



DECENT WORK CHECK

JAPAN 2023

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WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

In 2023, the team aims to include at least 15 more countries, thus taking the number of countries with a Decent Work Check to 125!

The text in this document was last updated in May 2023. For the most recent and updated text on Employment & Labour Legislation in Japan in Japanese, please refer to: <https://kyuryocheck.jp/>

MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Minimum Wages Act, 1959
2. Labour Standards Act, 1947
3. Labour Contract Act, 2007
4. Ordinance for Enforcement of the Labour Standards Act, 1947
5. Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991
6. Ordinance for Enforcement of the Act on the Welfare of Workers Who Take Care of Children and Other Family Members etc., 1991
7. National Holidays Act, 1948
8. Constitution of Japan, 1946
9. Civil Code, 1896
10. Act on Securing of Equal Opportunity and Treatment between Men and Women in Employment, 1973
11. Trade Unions Act, 1949
12. Whistle Blower Protection Act, 2004
13. Employment Insurance Act, 1974
14. Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment, 1972
15. Child Welfare Act, 1947
16. Industrial Safety and Health Act, 1972
17. Act on Improvement, etc. of Employment Management for Part-Time Workers 1993
18. Guidelines Concerning Measures to be Taken for Pregnant and Postpartum Workers, 1997
19. Ordinance on Industrial Safety and Health, 1972
20. Employees Health Insurance Act, 1922
21. Industrial Accident Compensation Act, 1947
22. Employees' pension insurance Act, 1954
23. National Pension Act, 1959
24. Employment Security Act, 1947
25. Labour Relations Adjustment Act, 1946

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01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Japan has ratified the Convention 131 only.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Minimum Wages Act, 1959
- Labour Standards Act, 1947

Minimum Wage

Minimum wages in Japan are governed under the Minimum Wages Act of 1959. The minimum wages set under the Minimum Wages Act apply to all workers who are employed at an enterprise or place of business and receives wages there from, without regard to the kind of occupation, excluding persons employed in businesses or offices employing only family members residing together and domestic employees.

The basic minimum wages are separately established in each region of the country. Based on the deliberation of the Regional Minimum Wage Council in each prefecture, and determined by the chief of the prefectural labour bureau, the minimum wage is comprehensively applied to all types of employees in each prefecture. In addition, there are also special minimum wages, which may be set for specified businesses or occupations on the applications of interested parties. In order to guarantee the payment of minimum wages level for low paid workers, regional minimum wages are set for every region of Japan. (2) Regional minimum wages are set while taking into account the living expenses of workers, wages of workers and the ordinary enterprises' ability to pay the wages in the region.

All types of minimum wages are set by the Minister of Health, Labour & Welfare, or the Directors of the Prefectural Labour Offices, following an investigation and inquiry of the Central or Prefectural Minimum Wages Council for each region, which is composed

of an equal number of members representing respectively workers, employers and the public interest. The Minimum Wages Council conducts an investigation and inquiry with respect to all regional minimum wage reviews and, if the Minister or Directors considers it necessary, with respect to an application for a special minimum wage. Once its investigation and inquiry is conducted, the Council then submits its opinion on the regional or special minimum wage to the Minister or Directors.

Upon receipt of the Minimum Wages Council's opinion, the Minister or Directors can request another inquiry of the Council or give public notice of the summary of the opinion. If a public notice is given, interested workers and employers may then file objections within 15 days of the public notice. Any objections received must be referred to the Minimum Wages Council for its opinion concerning the objection. Once the period for filing objections has passed and, if relevant, the Minimum Wages Council has submitted its opinion on any objections raised, the Minister or Directors shall make a decision in relation to the minimum wage and give public notice of its decision. The decision for setting a revised minimum wage comes into effect 30 days after the date on which public notice is given and for abolishing the minimum wage on the date on which public notice is given.

The criteria for determining or updating minimum wages include wage trends (level of wages in the country), economic conditions/growth, employment trends, and consumer price index/inflation rate.

