

4. Labor Law

The Revision of the Law concerning Stabilization of Employment of Older Persons

Promulgated on June 17, 1994. Ch. 34. Effective as of July 1, 1994.

[Background for the Revision]

In Japan, the population rate of older persons has been increasing rapidly due to the improvement of average life span and a decrease in the birth rate. As the result, the rate reached 14%, and Japan came to be an “aged society” in 1995. Due to this population change, the labor force also continues to be older. Therefore, in terms of effective use of the older labor force and reduction of the social welfare cost, the employment policy for older persons was reconsidered and the relevant law was revised in 1994. At the same time, we have to note that in 1994 economic conditions caused the revision of pension-related laws to raise the age of eligibility for receiving a full pension from 60 to 65 in stages.

In Japan, older people want to continue working: according to the inquiry of the Management and Coordination Agency, approximately 60% of all workers express their desire to continue working until at least 65 years of age. When the Ministry of Labor researched the older non-working persons, above half of them want to work, and the major reason for those wishes is “economic”. On the other hand, the demand for the older persons is very low: for persons of 60–64 years old, the unemployment rate is as high as 5.7%, while the rate of total work force is 3.0% (as of January 1995); the ratio job openings to job applicants of the same age group is extremely low (8 openings for every 100 applications).

There is one change in the older workers’ employment. It is the constant raising of the fixed retirement age. In 1980, only 40% of all employers who have fixed the retirement age fixed the age at 60 or beyond, and this rate is the same as the rate of the employers who fixed the age at 55 or below. The number of the employers who fix

the retirement age at 60 or beyond has been increasing, and, in 1994 it increased to 84% of the total. However, there are still few employers who have established a method to provide jobs to any older employee who is under 65 and wishes a job.

Under such circumstances, the provision of employment to older persons is most essential for the welfare of the older persons—especially to offer employment opportunities to older persons until they reach the age of 65.

[Main Points of the Revision]

(1) **Obligation of Employers to Make the Retirement Age 60 (Article 4, effective as of April 1, 1998)**

The previous Law provided that the employer “shall endeavor to make the retirement age not below 60”; that the Labor Minister may request an employer who has fixed a retirement age below 60 to raise the retirement age to 60 or over; and that the Minister may institute various administrative measures, including ordering the employer to draft a plan to raise the retirement age (Articles 4–4-4). As mentioned above, this system has been effective and the number of employers who fix their retirement age at 60 or over has reached 80%. Under the new Law, it becomes “the obligation of employers” not to make the retirement age below 60 (Article 4). The term “obligation” means that in case of violation, only the related work rules or collective agreements will be void, and that there should be no retirement age set in the rules or agreements. The reason for this revision is that in order to offer employment opportunities to older persons until age 65, it is necessary to establish and promote the retirement age of 60 at least. It does not seem burdensome to do so, because many companies already make their retirement age 60 or over. The Law has a transition period so that the companies who still have a retirement age below 60 can easily raise their retirement age to 60. That is, the effective date of this provision is April 1, 1998. When it becomes effective, the Labor Ministry will be able to make an ordinance with some exemptions.

(2) **The Plan for the Introduction of a Continued Employment System (Articles 4-5 and 4-6, effective as of April 1, 1995, which will**

be revised as Articles 4-2 and 4-3 as of April 1, 1998).

Even if the age 60 retirement becomes compulsory, an uncomfortable situation will continue for each employee until 65 years old. Then, the new Law provides a step-by-step program for employers to continue employing older workers until 65 who wish to continue working. For this purpose, the Labor Minister may recommend employers to develop plans for the introduction or improvement of their strategies to continue employing older persons or make recommendations for the revision or performance of those plans. The previous Law also provided that employers should endeavor to continue employing older workers until 65 (Article 4-5), but as it did not have any concrete administrative mechanism, effective results could not be expected. Under the new Law, a concrete administrative mechanism is provided, and the expansion of employment opportunities for older workers until 65 has more substance.

(3) The Exception for the Dispatched Worker⁽¹⁾ (Articles 11-3 and 11-4, effective as of November 1, 1994)

Older persons in their sixties are very different in their physical abilities or health, and some of them wish temporary and part time work or other non-traditional work schedule of their choice. In order to satisfy their various wishes, it is suitable for them to be dispatched workers. However, the Workers Dispatching Law is limited to sixteen kinds of businesses to which workers can be legally dispatched. Under the new Law, therefore, as far as older workers of 60 or over are concerned, with a few exceptions, the limitations are not applied.

(4) Various Organizations for Assistance (Articles 44-3 and 44-6, effective as of July 1, 1994)

The previous Law provided for the Center for the Stabilization of Employment of Older Persons, which supplies lectures, information, and etc. to employers or any other concerned persons (Article 24 et seq.). The new Law establishes assistance for the older wor-

(1) " 'Worker dispatching' means causing a worker or workers employed by one person to be engaged in work for another person under the direction of the latter, while maintaining their employment relationship with the former, but excluding cases where the former agrees with the latter that such worker or workers shall be employed by the latter." The Worker Dispatching Law, Article 2, No. 1.

kers. First, the Labor Minister may appoint certain benevolent corporations, to be the Center for Effective Use of Older Persons' Occupational Experiences, when the corporations make and supply the employment opportunity of temporary jobs for older persons of 60 or over, with effective use of the older persons' occupational experiences (Article 44-2). Additionally, the Labor Minister may appoint other benevolent corporations, to be the National Center for Effective Use of Older Persons' Occupational Experience, through which the corporations can adequately develop the Center for Effective Use of Older Persons' Occupation Experiences (Article 44-6).

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5. International Law

Treaties and Agreements

[Multilateral]

Amendments to Articles 6 and 7 of the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, adopted at Regina on May 28, 1987, accepted on April 29, 1994, entered into force on May 1, 1994.

Convention on the Rights of the Child, adopted by General Assembly of the United Nations on November 20, 1989, accepted on May 16, 1994, entered into force on May 22, 1994.

Convention for the Conservation of Southern Bluefin Tuna, made in Canberra on May 10, 1993, accepted on May 19, 1994, entered into force on May 20, 1994.

United Nations Framework Convention on Climate Change, made in New York on May 9, 1992, accepted on June 21, 1994, entered into force on March 21, 1994.

Protocol to the International Convention on Civil Liability for