

## Q & A on Procedures for Worker Protection in Company Splits, Assignment of Business and Mergers

This is a summary in Q & A form about how labor contracts are handled on the occasion of company splits, assignment of business and mergers, based on the Act on the Succession to Labor Contracts upon Company Split (Act No. 103 of 2000), the Ordinance for Enforcement of the Act on Company Split (Ordinance of the Ministry of Labor No. 48 of 2000), the Guidelines on the Promotion of Appropriate Implementation of Measures that the Split company, the Successor Company, etc. Should Take Concerning the Succession to Labor Contracts and Collective Agreements Executed by the Split Company (Public Notice of the Ministry of Labor No. 127 of 2000) and the Guidelines Concerning Matters to Be Taken into Account by Companies, etc. in Assignment of Business and Mergers (Public Notice of the Ministry of Health, Labor and Welfare No. 318 of 2016)

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## Part 1 Introduction

### Organizing Terms

- Labor Contract Succession Act—The Act on the Succession to Labor Contracts upon Company Split (Act No. 103 of 2000)
- Ordinance for Enforcement of Labor Contract Succession Act—The Ordinance for Enforcement of the Act on the Succession to Labor Contracts upon Company Split (Ordinance of the Ministry of Labor No. 48 of 2000)
- Guidelines for Labor Contract Succession Act—The Guidelines on the Promotion of Appropriate Implementation of Measures that the Split company, Relating to the

Successor Company, etc. Should to Be Taken Concerning the Succession to Labor Contracts and Collective Agreements Executed by the Split Company (Public Notice of the Ministry of Health, Labor and Welfare No. 127 of 2000)

- Guidelines for Assignment of Business, etc.—The Guidelines Concerning Matters to Be Taken into Account by Companies, etc. in Assignment of Business and Mergers (Public Notice of the Ministry of Health, Labor and Welfare No. 318 of 1990)
- Primarily Engaged Workers—Workers primarily engaged in a business subject to succession (Labor Contract Succession Act Article 2 Paragraph 1 Item 1)
- Not Engaged Workers—Workers not engaged in a business subject to succession
- Article 2 Notice—Notice relating to the company split by the split company to workers and labor union(s) based on Labor Contract Succession Act Article 2
- Article 5 Consultation—Consultation relating to the succession of labor contracts between the split company and ①workers engaged in business subject to succession and ②workers who are not engaged in business subject to succession but regarding whom the split contract, etc. states that their labor contracts are to be succeeded to by the successor company, etc. based on Article 5 of the Supplementary Provision of the Act for Partial Revision of the Commercial Code, etc. in 2000 and Guidelines for Labor Contract Succession Act
- Article 7 Measure—Consultation, etc. at all business sites to obtain the understanding and cooperation of its workers by the split company based on Labor Contract Succession Act Article 7
- Workers subject to succession—Workers whose labor contracts are scheduled to be succeeded from the assignor company, etc. to assignee company, etc.

## Part 2 Company Split (Labor Contract Succession Act)

### Chapter 1 Subject of procedures prescribed in Labor Contract Succession Act

Q 1 What is the purpose of the Labor Contract Succession Act ?

A 1 In accordance with the introduction of the Company Split System in the Commercial Code, etc. the rights and obligation relationship of the split company are comprehensively handed over to a company succeeded by split or when a company newly established, from the viewpoint of protection of

workers, the Labor Contract Succession Act was enacted to establish special cases concerning succession etc. of labor contracts.

The Labor Contract Succession Act establishes Article 2 Notice, Article 5 Consultation, Article 7 Measure, procedures of filing objection and effectiveness, etc. as a special case of the Companies Act concerning the succession of labor contracts accompanying a company split.

In case of a company split, it must comply with the provisions of the Labor Contract Succession Act.

Q 2 In what cases does the Labor Contract Succession Act apply ?

A 2 The Labor Contract Succession Act is applied when the company conducts a company split based on the Companies Act (Act No. 86 of 2005).

Q 3 Does the Labor Contract Succession Act apply in the case of assignment of business or mergers ?

A 3 The Labor Contract Succession Act is applied only when the company is subject to a company split under the Companies Act and is not applicable when conducting assignment of business and mergers.

In the cases where assignment of business and mergers are carried out, although special legislative measures concerning worker protection have not been taken for the reasons described below, such organizational changes will have a major impact on employment and working conditions. Since there are cases that develop into conflicts in some cases, Guidelines for Assignment of Business, etc. was decided in August 2016 and applied from September 2016.

<In the case of assignment of business>

In the case of trying to succeed workers at the time of assignment of business, not only agreement between the assignor company and the assignee company is necessary but also consent of the workers themselves is required according to Article 625 of the Civil Code (Act No. 89 of 1898). And it is not permitted that labor contracts are succeeded to the assignee company contrary to the intention of the workers. Also in the trial cases, in

accordance with these basic rules, concrete and reasonable solutions are being made according to the content of the cases.

<In the case of a merger>

In the case of a merger, all rights and obligations including labor relations are to be inherited (Article 750, 752, 754, 756 of the Companies Act), and there will not be any cases assumed where disadvantages arise for workers.

Q 4 Are only full-time employees subject to the Labor Contract Succession Act procedures? Does the same act apply to part-time and temporary workers ?

A 4 "Workers" under the Labor Contract Succession Act mean those employed by the split company, and include all workers who have executed a labor contract with the split company. For this reason, the procedures prescribed by the Act, etc. are required to be followed for not only regular employees but also part-time employees and temporary employees.

Q 5 Is it possible to describe labor contracts of hiring recruiters in the split contract, etc. ?

A 5 The labor contract stated in the split contract, etc. is not necessarily limited to those in which the effect of the labor contract has occurred when the split becomes effective but concluded at the time of concluding the split contract, etc.

In "hiring adoption", because the opinion that an employment contract retaining the cancellation right between the worker and the company is established by the notice of the job offer has been established in the trial case example, the labor contract of the hiring recruiter can be described in the split contract, etc.

(Reference)

Case where it was deemed that a labor contract with a start date and withdrawal right was accepted by hiring adoption

○ Case of canceled hiring adoption by Elected Public Corporation (Supreme Court second small court ruled on May 30, 1980)

The notice of recruitment delivered to the appellant from the appellee clearly specified the date of hiring, placement place, employment position and status, and in addition to the adoption notice, no special mention was scheduled to be made for labor contract signing. For this reason, it can be understood that the appellant applied for an employee recruitment from the appellee and it was an application for a labor contract and the recruitment notice from the appellee is an acceptance for the application, whereby, as one form of so-called hiring adoption, and it is reasonable to assume that an employment contract has been concluded between the appellant and the appellee, the beginning of the effectiveness of the labor contract being specified in the recruitment notice.

**Q 6** In case of the company split, when all workers who work at the successor company, etc. are seconded from the split company and the split contract, etc. does not describe the handling of labor contracts, are the procedures by the Labor Contract Succession Act, etc. necessary ?

**A 6** The Labor Contract Succession Act sets out various procedures from the viewpoint of worker protection concerning how to inherit (or not) the workers.

For this reason, in case of the company split, even if one labor contract of the worker who works for the successor company, etc. is not inherited and all are seconded from the split company, the procedures of the Labor Contract Succession Act, etc. are necessary.

In this case, the procedures and the subjects specified in the Labor Contract Succession Act etc. are as follows.

Procedures	Target workers
Article 7 Measure	All workers employed by the split company
Article 5 Consultation	① Workers engaged in business subject to succession ② Workers who are not engaged in a business subject to succession but regarding whom the split contract, etc. provides that their labor contracts are subject to succession
Article 2 Notice	① Primarily Engaged Workers ② Workers other than Primarily Engaged Workers who are succeeded to the successor company, etc.

Q 7 Is it necessary to proceed with the Labor Contract Succession Act also when a company split is carried out by a simple split procedure (simple split) ?

A 7 Procedures of the Labor Contract Succession Act are necessary. Even in the case of a company split by simple split, the situation that requires worker protection is unchanged from that of an ordinary company split.

Q 7 – 2 Apart from the procedures of company split prescribed in the Labor Contract Succession Act, can the procedures of the Labor Contract Succession Act be omitted in the case of transferring workers based on individual agreements of workers ?

A 7 – 2 Even if the company transfers workers based on the individual consent of workers (so-called “employment transfer agreement method”) apart from the procedures of the company split prescribed in the Companies Act, the company is not permitted to omit the procedures of the Labor Contract Succession Act such as Article 2 Notice and Article 5 Consultation.

In addition, it should explain that the company may inherit working conditions even when transferring workers to workers, etc. by the employment transfer agreement method on the grounds of a company split or that primarily Engaged Workers that are not stipulated in the split agreements may be able to exercise the right to file an opposition about being excluded from succession by the company split.

In addition, if Primarily Engaged Workers not stipulated in the split contract, etc. exercise the opposition offer right, due to the effect of Article 4, Paragraph 4 of the Labor Contract Succession Act, the effect of the succession of labor contract will be maintained while maintaining the working conditions. On the other hand, the employment transfer agreement against this is invalid.

In addition, in case of seconding workers to the successor company, etc. while maintaining a labor contract relationship with the split company, procedures such as Article 2 Notification and Article 5 Consultation, etc. are necessary.

## Chapter 2 Article 7 Measure

Q 8 Why is Article 7 Measure necessary when splitting the company ?

A 8 In consideration of the fact that the split of the company affects not only Primarily Engaged Workers but also all workers of the split company to a certain extent, it is obligatory to take Article 7 Measure to the split company from the viewpoint of protection of workers.

As a concrete method of Article 7 measure, it is necessary that the split company consults with the labor union representing the majority of the workers at the workplace (majority representatives in the absence of majority labor union) at all of the workplaces or takes another equivalent method.

In addition, as "other equivalent means", regardless of the name, discussions in order to obtain understanding and cooperation of the workers which will be held where it is ensured that consultations will be held in good faith from the standpoint of labor-management peers are included.

Q 8 – 2 If it is a division of rights and obligation units that cannot be called business, isn' t Article 7 Measure not necessary TEST TEST ?

A 8 – 2 Even if it is a division of rights and obligation units that cannot be called business, Article 7 measure is necessary as long as the company split is carried out. In addition, it is desirable for certain Not Engaged Workers not to be succeeded to provide certain information such as explanation that the division of the rights and obligations may affect the contents, etc. of the duties, separately from Article 7 Measure.

Q 9 What matters must be consulted with labor unions, etc. ?

A 9 The following matters that the split company endeavors to obtain



understanding and cooperation of the workers employed by it.

- ① Background of and reasons for the company split concerned;
- ② Matters concerning the prospect of the split company' s and the successor company' s performance of obligations on and after the effective date of the company concerned;
- ③ Criteria for judging whether workers are those primarily engaged in a business subject to succession;
- ④ Matters relating to the succession to the collective agreement; and
- ⑤ Procedures for resolving problems arising between the split company and its workers in relation to the company split concerned.

Incidentally, the above matters are just examples, and in cases where there are other matters required for Article 7 Measure with workers employed by the split company, it is necessary to endeavor to conduct Article 7 measure.

Q10 If several labor unions are organized in the workplace subject to the company split- but neither of the labor unions alone is organizing a majority of the workers, what kind of measures should be taken ?

A10 In the absence of a labor union organized by a majority of workers in a specific workplace, methods like the following methods can be adopted.

- ① Select the representative who represents the majority of workers at the workplace and consult with this person.
- ② Do not elect a majority representative but consult with each existing labor union.

Q11 Does Article 7 Measure require an agreement on matters of consultation ?

A11 In Article 7 Measure, the company must endeavor to obtain understanding and cooperation of the employed workers, but it is not required to obtain consensus on consultation matters.

Q12 What is “The problem of labor relations arising between the split company or successor company and related labor union or workers in the company split”, exemplified as the subject matter of consultation with a labor union, etc. ?

A12 As “problems of labor relations”, for example, the following can be mentioned.

