IN-DEPTH

# Employment Law

## JAPAN

LEXOLOGY

# Employment Law

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**Brian S Cousin**

Fox Rothschild LLP

*In-Depth: Employment Law* (formerly The Employment Law Review) is an insightful global survey of the employment law frameworks and related developments in key jurisdictions around the world. It analyses the most consequential current issues faced by employers, including recent case law, legislative and regulatory changes and best practices.

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# Japan

**Hironobu Tsukamoto**, **Eriko Ogata**, **Soh Inoue** and **Ryota Taguchi**
Nagashima Ohno & Tsunematsu

## Summary

## Introduction

The Labour Contract Act (the LCA) serves as the primary legislation governing labour contract relationships in Japan. It codifies established case law principles and sets out the basic rules of labour contract relationships as civil law provisions. The Labour Standards Act (the LSA) prescribes minimum standards for labour contract relationships and, to ensure compliance, provides for administrative supervision and criminal sanctions for violations. The Industrial Safety and Health Act (the ISHA) stipulates requirements for workplace health and safety. In the field of collective labour-management relations, the Labour Union Act (the LUA), as the foundational legislation, defines 'labour unions', grants normative effect to collective agreements, provides protection for legitimate union activities and prohibits unfair labour practices.

The enforcement of employment law is overseen by the Labour Standards Inspection Office. This regulatory authority is empowered to issue corrective recommendations for violations of employment laws, including the LSA and the ISHA. In cases of serious violations, the Labour Standards Inspection Office may conduct investigations and refer cases to prosecutors for potential criminal proceedings.

Labour disputes are generally adjudicated in the ordinary courts in accordance with the Code of Civil Procedure and the Rules of Civil Procedure, under a three-tiered court system comprising district courts, high courts and the Supreme Court. The Supreme Court, however, only accepts appeals raising constitutional questions or significant legal issues. For individual labour disputes, parties may also file a petition for labour tribunal proceedings, which are simplified procedures designed to conclude within a maximum of three sessions. These proceedings are heard by a panel consisting of a judge and two labour tribunal members. Parties may raise objections against the tribunal's decision, in which case the dispute is automatically transferred to the ordinary courts.

Arbitration agreements concerning future individual labour disputes are considered invalid under Japanese law; therefore, arbitration clauses in employment contracts are interpreted as invalid and unenforceable. However, parties may enter into an arbitration agreement after a dispute has arisen.

## Year in review

The Japanese government has been encouraging companies to raise wages, and in 2025, the national average minimum wage was raised to ¥1,118 per hour.

An amendment to the Comprehensive Promotion of Labour Policies Act is scheduled to take effect in 2026. This amendment will require employers to implement measures to protect employees against harassment from customers. Employers will be legally obligated to take proactive steps to prevent and address such harassment, including the implementation of clear internal policies and support systems for affected employees.

## Significant cases

### Supreme Court judgment of 26 April 2024

In Japan, employers are generally afforded broad discretion to transfer employees to different positions or locations (job transfers), provided there is a business necessity and the transfer is not motivated by unfair reasons or purposes.[1] In recent years, there has been a notable increase in disputes involving employees who refuse transfer orders.

This Supreme Court decision is significant in that it is the first to clearly address the validity of transfer orders in situations in which there is an agreement between the employer and employee restricting the employee's job type or duties. The Supreme Court held that if such an agreement exists, the employer lacks the authority to order a transfer that contradicts this agreement without obtaining the individual employee's consent.

In practice, explicit job-type limitation agreements are rare in Japan. The existence of an implied agreement is often disputed, particularly in the case of employees with high levels of expertise or specialised skills. Therefore, it is advisable for employers to clearly and expressly reserve the right to order changes to employees' job types or duties in employment contracts or work rules to avoid ambiguity and potential disputes.

### Tokyo High Court judgment of 27 April 2023

This case involved a dispute over whether removing a female employee from the position of team leader and reassigning her to a managerial role without subordinates following her return from maternity and childcare leave constituted a violation of Article 9, Paragraph 3 of the Equal Employment Opportunity Act and Article 10 of the Child Care and Family Care Leave Act, which prohibit the adverse treatment of an employee who takes maternity or childcare leave.[2]

The Tokyo High Court found that, even in the absence of a formal demotion or reduction in base salary, the lowering of the quality of work and the impairment of future career development amounted to adverse treatment.

