Chapter 3

Employment / Working in Japan

1 Status of Residence

A foreign Nationals are permitted to engage in activities in Japan within the scope of activities permitted by their residence status.

Foreign Nationals can be divided into the following three categories, depending on whether they are permitted to work or not.

* Status of Residence with which people may work within the specified scope
  Diplomat, Official, Professor, Art, Religion, Press, Highly Skilled Professional, Business Manager, Legal /Accounting Services, Medical Services, Researcher, Instructor, Engineer / Specialist in Humanities / International Services, Intra-company Transferee, Nursing Care, Entertainer, Skilled Labor, Designated Skilled Labor, Technical Intern Training, Designated Activities (Working Holiday, Foreign Nurse and Certified Care Worker, etc., based on Economic Partnership Agreement (EPA))

* Status of Residence with which people may not work in principle
  Cultural activities, Temporary visitor, Student, Trainee, Dependent

* Status of Residence with which people are permitted to work without restriction
  Permanent resident, Spouse of Japanese national, Spouse of permanent resident, Long-term resident

2 Basic knowledge before starting work

2-1 Labor contract

To prevent workers from starting work without fully understanding the working conditions, such as wages, working hours, etc., thus getting into trouble later with their company, the Labor Standards Law (one of the laws concerning working) in Japan stipulates that the company (the employer) must clearly indicate working conditions to the worker concerned when they conclude a labor contract.

With regards to the following five items, which are particularly important, it is required, as a rule, for the company to issue a written document to the worker concerned, clearly indicating such conditions. (exceptionally, the conditions can be clearly indicated by a fax or an E-mail, etc. (limited to those which can be output to create a document), provided the worker concerned prefers).

1) When the contract starts and when it ends (pertaining to the term of contract)
   * A labor contract may be concluded with or without a fixed-term. The type of employment itself, such as regular employees, contract employees, part-time workers, temporary staff (*Arubaito*), etc., does not reflect whether it is a contract with a fixed-term. Therefore, it is important for an employee to confirm the term of contract, as well as the type of employment.
2) Provisions related to renewal of the contract, when concluding a fixed term contract (possibility of renewal, how decisions are made for renewal)
3) Place of work and job duties (content of work)
4) Schedule of work hours and rest time (the time work begins and the time work ends; if there is overtime, rest periods, rest days / holidays, rotation for alternative work schedule, etc.)
5) The amount of wages, and when and how they are paid (determination, computation and payment of wages, the period of computation, and the date of payment)

In addition, the Labor Contract Law stipulates that the employer and the worker need to confirm details of the labor contract as regards other matters besides those mentioned above, and in writing as far as possible.

Here, the term “worker" refers to a person who works under the instruction and control of an employer, receives wages as compensation for the work, and is subject to the protection of certain labor laws including the Labor Standards Law. A "worker” is a worker regardless of the type of employment, including not only a regular employee, but also a dispatched worker, a contract employee and a part-time worker.

one point

Prohibitions pertaining to a labor contract

The Labor Standards Act also stipulates matters that an employer must not incorporate in a labor contract.

1) Having a penalty charge paid if a worker violates a labor contract, or predetermining the amount

*This is to prohibit fixing the amount of penalty or damages in advance.
It is not prohibited for a company to claim compensation for damages actually incurred as a result of a willful or careless act of a worker, without predetermining the amount of damages.

2) Advancing credit as a condition for work, and unilaterally offsetting monthly wages against credit advances as repayment.

3) Requiring a worker to make compulsory savings through the company

* It is prohibited for a company to impose compulsory savings on its employees regardless of reasons for savings, even for employee welfare such as company retirement.
However, it is permitted under certain conditions for the company to take charge of part of the wages entrusted to the employer by the employees based on its own decision, regardless of the labor contract.

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If the working conditions as promised turned out to be different from actual fact...

If a worker, once he/she started working, noticed that the working conditions as promised at the time of conclusion of the labor contract differ from actual fact, he/she may immediately cancel his/her labor contract on these grounds.

