

to cope with such circumstances. The reason is the bounds of the option models. The option models are so obscure that it is very difficult to calculate them exactly. It also means that it is difficult to decide how the issuance of the warrants will influence the share value. As a result, the issuance of the warrants may entrench on the property rights of the shareholders and negatively influence the pricing in the security market. But it must be kept in mind that since the obscurity of the option models does not always bring the result that they should not be used. Practically, it seems to be important for the lawyers, such as the judges and attorneys, to deliberately adopt the values of the stock options that other private institutions calculate, taking into the consideration the interests of the existing shareholders.

Finally, I will briefly refer to the unfair issuance of the warrants. The warrants issuance to defend takeovers is likely to apply to the unfair issuance. Recently, it has been strongly insisted that whether the management establish the mechanisms to prevent the arbitral defense for takeovers or whether the shareholders who are not involved in takeovers are caused damages should be decided from the viewpoint of the validity and rationality of the defense tactics.

7. Labor Law

Partial Amendments to the Equal Employment Opportunity Act and the Labor Standard Law

Law No. 82, June 21, 2006 (Effective on April 1, 2007)

Background:

Japan faces the advent of a society with a declining population accompanied by a rapid decline in the birth rate and a rapid increase in the aged population rate at the same time. So, Japan is seeking rapidly to realize an environment in society where individuals can utilize their competencies to the maximum.

Under these circumstances, in the area of employment, the importance of the facilitation of the actualization of such a society where individ-

uals can utilize their competencies without suffering sexual discrimination and maternity is respected as well as a work-life balance is realized.

The Ministry of Health, Labour and Welfare has organized a study panel and started discussion on plans to promote Equal Employment Opportunity further since September 2004. In December 2005, the panel proposed recommendations in regard to future Equal Employment Opportunity plans.

Based on the recommendation, the Ministry submitted a bill for Partial Amendments of the Act and the Labour Standard Law to the Diet in the 164th normal session on March 7, 2006, and the amendments were promulgated on June 21, and enforced on April 1, 2007.

Outline:

Partial amendments to the Equal Employment Opportunity Act

1. No discrimination towards either gender

Employers shall give both genders equal opportunities in recruiting and hiring (Article 5).

Before the amendment, the Act forbade favorable treatment to females. In other words, discriminatory treatment against males from the male side were forbidden as discrimination against females. After the amendment, discriminatory treatment against both genders is forbidden.

2. Clarification and addition of stages in employment where discriminatory treatment is forbidden

Discriminatory treatment due to gender shall be forbidden in various stages in employment, such as the deployment of the workforce (including the assignment of jobs, and empowerment), promotion, demotion, development & training, benefits defined by departmental regulations, job type, change of employment category, encouragement to leave, age of retirement, termination of employment, and renewal of employment contract (Article 6).

Before the amendment, only recruiting, hiring (Article 5) and the deployment of the workforce, promotion, development & training (Article 6) had been defined as being stages where discriminatory treatment against females was banned. After the amendment, new stages are added to existing stages in employment and what the word “deployment” means is clarified.

3. No indirect discrimination

Employers shall not execute any treatment that is not caused by reasons including factors that are related to the genders of employees which are defined by departmental regulation as treatment that has a possibility to cause substantial gender discrimination, unless treatment shall have rational reasons in regard to the nature of the case job (Article 7).

In recent years, outright discriminatory conduct has been observed to decrease, but facts in specific cases have become complex, and how to tackle discriminatory cases has become a challenge in the sense that such cases have different patterns compared with the past typical cases. For example, in hiring, employers impose some conditions which are not relevant to jobs that females do not satisfy. Such substantial discrimination and disadvantage to females, which may not be intentional misconduct or do not seem to be different treatment at a glance between male and female, are observed to exist in certain policies or practices.

In the Ministry's department regulations, at the moment, "Condition of height, weight or physical capacity imposed in recruiting and hiring", "Practices to impose acceptance of location change around the country as a hiring condition under the policy of workforce management that is operated according to a job course in recruiting and the hiring of exempt employees or candidates to be exempt employees" and "Practices to impose location change experience in promotion" are defined as indirect discrimination.

4. No unfair treatment due to pregnancy

4-1. Employers shall not set rules for female employees as a reason for leaving companies because of marriage, pregnancy and childbirth. 4-2. Employers shall not provide female employees with any unfair treatment like the termination of employment because she intends to execute her right defined in the department regulations in regard to pregnancy, child birth and maternity leave. 4-3. Termination of employment during pregnancy and within one year after child birth shall be invalid unless employers shall prove the termination is not due to pregnancy or child birth (Article 9).