- ① With regard to judgment as to whether or not it corresponds to a Primarily Engaged Worker, a difference in opinion arises between the worker and the split company
- ② To discuss about the welfare benefits recognized as being contents of rights and obligations between the split company and workers and maintained as working conditions which are contents of labor contracts even after the company split, but in practice, they are difficult to succeed as they are, including alternative measures, etc.
- ③ Treatment of welfare benefits having a beneficial character not maintained as working conditions which is the content of the labor contract after the company split
- ④ Treatment of the benefit welfare after the company split in cases where a third party other than the split company carries out all or part of the welfare program in accordance with the provisions of each act and regulation

Q13 Until when should Article 7 Measure be taken ?

A13 Considering that it has close relations with Article 5 Consultation, it is necessary to commence consultations with the labor union, etc. before the start of Article 5 Consultation (the day before the day two weeks before the general meeting of shareholders approving the split contract, etc.). It is assumed that the required time varies depending on the consultation matter, but it is appropriate to start while considering the time required to practically obtain understanding and cooperation of workers.

Since consultation with the labor union, etc. is to resolve labor relations problems arising between the split company and labor unions or

workers upon the company splits through consultation, such consultation must be done multiple times if necessary.

Q 14 What is the relationship between Article 7 Measure and Article 5 Consultation ?

A14 Article 7 Measure is the procedure for obtaining understanding and cooperation of all workers who work for a split company in the company split. On the other hand, Article 5 Consultation is intended to protect certain workers by asking individual workers' desires regarding succession of labor contracts when a split company prepares a split contract, etc. Therefore, there are differences in the timing of implementation, scope of target workers, scope of consultation items, procedures, etc. (See the table below).

	Article 7 Measure	Article 5 Consultation
Time of implementation	Commence before the start of Article 5 Consultation	Commence before the day on which Article 2 Notice should be given
Scope of subject workers	Workers employed by the split company	a) Workers engaged in business subject to be succeeded b) Workers who are not engaged in business subject to succession but regarding whom the split contract, etc. provides that their labor contracts are subject to succession
Subject Matters of Consultation, etc.	a) Background and reasons for the company split concerned b) Matters concerning the prospect of the split company and the successor company, etc. performance of obligations c) Criteria for judging whether workers are those	The split company explains a) Overview of the company the worker is to work for on and after the effective date of a company split b) Matters concerning the prospect of the split company and the successor company, etc. performance of obligations on

	<p>primary engaged in a business subject to succession</p> <p>d) Matters relating to the succession to collective agreements</p> <p>e) Procedures for resolving problems arising between the split company and its workers in relation to the company split concerned etc.</p>	<p>and after the effective date of the company split concerned</p> <p>c) Manner of considering whether or not the workers are Primarily Engaged Workers, etc. and listening to their wishes, and consulting about the following matters.</p> <p>d) Whether there is any succession to worker labor contracts</p> <p>e) Planned operations, workplace and other employment details of the worker if his/her labor contract is succeeded to or if it is not succeeded to by the successor company, etc. Etc.</p>
<p>Consultation Procedure</p>	<p>In all work places,</p> <p>a) Consult with the labor union organized by a majority of the workers at the workplace</p> <p>b) Consult with a person representing the majority of the workers (if no labor union organized by the majority of the workers exists)</p> <p>c) Other equivalent means (including consultations, irrespective of names thereof, which are held on occasions where it is possible to secure faithful consultation on equal footing between management and labor in order to obtain understanding and cooperation of workers)</p>	<p>Depends on consultations with each worker. However, where the worker has selected a labor union as his/her agent, the split company is obliged to negotiate with the labor union in good faith.</p>

Q15 What is the relationship with collective bargaining rights under the Labor Union Act ?

A15 Regarding the subject matters of collective bargaining under Article 6 of the Labor Union Act (Act No. 174 of 1947), the split company cannot refuse the lawful request for collective bargaining related to a company split by the labor union due to the fact that Article 7 Measure is being held.

Q15- 2 What is the extent of "employers" under the Labor Union Act to become parties to collective bargaining ?

A15- 2 In general, "employer" under the Labor Union Act, which is a party to collective bargaining, refers to an employer under the labor contract.

However, please note that regarding "employers" under the Labor Union Act, as shown below, there are court precedents in which even business operators other than employers are considered "employers".

- ① Even a business operator other than an employer can be equated with the employer even though they are partial and fall under "employer" as long as it is in the case that "he/she was in the position in which the appellee was able to control and decide the basic working conditions of the dispatched employees to an equivalent extent, albeit partially, to the three contractor companies that were their actual employers." (Case of Asahi Broadcasting Corporation, Judgement of Supreme Court ruling of the Third Petty Bench on February 28, 1995)
- ② From the time of application for collective bargaining, if he/she is in the "state in which there is a realistic and concrete possibility of establishing the labor contract relationship in the near future with the worker", he/she falls under "employer". (Case of Kubota, Judgement of Tokyo High Court on December 21, 2011)

Q15-3 What are the court precedents accompanying company splits concerning the liability for unfair labor practices and the succession of the position of employers under the Labor Union Act ?

A15-3 There are the following court precedents, etc. accompanying company splits concerning the liability for unfair labor practices and the succession of the position of employers under the Labor Union Act.

① As the establishing company succeeded the labor contract relationship of the labor union members, it succeeded the liability for unfair labor practice concerning the controlling and intervention (treating differently from another union concerning the lending of the office, etc.), and the split company did not lose the position of the user in relation to the workers of the labor union who transferred. (Case of Morita, Morita Econos and the Central Labor Relations Commission, Judgement of Tokyo District Court February 27, 2008)

② Accompanying the succession of the dispatch employment relationship following the company split, the status of being the employer under the Labor Union Act also succeeded to the successor company in accordance with the succession of the dispatch employment relationship between the workers of the labor union and the successor company. (Case of the State/the Central Labor Relations Commission (Hankyu Travel International), Judgement of Tokyo District Court on December 5, 2013)

Q16 Is it necessary for the split company to retain the evidence that the Article 7 Measure was taken ?

A16 The split company is not obliged to leave evidence, etc. that Article 7 Measure was taken.

### Chapter 3 Article 5 Consultation

Q17 What is the scope of workers subject to Article 5 Consultation ?

A17 A worker subject to Article 5 Consultation is a worker engaged in a business to be succeeded and a worker other than that with a provision of succession of the labor contract in a split contract, etc.

Q18 What matters need to be consulted in Article 5 Consultation ?

A18 The split company shall explain sufficiently to the workers an overview of the company for which the workers will work after the company split, matters concerning the prospect of performance of the obligations of the split company and successor company, etc. after the effective date, manner of considering whether or not the worker is primarily engaged in a business subject to succession, etc. , listen to workers' wishes and consult whether the labor contract of the worker concerned is to be succeeded to by the successor company, etc., planned operations, workplace and other employment details of the worker concerned if his/her labor contract is succeeded to or if it is not succeeded to by the successor company, etc.

Q19 What is the relationship with the collective bargaining right under the Labor Union Act ?

A19 Regarding the subject matter of collective bargaining under Article 6 of the Labor Union Act (Act No. 174 of 1947), the split company cannot refuse the lawful request for collective bargaining related to a company split by the labor union due to the fact that Article 5 Measure is being held.

Q20 Can a worker select an agent for Article 5 Consultation? Also, what are the points to be aware of when selecting one ?

A20 Workers can select agents individually according to the provisions of Civil Code. In the event that a worker has selected an agent pertaining to all or part of Article 5 Consultation with a split company, the split company must consult with the agent in good faith.

Incidentally, "according to the provisions of Civil Code" refers to the provisions of Civil Code Part 1, Chapter 5, Section 3, Agency. Therefore, any of the following matters will be on behalf of both, so you cannot select the agent.

- ① The agent of the split company becomes an agent of the worker
- ② To make a person in the managerial or supervisory position of a split company an agent

Q21 What kind of methods are used by workers to select labor unions as agents for their own consultation ?

A21 There is no special provision as a way for workers to select labor unions as agents. Therefore, in addition to the method of submitting a power of attorney to the labor union individually, it is also possible to agree at the association rally or by the provisions of the labor union constitution.

However, since Article 5 Consultation is the principle to consult with individual workers, if workers themselves are requesting to conduct Article 5 Consultation with a split company, the intention of individual workers will prevail.

In addition, when the worker selects a labor union as an agent, it is important to clarify the range of items to be delegated to the agent in consultation in order to facilitate consultation and prevent trouble.

Q22 What is the period required for Article 5 Consultation ?

A 22 Article 5 Consultation must be done sufficiently by the day (notice deadline day) on which Article 2 notice should be given. In other words, by the notice deadline date, it is necessary that a split company explains the policies of the split company to the workers engaged in the business to be succeeded for consultation matters, listens to the workers' wishes, and secures enough time to consult with them.

The specific period necessary for Article 5 Consultation differs for each individual case, but in any case, it is required to start consultations with a time margin so that sufficient consultation with workers can be made.



Q23 Is Article 5 Consultation requested up to the agreement on matters of consultation ?

A23 The split company must explain the policies of the split company concerning consultation matters to the workers engaged in the business to be succeeded, and consult sufficiently after hearing the workers' wishes. However, as a result of the consultation, it is not always required to obtain an agreement.

However, in case of IBM Japan (company split) (Judgement of Supreme Court second petty bench on July 12, 2010), the Supreme Court ruled that between the split company and Primarily Engaged Workers "when the consultation was not held at all and also, even if the 5th consultation was held, it is clearly contrary to the objective of the Article 5 consultation requirement prescribed in the Act for the reason that explanations from the split company and/or the contents of the consultations are remarkably insufficient", and it is possible for the workers to dispute the effectiveness of the labor contract succession concerned in Article 3 of the Labor Contract Succession Act.

In addition, please keep in mind that, in the same case, regarding Article 7 Measure, "it is understood that it imposes an effort obligation on a split company, and the fact that it violated it is not a cause that changes the effectiveness of succession of the labor contract" and "only under exceptional circumstances such as where Article 5 consultations lack substance due to the fact that sufficient information has not been provided in implementing Article 7 measures, the implementation of any Article 7 measure comes to play a role as a circumstance to be taken into consideration in determining whether there is a violation of the obligation of the Article 5 consultations."

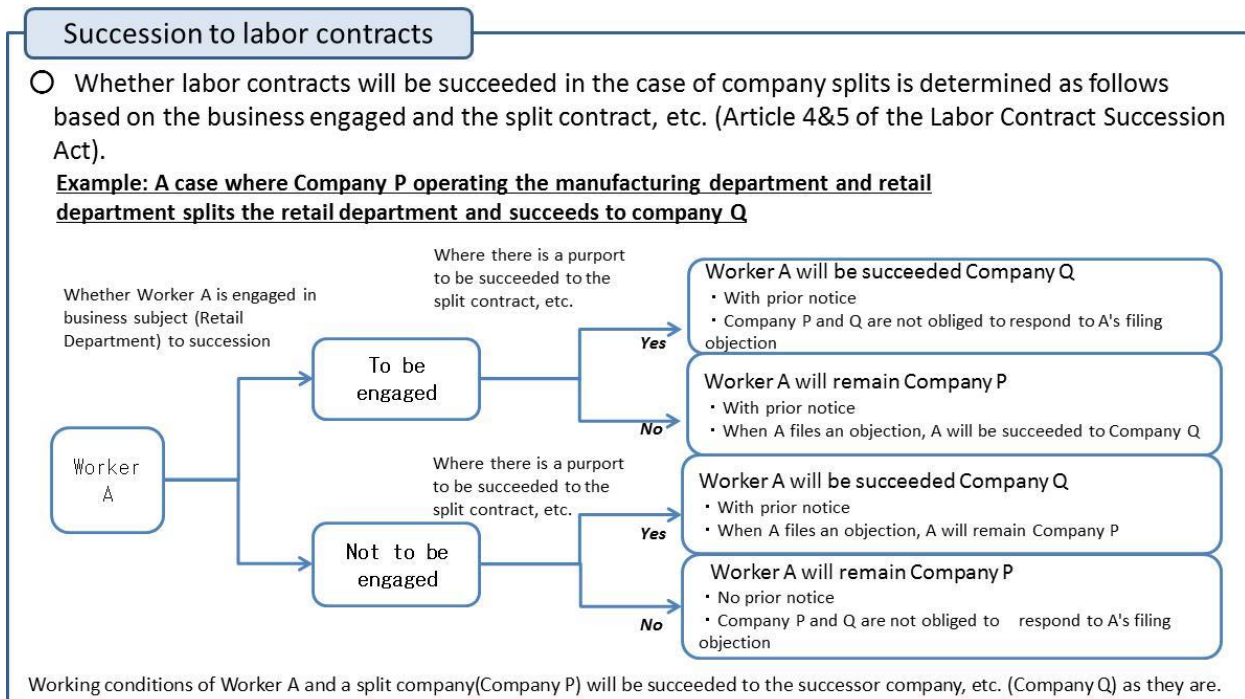
Q24 Is it necessary for the split company to retain the evidence that the Article 5 Consultation was done ?

