



JAPAN LEGAL UPDATE

TOKYO OFFICE CONTACTS

John C. Roebuck
Yuichiro Mori
Harukuni Ito
Takako Yako
Yuki Yoshida
Kyosuke Katahira
Naoko Tokumoto
Hiroyuki Fujimoto
Yusuke Hanada
Christopher G. Grant
Kazumasa Watanabe
Yuto Watanabe

Corporate

Amendments to the "Ordinance for Enforcement of the Act on the Succession to Labor Contracts upon Company Split" etc.

Amendments to the "Ordinance for Enforcement of the Act on the Succession to Labor Contracts upon a Company Split" ("Succession Act Ordinance") and the "Guideline for Appropriate Implementation of Measures to be Taken by a Split Company or Succeeding Company Related to the Succession to Labor Contracts or Collective Agreements Executed by a Split Company" ("Succession Act Guideline") came into effect as of September 1, 2016.

In addition, the "Guideline for Matters to be Noted by Company Carrying Out Business Transfers or Mergers" ("Business Transfer Guideline") was newly established and came into effect as of the same date.

Amendments to Succession Act Ordinance and Succession Act Guideline. In connection with the succession to labor contracts upon a company split, the Act on the Succession to Labor Contracts upon a Company Split and other relevant laws and regulations provide that, although the individual consents of employees to be succeeded are not required, the split company must take the following procedures to protect the employees: (i) consult with a labor union or a person representing the majority of employees; (ii) conduct individual consultations with employees; and (iii) issue notices to the relevant employees. The amendments have not changed the outline of the preceding procedures but have made certain changes to further promote worker protection, taking into account new legislation (such as the Companies Act) and court precedent.

For example, under the amended Succession Act Guideline, employees who are not involved in the succeeded business but whose labor contracts will be succeeded upon the company split have been included among the employees with whom the company is required to have individual consultations.

Establishment of Business Transfer Guideline. With respect to the succession to labor contracts upon a business transfer, the Business Transfer Guideline confirms the established legal principle that the individual consent of each employee is required and requires that the assignor company fully explain to the succeeded employees the status of the business transfer and consult with them so as to gain their consent.

On the other hand, with respect to a merger, the Business Transfer Guideline states that labor contracts will be succeeded comprehensively without the need for individual employee consents and that the employment conditions will be maintained without any changes.

As described above, the amendments and guideline have not made material changes to the basic concept of the succession to labor contracts upon a company split, business transfer, or merger. However, it is necessary that a company that carries out a company split etc. execute certain procedures while paying attention to the provisions of the ordinance and guidelines.

General

Osaka High Court's Decision to Set Aside an Arbitral Award

On June 28, 2016, the Osaka High Court rendered a decision to set aside an arbitral award issued by arbitrators in an arbitration case at the Japan Commercial Arbitration Association. Jones Day Tokyo, representing the appellant (a petitioner requesting that the arbitral award be set aside), brought attention to the fact that a law firm for which the presiding arbitrator worked represented a sister company of the opposing party in a U.S. class action lawsuit, and argued that the fact that the presiding arbitrator failed to disclose such information to the parties was tantamount to a procedural breach. Jones Day Tokyo also filed several foreign judicial cases referencing similar issues and collaborated on those cases with other offices of Jones Day. As a result, the Osaka High Court agreed with Jones Day's assertions and rendered a decision to set aside the arbitral award, which, we note, is only the second instance in which a Japanese court has set aside an arbitral award since the new Arbitration Law came into force.

Labor

Osaka High Court's Decision Recognizing a Violation of Article 20 of the Labor Contract Act

On July 26, 2016, a litigation action was brought in Osaka High Court, in which a fixed-term employee of HAMAKYOREX claimed that unreasonable differences existed in the working conditions of fixed-term employees and regular employees (indefinite-term employees) as to allowances paid to them. The plaintiff claimed that the result gave rise to a violation of Article 20 of the Labor Contract Act. Article 20 of the Labor Contract Act, which came into force in April 2013, prohibits employers from establishing unreasonable differences between the working conditions of fixed-term employees and employees of indefinite term. The Osaka High Court agreed and found that non-payment of four types of allowances, including food allowances, was unreasonable due to arbitrary differences and subsequently ordered HAMAKYOREX to pay the approximate balance of 770,000 JPY to the plaintiff. Originally, the court of the first instance found that only non-payment of commuting allowances was unreasonable. Because the number of litigation actions relating to Article 20 is increasing, attention should be paid to this area.

Labor

Promulgation of the Ministerial Ordinance of the Ministry of Health, Labor and Welfare on the Amendment to the Employment Insurance Act Etc. (August 2, 2016)

The Ministerial Ordinance on the Amendment to the Employment Insurance Act Etc. ("Amendment"), which was previously covered in the [May 2016 issue](#) of this *Update*, has been promulgated. Following this promulgation, employers may proceed to examine whether or not they need to make adjustments or create new internal rules to comply with the Amendment prior to the enforcement date, as a series of material laws and ordinances related to this Amendment have already been published.

Intellectual Property

Publication of Manual for Creating De-identified Information (August 2, 2016)

With the aim of facilitating the use of personal data, including big data, the Amendment to the Act on the Protection of Personal Information in September 2015 introduced provisions for handling "De-identified Information," i.e., information processed so that third parties cannot identify specific personal information contained therein (please see the [October 2015 issue](#)). Accordingly, the Ministry of Economy, Trade and Industry recently published the "Manual for Creating De-identified Information." The manual, which includes guidance on specific procedures and methods for creating the De-identified Information, should be a useful reference for companies in creating De-identified Information or in preparing internal guidelines for handling such information.

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