

# Employment Litigation and Timelines (Japan)

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*Employment litigation often has unique and specific rules. This Practice Note sets out the crucial steps, and associated timeframes, that occur when running, managing, and defending a labor and employment litigation matter in Japan.*

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A dispute between an employee and an employer may result in employment-related legal proceedings. When bringing and defending an employment litigation matter, the parties must comply with the mandatory procedural steps, including submitting pleadings within the required timeframes.

This Practice Note sets out the steps involved in an employee bringing, and an employer defending, an employment litigation claim in Japan.

## Forum of Employment Litigation

Parties can bring employment litigation claims to either:

- A regular civil court, the District Court.
- The Labor Tribunal, which is a unique forum for resolving employment disputes.

The Labor Tribunal was introduced in 2006 and is the preferred forum for employment-related disputes. The claimant may choose either forum, but the Labor Tribunal offers a simpler and quicker solution compared to the District Court.

## Limitation Date

The same statute of limitation (SOL) applies whether the claim is brought in the District Court or the Labor Tribunal.

The employee or former employee must file for litigation before the SOL expires.

The SOL for employment-related claims differ among the type of claims. For unpaid wages, which is the most common claim, the SOL was increased to three years according to the amendments to the [Labor Standards Act \(Act No. 49 of 1947\)](#) (which came into effect on 1 April 2020). This amendment further provides that the SOL must be extended to five years in the near future. However, it is yet to be decided when the five-year SOL comes into effect.

The SOL expires after three years from the date the right to bring the claim arose (for example, from when the wages were due to be paid and were not paid in part or full).

There is no SOL for a wrongful termination (that is, a dismissal without fair reason or without following a fair process) claim.

The employee may also make tort claims. A typical tort claim would be a claim for mental suffering caused by wrongful termination. The SOL for a tort claim is three years from when the victim became aware of their damage or suffering (Article 724, *Civil Code (Act No. 89 of 1896)*).

Typically, a party files a litigation claim within a few weeks or a few months from the date of the act or omission.

## Pre-Litigation Claim

An employee is not required to seek alternative dispute resolution before filing a claim at a Labor Tribunal or a District Court.

An employee can file for mediation at the local Labor Bureau, a subdivision of *the Ministry of Health Labor, and Welfare*. This mediation consists of only one hearing where a mediator appointed by the Labor Bureau (typically a lawyer) seeks to settle the case. This mediation is a voluntary procedure. Therefore, parties may refuse to:

- Attend the mediation.
- Agree to any settlement terms proposed by the mediator.

If the parties cannot reach a settlement, the mediation is terminated.

It is also common for an employee to retain a lawyer and make demands against the employer without starting litigation and involving the court. Usually, the employer responds by retaining its own attorney. This process is also voluntary, but many cases are settled this way without going to the Labor Tribunal or the District Court.

None of these processes impact or extend the limitation date for making employment-based claims at the District Court or the Labor Tribunal.

## General Litigation Rules and Principles

### Overview of Process

In Japan, the initial litigation complaint and the response from the defendant are typically simple. It is after the initial submissions that the parties add details and substance to their arguments in subsequent hearings by submitting briefs.

In subsequent hearings, the parties each submit briefs providing details of the claim or the defense and any additional evidence (Article 170(1), *Code of Civil Procedure (Act No. 109 of 1996)*).

There are no specific procedures that the parties need to follow when submitting additional briefs at subsequent hearings.

After several hearings, the court or tribunal typically suggests holding a preparatory proceeding. The preparatory proceeding is not public. In this proceeding, the parties and the judge discuss whether the parties can reach a settlement. Many times, the court actively tries to persuade the parties to settle. If the parties fail to reach a settlement, the judge re-opens a formal hearing.

## Confidentiality

### District Court

The parties to a District Court case are not confidential. However, the court does not actively disclose the information to the public, and a third party needs to go to the court to obtain information about the parties to any case if such is not disclosed by the parties themselves.

### Labor Tribunal

The entire procedure of the Labor Tribunal is not disclosed to the public and is private (Article 16, [Labor Tribunal Act \(Act No. 45 of 2004\)](#)).

## Virtual Hearing

Japan is in the process of digitalizing the court procedure.

Currently, it is in Phase I of digitalization, and only the preparatory proceeding of regular civil courts (that is, District Courts) and Labor Tribunal hearings can be held online with both parties attending virtually. Virtual hearings are optional, and the parties may choose to attend in-person.

Phase II of digitization involves holding formal court hearings (including examining evidence, especially witness examination) virtually.

Phase III of digitalization aims to digitalize all court records. The plaintiff will be able to file claims online and judgments will also be issued online.

On 18 May 2022, the amendment of the Code of Civil Procedure was adopted by legislature to implement Phases II and III. According to the amendment, Phases II and III are to be fully implemented during the year 2025.

