



JAPAN LEGAL UPDATE

Antitrust

Japan Amends Guidelines for the Subcontract Act

The purpose of the "Act against Delay in Payment of Subcontract Proceeds, Etc. to Subcontractors" ("Subcontract Act") is to ensure the fairness of subcontracting transactions and to protect the interests of subcontractors by preventing large companies with capital exceeding a certain amount ("Subcontracting Companies") from coercing small- and medium-size subcontractors into unfair transactions. Four types of transactions are subject to the Subcontract Act—manufacturing contracts, repair contracts, information-based product creation contracts, and service contracts. Subcontracting Companies are prohibited from engaging in 11 types of trade practices with respect to these four types of transactions. The Japan Fair Trade Commission issues guidelines for the Subcontract Act ("Guidelines") that provide detailed interpretations and specific examples of prohibited trade practices.

On December 14, 2016, the Guidelines were amended in order to further strengthen enforcement of the Subcontract Act. One of the major amendments was to significantly increase the specific examples of prohibited trade practices from 66 to 141 based on past enforcement and hearings.

For instance, one of the newly added examples of a prohibited trade practice is the prohibition on Subcontracting Companies requiring subcontractors to reduce prices without reasonable grounds in order to achieve the Subcontracting Companies' own purposes, such as by requiring a subcontractor to "Reduce the production cost by X percent in Y number of years" (corresponding to an "unfair demand for price cuts," one of the prohibitions under the Subcontract Act).

Besides the above-mentioned significant increase in the number of specific examples, the Guidelines also specify additional trade practices to which Subcontracting Companies should pay special attention, such as price reductions in the case of retroactive application of newly lowered unit prices. Further, the Guidelines have been amended to provide additional examples of transactions targeted by the Subcontract Act.

Through this amendment, it is expected that there will be even stronger enforcement of the Subcontract Act, and therefore companies that regularly engage in subcontracting transactions will need to verify, using the amended Guidelines, that their transactions and trade practices do not violate the Subcontract Act.

Labor

Publication of Draft Guidelines for "Equal Pay for Equal Work"

The Japanese government is considering introducing legislation concerning the so-called "equal pay for equal work" rule for the purpose of improving the working conditions of non-regular employees. As part of this process, on December 20, 2016, the draft guidelines for equal pay for equal work ("Draft Guidelines") were issued by the Council for the Realization of Work Style Reform held at the Prime Minister's Office.

The Draft Guidelines provide interpretations as to which differences in working conditions between regular employees and non-regular employees are considered reasonable and which differences are considered unreasonable. For typical situations, the Draft Guidelines contain two sets of specific examples: situations where there are no legal issues and situations that do have legal issues. For instance, the examples of situations with no legal issues include a case in which a company pays bonuses to regular employees who are responsible for meeting production efficiency or quality targets but subjects them to penalties if they fail to achieve those targets, while the company does not pay bonuses to non-regular employees on whom the company does not impose such commitments or penalties. On the other hand, an example of a situation that would involve legal issues is a case in which a company pays bonuses to all regular employees irrespective of their duties or contributions, while the company does not pay bonuses to non-regular employees.

Although the Draft Guidelines are currently no more than a "draft," it is expected that going forward, the drafting of the amendment to the law will be based on the Draft Guidelines; in other words, the content of the Draft Guidelines will likely be incorporated into a bill. Accordingly, companies that employ both regular employees and non-regular employees should begin to consider whether or not there are any unreasonable differences in working conditions between those categories of employees in light of the Draft Guidelines and should begin to investigate how to eliminate any such unreasonable differences that do exist.

Intellectual Property

Amendment to the Ordinance for Enforcement of the Trademark Act (January 1, 2017)

An application for trademark registration requires the classification of designated goods and services. The classification of certain goods has been changed for reasons including the amendment of the International Classification of Goods and Services and changes in business conditions. For example, under the amendment, "ski wax," which was previously classified under Class 28, has been moved to Class 4, and "smartphone" has been newly added to Class 9. Companies will need to confirm the new classification of goods for their applications for trademark registration filed on or after January 1, 2017.

Labor

Enforcement of the Child Care and Family Care Leave Act (January 1, 2017)

The "Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave," which was amended in March 2016, came into force in its entirety on January 1, 2017. For details, please see the [May 2016 issue](#) of this newsletter.

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