The Employment Law Review

Sixth Edition

Editor
Erika C Collins

Law Business Research

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EDITOR'S PREFACE

It is hard to believe that we are now on our sixth edition of *The Employment Law Review*. When we published the first edition of this book six years ago, I noted my belief that a book of this sort was long overdue given the importance to multinational corporations of understanding and complying with the laws of the various jurisdictions in which they operate. It has given me great pleasure to see the past editions of this book used over the last several years for just this purpose – as a tool to aid practitioners and human resources professionals in identifying issues that may present challenges to their clients and companies. The various editions of this book have highlighted changes in the laws of many jurisdictions over the past few years, making even clearer the need for a consolidated and up-to-date reference guide of this sort.

Global diversity and inclusion initiatives remained a hot topic in 2014. Many companies have unrolled initiatives regarding 'unconscious' bias, which is addressed in the first general interest chapter on global diversity. Looking abroad, recent legal developments regarding gender and transgender recognition will affect multinational corporations both in terms of law and policy, as underscored by recent legal developments out of India.

Our second general interest chapter tracks another active year of mergers and acquisitions after a brief decline following the financial crisis. This chapter, which addresses employment issues in cross-border corporate transactions, along with the relevant country-specific chapters, will aid practitioners and human resources professionals in conducting due diligence and providing other employment-related support in connection with cross-border M&A deals.

The third general interest chapter covers the increasing trend of clients considering or revising company's social media and mobile device management policies. In particular, there is an increase in the number of organisations that are moving toward 'bring your own device' programmes and this chapter addresses issues for consideration by multinational employers in rolling out policies of this sort. 'Bring your own device' issues remain a topic of concern because more and more jurisdictions have passed or are beginning to consider passing privacy legislation that places significant restrictions

on the processing of employee personal data. This chapter introduces practice pointers regarding monitoring of employee social media use at work as well as some steps to consider before making an employment decision based on information found on social media.

In addition to these three general-interest chapters, the sixth edition of *The Employment Law Review* includes 48 country-specific chapters. This edition has once again been the product of excellent collaboration. I wish to thank our publisher, particularly Gideon Roberton, Katherine Jablonowska, Adam Myers, Eve Ryle-Hodges and Shani Bans, for their hard work and continued support. I also wish to thank all of our contributors, as well as my associates, Jon Dueltgen and Courtney Bowman, for their efforts to bring this edition to fruition.

Erika C Collins
Proskauer Rose LLP
New York
February 2015

Chapter 22

JAPAN

Shione Kinoshita, Shiho Azuma, Yuki Minato, Hideaki Saito,
Ryo Miyashita, Keisuke Tomida and Tomoaki Ikeda[1]

I INTRODUCTION

The laws in Japan governing collective labour relationships are the Labour Union Act (LUA) and the Labour Relations Adjustment Act. Regarding individual labour relationships, there are laws protecting minimum working conditions, such as the Labour Standards Act (LSA), the Minimum Wages Act, the Industrial Safety and Health Act (ISHA), and the Industrial Accident Compensation Insurance Act. These laws are traditional Japanese labour laws established after World War II and based on the Constitution of Japan.

In recent years, Japan has experienced important changes to its labour laws. The Labour Contract Act (LCA) was enacted in 2007 and sets out basic regulations on employment agreements. The revision of the LCA (effective from April 2013) includes important amendments for fixed-term employment. The Equal Employment Opportunity Act (EEOA)[2] entered into effect in 1986 and has been revised several times. Since 2007, the EEOA has broadened protections for employees so that both male and female employees will not suffer any disadvantages based on their sex. Employees' rights are also expanded by other laws, such as the Child Care and Family Care Leave Act[3] and the Part-time Employment Act (PEA).[4] Besides, the Worker Dispatch Law (WDL) enacted in 1985 and amended in 1999 extended the scope of occupations that were

1 Shione Kinoshita, Shiho Azuma and Yuki Minato are partners and Hideaki Saito, Ryo Miyashita, Keisuke Tomida, Tomoaki Ikeda are associates at Dai-ichi Fuyo Law Office.