In addition, since the working conditions are decided based on the labor contract concluded by the company and the worker concerned, the employment regulations of the company, and the laws in Japan, etc., the company in principle cannot unilaterally change to working conditions unfavorable to the worker concerned without obtaining the consent of the worker after he actually started working.

2-2 Various insurance / pension schemes

(1) Employment insurance

The employment insurance system provides unemployment benefits, etc., to displaced workers to ensure a certain standard of living and promote his employment. Regardless of the size of the business establishment, a worker who:

- has prescribed working hours of 20 hours or more per week, and
- is expected to be employed for at least 31 days,

is eligible, whether he is a dispatched worker, a contract worker, a part-time worker or a temporary worker.

The company has a responsibility to enroll its workers in the employment insurance system. However, the payment of premiums is shared by both the workers and the company.

(2) Industrial Accident Compensation Insurance

Industrial Accident Compensation Insurance is a public system in which the government provides necessary insurance benefits in cases where workers incurred injury, illness or death due to their job (Occupational Accidents), or accidents on their way to work (Commuting Injuries).

Basically, a company that employs at least one worker is required to take procedures to join the Industrial Accident Compensation Insurance and pay the entire insurance premium.

All workers, including part-time workers and temporary workers (*Arubaito*), are eligible for benefits for work-related and commuting-related injuries.

(3) Health insurance / National health insurance

Health insurance / National health insurance is a social insurance system to provide medical benefits and allowances necessary to ensure a certain standard of living for workers and their families (*) in cases where they had an injury or illness, gave birth, or died and so on. If you join the Health insurance / National health insurance scheme, you can receive a health insurance card to bring with you to a doctor's office or a hospital. By doing so, the medical fee you pay at the reception desk of a doctor's office / hospital will be reduced to 30% of the full medical service fee in principle.

* If you are 75 years old or older, you can receive medical care as an insured person of the Medical care system for older people aged 75 and over instead of health insurance.

Health insurance is compulsory for:

- Businesses run by the state, or regional governments or corporations
- Individual businesses of certain industries which regularly employ five or more persons

Workers employed by applicable business establishments are covered by this system (dispatched workers, contract employees, part-time workers and temporary workers shall be covered as well, provided their prescribed working hours per week and prescribed working days per month are at least three-quarters of those of regular workers). Even if they are less than three-quarters, workers will be covered by health insurance if the following five conditions are met:

- At least 20 hours or more prescribed working hours per week
- Monthly wage of 88,000 yen or more
- Expected employment period of at least one year
- Not a student
- Employed by a company with at least 501 employees (a worker employed by a company with 500 employees or less shall also be covered by health insurance if it is provided in a labor contract)

As a rule, the company and the workers share the payment of the premiums equally.

Workers who do not qualify for health insurance coverage are eligible for National Health Insurance coverage if they have an address in Japan. In this case, they must make arrangements for enrollment by themselves at a local municipal office.

National Health Insurance premiums are calculated in household units based on the premium rate that each municipality establishes, and the householder bears the whole amount.

* For more details, please refer to Chapter 6, "Medical Care".

(4) National pension / employee pension insurance

National pension and employee pension insurance provide insurance benefits to workers and their families in order to ensure a certain standard of living for workers and their bereaved families, and contribute to the improvement of their welfare, in cases where the workers become older and suffer from physical disability due to illness or injury, or die, leaving the bereaved families to face great difficulties.

