

## Recent developments in employment regulations in Japan



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### Protection of freelancers

In recent years in Japan, more people are working as freelancers in search of more flexible work styles. The increase in the number of workers who want side jobs and the number of companies that allow them after the Covid-19 pandemic has also contributed to the growth of freelancers. According to a unified survey conducted by the Cabinet Secretariat in 2020 and other surveys conducted by the Cabinet Office, the Small and Medium Enterprise Agency, and the Ministry of Health, Labour and Welfare in 2019, between 3.41 and 4.72 million workers are working as freelancers.

Since freelancers have less bargaining power than their corporate counterparts, there are many problems associated with their work, such as short deadlines, low compensation, sudden cancellations, and nonpayment of compensation etc. In addition, since freelancers are not subject to labour laws protecting employees unlike company employees, there are many problems related to their working environment, such as lack of consideration for family care, and harassment by clients.

To improve these freelancer-related problems, the Freelance Act was enacted on 28 April 2023, and is scheduled to be enforced on 1 November 2024. The Freelance Act applies to transactions between business entities (with or without employees) and freelancers with no limit on the amount of the transactions. Freelancers protected by the Freelance Act are those who perform work without employees and are not protected by labour law as employees. The key provisions of the Freelance Act are summarised as follows.

#### 1. Specification of terms and conditions (Article 3)

When outsourcing work to a freelancer, a client must clearly specify in writing or by e-mail the

important terms and conditions, such as the work scope/description, the work deadlines, the compensation amount, and the payment date etc.

#### 2. Limitations on the timing of compensation payments (Article 4)

A client must set a due date for payment of compensation within the shortest possible period of 60 days from the receipt date of goods or services. If the parties do not specify the payment date, the payment date will be deemed to be the date on which goods or services are received.

#### 3. Prohibited acts of clients in outsourcing (Article 5)

A client is prohibited from (i) forcing freelancers to provide money, services and other economic benefits other than goods or services ordered in the contract, and (ii) changing the work description/scope or having a freelancer redo the work after delivery for reasons not attributable to the freelancer.

In addition, when outsourcing work for one month or more, a client is prohibited from (i) refusing receipt of goods or services, reducing the compensation amount, or returning goods for reasons not attributable to a freelancer, (ii) setting a compensation amount that is significantly lower than the market standard, and (iii) forcing a freelancer to purchase products, materials, etc specified by the client without a valid business reason.

#### 4. Accurate information in advertisement (Article 12)

When advertising, a client must provide the accurate and latest information on the important terms and conditions regarding works.

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### 5. Support for freelancers balancing family care and work (Article 13)

When a freelancer with whom a client has a business relationship of six months or longer makes a request, the client must give consideration so that the freelancer can balance his/her work with family care. For example, a client is supposed to adjust deadlines, switch meetings from in-person to online, etc.

### 6. Prevention of harassment (Article 14)

A client must take necessary measures to ensure that a freelancer does not have a hostile work environment due to harassment. Specifically, a client is supposed to (i) inform its employees of the policy prohibiting harassment, (ii) establish a system for consultation (eg, by setting up a consultation desk), and (iii) take appropriate and prompt measures in the event of harassment.

### 7. Prevention of harassment (Article 16)

When a client intends to terminate or not renew a business relationship for a period of six months or longer, the client must give a freelancer at least 30 days' prior notice.

### Other recent developments in workers' employment

Several laws/regulations/rules have recently been amended and enacted.

#### 1. Explicit description of working conditions

As of 1 April 2024, there are additional working conditions that must be explicitly indicated by an employer when concluding an employment agreement as follows:

- an employer must explicitly indicate the scope of changes in the workplace (eg, the possibility of transfer) and work description, in addition to the workplace and work description immediately after hiring;
- with regard to fixed-term employment contracts, an employer must explicitly indicate the maximum number of renewals or total contract period at the time of contract execution and with each contract renewal, if any; and
- if a fixed-term employment contract exceeds five years in total due to renewals and can be converted to an indefinite term employment contract upon request by an employee, the employer must explicitly indicate that the employee has the right to make such request.

Information that should be included in the scope of changes in the workplace are, for example, (i) whether nationwide transfers are possible, (ii) whether transfers are limited to a specific region, or (iii) whether work from home is permitted. Information that should be included in the scope of changes in the work description are, for example, (i) whether it could be all the work specified by the employer, or (ii) whether it is limited to specific work such as sales.

#### 2. Supportive measures for employees with family care responsibility

As of 31 May 2024, a revised Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children

or Other Family Members ('Revised Act') has been enacted that obliges an employer to take further supportive measures to enable employees with family care responsibilities to balance family care and work. The Revised Act is scheduled to be enforced in phases beginning in April 2025. The following is the brief summary of the Revised Act.

- Currently, measures to balance work and childcare (exemption from overtime work, shorter working hours, permission for telework, etc) are in place for employees raising children up to the age of three, but the Revised Act will expand the scope of these measures to include employees raising children before turning elementary school age.
- Currently, employers with 1,000 or more full-time employees are required to disclose the percentage of male employees who have taken paternity leave, but the Revised Act will impose the same disclosure obligation on employers with 300 or more full-time employees.
- The Revised Act requires employers to take measures to prevent employers from leaving their jobs due to nursing care for family members, such as providing information about measures for balancing work and nursing care to employees as early as possible (eg, to employees over 40 years of age). ■