

Employment Guidelines

Purpose

- The purpose of the “Employment Guidelines” is to help newly created enterprises, global companies and others to accurately understand employment rules in Japan, to improve foreseeability and to make it easier to expand business without giving rise to labor-related disputes. The Guidelines are based on analyses and categorization of judicial precedents concerning labor relations, in line with Article 37 Paragraph 2 of The National Strategic Special Zones Act (Act No 107, December 13, 2013).
- The Employment Guidelines should take account of opinions from both sides (i.e. employers and employees), and should be based on consultation with the National Strategic Special Zones Advisory Council.
- The Guidelines will be used by “Employment and Labor Advisory Centers” set up in National Strategic Special Zones, to assist in providing advice on employment management and labor contract issues in response to inquiries from global companies and other entities and persons, including employees.

Employment Guidelines

Basic Policy

- So that global companies and other entities can accurately understand employment rules in Japan and to improve foreseeability, the Employment Guidelines will be drafted according to the following policies.
- 1. As a “Introduction” of “case law analysis”, even for rules that are applied similarly from case to case, the Employment Guidelines will point out (*3) that in individual judgments the courts sometimes take account of 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-capital companies and newly created companies not premised on a system of long-term employment. Moreover, the situation of dispute resolution for cases of employment dismissal in Japan will also be introduced.
 - *1 (i) new school graduates are recruited and hired periodically; no limit on job duties and working location; long-term employment; promotions and pay raises under personnel and wage systems that take account of the progress of skill levels and accumulation of experience, (ii) wide-ranging transfers and secondment, (iii) establishment of working conditions in detail through rules of employment, (iv) in times of recession, employment adjustments made by reducing overtime work, reducing new recruitment, temporary shutdowns and secondment, etc. In cases of employment termination, voluntary early retirement to be offered before carrying out adjustment dismissal.
 - *2 (i) When a post becomes vacant, it is filled through open recruitment within the company and mid-career hiring from outside; long-term continuous employment is not a prerequisite; wages based on job, (ii) clear job duties; narrow scope of personal relocation, (iii) working conditions are set in detail for each worker individually in labor contracts, (iv) when a worker is employed for a specific post, the worker is dismissed when the post becomes redundant, after receiving monetary compensation combined with job-search support.
 - *3 The respective characteristics of “internal labor market type” and “external labor market type” companies mentioned above are at most a generalization; the combination of characteristics may differ according to the actual situation of individual companies. For example, an “internal labor market type” company may practice personnel management resembling that of an “external labor market type” company, depending on the department or post. It is not necessarily that the general rule is to pick one or the other.
- 2. In “Detailed Analysis”, case law will be categorized, mainly around topics that are of keen interest for global companies and other entities, and topics prone to disputes. Related legal systems and judicial precedents will be introduced.
- 3. On the subject of “Dismissal”, the most disputed area in labor relations, the Employment Guidelines will advise that in order to prevent disputes from occurring, an “external labor market type” company should include the grounds for dismissal, dismissal procedures, appropriate payment, job-search support, etc. in their labor contracts or rules of employment, and carry out such measures in accordance with these when dismissing appropriately paid employees in managerial or highly specialized positions.

Content of Employment Guidelines

I. Introduction

- In some court cases, judgments take account of differences in personnel management between the “internal labor market type” often seen in typical Japanese companies and the “external labor market type” often seen in foreign-capital companies and other entities.
- 1. In “internal labor market type” companies, transfer or secondment undertaken by the employer does not usually constitute abuse of personnel rights, while on the other hand, efforts to avoid dismissal (such as the broad use of transfers) tend to be expected of employers..
- 2. In “external labor market type” companies, if monetary compensation and job-search support (retirement packages) are provided upon dismissal, the expectation that employers will endeavor to avoid dismissal (such as the broad use of positional transfers) tends to be smaller than in “internal labor market type” companies.

II. Detailed Analysis

1. Establishment of Labor Contracts

1. Freedom of hiring
2. Withdrawal of a tentative job offer
3. Probationary Period

2. Development of Labor Contracts

1. Setting and changing working conditions
 1. By individual agreement
 2. By rules of employment
2. Transfer(redeployment)
3. Secondment (transfer to related firms)
4. Discipline (disciplinary action)
5. Disciplinary dismissal

3. Termination of Labor Contracts

1. Dismissal
2. Ordinary dismissal
 1. Dismissal due to inability to provide labor
 2. Dismissal due to lack of skills, insufficient performance, inappropriate attitude or lack of aptitude attitude
 3. Dismissal due to violation of workplace discipline or neglecting duties
3. Adjustment dismissal
 1. Necessity to reduce the number of employees
 2. Duty to endeavor to avoid dismissal
 3. Validity of selection of employees to be dismissed
 4. Validity of procedures
4. Restrictions on dismissal when for special reasons
5. Encouragement of voluntary retirement
6. Termination of employment by non-renewal of fixed-term contracts
7. Withdrawal of voluntary retirement
8. Duty of non-competition after retirement