INTRODUCTION TO LAW - FINAL PROJECT

Japan Labor Law

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CONTENTS

1 Preface **4**

2 Employment Contract **5**
2.1 Small Introduction . . . 5
2.2 Permanent Employee . . . 6
2.2.1 Introduction . . . 6
2.2.2 Duration . . . 6
2.2.3 Working Hours . . . 6
2.2.4 Salary and Payment Information . . . 6
2.3 Contract Employee . . . 7
2.3.1 Duration . . . 7
2.3.2 Working Hours . . . 7
2.3.3 Salary and Payment Information . . . 7
2.4 Outsourced or Temporary Employee . . . 7
2.4.1 Duration . . . 8
2.4.2 Working Hours . . . 8
2.4.3 Salary and Payment Information . . . 8

3 Trade Union and Labour disputes **9**
3.1 Introduction . . . 9
3.1.1 Trade unions . . . 9
3.2 Employers Association . . . 10
3.3 Collective Bargaining Agreements . . . 10
3.4 Enterprise Trade Unions . . . 11
3.5 Labour disputes . . . 11
3.6 Dispute settlement . . . 11

4 Minimum wage and benefits **13**
4.1 Small Introduction . . . 13
4.2 Minimum wages for major regions in Japan . . . 13
4.3 Employee Benefits . . . 14
4.3.1 Worker's Accident Compensation Insurance (Rousai-Hoken) . . . 14
4.3.2 Child Allowance (Kodomo/Kosodate Kyoushutsu-Kin) . . . 15
4.3.3 Unemployment Insurance (Koyou-Hoken) . . . 15
4.3.4 Health Insurance (Kenkou-Hoken) . . . 15
4.3.5 Welfare Allowance . . . 15
4.4 Additional Benifits . . . 16
4.4.1 Commuting Allowance (Koutsu-teate) . . . 16
4.4.2 Medical Check-up (Kenkou-shindan) . . . 16
4.4.3 Housing Allowance (Jutaku-teate) . . . 16
4.4.4 Employee Stock Ownership Plan (Juugyoin Mochikabu-seido) . . . 17

4.4.5 Retirement Allowance (Taishokukin) . . . 17
4.4.6 Special Leave for Weddings and Funerals (Keichou-kyuuka), Maternity Leave (Shussan-kyuuka), and Parental Leave (Ikuji-kyuuka) . . . 17
4.4.7 Working from Home or Telework (Zaitaku-seido) . . . 17

5 Eliminating jobs and dismissal 18
5.1 Small introduction . . . 18
5.2 Termination methods . . . 18
5.2.1 Resignation . . . 18
5.2.2 Ordinary dismissal (based on Japan's Civil Code and Labor Standards Law) . . . 19
5.2.3 Disciplinary dismissal . . . 21
5.2.4 Abusive and prohibited dismissal . . . 21
5.3 Advance notice of dismissal . . . 21
5.4 Cases where dismissal is invalid . . . 22
5.4.1 Prohibited dismissals . . . 22
5.4.2 Abusive dismissals . . . 22
5.5 Covenant not to compete . . . 23

1 PREFACE

The Labor Law in Japan is a really complicated system that consists of the Labor Standards Act (LSA), Labor Union Act (LUA), and the Labor Relations Adjustment Act (LRAA), these three main codes. The Japanese Labor Law mainly describes employee benefits and obligations, company obligations to employees, forms of employment, etc.

This report will cover four aspects of Japanese labor law: employment contracts, trade unions labor disputes, minimum wage benefits, and eliminating jobs and dismissal. Also, we will cite some of the important articles to explain our own understanding of the Japan Labor Law.

The unique social culture and ideology of Japan breed a special labor culture. Our expectation of this project is to have a better understanding of how the formation of this labor culture has influenced the formulation of labor law and how the labor law affects the development of the country.

2
EMPLOYMENT CONTRACT

2.1 Small Introduction

In Japan, employers must provide an offer letter and employment contract for the potential employee. If a company employs 10 or more people, it must also maintain a set of Work Rules and submit them to the Labor Standards Inspection Office[1]. These rules stipulate employment terms such as payment details, the expected hours of work (with start and finish times), rest days and leave, shift work, and retirement. These rules must be made known to all employees and must be given in English or other languages if necessary.

When it comes to the employment contract, it should not be signed until its terms are fully understood. According to Article 15 of the Labor Standards Act [3], the employer must provide a written contract in a way that the employee can understand and include the following terms:

1. The duration of the contract
2. The location of the job
3. A job description or list of responsibilities
4. Details of working hours including breaks, leave, overtime, and holiday entitlement
5. Salary and payment information
6. Information on terminating the employment
7. Information on retirement

Since much information of one same aspect is mentioned both in the Work Rules and the employment contract, it should be noted that if there is a discrepancy between them, whatever favors the employee takes precedence.

