

**Labor & Employment Law Newsletter****February  
2017****Implementation of Obligations to Take Preventive Measures Against Maternity Harassment****Jiro Abe, Takeo Tsukamoto****I. Introduction**

In March 2016, the Law for Equal Employment Opportunity of Men and Women (Law No. 113 of 1972) and the Child Care and Family Care Leave Law (Law No. 76 of 1991) were amended, imposing certain obligations on employers to take measures to prevent harassment of mothers and pregnant women and employees taking care of their elderly family etc., from January 1, 2017.

This newsletter outlines the background to the law change, an overview of the amendments, the types of harassment to be subject to preventive measures and the details of such measures.

**II. Background and Overview of the Amendments**

The purpose of the amendments is to establish an environment where female employees and older employees, etc., are able to work safely in order to promote and encourage the continuous employment of a demographic that has been in decline in terms of labor force participation, particularly in the face of the declining birthrate and an aging population. In recent years, in particular, reporting of harassment by reason of marriage, pregnancy, child care and family care leave, etc., has been increasing. As a result, those harassed female employees have been forced to abandon ongoing employment (“Maternity Harassment”) and male employees have been forced to waive their right to take child care leave (“Paternity Harassment”), therefore, taking steps to prevent these types of harassment has become an urgent issue.

Before the amendments to the Law for Equal Employment Opportunity of Men and Women and the Child Care and Family Care Leave Law, there were provisions regarding the prohibition of disadvantageous treatment by reason of marriage, pregnancy, child care and family care leave, etc. After the amendments, in addition to those provisions, it has become necessary for employers to take the preventive measures in order to avoid any disadvantage in working conditions due to language and behavior regarding marriage, pregnancy, child care and family care leave, etc., conducted

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by their superiors or co-workers. An overview of the current regulations and the new regulations under the amendments is as follows:

Provision regarding disadvantageous treatment:

Obligations of Employers	Legal Basis
Prohibition of disadvantageous treatment by reason of marriage, pregnancy, etc.	Law for Equal Employment Opportunity of Men and Women, Article 9, paragraph 3
Prohibition of disadvantageous treatment by reason of child care and family care leave, etc.	Child Care and Family Care Leave Law Article 10, etc.

The following provisions took effect on January 1, 2017, in addition to the provisions above:

Obligations of Employers	Legal Basis
Taking preventive measures in order to avoid any disadvantage to women's working conditions due to language and behavior regarding marriage, pregnancy, etc., conducted by their superiors or co-workers	Law for Equal Employment Opportunity of Men and Women, Article 11-2
Taking preventive measures in order to avoid any disadvantage to women's working conditions due to language and behavior regarding child care and family care leave, etc., conducted by their superiors or co-workers	Child Care and Family Care Leave Law Article 25

### III. Types of Harassment to Be Subject to Preventive Measures

Types of harassment subject to preventive measures are incorporated in the guidelines to the Law for Equal Employment Opportunity of Men and Women and the Child Care and Family Care Leave Law. Those types of harassment can be grouped into the following two major categories.

Category of Harassment against Using a Statutory System	Category of Harassment Regarding Status
Disadvantaging women's working conditions by language and behavior that is negative towards the use of the system that are provided for by law	Disadvantaging women's working conditions by language and behavior that is negative towards their status of marriage, pregnancy, etc.

#### (i) Harassment Targeting Use of Statutory Systems and Measures

Harassment targeting an employee's use of statutory systems and/or measures, is conduct which damages that employee's working environment by negative language and/or behavior towards use of systems and/or measures provided under the laws.