A24 The split company is not obliged to leave the evidence that Article 5 Consultation was done.

## Chapter 4 Scope of Primarily Engaged Workers

Q25 What is the difference in the application of the Labor Contract Succession Act depending on whether it is a Primary Engaged Worker or not ?

A25 Of the provisions of the Labor Contract Succession Act, the application of provisions of advance notice, objections and their effects vary depending on whether they are primarily engaged workers or not. Specifically, it is as follows.



Q25— 2 Although it is said that the enactment of the Companies Act made it possible to be subjected to the rights and obligations that do not fall under the conventional “business” (no organic integrity) to a company split, does it affect the judgment criteria of “Primarily Engaged Worker” in the Labor Contract Succession Act ?

A25— 2 As criteria for “Primarily Engaged Worker” in the Labor Contract

Succession Act, there is no influence as it is based on the concept of "business" continuously from the viewpoint of protecting workers such as securing workers' employment and duties.

Q25— 3 What does "business", which is the criteria for judgment of "Primarily Engaged Worker" in the Labor Contract Succession Act, mean ?

A25— 3 "Business" is basically a set of rights and obligations that are organized for certain business purposes and that organically function as a unit. Specifically, in view of the organization of the company, the structure of division of work, etc., if it is a cohesion of rights and obligations where the workers primarily engaged in the businesses are succeeded with the business and so the employment and duties of the workers are secured, it is regarded as "business".

Q26 What is the specific date which a split contract, etc. is entered into or is it created at the time of judging whether they are Primarily Engaged Workers or not ?

A26 It is appropriate to interpret it as the point of time to prepare a split contract, etc. for the head office, when the description items of a split contract, etc. created by the split company are finalized.

Q27 What is the case when it is not appropriate to judge whether or not they are Primarily Engaged Workers on "the date which a split contract, etc. is entered into or is created"? Also, how is primary / not primary judged in that case ?

A27 In the case where it is inappropriate to judge whether or not they are Primarily Engaged Workers on "the date which a split contract, etc. is entered into or is created", the judgment of primary / not primary in that case is as follows.

①In cases where it is clear that they are not engaged in the business

subject at the time of the conclusion of a split contract, etc. but will be engaged after concluding a split contract, etc.

→ They correspond to Primarily Engaged Workers

② In cases where it is clear that they are engaged in the business subject at the time of the conclusion of a split contract, etc. but will not be engaged after concluding a split contract, etc.

→ They do not correspond to Primarily Engagement Workers

Q28 In a splitting company, if the Primarily Engaged Workers are relocated to another business just before the point of entering into a split contract, etc. (or the workers engaged in other business are relocated to the business to be divided), what is the judgment as to whether or not they are Primarily Engaged Workers ?

A28 At the time of a company split, judgment as to whether or not workers are primarily engaged in business to be divided is generally carried out at the time of "the date of entering into or creating a split contract, etc.". (See Q26)

Provided, however, that in cases where the split company deliberately conducts relocation, etc. before a company split for the purpose of excluding workers from the successor company or split company after a company split without reasonable reasons, it is supposed to be based on the past actual work situation of the workers.

Therefore, even in the case of the question above, in principle, "judgment is made on the date of entering into or creating a split contract, etc." but the relocation just before entering into a split contract is attempting to exclude those workers and it is arbitrary of the company, it will be judged "whether they are Primarily Engaged Workers" based on the past actual work situation of the workers.

(Incidentally, refer to Q30 for the case of the question above, as to whether to judge them as Primarily Engaged Workers or not, in case there is a difference in opinion between the split company and the workers.)

Q 29 If the workers are engaged in multiple businesses in the so-called back-office department, what kind of things should be used as a guide to judge whether or not they are Primarily Engaged Workers ?

A29 With regard to the so-called back-office department, when the worker is engaged in multiple businesses, it is decided by comprehensively taking account of the duration of the worker's engagement in each business and the role that the worker plays in each business. It is considered as a rough standard that in the HR department, the number of workers in each business, in the accounting department, the amount of money handled in each business, in the asset management department, the amount of assets to be transferred from each business to the asset management department, in the government building management department, the area of the government building occupied by each business, in the general reception, the number of visitors to each business.

<Case Study>

Q In the case of dividing the company shown in Fig. 1, ★ are workers (workers who are in the general affairs department and are difficult to judge whether they are primarily engaged in business of Home Electronics Manufacturing or Computer Manufacturing) primarily engaged in Home Electronics Manufacturing or Computer Manufacturing?

A In cases where it is difficult for workers engaged in a back-office department to distinguish which business to engage in, and it is difficult to judge on the basis of time, role played by the workers, etc., unless there are special circumstances, only when the successor company succeeds to labor contracts pertaining to a majority of workers employed by a split company, excluding workers who cannot make such judgement, it is clear in the Guidelines for the Labor Contract Succession Act to judge workers as Primarily Engaged Workers. When this handling is applied to the case of Fig. 1, it becomes as follows.

○ Total number of workers at the company split at the time of creation of a split contract

100 people + 800 people + 250 people = 1150 people

○ Total number of workers in the split company excluding ★

1150 people - 60 people = 1090 people → majority = 546 people

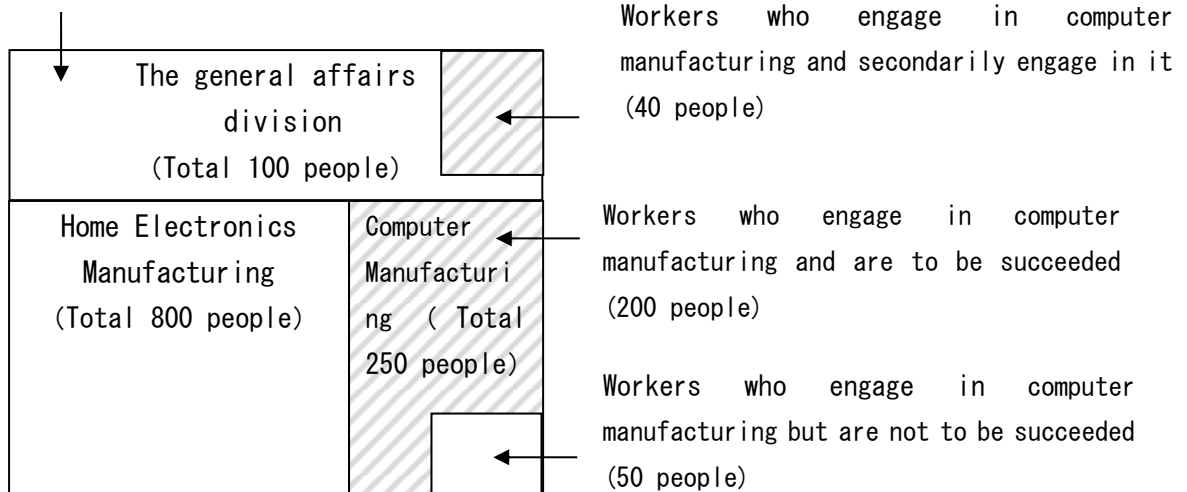
- Number of workers whose labor contracts are to be succeeded to a successor company = 240 (<546 people)
- Since the number of workers pertaining to labor contracts succeeded to a successor company, etc. is less than the majority of the total number of workers of the split company excluding ★, ★ do not correspond to “workers engaged primarily in computer manufacturing departments.” In other words, they are judged to be workers primarily engaged in the household appliance manufacturing department.

<Figure 1 >

- A company that operates a home electronics manufacturing department and computer manufacturing department divides the computer manufacturing department (part).
- For workers, the split company plans to succeed most of the computer department and a part (▨partial) of the general affairs department.
- As of the creation of the split agreement, the general affairs division: 100 people, home electronics manufacturing department: 800 people, computer manufacturing department: 250 people.

★Workers who cannot be judged as primarily engaged in home electronics manufacturing or computer manufacturing are the majority (60 people)

▨ : Workers who will be succeeded to the successor company



Q 3 0 How do we respond if there are conflicts of views between the split company and the workers concerning the judgment of whether or not they fall under the primarily engaged workers ?

A 3 0 The split company is required to strive to fill a gap in their views through, for example, Article 7 Measures and Article 5 consultation. If it still cannot be resolved, although it can eventually be resolved by a trial, it is also possible to arrange consultations to work toward resolving the conflict through the "individual labor dispute resolution system" implemented by the Prefectural Labor Bureau.

## **Chapter 5 Succession of labor contracts stated in a split contract, etc.**

Q31 If a labor contract is stated in the split contract, etc. how is that labor contract handled ?

A31 With regard to labor contracts described in a split contract, etc., all rights and obligations based on it will be succeeded, so rules of employment, collective agreements, and loans for use, money consumption loans and other atypical contracts, etc. established by labor practices, etc. will also be succeeded.

Upon succession of the labor contracts, all rights and obligations of the split company arising from the position as employer based on labor contracts are succeeded to the successor company and the contents of the labor contracts are not changed and they will be the contents of the labor contracts between the workers and the successor company, etc.

Q 32 What are the rights and obligations based on the labor contracts to be succeeded ?

A 32 Rights to be succeeded include not only the right to receive labor provision pursuant to the principal of labor contracts but also the right to request delivery of the accounts receivable when the worker receives surrogate accounts receivable, etc. and the claim right, etc. to receive the refund of money lent as part of the labor contract.

On the other hand, the obligation to be succeeded is not only the obligation to pay compensation (including various allowances, retirement allowances, etc.), but also obligation on welfare benefits, obligation to return so-called internal deposits, obligation for damages due to breach of safety consideration obligation (Civil Act Article 415), etc.

Q 33 Regarding the number of years of service that form the basis of the calculation of the number of days of annual paid leave or the amount of severance payment, etc., are those in the split company counted in the successor company, etc. ?

A 33 Regarding annual paid leave and retirement allowances plans, since rights and obligation relationships between workers and employers are recognized, if the labor contracts of the workers are stated in the split contract, etc., they will be succeeded to the successor company and counted. Other similar treatments are included such as the number of years of service pertaining to calculation of retirement amount, etc. (including non-statutory leave benefits, long-time service awards), permanent long-awaited qualification (qualification for retirement allowance, refreshment vacation and stock option).

Q 34 Is benefit welfare with a benefit character at a split company retained at the successor company, etc. ?



A34 With respect to benefit welfare at a split company, those having a benefit character other than those of rights and obligations between a split company and workers are not naturally succeeded to the successor company, etc. as a result of the company split.

Therefore, the split company shall provide information to the workers concerning the treatment of welfare benefits having the benefit character after the company split, and by means of Article 7 Measures and Article 5 Consultation, etc., it shall conduct consultations, etc. to a reasonable solution with the said workers.

Q35 In cases welfare programs at a split company are recognized as being contents of rights and obligations with workers, will their contents be maintained without fail ?

A35 Even for welfare programs that are deemed to be contents of rights and obligations between a split company and workers, there are things that are difficult for successor companies, etc. to take over with the same contents depending on their contents. With respect to such welfare benefits, the said split company shall provide information on the handling after the company split, to said workers, etc. (including labor unions whose workers are their members), by means of Article 7 Measure and Article 5 Consultation, etc., and it shall conduct consultations, etc. to a reasonable solution including alternate measures, etc. with the said workers.

Q36 How will the Employees' Pension Fund and the Defined Benefit Corporate Pension whose entitlements are the contents of labor contracts as a result of a company split be handled ?

