

1. Disadvantageous treatment due to marriage, pregnancy, childbirth, etc.

Article 9, paragraph 3 of the *Act on Securing, etc. of Equal Opportunity and Treatment Between Men and Women in Employment* prohibits employers from dismissing or giving disadvantageous treatment to female workers due to pregnancy, childbirth, or other reasons prescribed by the relevant Ordinance of the Ministry of Health, Labour and Welfare.

Specific details of prohibited disadvantageous treatment are as shown in the Guidelines (*) below.

* “Guidelines on Ways for Employers to Take Appropriate Measures with Regard to Items Stipulated in the Provisions concerning the Prohibition of Discrimination against Workers on the Basis of Sex, etc.”

2. Disadvantageous treatment due to asking for or taking childcare leave:

- Dismissal;
- Not renewing the contract of a worker employed for a fixed period;
- Reducing the number of potential contract renewals when an upper limit of the number of potential contract renewals is specified in advance;
- Negatively affecting the working environment;
- Setting a limitation on the regular working hours and/or overtime working hours, restricting working at midnight or shortening the regular working hours for a worker beyond his/her desired period against their will
- Demotion;
- Reducing a worker’s salary or calculating bonuses or other payments in a manner which is disadvantageous to said worker;
- Rating a worker in an employee performance evaluation which is required for promotion or experience-based promotion in a way which is disadvantageous to said worker;
- Making a change in a worker’s assignment which is disadvantageous to said worker; and
- The rejection of services provided by persons employed as temporary workers by the employing company.

3. Details of harassment related to pregnancy, childbirth, childcare leave, etc. in the workplace

Points:

- Workers may suffer from harassment when, for female workers, using (or intending to use) the system regarding pregnancy/childbirth and when, for both male and female workers, using (or intending to use) the system regarding childcare/family care.
- An act of harassment toward a worker may be instigated by his/her superior or a co-worker.
- Harassment may occur if an act is taken directly against a worker. Additionally, the mere fact that someone commits an act may not constitute harassment unless it is objectively apparent that an ordinary worker would be forced to give up using the system because of such an act.
- Harassment may occur if such an act is taken against a worker by his/her superior even on a single occasion, or if done by his/her co-worker repeatedly or continuously (including a case where another such an action is taken even after a worker expresses his/her disagreement and, in which case, such an act is not required to be continued to constitute harassment).
- Harassment may occur if a worker who requests to use the system is urged by his/her superior personally to withdraw such a request, and the employer is required to take necessary measures to address such a situation. If a worker is not urged personally to withdraw such a request by his/her superior but by someone acting in the capacity of their employer (such as through a refusal of a request to use the system), such a case constitutes a breach of the relevant laws prescribing the systems that should be available to workers (for example, Article 65, paragraph 1 of the *Labor Standards Act* with respect to before and after childbirth leave).
- If an employer facilitates a worker's early return to work from childcare or other leave in consideration of his/her circumstances and career, such a case is not deemed to hinder such a worker's chance to use the system. However, it should be noted that a worker's timing in returning to work is always at his/her discretion.

[Typical Examples]

- A worker was told by his superior when asking for childcare leave "it is unacceptable that a man takes childcare leave" and had almost no choice other than giving up taking leave.
- A worker was told by his/her co-worker when indicating his/her intention of requesting to take family care leave "if I were you I wouldn't make such a request; So you shouldn't do that, either." Furthermore, they told the co-worker that "I do have to make a request" but was given a similar response and forced to give up on taking leave.
- A worker is repeatedly told by his/her superior or co-worker that "we can't give very much work to a person who has a limit on overtime working hours" and was only given miscellaneous duties. They had trouble working in such a situation that he/she cannot

overlook (including a case where another such act occurs taken even after a worker expressed his/her disagreement).

- A worker is told by his/her superior or co-worker “you only care about yourself and not about others by working on such short shifts; you are causing trouble” continuously, and has trouble working in such a situation that he/she cannot overlook (including a case where another such act occurs taken even after a worker expresses his/her disagreement).
- A worker is told by her superior or co-worker that “we can’t give work to a pregnant woman because she could be absent from work at any time” continuously and given no work, and has trouble working in such situation that she cannot overlook (including a case where another such act occurs taken even after a worker expresses her disagreement).
- A worker is told by her superior or co-worker that “you should have avoided pregnancy in this busy time” continuously, and has trouble working in such situation that she cannot overlook (including a case where another such act occurs even after a worker expresses her disagreement).
- A worker is told by her superior when indicating her pregnancy that “I’m afraid you have to leave the company as soon as possible as we are hiring a new person to fill your position.”

Reference Source:

“An Employer’s Obligation for Taking Measures against Harassment Related to Pregnancy, Childbirth, Childcare leave, Family Care Leave, etc. in the Workplace”, Ministry of Health, Labour and Welfare, Brochure no.10, issued in July 2017.