The minimum wage rate in Japan is different in different regions of Japan. There are 47 different regions in Japan and the wage changes according to the region.

In line with the provisions of Labour Standards Act and the Minimum Wages Act, any individual convicted of violating the provisions regarding payment of minimum wages shall be punished as follows:

- a) for failing to pay wages equal to or greater than the minimum wage amount to workers covered by the minimum wage - by a fine not exceeding 500,000 yen;
- b) for failing to inform workers of applicable minimum wages, by posting information continuously at conspicuous places in workplaces and by other means - by a fine not exceeding 300,000 yen;
- c) for refusing, impeding or evading an inspection, or failing to make a statement or making a false statement to questions asked by Labour Standards Inspectors - by a fine not exceeding 300,000 yen;
- d) for failing to pay wages in accordance with the requirements of the Labour Standards Act pertaining to method and timing of payment, payment of piece-rate workers, emergency payments and absences allowances - by a fine not exceeding 300,000 yen; or
- e) for dismissing or giving disadvantageous treatment to a worker by reason of the worker reporting an alleged violation of the Act to any of the relevant bodies - by a fine not exceeding 300,000 yen (or up to 6 months imprisonment);

Sources: § 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 32, 39-41 of the Minimum Wages Act, 1959; §24-27 of the Labour Standards Act, 1947

Regular Pay

Wages are defined as any payment to the worker from the employer, including salaries, allowances and bonuses. The allowances and bonuses may be paid according to particular work rules, e.g. housing allowance or retirement allowance. The full amount of the wages must be paid in cash and directly to the employee and at least once a month on a specified date. Where payment is made more frequently than once a month, dates must be specified for the payment.

An employer cannot reduce wages without the consent of the employee. No statutory regulations explaining the circumstances in which the salary maybe deducted by the employer could be found, except where the employer can make salary cuts for disciplinary action. Although salary deduction is regulated under Employment Rules, the amount of decrease for a single occasion must not exceed 50 percent of the daily average wage, and the total amount of decrease should not exceed 10 percent of the total wages for a single pay period. Payroll deduction is generally prohibited and employees' consent for such deductions is unenforceable.

Partial deduction from wages is permitted in cases otherwise provided for by laws and regulations or in cases where there exists a written agreement with a labour union or with a person representing a majority of the workers (where labour union is not organized).

Sources: §11, 24 & 89 of the Labour Standards Act, 1947; §2(3) of the Minimum Wages Act, 1959

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Japan has not ratified any of the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter time (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Labour Standards Act, 1947
- Labour Contract Act, 2007
- Ordinance for Enforcement of the Labour Standards Act, 1947
- Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991
- Ordinance for Enforcement of the Act on the Welfare of Workers Who Take Care of Children and Other Family Members etc., 1991

Overtime Compensation

The statutory working hours for full-time work are 8 hours a day and 40 hours a week. The maximum number of working days in a week cannot exceed 6 days. These limits may be relaxed for a definite period, which is defined by agreement of the employer and the enterprise trade union or, if such union does not exist, a worker representing a majority of workers.

An employer may not impose overtime on workers if work can be performed within the normal working time limits by means of appropriate organization and distribution of work, distribution of working time by introducing new shifts or employing new workers.

Limits of overtime will be set by the agreement, which provides for overtime to be worked. The only statutorily set limits on overtime apply to belowground labourers and other workers performing tasks particularly hazardous to health. These workers cannot be required by a written agreement to work more than 2 hours of overtime per day. No limits are imposed on overtime performed due to an

extraordinary need. It is absolutely necessary that the number of hours worked overtime is provided in the agreement, non-inclusion of which is a criminal offence. There are administrative guidelines which state that a maximum of 45 hours per week can be worked, but even this can be exceeded where the agreement specifies otherwise. Workers who are covered by a written agreement between their employer and a labour union or other representative of the majority of workers, providing for the averaging of working hours over a period of up to 1 year, may be required to work up to 52 hours in one week, provided that they are not required to work more than 48 hours in any 3 consecutive weeks or more than 40 hours per week on average. The weekly hour limit may be exceeded in cases of extraordinary need due to disaster or other unavoidable event, with the prior permission of or (in cases too urgent to obtain prior permission) subsequent notification to the relevant government agency. Employers in prescribed industries who usually employ less than 10 workers may require their workers to work up to 44 hours in a week.