A36 Because the Defined Benefit Corporate Pension and Employees' Pension Fund are respectively implemented for securing the soundness and reliability of the Public Pension System under the provisions of Article 1 Paragraph 1 of the Employees' Pension Insurance Act (Act No. 115 of 1952) and the Defined Benefit Corporate Pension Plan Act (Act No. 50 of 2001) maintained by Annex 5 to Supplementary Provisions to the Act on Amendment

to the Employees' Pension Insurance Law etc. (Act No. 63 of 2013), the concrete handling accompanying the company split will be subject to the provisions of each act and regulation.

Where a labor contract of a worker who is a member of Defined Benefit Corporate Pension or a worker who is a member of the Employees' Pension Fund is succeeded from a split company based on the description of a split contract, etc., to a successor company, as a way to continue the rights and obligations concerning the payment of benefits which are pension or lump sum payments, methods such as the following exist. However, since it is necessary to change the terms, etc., approval or authorization by the Minister of Health, Labor and Welfare is necessary.

※ Additionally, even if the type of corporate pension being implemented by the split company and the successor company, etc. is different, by transferring the rights and obligations related to payment of pension benefits, etc. of workers, they can continuously be a member of the cooperate pension. Concerning the specific method, it depends on the point stipulated by each corporate pension act.

(In case of fund-type corporate pension)

Of the Defined Benefit Corporate Pension, the fund-type corporate pension is established by arbitrarily establishing a fund based on the provisions of Chapter 3, Section 3 of the Defined Benefit Corporate Pension Act.

1 In the case of incorporation-type company split

(1) A method of partially amending the terms of the fund pertaining to the split company and adding a company (hereinafter referred to as "incorporated company") established by the incorporation-type company split pursuant to the provisions of the Companies Act to the applicable place of business of the fund.

(2) A method of dividing a fund related to a split company concerning a worker whose labor contract is succeeded to the incorporated company and newly establishing a fund with the incorporated company as the applicable place of business.

2 In case of absorption-type company split

(1) When the successor company has a fund

A method of transferring the rights and obligations related to the payment of pension benefits, etc. of subsidiaries of the fund related to the split company to the fund relating to the company succeeding business by an absorption-type company split pursuant to the Companies Act (hereinafter referred to as "successor company") or a method of merging the fund

pertaining to the split company and the fund pertaining to the successor company.

(2) When the Succeeding Company has no fund

A method of partially amending the terms of the fund related to the split company and adding the successor company to the place of business of the fund or a method of newly establishing a fund with the successor company as the applicable place of business.

(In case of contract-type corporate pension)

Of the Defined Benefit Corporate Pension, the contract-type corporate pension is to be implemented under the provisions of Chapter 9 of the Defined Benefit Corporate Pension Act.

1 In the case of incorporation-type company split

A method of dividing the contract-type corporate pension pertaining to the split company concerning workers whose labor contracts are succeeded to the incorporated company and newly implementing the contract-type corporate pension, the incorporated company being the implementing place of business.

2 In the case of absorption-type company split

(1) When the successor company implements the contract-type corporate pension

A method of transferring the rights and obligations related to the payment of pension benefits, etc. of subsidiaries of the contract-type corporate fund related to the split company to the contract-type corporate fund relating to the successor company or a method of merging the contract-type corporate fund pertaining to the split company and the contract-type corporate fund pertaining to the successor company.

(2) When the successor company is not implementing the contract type corporate pension

A method of newly establishing a fund with a successor company as an applicable place of business or a method of newly implementing the contract-type corporate pension which is to be implemented by a successor company.

Additionally, even if the type of corporate pension being implemented by the split company and the successor company, etc. is different, by transferring the rights and obligations related to payment of pension benefits, etc. of subsidiaries of workers, they can continuously be a

member of the cooperate pension. Concerning the specific method, it depends on the point stipulated by each corporate pension act.

(In the case of Employees' Pension Fund system)

The Employees' Pension Fund is a corporation that was arbitrarily established and is still to exist based on the provisions of Chapter 1, Section 1 of the Employees' Pension Insurance Act before the amendment pursuant to Article 1 of the Revised Welfare Pension Reform Act of 2013. Basically, it is the same as in the case of fund-type corporate pension, but since April 1, 2013, it is no longer possible to establish an Employees' Pension Fund. As a method of continuing benefits such as pension or lump sum payment paid by the Employees' Pension Fund to workers whose labor contract has been succeeded to the successor company, employment of a split company as a member of the Employees' Pension Fund, only changing the terms will be possible.

Q37 How will the health insurance society accompanying the company split be responded to ?

A37 Because the health insurance society is an organization with a corporate status that is different from that of a split company or a successor company, etc., it may be considered that correspondence at the time of company split is, for example, as follows.

1 In the case of incorporation-type company split

(1) Transfer to existing health insurance society

A method of transferring as a place of business applied of the health insurance society (or other health insurance society) that was the applicable place of business before the company split. However, the consent of the employer and one-half or more of the insured persons to be used is required.

(2) Establishment of a new health insurance society

① Accompanying the company split, a method of dividing the health insurance society that was applied to the split company. However, it is necessary to satisfy the requirements such as:

(A) A resolution by approval of more than three quarters of the society council members of a society meeting

(B) The number of insured persons in society that will survive after the split or the society established by split is not less than a certain number

② A method of establishing a completely new health insurance society by the incorporated company. However, it is necessary to satisfy the requirements such as:

(A) The number of insured persons used for the employer trying to establish a society is more than a certain number

(B) Obtaining the consent from one-third or more of the insured persons to be used

(C) Having the business continue for three years or more after the company split, and establishing the foundation of the business

## 2 In the case of absorption-type company split

Usually, since the insured person only transfers from the split company to the successor company, if the successor company is an applicable place of business, the insured person will, if there is a health insurance society in the company, be insured.

Q38 Is it possible to dismiss an employee for reasons of a company split only ?

A 38 With regard to ordinary dismissal or dismissal for the reason of reorganization, the provisions of Article 16 of the Labor Contract Act (Act No. 128 of 2007) are prescribed, and the legal principle of precedent concerning these types of dismissals is established, and the split company or the successor company, etc. cannot dismiss an employee for reasons of a company split only.

(Reference)

### ○ Ordinary dismissal

If a dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, it is treated as an abuse of rights and is invalid. (Article 16 of the Labor Contract Act)

### ○ About dismissal based on business management necessity (dismissal for the reason of reorganization)

Regarding dismissal for the reason of reorganization as well, if it is objectively lacking objectively reasonable grounds and it is not considered to be appropriate in general societal terms, it will be invalid

under the provisions of the Labor Contract Act as an abuse of rights. Also, referring to previous court precedents, it is necessary to consult with labor unions and explain to workers and carefully consider the following things.

- Necessity of personnel cutbacks
- Do everything possible to avoid dismissal
- The criteria for selecting dismissed persons is objective and reasonable

In addition, with the aim of dismissing some workers, the company split causes the successor company succeeding the unprofitable business with the succeeded worker, or leave the worker at the split company where only unprofitable business remains. In such a case, the doctrine of so-called piercing the corporate veil or the doctrine of so-called contravention of public policy and morality, etc. may be applied.

Q39 Is it possible to reduce working conditions for reasons of a company split only ?

A39 The working conditions of workers whose labor contracts are succeeded as a result of a company split will be maintained. Regarding the change of working conditions which is the content of a labor contract, it is necessary for agreement between labor and management in the Labor Union Act and agreement between both parties of the contract based on the basic principle of Civil Code, so it is impossible to make a disadvantageous change in the working conditions based only on a company split.

In addition, when changing working conditions before and after the company split, agreement between labor and management is the basic rule in accordance with laws and ordinances and precedents.

(Reference)

Labor Contract Act (Act No. 128 of 2007)

Article 9 An Employer may not change any of the working conditions that constitute the contents of a labor contract in a manner disadvantageous to a Worker by changing the rules of employment, unless an agreement to do so has been reached with the Worker; provided, however, that this does not apply to the cases set forth in the following Article.

Article 10 When an Employer changes the working conditions by changing the rules of employment, if the Employer informs the Worker of the

changed rules of employment, and if the change to the rules of employment is reasonable in light of the extent of the disadvantage to be incurred by the Worker, the need for changing the working conditions, the appropriateness of the contents of the changed rules of employment, the status of negotiations with a labor union or the like, or any other circumstances pertaining to the change to the rules of employment, the working conditions that constitute the contents of a labor contract are to be in accordance with such changed rules of employment; provided, however, that this does not apply to any portion of the labor contract which the Worker and the Employer have agreed on as being the working conditions that are not to be changed by any change to the rules of employment, except in cases that fall under Article 12.

Article 12 A labor contract that stipulates any working conditions that do not meet the standards established by the rules of employment is invalid with regard to such portions. In this case, the portions which have become invalid are governed by the standards established by the rules of employment.

Q40 When the absorption-type company split is carried out, it is assumed that the existing rules of employment of the successor company after the split exists in the successor company and those which are succeeded from the split company by the split also exist. How can these situations be avoided ?

A40 In the case of an absorption-type company split, with regard to labor contracts stated in the split agreement, all of the rights and obligations based thereon will be succeeded to the successor company, all rights and obligations of the split company arising from the position as employer based on the labor contracts will be succeeded to the successor company and all of the obligations are succeeded to the successor company and the content of the labor contracts will be not changed as such and become the content of the labor contracts between the successor company and the workers. Therefore, it is natural for multiple rules of employment to coexist at the successor company after the split.

In this case, in order to avoid such a situation, it is necessary to change the rules of employment of the split company after adjustment between the split company and the successor company before the company

split or to change the rules of employment of the successor company after the company split, In doing so, when changing the working conditions in accordance with laws and ordinances and precedents, we must pay attention to the fact that consensus between labor and management is the basis (see Q39).

Q40— 2 Can a worker not receiving payment from a split company be paid unpaid wages by a successor company, etc. ?

A40— 2 In the case of a fraudulent company split (meaning an absorption-type company split implemented with the knowledge that the split company would harm its remaining creditors, the same shall apply hereinafter) by the amendment of the Companies Act (enforced in May, 2015), the remaining creditor is able to request the performance of the obligation to the successor company, etc. to the extent of the value of property succeeded to it (Article 759, Paragraph 4 of the Companies Act, etc.).

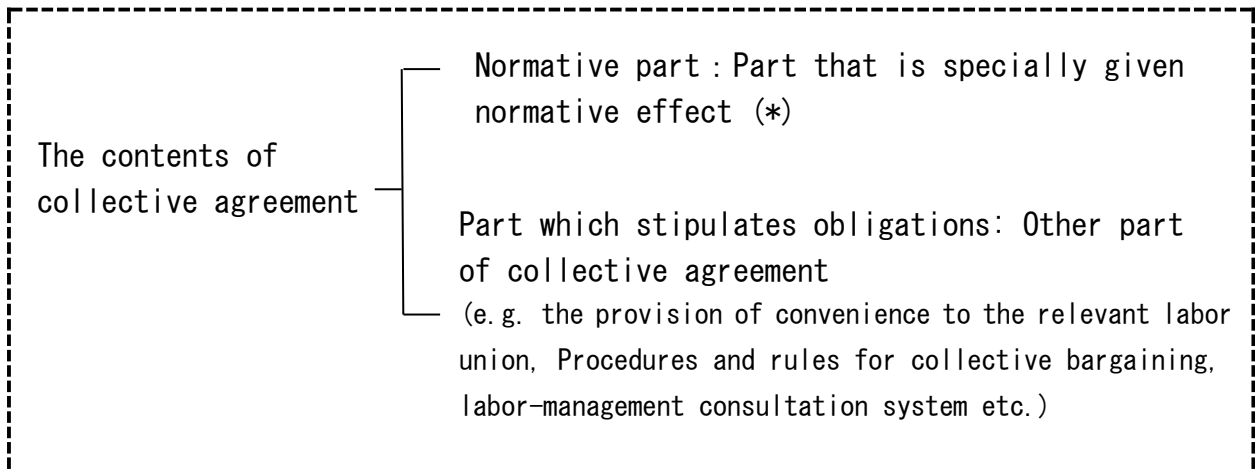
Workers can also exercise their claims by the remaining creditors in the fraudulent company split pursuant to the Companies Act, if they have claims that have reached their due date such as unpaid wages.

