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How will the amendments of the Local Public Service Act and Local Autonomy Act affect ALTs?

Neo Yamashita, EWA

Charles Weathers, Osaka City University

The Local Public Service Act and the Local Autonomy Act govern employment practices for both regular and non-regular public employees. The rules and regulations governing non-regular employees are inconsistent and unfair, resulting in constant labor problems, so the Ministry of Internal Affairs and Communications (MIAC, or *Somusho*) has been preparing an extensive overhaul that will revise both laws and create a new employment category, Fiscal Year Appointed Employee (*kaikei nendo ninyo shokuin*), to replace the current non-regular employee (*hiseiki komuin*) designation. The two revised laws (currently undergoing heated debate and adjustment) are scheduled to take effect on April 1, 2020. This report provides a compact explanation of the changes and their implications for ALTs.

1. Why will the Local Public Service Act and Local Autonomy Act be amended?

Background

- a) Legal cases for wages and working conditions of non-regular public sector employees
 - The number of non-regular public sector employees has increased because of the extreme fiscal problems of local governments. Local governments have used non-regular employees for decades to hold down costs, but tens of thousands of regular local public employee positions have been replaced by cheaper non-regular employees since 2005.
 - Compensation practices are unfair. Non-regular employees do not receive the

same bonuses and allowances as regular employees, even when they do equivalent work.

- Personnel practices are not consistent. The most common inconsistency is that most local governments do not pay bonuses and allowances to non-regular public sector employees.
- Local governments treat many non-regular employees as regular employees (in the legal sense) in order to pay them bonuses (regardless of their actual employee category) because Article 203-2 of the Local Autonomy Act allows non-regular public sector employees to receive only basic wages and job-related costs such as transportation fees but not bonuses or allowances regarded as family- or welfare-related.
- Court decisions have not been consistent. The Supreme Court has recognized non-regular public sector employees as regular employees in one decision in 2010, but Osaka High Court ruled in the same year that they were quasi-regular employees. Both the Supreme Court and Osaka High Court used the term *jokin-teki hijokin*, literally regular-type non-regular employee. That ruling did not exactly put an end to the confusion.

b) Legal status and labor disputes of non-regular public sector employees

- Most non-regular public sector employees (special civil servants, *tokubetsu-shoku komuin*) are covered by Article 3-3-3 of the Local Public Service Act so they are also covered by the Trade Union Law. However, regular public employees (or civil servants, *ippan-shoku komuin*) are covered by Articles 17 or 22 of the Local Public Service Act, so they are excluded from coverage by the Trade Union Law.
- Under the Trade Union Law, employees enjoy basic labor rights, including the rights to free association (i.e., the right to form unions), to conduct bargaining, and to strike, and labor-management disputes are mediated by labor relations commissions. In addition, private sector managers are legally required to conduct collective bargaining, which makes it possible for smaller unions (such as EWA and General Union) to represent employees effectively. However, local

governments are not legally required to negotiate with their regular employees under the Local Public Service Act.

- There have been many labor disputes by non-regular employees against local governments, including strikes and lawsuits.
- Some local governments, especially under neoliberal politicians like Osaka's Hashimoto Toru, have challenged the right of any one union to defend workers covered under the two different laws (the Local Public Service Act and the Trade Union Law), but the Supreme Court ruled in 2015 that a union may represent both categories of workers. Unions such as EWA that defend both categories of workers are sometimes called hybrid unions. There are only a few other such unions at present.

c) When the revisions of the two Acts take effect on April 1, 2020, the following changes in personnel practice will occur:

c-1) • Article 22-2 of the revised Local Public Service Act will create two types of non-regular public sector employee: full-time Fiscal Year Appointed Employee and part-time Fiscal Year Appointed Employee. (Until 1945, public employees in Japan were regarded as “appointed” by the Emperor, rather than “hired” like private sector employees; since 1945, they have been regarded as appointed by official agencies, including national ministries, and local governments.)