For workers aged 13-15 years, prescribed working hours are 7 hours per day including school hours. Workers aged 15-18 years may be required to work 10 hours in a day, provided that the total weekly working time does not exceed 40 hours and the working hours on another day is reduced to no more than 4 hours. Overtime work by persons under 18 years of age is restricted.

An employer may be permitted to have its employees work longer than the statutory work hours (“statutory overtime work”) or on the statutory rest days (“statutory rest-day work”) by entering into a labour-management agreement with a union organized by a majority of the employees at

the workplace where such a union exists, or with an employee representing a majority of such employees where no such union exists *and* by filing such agreement with the relevant labour standards inspection office. In addition, the rules of employment or the collective bargaining agreement must clearly provide that such overtime work or work on rest days may be ordered when necessary due to business reasons. Workers may be required to work overtime where there is an extraordinary need, due to a disaster or other unavoidable circumstances and the employer has obtained the permission of the competent government authority or, if urgent, notifies the authority after the fact. Where a written agreement allowing for overtime work has been entered into, the agreement shall clarify the specific reasons why workers are required to work overtime.

Where an employee does overtime work, the employer is required to pay an increased salary to the employee at 125% of his normal salary. If worker is required to perform overtime work on statutory rest days, employer has to pay wages at an increased level of 135% of the normal wage rate. If a worker engages in overtime work in excess of 60 hours per month, he/she must be paid at 150% of the normal wage rate for the overtime hours. Employer can also provide worker paid vacation in lieu of increased salary at increased rate of 125% out of 150% (of the normal wage rate) for hours exceeding 60 hours per month. Managerial staff or employees who have administrative or supervisory positions are not paid any premium for overtime hours.

Overtime work may not be asked from following workers:

- i. expectant or nursing mothers are prohibited from working in excess of 8 hours per day, pursuant to a weekly

hour averaging scheme, if so, requested by the expectant or nursing mother and Young workers under 18.

- ii. parents cannot be allowed to work for more than 24 overtime hours per month and 150 overtime hours per year, who are taking care of a child before the time of commencement of elementary school and who make a request for the purposes of taking care of that child.

The employers are allowed to make workers work overtime after executing a labour-management agreement as provided under article 36 of the Labour Standards Act. In line with the Acts on Work Style Reform, to be applicable from April 2019 (for small and medium enterprises, the changes will be applicable from April 2020), the maximum overtime hours will be 45 hours per month and 360 hours per year. The maximum overtime hours under temporary and exceptional circumstances can be set as following during the busy season (maximum 6 months during the year) by agreeing to a special clause under article 36 agreement: 720 hours per year; less than 100 hours including holiday work in a particular month; 80 hours per month during the second to the six months. Those violating the provisions will be subject to imprisonment with labour up to 6 months or a fine up to JPY300,00.

Sources: §32, 33, 36, 37, 40, 41, 60, 61, 62, 63, 64 & 66 of the Labour Standards Act, 1947; §35 of the Labour Contract Act, 2007; §12-4(4), 12-4(5), 12-5, 16(1), 18, 19, 20(1), 21 & 25-1 of the Ordinance for Enforcement of the Labour Standards Act, 1947; §17(1) of the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991; Chapter 3-3 of the Ordinance for Enforcement of the Act on the Welfare of

Workers Who Take Care of Children and Other Family Members etc., 1991

Night Work Compensation

In Japanese law, work performed between 22:00 to 05:00 is considered night work. For certain regions and at certain times of the years, this limit can be changed to 23:00 to 06:00.