2 The Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment.

3 The Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave.

4 The Act on Improvement, etc. of Employment Management for Part-time Workers.

covered under the worker dispatching system. As a result, the worker dispatching system was considered a social problem, so the WDL has more recently been amended (see Section XIV, *infra*).

Each labour law has a different supervision and conflict-resolution system, so the overall system is complicated. The LUA stipulates the Labour Relations Commission system. A local labour relations commission (established in each prefecture) and its supervising agency, the Central Labour Relations Commission, conduct mediation, conciliation and arbitration to settle collective labour disputes.

In contrast, ordinary courts settle individual labour disputes. Additionally, since the inception of the labour tribunal system in 2006, labour tribunals have also been competent to settle such disputes. Local labour departments (governmental agencies) also conduct mediations to settle such disputes.

The Labour Standards Inspection Office (LSIO) is the supervisory agency concerning the LSA, the Minimum Wages Act, the ISHA, and the Industrial Accident Compensation Insurance Act.

Local labour bureaus are the supervisory agencies concerning the EEOA, the PEA and the WDL.

II YEAR IN REVIEW

As of 2014, employees at many companies (such as restaurants and chain stores) are working long hours because of a labour shortage. Consequently, certain companies had no choice but to close their stores. As mentioned Section VI.i, *infra*, employers may require employees to work more than statutory working hours after entering a labour-management agreement, so companies whose employees do work long hours are viewed with suspicion. Under these situations, the Law for Promotion of Measures for Prevention of Karoshi, etc. was enacted in June 2014 to promote measures to prevent death and suicide induced by overwork, both caused by stress and long working hours. The law became effective in November 2014.

Another problem is that the number of applications for, and certifications of workers with ill health on the grounds of mental illnesses suffered from stress at work has increased rapidly. Mental health is a pivotal issue in companies, so the ISHA was revised in response to these circumstances. The ISHA requires that any employer that employs 50 or more employees at a workplace must check their levels of stress from December 2015.

III SIGNIFICANT CASES

There are two important Supreme Court cases in 2014.

i Employers' liability for the long-term health of employees[5]

The plaintiff is an employee who worked as a project leader of a new technology development project. The employee developed mental illnesses from stress at work and

5 Supreme Court 24 March 2014 (the *Toshiba* case).

working long hours, took sick leave, and was then discharged because of expiration of the leave period. Because her mental illnesses was certified as an injury resulting from work, the employee filed a suit against the company seeking reversal of the dismissal and damages arising from breaches of the company's obligations to provide a safe working environment. The plaintiff did not report all details related to herr mental illnesses or medical treatment for a long time because of its mental factors. Therefore, when judging whether the company was responsible for the damages, the Supreme Court ruled on legal issues about comparative negligence. In summary, the Court ruled that:

a considering privacy issues concerning medical records, an employee is not obliged to actively disclose his or her medical records to an employer;

b while the plaintiff did not report all the details related to her mental illnesses, the company could have noticed the illness by confirming her medical check-ups and managing her attendance. Therefore, the company should have taken proper actions with regard to the plaintiff; and

c the mental aspect of the plaintiff's illness should not be considered in relation to comparative negligence because the plaintiff regularly worked at the company before she suffered any mental illnesses.

In conclusion, the Supreme Court sent the case back to the High Court, which ruled that the company shall pay 20 per cent less compensation than was demanded of it.

This ruling means that in certain cases, such as cases where employees have worked for an employer for a long time, the employer is heavily responsible for damages arising from a breach of its obligations to provide a safe working environment. This case reminds employers of the importance of labour management and recognition of employees' health.

ii Maternity harassment[6]

A female employee who fell pregnant requested that her employer transfer her to another light business operation based on Article 65, Paragraph 3 of the LSA. However, when relocating the employee, the employer demoted her from a management position to a non-managerial position. Therefore the employee filed a suit against the company claiming that the demotion was void because the employer had violated the EEOA. The EEOA stipulates that employers must not dismiss or give disadvantageous treatment to female workers for reasons relating to pregnancy, childbirth, or for requesting absence from work (Article 9, Paragraph 3). The summary of the Supreme Court ruling is as follows:

a female employees, in principle, cannot be demoted on account of pregnancy. Therefore, such demotions will be regarded as illegal and invalid as a general rule;

b however, where (1) the employees voluntarily consent to the demotion; or (2) there are special circumstances that necessitate the demotion, such demotions will be exceptionally regarded as legal and valid.