- Full-time Fiscal Year Appointed Employees: same working hours per week as regular employees: 38 hours 45 minutes or more.
- Part-time Fiscal Year Appointed Employees: fewer working hours per week than regular employees.
- The designation “regular-type non-regular employee” will no longer exist.

c-2) • Part-time employees will be paid basic wages, costs, and bonuses based on the amended Article 203-2 of the Local Autonomy Act.

- Full-time employees will be paid basic wages, job-related costs, and all allowances including bonuses, severance pay (in Japan, this is usually a

retirement allowance), housing allowances, regional allowances (a cost-of-living supplement based on where you work; e.g., 20% in Tokyo, 11% in Osaka) and so on, on the same basis as regular employees based on Article 204 of the revised Local Autonomy Act.

d) Status of Fiscal Year Appointed Employees

- Fiscal Year Appointed Employees will be appointed in accordance with Article 22-2 of the Local Public Service Act.
- Non-regular employees currently covered by Article 3-3-3 of the Local Public Service Act will be converted to Fiscal Year Appointed Employee status, meaning that they will no longer be covered by the Trade Union Law, and will lose their right to strike.
- An advantage for local governments is that they will no longer face the threat of (legal) strikes. However, unions are concerned about a possible loss of leverage since the right to strike will be eliminated.

2. What will change for non-regular sector employees such as ALTs?

a) Transition

- ALTs will have their employment status converted to Fiscal Year Appointed Employee.

b) Status and working conditions (individual employees):

- The duration of employment will be less than one year (or one fiscal year), i.e., less than 365 days.
- The employment relationship is not contractual but appointment-based. “Appointment” sounds exalted because, as explained above, the term was originally intended for elite officials in the national bureaucracy. A private sector non-regular employee works under a contract (in principle, according to an agreement between the worker and employer), so s/he has a “right of expectation,” that is, a legal right to job security based on a reasonable

expectation that s/he will continue working for an extended period. In the public sector, however, non-regular employees are appointed, so, legally speaking, there is no contract-type agreement.

- Therefore, an appointment cannot be officially renewed. Technically, an employee who continues working in the following year is hired under a completely new appointment, not renewed.
- ALTs will be evaluated by local governments when they apply for new appointments. The means of evaluation will vary by local government.
- Since, legally speaking, ALTs will be given new appointments rather than re-hired, they cannot accrue seniority or benefits, regardless of time worked. ALTs seeking to obtain new appointments will have to undergo interviews just like persons seeking ALT positions for the first time. Local governments will have the option of recruiting new candidates for ALT positions or interviewing incumbents.
- All ALTs, regardless of experience, will have a one-month probationary period after each new appointment.
- The wage will be determined according to salary schedules and periods of service, so experience can bring a higher wage even if the appointment is new. This means that it will be possible to at least partly circumvent the prohibition of the appointment system on accruing tenure. However, the personnel practices of local governments will probably vary.
- Most allowances, including regional, housing, child, and retirement allowances, for full-time ALTs will be paid on an equal basis to those of full-time regular employees.
- Bonuses for part-time ALTs will be paid on an equivalent basis with those of regular employees. “Equivalent” will probably mean the same proportion of base pay, but this will probably vary by local government.
- Fiscal year appointed employees will receive paid holidays and special holidays on an equivalent basis with regular employees. This should be a significant improvement, but again, it is not clear that all local governments will fully

implement the measures.

