

Client Alert

January 15, 2024

Table of Contents

1. Summary of the employer's obligation to provide clear notice of terms of employment
2. Terms applicable to all employees after the amendment
3. Terms applicable only to fixed-term employees after the amendment

Effective April 1, 2024: Changes to employer's obligation to provide clear notice of terms of employment

The Labor Standards Act (the "LSA") requires employers to provide clear notice of certain terms of employment set forth under the Ordinance for Enforcement of the Labor Standards Act (the "LSA Ordinance"). An amendment to the LSA Ordinance will become effective on April 1, 2024 changing the terms covered by this notification requirement.

Under the LSA Ordinance as amended:

- (1) employers will be obliged to clearly notify all employees of the scope of possible changes in their workplaces and duties during their employment in addition to their workplaces and duties immediately upon hiring;
- (2) all fixed-term employees must be notified of the maximum number of contract renewals they can receive and the maximum total period of the renewed employment agreements; and
- (3) fixed-term employees with five or more years of work experience must be notified that they have the right to apply for conversion from fixed-term employment to indefinite-term employment and the terms of their employment after conversion to indefinite-term employment.

Please see the below for further details on changes employers should ready themselves for by April 1, 2024.

1. Summary of the employer's obligation to provide clear notice of terms of employment

Under Article 15, Paragraph 1 of the LSA, employers are obliged to provide employees with clear notice of specific terms of their employment when they are hired. These terms include, but are not limited to:

- (1) the period of the employment agreement;
- (2) the criteria for renewing a renewable fixed-term employment agreement;
- (3) the employee's workplace and duties;
- (4) daily work starting and ending times, whether the employee is required to work more than his/her prescribed working hours, rest periods, holidays, leave, and when employees are divided into two or more groups, shift changes;
- (5) the method of determining, calculating and paying wages, the time at which pay periods close and when wages are paid and rules regarding wage increases; and



(6) rules regarding resignation and unilateral termination.

In practice, international companies doing business in Japan generally comply with their notification obligations by presenting employees with written employment agreements.

Under the LSA, employers who fail to comply with these obligations can be fined up to JPY 300,000.

2. Terms applicable to all employees after the amendment

As mentioned in 1.(3) above, employers are currently obliged to clearly notify employees of the workplaces at which they will work and the duties they will perform. According to a government notification, it is currently sufficient to notify employees of their workplaces and duties immediately upon hiring.

However, the LSA Ordinance as amended will require employers to notify their employees of the scope of possible changes in their workplaces and duties during their employment.

If the employer limits the scope of possible changes in an employee's workplace and duties during employment in its notice to an employee at the time of employment, the limited scope of changes is likely to be deemed to be a part of the agreement between the parties. Assuming that such an agreement is established, the employer will then be unable to unilaterally change the employee's workplace and duties beyond the limited agreed-upon scope.

On the other hand, however, narrowly defining the scope of changes in workplaces and duties may make it easier to justify unilateral termination of an employee, although a case-by-case assessment would be required. Roughly speaking, when determining whether a unilateral termination is justified, the court generally expects the employer to have considered the possibility of reassigning/relocating the employee to another role/workplace before unilaterally terminating the employee. Defining the scope of changes in workplace or duties narrowly may reduce the level of effort a court would find acceptable in this regard.

3. Terms applicable only to fixed-term employees after the amendment

3.1 Maximum number of contract renewals and total contract period

As mentioned in 1.(2) above, employers are currently obliged to provide clear notice of the criteria for renewing a renewable fixed-term employment agreement. However, under the LSA Ordinance as amended, clear notification must also be given of any maximum number of contract renewals and of the maximum total period of employment under such renewed agreements.

Also, according to an amendment to a government notification made at the same time as the amendment to the LSA Ordinance, employers will be required to explain their reasons where (i) a maximum number of renewals or maximum total period of employment is newly set after the initial fixed-term employment agreement is concluded and (ii) where the maximum number of renewals or the maximum total period of employment set forth under the initial fixed-term employment agreement is reduced.

**For further information,
please contact:**



Tomohisa Muranushi
Partner
+81 3 6271 9532
tomohisa.muranushi@bakermckenzie.com



Kento Tanei
Associate
+81 3 6271 9704
kento.tanei@bakermckenzie.com

3.2 Terms related to conversion from fixed-term to indefinite-term employment

Under the Labor Contracts Act, a fixed-term employee who has continued to work for the same employer for more than five years has the right to apply for conversion from fixed-term employment to indefinite-term employment.

After the amendment to the LSA Ordinance, employers will be obliged to notify fixed-term employees with five or more years of work experience of their right to apply for conversion and the terms of their employment after conversion to indefinite-term employment.

Also, according to an amendment to a government notification made at the same time as the amendment to the LSA Ordinance, employers will be required to make an effort to explain to fixed-term employees the matters taken into account in determining the terms of their employment after conversion to indefinite-term employment.

Baker & McKenzie
(Gaikokuho Joint Enterprise)

Ark Hills Sengokuyama
Mori Tower 28F
1-9-10, Roppongi, Minato-ku
Tokyo 106-0032, Japan
Tel + 81 3 6271 9900
Fax +81 3 5549 7720

www.bakermckenzie.co.jp/en