

To employers and workers:

## Procedures for the Protection of Workers in Company Splits Have Changed!

### – Main Points of the Amendment to the Ordinance for Enforcement of the Labor Contract Succession Act and to the Guidelines thereof – (Enforcement/Application Date: **September 1, 2016**)

For the protection of workers in company splits, the Act on the Succession to Labor Contracts upon Company Split (hereinafter referred to as, the "Act") as well as the Ordinance for Enforcement thereof and the Guidelines thereof were established. On the basis of developments in the Companies Act, etc. and accumulated court precedents in recent years, the Ordinance for Enforcement for the Act and the Guidelines concerning the Act were amended, and put into force and applied from September 1, 2016. We ask all relevant parties to understand the main points (overview) of the amendment stated in this leaflet, and to take appropriate action to ensure smooth worker protection and organization restructuring.



New category of workers covered by individual consultations added!



In individual consultations, it is necessary to explain about "matters concerning the prospect of the split company and the successor company, etc. performance of obligations!"



Regarding so-called "employment transfer agreement"

- (i) Even where a worker is to be transferred to the successor company, etc. on the basis of his/her employment transfer agreement, applicable legal procedures cannot be omitted!
- (ii) New subject matter of written notice to workers have been added!

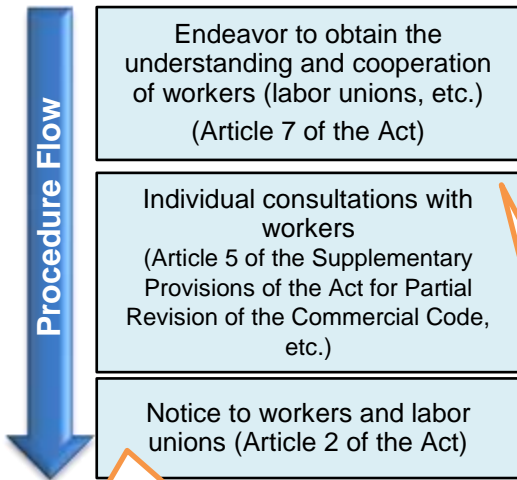
Aside from these, the following details have been newly stipulated.

- (i) Fundamental principle concerning workers primarily engaged in business subject to succession
- (ii) Action to take when the company system is abused, etc. for the purpose of dismissing specific workers
- (iii) Legal significance of individual consultations with workers (Article 5 consultation)
- (iv) Right to collective bargaining and the viewpoint of court precedents concerning which party is the employer that should deal with collective bargaining
- (v) Points to consider concerning the succession to liability for unfair labor practice and the status of employer in company splits

- For details on the overall procedures based on the Act, Ordinance for Enforcement, and Guidelines, please visit the Ministry of Health, Labour and Welfare website (<http://www.mhlw.go.jp/>), or read the pamphlet, "Overview of the Act on the Succession to Labor Contracts upon Company Split (Labour Contract Succession Act)" (hereinafter referred to as, the "Pamphlet").
- If you have any questions, please contact the Employment and Environment Equality Division (Office) of the nearest Prefectural Labour Office.  
For the locations of the Prefectural Labour Bureau, please check the following Ministry of Health, Labour and Welfare website. (<http://www.mhlw.go.jp/kouseiroudoushou/shozaiannai/roudoukyoku/>)



# Subject Matter of this Amendment



▶ **Regarding so-called "employment transfer agreement"**

Even where a worker is transferred to the successor company, etc. by means of an employment transfer agreement (meaning that a primarily engaged worker is not subject to the company split concerned but transferred to the successor company/incorporated company by individually obtaining his/her agreement), applicable procedures such as notification and individual consultations with the worker cannot be omitted.

▶ **Individual consultations with workers**

• **Addition of subject workers**

Previously, "workers engaged in business subject to succession" were the participants in individual consultations. However, "workers who are not engaged in business subject to succession but regarding whom the split contract, etc. provides that their labor contracts executed with the split company are to be succeeded to by the successor company, etc." have been newly added as participants in such consultations.

• **Addition of matters of explanation**

As matters to be explained in individual consultations, "matters concerning the prospect of the split company's and the successor company, etc. performance of obligations" have newly been added.

– **Matters concerning the prospect of performance of obligations –**

With the enactment of the Companies Act, the subject matter of prior disclosure has been changed to "matters concerning the prospect of performing obligations." This change is considered to make the so-called "insolvency split" possible.

Matters concerning the prospect of performance of obligations are those regarding which is necessary to endeavor to obtain the understanding and cooperation of workers (labor unions, etc.). Since such matters are important subject matter of consultations relating to the handover of workers, they have been added to the matters on which explanations are required in individual consultations.

▶ **Addition of new subject matters of written notice to workers**

In the case where a worker is handed over to the successor company, etc., it is necessary to notify the worker of the fact that his/her working conditions will be maintained as are.

\* Aside from these, other subject matter include the filing of objections to overturn the succession or non-succession to labor contracts (Articles 4 and 5 of the Act) and the entry into force of labor contract succession or non-succession (Articles 3 to 5 of the Act).

▶ **Other Subject Matter of the Amendment**

(i) **The fundamental principle concerning workers primarily engaged in a business subject to succession (Primarily Engaged Workers)**

With regard to the criteria for judging whether workers are Primarily Engaged Workers, workers continue to be judged in units of "business" in light of the Act, rather than "rights and obligations" in light of the Companies Act, for the sake of protecting workers.

Further, the interpretation of a "business" unit is based on "assets that are organized for certain business purposes and that organically function as a unit" in light of the Act's objective of protecting workers by securing the employment and duties of workers."

(ii) **Action to take where the company system is abused, etc. for the purpose of dismissing specific workers**

It is important to note that cases of abusing, etc. the company system for the purpose of dismissing specific workers may be subject to the application of the so-called "doctrine of piercing the corporate veil" and/or the so-called "doctrine of so-called contravention of public policy and morality," and relief treating such dismissal as unfair labor practice,

(iii) **Legal significance of individual consultations with workers (the Article 5 consultation)**

In accordance with a precedent of the Supreme Court, in cases where it is clearly contrary to the objective of the Act requiring Article 5 consultations, since such consultations are not held at all or held remarkably insufficiently, the relevant Primarily Engaged Workers may individually dispute whether the succession to his/her labor contract is effective.

(iv) **Right to collective bargaining and the viewpoint of court precedents concerning which party is the employer that should deal with collective bargaining**

It is important to note that there are accumulated precedents holding, for example, that a business operator other than the person employing the worker concerned potentially falls within the category of employer if, and to the extent that, the business operator is in a position where it is able to realistically and specifically control and decide basic working conditions, etc. of the worker concerned to an extent equivalent, albeit partially, to the person employing the worker concerned.

(v) **Points to consider concerning the succession to liability for unfair labor practice and the status of employer in company splits**

It is important to note that there are court precedents and orders of the Central Labour Relations Commission, holding that the successor company, etc. may succeed to "liability for unfair labor practices" or to "the status of employer," where such unfair labor practices or status are associated with the relevant company split. For these court precedents, etc., please refer to the Ministry of Health, Labour and Welfare website, or Pamphlet.

**[Transitional Measure]**

This subject matter of the amendment applies to absorption-type company splits for which an absorption-type company split agreement is executed on or after September 1, 2016, and to incorporation-type company splits for which an incorporation-type company split plan is formulated on or after the same date.

Other required amendments have also been made. For detail, please refer to the Pamphlet.