

Ensuring Fair Treatment of Workers Irrespective of their Employment Types (Revision of the Part-time Employment Act, Labor Contract Act and the Worker Dispatching Act)

Effectively reduce irrational gaps in the treatment between regular employees and non-regular workers in the same company through making following legislative revisions based on “the Action Plan for the Realization of Work Style Reform”.

1. Establish rules and regulations to facilitate eradication of irrational gaps

- Regarding prohibiting irrational gaps in the treatment between regular workers and fixed-term/part-time workers, it should be clearly prescribed that appropriateness of each working condition shall be determined in accordance with the nature and purpose of the treatment in question. (note: the “Act on Improvement, etc. of Employment Management for Part-Time Workers” will be renamed “Act on Improvement, etc. of Employment Management for Part-Time Workers and Fixed-Term Workers”, following expanding the scope of workers covered by this act.)
- Regarding fixed-term workers, obligate employers to provide fixed-term workers equal treatment with regular employees if i) their duty and ii) the scope of shift in duties and personnel positioning is equal to that of regular employees.
- Regarding dispatched workers, obligate dispatching business operators to provide workers with either i) equal and/or balanced treatment with employees in dispatch destinations or ii) treatment based on a labor-management agreement that fulfills certain requirements such as ensuring a wage equal to or greater than the average pay for comparable jobs.
- The legal basis for guidelines on these matters shall be put in place.

2. Oblige employers to fulfill accountability about working conditions

- Regarding part-time/ fixed term/ dispatched workers, oblige employers to explain, if there are gaps in the treatment, how and on what grounds working conditions are different from those for regular workers.

3. Introduce administrative measures to ensure enforcement and Alternative Dispute Resolution (ADR) by the government

- In order to ensure enforcement of obligations stated above, the government will put in place administrative measures and ADR.

Establish rules and regulations to facilitate eradication of irrational gaps (1) (for part-time/ fixed-term workers)

【Current rules】

- **Equal treatment rule:** discriminatory treatments are prohibited when there is no difference in i) the duties and ii) the scope of shift in duties and personnel positioning. (Article 9 of the Part-time Employment Act)
 - ⇒ Currently, this applies only to part-time workers, not fixed-term workers.
- **Balanced treatment rule:** irrational gaps in the treatment are prohibited, taking account of differences in i) the duties, ii) scope of the shift in the duties and personnel positioning, and iii) other circumstances. (Article 8 of the Part-time Employment Act and Article 20 of the Labor Contract Act)
 - ⇒ Currently, the definition of “irrational gaps” is not clear enough.



【After revision】

- **Equal treatment rule** will be applied to fixed-term workers, as well as part-time workers.
- **Balanced treatment rule** will become unequivocal.
 - It will be clearly prescribed that circumstances that are deemed appropriate in accordance with the nature and purpose of each working condition should be taken into account when deciding the content of the working condition in question, such as base pay, bonus, position allowance, meal allowance, benefit and educational opportunities.
- **Provide design basis for the guidelines, to make equal treatment rule and balanced treatment rule unequivocal.**

	Part-time workers	Fixed-term workers
Equal treatment	○ → ○	× → ○
Balanced treatment	○ → ◎	○ → ◎
Guidelines	× → ○	× → ○

× : no rule ○ : rule exist ◎ : more precise rules

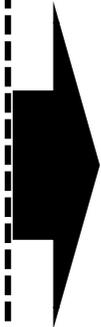
Establish rules and regulations to facilitate eradication of irrational gaps (2) (for dispatched workers)

【Currently】

- Concerning gaps in treatment between dispatched workers and employees in dispatch destinations

⇒ **Neither equal treatment rule nor balanced treatment rule is provided.**

（“**duty of consideration**”（配慮義務） is the only rule.）



Policy considerations suggested by the Labor Policy Council

- Equal or balanced treatment with the workers in dispatch destinations is an important viewpoint, considering that main work place for dispatched workers is the destination companies.
- The wage levels, however, are generally higher in larger companies, while duty levels does not always correspond to the size of companies. As a result, there might be situations where equal treatment with the workers in dispatch destinations is not consistent with systematic career development of the workers.
- Given these circumstances, it would be appropriate to provide options, (i) and (ii), for the fair treatment of dispatched workers.