In the same way as health insurance, employee pension insurance is compulsory for business establishments to which the following apply:

- Businesses run by the state, or regional governments or corporations
- Individual businesses of certain industries regularly employing five or more persons

Workers employed by applicable establishments are covered by this system (dispatched workers, contract employees, part-time workers are covered the under employee pension insurance as well, provided their prescribed working hours of one week and prescribed working days of one month are at least three-quarters of those of regular workers). Even if they are less than three-quarters, workers will be covered by employee pension insurance if the following five conditions are met::

- At least 20 hours or more prescribed working hours per week
- Monthly wage of 88,000 yen or more
- Expected employment period of at least one year
- Not a student
- Employed by a company with at least 501 employees (a worker employed by a company with 500 or less employees will be covered by employee pension insurance if it is provided in a labor contract)

Insurance premiums under the employee pension insurance scheme are paid at fixed rates, and the company and the workers share the payment of premiums equally. Premiums under the National Pension scheme are a fixed amount, and the insured person pays the full amount.

3 Rules for working

3-1 Wages

The Minimum Wage Act stipulates the minimum amount of wage that a company must pay. The "minimum wage" applies to all workers, including regular employees, dispatched workers, contract employees, part-time workers, temporary workers and so on regardless of differences in their type of employment. It is prohibited, even if a worker agrees, to conclude a contract at a lower wage than the minimum wage. Hence, even if you agreed to work at a lower wage than the minimum wage at the request of a company, such a promise is null and void under the law, and it shall be regarded you agreed to a wage equal to the amount of the minimum wage.

Therefore, you can claim a sum equal to the difference of your wage from the minimum wage, x hours worked, later.

Leave allowance

In the event of an absence from work for reasons attributable to the company, the company must pay leave allowance equal to at least 60 percent of the worker's average wage in order to guarantee the minimum living standard of the worker. As long as the reasons for absence from work are attributable to the company, a certain level of salary is guaranteed to the worker.

Therefore, one should not assume that “I cannot be paid because I did not work”.

3-2 How the wages are paid

There are rules on how wages must be paid to ensure that wages are paid in full to the workers. The following four principles are established.

1) Principle of payment in currency
Wages must be paid in cash. It is not permitted to pay in kind (such as company goods). However, if a worker agrees, bank transfer or other means can be used.
In addition, if a company and the labor union made an agreement, payment can be made in kind instead of payment in currency.

2) Principle of direct payment
Wages must be paid directly to the worker himself. For example, a company can not make payment to parents, etc., on the ground that the worker is a minor.

3) The principle of payment in full
The wages must be paid in full. It is prohibited to forcibly deduct part of the wages (deduction).
However, deductions stipulated by law, such as income tax and social insurance premiums, etc., are permitted. In addition, it is permitted for a company to deduct part of the wages if a written agreement is concluded with a labor union formed by a majority of workers, or a representative of a majority of workers in cases where there is no union formed by a majority of workers.

4) Principle of payment at least once a month periodically
Wages must be paid at least once a month on a fixed date. For example, it is not permitted to pay a two-month wage altogether. In addition, it is prohibited not to specify the date of payment, for example, is not permitted to say "from 20th to 25th every month" , or "the 4th Friday every month", in which the payment day changes within the range of 7 days in a month. However, extraordinary wages and bonuses are exceptions.

3-3 Working hours, rest periods, rest days

Maximum Working hours are stipulated by law. The Labor Standards Law stipulates that the maximum working hours should be 8 hours a day and 40 hours a week (legal working hours). If a company wants to have workers work overtime, the company must pay extra wages.

In addition, a company must provide its workers, during the working hours, with a rest period of at least 45 minutes if the working hours per day exceed 6 hours, and at least 60 minutes if they exceed 8 hours.

The company must give workers at least one rest day (legal holiday) per week, or at least 4 rest days over the period of 4 weeks.

In addition, although the worker dispatching agency shall assume responsibility for making decisions on working conditions of dispatched workers, including working hours, rest periods, holidays, etc., the company receiving the worker dispatch service shall assume responsibility for observing those rules.

one point

Annual paid leave

Annual paid leave is a holiday (vacation) that a worker may take for which wages are paid even though he is absent from work on the prescribed work days. A worker who has been working continuously for 6 months and reported for work on at least 80% of the total working days can take annual paid leave of 10 working days. Furthermore, as the worker's years of service increases, the number of paid holidays he can enjoy annually will increase as well as long as he meets the condition of at least 80% of attendance at work (with an upper limit of 20 days).