In Japan, there are many types of contracts. Here, we will introduce the main three of them:

1. Permanent Employee
2. Contract Employee
3. Outsourced or Temporary Employee

[1] "Employment Contracts - Japan"

2.2 Permanent Employee

2.2.1 • Introduction

Permanent Employee is the one and only regular employment in Japan. Permanent employees do not have a predetermined end date to employment which means that employees can work until the statutory retirement age. In addition, permanent employees normally have better health care, salary, and paid vacations than other types of employment. Also, only in exceptional circumstances does an employer have the right to terminate a permanent employee.

2.2.2 • Duration

A permanent employee contract doesn't have a fixed period, which means except in unusual circumstances such as company reorganization or bankruptcy, permanent employees can work until their retirement.

2.2.3 • Working Hours

According to Article 32-1 of the Labor Standards Act, Employers shall not have Workers work more than 40 hours per week and not more than 8 hours per week, excluding the rest period. Also, the permanent employees have at least one day off per week.

With respect to Workers employed, employers often require the permanent employee to work overtime, in which case the employer and the employee must reach a written agreement specifying the additional hours to be worked and the wages to be compensated.

1. For overtime work, an allowance of 25% over the normal wage must be paid.
2. For work on rest days, an allowance of 35% over the normal wage must be paid.

2.2.4 • Salary and Payment Information

Based on Article 39 of the Labor Standards Act, employers are required to pay more than the minimum wage for all categories of employees. The minimum wage is set by the Japan labor ministry based on regional job market conditions. (minimum wage in Tokyo is ¥1,013 per hour rounded up to 9.6 USD

However, the salary of permanent employees is multiple components, generally including a base salary, performance-based bonuses, transportation allowances, Business expenses, and social insurance.

The Japan Labor Ministry mandates employers to provide social security insurance for permanent employees. Generally, social security insurance covers 4 things: Health insurance, industrial injuries insurance, unemployment insurance, and pension benefit. Employers have

to cover 50% of the cost and the other 50% of the cost of monthly premiums is covered by the individual through deductions from salary.

2.3 Contract Employee

Contract employees, also called independent contractors, are individuals hired for a specific project or a certain timeframe for a set fee.

2.3.1 • Duration

The duration depends on the contracts. It can be three, six or twelve months or even longer. According to the stipulation from Article 14 of the Labor Standards Act, we can know that this kind of contract may last up to three years, while for employees who possess expert knowledge, technology or experience, and for those aged more than sixty (included), the contract period must not exceed 5 years.

2.3.2 • Working Hours

The working hours of contract workers must comply with article 32 of the labor standards law on working hours limitation. However, in the real work environment, contract employees often work on a short period with intense working hours, in this case, the employer and the contract employees must have a written agreement about working hours and overtime allowance.

2.3.3 • Salary and Payment Information

As mentioned above, the payment of contract employees is determined by the salary on the written agreement. According to the regulation of the Labor Ministry, the salary of contract employees generally consist primarily of a base salary and Social Security. Their based salary is calculated by the hour according to the agreement in the contract. Therefore, in this case, contract employees don't have some additional benefits provided by the company such as paid vacation, transportation allowance.

2.4 Outsourced or Temporary Employee

The outsourced or temporary employees sign a contract with the temporary agency. Then the agency contacts the employer to transfer these employees. Therefore, outsourced employees will not be the employees of the company where they work but that of the temporary agency. Usually, when the company is extremely short of manpower or when it wants to save costs, it prefers recruiting outsourced employees.

2.4.1 • Duration

The duration of the contract of a temporary employee is usually short, around 3 months. It may vary and often depend on the situation of the company as well as the individual. If the company doesn't want to renew the contract with the temporary employee, the temporary agency will then arrange a new job for this person. Nevertheless, it is also possible for temporary employees to be recognized by the company and become permanent ones.

2.4.2 • Working Hours

Generally speaking, outsourced employees have the most flexibility and relatively short working hours among these three types. Usually, they start from 9 am and end at 5 pm, which is often earlier than permanent employees. In addition, if they are dissatisfied with the current company's work system and content, they are able to discuss with the temporary agency and work for another company.

2.4.3 • Salary and Payment Information

As mentioned above, temporary employees are members of the temporary agency instead of the company where they work. Therefore, they do not earn their salary from the company but get paid by the agency. The agency pays for their social insurance as well. Their salary is calculated by the hour with few opportunities of increase. Therefore, in this case, outsourced employees don't enjoy the benefits provided by the company such as paid vacation and usually earn less compared with the other two contract types.

