are required to disclose the status of employees taking child care leave at least once a year pursuant to an Ordinance of the Ministry of Health, Labour and Welfare (Article 22-2 of the Amended Child Care and Family Care Leave Act).

The content to be disclosed will be determined by an Ordinance of the Ministry of Health, Labour and Welfare, and will likely include the "percentage of male employees taking child care leave" or the "percentage of employees taking child care leave and leave for child care purposes."

(5) Relaxation of requirements to take child care leave and Family Care leave for fixed-term employees

Under the current act, fixed-term employees are required to meet the following two requirements in order to take **child care leave**:

- (i) The employee has been continuously employed by the current employer for one year or more; and

- (ii) The employment contract is not set to expire before the child reaches one year and six months old.

Under the current act, fixed-term employees are required to meet the following two requirements in order to take **Family Care leave**:

- (i) The employee has been continuously employed by the current employer for one year or more; and
- (ii) The employment contract is not set to expire within six months from the day on which 93 days have elapsed after the scheduled commencement day of Family Care leave.

Due to the 2021 Amendment, with respect to both child care leave and Family Care leave, the requirement that: (i) "the employee has been continuously employed by the current employer for one year or more" will be abolished and only the respective requirement (ii) will apply (Proviso of Article 5, Paragraph 1, Proviso of Paragraph 3 of the same Article and Proviso of Article 11, Paragraph 1 of the Amended Child Care and Family Care Leave Act).

However, like non-fixed-term employees, employers may exclude employees who have been continuously employed by that employer for less than one year from being eligible for child care leave or family care leave pursuant to a labor-management agreement (Article 6, Paragraph 1 of the Amended Child Care and Family Care Leave Act (not amended)).

In short, the requirements in order to take child care leave and family care leave for fixed-term employees after the 2021 Amendment shall be as follows;

<Child Care Leave for fixed-term employees>

- ✓ The employment contract is not set to expire before the child reaches one year and six months old.
- ✓ (if stipulated by the labor-management agreement) The employers may exclude employees who have been continuously employed by that employer for less than one year from being eligible for child care leave.

<Family Care Leave for fixed-term employees>

- ✓ The employment contract is not set to expire within six months from the day on which 93 days have elapsed after the scheduled commencement day of family care leave.
- ✓ (if stipulated by the labor-management agreement) The employers may exclude employees who have been continuously employed by that employer for less than one year from being eligible for family care leave.

(6) Establishment of provisions on child care leave benefits at birth

Based on the amendments described in (1) and (2) above, the Employment Insurance Act will be amended

in the two following respects:

(i) Child care leave benefits at birth

Provisions will be established so that employees who take Child Care Leave at Birth are able to receive benefits for Child Care Leave at Birth (Article 61-6, Paragraph 1 and Article 61-8 of the Employment Insurance Act).

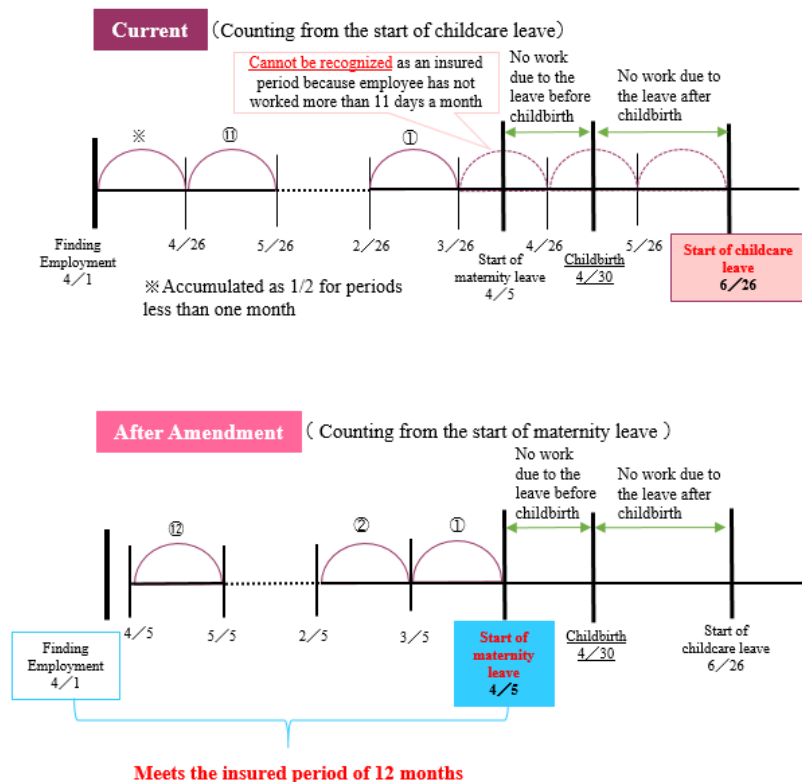
(ii) Special provisions regarding the starting point of calculations for insured period