In addition, workers such as dispatched workers and part-time workers, even though they have different types of employment from that of regular employees, shall be granted the same number of paid holidays as regular employees, provided they:

- have worked continuously for 6 months
- reported for work on at least 80% of all working days (*)
- worked for at least 5 days a week or 217 days a year

Even in cases where they work only 4 days or less a week or 216 days or less a year, they shall be granted paid holidays in the same amount as regular employees, if their prescribed working hours are at least 30 hours a week.

Workers whose prescribed working hours are 4 days or less a week or 216 days or less a year, and whose prescribed working hours are less than 30 hours a week, are granted paid holidays commensurate to the prescribed number of their working days.

* When the contract of an employee with a fixed-term contract is renewed, the days he reported for work prior to renewal of the contract will be included in the calculation if renewal of contract makes it virtually the same as continuous employment.

3-4 Overtime work, and work on holidays

A company must conclude a written agreement (hereinafter referred to as the "36 agreement") with a labor union organized by a majority of workers, or a representative of a majority of workers if there is no union organized by a majority of workers, if the company wants to have workers work beyond statutory working hours, or on legal holidays.

In addition, a company must pay increased wages if the company has workers work over legal working hours, or on legal holidays, based on the 36 agreement.

one point

How to calculate the rate of premium for overtime

1) 25% or more for overtime work beyond statutory working hours
   * For overtime work exceeding statutory working hours by 60 hours a month, increased wage by 50% or more must be paid

2) 35% or more for work on a legal holiday (holiday work)

3) 25% or more for late night work, 10:00 pm to 5:00 am (midnight work)
   * For example, in a case of overtime work beyond statutory working hours, when it is also late-night work at the same time (1 + 3), the wage to be paid shall be increased by 50% or more.

The wage premium for overtime shall apply to all workers, regardless of types of employment. Therefore, the extra pay shall be paid to dispatched workers, contract employees, part-time workers and temporary workers (*Arubaito*).

3-5 Safe and comfortable work environment

The Occupational Safety and Health Act is provided to ensure the safety and health of workers in the workplace, and to create a comfortable working environment.

The Occupational Safety and Health Act stipulates that a company must take necessary measures to prevent workers from having accidents or getting sick due to their work. In addition, it stipulates that workers must abide by the rules necessary to prevent occupational accidents and participate in measures taken by the company.

For example, a company must conduct a medical check by a doctor when a worker is hired, and once every year thereafter (workers performing dangerous or harmful work shall receive a health checkup every six months), and workers must receive such medical checkup.

In addition, mental health problems due to work stress have also become a major issue in recent years. In the light of this, companies must undertake stress checks on workers and take necessary measures based on the results, such as job rotation.

Furthermore, companies must, from the viewpoint of health management, objectively grasp the state of working hours of workers, and provide workers who suffer from fatigue due to long working hours with face-to-face guidance by a physician. Based on the results, the company must take necessary measures on employment, such as job rotation.

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Medical checkup

The Safety and Health Law applies not only to regular employees but also to dispatched employees, contract employees, part-time workers and temporary workers if they meet the following two conditions:

- Being employed with a contract without fixed period (in case of employees with a fixed-period contract, the worker must be expected to be employed for at least one year, or have been employed at least one year by renewal of the contract)
- Working hours per week are three-quarters or more of the prescribed working hours of regular workers engaged in the same type of job at a relevant business site.

one point

Face-to-face guidance by a physician

Under the Occupational Safety and Health Act, not only regular employees but also dispatched workers, contract employees, part-time workers and temporary workers who have performed overtime work / holiday work / for over 80 hours a month, and who are recognized to be suffering from fatigue (if they submit a request), are eligible (*) for face-to-face guidance by a physician.