6 Supreme Court 23 October 2014.

In conclusion, the Supreme Court ruled that the plaintiff did not voluntarily consent to her demotion based on the fact that her employer did not explain to her any disadvantageous situations. However, the Supreme Court sent the case back to the High Court so that the High Court will judge whether there are the special circumstances in this case.

Japan is an ageing society with a low birth rate, so it is necessary to protect female workers, especially during pregnancy, childbirth and childcare leave. The LSA, the EEOA, and the Child Care and Family Care Leave Act clearly stipulate the relevant rights for female workers. Therefore, an employer must not take disadvantageous treatment to its female employees for reasons relating to pregnancy, childbirth or childcare. It is generally recognised that maternity-related harassment exists in some workplaces and this case has attracted a great deal of attention.

IV BASICS OF ENTERING AN EMPLOYMENT RELATIONSHIP

i Employment relationship

An employment contract is established when an employer and a job applicant agree that: (1) the job applicant shall work for the employer; and (2) the employer shall pay a salary to the job applicant as consideration. If the employer has its work rules stipulating reasonable working conditions and has informed its employees of the work rules, the contents of an employment contract shall be based on the working conditions provided by the work rules without any consent of the job applicant. A job applicant and an employer may enter into or change, by agreement, an employment contract that includes working conditions different from those under the work rules. However, any parts of an employment contract that stipulate working conditions that do not meet the standards established by the work rules shall be invalid. In this case, the invalid portions shall be governed by the standards established by the work rules.

There is no statutory requirement concerning the form of an employment contract, so an employer and a job applicant may orally enter into an employment contract. However, to let the job applicant understand his or her rights and duties under the contract, the employer must notify the job applicant in writing of certain employment conditions[7] before or upon entering into the employment contract.[8] The employer can fulfil this requirement by giving the applicant a written employment contract or by providing a copy of its work rules.

Fixed-term employment is lawful, but the term cannot be longer than three years, except in some limited circumstances.

ii Probationary periods

Although there is no regulation concerning probationary periods, an employer may set a limited probationary period under case law in Japan. Many employers use probationary

7 Such as wages, working hours, term of contract, workplace, and the nature of the work.

8 Article 15, Paragraph 1 of the LSA.

periods to train and to evaluate their employees to determine whether they should be retained as fully fledged employees.

An employer generally sets forth probationary periods in its work rules. A general range of probationary periods is from one to six months and a typical probationary period is three months. Extremely long probationary periods will be void because of violation of the public policy.

It is generally understood that the usual probationary period is designed to reserve the employer's right of cancellation. The employer may dismiss less strictly its employee during a probationary period than its regular employee; however, even during the probationary period, 'reasonable and socially acceptable' grounds are required to dismiss the employee. This means that an employer is required to show a lack of fitness of its employee based on facts[9] in order to properly exercise its reserved cancellation rights.

iii Establishing a presence

Whether a foreign company is required to register will be decided based on its intended business in Japan. In a case where a foreign company intends to only conduct preparatory or supplemental tasks,[10] the foreign company may establish its representative office in Japan without any registration. However, if a foreign company intends to continuously operate its business in Japan, it must register itself with the relevant legal affairs bureau. In this case, while the foreign company does not have to establish its branch office in Japan, it must at least register its representative in Japan or its branch office (if any) in Japan.

Unless a foreign company intends to continuously operate its business in Japan, it may engage an independent contractor without its registration in Japan. An independent contractor will constitute a permanent establishment (PE) of the foreign company under certain conditions;[11] provided, however, that there are exemptions for independent contractors under Japanese taxation laws. In a case where a foreign company has its PE in Japan, its Japanese-sourced income shall be subject to corporate tax.