With respect to child care leave benefits in cases existing child care leave, special provisions will be established regarding the starting point of calculation for the insured period in order to eliminate cases in which recipient requirements are not satisfied depending on the timing of the delivery date (Article 61-7, Paragraph 4 of the Employment Insurance Act).

In other words, the current act requires 12 or more “Fulfilled Months” (i.e. months in which the number of days subject to wage payment (specifically equal to working days) is 11 or more days), within the two-year period preceding **the commencement day of child care leave**. However, after the amendment, even if the requirements described above are not satisfied in the insured period, if there are at least enough Fulfilled Months within the two-year period preceding **the commencement day of maternity leave**, the requirements for the insured period regarding the payment of child care leave shall be satisfied. An example of such a calculation is shown below.

Example Case

Finding Employment	April 1, 2021
Leave Before Childbirth	From April 5, 2022
Date of Birth	April 30, 2022
Leave After Childbirth	From June 25, 2022
Childcare Leave	From June 26, 2022
Insurance Requirement (Current)	Does not meet the insured period of 12 months
Insurance Requirement (After Amendment)	Meets the insured period of 12 months



(Prepared based on a chart in the leaflet entitled "Partial change of requirements for insured period regarding child care leave benefits from September 1, 2021 – For those who take child care leave from September 1, 2021 or later –" issued by the Unemployment Office, Municipal Labour Bureau, Ministry of

Health, Labour and Welfare)

3. Effective date

The effective dates of the amendments described in 2 above are as follows:

Item	Effective date
(1) Establishment of a framework for flexible child care leave immediately after the birth of a child (Child Care Leave at Birth)	A date specified by a government ordinance within one year and six months from the date of promulgation (expected to be October 1, 2022)
(2) Taking of child care leave in installments and flexible commencement day for child care leave after child turns one year old	A date specified by a government ordinance within one year and six months from the date of promulgation (expected to be October 1, 2022)
(3) Obligation to take measures to improve the employment environment so as to encourage employees to take child care leave, and to inform employees who have notified employers that the employee or the employee's spouse is pregnant or has given birth to a child of the system and confirm the employee's intention to take child care leave	April 1, 2022
(4) Mandatory disclosure of the status of employees taking child care leave	April 1, 2023
(5) Relaxation of requirements to take child care leave and family care leave for fixed-term employees	April 1, 2022
(6) Establishment of provisions on child care leave benefits at birth: (i) Child care leave benefits at birth (ii) Special provisions regarding starting point of calculation for insured period	For (i): A date specified by a government ordinance within one year and six months from the date of promulgation (expected to be October 1, 2022) For (ii): September 1, 2022

4. Practical measures based on the 2021 Amendment

With respect to the 2021 Amendment, it is necessary to revise applicable parts of internal regulations concerning the Child Care and Family Care Leave Act by each effective date, and in accordance with any Ordinance(s) of the Ministry of Health, Labour and Welfare to be published in the future. In addition, with respect to the amendment described in 2(1) or (5) above, it may be prudent to conclude a labor-

management agreement, if necessary.

In particular, with respect to the amendment described in 2(3) above, it is necessary to consider and implement specific measures within the company to improve the employment environment so as to encourage employees to take child care leave, and to inform employees who have notified the employers that the employee or the employee's spouse is pregnant or has given birth to a child of the system and confirm the employee's intention to take child care leave.

It is also necessary to review administrative procedures for personnel and labor matters relating to child care leave to ensure that they are fully compliant with the 2021 Amendment.

