7. Labor Law

The 1998 Amendment to the Labor Standards Law.
Law No. 112, September 30, 1998 (effective on April 1, 1999)

Background:

Labor law in Japan has been experiencing a period of legislative reform since 1985. The reforms may be viewed as a movement to adjust the previous labor law system, which was established in the aftermath of World War II and which was focused on factory workers, to present circumstances, in which the structure of Japan has vastly changed and styles of work have become very varied. This Amendment to the Labor Standard Law (LSL) can be placed within this movement.

There is no doubt that one aspect of the movement towards amendment has been that of carrying out a deregulation policy, as in the cases of recent amendments to the Employment Security Law and the Worker Dispatching Law. If we examine it more precisely, however, we find it is misleading to analyze this movement only in the context of the deregulation policy. Many points in the Amendment reflect the 1993 proposal "Regarding the future of law of the labor contract" drawn up by the Workshop on the Labor Standards Law under the Ministry of Labor.

Main Provisions:

(1) Exception to the upper-limit on the labor contract term

Article 14 of the LSL stipulates that, when setting the labor contract term, the upper-limit shall be one year. Since the number of cases of project-style work is increasing, the Amendment to the LSL establishes the exception according to which, in the case of high-level specialists, the upper-limit of the labor contract term shall be 3 years. This provision also applies to the case of high-level specialists being involved in temporary work necessary to set up or terminate an enterprise. In order to prevent abuse of this upper-limit, two safeguards are provided. First, "high-level specialists" are defined as people who, for

example, have completed graduate school. Secondly, renewal as a 3-year contract is not allowed. On the other hand, for workers re-hired after retirement, contracts or re-contracts with people over 60 years old up to 3 years is allowed.

(2) Specification of working conditions

The Amendment enlarged the range of working conditions which require specification under Article 15. Previously only wages needed to be specified on paper. Now, specification is required for the labor contract, workplace and the work to be engaged in, hours of work, work outside the job description, rest periods, rest days and leave, matters regarding working shifts, and discharge. For the employer's convenience, the Ministry of Labor has issued the model information papers on working conditions.

(3) Statement at time of discharge

The reason of discharge has been added to the items to be stated in a document at the time of discharge (Art. 22). Included in such reasons are retirement, term limit, resignation for private reasons, dismissal, and so on. In the case of dismissal, it is necessary to specify the reason for the dismissal.

(4) Working-hours averaging system

Regarding the working-hours averaging system per year, in order to allow more flexibility, the Amendment enlarged the range of workers to whom the system applies, and reduced the term to which it applies. And, in order to protect workers, it established a limit to the working day and modified the limit of continual working days. Regarding the working-hours averaging system per month, it allows the adoption not only by work rules but also by agreement on paper with the representatives of the greater part of workers.

(5) Simultaneous leave

Regarding the simultaneous leave provided in Article 34, it allows the suspension of its application by agreement on paper with the representatives of the greater part of workers.

(6) Overtime work

It is provided that the Minister of Labor set the standard on an upper time limit for overtime work. The parties of agreements to overtime work must follow this standard as far as possible. This standard

doesn't have a binding effect. The upper-limit of overtime work being set by the Minister of Labor is 15 hours per week, 45 hours per month, and 360 hours per year.

(7) Discretionary work

Regarding white-color work, such as planning in a workplace which has the function of a main office, a new kind of discretionary work has been introduced. The procedure to adopt a new form of discretionary work is complex: new discretionary work can be adopted only by the unanimous decision of a joint committee, in which employers and employees investigate and discuss issues concerning working conditions in the workplace, such as wages and work time, and employees make suggestions to employers. Half of the members of the joint committee must be employees. Regarding the members of the worker-side, it is necessary that the representatives of the greater part of the members nominate them, and that they gain the confidence of the workers through voting by all the workers. Whether there is an application of discretionary work or not depends on the consent of each worker.

(8) Others

Workers who work successively for over 3 years and 6 months are given 2 days more annual leave per year. The Amendment abolished the limitation on the subjects of supplementary work rules. Directors of labor departments of local governments can give necessary advice and instruction on demand, in order to settle conflicts between labor and management. Regarding the duty to inform workers of the statutes and rules, the agreement between labor and management and the decision of the joint committees are added to subjects to be noticed. Regarding the method of notice, delivery by paper or personal computer is allowed.

Editorial Note:

It could be said that the main character of the 1998 Amendment to the LSL is to make the legal system more suited to the variety of styles of work, and to prevent conflicts by clarifying working conditions. From this understanding, we can appraise the Amendment as follows.

Because the relief of the upper-limit on contract terms is accompanied by very strict regulations, it will not be widely used. In future, the question of whether such regulations as set the upper-limit as 1 year more generally are reasonable or not should be examined. It is expected that the specification of the working conditions and statement about the reasons for discharging will play an important role in preventing or settling conflicts. The procedure to adopt discretionary work is so complex that it is uncertain how often this scheme will be used. This needs to be observed from now on. The law reforms concerning individual labor relations must be continued. The realization of labor contract law such as the enactment of a dismissal law is required.

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8. International Law

Treaties and Other International Agreements

Multilateral:

Date of Entering into Force with Respect to Japan (Date of adoption)	Treaties and Other International Agreements
Jan. 14, 1998 (Oct. 4, 1991)	Protocol on Environmental Protection to the Antarctic Treaty
Feb. 5, 1998 (Apr. 15, 1997)	Fourth Protocol to the General Agreement on Trade in Services
Jul. 23, 1998 (Mar. 10, 1998)	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
Jul. 23, 1998 (Mar. 10, 1998)	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf