

4. Labor Law

An Amendment to the Child Care Leave Law

Promulgated on June 9, 1995. Ch. 107. Effective as of October 1, 1995 and April 1, 1999.

[Background of the Amendment]

In Japan, the population of older persons is increasing, while the system to care for older persons is inadequate. As a result, many employees, especially female employees are forced to quit their jobs and to take care of their elderly family members. It is likely that this situation will worsen because the increasing proportion of older people is not abating, and also because the birth rate is decreasing year by year.

In order to avoid the suspension of employees' jobs and careers, because of family care responsibilities, some companies provide family care leave systems in their employment and personnel schemes. According to a 1993 research study by the Ministry of Labor, 51.9% of establishments which have 500 or more employees already have such family care leave systems, however, in the cases of establishments which have from 33 to 99 employees, only 14.2% provide any kind of family care leave system.

The system to guarantee family care leave to employees is very useful in helping persons who have to take care of a sick family member. The Ministry of Labor issued a guideline concerning family care leave in 1992, and promoted the system to companies. In 1995, the legislation for family care leave was officially adopted. Since there is already a law concerning child care leave, this legislation became an amendment to the Child Care Leave Law. But since only 16.3% of all companies already have a family care leave system now, the legislator decided to make the preparation duration. Many provisions of the amendments will be effective as of April 1, 1999.

[Outline of the New Law]

I. The amendment which became effective as of October 1, 1995

(1) The name of the new law is “Act concerning Welfare of Workers Who Are Taking Care of a Child or Family Member, such as Child Care Leave”.

(2) An employer has to endeavor to take special actions to re-employ workers who quit their jobs because of pregnancy, childbirth, child care or sick family care (Article 15). The Equal Employment Opportunity Law has a similar provision which applies to female workers who quit their jobs because of pregnancy, childbirth or child care (Article 25). The new law increases the coverage of the Equal Employment Opportunity Law, that is, it covers male employees, and employees who quit their jobs because of “sick family care”. Due to this amendment to the Child Care Leave Law, the provision of the Equal Employment Opportunity Law was discarded.

(3) Employers have to endeavor to introduce a family care leave system. (Section 2 of the Schedule)

II. The Amendment which will be effective as of April 1, 1999

(1) The name of the new law will change to “Act concerning Child Care Leave, Family Care Leave or Welfare of Employees Who Are Taking Care of a Child or Family Member”.

(2) The System of Family Care Leave

The employee who is eligible for family care leave is a male or female employee who must care for his/her spouse, parents, children and parents of his/her spouse. In the event that an employee lives with his/her grand parents or sisters/brothers and they are dependents of the employee, they are covered by this law. These relatives should be in such condition as to need full-time care for at least two weeks (Article 2).

If the employee who is entitled to family care leave requests the leave, the employer must approve it, but an employer need not pay the employee during the leave (Article 11 (1)). If there is a provision in the collective agreement, the employer may refuse a request for family care leave from an employee: (i) who has been employed continuously for less than one month; (ii) whose employment will be

terminated in three month; or (iii) whose weekly scheduled working days are two days or less (Article 12 (2)).

When an employee requests family care leave on very short notice (less than two weeks), an employer can order the employee to change the starting date of the leave, but the employer cannot postpone the date to begin more than two weeks after the original date the employee made the request. (Article 12 (3)).

The duration of the leave is three months at most. An employee may take leave only once per family member for care. A leave period cannot be separated into two parts, that is, an employee has to take one continuous leave. (Article 15 (1); Article 11 (1)). An employee may request the extension of the leave within two weeks of the original last day of the family leave, but the extension request is permitted only once, and the total duration of the leave may not exceed three months (Article 13).

The family care leave will terminate when: (i) the last day of the leave an employee requested has ended; (ii) three months have passed since the first day of the leave; (iii) an employee is granted another leave, such as maternity leave; or (iv) the member of the family for whom leave was taken dies. (Article 15 (3) and (4)).

The most important provision is that which prohibits the dismissal of the employee who takes leave (Article 16).

(3) Other Employer Obligations

In addition to family care leave, an employer has to provide one of the following accommodations for employees who are taking care of their families: (i) an accommodation to work part-time; (ii) a flexible time schedule; (iii) an earlier or later time schedule for beginning work or for ending work; or (iv) monetary assistance in case an employee employs someone to nurse his/her family member. (Article 19).

[Comment]

Under the principle of equal treatment of sexes, the new law guarantees family care leave not only to female workers but also to male workers. It is expected that many more women will take the leave than men will, because of the power balance within a family.

The fact that Japanese women are taking care of not only their own parents but also their husbands' parents is evidence of the lower status of Japanese women in the family. Considering the situation, it seems very burdensome to women that the law guarantees an employee leave to care for his/her spouse's parents. If the new law did not guarantee leave to care for a spouse's parents, then would male workers ask their wives to take care of their parents? Would male workers take care of their parents by themselves? The new law will assist the family confronted with the illness of a member, but it is regrettable to say that it will do little to overcome the gender roles within the Japanese family based on traditional customs.

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5. International Law

Treaties and Agreements

[Multilateral]

Constitution de l'Union internationale des télécommunications, made at Geneva on December 22, 1992, accepted on January 18, 1995, entered into force on January 18, 1995.

Convention de l'Union internationale des télécommunications, made at Geneva on December 22, 1992, accepted on January 18, 1995, entered into force on January 18, 1995.

Protocole facultatif concernant le règlement obligatoire des différends relatif à la Constitution de l'Union internationale des télécommunications, à la Convention de l'Union internationale des télécommunications et aux Règlements administratifs, made at Geneva on December 22, 1992, accepted on January 18, 1995, entered into force on January 18, 1995.

International Cocoa Agreement, 1993, made at Geneva on July