3
TRADE UNION AND LABOUR DISPUTES

3.1 Introduction

In japan three fundamental labour standards are guaranteed in the constitution :

1. the right to exercise something which is considered work (Art. 27 para. 1)
2. the prohibition of child labour (Art. 27 para. 3)
3. the freedom for workers to organize collectively and to bargain (Art. 28)

Japanese labour law is established within the constitutional framework and is elaborated by acts, ordinances, collective agreements and work rule. Japanese labour law can be divided in three major labour laws :

1. the Labour Standards Law (LSL)
2. the Trade Union Law (TUL)
3. the Labour Relations Adjustment Law (LRAL)

For this section "Trade Union Strikes" the Trade Union Law (TUL) is going to be the most relevant. The Labour Standards Law (LSL) is going to be too but to a lower degree.

3.1.1 • Trade unions

As previously mentioned the freedom of worker's association is granted in Art. 28 of the Constitution. Trade Unions are ruled in the TUL and are defined as organisations which are autonomously formed and composed of mostly workers. Their goal is to maintain and/or improve the working conditions and to raise the economic status of workers (Art. 2). Workers that engage in social or welfare movements are not aimed or eligible. Neither are workers that are in a supervisory position. (Art. 2 para. 1,3,4).

The Trade Union's constitution needs to ensure that every member has a right to participate in all affairs and that no worker is denied membership because of their race, religion, gender, social status or family origin (Art. 5 - 2). When Trade Unions meet all the conditions, they are registered by the Labour Relations Commission and therefore gain the status of a legal personality as well as legal protection. This is what prevents them from being exposed to unfair labour practices (Art.7). The discrimination of a worker because of trade union activities is forbidden and the employer is not allowed to exert any influence on the trade unions management. Another important aspect to mention is that the employer does not have the right to reject the collective bargaining process if he does not have an acceptable reason.

3.2 Employers Association

Employer's organisations are not covered by the TUL. Instead the Japanese Federation of Employers Associations ("Nikkeiren") acts as the main role on behalf of the employers in industrial relations. It is not present in any collective bargaining but sets parameters to the employers. This means it has an indirect influence on labour issues.

3.3 Collective Bargaining Agreements

Definition of collective bargaining agreement :

*"**Collective bargaining**[2], the ongoing process of negotiation between representatives of workers and employers to establish the conditions of employment. The collectively determined agreement may cover not only wages but hiring practices, layoffs, promotions, job functions, working conditions and hours, worker discipline and termination, and benefit programs." [1]*

In order to collective bargaining in japan there must be, according to the Art. 14 of the TUL, on one side a trade union and, on the other, either an employer or an employer's association. The employer needs to bargain with the appropriate trade union if the employer does not have a valid reason not to. (Art. 7 para. 2).

Salaries are normally defined during the "spring offensive" in spring. Enterprise unions submit claims for pay increases under the coordination of the Japanese Trade Union Confederation (Rengo) and the much smaller National Confederation of Trade Unions (Zenroren) as well as the industrial federations. On the employer's side they respond through the Japanese Federation of Employers Association (Nikkeiren). When the big enterprises in big industries come to an agreement, this agreement is implemented to the smaller-sized enterprises. However normally the individual situation of enterprises is taken into account, in order for the agreement not to damage the enterprise, which would be in the own interest of the trade union.

All collective agreements apply primarily to trade union members. If in one workplace, $\frac{3}{4}$ of the workers have the same agreement, it will then be applied to all similar workers in the enterprise (Art. 17). A collective agreement may apply to a whole locality if the majority of workers of the same kind fall under collective agreement (Art. 18).

Collective agreements are really the deciding factor for work rules and for labour contracts. This means that the work rules and the labour contracts are not allowed to violate the collective agreement (Art. 92 of the TSL). It also means that any labour contract that does not coincide with the collective agreement is immediately considered void (Art.16 of the TUL).

[2]Augustyn, A. (2020, March 06). Collective bargaining. In Britannica. Retrieved February 18, 2021, from https://www.britannica.com/topic/collective-bargaining

Normally collective agreements give specific rights and duties to the contractual parties. In many cases mostly to the employer and the enterprise trade union. For example the employer has to fulfill the obligations stated in the collective agreement.

