
COVID-19 and Labour Law: Japan

Qi Zhong*

Abstract

In the case of Japan, a national-level "state of emergency declaration" has not yet been issued. If a worker is infected with Covid-19, the absence allowance will not be paid. Instead, the worker will receive an injury and sickness benefit. They are also eligible for workers' compensation insurance benefits. The government will subsidize the full amount of wages paid to companies that allow employees to take paid leave to care for children.

Keywords: Covid-19; Labour Law; Sickness Benefit; Telework

As of April 2, 2020, there were more than 2,000 confirmed cases in Japan, of which approximately 530 were in Tokyo. At the prefectural level in Tokyo and elsewhere, requests have been made to work from home as much as possible and to refrain from going out at night. The Act on Special Measures against the New Coronavirus was enacted on March 13, allowing the Prime Minister to declare a "state of emergency" and the prefectural governors to make requests and instructions for self-restraint and school closures, but it does not forcibly prohibit citizens from leaving the residence¹.

The governor can issue enforceable instructions not to hold events or cancel schools. In the case of "facilities that are used by a large number of people," the governor can request the restriction or suspension of their use². Of the supermarkets, only those selling daily necessities such as food, medicine, hygiene products and fuel can remain open³. There is no direct provision for absence from work for private companies.

There is nothing in the law to stop public transportation in order to blockade a city.

* Researcher, J.D., University of Tokyo, The Japan Institute for Labour Policy and Training, ORCID 0000-0001-8313-3949, <https://www.jil.go.jp/english/profile/zhong.html>.

¹ Article 45.

A prefectural governor may request that a person not to leave the residence or any other place equivalent to the residence without reason, and other cooperation necessary for the prevention of infection, except in cases where it is necessary to maintain a living.

² According to Abe's remarks, the government will not compensate for the cancellation of the event.

³ Article 45, paragraph 2. A prefectural governor may request a person who manages a school, a social welfare facility, an entertainment hall, or any other facility used by a large number of persons specified by a Cabinet Order, or a person who holds an event using said facility, to restrict or suspend the use of said facility or restrict or suspend the holding of the event or take any other measures specified by a Cabinet Order.

If a worker is infected with a new type of coronavirus and takes a leave of absence due to work restrictions imposed by the prefectural governor, it is generally considered that the absence from work does not fall under the category of "absence from work due to reasons attributable to the employer" and therefore the absence allowance⁴ is not paid. As long as the worker is insured by the Employer's Insurance, the insurer will provide an allowance for sickness and injury if the requirements are met. Specifically, two-thirds of the average standard daily remuneration for the last 12 months from the day three days after the date on which the worker is no longer able to work due to medical treatment is compensated by the sickness and injury allowance. If a worker voluntarily takes a leave of absence due to a fever or other symptoms when it is not known whether it is a new type of coronavirus or not, he or she is not subject to the payment of absence allowance.

If the employee comes into contact with a corona-infected person and quarantines himself at home at the direction of the employer, he may be able to claim absence allowance under Article 26 of the Labor Standards Act⁵. The government recommends that when workers are absent from work in connection with the new coronavirus, workers and employers should discuss it well and make efforts to avoid disadvantages to the workers.

On March 5, 2020, the government decided to request a two-week quarantine for those entering the country from China and South Korea, regardless of whether they are infected or not. In the case of an employee who was on a business trip abroad, the employer should be responsible for the circumstances that forced him/her to stay at home due to this request. Therefore, in addition to compensation for absence from work, it is considered necessary to take measures such as granting special paid leave. On the other hand, if an employee returns home from an entirely personal trip abroad, etc., it is generally difficult to judge that this is a "reason attributable to the employer" from a legal point of view, and neither wages nor compensation for absence from work are necessary.

The Ministry of Health, Labor and Welfare has set up a "Telework Comprehensive Portal Site" that consolidates information related to telework and posts various information for the introduction and utilization of telework, such as a consultation window for telework and Q&A on telework.

Since workers and employers can change the starting and ending time of the workday by their agreement, the content of the staggered commute will be discussed voluntarily by labor and management.

When a worker develops a new type of coronavirus infection, the worker is eligible for workers' compensation insurance benefits if it is recognized that the infection was caused by work or commuting⁶.

The government will subsidize the full amount of wages⁷ (up to 8,330 yen per day) paid to employees (both regular and non-regular) who take paid leave (excluding annual paid

⁴ Absence allowance is an allowance paid to a worker when the worker is absent from work for the employer's reasons.

⁵ Article 26. In the event of an absence from work for reasons attributable to the employer, the employer shall pay an allowance equal to at least 60 percent of the worker's average wage to each worker concerned during the period of absence from work.

⁶ In order to qualify as an occupational injury, the worker's coronavirus infection must be recognized as "work-related". In this regard, there is no precedent yet.

leave as required by law) between February 27 and March 31 in order to care for children attending elementary schools, special needs schools, kindergartens, daycare centers, certified children's preschools, etc. that are closed temporarily⁸.

Sole proprietors, including freelancers, are effectively interest-free on cash-flow measure loans, regardless of their creditworthiness or collateral. An interest-free loan system has been established to provide livelihood loans of up to 200,000 yen per month to households that are not eligible for coronavirus-related leave of absence subsidies or that have lost their jobs.

In principle, patients with new coronavirus infections are hospitalized in accordance with the Act on Prevention of Infectious Diseases and Medical Care for Patients with Infectious Diseases (Act No. 114 of 1998). It is said that the number of PCR tests is kept down to prevent many patients with minor illnesses from being hospitalized and leading to medical collapse.

The government's internal guideline (Secretariat, dated March 1, 2020) also states that in the future, if the infection spreads in the region, asymptomatic and lightly ill patients should be kept at home for rest and medical treatment in principle⁹.

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⁷ https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/koyou/kyufukin/pageL07_00002.html

⁸ For freelancers, the amount of the subsidy is 4100 yen per day.

⁹ <https://www.mhlw.go.jp/content/000609214.pdf>