When reassigning employees returning from childcare leave, employers should take into consideration not only economic detriment but also the impact on the employee's career development.

## Basics of entering into an employment relationship

### Employment relationship

When hiring employees, employers are required to provide written notification of the terms and conditions of employment. While an employment contract signed by both parties is not mandatory, it is recommended to ensure that an employee is fully aware of, and understands, the terms and conditions of employment and to avoid any misunderstandings. The LSA[3] requires that certain matters be specified, including contract duration, renewal criteria for fixed-term contracts, work location and duties

(including their scope and any discretion to change them), working hours, wages, grounds for termination and dismissal, retirement allowance, expenses borne by employees, safety and hygiene matters, vocational training, work-related accidents, disciplinary actions and leave of absence.

Under the LSA,[4] the maximum duration of a fixed-term employment contract is generally three years, though in practice, fixed-term employment contracts are frequently set at one year and renewed. If the total duration of consecutive fixed-term employment contracts exceeds five years, employees are legally entitled to request conversion to an indefinite-term employment contract.

Changes to terms of employment generally require the individual consent of the employee, particularly for important terms such as wages or working hours. Alternatively, changes may be made through revisions to work rules by following the legally required process, which includes soliciting employees' opinions on the proposed changes. Any disadvantageous changes must not only be reasonable but must also follow thorough consultation with an employee representative or the majority union. If substantial disadvantages could occur, compensatory or transitional measures should be implemented to mitigate them.

## Probationary periods

If an employer hires an employee, the employer may set a probationary period to observe the employee's work attitude and job performance over a certain period before making a final decision on the employee's permanent employment. Although there are no specific legal restrictions on the length of probationary periods, they are typically set at between three to six months.

If the employer decides not to confirm the employee's permanent employment during or at the end of the probationary period, it must issue a notice of dismissal. If an employee has been employed for more than 14 days, at least 30 days' notice is required for dismissal, even during the probationary period.

Even for termination during or at the end of the probationary period, the restrictions on dismissal as provided in Article 16 of the Labour Contracts Act apply. Accordingly, the employer must have justifiable grounds for dismissal, such as poor work performance, unsatisfactory work attitude, inability to perform duties, although the threshold is somewhat relaxed compared to the ordinary dismissal of employees who have completed their probationary period.

## Establishing a presence

A foreign company that continuously conducts business in Japan must officially appoint a representative and register with the commercial registry. However, if the foreign company does not conduct business in Japan (other than market research) or if the employee works remotely for the foreign company, it may hire employees in Japan without being officially registered. Such employees, however, cannot be enrolled in social insurance or labour insurance without the company having a physical presence (such as a branch or subsidiary) in Japan. Therefore, in practice, direct employment may not be a viable option, and it is common for a foreign company entering the Japanese market to engage

independent contractors. It is essential to ensure that independent contractors do not constitute an agent permanent establishment (PE). An agent PE arises when a person acts in Japan on behalf of a foreign company (the principal) and, in doing so, habitually concludes certain contracts, or habitually plays the principal role leading to the conclusion of such contracts that are routinely concluded without substantial modification by the principal. If the foreign company is deemed to have an agent PE in Japan, it would be taxed on the income attributable to the agent PE unless the activities undertaken by the agent are of a preparatory or auxiliary nature. However, there is an important exception to the agent PE. If the agent is an independent agent and acts for the principal in the ordinary course of its business, such agent would not be treated as an agent PE. The independent agents must be legally and economically independent.

A foreign company may also hire employees through a dispatch agency. However, in practice, the user company must appoint a responsible person to supervise or manage employment matters related to dispatched workers, and this person is required to be an employee or director of the company. In practical terms, it might be difficult for a foreign company to fulfil these obligations.

If a company hires employees, it must enrol them in social insurance (including health insurance and employees' pension) and labour insurance (including employment insurance and industrial accident insurance). The company is also required to withhold taxes when paying salaries. Employees' share of social and labour insurance premiums is deducted from their salary.