3.4 Enterprise Trade Unions

In the enterprise the workers are normally represented by an enterprise trade union. This trade union consists of a few members of the workers that are elected. The election is defined and ruled by the trade unions constitution. The representation of the worker plays a major role in the making of the work rules, which every employer needs to draw up if there are more than 10 workers employed continuously (Art. 89 of the LSL). The employer needs to consult the trade union (or any representing employee) before drawing up the work rules (Art. 90-1 of the LSL)

3.5 Labour disputes

Art. 28 of the constitution ensures the workers that they are allowed to act collectively which contains labour disputes. Labour disputes are defined in the Labour Relations Adjustment Law (LRAL) as :

"a disagreement over claims regarding labour relations arising between the parties concerned with labour relations resulting in either the occurrence of acts of dispute or the danger of such occurrence" (Art.6)[3] *[2]*

For labour disputes, the trade union can not be held accountable for, under neither the civil nor under the penal law under the condition that they act properly (Art. 8 and 1 para. 2 of the TUL). The trade unions need however to legally be registered as one and that they use no violence during the labour dispute. Legally authorized are different acts of dispute found in the Art. 7 of the LRAL. These are :

1. strikes
2. slowdowns
3. other acts hampering the normal course of work

3.6 Dispute settlement

Labour disputes can be settled by three different ways :

1. conciliation

[3]"Labor Relations Adjustment Act ." International Labour Organization, 27 Sep. 1946. from https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/27191/111920/F-2088015431/JPN27191

2. mediation
3. arbitration

The conciliation is the settlement of the labour dispute through one or more conciliators chosen by the LRC (Labour Relations Commission). He or She acts as intermediaries between the parties (Art. 13 of the LRAL) and needs to be a person with experience in the settlement of labour disputes (Art. 11 LRAL).

The next way to settle a dispute is by the mediation which is accomplished by a mediation committee This committee needs to be representing the workers, the employers and the public in equal numbers. Additionally it has the power to draft a proposal of the settlement (Art. 26 LRAL)

Arbitration is the strongest form of labour dispute settlement. The Labour Commision will nominate an arbitration committee. This committee will then interact with all of the Labour Relations Commission members. It takes a final decision which is known as an arbitration award.

4
MINIMUM WAGE AND BENEFITS

4.1 Small Introduction

The japan employees enjoy a minimum wage that applies regardless of gender, age, ethnic background, and location. According to the minimum wage act, Article 9(1):

In order to guarantee the payment of minimum wages level for low-paid workers, regional minimum wages shall be set for every region of Japan.

Under the Japanese labor law, based on the type of industry and the region, the minimum wages vary in Japan. For some particular sectors, the industrial minimum wage is applicable that is usually higher than the regional minimum. If the provincial and industrial minimum wage differs, the employee is entitled to get the maximum wage between the two. Besides, an employer is not legally bound to pay bonuses unless there is an agreement between them. However, the bonuses are usually included in the remuneration packages of the employees. Moreover, compared to overseas, Japanese companies are known to offer a lot of employee benefits. Furthermore, Japanese legally work 40 hours per week; however, some exceptions are based on the business, where Japanese can work up to 44 hours a week. Employee benefit in Japan (Fukuri Kosei) means a range of initiatives to benefit employees and their families regarding well-being and living standards.

4.2 Minimum wages for major regions in Japan

The first minimum wage act was enacted in Japan in 1959; since then, the law had been amended from time to time. Presently, the employees in Japan are enjoying the highest minimum wage, although the average increase of the minimum wage dropped to its lowest in 16 years after increasing ¥20 for four years until the fiscal year 2019; however, in 2020, the minimum wage was increased by only ¥1 compared to the previous year. For instance, the national average minimum wage was ¥737 in 2011, and it was raised to ¥901 in 2019, but it was raised to ¥902 in 2020 by increasing only ¥1.

As discussed above, the minimum wage varies among regions and industries; therefore, some areas' minimum wages are much lower than some big cities. The Ministry of Labor's regional bureaus determines minimum wage in each of Japan's 47 Prefectures. To determine the minimum wage in each prefecture, the regional bureau considers the local economic conditions, cost of living, and other indexes to their account.

The present minimum wages in 10 different prefectures are given below to demonstrate the gaps among the minimum wages among the urban and rural prefectures.

Yamagata prefecture	¥790
Fukushima prefecture	¥798
Ibaraki prefecture	¥849
Tochigi prefecture	¥853
Gunma prefecture	¥835
Saitama prefecture	¥926
Chiba prefecture	¥923
Tokyo prefecture	¥1013
Kanagawa prefecture	¥1011
Niigata prefecture	¥830

Table 1: The minimum salary of each prefecture in Japan

From the table, the highest minimum wage is ¥1013, given in the Tokyo Prefecture, which is the Capital of Japan and the lowest minimum wage is ¥790 in the Yamagata Prefecture. Between the highest and lowest, the difference is ¥223, which is a pretty large number that demonstrates that a particular region's economic conditions have been taken into account. For example, Tokyo is the nation's capital with a high economy, and its minimum wage is higher than the Yamagata Prefecture, which is not as economically prosperous as Tokyo.