There are four insurance benefits in which a company is legally obliged to participate: (1) workers' accident compensation insurance; (2) employment insurance; (3) health insurance and nursing care insurance; and (4) employees' pension insurance.

Salary income is subject to withholding tax under the Income Tax Act. Under the withholding tax system, a payer of salary income in Japan must calculate the amount of income tax payable, withhold the amount of income tax from the income payment, and pay it to the government.

9 These could be low job-performance ratings and unsatisfactory attitudes.

10 Such as market surveys and collecting information.

11 Including a condition that the contractor is authorised to conclude contracts on behalf of the foreign company in Japan.

V RESTRICTIVE COVENANTS

Given its personal, continuous character, an employment contract requires a relationship of trust between the parties. In more concrete terms, each party is required to act in good faith in consideration of the other's interest. Therefore, during the term of employment, an employee shall undertake obligations to keep trade secrets, to refrain from competitive activities, and not to damage the employer's reputation or confidence even if there is no provision about the obligations under any employment contract or work rules.

By contrast, an employee has its rights to choose or change his or her job, so an employee does not automatically undertake non-compete obligations after leaving a job without any agreement to that effect. Therefore, if the employer wants its employees to undertake post-termination non-compete obligations, it must enter into such an agreement with the employees or have corresponding work rules, both setting forth the obligations. Non-compete obligations are direct restrictions on a former employee's freedom to choose his or her occupation, so courts will decide their enforceability based on a variety of factors, such as whether the duration and scope of the obligations are clearly stated in an agreement or work rules and whether additional and sufficient compensation for the obligations is provided to the former employee.

VI WAGES

i Working time

Statutory working hours

The LSA stipulates overly rigid regulations on working hours. In principle, an employer must not require or approve of employees working more than eight hours a day or 40 hours a week (excluding rest periods) without a labour-management agreement.[12] These are generally known as the 'statutory working hours'. If an employer violates this regulation, it will bear criminal liability.[13]

Where an employer wants to require employees to work more than the statutory working hours, the employer must enter into a labour-management agreement either with a labour union (if any) or an employee that represents the majority of employees at a workplace (if the union does not exist), and then to notify the relevant government agency of the agreement.[14]

Exemptions to statutory working hours

As the exceptions to regulations on statutory working hours, the LSA stipulates certain modified working hour systems, such as flextime and annual, monthly, or weekly modified working hour systems. Under these systems, an employer may require its employees to work beyond the statutory working hours to the extent permitted by law.

12 Article 32 of the LSA.

13 Article 119, Paragraph 1 of the LSA.

14 Article 36 of the LSA.

Exemption for managers

Further, certain employees, such as those in management, are exempted from the regulations on statutory working hours.[15] This means that an employer may require the exempted employees to work in excess of the statutory working hours without entering a labour-management agreement.

ii Overtime

Legally speaking, the LSA does not require an employer to pay its employees a salary based on working hours. However, it is understood that, in practice, wages and working hours are associated when it comes to overtime pay. Under certain conditions, an employer may let its employees work overtime, with the LSA requiring the following minimum salary premiums for all employees except those who are exempted from the regulations on statutory working hours:

Work in excess of statutory working hours	25%
Work in excess of statutory working hours exceeding 60 hours in a month	50%
Work on statutory days off	35%
Work late at night (between 10pm and 5am)	25%
Work late at night in excess of statutory working hours	50%
Work late at night in excess of statutory working hours exceeding 60 hours in a month	75%
Work late at night on statutory days off	60%

Employees who are exempted from the regulations on statutory working hours (e.g., employees in management) are entitled to a minimum premium of 25 per cent for work late at night (between 10 pm and 5am). However, such employees are not entitled to receive the other premiums.

VII FOREIGN WORKERS

There is no limit on the number of foreign workers whom an employer can employ under the Japanese laws. The Japanese employment laws are applicable to the foreign workers who are employed and work in Japan regardless of whether their employer is a foreign company or a domestic company.