## **Chapter 6 Succession of collective agreements**

Q41 What is a collective agreement ?

A41 A collective agreement is an agreement on working conditions, etc. between workers and employers or their organizations, which are put in writing and signed or affixed with the names and sealed by the parties concerned. (See the figure below for details, etc. of the collective agreement, etc.)

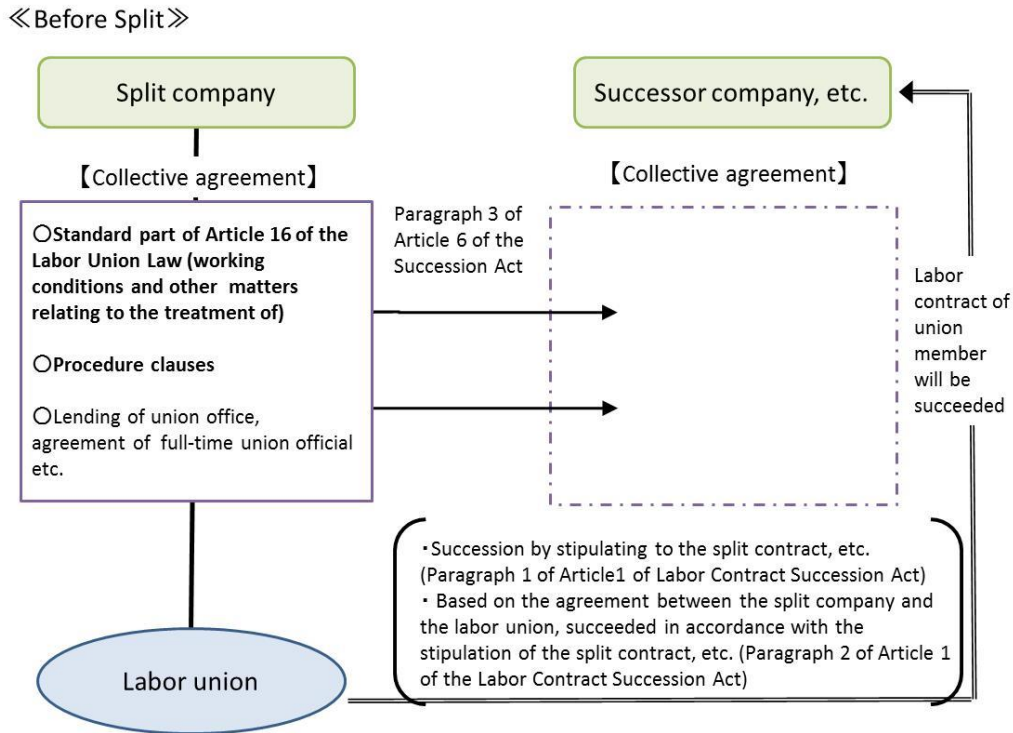


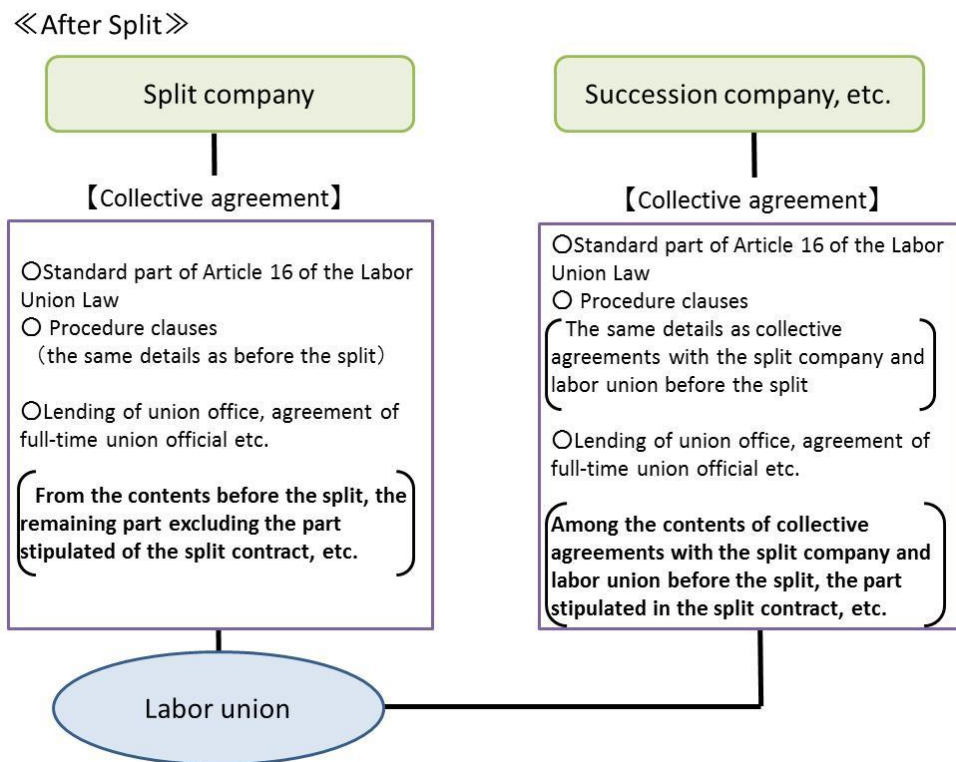


Regarding the succession of collective agreements, the handling is different between the normative part and the other part.

(\*): The collective agreement is a bilateral agreement between the parties to the agreement, but since it plays a major role in labor relations, Article 16 of the Labor Union Act, regarding "the standards concerning working conditions and other matters relating to the treatment of workers", normative effect is given directly to discipline the individual labor contract.

<Figure Succession of collective agreements>





Q42 What happens to the handling of the normative part of the collective agreement during a company split ?

A42 The normative part of collective agreements refer to the part (Article 16, the Labor Union Act) that defines working conditions and other matters relating to the treatment of workers, out of the provisions of collective agreements.

Regarding the normative part of the collective agreements concluded between the split company and the labor union, under the provisions of Article 6, Paragraph 3 of the Labor Contract Succession Act, when labor contracts pertaining to the labor union members are succeeded to a successor company, etc. at the time of a company split, the collective agreement with the same contents are deemed to have been concluded between the successor company and the labor union.

Therefore, the successor company, etc. will stand as a party to a collective agreement which has the same contents as the relevant collective agreement.

Incidentally as for the normative part of collective agreements, only certain standards are given to labor contracts between employers (split companies) and labor union members, and it neither prescribes the rights and

obligations nor will it be succeeded between employers (split companies) and labor unions by the provision of company split of the Companies Act. For this reason, special provisions have been established in the Labor Contract Succession Act, and it deemed that the same agreements as the collective agreements concluded between the split companies and the labor unions are concluded between the successor companies, etc. and the labor unions.

Q43 How to succeed the part which stipulates obligations of the collective agreements to the successor company, etc. ?

A43 The part which stipulates obligations of collective agreements refers to the part of the collective agreements that is not part of the normative part.

<Requirements for succeeding part which stipulates obligations to a successor company>

In order to have the part which stipulates obligations of the collective agreements succeeded to the establishing company, etc., unlike the normative part, it is necessary to describe in the division contract, etc. that the part which stipulates obligations of collective agreements will be succeeded.

<About agreement between split company and labor union concerning succession of the part which stipulates obligations>

Even if a statement of a split contract, etc. that the part which stipulates obligations is to be succeeded is made, it cannot be succeeded for the part not agreed between the split company and the labor union. In other words, the successor company, etc. will be succeeded to the obligations which the two parties agreed in accordance with the description of the split contract, etc.

Q44 What is the reason that an agreement between the split company and the labor union is needed to succeed the part which stipulates obligations?

A44 According to the provisions relating to company split of the Companies Act, the part which stipulates obligations stated in the split contract, etc. is not necessarily subject to agreement between the split company and the labor union, and as a matter of course it will be succeeded to the successor company,

etc.

However, with this measure only, for example, in the case of provision of a labor union office, there is a risk of a rational situation for the company side that the labor union can ask the union office for provision of either a split company or a successor company, etc.

For this reason, it was decided to seek mutual agreement in order to succeed the part which stipulates obligations to the successor companies, etc.

Q45 What is the reason that an agreement between the split company and the labor union is needed to succeed the part which stipulates obligations ?

A45 If an agreement is not obtained between the split company and the labor union concerning the succession of the part which stipulates obligations and labor contracts pertaining to the members of the labor union that has concluded a collective agreement is succeeded to the successor company, the split company remains at the position as a party to the collective agreement even after the split and the successor company, etc. is at the position of a party to a collective agreement having the same contents as the said collective agreement.

Therefore, with regard to provision concerning omission such as so-called peace obligations and provision prescribing certain disciplines such as collective procedures, the split company and the successor company, etc. will respectively fulfill or claim rights and obligations on compliance with the discipline with the labor union.

In addition, in cases where the split company, such as the approval of a certain number of union-dedicated persons according to the number of members and the loan of a certain area of a union office, etc. is fulfilling certain contents to the labor union, the said split company and successor company, etc. will incur unjust allegiance and joint debt to said labor union in fulfilling such obligations.

Q46 At what point should the agreement between the split company and the labor union concerning the succession of the part which stipulates obligations (Article 6, Paragraph 2 of the Labor Contract Succession Act) be made ?

A46 There is no clear provision in the Labor Contract Succession Act as to the timing of the agreement between the split company and the labor union under Article 6, Paragraph 2 of the Labor Contract Succession Act. However, it is desirable to agree on prior discussions between labor and management before concluding split contracts, etc.

Q47 As to the succession of the part which stipulates obligations, how should it be described in the split contract, etc.?

A47 Let' s explain about the part which stipulates obligations of collective agreement by taking the provision concerning loaning of a union office as an example.

In this case, for example, it is also possible to make a statement of the content in the split agreements and agree that “the split company lends a 40-square-meters union office out of the contents of the collective agreement “to lend a union office of 100-square-meters to the labor union” and the obligation to lend the union office of the scale of the remaining 60-square-meters shall be handed over to the establishing company.”

Q48 With regard to the collective agreements for which a valid period has been defined, how is the validity period handled when Article 6, Paragraph 3 of the Labor Contract Succession Act is applied ?

A48 By application of the provisions of Article 6, Paragraph 3 of the Labor Contract Succession Act, the collective agreement of the same contents as those of the collective agreement entered into between the split company and the labor union is deemed to have been concluded between the successor company and the labor union. In this case, “the collective agreement of the same contents” means a collective agreement which is completely identical to the contents of the collective agreement concluded between the split company and the labor union at the time immediately before the splitting effectiveness occurs.

Therefore, the end of the valid term of the collective agreement will not change before and after the company split.

Q49 Regarding the collective agreements to which Article 6, Paragraph 3 of the Labor Contract Succession Act is applied, is it necessary to be put in writing, affixing the names, etc. of the parties after the company split ?

A49 Article 6, Paragraph 3 of the Labor Contract Succession Act establishes special provisions of Article 14 of the Labor Union Act and it is not necessary to put in writing, or affix the names of both parties, which is the requirement for the effect of the collective agreement prescribed in the said Article. However, it is desirable to have the requirement of the same Article so that there will be no dispute over the contents of the agreement at a later date.

Q50 When the company split is an absorption-type company split, if the successor company has concluded a collective agreement with one existing labor union, as a result of the application of the provisions of Article 6, Paragraph 3 of the Labor Contract Succession Act, does it mean that there are multiple collective agreements in the successor company?

A50 It is possible that there are two or more labor unions in one company. Further, with regard to the same matter, each labor union may execute a collective agreement containing different contents with the employer. Therefore, naturally, there can be multiple collective agreements existing in one company.

Therefore, in the case of an absorption division, as a result of the application of the provisions of Article 6, Paragraph 3 of Labor Contract Succession Act, the collective agreement with the same contents as the collective agreement concluded with the split company is deemed to have been executed with the successor company and the trade union, and the successor company has concluded different collective bargaining agreements with several unions concerning the same matters. Consequently, there can be a situation where the working conditions of workers of the same type are different among them, depending on which labor union they belong to.