4.3 Employee Benefits

There are also two types of employee benefits in Japan. One is legal employee benefit (Houtei-Fukuri Kosei) which is mandatory for a company to provide its employees as per law. The other is which the company voluntarily provides to its employers.

Major of the legal employee benefits are:

4.3.1 • Worker's Accident Compensation Insurance (Rousai-Hoken)

When a worker is injured or ill due to an accident at work or even on the way to work, the worker will get compensation under this insurance. Article 1 of the Industrial Accident Compensation Act clearly states the purpose of this Act.

"The purposes of the industrial accident compensation insurance are to grant necessary insurance benefits to workers in order to give them prompt and fair protection against injury, disease, disability or death or the like resulting from employment. employment-related cause or commuting, and to promote the social rehabilitation of workers who have suffered an injury or disease from an employment-related cause or commuting, assist those workers and their surviving family members and secure the safety and health of workers or the like, thereby contributing to the promotion of the welfare of such workers."

4.3.2 • Child Allowance (Kodomo/Kosodate Kyoushutsu-Kin)

If any worker has any child, he is entitled to receive a fixed amount of money for his/her child. This amount of money helps the parents to bear additional expenses. For families with two children with a yearly salary of less than ¥9.6 million, the monthly child allowance varies from ¥10000 to ¥15000 per child. Last year during the pandemic, the Japanese government even increased the allowance by ¥10000 to ease the expenses for the child during the hard economic times.

4.3.3 • Unemployment Insurance (Koyou-Hoken)

When a worker loses his/her job due to various reasons, he/she can apply to the country and receive from 50 to 80% of the salary as an unemployment allowance in a period of 90 to 150 days. However, special conditions exist to determine the people who are eligible for unemployment insurance. If a person is newly employed and he is older than 65 , a temporary worker, (work time is less than 30 hours a week) he is not eligible for unemployment insurance. According to Article 4 (3) of the Employment Insurance Act, the worker must show that he/she doesn't have any alternatives.

"The term "unemployment" as used in this Act means the conditions under which an insured person is separated from employment and is unable to find employment in spite of having the will and ability to work."

4.3.4 • Health Insurance (Kenkou-Hoken)

This insurance is meant to cover the employee's cost by around 70% if he/she receives any treatment from the hospital. In brief, this medical insurance system compensates for the conditions, including sickness, accident, and other illnesses.

Article 1 of Health Insurance Act clearly states its purpose

"The purpose of this Act is to provide insurance benefits for sickness, injury or death other than employment injuries (meaning employment injuries as provided for in Article 7, paragraph (1), item (i) of the Industrial Accident Compensation Insurance Act (Act No. 50 of 1947)) or childbirth of a worker or a dependent thereof, thereby contributing to the stability of lives and the improvement of welfare of the people."

4.3.5 • Welfare Allowance

In japan, the wage might seem comparatively low in comparison to the living standard, but, this is because the welfare allowance in Japan is pretty substantial. According to the result of a welfare expense survey held in 1999, The welfare payment is provided by a company at a rate of 30% of the employee's salary in addition to their basic salary, which is a pretty big amount indeed. Besides, the amount of welfare in Japan is not included in the overall salary.

4.4 Additional Benifits

Besides, some welfare is commonly provided by Japanese companies to their employees. Some of which are pretty unique in comparison to the other countries in the world.

4.4.1 • Commuting Allowance (Koutsu-teate)

In many countries abroad, employees have to pay themselves the transportation cost from their home to the workplace, but in Japan, it is pretty standard that a company bears the transportation cost of its employees, and it is called Commuting allowance (Koutsu-teate). There is not a fixed rate at which the commuting allowance is provided. Some companies bear the full cost of the transportation, while others bear partial cost at a fixed rate.

4.4.2 • Medical Check-up (Kenkou-shindan)

A medical check up is an extraordinary benefit from the employer, by which an employee can go through several medical examinations. In most cases, Japanese companies provide a medical check-up on a yearly basis.

According to the Industrial Safety and Health act articles no 10, 18, and 19:

"The companies have to appoint a manager and form a committee to ensure the employees' health and medical facilities. "

4.4.3 • Housing Allowance (Jutaku-teate)

Housing costs could be a major expense in Japan. There are few ways that a company can support its employees. Rent subsidy (Housing allowance): Employees get some portion of their rent included in their salary package to reduce the burden for the employees. The rate at which employers determine the allowance varies from company to company. There is no fixed rate for this allowance.

