Japan Newsletter
August 2016

ARQIS FOREIGN LAW OFFICE

Dusseldorf
Munich
Tokyo

Labor Law in Japan: Fixed-Term and Part-Time Employment

While Japan has been known for several decades for its “lifetime employment” practice, economic and business fluctuations in the global market demand Japanese companies to retain high flexibility also in terms of human resources. As a consequence, Japanese companies have significantly increased the hiring of fixed-term and part-time employees beside their regular staff. In recent years, the share of such “irregular” employees has reached almost 40 percent of the total workforce in Japan.

In response to this development, the Japanese government made various amendments to the labor law which companies should be aware of. This newsletter highlights some of the most recent and important amendments to part-time and fixed-term employment in Japan.

I. Part-Time Employment

Under Japanese law, an employee whose prescribed weekly working hours are less than those of full-time employees is considered a part-time employee. In principle, general Japanese labor law, such as the Labor Standards Act (“LSA”), also applies to part-time employees. However, in addition, the Act on Improvement, etc. of Employment Management for Part-Time Workers (”Part-Time Work Act”), which is designed to promote the part-time employees' welfare and to ensure appropriate working conditions, governs the part-time employment relationship.

Under the Part-Time Work Act, the employment contract of a part-time employee shall include, in addition to the basic terms and conditions of the employment, specific provisions concerning (i) salary raise, (ii) retirement allowance, and (iii) bonus payments. Although such specifications are a mandatory part of the contract, the Part-Time Work Act does not require the employer to actually grant any of these benefits to part-time employees. To this end, the contract must only include a provision stipulating whether the part-time employee shall be entitled to such benefits or not. Further to an amendment of the Part-Time Work Act effective as of 1 April 2015, companies employing part-time employees are required to inform such part-time employees about the content of improvements to their labor management, and shall establish a system allowing the adequate handling of requests from part-time employees.

Furthermore, the Part-Time Work Act obliges the employer to inform the part-time employee about the criteria applied for the determination of the part-time employee's salary at the latter's request. Discrepancies between the hourly salary of a part-time employee and a full-time employee cannot be justified merely by the fact of a part-time employment, but require a comprehensible reason, such as a different scope of work or level of responsibility. Under the currently applicable scheme, the discrimination of part-time employees compared to regular employees is prohibited if such part-time employees (i) perform the same work as regular employees, (ii) are subject to the same personnel utilization scheme (e.g. the same rules for the admissibility and scope of personnel transfers apply), and (iii) have entered into an indefinite-term employment agreement. After the amendment of the Part-time Work Act, the discrimination of part-time employees compared to regular employees became also prohibited if only criteria (i) and (ii) apply, so that the scope of the prohibition has been extended. To treat part-time employees differently from regular employees, an employer must establish principles for all part-time workers in a comprehensive manner, preventing unreasonable differences in consideration of the content of the work duties, the personnel utilization scheme, and other circumstances.

Contact:
ARQIS Foreign Law Office
Foreign Law Joint Enterprise with
TMI Associates
Roppongi Hills Mori Tower, 23F
6-10-1 Roppongi
Minato-ku, Tokyo 106-6123
Phone: +81 (3) 6438-2770
Fax: +81 (3) 6438-2777
Email: tokyo@arqis.com
http://www.arqis.com
twitter.com/ARQISTokyo

The Part-Time Work Act also requires the employer to promote part-time employees to become regular employees by the following measures:

- Notifying the part-time employees about vacant regular positions and the terms and conditions thereof, as well as providing information for application before hiring an external candidate.
- Notifying the part-time employees about vacant or newly implemented positions and providing opportunity to apply for such positions similarly to regular employees before assigning such position to a regular employee.
- Implementing an examination system which allows part-time employees to become a regular employee.

At present, part-time employees working generally less than 3/4 of the regular working time stipulated for full-time employees do not need to be enrolled in the national social insurance system (health insurance, pension insurance).

Effective as of 1 October 2016, however, social insurance will also apply to part-time employees not being students and meeting all of the following requirements in addition to the general application requirements for the social insurance:

- Weekly designated working hours amount to at least 20 hours;
- Monthly wage amounts to at least JPY 88,000 (with an annual wage amounting to at least JPY 1,060,000);
- Expectation to be employed for at least one year on a continuous basis;

  and
- Employed by a company with more than 500 employees.

II. Fixed-Term Employment

The Labor Contract Act ("LCA") includes regulations concerning fixed-term contracts and expressly requires an "unavoidable reason" in order to terminate a fixed-term contract before the expiration of its contractual term. This requirement to terminate a fixed-term contract during its term is thus even stricter than the "justifiable cause" required in case of terminating an employment contract with an indefinite term. As a general rule, the Labor Standard Act ("LSA") permits fixed-term employment contracts for a maximum term of three years. This term can be extended to five years in specific cases, e.g. if the employee is a specialist with a high degree of certain knowledge, such as a tax advisor, a scientist, or an employee holding a PhD. Although the conclusion of consecutive fixed-term contracts is generally possible, a repeatedly renewed fixed-term contract may be treated as an employment for an indefinite term.

