

Workforce Management Newsletter

Issue 52, April 22, 2020

In brief

We have summarized important information in employment issues related to COVID-19.

In detail

Items that need to be considered in employment issues in relation to COVID-19 are as follows:

I. Handling cases when workers are temporarily suspended due to COVID-19

i. Determination of cases where Leave Allowance is required

When an employer instructs a worker to take a leave of absence from work due to COVID-19, the treatment of wages during the leave becomes an issue. Article 26 of the Labor Standards Law stipulates that in the event of "leave due to reasons attributable to an employer," an employer must pay a Leave Allowance (60% of the average wage) during the leave. In the event of an absence from work due to inevitable uncertainty, an employer is not obliged to pay a Leave Allowance because it does not fall under any of the reasons attributable to an employer. Inevitable uncertainty is defined as: (i) an cause arising from outside the business; or (ii) a cause that cannot be avoided even if an employer exercise its utmost care as a regular manager.

According to the "Q&A concerning COVID-19" published by the Ministry of Health, Labour and Welfare ("MHLW"), the above is applied to the case of "instructing a worker to take leave from work due to COVID-19" as follows.

(a) Instruct a worker to take a leave of absence due to infections with COVID-19

When a worker takes a leave due to a work restriction imposed by the prefectural governor, it is generally considered that the leave does not fall under the category of "leave due to reasons attributable to an employer." Therefore, it is not necessary to pay Leave Allowance. If a worker is covered by the employee insurance, one will be paid Injury and Disease Allowance if he/she meets the requirements.

(b) Instruct a worker who is suspicious of being infected with COVID-19 at an employer's own judgment

When an employer orders to take a leave of absence at its own judgement with the presence of fever, etc., it is considered that such case will fall under "leave due to reasons attributable to an employer and it is necessary to pay Leave Allowance"

(c) A worker is voluntarily absent due to fever and other symptoms.

If a worker takes a leave of absence voluntarily due to fever or other symptoms, the leave may be treated in the same manner as normal sick leave. It is possible to use Annual Paid Leave or Sick Leave.

(d) Due to COVID-19, a company is forced to suspend business operations, etc. and has no choice but to close its business for unavoidable reasons.

It is necessary to comprehensively consider the possibility of other alternative measures, the period of suspension of business, and specific efforts by the employer to avoid the suspension of business and judge whether or not the suspension of business falls under the category of "suspension of business due to inevitable uncertainty. Even if a worker is suspended from work due to a state of emergency based on the Act on Special Measures Concerning Countermeasures against New Influenza, etc., the obligation to pay Leave Allowances will not be eliminated uniformly.

In the "Q&A concerning COVID-19", even if it is determined unnecessary to pay Leave Allowance on the above, it is desirable to make efforts to avoid disadvantages to a worker and to grant Paid Leave or pay Leave Allowance.

For details on the "Q&A concerning COVID-19", please visit the MHLW website below.
https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000164708_00001.html#Q&A

II. Subsidy available in relation to COVID-19

i. Subsidy for payment of Leave Allowances, etc. (Special Measures for Employment Adjustment Subsidies)

Employment Adjustment Subsidy is established to subsidize a part of Leave Allowances, etc. provided to an employer who have been forced to downsize due to economic reasons, such as economic downturn, temporarily business suspension or provision of education and training, etc. to its workers, and maintaining employment of workers.

With regard to this Subsidy, special measures have been established to alleviate the requirements for an "employer affected by COVID-19." In addition, the following special measures were expanded as the "Emergency Response Period" for leave from April 1, 2020 to June 30, 2020.

Item	Contents of Subsidy
Subsidy for the amount equivalent to Leave Allowance when business is closed or the wage when an employer provides education and training to employees	The amount calculated by multiplying the equivalent amount to the Leave Allowance when business is closed or the wage when an employer provides education and training, by the following subsidy rate 4/5 for SMEs, 2/3 for non-SMEs (9/10 for SMEs and 3/4 for non-SMEs if their employees are not terminated.) * Ceiling is JPY 8,330 per worker
Addition when education and training is provided	JPY 2,400 for SMEs and JPY 1,800 for non-SMEs per person per day
Applicable leave	This covers not only leave of absence for the entire day of prescribed working days, but also short-time leave with one hour or longer, which is taken within prescribed working hours in certain units, such as by department/division, job category, or working system.
Maximum number of days for payment	Up to 100 days per year. However, during the Emergency Response Period, payment will be made in addition to this maximum number of days for payment.
Eligible person	Workers who are not the insured in Employment Insurance can receive the same subsidy.
Notification	Even though a leave is already taken, ex post facto notification of plan can be submitted until June 30, 2020,

For details of the Employment Adjustment Subsidy, including detailed payment requirements, procedures, and details of subsidy other than the Emergency Response Period, please refer to the MHLW website below.

https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/koyou/kyufukin/pageL07.html

- ii. Subsidy for a worker who takes Paid Leave to take care of children attending elementary schools, etc. (Subsidies for responding to elementary school closure, etc. due to COVID-19)

A subsidy was established for an employer who provides Paid (fully-paid) Leave (excluding Annual Paid Leave under the Labor Standards Law) to its workers who have to take care of children attending elementary schools, etc. that are temporarily closed in response to COVID-19. The purpose of this subsidy is to ensure an environment in which guardians can take leave according to their desires, regardless of whether they have Annual Paid Leave or not.

(a) Contents of Subsidy

Equivalent amount of daily wage for applicable worker (*1) x days of Paid Leave (*2)

(*1) The daily amount of the normal wage of each eligible worker. JPY 8,330 if it exceeds JPY 8,330.