Additionally, an employer must not use the nationality of any employees as a basis for engaging in discriminatory treatment concerning certain working conditions, such as wages and working hours.[16]

When an employer enters into an employment contract with a foreign person other than a special permanent resident, the employer must notify a relevant job-placement office of the person's information, such as its name, resident status, and birth date. The employer is also required to give notice to a relevant job-placement office in the case of the person's retirement.

15 Article 41 of the LSA.

16 Article 3 of the LSA.

Any foreign national who enters to Japan to work must obtain a working visa at a Japanese diplomatic missions abroad. Also, any foreign national must generally receive landing permission when he or she arrives at a port of entry, a time when his or her residence status and period of stay in Japan will be determined. The foreign national can conduct activities within its resident status. The foreign national can only reside in Japan for his or her period of stay. A foreign national who wishes to continue conducting the same activities in Japan with his or her current resident status beyond the period of stay must apply for an extension of the period no later than the last day of the period.

As mentioned in Section IV.iii, *supra*, there are four insurance benefits in Japan. These benefits also cover foreign workers.

All individuals, regardless of nationality, are classified as either residents or non-residents under Japanese tax laws. In general, residents have an obligation to pay income tax on their worldwide income (including salary income). By contrast, non-residents are obliged to pay income tax on any income from domestic sources (including salary income from employment in Japan).

VIII GLOBAL POLICIES

The adoption of work rules is mandatory for any employer who hires 10 or more employees on a continuing basis. This employer must submit its work rules to the relevant local LSIO.[17] When establishing its work rules, an employer must hear an opinion of either a labour union (if applicable) or an employee (if there is no union in the workplace) that represents the majority of the employees at a workplace. When submitting its work rules to the relevant local LSIO, the employer must attach a document stating the opinion.[18]

The work rules must include the following information:[19]

a working hours (including holiday, leave, shift changes, breaks, and the start and end of the working day);

b wages (including the methods for determination, calculation, and payment of wages; and the dates for closing accounts for wages and for payment of wages); and

c termination (including grounds for dismissal).

Work rules must also cover the following if the employer has a policy relating to these matters:

a termination allowances (including the scope of covered employees; methods for determination, calculation, and payment of termination allowances; and the dates for payment of such allowances);

b special and minimum wages;

c the cost to be borne by employees for food, supplies or other expenses;

d safety and health;

17 Article 89 of the LSA.

18 Article 90 of the LSA.

19 Items 1–3, Article 89 of the LSA.

e vocational training;
f accident compensation and support for injury or illness outside the course of employment;
g commendations and sanctions; and
h other matters applicable to all employees at the workplace.

The work rules must not infringe any laws and regulations or any collective agreement applicable to the workplace in question.[20]

In order to amend work rules, the employer must request an opinion on its amendment from either a union or an employee (if there is no union in the workplace) that represents the majority of the employees at the workplace. The employer and the employees may, by agreement, amend the work rules. However, if (1) the employer informs its employees of the changed work rules, and (2) if the changed work rules set forth reasonable working conditions in light of relevant circumstances (such as disadvantages to be incurred by the employees; the need for the change; the contents of the changed work rules; and the status of negotiations with a labour union or a representative employee), the employer may amend its work rules without the employees' consent.

IX TRANSLATION

When employing foreign workers, an employer is not required to provide them with relevant documents (e.g., work rules and employment agreement) in a language they understand. However, to avoid conflicts, it is appropriate to explain key working conditions in a language comprehensible to foreign workers so that they can understand the terms and conditions under their employment contracts. Furthermore, an employer should display warning letters and its safety and health rules at a workplace, both written in languages employees understand. If an industrial accident happens under a situation where there is no such display at a workplace, the situation will be regarded as evidence that an employer has not complied with its duties of safety and of safety education.