## Restrictive covenants

Case law permits non-compete clauses in employment contracts to the extent that they are reasonable and necessary to protect the company's legitimate business interests. While non-compete obligations during employment are generally considered valid, post-employment non-compete obligations are subject to strict judicial scrutiny to protect an employee's freedom of occupation. When determining the validity of non-compete obligations, the courts consider factors such as: (1) the existence of a legitimate business interest; (2) the employee's position and access to sensitive or confidential information; (3) whether the scope of restriction is reasonable in terms of type of the prohibited activities, geographical area and duration; and (4) the adequacy of any compensation provided.

In addition, under Japanese law, employers and employees may agree to prohibit the employee from soliciting the employer's customers or employees after termination, provided that (1) there is a legitimate business interest; (2) the restriction is reasonable in scope; and (3) it does not interfere with free competition.

## Wages

### Working time

Employers must not require employees to work more than eight hours per day or 40 hours per week, unless a written labour-management agreement (known as a '36 Agreement') has been concluded and filed with the relevant Labour Standards Inspection Office.[5-] Where such an agreement has been entered into, overtime remains subject to strict statutory limits, and penalties apply for violations. Generally, overtime is limited to 45 hours per month and 360 hours per year. In exceptional circumstances, overtime may exceed these limits but must not surpass: 720 hours per year; 100 hours (including holiday work) in any single month; an average of 80 hours per month over any period of two to six consecutive months. Overtime exceeding 45 hours per month is only permitted for up to six months per year.

Unlike overtime work, there are no legal restrictions specifically limiting late-night work (defined as work performed between 10pm and 5am). However, an additional premium must be paid for late-night work. Given that excessive late-night work can place undue burden on employees, it is advisable to implement late-night work arrangements in a limited and controlled manner.

### Overtime

Employers are required to pay enhanced rates (overtime premiums) to employees for: (1) overtime work; (2) statutory holiday work (one day per week or four days over a four-week period); and (3) late-night work.[6] The applicable statutory rates are as follows:

1. Overtime work: 25 per cent of the regular wage rate, with a higher rate (50 per cent) for hours exceeding 60 per month;
2. Statutory holiday work: 35 per cent of the regular wage rate; and
3. Late-night work: at least 25 per cent of the regular wage rate.

As mentioned in the previous subsection, there are strict legal limits on overtime hours, and exceeding these limits is prohibited even if an employer pays the premium for overtime work.

For 'persons in positions of supervision or management', the regulations under the LSA concerning working hours, breaks and holidays do not apply.[7] Consequently, there is no obligation to pay enhanced rates for overtime work or statutory holiday work in relation to employees in such positions, provided, however, that enhanced rates must still be paid for late-night work.

In practice, employers sometimes pay overtime premiums by including compensation for a certain amount of overtime work within the base salary (commonly referred to as a 'fixed overtime allowance'). For this method to be recognised as a valid payment of overtime premium, the wages for standard working hours and the overtime premium must be clearly distinguished in the employment contract or work rules, specifying the number of overtime hours or the amount paid as overtime premium. If actual overtime work exceeds the hours covered by the fixed overtime allowance, the employer must pay the additional amount due.

## Foreign workers

Foreign workers are required to have a status of residence and a visa; however, provided that they engage in work permitted under their status of residence, there are no restrictions on the number of foreign workers that may be employed, and they may work throughout the validity period of their status of residence. Employers are required to verify the status of residence and its expiry date when employing foreign workers to prevent unlawful employment. All employers are required to submit a notification to the Employment Security Office when hiring or terminating the employment of foreign workers.

Taxes and social insurance for foreign workers are, in general, equivalent to those for Japanese workers. Where a bilateral social security agreement has been concluded with the foreign worker's home country, exemption from enrolment in the Japanese social security system may be granted.

Foreign workers working in Japan are protected under Japanese labour law. The mandatory provisions of Japanese labour law apply equally to Japanese and foreign workers working in Japan. The validity of a dismissal of a foreign worker is also assessed in accordance with Japanese labour law standards.