Statutory System	Reason	Harassment
<ul style="list-style-type: none"> <li>• Maternity health care measures</li> <li>• The ban on work harmful to maternal functions</li> <li>• Pre-childbirth leave</li> <li>• Transfer to light duties</li> <li>• Applicable limits on working-hours overtime</li> <li>• Childcare time</li> <li>• Child care and family care leave</li> <li>• Sick/injured child care leave and nursing leave</li> <li>• Short working hour system</li> </ul> , etc.	<ul style="list-style-type: none"> <li>• Consulting about requests to use the system, etc.</li> <li>• Requesting to use the system, etc.</li> <li>• Using the system, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Imply the prospect of dismissal or other disadvantageous treatment</li> </ul> <p>Superior's language and behavior:</p> <ul style="list-style-type: none"> <li>• Declining requests to use the system, etc., or use of the system</li> <li>• Telling employees not to request to use the system, etc.</li> <li>• Force the withdrawal of requests to use the system</li> <li>• Harass repeatedly or continuously</li> </ul> <p>Co-worker's language and behavior :</p> <ul style="list-style-type: none"> <li>• Telling employees not to request to use the system repeatedly or continuously</li> <li>• Force the withdrawal of requests to use the system repeatedly or continuously</li> <li>• Harass repeatedly or continuously</li> </ul>

(ii) Harassment Regarding Status

Harassment regarding status, is conduct which damages an employee's working environment by negative language and/or behavior towards that employee's status of marriage, pregnancy, etc.

Status	Reason	Harassment
<ul style="list-style-type: none"> <li>• Marriage, pregnancy</li> <li>• Post-childbirth leave</li> <li>• Symptom caused by marriage or pregnancy</li> <li>• The ban on work harmful to maternal functions</li> </ul> , etc.	<ul style="list-style-type: none"> <li>• Marriage</li> <li>• Pregnancy</li> <li>• Loss of skills required for his/her job, which are caused by morning sickness, etc.</li> <li>• Being unable to work due to limitations on work</li> </ul> , etc.	<ul style="list-style-type: none"> <li>• By superiors: Imply the prospect of dismissal or disadvantageous treatment, or harass repeatedly or continuously, conducted by their superior</li> <li>• By co-workers: Harass repeatedly or continuously</li> </ul>

**IV. Details of Preventive Measures**

The details of the preventive measures which should be taken by employers are incorporated in the guidelines. A summary of the measures is as follows.

<p>1. Clarification of the employer's policy, making the policy public and informative to employees</p>	<p>1) Clarifying the specifics of harassment and the policy, making it public and informing employees 2) Establishing rules and policies concerning strict measures against violation and making such policies public to promote awareness</p>
<p>2. Establishment of necessary measures to provide employees with adequate consultation (including the handling of complaints)</p>	<p>3) Establishing an inquiry desk / window 4) Responding appropriately in providing consultation 5) Preferable to establish measures that can address all aspects of harassment</p>
<p>3. Prompt and appropriate response after being alerted of the facts pertaining to workplace harassment</p>	<p>6) Confirming the facts promptly and accurately 7) Taking appropriate measures to protect the employees who have suffered from harassment 8) Taking appropriate measures against the harasser 9) Taking measures for the prevention of any recurrence</p>
<p>4. Measures to eliminate causes and background to workplace harassment by reason of marriage, pregnancy, etc.</p>	<p>10) Taking measures corresponding to the actual workplace environment and conditions of the employer and the employees, etc., such as reviewing and changing of operational systems 11) Preferable to notify and raise awareness of the employees so that employees have knowledge of available systems and measures and are conscious to perform their duties properly and adequately according to their physical condition and communicating smoothly</p>
<p>5. Additional measures which shall be taken by employers</p>	<p>12) Taking measures for the protection of the privacy of any person complaining of harassment as well as the harasser, etc., and letting employees know that such measures have been taken 13) Stipulating that an employee shall not be treated disadvantageously due to having made a request for advice or having cooperated in confirming the facts, and making such a stipulation public to employees and enhancing their awareness of the policy</p>

In the event that an employer is in violation of these measures, though punishments for violations are not provided, the Minister of Health, Labor and Welfare may give the employer guidance and recommendations. If the employer has not complied with them, the Minister of Health, Labor and Welfare may make a public announcement of such violation. The public announcement would lead to serious consequences due to the influence of SNS (Social Network Services).



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