* R & D workers who worked overtime or worked on holidays for 100 hours or more per month, and workers under the highly skilled professional system who worked longer hours than the Health Management Hours by 40 hours per week where the excess hours per week have accumulated to more than 100 hours per month, are eligible for face-to-face guidance by a physician without making a request.

3-6 Injuries, illness, etc., at work

Workers are compensated by Industrial Accident Compensation Insurance if they incurred an injury or illness due to their jobs.

For example, if you get treatment at a hospital participating at Industrial Accident Compensation Insurance, the treatment cost in principle will be free (if you go to a hospital which is not participating, you must pay the cost initially, but you will be reimbursed by making a request to the Labor Standards Inspection Office). If you have to take a break from work, you can receive compensation for absence from work (the business owner shall pay 60% of the average wage until the third day of leave, and 80% of the amount equivalent to the average pay shall be covered by Industrial Accident Compensation Insurance from the fourth day). If a worker dies, Benefits (Compensation) for the Surviving Family will be provided to the bereaved family.

It should be noted that it is prohibited to fire a worker during a period he is away from work, and 30 days thereafter, for treatment of an injury or illness due to an industrial accident.

In addition, Industrial Accident Compensation Insurance covers not only injuries and illnesses at work, but also injuries, etc., incurred during commuting. Mental disorders such as depression due to causes such as long working hours are also covered by Industrial Accident Compensation Insurance.

You can not use health insurance if the injury or sickness was caused because of work, so you must claim for workers' injury insurance benefits. If you have any issue concerning injuries, etc., incurred during work or commuting, please consult the Labor Standards Inspection Office.

* Industrial Accident Compensation Insurance is applicable to not only regular employees but also dispatched workers, contract employees, part-time workers and temporary workers (*Arubaito*).

3-7 Prohibition of discrimination on the basis of sex

With regard to the recruitment and employment of workers, employers shall provide equal opportunities for all persons regardless of sex.

With regard to the following matters, employers shall not discriminate against workers on the basis of sex. Assignment , promotion, demotion, and training of workers; Loans for housing and other similar fringe benefits as provided by Ordinance of the Ministry of Health, Labor and Welfare; Change in job type and employment status of workers; and Encouragement of retirement, mandatory retirement age, dismissal, and renewal of the labor contract.

Employers shall not use the fact that a Worker is a woman as a basis for engaging in differential treatment in comparison to men with respect to Wages.

3-8 Maternity leave, childcare leave / family care leave, etc.

If a woman who is expecting to give birth within 6 weeks (or within 14 weeks in the case of multiple fetuses) requests leave from work, the Employer shall not make her work. In addition, employers shall not have a woman work within 8 weeks after childbirth; provided, however, that this shall not prevent an Employer from having such a woman work, if she has so requested, after 6 weeks have passed since childbirth, in activities which a doctor has approved as having no adverse effect on her.

In the event that a pregnant woman has so requested, an Employer shall transfer her to other light activities.

In the event that an expectant or nursing mother has so requested, an employer shall not have her work in excess of the statutory working hours per week or per day even when an irregular work system is adapted in the workplace. In addition in the event that an expectant or nursing mother has so requested, an employer shall not have her work overtime nor work on days off, at night.

Employers shall not stipulate marriage, pregnancy or childbirth as a reason for retirement of women workers.

Employers shall not dismiss women workers for marriage.

Employers shall not dismiss or give disadvantageous treatment to women workers by reason of pregnancy, childbirth, or for maternity leave before childbirth, etc. (this applies to companies receiving dispatched workers).

Dismissal of women workers who are pregnant or in the first year after childbirth shall be void. However, this shall not apply in the event that the employers prove that dismissals are not by reasons prescribed in the preceding paragraph.

Employers shall secure the necessary time off so that women workers they employ may receive the health guidance and medical examinations. In addition, Employers shall take necessary measures, such as change of working hours and reduction of work, in order to enable the women workers they employ to comply with the directions they receive based on the health guidance and medical examinations. (this also applies to companies that receive dispatched workers).