X EMPLOYEE REPRESENTATION

There is no definition of employee representation under Japanese law. However, in certain situations, the LSA requires that an employer hear an opinion of or enter into a labour-management agreement with either (1) a labour union organised by a majority of the employees at a workplace (where such a union exists); or (2) a person representing the majority of the employees at a workplace (where a union does not exist). While in practice, the union or representative are referred to as an 'employee representative', this is very different to the works councils established and regulated in many European countries, for instance. When the employees at a workplace select a person to represent them, the person must be selected through democratic procedures. Further, the employees cannot

20 Article 92 of the LSA.

select a person in management as their representative. The employee representative is an *ad hoc* representative, so, in general, there is no term for the representative.

On the other hand, where an employer enters into a collective agreement concerning working conditions, a labour union will be party to that agreement. The Constitution of Japan guarantees workers' right to organise and to bargain and act collectively, so a labour union must remain independent from an employer. In contrast to the United States and Europe, corporate unions are more popular than industry unions in Japan. Once a collective agreement is executed, any employment agreement that does not meet working conditions under the collective agreement will be void and be replaced with the collective agreement. In a case of collective bargaining, an employer must negotiate in good faith with a labour union.

XI DATA PROTECTION

i Requirements for registration

Data protection in Japan is governed by the Act on the Protection of Personal Information (APPI). There is no required registration in relation to data protection under the Japanese laws.

When handling personal information, a company shall, as much as possible, specify the purpose for its use of personal information (the purpose).[21] In principle, no company can handle personal information beyond the scope necessary to achieve the purpose without obtaining the prior consent of the data subject.[22]

When acquiring personal information, a company must promptly notify the person of, or publicly announce, the purpose unless the company has already publicly announced the purpose.[23] In addition, when a company directly acquires personal information from a person in writing, the company must expressly show its purpose to the person in advance.[24]

A company must not, in principle, provide any personal data to any third parties without obtaining the prior consent of the person.[25]

A company must keep personal data accurate and up to date within the scope necessary for the achievement of the purpose.[26] Also, a company must take necessary and proper measures for the prevention of leakage, loss or damage, and for other security control of the personal data.[27] A company must exercise necessary and appropriate supervision over its employees to ensure the security control of the personal data.[28]

21 Article 15, Paragraph 1 of the APPI.

22 Article 16, Paragraph 1 of the APPI.

23 Article 18, Paragraph 1 of the APPI.

24 Article 18, Paragraph 2 of the APPI.

25 Article 23, Paragraph 1 of the APPI.

26 Article 19 of the APPI.

27 Article 20 of the APPI.

28 Article 21 of the APPI.

ii Cross-border data transfers

While a company must, in principle, obtain the prior consent of the person when it provides personal data to any third party,[29] there are no other regulations concerning the cross-border transfer of personal data.

It should be noted that a company does not have to obtain the prior consent of the person under certain cases[30] because these cases shall not be regarded as transfer of personal information to any third parties.

iii Sensitive data

The APPI does not define or set forth special regulations on sensitive information. However, certain guidelines set forth additional rules concerning sensitive personal information, such as information relating to race, ethnic group, social status, family origin, income and medical records. Further, if a company abusively uses such sensitive information, this might be regarded as a violation of privacy or an invasion of personal rights and so the company might be held liable for damages arising from the violations or invasion.

iv Background checks

Because it has the freedom to employ and choose from among its applicants, an employer may collect personal information about its job applicants (such as information related to their criminal records and credit records) to a reasonable extent as a background check when it decides to employ an applicant. However, such collection needs to be carried out by commonly accepted proper methods and care should be taken not to infringe on the dignity of applicants' personality and privacy.

XII DISCONTINUING EMPLOYMENT

i Dismissal

As a general rule, employment will only be terminated for cause by an employer in Japan. There is no concept of termination 'at will'.

Cause for dismissal includes poor performance, repeated misconduct, serious misconduct, redundancy, and medical incapacity. However, an employer's right to dismiss its employee is severely restricted. Article 16 of the LCA stipulates that a dismissal will, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of right and be invalid.

Other laws (like the LSA) set forth certain restrictions on dismissals, such as restrictions on dismissals during periods of maternity leaves or medical treatment of work-related injuries.

