



## Labor & Employment

### Japan's Ministry of Health, Labour and Welfare Requests Employer Associations to Prepare for the Conversion Rule

As April 1, 2018, will mark the fifth year since the "Rule on conversion of fixed-term employment to permanent employment" ("Conversion Rule") was enacted to stabilize the employment of fixed-term employees, an increasing number of eligible employees ("Eligible Employees") will soon begin applying for permanent employment contracts. Given the impending situation, the Ministry of Health, Labour and Welfare is advising employer associations such as the *Keidanren* (Japan Business Federation) to be well prepared for the incoming impact of the Conversion Rule.

The following is a brief overview of the Conversion Rule:

#### Requirements

- The combined contract term of two or more fixed-term employment contracts with the same employer exceeds five years.
- An Eligible Employee applies for a permanent employment agreement before the expiration of his or her fixed-term employment contract ("Last Contract") with which the combined contract term exceeds five years.

#### Effect

If an Eligible Employee makes a timely application, a permanent employment contract between the Eligible Employee and the employer will become effective the day following the expiration date of the Last Contract. The employment conditions of the permanent contract will be identical to those in the Last Contract, unless otherwise provided for in a collective agreement, work rules, or employment contract.

Since it will take some time to prepare for the Conversion Rule, we recommend that all employers promptly begin their preparations, including revising any applicable rules. In addition, employers should take into account that an employer may not legally refuse the renewal of an employment contract with an employee before he or she becomes an Eligible Employee.

## Privacy

### Supreme Court Issues Decision on Personal Information Leakage

The Supreme Court (Second Petty Bench) issued a decision on October 23, 2017, overruling an Osaka High Court original decision that had dismissed a claim for damages filed by a plaintiff, an individual who alleged that the leak of the plaintiff's personal information (including the plaintiff's name, date of birth, address, telephone number) possessed by the defendant, a correspondence education provider, caused the plaintiff mental distress. The Supreme Court remanded the case to the Osaka High Court for further action regarding the defendant's negligence, the plaintiff's mental damage and its degree, etc.

There are several judicial precedents affirming that plaintiffs may claim damages for infringement of their privacy rights due to personal information leakage. Some of the existing precedents support damage claims in the range of ¥5000–10,000 based on types of mental distress, such as anxiety, even without any proof of harassment or financial loss due to the misuse of personal information. By contrast, the Osaka

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#### TOKYO OFFICE CONTACTS

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[John C. Roebuck](#)

[Yuichiro Mori](#)

[Harukuni Ito](#)

[Kyosuke Katahira](#)

[Yuki Yoshida](#)

[Shinji Kadomatsu](#)

[Yusuke Hanada](#)

[Hiroyuki Fujimoto](#)

[Naoto Kosuge](#)

[Gregory H. Kikkawa](#)

[Hiroki Kikkawa](#)

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High Court's decision in the instant case had ruled that discomfort or anxiety alone was insufficient grounds for damages. The Supreme Court's recent decision overruled this decision and suggested the possibility that a court may recognize mental distress such as discomfort or anxiety as the basis for damages in cases of personal information leakage.

Due to the widespread adoption of technological developments including big data and the Internet of Things, we expect that the number of opportunities for companies to deal with large amounts of personal information will increase dramatically in the future and that the potential liability due to personal information leakage may be very large. Any company dealing with personal information in Japan should carefully review the Supreme Court's decision and the progress of the remanded trial, as well as reconsider the possible economic impact of, and countermeasures against, leaks of personal information.

## Intellectual Property

### First Registration of Sound Trademarks Consisting Only of Musical Elements

Since April 1, 2015, the Japan Patent Office ("JPO") has been accepting applications for certain new types of trademarks, including those consisting of sounds and colors in accordance with the Trademark Act as amended in 2014. Recently, the JPO accepted the registration of sound trademarks consisting only of musical elements such as melody, harmony, rhythm, tempo and tone (i.e., sound trademarks containing no language elements) for the first time. Any company using distinctive sound marks as part of its business may want to consider registering such trademarks as a way of enhancing its brand.

## Disputes

### Interim Proposal for the Amendment of the Civil Execution Act

On September 8, 2017, the Civil Execution Act Committee of the Legislative Council prepared the Interim Proposal for the Amendment of the Civil Execution Act ("Interim Proposal") and opened up the Interim Proposal for public comments until November 10, 2017. As mentioned in [October 2016 issue](#), there has been some concern as to whether the new system would cause financial institutions to disclose debtor information concerning deposit or savings accounts ("Accounts") because of the practical difficulty of securing the attachment of such Accounts. The Interim Proposal expressly prescribes that: (i) upon petition by a creditor, an execution court can obtain certain information from financial institutions regarding the existence of Accounts and other items necessary to petition the attachment of such Accounts; and (ii) the procedure would substantially follow the procedure used for property disclosure under the same act. Future discussions by the Legislative Council should be continuously monitored to see how the outline of the bill will be prepared after accounting for the public comments.

## General

### Enforcement Date of Private Residence Lodging Business Act Announced

On October 27, 2017, the Cabinet Order to Specify an Enforcement Date of the Private Residence Lodging Business Act was promulgated. The Private Residence Lodging Business Act will come into force on June 15, 2018. For details, please see [the July 2017 issue](#) of this newsletter.

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