Rented company house: Sometimes companies rent a property and the employees can live there. Here the benefit is since the company pays a fixed percentage of rent the employees can live cheaper. Moreover, the rent itself can be relatively lower than other private apartments.

Dormitory for employees: Sometimes companies own residence for their employees. Some of them are furnished and equipped with meals. The employees have to pay a fixed amount of rent but the rent is comparatively cheap in those company-owned residences.

4.4.4 • Employee Stock Ownership Plan (Juugyoin Mochikabu-seido)

Under this plan, employees can buy the company's stock directly deducting from their salary, and they can receive the profit independently from the paycheck. This can usually be found in some big companies, which are listed in the national stock exchange.

4.4.5 • Retirement Allowance (Taishokukin)

At the time of the termination of a contract between the employer and the employee, the employee receives a monetary allowance from the employer which is called Retirement Allowance. A retirement allowance from the employer is not a legitimately enforceable system; rather, it is an issue that has been settled between the employer and employees as part of a labor agreement. A retirement allowance, which is the deferred payment of salary, rewards, and benefit for the long term labor, encourages the employees to be loyal to the company for the long term, and it is determined by multiplying an approximate basic income by a transfer rate depending on years of employment. One of the very important characteristics of this allowance is that when the retirement age approaches, the coefficient, which is used for estimating the allowance, increases, which means employees are technically discouraged from retiring at an early age.

4.4.6 • Special Leave for Weddings and Funerals (Keichou-kyuuka), Maternity Leave (Shussan-kyuuka), and Parental Leave (Ikuji-kyuuka)

Employees are entitled to receive leaves for the wedding and funerals of their close ones. Also, workers are provided with six weeks of maternity leave before the baby is born and eight weeks of vacation after childbirth. Employees can get parental leave as well, which allows the employees to take a break until their child is 1 year old.

4.4.7 • Working from Home or Telework (Zaitaku-seido)

Many IT companies often allow their employees to work from their homes without coming to the office. Although this facility is not present in all companies, some companies in their respective sectors sometimes allow this sort of opportunity.

5
ELIMINATING JOBS AND DISMISSAL

5.1 Small introduction

Under Japanese labor law, termination of employees is a difficult procedure. Japanese labor law requires that dismissal has to be considered appropriate and done under reasonable grounds. Therefore, there is always a risk entailed when dismissing an employee.

Indeed, two particularities of Japanese Labor Law are engendering those risks.

Firstly, there is the expectation of lifetime employment which commonly refers to long-term employment contracts (i.e indefinite contracts that specify no fixed duration), and lastly, Japan is a civil law Jurisdiction where precedent judgments cannot affect and be relied upon to ensure the outcome of future procedures. Those two factors are thus causing high protection for employees in regard to dismissals. They culminate in what is called “the principle of appropriateness” first defined by the Supreme Court of Japan in 1975.

"Even in the case where grounds for regular termination exist, the Employer may not always be able to terminate. When, in view of the applicable concrete circumstances, effecting termination is highly unreasonable and unacceptable based on the prevailing attitudes of society, said termination shall be considered invalid as an abuse of the employer's right to terminate."

5.2 Termination methods

Under Japanese law, all dismissals are considered individual dismissals.

For employees (excluding the ones on their probation trial which is about 3 to 6 months in Japan), there are three methods for employee termination:

1. resignation
2. ordinary dismissal
3. disciplinary dismissal

5.2.1 • Resignation

Resignation is based on mutual agreement of both parties, the firm can however propose to its employees to resignate.

In order to avoid the paperwork and risks of dismissals, Japanese companies use resignation as

another way to terminate their employment contracts with certain employees by compromising financially with the employee such that this person resigns voluntarily.

As it is a mutual agreement, the amount of compensation can be discussed and negotiated by both parties. However, in the case of resignation, on a legal ground, the employee is committed not to exercise its right for wrongful termination in return for the compensation he received, including usually a combination of notice (or payment in lieu of notice) and severance payment.

Thus, this type of termination represents for companies the method with the lowest risks arising from dismissals, and is, therefore, the ideal situation for both parties if they can reach an agreement satisfying for both of them.

In this case, companies usually provide a 3 to 6 months salary to the employee as compensation.

5.2.2 • Ordinary dismissal (based on Japan's Civil Code and Labor Standards Law)

In principle, any Japanese employer can dismiss its employees but only if it satisfies the conditions included in Japan Labor Law as well as anything that may have been guaranteed in the employment contract if applicable. (Ordinary dismissal is applicable only if the employee assigned an employment contract without fixed term and isn't in probation period)

Grounds for termination under Japanese labor law include the following:

- employee's inability to work due to an injury, disability, illness or permanent damage, significant poor performances, or loss of trust relationship due to fraud in the application for employment.