Q51 If a worker succeeded to a labor contract by a successor company, etc. withdraws from a labor union that he/she had joined before the company split and organizes a new labor union, pursuant to the provisions of Article 6, Paragraph 3 of the Labor Contract Succession Act, will collective agreements deemed concluded with a successor company, etc. continue to be applied to these workers ?

A51 The provisions of Article 6, Paragraph 3 of the Labor Contract Succession Act apply only to members of labor unions that have signed collective agreements with a split company. Therefore, with regard to those who have withdrawn from a labor union that they had joined before the company was split, the collective agreement will not apply in the successor company, etc. unless it applies under Article 17 of the Labor Union Act (General Binding Effect) and Article 18 (General Binding Effect in a Locality)).

Q52 How will the General Binding Effect of the collective agreement (Article 17 of the Labor Union Act) and Union Shop, etc. (Article 7 Item 1 Proviso of the Labor Union Act) be influenced by the company split ?

A52 <About the General Binding Effect of collective agreement>

○ In case of a split company

Regarding the General Binding Effect of a collective agreement, the requirement is that "When three-fourths or more of the workers of the same kind regularly employed in a particular factory or workplace come under application of a particular collective agreement" (Article 17 of the Labor Union Act).

Therefore, even if Article 17 of the Labor Union Act has been applied at the factory or workplace of the split company before splitting the company, the factory of the split company or the successor company, etc. that does not meet the requirement at the time of the split in the factory or workplace, the same article does not apply and the General Binding Effect will be lost.

○ In case of a successor company, etc.

In the case where a business establishment with a split company has set up a company through an establishing split that meets the General Binding Effect requirements of a collective agreement, the General Binding Effect requirements of the collective agreement at the establishing company after

the company split are satisfied.

In the case where a successor company succeeds a business establishment of a split company by means of an absorption-type company split that meets the General Binding Effect requirements of a collective agreement, whether or not to satisfy the General Binding Effect requirements of the collective agreement at the succeeded business establishment of the successor company after the company split, opinions are divided in theories and judgments, and the effect of the General Binding Effect does not extend naturally.

<About Union Shop, etc. >

○ In case of a split company

Regarding the collective agreement concerning so-called Union Shops, etc. of Article 7, Item 1 Proviso of the Labor Union Act, as its requirements, in the same proviso, it is stated that "the labor union represents a majority of the workers employed at a particular factory or workplace". Therefore, if it does not satisfy the requirements due to the company split, the collective agreement concerning the Union Shop, etc. will expire.

○ In case of a successor company, etc.

When a collective agreement is succeeded to an incorporated company through an incorporation-type split, if a business establishment with a split company has adopted a Union Shop, etc., the Union Shop, etc. will be taken as a rule at the incorporated company after the company split. When a collective agreement is succeeded to a successor company by absorption-type split, if a business establishment with a split company has adopted a Union Shop, etc., it will be taken at the successor company after the company split. Although, even if the number of labor union members that were succeeded occupy a majority in the successor company, the effect of the Union Shop, etc. does not naturally extend in the business establishment existing in the successor company in the past.

Q53 What kind of handling of labor-management agreements of the Labor Standards Act needs to be done when splitting a company ?

A53 These labor-management agreements will continue to be effective if the identity of the workplace is recognized before and after the company split. However, if the identity of the workplace is lost, the effectiveness of



penalties under the relevant Labor Standards Act will be lost, and therefore after the split it is necessary to conclude a labor-management agreement and submit a notification based on each provision again.

Incidentally, "having the identity of the workplace" generally means that the composition of the workers, the location of the workplace, the actual condition of the business, etc. are substantially the same. In the case of a company split, if these parts are the same except for the change of the position of the user by the company split, it is deemed that there is an identity of the workplace.

## Chapter 7 Article 2 Notice to workers

Q54 What is the scope of workers who must be given Article 2 Notice ?

A54 The scope of workers to whom a split company gives Article 2 Notice is limited to those of workers employed by such split company:

- ① Primarily Engaged Workers
- ② Workers other than Primarily Engaged Workers, succeeded to a successor company

Q55 When should Article 2 Notice be notified to workers ?

A55 Article 2 Notice to workers must be done by the previous day of the date two weeks prior to the date of the shareholder meeting in which the split contract, etc. are to be approved. But it is desirable that it should be done on the same day as the earliest date out of the head office keeping date of the split contract, etc. or when the notice is issued about the shareholder meeting, etc.

Q56 What are the subject matters to be notified to workers in Article 2 Notice ?

A56 The subject matters to be notified to Article 2 Notice to the workers are

as follows.

- ① When succeeded by a company split, it shall be succeeded while maintaining working conditions
- ② Whether or not the description of split contract, etc. that the worker will be succeeded to successor company, etc.
- ③ The deadline date for which the worker can offer an objection
- ④ Matter of which issues of Item 1 of Article 2 of the Labor Contract Succession Act the worker falls under
- ⑤ Outline of the business to be succeeded
- ⑥ Name, head office, business details and the number of workers that the split company and successor company, etc. plan to employ (\* 1) after the split
- ⑦ Date on which the company split takes effect (\* 2)
- ⑧ Details of the work engaged in of the worker concerned, place of employment and other employment details (\* 3) at the split company or the successor company after the split
- ⑨ Matters concerning the prospect of the split company' s and the successor company' s, etc. performance of obligations on and after the split (\* 4)
- ⑩ When there is an objection under Item 1 of Article 4 or Item 1 of Article 5 of the Labor Contract Succession Act, the fact that the request can be made and the name and address of the department receiving the request when filing an objection, the name of person, job title and place of work

(\* 1) In "the number of workers that the split company and successor company, etc. plan to employ", such as workers whose labor contracts are succeeded by a company split, part-time employees and newly hired workers, not limited to regular employees, are included.

With regard to the seconded workers, for example, it is thought that after including it in the number of workers scheduled to be employed by the successor company, etc. "it is noted that out of ○ workers scheduled to be employed by a successor company, ○ persons are seconded from a split company".

(\* 2) "The date on which the company split becomes effective" means "the day on which the absorption-type company split becomes effective" in the absorption-type company split or the date on the organizing registration of the incorporated company in the incorporation-type company split, and it was regarded as a subject matter of notice to clarify the schedule of the company split.

(\* 3) Working conditions such as wages, working hours, etc. are not subject to change as the company split, so it is not necessary to notify those,

but regarding employment details, since it is often unlikely that it can be decided at the discretion of users, it was regarded as a notice concerning the planned employment details after the company split. Incidentally, the "other employment details" includes working hours during shift work.

- (\* 4) "Matters concerning the prospect of performance of the obligations" is a preliminary disclosure item in the company split under the Companies Act and it was regarded as a matter of notice as it is a serious concern for workers. Incidentally, the contents described in the notice may be based on the summary of the documents to be prepared at the head office based on the provisions of the Companies Act and the manner described in the shareholders convocation notice.

Q57 With regard to Article 2 Notice to workers, why is the company obligated to issue documents ?

A57 In the Labor Contract Succession Act there is the obligation for the split company to issue documents because it is necessary to issue them using a method that arrives at individual workers without fail and to prevent the position of the workers becoming unstable due to trouble after the incident.

Q58 When making Article 2 Notice via postal items, etc., how soon should the workers be informed ?

A58 When notifying by mail, etc., it will take effect from the time of reaching the other party according to Article 97, Paragraph 1 of Civil Code. Therefore, it is necessary to arrive at the worker by the previous day of the date two weeks prior to the date of the shareholder meeting, etc. The same is true for notice to the labor union.

Q59 Why is "matter of which issues of Item 1 of Article 2 of the Labor Contract Succession Act the worker falls under" stated ?

A59 For workers who have a description stating that a successor company, etc. will succeed the labor contract on the split contract, etc., notification will be made regardless of whether they engage primarily in the business to be succeeded or not. If it is unnecessary for a worker to be notified the matter of items of Article 2, Paragraph 1 of the Labor Contract Succession Act, it will be difficult for the worker receiving the notice about the succession of their own labor contract in the event that there is an objection on this matter to judge whether or not it is possible to file an objection under Article 5, Paragraph 1 of the Labor Contract Succession Act.

For this reason, it was stipulated as a notice item in the Ordinance for Enforcement of the Labor Contract Succession Act.

Q 60 How should “matters concerning the prospect of performance of the obligations” in the notice be stated ?

A60 For example, it may be stated that “our company and the successor company have no issue with regard to their performance of obligations on and after the effective date”. In addition to this, it may be possible to state the gist of matters related to the prospect of performance of obligations to be disclosed in advance based on the descriptions of the Companies Act.

Q61 Is it possible to make Article 2 Notice via e-mail ? Is it possible to send by fax ?

A61 Article 2 notification cannot be done via e-mail. Also, it cannot be done using electronic media such as a homepage or a floppy disk. (See Q57 for reasons why only written media is permitted)

With regard to fax, it is permitted by printing on the paper provided in the facsimile machine within the control area of the other party by facsimile because the signature, etc. of the notifier is not included in Article 2 Notice as a requirement. (The notifier is responsible for the danger associated with a malfunction of the other fax machine.)

These matters also apply to Article 2 Notice to labor unions.

Q62 What kind of thing does it refer to when Article 2 Notice has not been received lawfully ?

A62 It refers to the cases where there are less than two weeks before the shareholder meeting when workers are notified, notice is given that all or part of the matters stipulated by the act and regulations as notification matters are missing or the notice is not in writing and done verbally or the like.

## Chapter 8 Article 2 Notice to labor unions

Q63 What is the scope of labor unions that must be given Article 2 Notice ?

A63 A labor union that a split company carries out Article 2 Notice is a labor union that has signed a collective agreement with the split company.

However, even if the split company has not concluded a collective agreement with a labor union, as a result of the progress of collective bargaining after the notice, there is a possibility that a collective agreement may be concluded, it is desirable to notify the labor union according to the example of the provisions of Article 2, Paragraph 2 of the Labor Contract Succession Act.

Q64 When should Article 2 Notice be given to the labor union ?

A64 Like Article 2 Notice to workers, it must be done by the previous day of the date two weeks prior to the day of the shareholder meeting in which the split contract, etc. are to be approved. But it is desirable that it should be done on the same day as the earliest date out of the head office keeping date of the split contract, etc. or when the notice is issued about the shareholder meeting, etc.

Q65 What is to be notified to labor unions in Article 2 Notice ?

A65 The subject matters to be notified to the labor union are as follows.

- ① Outline of business to be succeeded
- ② Name, head office, business details and the number of workers that the split company and successor company, etc. plan to employ (\* 1) after the split,
- ③ Date on which the company split takes effect (\* 2)
- ④ Matters concerning the prospect of the split company' s and successor company' s etc. performance of obligations on and. after the split (\* 4)
- ⑤ Whether the description of the split contract, etc. that the collective agreement signed between the split company and the labor union is succeeded to the successor company
- ⑥ Scope of the workers to be succeeded (in case the names of the workers are unclear to the labor union, the names of the workers)
- ⑦ In cases where the collective agreement is to be succeeded, the content of collective agreement succeeded by the successor company, etc.

Please refer to (\* 1), (\* 2), (\* 4) of A 56 for explanations of items ② to ④.

Q66 Regarding Article 2 Notices to labor unions, why are split companies obligated to issue documents ?

A66 According to the Labor Contract Succession Act, it is obliged to issue a document to the split company depending on the form of division of the company, which may have a serious impact on collective agreements currently concluded, This is because it is necessary to provide it to labor unions that have signed collective agreements with the split company in a way that they can be reliably reached.

**Q67** Even in the case of getting consent of the labor union concerning a split contract, etc. by preliminary consultation, etc., should Article 2 Notice be given again ?

**A67** Article 2 Notice made to the labor union with which the split company has signed a collective agreement is a statutory obligation from the viewpoint of protection of workers as the division of company has a big influence on the activities of the labor union and, even if consent has been obtained for such division by prior consultation, it must be done.

## **Chapter 9 Workers' objections to labor contracts succession, etc.**

**Q68** Under the Labor Contract Succession Act, in what cases can an objection regarding succession of labor contracts be filed to a successor company, etc. ?

**A68** With regard to succession of labor contracts to a successor company, etc., an objection can be filed when it falls under the following cases.