In the event an employer has a worker work during the above referred period, the employer has to pay increased wages for work during such hours equivalent to at least 125% of the normal wages per hour. If overtime is performed during *night* hours, employer has to pay wages equivalent to at least 150% of the normal wage rate. If work is performed during the night hours on weekly rest days, the required rate is at least 160% of the normal wage rate.

Night work against increased wages is legally permitted but cannot be ordered to those workers who are raising a child and request to be accepted. Similar is the case for expectant and nursing mothers. Additionally, workers below the age of 18 are restricted from working during night hours except for males over 16 years of age engaged on shift-work basis.

Sources: §37 & 60-64 of the Labour Standards Act, 1947; §19-21 of the Ordinance for Enforcement of the Labour Standards Act 1947

Compensatory Holidays / Rest Days

Workers may be required to work on a weekly rest day where the employer has entered into a written agreement with a union or other representative of the majority of workers allowing for work on

weekly rest days and notified the relevant government agency of the agreement; or there is an extraordinary need, due to a disaster or other unavoidable circumstances and the employer has obtained the permission of the competent government authority or, if urgent, notifies the authority afterwards. Where a written agreement allowing for work on weekly rest days has been entered into, the agreement shall clarify the specific reasons why workers are required to work on weekly rest days.

Further, where work on a weekly rest day has been performed due to an extraordinary need without the prior permission of the relevant government agency, the agency may order the employer to provide the workers with equivalent rest periods or days off if it determines that the overtime was inappropriate.

Where work on weekly rest days is performed pursuant to a written agreement, restrictions shall apply as stipulated by that agreement. Where work on weekly rest days is performed due to an extraordinary need, no limitations apply beyond the requirement that the employer obtain the permission of the relevant government agency or, if not possible due to the urgency of the situation, notify the agency after the fact.

No legal provisions regulating work on public holidays could be found.

Sources: §33, 36, and 37 of Labour Standards Act 1947; §16 & 20 of the Ordinance for Enforcement of the Labour Standards Act 1947

Weekend / Public Holiday Work Compensation

Compensation rates payable for working on a rest day shall be set by cabinet order within the range of 25-50% over the normal wage per working hour or day. Where work on weekly rest days is performed between 10pm and 5am (11pm and 6am for certain areas or during certain times of the year), the employer has to pay premium wages for that work at a rate no lower than 60% over the normal wage per working hour.

Nothing could be found on compensation for working on a public holiday.

Sources: §33(2), 37(1), and 37(2) of the Labour Standards Act, 1947; §20(2) of the Ordinance for Enforcement of the Labour Standards Act, 1947

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.
In addition, for several industries, different Conventions apply.

Japan has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Labour Standards Act, 1947
- Ordinance for Enforcement of the Labour Standards Act, 1947
- National Holidays Act, 1948

Paid Vacation / Annual Leave

Employees are entitled by law to a paid vacation. Employees may take their paid vacation by accumulating the number of hours equivalent to five days per annum if such a labour-management agreement is made, or in full days. After 6 months of continuous employment, the employee can claim 10 days of annual leave. Provided that the vacations do not prevent business from operating adequately, they can be taken whenever the employee decides to do so.

The initial entitlement to annual leave is 10 days. After that, employees who have been employed continuously for at least one and half years are granted one additional day's leave for each year of service, however, the maximum number of annual paid leave days may not exceed by 20 days. Part-time workers whose prescribed weekly working hours are at least 30 hours per week are entitled to the same amount of annual leave as full-time workers. For those working under 30 hours, they are entitled to annual leave according to the number of days on which they work per week or per year.

To qualify to annual leave, workers must have been employed continuously for 6 months from the date of being hired and have reported for work on at least 80% of the total working days. Where a worker has reported for work on less than 80% of the

total working days, the employer is not obliged to grant the worker annual leave in the following year.