Where an employer wishes to dismiss its employee, the employer must provide at least 30 days' advance notice. An employer who does not give the 30-day notice is

29 Article 23 of the APPI.

30 The cases are stipulated in Article 23, paragraph 4 of the APPI.

required to pay the average wage for a period of not less than 30 days, except under certain conditions.[31] An employer is not generally required to give notice to a works council or trade union when the employer dismisses its employee.

Based on its work rules, an employer may dismiss its employee because of a disciplinary action (punitive dismissal). In a case of punitive dismissal, courts will judge the validity of the dismissal pursuant to Article 15[32] as well as Article 16 of the LCA.

ii Redundancies

As mentioned in subsection i, *supra*, the validity of the redundancy is also judged by whether it lacks objectively reasonable grounds and whether or not it is considered to be appropriate in general societal terms. However, under case law, it is necessary to meet the following criteria so that the redundancies are deemed reasonable and appropriate in general societal terms:

a Necessity: the business circumstances of the employer are in a situation that renders redundancies unavoidable and necessary.

b Efforts to avoid redundancy: in short, redundancies should be the measure of last resort.

c Reasonable selection: the standards for selection of employees who are subject to redundancies were reasonable and redundancies were fairly carried out.

d Reasonable process: the employer conducted sufficient consultations with its employees and labour unions.

XIII TRANSFER OF BUSINESS

i Merger

In a merger, employment contracts between a target company and its employees shall be automatically transferred to an acquiring company. Therefore, employees of the target company shall be employees of the acquiring company as of the effective date of the merger. Their working conditions remain the same at the acquiring company, so employees are not materially disadvantaged. This is why there is no specific Japanese labour law to protect employees affected by a merger.

ii Asset transfer

In a case of asset transfer, each asset (including employment contracts) shall be transferred from a seller to a purchaser according to an asset purchase agreement. However, Japanese law requires employers to obtain consent from each employee to validly transfer their

31 Article 20 of the LSA.

32 Article 15 of the LCA stipulates that 'in a case where an employer takes disciplinary action against its employee, if the disciplinary action lacks objectively reasonable grounds and is not found to be appropriate in general societal terms in light of the characteristics and mode of the act committed by the worker pertaining to the disciplinary action and any other circumstances, the disciplinary order will be treated as an abuse of right and be invalid.'

employment contracts to the purchaser. The employees may decide whether they continue working at their current employer, so there is no specific Japanese labour law to protect employees affected by asset transfer.

iii Company split

In a case of a company split, a part or all of the company's assets and liabilities (including employment contracts) constituting a particular business of a seller shall be transferred from a seller to an acquirer based on a company split plan or agreement. While the Companies Act sets forth general procedures for the company, the Labour Contract Succession Law regulates the transfer of employment contracts in the cases of a company split because the company split will have a large effect on employees.

XIV OUTLOOK

In 2015, employers will need to pay attention to the 'deemed employment offer rule' (the rule) under the WDL (effective on 1 October 2015).[33] Under the rule, if any act of an employer falls under certain types of illegal dispatch, the employer is deemed to have offered an employment contract subject to the same working conditions as those contained in their dispatch contracts to their dispatched workers. If the dispatched workers accept the deemed offer, employment contract shall be automatically executed regardless of the employer's will. This means that the rule forces such employers to enter into an employment contract, so the rule is considered as a sort of a civil punishment. The rule will have a significant effect on the employment regime in Japan. Therefore, a bill to amend the rule was submitted to the Diet twice in 2014 but did not pass.

In addition, the amendment of the PEA will become effective in April 2015. While employers are currently prohibited from discriminating against certain part-time employees in terms of working conditions, the amended PEA will broaden the scope of covered part-time employees. The amended PEA also prohibits having unreasonable working conditions on the ground that employees are part timers. Therefore, the number of labour disputes concerning part-time employees is likely to increase in 2015. The amended PEA also requires that employers explain certain matters when hiring new part-time employees and that that employers establish consultation services for part timers. This means that employers will need to devote more attention to their management of part-time employees.

33 Article 40-6 of the WDL.

Appendix 1

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