Under the Child Care and Family Care Leave Law, a worker can take childcare leave, in principle, until the child becomes 1 year old (up to 2 years old in certain cases). Men as well as women can take childcare leave. Furthermore, it is possible to take childcare leave for one year until the child becomes one year and two months if certain conditions are met, such as both parents will take childcare leave.

In addition, under the Child Care and Family Care Leave Law, a worker can take family care leave in order to care for a family member requiring nursing care.

Family care leave can be divided up to three times for up to 93 days in total per family member requiring nursing care.

The company can not refuse applications for childcare leave and family care leave from eligible workers.

The company is prohibited by the law from firing or treating workers unfavorably on the grounds that they have requested or taken childcare leave / family care leave. (Also applies to the company receiving dispatched workers).

one point

Maternity leave for dispatched workers, etc.

* Dispatched workers must submit a request for maternity leave, childcare leave and family care leave to the temporary worker dispatching agency.
* Fixed-term contract employees, such as dispatched workers, contract employees, part-time workers and temporary workers, can also take childcare leave and family care leave, if they meet the following two conditions at the time they request leave.
  - They have continued working for more than one year
  - It is not clear that the term of their labor contract will expire prior to:
    - the day the child becomes one and 6 months old (two years old, for childcare leave for a child of one and six months to two years old) (in the case of childcare leave), or,
    - a period of six months after 93 days has elapsed from the scheduled day that family care leave begins.

3-9 Harassment prevention measures

Employers shall establish necessary measures in terms of employment management to give advice to workers and cope with problems of workers, and take other necessary measures so that workers they employ do not suffer any disadvantage in their working conditions by reason of sexual harassment, maternity harassment, etc. (this applies also to companies receiving dispatched workers).

3-10 Guidelines for Employment Management of Foreign Nationals

In order to keep Japan a country that is attractive to non-Japanese workers who are currently working in Japan in various specialized / technical fields as well as those wishing to work in Japan in the future, it is necessary to create an environment where workers with various backgrounds can safely exercise their abilities effectively, including ensuring fair treatment. Guidelines for employers to deal appropriately with the improvement of employment management of foreign workers, etc. (the “Guidelines for Employment Management of Foreign Nationals”) have been drawn up so that employers will take appropriate measures to improve employment management and re-employment support for non-Japanese workers. The personnel of the Public Employment Security Office (*Hello Work*), when they visit business establishments employing foreign workers, use these guidelines to provide necessary advice and guidance.

Please visit the website below for the main content of the Guidelines for Employment Management of Foreign Nationals.

https://www.mhlw.go.jp/file/06-Seisakujouhou-11650000-Shokugyouanteikyokuhakenyukiroudoutaisakubu/300529_3.pdf

Please visit the website below for the Guidelines for Employment Management of Foreign Nationals.

https://www.mhlw.go.jp/file/06-Seisakujouhou-11650000-Shokugyouanteikyokuhakenyukiroudoutaisakubu/1015820920.pdf

4 Forms of employment

4-1 Dispatched workers (dispatched employees)

Under the worker dispatching arrangement, a worker who has concluded a labor contract with a temporary staff company (dispatching company) is sent to another company based on a worker dispatching service contract concluded in advance, and the worker works under the directions and orders of the company receiving the dispatched worker. The worker dispatching arrangement is complicated, because the company that pays the worker and the company that gives instructions and orders at work are different. Thus, the Worker Dispatching Law sets forth detailed rules for dispatched workers.

In dispatching, the legal employer is the dispatching company. Therefore, if an accident or problem occurs, the dispatching company must deal with it responsibly. However, it is inappropriate for a company receiving dispatched workers not to assume any responsibility, because it is the company that is actually giving instructions and orders to the workers. Therefore, the Worker Dispatching Law provides for matters for which both parties should take responsibility, including provisions pertaining to the Labor Standards Act and the Industrial Safety and Health Law. There are personnel who offer consultation in both the dispatching companies and the companies receiving dispatched workers. Therefore, please seek consultation with a person in charge if you encounter problems at work.