## Decision Maker

### District Court

In the District Court, it is typical for a judge to sit alone. For sophisticated lawsuits, a panel consisting of three judges may be formed, which is determined by the discretion of the court.

### Labor Tribunal

In the Labor Tribunal, there is a panel of three persons: a judge and two members with expertise in labor and employment matters.

The Labor Tribunal Act requires the appointment of the two members to be *balanced*, and as a matter of practice, be appointed based on recommendations from trade unions and business associations (Articles 9 and 10, Labor Tribunal Act). This means that of the two members, one member represents labor, and the other represents the management. The parties can challenge the appointment of the members if there is a believed conflict of interest.

## Legal Representative

It is common for the employer to be represented by a legal counsel (a qualified lawyer), although the employer can also represent themselves.

Employees can also either retain a legal counsel or represent themselves. However, it is common for employees to represent themselves.

## Litigation

Unless stated otherwise, the process for the Labor Tribunal is the same as for the District Court.

## Employee Submission of Claim

### District Court

For a civil court case, the employee must submit a complaint which includes:

- A summary of claims (for example, "The Defendant needs to pay the Plaintiff XX JPY" or "The Plaintiff seeks to confirm that it is an employee of the Defendant").
- The reasons for the claim (that is, the factual and legal basis of the claim).

The petition must be accompanied by documentary evidence that backs up the factual basis of the claim.

All documents need to be filed as a hard copy. The employee must submit two hard copies, one for the court and one copy that is sent to the employer.

The employee need not be represented by an attorney and may file the claim on their own.

### Labor Tribunal

The employee must follow a process similar to that of the District Court if they are filing a claim through the Labor Tribunal. The employee need not be represented by an attorney and may file the claim on their own.

## Employer Receipt of Claim

The District Court must designate the first hearing within 30 calendar days of the date the employee submitted the claim.

Within a week of the employee filing a claim, the court serves the employer via special delivery using post mail with a hard copy of the full set of documents submitted by the employee. The post office confirms receipt and delivery of the documents.

The process for service is similar for a Labor Tribunal.

## Defence Deadline

The employer must submit a response as a hard copy (that is, the defendant's first brief). The respondent must send the response to the District Court as well as to the employee, which may be made by hand-delivery or by mail.

Delivering online (that is via email or some other web service) is yet to be allowed, although the court plans to allow this in the next few years (it would require an amendment of Japan's Code of Civil Procedure). However, the courts accept court documents via facsimile if followed up by a hard copy.

The court sets the deadline for submitting a response typically a week before the first hearing. The response needs to include the employer's argument against the claim (usually, the defendant challenges the claim and requests that all claims be dismissed), and the reasons for the argument.

If the employer does not submit a response by the first hearing and fails to attend the first hearing, it is deemed to have accepted the employee's claims. However, if employer fails to submit a response before the first hearing, the employer can still dispute the employee's claim by attending the first hearing and making oral arguments.

After submitting the response and after the first hearing, the employer must then file a subsequent brief (referred to as a preparatory statement) that provides the details of its argument (statement of facts and evidence). The subsequent brief must be received by the next hearing, which is typically scheduled about a month from the first hearing.

## Next Steps and Submissions

Further to the summary of the litigation process (see [Overview of Process](#)), the procedures for the District Court and the Labor Tribunal are as follows.

### District Court

A typical employment litigation process in the District Court consists of:

- Several rounds of hearings for the parties (who can be represented by lawyers) to submit their further briefs (known as, 'preparatory statements') and evidence.
- Hearing to examine witnesses, if the parties request. Typically, the presentation of evidence-in-chief and cross-examination by the other party is done in the same hearing. In the alternative, the parties may submit a written statement from would-be witnesses as evidence, but that written statement is only hearsay and never as good as a cross-examined witness. In practice, the court does not hear a witness unless the facts of the litigation matter are highly contested between the parties.

- Final hearing where the parties present their final briefs.

The process is mainly document-based, except for witness examination. According to the most recent survey published by the Supreme Court of Japan, the average time for the entire process was 14.5 months (for 2018).

### **Labor Tribunal**

In a Labor Tribunal, only three hearings are held unless for exceptional circumstances (Article 15(2), Labor Tribunal Act), where the panel members:

- Review the documents submitted by the parties.
- Directly ask questions to the parties. The parties are required to attend the Labor Tribunal hearings, even if they have legal representation. Cross-examination by the parties is not permitted.

A Labor Tribunal hearing is not held in a courtroom but held using a round table. This is because the procedure is more conciliatory rather than confrontational.

## **Judgment**

### **District Court**

In the District Court, at the final hearing, the court sets a date for the judgment to be presented, which is typically a month later. The parties do not need to be present on the day the judge announces the judgment.