  " The Prime Minister may when he or she finds that a member cannot execute his or her duties by reason of mental or physical disorder or that a member has contravened the duties of his or her position or that a member has committed such misconduct as to render such member unfit to be a member, dismiss said member with the consent of the Central Labor Relations Commission in the case of an employer member or a labor member; or with the consent of both Houses in the case of a public member." Article 19-7 (1), Labor Union Act

However, an employer can't dismiss an employee during a period of absence for medical treatment due to work-related injuries or illness. Furthermore, an employer can't dismiss his employee within 30 days thereafter. Lastly, an employer can't dismiss any woman during or after (within 30 days thereafter) a period of absence before and after childbirth.

"An employer must not dismiss a worker in a period during which the worker is absent from work for medical treatment due to an injury sustained or illness suffered in the course of

employment, nor within 30 days thereafter, and must not dismiss a female worker in a period during which she is absent from work before or after childbirth based on the provisions of Article 65, nor within 30 days thereafter; provided, however, that this does not apply if the employer pays compensation for discontinuation pursuant to Article 81, nor does it apply if business continuance has become impossible due to a natural disaster or any other compelling reason." Article 19 (1), Labor Standard Act

- breach of internal policies and rules, workplace disciplines, breach of work responsibilities and duties, orders
- Loss of job responsibility, dismissal due to business downsizing, economic reasons, or corporate dissolution

Termination in regard to the precedent reason is very restricted in Japan as there is no redundancy status in Japan. Indeed, the Japanese government has established that the following 4 conditions are required in order for a company to dismiss employees on that ground:

- The company must decrease its number of employees (economic necessity)
- The company must adopt the "unilateral termination of employment contract"
  - method as a means of employment adjustment, it requires that the company tries its best to avoid any termination of employment.
- The company must have done an adequate selection of the employees laid off
- Adequacy of the termination procedure

However, this ground of termination is considered in Japan as a last resort for companies. It is only permitted in a case where the company has no other choice but to do so. The management of employers must have tried everything in their power to avoid termination. Indeed, employers should use any available and legal means within a company prior to the termination in order to avoid it and provide their best effort, including lowering compensation for directors, limiting new hires, soliciting voluntary retirement, encouraging early retirement, personnel relocation, and employee transfers. Thus, it is extremely hard for companies to satisfy the 4 conditions discussed previously.

Additionally, poor performance or misconduct justifying dismissal in other countries aren't acceptable grounds under Japan Labor Law. Grounds for termination should be stated in the company's internal policy or in the employment contract. However, if the grounds stated in the employment contract are seen as too harsh by the court, termination isn't enforceable.

Furthermore, under Japanese Labor Law, no severance pay is required upon termination, except when the compensation is in lieu of notice.

The validity of selection criteria used:
The Japan Court have accepted previously the following criteria examples:

- Selecting employees close to retirement
- Selecting employees who have a precedent of tardiness, absenteeism, or who are leaving office early ...
- Selecting employees who have a less significant performance than others

5.2.3 • Disciplinary dismissal

Disciplinary dismissal is considered in Japan as one of the most severe to both parties. This method still requires a 30 days notice or a payment in lieu of notice.

Disciplinary termination is a rare procedure as it occurs when an employee has committed crimes or a serious ethical breach, made a false statement in his/her resume at the time he/she applied to the position or if the employee had an absence which wasn't justified (ex: more than 2 weeks without any explanation) Disciplinary dismissal being very unfavorable for the employee, the threshold installed by the Court regarding "sufficient reasons" in this situation is very high, thus its use is very rare.

5.2.4 • Abusive and prohibited dismissal

The Labor Contract Act stipulates that " a dismissal shall, if it lacks objectivity reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of right and be invalid" (§16). Not only this provision can be applied to individual dismissal but also to collective dismissal. Additionally, it applies for any kind of dismissal whether it is disciplinary, due to an employee's incapability or job redundancy.

