



May 29, 2020

4. Labor Law (2)

The Japanese government decided to lift the state of emergency on May 25, 2020 due to the recent decreasing trend in the number of newly infected people, but COVID-19 pandemic continues to have significant impact on the work environment in Japan. We have set out below the key issues faced by business operators across Japan and the related measures taken by the Japanese government to mitigate the impact. This newsletter is drafted based on the information as of May 29, 2020.

1. Payment to Employee during Absence

Due to the rise in the number of COVID-19 cases, the Japanese government declared a state of emergency and many business operators suspended their business in response to the “self-restraint requests” from prefectural governors. Therefore, companies voluntarily shut down their manufacturing sites and offices and placed on leave their employees who cannot conduct teleworking. Under such circumstances, payments to employees are made as provided below under the Japanese labor law.

➤ Leave Allowance

In general, employer does not have an obligation to pay employee’s salary unless the employee carries out work for such employer. However, Article 26 of the Labor Standards Act (“LSA”) provides that if an employee is absent from work for reasons attributable to employer, the employer is required to pay 60 percent of the employee’s average wage as an allowance during the period of such absence (“Leave Allowance”). This is a mandatory requirement which is intended to guarantee the basic income of employees.

➤ Reasons Attributable to Employer / Force Majeure

✓ Concept of “Force Majeure” under the LSA

The term “reasons attributable to employer” includes commercial disruptions occurring close to the area where employer can exercise its influence. However, it does not include commercial disruption due to “force majeure” such as natural disaster or war. Therefore, employer does not have an obligation to pay the Leave Allowance if the employer placed employees on leave due to “force majeure”.

Under the current circumstances, the Ministry of Health, Labour and Welfare (“MHLW”) announced the following two criteria for leave of absence due to “force majeure”:

- (1) Leave of absence must be due to an event occurring outside the scope of employer’s business; and
- (2) Leave of absence must be due to an event which is inevitable despite employer’s utmost effort to perform duty of care which the employer is required to perform as an ordinary business owner.

✓ Place Employees on Leave Due to “Self-restraint Request” from Prefectural Governor

The MHLW states that request for business suspension under the Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response meets the requirement mentioned in (1) above. However, the MHLW views that in order to also meet the requirement mentioned in (2) above, employer must try to take measures, which will enable its employees to work from home, or to provide its employees with different kinds of work, before the employer places the employees on leave. According to the MHLW announcement, the state of emergency or the “self-restraint request” from the prefectural governor is not immediately considered as “force majeure”.

✓ Leave of Absence for Other Reasons

The MHLW states that in case employer is forced to suspend its business because its overseas supplier stopped its business due to the COVID-19 pandemic, whether such circumstance constitutes “force majeure” is determined by taking into consideration the factors such as (1) the degree of dependence on such supplier, (2) the possibility of other alternative measures, (3) the length of suspension of business, and (4) the employer’s specific efforts to avoid the suspension of business.

2. Employment Adjustment Subsidy

Even in the case where absence from work cannot be considered as absence due to “force majeure” or where employer voluntarily pays the Leave Allowance to employees to ensure their livelihood, such employer may be eligible to receive the Employment Adjustment Subsidy (*koyo chousei jyoseikin*). Currently, the MHLW is in the process of implementing special measures for the employers affected by COVID-19 pandemic such as expansion of scope of subsidy and simplification of application procedures.

➤ Outline of Employment Adjustment Subsidy System

- ##### ✓ Under the Employment Adjustment Subsidy System, in case employer is forced to reduce business activities for economic reasons but maintains its employment contract with its employees by temporarily placing the employees

on leave (temporary layoff), put them on job training or send them on secondment instead of dismissing them, the Japanese government reimburses such employer a part of the costs for the Leave Allowance or salaries paid to such employees.

- ✓ In order to be eligible for the Employment Adjustment Subsidy, employer needs to meet certain requirements such as the following:
 - (1) Employer needs to be enrolled in the Employment Insurance System.
 - (2) Employer's production index (e.g., amount of sales or amount of production) must decrease in a certain amount.
 - (3) Employer needs to enter into a labor-management agreement on temporary layoff with a labor union or an employee who represents majority of employees ("Labor-Management Agreement").
- ✓ Employer needs to file an application for the Employment Adjustment Subsidy to the Labor Bureau or Hello Work, which has jurisdiction over the location of employer's business office, together with necessary documents including plans for the measures to be taken to maintain the employment and the Labor-Management Agreement.

➤ **Special Measures Relating to COVID-19**

- ✓ Various special measures regarding the Employment Adjustment Subsidy are now in place for employers affected by COVID-19 pandemic. These special measures are applied to the temporary layoffs occurring on or after the January 24, 2020.
- ✓ In particular, the period from April 1 to June 30, 2020 is set as an emergency supporting period and the Japanese government is widely expanding the Employment Adjustment Subsidy System for the temporary layoffs implemented during this period including an increase in the subsidy rate (i.e., up to 75% increase for large companies and 90% increase for small and medium-sized companies (Note: The maximum amount of subsidy is JPY 8,330 per day per employee.), the removal of limitation of days for which subsidies can be granted, and the simplification of procedures and documents to be submitted.
- ✓ In addition, on May 1, 2020 the MHLW announced further expansion of the special measures. Specifically, the following rules will be applied to the temporary layoffs on and after April 8, 2020:
 - (1) If employer receives a "self-restraint request" from prefectural governor, the subsidy rate for the Leave Allowance can be increased to 100% if certain requirements are met (Note: The maximum amount of subsidy is JPY 8,330 per day per employee.).
 - (2) Even without receiving "self-restraint request" from prefectural governor, if employer pays more than 60 % of employee's salary as Leave Allowance, the subsidy rate for the portion exceeding 60% will be increased to 100% (Note: The maximum amount of subsidy is

JPY 8,330 per day per employee.).

- ✓ The MHLW announced to further simplify the application procedures and necessary documents for the Employment Adjustment Subsidy on May 19, 2020.

➤ **Other Subsidies**

In addition to the Employment Adjustment Subsidy, there are following subsidies available to employers affected by COVID-19 pandemic:

- ✓ Subsidy for Elementary School Holidays, etc.

This subsidy is provided to employers that allow employees, who need to take care of their children, to take paid leave (excluding annual paid leave) due to the temporary closure of elementary schools, kindergartens, special-needs schools, etc. In principle, up to JPY 8,330 per day is paid to each employee and to employees who took paid leave on and after April 1, 2020, up to 15,000 yen is paid.
- ✓ Subsidy for Promotion of Work Style Reform
 - (1) Teleworking Subsidy

This subsidy is paid to small and medium-sized business owners who are newly introducing teleworking as a measure against COVID-19 pandemic. Half of the costs associated with the introduction of teleworking, such as the costs for installing telecommunication equipment, the costs for preparing or changing the work rules and the costs for executing Labor-Management Agreement, will be subsidized. The maximum amount of such subsidy is JPY 1,000,000 per company.
 - (2) Subsidy for Special Leave to Enhance Workplace Awareness

Employers, who have newly established a special leave system such as sick leave as a measure against COVID-19, is entitled to this subsidy. This subsidy provides up to 75% of the costs for promoting the use of such special leave to employees. The maximum amount of such subsidy is JPY 500,000 per company.

(To be continued in our next issue)

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