

4. Labor Law

The Revision of the Equal Employment Opportunity Law, etc.

Promulgated on June 18, 1997. Ch. 92. Effective as of April 1, 1999.

[Background of the Revision]

The Equal Employment Opportunity Law (EEOl) was enacted in 1985. The purpose of this law is to eliminate sex discrimination at each stage of employment, but since it merely imposed on employers a “duty to endeavor” to provide women with opportunities equal to those provided to men with regard to discrimination in recruitment, hiring, assignment and promotion, the legal effect was limited. Mediation by the Equal Opportunity Mediation Commission, which was established as one of dispute resolution procedures concerning sex discrimination, couldn’t be started without the consent of both parties. Therefore, mediation was used only once since enactment, and ended in failure. Moreover, there have been few advances in voluntary elimination of sex discrimination by employers. Consequently, the Equal Employment Opportunity Law was amended in 1997 in order to facilitate the elimination of sex discrimination in the workplace.

Following this revision, limitations on overtime work by women and the banning of night work for women workers were abolished. These were women’s protective provisions in the Labor Standards Law (LSL). On the other hand, limitations on night work for both men and women workers were added to the Child Care and Family Care Leave Law (CCFCLL).

[Main Points of the Amendment]

(1) The Title of the Law

The official name of the Equal Employment Opportunity Law has been changed from “Law Respecting the Improvement of the Welfare of Women Workers, including the Guarantee of Equal Opportunity and

Treatment between Men and Women in Employment”, to “Law Respecting the Guarantee of Equal Opportunity and Treatment between Men and Women in Employment”. The 1985 Law was so named because it was legislation which formally amended the 1972 Working Women’s Welfare Law, and in the 1997 revision it was renamed in order to clearly express the concept of an equal employment law.

(2) Prohibition against Discrimination

The 1997 Law prohibits discrimination against women with respect to recruitment, hiring, assignment and promotion (1997 EEOL, Arts.5 and 6), while the 1985 EEOL simply set forth the employer’s moral duty to endeavor to provide equal opportunity for women and men. Regarding vocational training, the limitation of prohibition against discrimination was abolished (1997 EEOL, Art.6). With respect to recruitment, hiring, assignment, promotion and vocational training, the Ministry of Labor can issue guidelines to clarify what discriminatory treatment is prohibited (1997 EEOL Art.10). Moreover, recruitment and assignment limited only to women that used to be legal have been prohibited as “discrimination against women” in principle because they may result in fixed categories of work only for women and occupational segregation between men and women.

(3) Positive Action

Article 9 of the 1997 Law permits preferential treatment for women as an exception when it is adopted to eliminate sex discrimination, although it is formally contrary to the concept of equal opportunity. The Law also provides that the national government can give advice and other forms of assistance concerning positive action to employers taking or going to take measures to eliminate de facto discrimination between men and women in the workplace (1997 EEOL Art.20).

(4) Measure to Secure Legal Effectiveness

(a) Publication of Names of Companies

When an employer violates the prohibition against discrimination and furthermore fails to comply with the Labor Minister’s advice (1997 EEOL Art.25 Para.1), the Labor Minister can publicize the fact (1997 EEOL Art.26).

(b) Improvement of Mediation Procedures

When one party applies for mediation, the other party’s consent is

not required (1997 EEOL Art.16).

(5) Measures Employers Should Pay Attention to with Respect to Women's Employment

(a) Sexual Harassment

Employers are required to give consideration in personnel management to the prevention of sexual harassment in the workplace (1997 EEOL Art.21 Para.1). The Labor Minister issues guidelines with respect to the issues employers should pay attention to (1997 EEOL Art.21 Para.2).

(b) Health Management during Pregnancy and after Childbirth

Employers must take measures to protect the health of women employees during pregnancy and after childbirth. Formerly employers only had the "duty to endeavor" to take such measures under the 1985 Law (1997 EEOL Art.22 and 23 Para.1). The Labor Minister issues guidelines with respect to the measures employers should take (1997 EEOL Art.23 Para.2).

(6) The Revision of Other Related Laws

(a) The Labor Standards Law (LSL)

Regulations limiting late night work, overtime work and holiday work by women (LSL Arts.64-2 and 64-3 prior to revision) have been abolished. In the women's protective provisions of the LSL, maternity leave for women prior to childbirth has been extended from 10 weeks to 14 weeks in the event of a multiple birth (LSL after the revision Art.65 Para.1).

(b) The Child Care and Family Care Leave Law (CCFCLL)

Article 16-2 of the CCFCLL provides that the employer cannot order late night work (defined as occurring between 10:00 P.M. and 5:00 A.M.) for a worker who is raising child not yet in elementary school when the worker requests a late night work exemption.

**Prof YOICHI SHIMADA
SHINO NAITO**