Furthermore, the Labor Contract Act prohibits employers to terminate a contract discriminatorily, on grounds of nationality, beliefs, sex and so on. "on grounds of nationality, creed or social status" (§3 , Labor Standard Act)

5.3 Advance notice of dismissal

"In the event that an employer wishes to dismiss a worker, the employer shall provide at least 30 days advance notice. An employer who does not give 30 days advance notice shall pay the average wages for a period of not less than 30 days. However, that this shall not apply in the event that the continuance of the enterprise has been made impossible by a natural disaster or other unavoidable cause nor when the worker is dismissed for reasons attributable to the worker." - Labor Standards Law of Japan - Article 20

This article states that the advanced notice of dismissal has to be of 30 days. This notice is required no matter the length of service, provided that the employee has overcome the probationary period. If an advance notice isn't given, the employer has to pay the average wages for at least 30 days. The number of days of notice can however be shortened if the employer

pays the wages for the number of days that are reduced. The Labor Standards Law also states that the employer must give a certificate explaining why the job of the retiring or was terminated, when the later requests for it.

These provisions however do not apply to Workers who are employed on a daily basis, workers who are employed for a fixed period not longer than two months, workers who are employed in seasonal work for a fixed period not longer than four months, or workers in a probationary period. The advance notice of dismissal does not apply either in the case of an unavoidable event that causes the discontinuance of the enterprise.

The conditions are set as to give the dismissed employee some time to find another job. Indeed, the Japanese work culture encourages lifetime employment and the unemployment rate is very low (about 2.34% in 2020). The Japanese work culture also advocates company loyalty and long working hours, so maybe giving time to find another job or giving an advance of money is a way to show respect in return and thanking the former employees for their hard work.

5.4 Cases where dismissal is invalid

5.4.1 • Prohibited dismissals

Japanese labor law prohibits some dismissals because they are considered to be unfair. For example, it strictly prohibits dismissals on the grounds of discrimination, such as gender, nationality, creed, etc. It also proscribes dismissals during family leaves, such as childbirth, maternity or family care. This also stands for people on a period of rest for medical treatment, in the case of an injury or an illness. The prohibition of dismissal in these cases is extended to 30 days after the end of the leave.

The rules of the advance notice of dismissal also apply in this case. The period of 30 days after the end of the leave can be shortened if the employer pays the wages corresponding to the missing period and the prohibitions are invalid in the case of an unavoidable event that causes the discontinuance of the enterprise.

5.4.2 • Abusive dismissals

Firms in Japan usually specifically list the reasons why they dismiss an employee but some dismissals can also be considered "abusive".

"The major reason for dismissal listed in the employee regulations can be roughly classified into three types: employee's misconduct, employee's incapability and the firm's economic necessity. When judging whether a dismissal is to be nullified as abusive, the court starts with the questions of whether the alleged misconduct, incapability or economic necessity falls under the reasons for dismissal set forth in the employee regulations. The court first assesses the reasonableness of the statutory reason, and then examines its applicability to the dismissal." (5.

Dismissals in Japan, "Part One: How strict is Japanese law on Employers?")

In the case of a dismissal by reason of the employee's misconduct, the court takes these details into consideration: components of facts regarding the misconduct (manner, gravity, motives, etc.), propriety of the dismissal as a means of sanction (considering the nature of the misconduct, its type and degree), and the due process (if the employee was able to explain him/herself).

If the dismissal is due to the employee's incapability, the temporary loss of occupational capacity is nullified. Terminating employment shortly after a period of absence not notified to the employer is also considered abusive: the employer would have to wait a certain time to consider this as a reason for dismissal. When it comes to insufficient job performance, the court wants to see if there was no other recourse than dismissing the employee and therefore examines the nature and degree of the insufficient performance. If the employee did not make any effort to assist the employee or assign him/her to a job more fitting to his/her qualifications, this reason for dismissal will be considered as abusive.

Dismissals by reason of firm's economic necessity can also go under court examination. The abusiveness of economic dismissals is decided on four factors: economic necessity of reducing the workforce, efforts made to avoid dismissal in attaining the reduction, the method of selecting the employees to be dismissed, and the extent and manner of labor management consultation in executing the collective dismissal. If one of these factors were to be questionable, the dismissal would be considered abusive and therefore nullified.

5.5 Covenant not to compete

As in many other countries, Japanese employees have a covenant not to compete when resigning or being dismissed from their job.

"In Japan, freedom of choice of occupation is guaranteed by the Constitution. Accordingly, an agreement that prohibits working for a competitor for a certain period after leaving his/her former employer is only valid if the term, geographical scope, professional field, commensurate compensation concerned, and similar restrictions are reasonable. Regarding trade secrets, both the disclosure of former employers' trade secrets by workers and wrongful acquisition of such trade secrets by enterprises are prohibited by law under the Unfair Competition Prevention Act." (Japan External Trade Organization, "Resignation and Dismissal")

This article overall states that it is prohibited, for a certain amount of time, to work in a competing firm to the one in which one was working in. The new company therefore can not sell the same kind of product or be in the same field of study.

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