4-2 Contract employees (employees with fixed-term employment contracts)

A labor contract with prefixed contract term based on an agreement between a worker and a company will be automatically terminated upon expiration of the term of contract (the term of contract can be extended if the worker and the company agree to renew the labor contract). The term of contract shall be 3 years maximum, with exceptions in certain cases.

4-3 Part-time workers

Part-time workers are "part-time employees" as defined in the Part-Time Employment Act, and the term refers to workers whose prescribed weekly working hours are shorter than that of ordinary workers (so-called “regular employees”) employed at the same workplace. Under the Act, there is no distinction between part-timers and “temporary part-time workers (*Arubaito*)”, and they are all regarded as part-time workers, regardless of how they are called, provided they meet the same conditions.

Also, since part-time workers are essentially workers, various labor laws apply to them as well. Therefore, if they meet certain requirements, part-time workers can take annual paid leave, and be eligible for employment insurance, health insurance and employees’ pension insurance.

While companies are obligated to clearly indicate working conditions when hiring workers, and with regard to five particularly important conditions, issue documents in principle (see 2-1), the Part-Time Employment Act also stipulates that companies must provide documentation or other measures to clarify the availability of pay raises, retirement allowances, bonuses and relevant contact window.

4-4 A Person who works by concluding service agreement / contract

In a "subcontracting" or "contract" arrangement, unlike a "worker" mentioned in the above, payment is made for completion of a work assignment that a contractor receives from a customer. Therefore, contractors are treated as "business owners" who do not work under the instruction of a client. So, basically, a contractor can not receive protection as a "worker".

However, even if you conclude a contract as a "subcontractor" or "contractor", if it is judged from the actual type of employment that you are a "worker" who actually receives instructions from the client, you can be protected as a "worker".

If you can not decide if you are a "worker" or not, please consult the Labor Standards Inspection Office.

5 Resignation / Dismissal

5-1 Resignation

In general, termination of a labor contract by any means other than dismissal or termination of fixed-term employment (see 5-2) is called resignation.

When a worker submits his/her request to leave, applicable laws and regulations differ depending on whether the labor contract was concluded with or without a fixed-term.

If the worker had concluded a labor contract without a fixed-term, the labor contract will be terminated in 2 weeks, in principle, if a worker submits a request to leave (if the company's employment rules provide for retirement procedures, you must submit your request to leave accordingly).

If a worker concluded a labor contract with a fixed-term, he/she can not resign in the middle of the term of contract unless there are unavoidable circumstances, and the labor contract will end when the term of contract expires. Also, in order for the same worker to continue working after the expiration of the term of contract, it is necessary to re-enter a new labor contract (such contract renewal requires the consent of both the company and the worker).

A worker, at his/her sole discretion, may resign from the company, but it is important to follow the rules as a member of society in Japan, for example by informing your superior of your intention to resign in advance, given notice in writing, handing over work duties, etc. In some cases, the company will have set up procedures for resignation in the employment rules and so on. If you decide to resign, it is necessary to find out how the resignation procedures work at your company first.

5-2 Dismissal

(1) Dismissal

A unilateral termination of a labor contract by a company is referred to as dismissal.

A company cannot dismiss its workers at will for any reason. If the dismissal lacks an objective, rational reason and is deemed inappropriate under socially accepted conventions, the dismissal shall be invalid.

In addition, it is required for a company to prescribe, in its employment rules, reasons for dismissal (the circumstances that are the basis for dismissal) in advance.

In addition, in the event that a company wishes to dismiss a worker, the company is required to provide at least 30 days advance notice to the worker concerned. If no advance notice is given, the company must pay the worker the average wages for 30 days or more (dismissal notice payment) (even if advance notice is given, if it was given less than 30 days in advance, the company must pay the average wage for the number of days falling short as dismissal notice payment).