## Global policies

Internal disciplinary rules are not required by law; however, if an employer wishes to introduce them, they must be incorporated in the work rules. Work rules must be filed with the relevant Labour Standards Inspection Office where there are 10 or more employees.[8] Work rules can be in English but the Japanese translation is necessary for filing. Prior to filing, the employer is required to obtain a written opinion from an employee representative or the majority labour union. Individual employee signatures are not required. However, the work rules must be communicated to employees through posting on the company intranet, storing on company servers, email distribution or through other appropriate means.

The work rules must set forth working hours, wages and termination of employment. In addition, the following matters must be addressed in the work rules, where the relevant systems exist:

1. retirement allowance;
2. bonus;
3. leave of absence;
4. work-related sickness or injury;
5. disciplinary actions; and
6. other working conditions applicable to all employees.

Employers are required to establish rules on the handling of employees' personal information and data security, as well as implement policies aimed at preventing harassment.

Provided that the work rules, including disciplinary provisions, are properly implemented and communicated in the company, they, including the disciplinary provisions, apply to employees. However, in practice, they are incorporated into an employment contract by reference to the relevant rules.

## Parental leave

Employees are entitled to maternity, paternity and child-nursing care leave.

Female employees are entitled to take maternity leave for six weeks (14 weeks for multiple pregnancies) prior to childbirth and eight weeks following childbirth.[9] Male employees are also entitled to paternity leave of up to four weeks within eight weeks following childbirth.-[10] Employees are generally entitled to childcare leave until their child reaches one year of age.[11] Childcare leave may be extended where special circumstances exist (such as inability to secure daycare for their child).

Employees may also be entitled to take leave for childcare purposes, such as nursing sick children, accompanying them for vaccination or attending school entrance ceremonies.

Generally, these forms of leave are unpaid, as employees may receive benefits under health insurance and employment insurance. Some employers may grant paid leave as part of company benefits. Employers are prohibited from subjecting employees who utilise parental leave unfavourably (including through dismissal, demotion or salary reduction).

## Translation

Employers are required to notify employees of the key terms and conditions of employment in writing. There is no statutory requirement for the language or translation into Japanese, but the language of the offer letter, employment contract, work rules or any other documents related to terms and conditions of employments is required to be such that the employee can readily understand it. Work rules are required to be established and filed with the Labour Standards Inspection Office if the employer regularly engages 10 or more employees, and the filed version must be in Japanese or accompanied by a Japanese translation if it is prepared in a different language.

## Employee representation

In Japan, employee representation in the workplace is ensured through either a majority labour union (which is a labour union comprising the majority of employees at the workplace) or through an employee representative selected from among all employees at the workplace.

This representative participates in key labour matters, including concluding labour-management agreements (for example, labour-management agreements on

overtime) and providing written opinions regarding the creation or amendment of work rules.

A majority labour union must comprise the majority of all employees at the workplace, including non-regular employees, such as part-time workers. Labour unions are protected under the Labour Union Act, and when a majority union requests collective bargaining with the employer regarding the conclusion of labour-management agreements or the creation and amendment of work rules, the employer is under a duty to negotiate in good faith. Unjustified refusal by the employer to do so constitutes unfair labour practice. In such cases, the majority labour union may apply to the Labour Relations Commission for a remedy order.

With regard to the employee representative, one or more must be elected from among the employees at the workplace through a democratic process (such as voting or a show of hands) that clearly reflects the support of the majority of employees. 'Persons in positions of supervision or management' are not eligible for selection as employee representatives. The election of the majority representative must be conducted with a clear explanation of its purposes, such as the conclusion of a 36 Agreement or to provide an opinion on proposed work rules. While there are no specific statutory regulations regarding the term of office, employers are required to confirm that the majority representative has the support of the majority of employees at each juncture when acting as the majority representative, such as when concluding labour-management agreements. The frequency of meetings between employers and majority representatives is not statutorily regulated but meetings must be held in accordance with any applicable collective agreements.

It is prohibited to treat an employee representative or members of a labour union unfavourably by reason of their role as a representative or as a member of a labour union.