【After revision】

- Regarding dispatched workers, dispatch business operators are obliged to ensure either i) equal or balanced treatment with that of workers in dispatch destinations or ii) treatment in accordance with a labor-management agreement that fulfills certain requirements.

i) Equal or balanced treatment with that of workers in dispatch destinations

- Provide equal/ balanced treatment rules that regulate gaps between dispatched workers and workers in dispatch destinations.
- Obligate dispatch destinations to provide information about working condition of employees
- Enhance rules that regulate efforts made by dispatch destinations, such as provision of educational opportunities,

ii) Treatment in accordance with a labor-management agreement that fulfills certain requirements

Working conditions for dispatched workers are decided according to a labor-management agreement between a dispatch business operator and labor representatives that represent majority of workers, which fulfills following requirements.

The wage for a dispatched worker should be either

- (a) a wage equal to or greater than the average pay for comparable jobs
- (b) a wage with pay rise corresponding to improvement in duties, performance, capability or experience of the dispatched worker.
- the wage should be decided based on fair assessment of the duty, performance, capability or experience of dispatched workers.
- There should be no unreasonable gap in other working conditions than the wage between dispatched workers and regular workers in the dispatch business operator.
- the operator should provide systematic and step by step vocational education and training opportunities to dispatched workers.

- “**Duty of consideration**” is introduced in order to facilitate compliance by the dispatch business operators with the above stated i) or ii), in terms of the fee for worker dispatching, which has to be negotiated with dispatch destinations.
- Provide design basis for the **guidelines**, to make equal treatment rule and balanced treatment rule unequivocal.

Oblige Employers to Fulfill Accountability about Working Conditions

【Currently】

- **Obligation to explain working conditions and matters taken into consideration when they are decided**

Employers owe this obligation **only to part-time and dispatched workers, not to fixed-term workers.**

- Employers are only obliged to explain working conditions that concern the worker themselves. They do not have to explain how and on what grounds the treatment is different from that of regular workers.



【After revision】

- **Employers owe the obligation to explain working conditions and matters taken into account when they are decided to fixed-term workers,** as well as part-time and dispatched workers.
- Oblige employers to explain how and on what grounds the treatment is different from that of regular workers.
- Prohibit disadvantageous treatment of the worker after requesting explanation.

	Part-time	Fixed-term	dispatched
Working conditions	○ → ○	× → ○	○ → ○
Matters taken into account	○ → ○	× → ○	○ → ○
How and on what grounds the treatment is different	× → ○	× → ○	× → ○

× : no rule ○ : rule exist

Introduce Administrative Measures to Ensure Enforcement and Alternative Dispute Resolution (ADR) by the Government

【Currently】

- **Obligation to report to the government, advice and guidance by the government**
 - ⇒ For part-time and dispatched workers, there are rules, but for fixed-term workers, there is no rule.
- ADR mechanisms by the government (arbitration and others)
 - ⇒ Available only to part-time workers, not to fixed-term or dispatched workers
 - ⇒ Conflict over balanced treatment is not covered, even for part-time workers



【After revision】

- Provide rules to regulate report to the government, advice and guidance by the government about fixed-term workers, as well as part-time and dispatched workers.
- Establish rules to regulate ADR mechanisms by the government that is available to fixed-term and dispatched workers, as well as part-time workers
- ADR by the government will address conflicts over balanced treatment and accountability about how and on what grounds the treatment is different, in addition to previously covered field.

	Part-time	Fixed-term	dispatched
Enforcement measures	○ → ○	× → ○	○ → ○
ADR by the government	△(※) → ○	× → ○	× → ○

× : no rule △ : partially covered ○ : rule exist
 ※ balanced treatment is not covered