

Employment Guideline Proposal

Provisional Translation

資料 1 — 1

Purpose

- The Employment Guideline aims to help global companies and newly born enterprises to accurately understand the employment rules in Japan, to improve foreseeability and to ease expanding business without triggering labor related disputes. The Employment Guideline should consist of analyses and categorization of judicial precedents regarding labor relations, and be made in accordance with Article 37 Paragraph 2 of The National Strategic Economic Growth Areas Act (Act No 107, Dec 13, 2013).
- The Employment Guideline should be drafted with consideration of opinions from both the side of employer and employee, and upon consultation with the National Strategic Economic Growth Areas Advisory Council.
- The Employment Guideline will be utilized by the “Employment Labor Advisory Consultation Center” established in the Growth Areas to provide advice on employment management and labor contract issues in response to inquiries from global companies and other entities and persons, including employees.

Employment Guideline Proposal

Basic Policy

- So that global companies and other entities accurately understand the employment rules in Japan and so as to improve foreseeability, the Employment Guideline is made according to the following policies:
1. As for the “General Outline” of “judicial precedent analysis”, even as for rules which are applied similarly from case to case, the Employment Guideline will point out (*3) that the court may consider in individual judgments differences as to the situation of (a) personnel management of an “internal labor market type” (*1) often seen in typical Japanese companies and (b) personnel management of an “external labor market type” (*2) often seen in foreign companies and new companies which do not operate under the long-term employment system. Moreover, the actuality of dispute resolution for employment dismissal in Japan will also be introduced.
 - *1 (i) Periodical recruiting of new graduates; no limit as to a job role and work location; long-term employment; promotion and wage raise based on occupational skill and years of experience, (ii) wide-ranged transfer and secondment, (iii) establishment of uniform working conditions through rule of employment, (iv) in times of recession, employment adjustments made by reduction of overtime work, reduction of new recruitment, shutdowns and secondment, etc. In cases of employment termination, undergo soliciting those who desire voluntary early retirement before undergoing adjustment dismissal.
 - *2 (i) Recruitment from in and outside the company when a post is open; long-term employment is not a basic assumption; wages based on job, (ii) clear position assignment; narrow scope of transfer, (iii) setting of detailed working conditions set by labor contract for each individual employee, (iv) as for employees hired for specific posts, undergo dismissal including provision of re-employment support and monetary compensation when the post itself becomes lost.
 - *3 The above mentioned “internal labor market type” and “external labor market type” company characteristics are at most a general categorization, and the combination of the characteristics may differ according to the actual state of individual companies. For example, even as for “internal labor market type” companies, personnel management close to an “external labor market type” may be undergone according to the department or post. It is not necessarily that the general rule is to pick one or the other.
 2. In the “Specific Topics”, judicial precedents will be categorized, mainly around issues that are of keen interest for global companies and other entities, and issues that tend to be most disputed. Related legal systems and judicial precedents will be introduced.
 3. With regard to “Dismissal”, which is the most disputed area in labor relations, the Employment Guideline will advise that in order to prevent disputes beforehand, an “external labor market type” company should state in the labor contract or the rule of employment the reasons for dismissal, the procedures of dismissal, the appropriate payment, re-employment support, etc., and to carry out such measures in accordance with the labor contract and the rule of employment when dismissing an appropriately paid employee in managerial or highly specialized positions.

Employment Guideline Proposal Contents

I. General Outline

- Court cases exist wherein the court passed judgment on considering the difference between personnel management in the “internal labor market type” often seen in typical Japanese companies and personnel management in the “external labor market type” often seen in foreign companies and other entities.
- 1. In the case of companies which undergo “internal labor market type” personnel management, there are many cases where the court rules that transfer and secondment by the employer are not an abuse of power on personnel rights, while on the other hand, there is a tendency to seek that the employer endeavors to avoid dismissal by utilizing transfer of positions, etc., broadly.
- 2. In the case of companies which undergo “external labor market type” personnel management, when on dismissal the employer provides monetary compensation and re-employment support (a retirement package), the degree of seeking the employer endeavors to avoid dismissal by utilizing transfer of position, etc., broadly tends to be lower than in the case of “internal labor market type” companies.

II. Specific Topics

1. Formation of Labor Contracts

1. Freedom of hiring
2. Tentative hiring cancellation
3. Probationary Period

2. Development of Labor Contracts

1. Setting and changing working conditions
 1. By individual agreement
 2. By uniform working conditions under the rule of employment
2. Transfer
3. Secondment
4. Discipline
5. Disciplinary dismissal

3. Termination of Labor Contracts

1. Dismissal
2. Ordinary dismissal
 1. Due to employee's inability to provide labor
 2. Due to employee's lack, or loss, of the skills or qualifications required for performance of the employee's job, insufficient performance, inappropriate attitude
 3. Due to violation of workplace discipline, neglecting employee's duty
3. Adjustment dismissal
 1. Necessity to reduce the number of employees
 2. Duty to endeavor to avoid dismissals
 3. Validity of selection of employee to be dismissed
 4. Validity of procedures
4. Restrictions on dismissal when for special reasons
5. Encouragement of voluntary resignation
6. Employment termination by non-revision of fixed-term contract
7. Employee's withdrawal of voluntary retirement
8. Employee's duty not to compete after retirement