## Data protection

### Requirements for registration

In Japan, the Act on the Protection of Personal Information (the APPI) regulates the processing of personal information. The APPI is enforced by the Personal Information Protection Commission (the Commission), the data protection authority. Companies are not required to register with the Commission. While Companies are not required to specify the types of information they collect or process, they are required to (1) specify the purposes for which they intend to process personal information and (2) process personal information only to the extent necessary to achieve the specified purpose. Regarding notification requirements, if companies directly collect personal information in writing, they must clearly specify the purpose of use at the time of collection. In other cases, companies must either notify the data subjects of the purpose of use or make it publicly available.

As explained in the 'Sensitive data' section, companies must obtain employees' consent before collecting sensitive personal information relating to them. Except in the case of sensitive personal information, companies are not required to obtain employees' consent for the collection of their personal information.

The APPI requires companies to take necessary and appropriate measures to ensure the security of personal data including preventing leakage, loss or damage, and to exercise necessary and appropriate supervision over employees processing personal data. In addition, the Guidelines on the Act on the Protection of Personal Information (General Edition) require companies to limit the employees who can access personal data and adopt technical safety measures.

## Cross-border data transfers

While companies are not required to register cross-border data transfers with the Commission, they may transfer personal data outside Japan only if (1) employees' prior consent is obtained, (2) the third-party recipient is located in a country recognised by the Commission as providing the same level of protection for personal information as Japan (currently, the European Economic Area and the UK) or (3) the third-party recipient has implemented measures to continuously ensure a level of protection equivalent to that required under the APPI (for example, by entering into an appropriate data transfer agreement with the third-party recipient). In the case of (1), the APPI also requires that, prior to obtaining consent for cross-border personal data transfers, companies are required to provide employees with (1) the name of the foreign country; (2) information on the protection of the personal information in the foreign country, obtained in an appropriate and reasonable manner; and (3) information in relation to the measures taken by the third-party recipient for the protection of personal information.

## Sensitive data

Under the APPI, information relating to race, creed (religion), social status, medical records (health), criminal record and records of having been a victim of a crime are classified as sensitive personal information. Subject to certain exceptions, companies must obtain consent from employees prior to collecting sensitive personal information relating to them. Sensitive personal information may not be disclosed to third parties without the individual's consent, except in cases where statutory exceptions apply.

## Background checks

There are no statutory limitations directly preventing companies from conducting background checks. However, official databases for such checks are extremely limited in Japan, and there is no official method for conducting credit or criminal record checks. In practice, background checks are typically conducted with the applicant's consent in accordance with applicable regulations. In particular, as mentioned in the 'Sensitive data' section, employers must not collect sensitive personal information, including criminal records, unless the applicant's consent is obtained in accordance with the APPI. Furthermore, the Guideline on the Employment Security Act (the Guideline) generally prohibits companies from collecting information relating to (1) race, ethnicity, social status, family background, registered domicile, place of birth, and other factors that may cause social discrimination; (2) personal briefs; and (3) history of labour union membership. The Guideline also regulates the method of collection of applicants' information; namely, the applicant's information must be collected by lawful and fair

means, such as collecting such information (1) directly from the applicant; (2) from a third party based on the applicant's consent; or (3)through sources made public by the applicant.

### Electronic signatures

Electronical signatures are permissible in Japan, and their evidential value in court is provided for under the Act on Electronic Signatures and Certification Business. Further, electronic signatures are valid and enforceable for offer letters and employment contracts. However, while companies are required to specify certain working condition in writing, these conditions can be provided electronically only if requested by the employee.

## Discontinuing employment

### Dismissal

Companies are not permitted to dismiss employees without cause. More specifically, the LCA provides that a dismissal lacking objectively reasonable grounds, and not considered appropriate under generally accepted social norms, constitutes an abuse of the right of dismissal and is invalid. Examples of grounds for dismissal typically set out in work rules and employment contracts include: inability to perform duties because of health or physical issues; lack or loss of the skills, capacity and qualifications necessary to carry out duties; or any employee misconduct (including violations of law or company rules or policies, or criminal conduct). While employers are generally not required to notify a government authority or labour union of a dismissal, they are required to (1) give employees at least 30 days' advance notice of dismissal or (2) pay employees their average wages for a 30-day period or more.[12] This 30-day period may be shortened if the employer compensates the employees for their average wages for each day by which the notice period is shortened. Employees do not have rehire rights and employers are not required to offer suitable alternative employment. There is no statutory requirement to offer severance or other dismissal indemnities, provided that the dismissal is considered valid. If the dismissal is found to be invalid, the employer is required to reinstate the employee and pay back-pay. Nevertheless, as a result of the difficulties in dismissing employees, employers will often encourage employees to voluntarily resign by executing mutual separation agreements with severance payments. Companies are prohibited from dismissing (1) pregnant employees or those on maternity leave, or within 30 days following the end of such leave, and (2) employees during leave of absence because of work-related injury or illness related, or within 30 days thereafter.[13] Dismissal on the grounds of nationality, creed (religion), social status, labour union membership, gender, or taking childcare leave or family care leave is also prohibited.