(2) Termination of fixed-term employment

If a new contract is not concluded or a current labor contract is not renewed when a fixed-term employment expires, it is termination of fixed-term employment.

In case of a fixed-term labor contract, in principle, the labor contract will automatically terminate when the term of contract expires.

Thus, termination of fixed-term employment is different from dismissal in which a company unilaterally terminates a labor contract in the middle of the term of contract.

If the contract was renewed three or more times, or if the person has continued to work for more than one year, the company is required to provide at least 30 days advance notice if the company does not intend to re-enter the next labor contract.

When it can be virtually regarded as a dismissal as in a case of a labor contract without a fixed term considering the contract was renewed repeatedly, or when the worker reasonably assumed continuation of the employment, etc., in other words, when no objective or rational reasons to terminate the fixed-term employment exist, and it is recognized inappropriate under socially accepted conventions, the company can not terminate the fixed-term employment. In this case, the labor contract with a fixed term shall be renewed under the same working conditions as before.

Dismissal for purposes of reorganization

When a company carries out workforce reduction due to recession, poor management, etc., a dismissal in this case is referred to as dismissal for the purposes of reorganization. Whether or not such a restructuring termination is valid or not is judged in the light of the following matters.

1) Necessity of workforce reduction

It must be based on needs serious enough to carry out workforce reduction measures in the light of company management, such as recession, business slump, etc.

2) Efforts made to avoid dismissal

Efforts have been made to avoid dismissal through other means, such as reassignment, recruitment of desired retirees, etc.

3) Rationality for choosing suitable persons

The criteria for choosing persons subject to restructuring termination must be objective and rational, and their implementation must be fair

4) Appropriateness of dismissal procedures

The need for dismissal, and its timing, scale and method, must be explained to the labor union or workers to gain their understanding

Encouragement to retire

When a company encourages its worker to voluntarily retire, saying, "We want you to quit," or "Will you do us a favor and quit?" , it is referred to as encouragement to retire. It is different from a notice of dismissal (see 5-2 (1)), in which the company unilaterally gives a notice of termination of an employment contract.

It is up to the worker to decide whether to accept the encouragement to retire or not, and there is no need to make an immediate decision on the spot. If the worker has no intention to retire, he must clearly communicate that he will not accept the encouragement to retire.

6 Bankruptcy of the company

A system exists for the government to reimburse unpaid wages under the Act on Ensuring Payment of Wages, in the event a company goes bankrupt and can not pay salaries to its workers.

Please consult with the Labor Standards Inspection Office in such a case, as part of the unpaid wages will be reimbursed.

7 Basic allowance

If you become unemployed, you can receive a basic allowance if you were covered by employment insurance. In order to be eligible to receive a basic allowance, a worker must have worked at least 11 days per month for 12 months during the span of two years before he left the company. However, if the reason for leaving the company was bankruptcy or termination due to circumstances of the company, or non-renewal of a fixed-term labor contract, etc., a worker can receive the basic allowance provided he worked at least 11 days for at least 6 months during the period of one year before he left the company.

In addition, the date that payment of the benefit begins and the period of the benefit vary depending on the reasons for becoming unemployed.

The benefit is provided starting on the day you have been unemployed for at least 7 days in total after you submitted a job application and a letter of separation (when an employee leaves the company, the company is required to issue the letter of separation) was accepted at the Public Employment Security Office (Hello Work). But, if you resigned for your own reasons or if you were dismissed for serious reasons due to your fault, the benefit payment will not start until another three months have passed.

Therefore, when you receive a letter of separation, make sure to check and read the column for the reasons for your leaving the company. Because if it states “voluntary resignation”, when in fact you were dismissed due to company circumstances or you merely responded to the encouragement to retire, you will be at a disadvantage in receiving the basic allowance.

In addition, it is possible to get a certificate of reasons for retirement or termination from the company.