- ① When the labor contract of Primarily Engaged Workers is not to be succeeded to the successor company, etc. by the description of the split contract, etc.
- ② When the labor contract of workers, who are employed by a split company other than Primarily Engaged Workers, is to be succeeded to the successor company, etc. by the description of the split contract, etc.

The objections must be made in writing to the split company, and as the content thereof it is enough to mention "the name of the worker filing the objection" and that it is against "the labor contract pertaining to the worker will not be succeeded or will be succeeded to the successor company, etc."

**Q69** With regard to succession of labor contracts to the successor company, etc., why can certain workers file an objection ?

A69 In A68 's cases ① and ②, it is decided that certain workers are able to file an objection because they are possibly separate from the duties which each individual worked so far only because of the intention of the split company, etc. That is, in ① of A68, the specific workers are excluded from the subjects of the succession of labor contracts to the successor company, etc. in ②, the workers do not wish to succeed labor contracts to successor companies, etc. but there is a possibility that the disadvantage of being forced to succeed may occur, and it is necessary to protect these workers from such a situation.

Q69— 2 Does the worker receive any disadvantageous treatment on the grounds that s/he has filed an objection?

A69— 2 The filing an objection is a legal right of workers under the Labor Contract Succession Act, and companies must not treat any worker in a disadvantageous manner including dismissal on the grounds that s/he is to file, or has filed, an objection.

Q70 How is the objection deadline date set?

A70 The split company will determine the deadline date that will be the last day of receipt of the objection, and both of the following two requirements must be met.

① From the day two weeks prior to the day of the shareholders meeting, etc. to approve a split contract, etc. until the day before the shareholders meeting, etc.

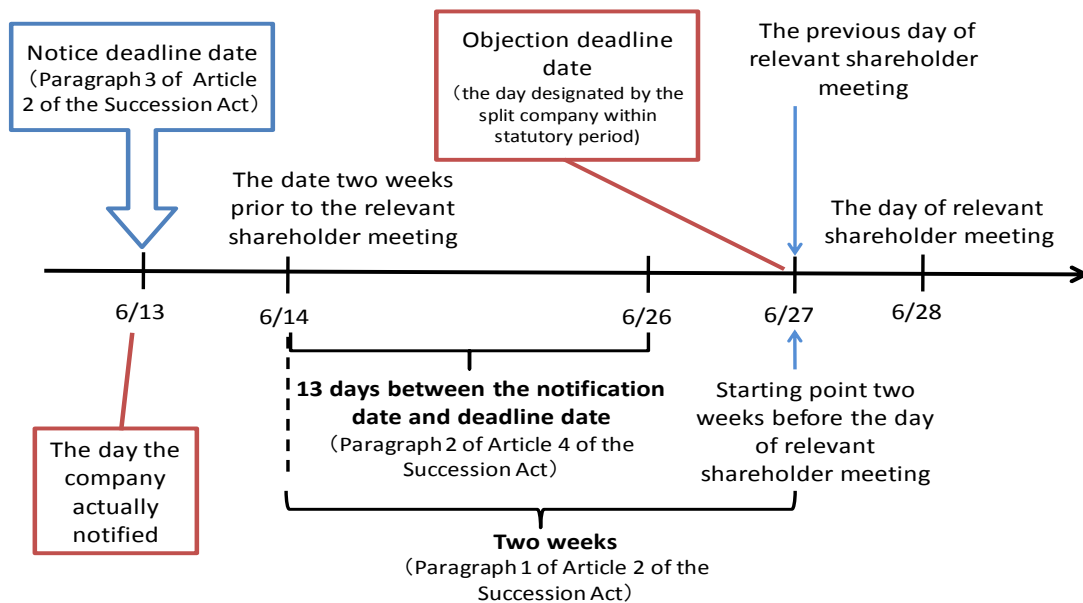
② There must be at least 13 days between the day on which the notice of Article 2 was made and the objection deadline date ("the notification date" refers to the day on which the notice of Article 2 arrives at the worker)

For example, if the notice of Article 2 is made on Monday, the objection deadline date must be the day after Monday of the following week (If Monday is a holiday and the company is closed, it must be Tuesday).

<Image Diagram of notification schedule>



**The relevant shareholder meeting is to be held on June 28**

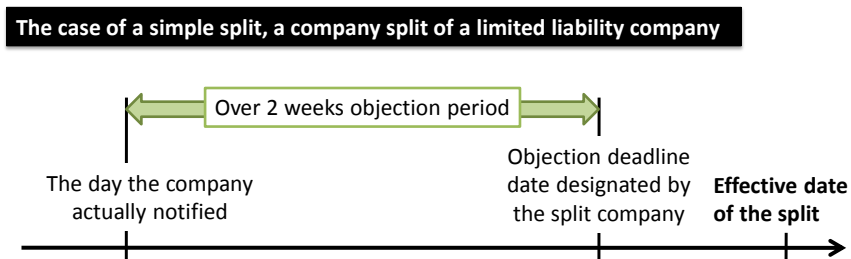
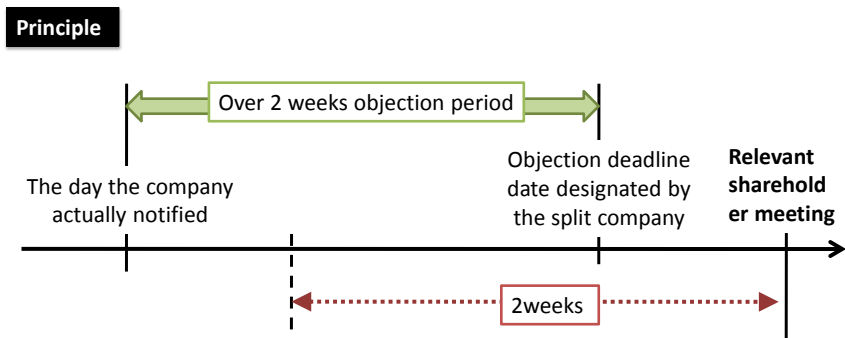


※In this case, the legal notice deadline date and the company's actual notice date coincidentally coincide.

**※Objection deadline date in a simple split**

In the case where the company split is carried out by the procedure of simple split, approval by the shareholders meeting to split contract is not required, so when the split company decides the objection deadline, the date of the shareholders meeting cannot be based on Paragraph 1 and Paragraph 2 of Article 4 of the Labor Contract Succession Act. For this reason, there is the provision of revisions concerning the application of these provisions, so the objection deadline date limits to the day before the day on which the company split becomes effective as stated in the split contract, etc. The same applies to the objection filed pursuant to Paragraph 1 of Article 5 of the Labor Contract Succession Act.

<Figure About the objection deadline date>



Q71 Why must a worker file an objection in "writing"?

A71 Filing objections by certain workers cause legal effects contrary to the contents of split contracts, etc. created by the split company. For this reason, it is obliged to file objections in writing so that they can ensure that the split company has the fact that the worker has offered the objection and it prevents the situation of the workers from becoming unstable due to conflict after the company split.

Q72 Is it possible to give up the right to file an objection in advance by worker's agreements ?

A72 Since the worker judges whether s/he can file an objection or not with the provisions of the Labor Contract Succession Act after the notice from the split company has arrived, it is not possible to let them give up the right to file an objection in advance.

Q73 Unless Notices of Article 2 of the Labor Contract Succession Act are issued from a split company, is it true the worker cannot file an objection ?

A73 Even if Notices of Article 2 are not given by the split company, for example, based on the description of the split contract, etc. placed in the head office and accurate information from the labor union, etc., the worker can legally file an objection.

Q74 In the form of objection under Paragraph 1 of Article 4 of the Labor Contract Succession Act, why is the worker not required give a statement that s/he is a Primarily Engaged Worker ?

A74 In this case, it is because it is unnecessary to describe so-called primary-not primary judgment, since recognition is consistent between an employee and an employer.

In other words, from the perspective of the employee, it is obvious that in case of filing objections pursuant to Paragraph 1 of Article 4 of the Labor Contract Succession Act, the workers recognize that they are Primarily Engaged Workers in the business subject to succeeded.

Also, from the viewpoint of the employer's side, as the notice pursuant to Paragraph 1 of Article 2 of the Labor Contract Succession Act, etc. is being given to workers which does not mention the succession of their labor contracts in the split contract, it is obvious that the split company shall notify the workers that they are not engaged in business subject to succession after knowing that they are Primarily Engaged Workers (it is separated from the work which was primarily engaged in the past). For this reason, it is deemed unnecessary to mention so-called primary-not primary judgment in the document of the objection request.

Q75 In the form of objection under Paragraph 1 of Article 5 of the Labor Contract Succession Act, why is the worker required to give a statement that s/he is a Primarily Engaged Worker ?

A75 When a worker files an objection pursuant to Paragraph 1 of Article 5 of the Labor Contract Succession Act, unlike the case of filing an objection pursuant to Paragraph 1 of Article 4, both cases can happen where an employee and an employer agree on so-called primary-not primary judgment and do not agree.

In other words, if the split company determines that the worker is a Primarily Engaged Worker (Item 1 of Paragraph 1 of Article 2 of the Labor Contract Succession Act) and the worker considers himself/herself to be a "Secondarily Engaged Worker", it is expected that the recognition of both sides will be incorrect.

In the case where the primary-not primary judgment is inconsistent between an employee and an employer, it is urgent to resolve the difference of the viewpoint, and it is appropriate to clarify that the worker himself/herself thinks that s/he is a Primarily Engaged Worker. For this reason, such statement is requested.

Q76 Is it possible for a split company to request the reasons for filing an objection to workers ?

A76 Although it is possible in hopes of the worker voluntarily responding, the existence or nonexistence of the statement of the reasons, etc. does not affect the effectiveness of the objection filing with the provisions of the Labor Contract Succession Act at all.

Q77 When the worker files an objection by mail, by what time should it be sent to the split company ?

A77 In the case of filing an objection with the provisions of the Labor Contract Succession Act by mail, etc., the validity arises from the time of reaching the counterpart pursuant to the provisions of Paragraph 1 of Article 97 of Civil Code, so it is necessary to arrive at the split company by the deadline date indicated by the split company at the time of notice to the workers with the provisions of Paragraph 1 of Article 2 of the Labor Contract Succession Act.

Therefore, when dispatching a file document of an objection under the Labor

Contract Succession Act, it is necessary for the worker to pay sufficient attention so that the document will reach the split company by the deadline date.

Q78 Can a worker file an objection via e-mail ?

A78 As with Notice of Article 2, it is stipulated that objections with the provisions of the Labor Contract Succession Act should also be made in writing, so it is not possible to do so using e-mail, a website, floppy disk or other electronic medium.

In addition, because the signature, etc. of the worker who submits the objection is not included in the objection filing under the Labor Contract Succession Act, it is accepted by printing by facsimile on the paper provided in the fax machine within the control area of the opponent (The worker is responsible for the danger associated with the malfunction of the fax machine.).

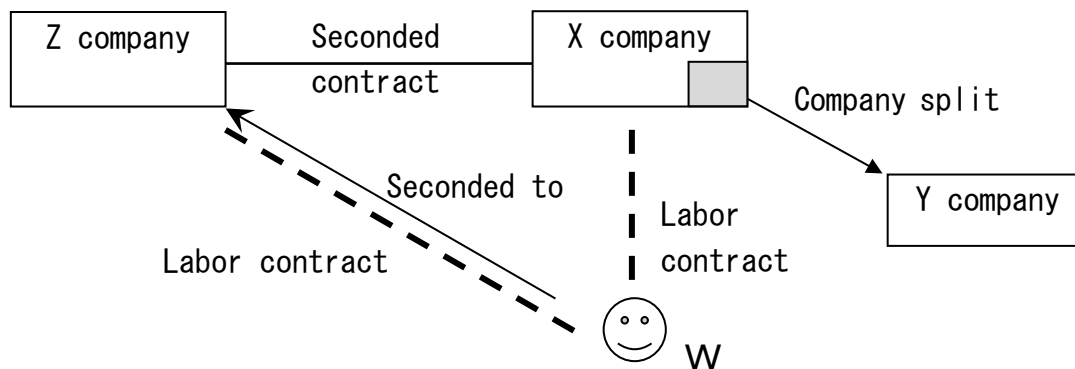
Q79 After not receiving notice from a split company legally, if not able to file an objection under Paragraph 1 of Article 5 of the Labor Contract Succession Act, what should the worker do ?