Under the Act before the amendment, termination of an employment contract due to pregnancy, child birth and having child birth leave have been also invalid. In addition to that, after the amendment, some

treatment, like the recommendation to leave a company or a change of employment type due to the reasons derived from motherhood, are prohibited clearly as a disadvantage. This change could be said to be a part of the improvement of the work environment accompanied with the recent increase of cases where female employees receive disadvantageous treatment.

5. Measures to prevent sexual harassment

Employers shall take necessary measures in regard to employee relations/employee management so that employees who take some actions responding to sexual harassment caused in the work place shall not be forced to have disadvantages in employment conditions and to have worse work environments (Article 11).

Before the amendment, employers must consider to take measures to prevent sexual harassment. The revised Act imposes on all employers the duty to take measures to prevent it as mandatory. At the same time, male employees are subject to protection.

6. Measures to promote effectively positive action

Employers can consult the government and get assistance from the government in implementing some measures to improve situations where employers find challenges to secure equal employment opportunities and equal treatment in the employment area (Article 14).

7. Measures to secure execution of the Equal Employment Opportunity

Names of companies as employers would be open to the public if employers that are against the Act do not follow the order in regard to sexual harassment or health care for motherhood (Article 30).

Before the amendment, the publication of company names that were against the Act and did not follow the order also had been regulated. This amendment adds two cases where company names will be made public.

Partial Amendment of Labour Standard Law

The underground job (pit) work engaged in by females who have given childbirth within a period not exceeding one year and the dangerous work underground engaged in by females whose age are above eighteen years old shall be prohibited (Article 64-2).

Before the amendment, any underground jobs that were engaged in by females who were above eighteen were prohibited. The amendment

deregulates the rule based on a request from the employers' side.

Editorial Note:

1. In this amendment, the most significant point to be noted is to adapt the idea of indirect discrimination. Indirect discrimination is defined as “standards, including but not limited to rules, practices that seem to be neutral on the surface which give considerable disadvantage for either gender compared with the other gender and the case where standards are not recognized that have rationality and/or legitimacy, for example, the case that has no job related case.” However, the idea of indirect discrimination has yet to be accepted socially and a social consensus of what is to be recognized as being against the Act as indirect discrimination has yet to be formed. Considering these circumstances, the department regulation issued by The Ministry of Health, Labour and Welfare defines what actions of employers caused by non- gender related reasons are to be deemed as indirect discrimination under the Equal Employment Opportunity Act. Hence, besides actions defined as indirect discrimination by the department regulation, other actions taken by employers could be recognized as indirect discrimination when the Civil Law is applied referring to the doctrine of indirect discrimination.

In the future, actions to be defined in the department order should be revised and/or added proactively based on the tendency of judicial decisions formed by court cases, practices made by companies, enterprises.

2. The second point to be noted is that not only discriminatory treatment in the phases of recruiting and hiring, but also discriminatory treatment that occurs in several phases in employment are prohibited. Moreover, in addition to female employees, male employees become eligible to be covered. The execution of the Act could be said to be a step forward to the object of the Act.

3. The third point to be noted is that measures to be taken by employers become mandatory for employers in addition to the revision that made male employees become a target to be protected by the Act. But even after the amendment, no penalty is applied even if employers have taken no measure to prevent sexual harassment that is against the Act.

Also, the Act does not present any specific actions to be taken by employers. It is understood that litigation to require employers to take any

actions to prevent sexual harassment based on Article 11 are impossible.

8. International Law and Organizations

Multilateral:

Date Coming into Force with Respect to Japan	Date of Adoption	Treaties and Other International Agreements
Jan. 1, 2006	Oct.5, 2004	Seventh Additional Protocol to the Constitution of the Universal Postal Union
Jan. 1, 2006	Oct.5, 2004	General Regulations of the Universal Postal Union
Jan. 1, 2006	Oct.5, 2004	Universal Postal Convention
Jan. 1, 2006	Oct.5, 2004	Postal Payment Services Agreement
Feb. 3, 2006	June, 26, 1999	Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures
Apr. 20, 2006	Oct. 17, 2003	Convention for the Safeguarding of the Intangible Cultural Heritage
May 24, 2006	Nov. 28, 2005	Agreement on Duty-Free Treatment of Multi-Chip Integrated Circuits (MCPs)
June 19, 2006	Oct. 6, 1989	Protocol relating to an Amendment to Article 56 of the Convention on International Civil Aviation
Aug. 1, 2006	May 2, 1996	Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976
Aug. 11, 2006	June 24, 1986	Convention concerning Safety in the Use of Asbestos
Sep. 6, 2006	Aug. 4, 1995	Agreement for the Implementation of