2021年 育児・介護休業法改正 ～男性の育児休業取得促進のための新たな枠組み等

弁護士 神尾 有香 / 西内 愛

2021年6月9日、「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及び雇用保険法の一部を改正する法律」が公布されました（「2021年改正」といいます。2021年改正後の各法律を、それぞれ「改正育児・介護休業法」、「改正雇用保険法」といいます。2021年改正前の育児休業、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を「改正前育児・介護休業法」といいます。）。具体的内容は追って厚生労働省令により定められますが、本ニュースレターでは、2021年改正及び求められる実務対応について概説します。

1. 2021年改正の主な内容

2021年改正による主な改正点は、以下のとおりです。

- (1) 子の出生直後の時期における柔軟な育児休業の枠組みの創設
- (2) 育児休業の分割取得化と1歳以降の育児休業開始日の柔軟化
- (3) 育児休業を取得しやすい雇用環境整備及び妊娠・出産の申出をした従業員に対する個別の周知・意向確認の措置の義務付け
- (4) 育児休業の取得状況の公表の義務付け
- (5) 有期雇用従業員の育児・介護休業取得要件の緩和
- (6) (1)の新制度をも育児休業給付の対象に含めるための雇用保険法上の規定の整備等

2. 各改正点の概要

上記1の各改正点につき、以下のとおり概説します。

(1) 子の出生直後の時期における柔軟な育児休業(出生時育児休業)の枠組みの創設

2021年改正につき、報道などで特に注目されている点は、男性従業員による育児休業の取得を促進するために、いわゆる「男性版産休」が創設されることです。これは、法律上の呼称としては、「出生時育児休業」といい、既存の育児休業制度とは別に、子の出生後8週間以内に合計4週間までの育児休業を取得することができるというものです(改正育児・介護休業法9条の2から9条の5)。

現行法上、子の出生後8週間以内に育児休業を取得した場合にはその後再度育児休業を取得することができる制度(いわゆる「パパ休暇」)がありますが(改正前育児・介護休業法5条2項)、2021年改正により同制度は見直され、出生時育児休業と育児休業の分割取得化(下記(2)参照)に置き換わります。

出生時育児休業は、分割して2回まで取得できるほか、従業員の意向により休業期間中に就業することもできる等、業務ともある程度調整して柔軟に利用できるような制度として新設されます。

出生時育児休業の概要は以下のとおりです。

	出生時育児休業 (現行の育児休業に加えて取得できる)	現行の育児休業
対象期間 取得可能日数	子の出生後8週間以内に合計4週間まで取得可能	原則子が1歳(最長2歳)まで
申出期限	原則休業の2週間前(※1)まで	原則1か月前まで
分割取得	分割して2回取得可能	原則分割不可→改正により2回まで分割可能に(下記(2)参照)
休業中の就業	労使協定を締結している場合、従業員が合意した範囲(※2)で事前に調整したうえで休業中に就業することが可能	原則就業不可
育児休業給付	対象となる	対象となる

(厚生労働省リーフレット「育児・介護休業法改正ポイントのご案内」(厚生労働省都道府県労働局雇用環境・均等部(室)令和3年6月作成)1頁記載の図表を基に作成)

※1厚生労働省令で定める措置(出生時育児休業の申出が円滑に行われるようにするための職場環境の整備等)の実施を労使協定で定めている場合は、2週間～1か月前までとすることができます。

※2 休業中の就業に関する手続は、改正育児・介護休業法9条の5第2項～5項による。厚生労働省令により、就業させることのできる日数の上限が設けられ、休業期間中の労働日・所定労働時間の半分までとされる見込みです。

(2)育児休業の分割取得化と1歳以降の育児休業開始日の柔軟化

現行法上、原則として分割して育児休業を取得することができませんが、改正育児・介護休業法により、出生時育児休業とは別に、分割して2回まで育児休業を取得することが可能となります(改正育児・介護休業法5条2項)。

また、保育所に入所できない等の事情により1歳以降に育児休業を延長する場合、現行法では延長後の育児休業を開始できる日が1歳の誕生日と1歳6か月の誕生日に限定されていましたが、2021年改正により、誕生日(応当日)以降でも配偶者と交代で育児休業を開始できるようになります(改正育児・介護休業法5条3項、

4 項及び 6 項等)。

(3) 育児休業を取得しやすい雇用環境整備及び妊娠・出産の申出をした従業員に対する個別の周知・意向確認の措置の義務付け

育児休業の取得を促す目的で、以下のような措置を講ずることが事業主に義務付けられます(改正育児・介護休業法 21 条 1 項、21 条の 2 第 1 項、22 条 1 項)。

- ① 従業員による育児休業の申出・取得を円滑にするための雇用環境の整備に関する措置(従業員に対する育児休業にかかる研修の実施、育児休業に関する相談体制の整備等)
- ② 従業員本人又はその配偶者の妊娠・出産の申出をした従業員に対して事業主から個別の制度周知(面談での制度説明、書面による制度の情報提供等の複数の選択肢からいずれかを選択することとなる見込み)及び休業の取得意向を確認するための措置

また、上記②記載の申出をしたことを理由とする解雇その他の不利益取扱いは禁止されます(同法 21 条 2 項)。

これらの具体的内容・方法等については、追って厚生労働省令で定められます。

(4) 育児休業の取得の状況の公表の義務付け

企業の育児休業取得促進の取組みを促すため、常時雇用する従業員数が 1000 人超の事業主は、厚生労働省令の定めるところに従い、毎年 1 回以上、育児休業の取得の状況に関する公表が義務付けられます(改正育児・介護休業法 22 条の 2)。

公表内容は、厚生労働省令で定められる予定ですが、「男性の育児休業等の取得率」又は「育児休業等と育児目的休暇の取得率」と定められる見込みです。

(5) 有期雇用従業員の育児・介護休業取得要件の緩和

現行法上、有期雇用従業員が**育児休業**を取得するためには、以下の 2 つの要件を満たすことが求められています。

- ① 当該事業主に引き続き雇用された期間が 1 年以上である者
- ② 子が 1 歳 6 か月に達する日までに雇用契約が満了することが明らかでない者

また、現行法上、有期雇用従業員が**介護休業**を取得するためには、以下の 2 つの要件を満たすことが求められています。

- ① 当該事業主に引き続き雇用された期間が 1 年以上である者
- ② 介護休業開始予定日から起算して 93 日を経過する日から 6 か月を経過する日までに、雇用契約が満了することが明らかでない者

2021 年改正により、育児休業と介護休業いずれについても、①の要件「当該事業主に引き続き雇用された期間が 1 年以上である者」が廃止され、各々②の要件のみとなります(改正育児・介護休業法 5 条 1 項ただし書、同条 3 項ただし書、11 条 1 項ただし書)。

ただし、無期雇用従業員と同様に、労使協定を締結した場合には、事業主に引き続き雇用された期間が1年未満である従業員を、育児休業又は介護休業の対象から除外することが可能です(改正育児・介護休業法 6 条 1 項(同条項の改正なし))。

整理しますと、2021 年改正後、有期雇用従業員が育児休業及び介護休業を取得する要件は、次のとおりとなります。

＜有期雇用従業員の育児休業＞

- ✓ 子が1歳6か月に達する日までに雇用契約が満了することが明らかでないこと
- ✓ (労使協定により規定されている場合)事業主に引き続き雇用された期間が1年未満である場合、育児休業の対象から除外可能

＜有期雇用従業員の介護休業＞

- ✓ 介護休業開始予定日から起算して93日を経過する日から6か月を経過する日までに、雇用契約が満了することが明らかでないこと
- ✓ (労使協定により規定されている場合)事業主に引き続き雇用された期間が1年未満である場合、介護休業の対象から除外可能