A79 Workers can seek conservation or confirmation of the position as a worker employed by a split company, by consultation with a split company, etc. before the company split and even after the company split. S/he can also ask the successor company, etc. to confirm that s/he is not an employed worker.

## Chapter 10 Other (in case of secondment)

Q80 When the split company (X company) splits a division into another company (Y company) by a company split, how is the worker (W) who is temporarily seconded from X company to another company (Z company) treated under the Labor Contract Succession Act ?

A80



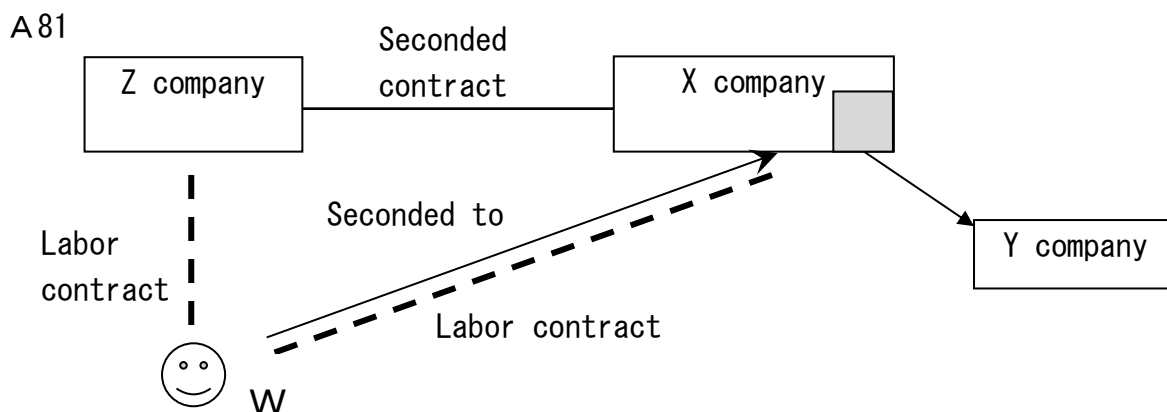
① Although W is working at Z company, is it possible for him/her to be succeeded to Y company by a company split?

→Unlike employment transfer, workers are engaged in the work of the company which they are seconded to, while being registered at the company they are seconded from. Therefore, as long as the labor contract between W and X company continues, if it is included in the rights and obligations related to the business split from X company, it can be succeeded to Y company by putting it into the split contract, etc.

②Is it necessary that X company takes the procedures of the Labor Contract Succession Act to W ? Also, regarding W, how do they judge whether the worker is a Primarily Engaged Worker or not?

→Since W is employed by X company, procedures pursuant to the Labor Contract Succession Act are necessary. Whether W, who is temporarily seconded to Z company when the split contract is made, is a Primarily Engaged Worker or not depends on considering various circumstances such as what department W belongs to during the temporary seconded period and what department W is to go back to after the temporary seconded period.

Q81 When the split company (X company) splits a division into another company (Y company) by a company split, regarding the worker (W) who is temporarily seconded from another company (Z company) to X company, is it necessary that X company takes the procedures pursuant to the Labor Contract Succession Act to W ?



① Although W has been seconded from another company and is working at X company, is it possible for him/her to be succeeded to Y company by a company split?

→ There is a seconded contract about W between Z company, which W is seconded from, and X company, which W is seconded to. Therefore, if the contract is included in the rights and obligations related to the business split from X company, it can be succeeded to Y company by putting it into a split contract, etc.

② Is it necessary that X company takes the procedures of the Labor Contract Succession Act to W?

→ Generally, it is necessary. In the case of secondment, it is generally considered that the worker is in a "double contractual relationship", a new labor contract is made between him/her and the company which s/he is seconded to while maintaining his/her position as an employee of the company which s/he is seconded from, and s/he is working as an employee of the company which s/he is seconded to. Therefore, in general, there is also a labor contract between W, who

is temporarily seconded from Z company to X company, and a split company X company, so W is an "employee" of X company. In the event that s/he is primarily engaged in the succeeded business, the X company has to make notice under Paragraph 1 of Article 2 of the Labor Contract Succession Act.

However, for cases where it is not recognized that a labor contract is made between W and X company, such as where wage determination and payment are all done by Z company before being seconded, W is not an "employee" of X company.

Please also refer to ③.

- ③ W has become subject to the company split of X company, are there any necessary procedures in addition to ② ?

→ Since W is a seconded worker from Z company, the consent of W on secondment is separately required. Regarding the consent of workers on secondment, there are cases where comprehensive consent is enough such as collective agreements or company regulations etc. without an individual/concrete consent, but in such a case, the theory has become influential that "it is necessary that the secondment is daily between closely related companies, and wages, working conditions at the destination, the period of secondment, how to return, etc. are maintained in consideration of the interests of workers in the direction of the employee and workers accepted it as a means of normal personnel change at the company".

Even if there is a provision on the seconded in collective agreements or company regulations, the change of the destination is a change of the counterparty of labor contract and in the case of further ordering the employee to be seconded to another destination need conservative procedures, such as obtaining consent from the workers concerned.

In addition, if there is not a provision on the seconded in collective bargaining agreements or employment regulations, etc., it is not enough to just mention it in a split contract etc., but it is necessary to obtain consent from the worker himself/herself.

- ④ W was primarily engaged in business to be split at X company, but in this company split, W' s labor contract was not succeeded to Y company. Can W file an objection under Article 4 of the Labor Contract Succession Act against X company ?



→ If W falls under “employee” of X company in the Labor Contract Succession Act, the Labor Contract Succession Act applies to W (refer to ②). Therefore, in the above case, W can file an objection against X company with the provisions of Paragraph 1 of Article 4 of the Labor Contract Succession Act.

## Part 3 Assignment of Business / Mergers

Q82 How is a labor contract succeeded to the assignee company at the time of assignment of business ?

A82 The succession of the rights and obligation relations at the time of assignment of business is, in legal nature, a form of specified succession and it is necessary for the assignor company, etc. to obtain consent for succession of labor contracts to the assignee company, etc. individually from the workers subject to succession with the provisions of Paragraph 1 of Article 625 of Civil Code.

Q 83 What should be discussed in obtaining consent of workers subject to succession ?

A83 From the viewpoint of smooth organization restructuring and protection of workers, in order to obtain consent based on their true intentions subject to succession, it is appropriate for the assignor company to consult with the workers with considerations of the following matters.

① To consult about the overall situation relating to the assignment of business concerned (including matters concerning the prospect of assignor company, etc. and the assignee company, etc. performance of obligations), the overview of the assignee companies, etc. and work conditions (including the operations they are scheduled to engaged in, workplace, and other employment details), etc.

② In particular, when the assignor company, etc. makes some change in the

working conditions of the workers subject to succession and succeeds them to the assignee company, etc., it is necessary to obtain the consent of that worker.

③ If workers individually select a labor union as a proxy pertaining to all or a part of the consultations pursuant to the provisions of the Civil Code, the assignor company, etc. shall negotiate with the labor union in good faith.

④ Regarding subject matters of collective bargaining prescribed in Article 6 of the Labor Union Act concerning work conditions of workers, the assignor company, etc. may not refuse a lawful request for collective bargaining made by the labor union pertaining to the relevant assignment of business.

⑤ Leaving plenty of time to ensure sufficient consultation to obtain the consent of workers subject to succession on the basis of their true intentions.

⑥ If the assignor company, etc. has obtained the consent of workers subject to succession by intentionally providing false information to such workers, the workers may rescind their manifestation of intention pursuant to the provisions of Paragraph 1 of Article 96 of the Civil Code.

Q 84 How soon should the assignor company consult with workers subject to succession?

A84 It is appropriate for the assignor company, etc. to leave plenty of time to ensure sufficient consultation to obtain the consent of workers on the basis of their true intentions.

Q85 Is it possible to dismiss a worker for reasons of business assignment alone ?

A85 The legal principle of precedent concerning dismissal for the reason of reorganization applies to cases of dismissal based on assignment of business. For this reason, if dismissal lacks objectively reasonable grounds (e. g. where the dismissal of a worker subject to succession is only based on a transfer of the business the worker has engaged in) and is not considered to be appropriate in general societal terms, such dismissal is abuse of the right to dismissal, so it will be treated as invalid pursuant to the provision of Article 16 of the Labor Contracts Act.

This also applies to dismissal only on the basis that the worker subject

to succession does not consent to his/her labor contract being succeeded to by the assignee company, etc.

In this type of case, it is necessary for the assignor company, etc. to take measures sufficient to maintain the employment relationship with the relevant worker subject to succession, such as reassigning the worker to a business division other than the division subject to the assignment of business.

Q86 Is it possible for the assignor company, etc. to select the workers subject to succession among the divisions subject to the assignment of business?

A86 The assignor company, etc. can select the workers subject to succession among the divisions subject to the assignment of business. In this case, it is necessary for the assignor company, etc. and assignee company etc. not to commit any unfair labor practices such as treating a labor union member in a disadvantage manner, or any other illegal act.

Q87 What kind of court precedents are involved in the presence or absence of succession to labor contracts and changing of working conditions in assignment of business ?

A87 In relation to the presence or absence of succession to labor contracts and changing of working conditions in assignment of business, it is important to note that, in court precedents, relief has been granted according to the individual cases; for example, the handover of workers who had once been excluded from succession was allowed by finding an implied agreement on succession to their labor contracts, or by employing the doctrine of so-called piercing the corporate veil, or the doctrine of so-called contravention of public policy and morality.

Q88 Is it necessary to consult with labor unions, etc. on business assignment ?

A88 From the viewpoint of smooth organization restructuring and protection of

workers, it is appropriate for the assignor company, etc. to consult with the labor union, etc. in order to obtain understanding and cooperation of its employees with regard to the transfer.

Concrete means for obtaining understanding and cooperation of workers are to consult with a labor union organized by the majority of workers (in the absence of such labor union, the person representing the majority of the workers) and other equivalent means.

Further, “other equivalent means” include consultations, irrespective of the names thereof, which are held on occasions where it is possible to secure faithful consultations on equal footing between labor and management in order to obtain the understanding and cooperation of workers.

Q89 What should the assignor company endeavor to consult with the labor unions, etc. about ?

A89 The assignor company, etc. should endeavor to obtain understanding and cooperation of its employees with regard to matter such as the following.

- ① Background of and reasons for assignment of business
- ② Matters concerning the prospect of assignor company, etc. and the assignee company, etc. performance of obligations after the effective date of assignment of business
- ③ Criteria for judging whether or not s/he corresponds to a worker subject to succession
- ④ Matters on succession to collective agreements
- ⑤ Procedures for resolving labor relations problems between labor unions or workers and assignor companies, etc., or assignee companies, etc. in assignment of business.

Q90 How soon should the assignor company endeavor to consult with labor unions, etc. ?

A90 Consultation with labor unions, etc. should commence at the latest before the start of acceptance separately from workers subject to succession, and should be arbitrarily implemented thereafter as required.

Q91 What is the relationship between consultation with labor unions and the rights to collective bargaining under the Labor Union Act ?

A91 With regard to the subject matters of the collective bargaining prescribed in Article 6 of the Labor Union Act in association with assignment of business, which include the working conditions, etc. of workers, the assignor company, etc. cannot refuse a lawful request for legitimate collective bargaining from a labor union in relation to such assignment of business on the grounds that the above procedures have already been implemented.

Also, if a request for collective bargaining is made pertaining to the matters from ① to ④ of Answer 89, the assignor company, etc. is required to negotiate with the relevant labor union in good faith.

Q92 What is the scope of "employer" under the Labor Union Act as parties to collective bargaining ?

A92 Refer to Answer 15-2.

Q93 How are labor contracts handled when merging ?

A93 The surviving company, etc. comprehensively succeeds rights and obligations of the company disappearing due to the merger and its workers, so it takes over labor contracts of workers comprehensively.

For this reason, it is necessary to note that the working conditions stipulated in such labor contracts will be maintained as they are.