The judgment is given in the courtroom and has two parts: the order and its reasons. The judge verbally announces the order (such as "the defendant must pay the plaintiff XX JPY") but does not read out the entire reason.

The court then gives a copy of the judgment to both parties. If the parties do not attend, it serves the judgment to each party. Anyone can access court judgments, but copies are not allowed unless a person is either:

- A party to the lawsuit.
- Can prove that they need copies to protect their rights.

(Article 91(3), Code on Civil Procedure.)

### **Labor Tribunal**

In a Labor Tribunal, if the parties do not reach a settlement, the tribunal issues a determination. The determination is typically issued verbally at the last hearing, followed up by writing (Article 20(6) and (7), Labor Tribunal Act).

## Appeal Process

### Labor Tribunal

A party can appeal a determination by the Labor Tribunal to the District Court. The deadline for appeal is two weeks from the date of determination (Article 21(1), the Labor Tribunal Act).

An appeal of a Labor Tribunal determination proceeds automatically to a District Court and follows the same process and timelines as a matter heard in the District Court in the first instance.

If necessary, a party can further appeal a claim to the High Court, and potentially the Supreme Court.

### District Court

Any party that disagrees with the judgment of the civil court of the first instance (for employment litigation, this is the District Court) can appeal to the High Court.

The appealing party must file the appeal within two weeks of receiving the service of judgment by the District Court (Article 285, Code of Civil Procedure).

The appeal itself can be very simple (essentially, the appellant only needs to state the judgment by the District Court should be overturned), but the appealing party must submit the details of its argument within 50 calendar days of the date of appeal (Article 182, Rules of Civil Procedure).

The appeal must be filed with the High Court, a senior court to the District Courts. Japan is divided into seven High Court districts (Sapporo, Sendai, Tokyo, Nagoya, Osaka, Takamatsu, and Fukuoka (with a branch in Naha, Okinawa)).

### Appeal Hearing

The appeal process (that is, an appeal heard by the High Court) is not a full rehearing of the initial claims but a review of the original judgment.

A party may appeal if they think the District Court made an error on the interpretation of facts, the law, or both.

Unless the appellate court determines that it needs to examine additional evidence, which happens when the appellate court believes the original judgment needs to be reviewed, it only holds one hearing and immediately closes the case. Typically, the appellate court examines further evidence only in highly contested cases.

The appellate court always works as a panel consisting of three judges.

The parties to the case are not confidential and the judgment may be disclosed to the public. However, it is only disclosed per request and the requesting person needs to identify the case by specifying the case number, which is not generally made available to the public. The requesting person also needs to be an interested party to make copies of the records. In practice, unless the courts decide to publish a case, it is difficult for an unrelated party to access court records.

## Final Decision

A party can further challenge the judgment of the appeal court for legal grounds only (that is to determine whether there was illegality in the judgment) (Article 312, Code of Civil Procedure).

The appealing party must file the appeal to the Supreme Court located in Tokyo. Most appeals to the Supreme Court are dismissed on the papers without holding a hearing. The Supreme Court only hears cases if:

- The litigation involves issues that require a new interpretation of the law.
- The Court decides to revise court precedents.

## Costs

The plaintiff must pay a fee for filing litigation in the civil court, which depends on the amount of the claim, as follows:

- For a claim up to one million Japanese Yen (JPY): JPY 1,000 per JPY 100,000 of claim.
- For a claim exceeding JPY one million and up to JPY five million: JPY 1,000 per JPY 200,000 of claim in addition to the said fees.
- For a claim exceeding JPY five million and up to JPY ten million: JPY 2,000 per JPY 500,000 of claim in addition to the said fees.
- For a claim exceeding JPY ten million and up to JPY one billion: JPY 3,000 per JPY 1 million of claim in addition to the said fees.
- For a claim exceeding JPY one billion and up to JPY five billion: JPY 10,000 per JPY five million of claim in addition to the said fees.
- For a claim exceeding JPY 50 billion: JPY 10,000 per JPY ten million of claim in addition to the said fees.
- For wrongful termination, the claim is deemed to be JPY 1.6 million with a filing fee of JPY 13,000.

The fee for filing a Labor Tribunal is about a half of the above amounts for a civil court matter.

The Japanese court fee system discourages plaintiffs from making large claims unless they believe their case is sound. A plaintiff must also pay postage fees for serving the petition to the defendant.

The losing party must pay the court fees after the case is concluded.

Attorney fees are not considered court fees, and the winning party cannot recover its legal representative costs this fee from the losing party. Attorneys representing employees typically work with a retainer fee plus contingent fee basis. Attorneys representing employers may also work under a similar arrangement, or on an hourly fee basis.