(6)出生時育児休業給付金の規定の創設等

上記(1)及び(2)の改正を踏まえ、以下の二つの点につき、雇用保険法が改正されます。

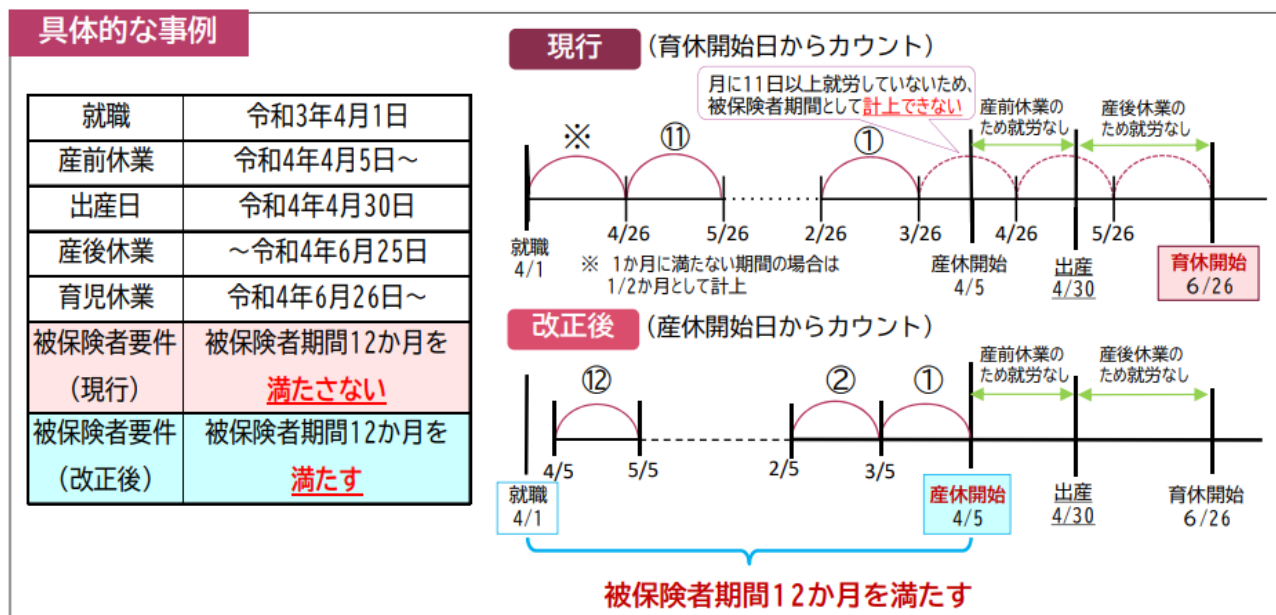
① 出生時育児休業給付金

出生時育児休業を取得した場合にも出生時育児休業給付金を受給できるよう、規定が整備されます(雇用保険法 61 条の 6 第 1 項、61 条の 8 等)。

② 被保険者期間の計算の起算点に関する特例

また、従来の育児休業を取得する場合の育児休業給付金について、出産日のタイミングによって受給要件を満たさなくなるケースを解消するため、被保険者期間の計算の起算点に関する特例が設けられます(雇用保険法 61 条の 7 第 4 項等)。

すなわち、現行法上は、育児休業開始日を起算点として、その日前2年間に賃金支払基礎日数(就労日数)が11日以上ある完全月が12か月以上あることが必要となりますが、改正後は、保険者期間において上記要件を満たさないケースでも、産前休業開始日等を起算点として、その日前2年間に賃金支払基礎日数(就労日数)が11日以上ある完全月が12か月以上ある場合には、育児休業給付の支給に係る被保険者期間要件を満たすことになります。この計算の具体例については、下図のとおりです。



(厚生労働省・都道府県労働局・ハローワーク「令和3年9月1日から、育児休業給付に関する被保険者期間の要件を一部変更します～育児休業開始日が令和3年9月1日以降の方が対象です～」¹⁾)

3. 施行期日

上記2の各改正点の施行期日は、下表のとおりです。

項目	施行期日
(1)子の出生直後の時期における柔軟な育児休業(出生時育児休業)の枠組みの創設	公布日から1年6か月以内の政令で定める日(2022年10月1日となる見込み)。
(2)育児休業の分割取得化と1歳以降の育児休業開始日の柔軟化	公布日から1年6か月以内の政令で定める日(2022年10月1日となる見込み)。
(3)育児休業を取得しやすい雇用環境整備及び妊娠・出産の申出をした従業員に対する個別の周知・意向確認の措置の義務付け	2022年4月1日
(4)育児休業の取得の状況の公表の義務付け	2023年4月1日
(5)有期雇用従業員の育児・介護休業取得要件の緩和	2022年4月1日
(6)出生時育児休業給付金の規定の創設等	左記①につき、公布日から1年6か月以内の政令で定める日(2022年10月1日となる見込み)。
①出生時育児休業給付金	左記②につき、2022年9月1日
②被保険者期間の計算の起算点に関する特例	

¹ <https://www.mhlw.go.jp/content/11600000/Arial.pdf>

4. 2021 年改正を踏まえた実務対応

2021 年改正については、今後公表される厚生労働省令等に基づき、各施行日までに、育児・介護休業法に関する社内規程の該当箇所の改正が必要となります。また、上記 2(1)又は(5)の改正点につき、各社の必要に応じて、労使協定の締結等の対応が必要となります。

特に、上記 2(3)の改正点については、育児休業を取得しやすい雇用環境整備と、妊娠・出産の申出をした従業員に対する個別の周知・意向確認の措置として、社内で具体的にどのような措置を講ずるかを検討し、制度化していく必要があります。

また、育児休業に関する人事労務上の事務手続も、2021 年改正を踏まえたものに見直す必要があります。

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- 本ニュースレターの執筆者は、以下のとおりです。
弁護士 神尾 有香 (yuka.kamio@amt-law.com)
弁護士 西内 愛 (ai.nishiuchi@amt-law.com)

Authors:

[Yuka Kamio \(yuka.kamio@amt-law.com\)](mailto:yuka.kamio@amt-law.com)

[Ai Nishiuchi \(ai.nishiuchi@amt-law.com\)](mailto:ai.nishiuchi@amt-law.com)

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