(1) Conversion to an Indefinite-Term Contract (Article 18 LCA)

An employee who has been employed with the same employer based on two or more fixed-term contracts for a duration exceeding five years is entitled to apply, prior to the expiration of the contractual term, for entering into an indefinite-term contract. In such case, the employer is deemed to have consented to the application and an indefinite-term contract comes into effect on the day following the expiration date of the fixed-term employment.

a) Labor Conditions after Conversion

Except for the contractual term, the conditions of the indefinite-term contract after the conversion will remain the same as under the preceding fixed-term contract, unless provided otherwise in a labor agreement, the rules of employment, or an individual agreement between the employee and the employer. To avoid later ambiguity concerning the scope of the labor conditions in the employment contract after its conversion, it is recommendable to confirm the terms and conditions of conversion and the respective labor conditions in the employment contract or the rules of employment of the company.

b) Exceptions due to Interruption

In the following cases, the employment is considered as interrupted, and previous fixed-term contracts with the same employer will not be taken into consideration for the calculation of the total employment period:

(i) Six or more months have passed between the expiration of the previous fixed-term contract and the next fixed-term contract.

(ii) The previous fixed-term employment has been entered for a term of less than one year (or several short-term agreements have been entered continuously for a term of less than one year or are regarded as continuous employment based on a guideline of the Ministry of Health, Labor and Welfare, both: "Short-Term Employment"), and there is an interruption of at least half of the duration of the Short-Term Employment until the next employment contract is concluded.

The above described regulations do not apply to fixed-term contracts already effective before 1 April 2013.

c) Exemptions for Employees with Highly Specialized Knowledge, etc.

According to the Special Measures Act regarding Fixed-term Employment which came into effect on 1 April 2015, employees

- with a high income (at least 10,750,000 JPY per year) and a high degree of certain knowledge (e.g. employees holding a PhD degree, IT system analysts, tax advisors, etc.), and
- hired to conduct a business ending within a fixed period of more than five years for which such highly specialized knowledge is required,

are not entitled to request the conversion of their fixed-term employment to an indefinite-term employment during the time they are working for such project, provided that (i) the term during which the conversion right is excluded is at maximum ten (10) years and (ii) the employer has established an employment measures management plan approved by the labor standards inspection office.

Exemptions also exist for individuals continuously employed on a fixed-term basis after their retirement age. Such employees shall not either be entitled to request the conversion of their employment to an indefinite-term employment during the time of their continuous employment, provided that the employer has established a labor management plan approved by the labor standards inspection office.

(2) Renewal of a Fixed-Term Contract and Right of Refusal (Article 19 LCA)

In case an employee applies for renewal of a fixed-term contract prior to the contract's expiration or for conclusion of a new contract without delay after the expiration of the fixed-term contract and if the employer refuses the renewal, the refusal has to be socially appropriate and must be based on objectively reasonable grounds in order to be valid. This procedure has been developed by court practice and applies to fixed-term contracts falling under either one of the categories described below:

The non-renewal of a fixed-term contract, which has been renewed in the past repeatedly, is considered equal to the termination of an indefinite-term contract based on social standards.

The employee has the reasonable expectation that the fixed-term contract will be renewed after its expiration date. In the above cases, the employer's refusal is considered having no legal effect, and the employer is deemed to have accepted the renewal with the same conditions as those of the previous fixed-term contracts.

In case the refusal of the renewal of a fixed-term employment agreement is invalid because the agreement falls under one of the above stated categories, and due to the renewal, the term of employment with the same employer exceeds the period of five years, the employment will be converted to an indefinite-term agreement in accordance with Article 18.

(3) Prohibition of Unreasonable Employment Conditions (Article 20 LCA)

Differences in the conditions of indefinite-term contracts and fixed-term contracts of the same employer must be reasonable in view of the working conditions, such as salary, working hours and work duties, as well as educational training, welfare benefits, compensation in case of natural disasters, etc.

Our Offices:

Tokyo Office

ARQIS Foreign Law Office
Foreign Law Joint Enterprise with
TMI Associates
Roppongi Hills Mori Tower, 23rd floor
6-10-1 Roppongi, Minato-ku, Tokyo
106-6123 Japan
Phone: +81 (3) 6438-2770
Fax: +81 (3) 6438-2777
tokyo@arqis.com

Düsseldorf Office

ARQIS Rechtsanwälte
Hammer Str. 19
40219 Düsseldorf
Germany
Phone: +49 (211) 13069-000
Fax: +49 (211) 13069-099
duesseldorf@arqis.com

Munich Office

ARQIS Rechtsanwälte
Prinzregentenplatz 7
81675 Munich
Germany
Phone: +49 (89) 309055-600
Fax: +49 (89) 309055-699
munich@arqis.com