- Private sector-employees and part-time public employees, including full-time one year appointed employees like ALTs, will continue to be covered by Governmental Health Insurance and pension schemes. After one year of service, full-time one-year appointed employees, including ALTs, will be shifted to the much better *Kyosai Kumiai* scheme for healthcare and pension coverage, which regular public employees join from the beginning of their appointments.
- Supervision of working conditions is conducted by the personnel divisions of local governments instead of labor standards inspection offices. The personnel divisions of local governments have no authority to correct local governments' unlawful practices whilst labor standards inspectors have the authority to enforce rulings.

c) Rights and disputes (collective relationship):

- Right to association: In principle, unions are prohibited, although employees may form *shokuin dantai* (employees' organizations), which in practice serve as unions. In addition, *shokuin dantai* are allowed to exist only within a single local government, so nationwide organizations are in principle not possible; again, however, practice is different, as there are two nationwide local civil servant unions.
- Right to collective bargaining: Article 55 of the Local Public Service Act allows collective bargaining, but only on a restricted basis, and it affords no right to conclude collective agreements, although in reality de facto collective agreements are concluded.
- There is no right to strike. Strikes are illegal.
- Unfair labor practices: Technically, these do not exist. Labor relations commissions do not get involved in public sector labor problems.

d) Other issues

d-1) Special resolutions of the Diet for the revised laws.

- The central government is advising local governments that they should maintain appropriate working conditions with no worsening of or deterioration in conditions for persons who are converted from non-regular employees to Fiscal Year Appointed Employees.

d-2) You can view the suggestions and recommendations from the central government to local governments regarding the Fiscal Year Appointed Employee system in a manual issued by MIAC (in Japanese) at http://www.soumu.go.jp/main_content/000579717.pdf.

- MIAC is recommending that local governments employ Fiscal Year Appointed Employees for one full year. As long as local governments follow this guidance, this should resolve the current problem that non-regular employees experience at least short periods of unemployment at year-end.
- An employee's work hours for a local government will be added together even if they are worked in different workplaces. For example, an ALT who works 15 hours a week at a daytime school and 10 hours a week at a night school for the same city government will be credited for 25 hours of work. Since hours are cumulative, an ALT working at least 38 hours 45 minutes, even at multiple workplaces, will be deemed a full-time employee.
- Age limits for hiring or employment are illegal.
- Part-time teachers will be paid by working hours, not by *koma* (teaching units), so preparation time will at last be paid. Some prefectures, such as Kanagawa Prefecture, have already instituted this improvement.
- The starting and ending times in a workday must be made clear to part-time employees.
- Under the Fiscal Year Appointed Employee system, the national government recommends that employees working at least 37 hours 45 minutes a week be converted to full-time status (the present threshold is 38 hours 45 minutes). This is not mandatory so employees and unions should demand conversion to full-time status as necessary.
- Part-time employees can receive a wage supplement in areas where regular or

full-time employees are paid a regional allowance, but, again, this is not mandatory.

- JETs will be Fiscal Year Appointed Employees, but their wages and working conditions are regulated nationally not locally.

3. How should you deal with your employers under the amended Acts?

a) To maintain or improve working conditions of ALTs where allowances other than bonuses are paid:

- Unions should demand that part-time employees be converted to full-time status.
- Unions should have the working hours of part-time employees guaranteed.
- The central government has decreed that regional allowances must be converted into wages, so employees and unions should work to have allowances (e.g., severance (retirement) allowances, housing allowances) of part-time employees converted into basic wages.

b) Rather than wait, unions should demand improved employment conditions before the new laws take effect:

- Unionize non-regular employees and form hybrid unions to strengthen unity among the workers.
- Make all working conditions subjects of collective bargaining.
- If local governments fail to negotiate in good faith, bring cases to labor relations commissions well before April 2020. It will be especially important to prevent ALTs from being dismissed and replaced with dispatched teachers from private companies.
- After April 2020, bring problem cases to the International Labour Organization (ILO) if labor relations commissions have refused to accept them.

Conclusion

The revised Local Public Service Act creates a new employment designation, Fiscal Year Appointed Employee, intended to make laws governing non-regular public

employees more consistent. Unfortunately, many of the current problems, including lack of job security, will remain. Similarly, many important benefits, such as the right to conversion to regular status, are not mandatory. Unions around Japan are currently lobbying the government and negotiating with local governments to shape actual practices. Therefore, it is important that ALTs understand the new system and work with their unions to strengthen worker rights and protect their livelihoods.