(*2) Total days of Paid Leave for each eligible worker. Including Leave by time unit.

With regard to the number of hours less than one day of the total number of Paid Leave, the amount is calculated by multiplying the equivalent daily wage of an eligible worker by the amount converted to hourly wage by said number of hours.

(b) Applicable period

From March 18, 2020 to June 30, 2020

It is desirable to establish Rules of Employment or bylaw regarding a leave plan. However, if a leave that meets the requirements is granted even if the Rules of Employment are not introduced, the leave will be eligible for the Subsidy.

Please refer to the MHLW website for details of the “Subsidy for Leave in response to Elementary School Closure due to COVID-19”.

https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/koyou/kyufukin/pageL07_00002.html

- iii. Subsidy for introduction of telework system (Telework Course for COVID-19 measures under Subsidy for Work-Style Reform Promotion)

This Subsidy is provided to assist SMEs that have newly introduced teleworking as measures against COVID-19.

(a) Requirements

- Implement the following efforts subject to subsidy during the implementation period
- There must be one or more workers who have performed teleworking.

(b) Efforts Subject to Subsidy

- Introduce/operate internet devices for teleworking
- Introduce/revise Rules of Employment/Labor-Management Agreement
- Provide training to those who are in charge of labor management
- Provide training to, inform/enlighten workers
- Receive consultation, etc. by external experts (Labor and Social Security Attorney, etc.)

(c) Implementation period

From February 17, 2020 to May 31, 2020

(d) Amount to be paid

The Subsidy rate is 1/2 of cost. *Up to JPY 1 million per company

The Work-Style Reform Promotion Subsidy also includes Subsidy for the introduction of Special Leave regulations as measures against COVID-19 (Special Course for Improving Workplace Awareness).

For the details of the "Subsidy for Work-Style Reform Promotion", please refer to the website of the MHLW.

https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/roudoukijun/jikan/telework_10026.html
https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/roudoukijun/jikan/syokubaisiki.html

III. **Compliance with Labor Standards-Related Laws and Regulations in consideration of COVID-19**

Based on the impact of the COVID-19 on economic activities, on March 17, 2020, a notice from the MHLW (No. 0317, issue 17) presented the following content.

i. Consideration for SMEs, etc.

In consideration of the impact on SMEs of the spread of the COVID-19, the Labor Bureau and the Labor Standards Inspection Office will stand with the SMEs in accordance with the Basic Policies on Labor Policies. Even when violations of Labor Standards-related Laws and Regulations, such as the Labor Standards Law and the Industrial Safety and Health Law, are recognized, consideration has been given to encourage the employers to improve voluntarily in light of the circumstances of the SMEs.

ii. Clarification of Interpretation of Article 33 of the Labor Standards Law

Article 33, Paragraph 1 of the Labor Standards Law stipulates that, in the event of an extraordinary necessity due to disaster, etc., the statutory working hours can be extended, and an employer can instruct its workers to work to the extent necessary by obtaining the permission from the Chief of the Labor Standards Inspection Office or by ex post facto notification. Due to the spread of the COVID-19, it has been indicated that the cases of treatment of patients, and production or manufacture of necessary face masks, disinfectants, medical devices may also be subject to this regulation., etc.

iii. Flexible Operation of Irregular Working Hour System on Yearly Basis

It has been clarified that the Labor-Management Agreement can be re-concluded even in the middle of an operation of the system when the implementation of the system as originally planned is deemed extremely inappropriate in a workplace that adopts an Irregular Working Hour System on a Yearly Basis in order to prevent the COVID-19.

iv. Clarification of Concept of Special Clause of 36 Agreement

It has been clarified that the reason for being busy due to the COVID-19 is recognized as "case where there are temporary special circumstances" even if it is not specified in the Special Clause of the 36 Agreement.

In addition, the implementation of medical examinations and holding safety committees based on the Industrial Safety and Health Law can be flexibly arranged, such as postponing, for a limited period of time until May 31, 2020.

Please refer to the MHLW website for details of "Measures for SMEs, etc. in Considering of Impact by the Outbreak and Spread of COVID-19 (Notification)."

<https://www.mhlw.go.jp/content/10900000/000610189.pdf>

IV. **RELATED LINKS**

MHLW, "COVID-19"

https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000164708_00001.html

Ministry of Economy, Trade and Industry ("METI"), "METI Relief Measures"

<https://www.meti.go.jp/covid-19/index.html>

National Tax Agency ("NTA"), "Measures Concerning COVID-19"
<http://www.nta.go.jp/taxes/shiraberu/kansensho/index.htm>

※ Definition of SME

The definition of SME in this newsletter is shown in the table below.

Industry	Amount of stated capital or total amount of investment	Or	Number of regular workers
Retail	JPY 50 million or less	Or	50 or less
Service	JPY 50 million or less	Or	100 or less
Wholesale	JPY 100 million or less	Or	100 or less
Other	JPY 300 million or less	Or	300 or less

*This newsletter is based on information as of April 22, 2020.

Let's talk

For more detailed information or initiatives for individual projects, please contact a person-in-charge at PwC Japan or the following.

PwC Labor and Social Security Attorney Corporation

Kasumigaseki Building 15F, 3-2-5 Kasumigaseki, Chiyoda-ku, Tokyo 100-6015

<https://www.pwc.com/jp/ja/services/tax/outsourcing/hr-consulting.html>

Representative

Manabu Iwaoka

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