### Redundancies

With respect to dismissal for purposes of downsizing a company's workforce, case law has imposed stricter restrictions. Generally, courts require that the following conditions and factors be met for such dismissal to be valid: (1) the dismissal must have been unavoidable considering the company's financial or operational circumstances; (2) the employer must

have made reasonable efforts to avoid an minimise the dismissals prior to implementing them; (3) the selection of employees for dismissal must have been made on objective and reasonable criteria; and (4) the employer must have observed due process prior to the dismissal, including prior consultations in good faith with the labour union (if any) or with the affected employees. If 30 or more employees are made redundant or otherwise leave a company for reasons not attributable to such employees, the employer is obliged to submit a notification of large-scale employment change to the Employment Security Office. Employees do not have rehire rights. In practice, during consultations with the labour union or the employees, the company will offer to execute mutual separation agreements with severance payments, as part of efforts to avoid dismissal. The notice periods and certain prohibition against dismissals stated in the previous subsection also apply to dismissals in the case of redundancy.

## Transfer of business

In the case of a merger, employment agreements are automatically transferred to the surviving entity and their terms and conditions are maintained. There are no statutory requirements for consultation with, or notification to, employees. Having said that, typically, employees are informed when the transaction is publicly disclosed.

In the case of a company split (demerger), the employment-related aspects of a company split are governed by the Act on the Succession to Labour Contracts upon Company Split (the Labour Contract Succession Act). Under the Labour Contract Succession Act, companies intending to implement a company split are required to notify their employees and the labour union (if any) of matters relating to the company split. Companies are required to discuss the details of the transfer with employees and make efforts to obtain their understanding and cooperation. If a company (1) retains the employees primarily engaged in a business subject to succession in the split company, or (2) transfers employees not primarily engaged in a business subject to succession to the successor company, those employees may file an objection.

In the case of a business transfer, the individual consent of each affected employee is required prior to closing to transfer the seller's employees to the buyer as part of the transaction.

In all types of business transfers mentioned above, if a collective agreement requires a consultation process with a labour union, the employer must conduct prior consultation in accordance with such agreement.

## Outlook and conclusions

As discussed in the 'Year in review' section, employers will be required to address customer harassment in anticipation of the upcoming legislative amendment in 2026. Further, in light of the recent increase in disputes involving transfer orders, it is advisable to review employment contracts and work rules.

## Endnotes

1 Saibanshu Minji 271,109. Back to section

2 Hanrei Taimuzu 1523, 129. Back to section

3 Article 15 of the LSA. Back to section

4 Article 14 of the LSA. Back to section

5 Articles 32 and 36 of the LSA. Back to section

6 Article 37 of the LSA. Back to section

7 Article 41, Item 2 of the LSA. Back to section

8 Article 89 of the LSA. Back to section

9 Article 65 of the LSA. Back to section

10 Article 9-2 of the Act on Childcare and Caregiver Leave. Back to section

11 Article 5, Paragraph 1 of the said Act. Back to section

12 Article 20 of the LSA. Back to section

13 Article 19 of the LSA. Back to section

NAGASHIMA OHNO & TSUNEMATSU

**Hironobu Tsukamoto** hironobu_tsukamoto@noandt.com
**Eriko Ogata** eriko_ogata@noandt.com
**Soh Inoue** soh_inoue@noandt.com
**Ryota Taguchi** ryota_taguchi@noandt.com

Nagashima Ohno & Tsunematsu