The employer grants paid leave during the period requested by the worker, unless it would interfere with the normal operation of the enterprise (in which case, the employer may grant the leave during another period); or a written agreement has been entered into by the employer and a union or other representative of a majority of workers, which stipulates the period in which annual leave will be granted. Annual leave may be taken either in a consecutive period or divided periods of time. Furthermore, either the average wage or the amount of wages that would normally be paid for working the prescribed working hours, in accordance with the rules of employment or the equivalent thereto, calculated in accordance with §25 of the Ordinance for Enforcement of the Labour Standards Act 1947 will be paid by the employer to the employee when the latter avails the paid leave. Although employers do not have to pay for earned and unused vacation at the termination of employment, employers often do so at their discretion.

In line with the Acts on Work Style Reform, to be applicable from April 2019 (for small and medium enterprises, the changes will be applicable from April 2020), employers are required to designate a specific time period during the year in which a worker can take 5 days paid annual leave so that workers entitled to 10 or more days of paid annual leave are able to take 5 days at a particular time.

Sources: §39 of the Labour Standards Act, 1947; §24(3) & 25 of the Ordinance for Enforcement of the Labour Standards Act, 1947

Pay on Public Holidays

The legislation regarding public holidays is the Act on National Holidays 1948, which stipulates 16 national holidays in a calendar year. It is not a legal requirement that the holidays are specified as days off. The holidays are as follows: New Year's Day (01 January); Coming of Age Day (2nd Monday of January); National Foundation Day (11 February); Vernal Equinox Day (20/21 March); Shō wa Day (29 April); Constitution Memorial Day (03 May); Greenery Day (04 May); Children's Day (05 May); Marine Day (3rd Monday of July); Mountain Day (11 August); Respect for the Aged Day (3rd Monday of September); Autumnal Equinox Day (22/23 September); Health and Sports Day (2nd Monday of October); Culture Day (03 November); Labour Thanksgiving Day (23 November); and the Emperor's Birthday (23 December).

The National Holidays law requires that when a national holiday falls on a Sunday, the next working day shall become a public holiday (referred to as "transfer holiday"). Moreover, a working day that falls between two other national holidays is also declared a holiday, referred to as "citizens' holiday".

There is no provision as to whether the holidays are paid or unpaid.

Source: The National Holidays Act, 1948

Weekly Rest Days

An employer must provide employees at least one rest day per week; however, the principle of a one-day-per-week rest system does not apply to an employer that provides at least four rest days during any four-week (or shorter) period. In such case, the starting day for calculating the four-

week (or shorter) period for this modified weekly rest system must be set forth in the rules of employment.

Source: §35 of the Labour Standards Act, 1947; §12-2 of the Ordinance for Enforcement of the Labour Standards Act

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Japan has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Constitution of Japan, 1946
- Labour Standards Act, 1947
- Labour Contract Act, 2007
- Civil Code, 1896
- Act on Securing of Equal Opportunity and Treatment between Men and Women in Employment, 1973
- Trade Unions Act, 1949
- Whistle Blower Protection Act, 2004

Written Employment Particulars

Once an employer has made a formal offer of employment to a prospective employee and the prospective employee has accepted it, a certain employment relation has been established, even if the employee has not yet started work. In practice, employment relationship is traditionally founded on lifetime employment. The employee usually remains with one company for his/her entire working life. The employment period is thus not stipulated and the post is assured until mandatory retirement age, which is usually somewhere between 55 and 60 years. However, a fixed term contract may also be concluded as not everyone can be employed for an indefinite term.

There is no requirement that the employment contract be in writing; it can be in oral form as well. However, the employers are required to inform employees in writing of important working conditions at the time of hiring, which employers are generally required to prepare and file with the relevant labour standards inspection office for any workplace constantly employing ten or more employees. These conditions thereby

constitute part of the employment contract.

Details of such terms and conditions include matters pertaining to the duration of an employment contract; workplace and work contents; start and end time for working hours, break time, etc.; wages; termination of employment, retirement and dismissal.

There is no provision in law, which requires employers to provide their employers with a letter of appointment to the employees, although it may be customary to provide such letters.

Employment Security Act was amended in 2017 and now employers are required to state the working conditions of a role to the job seekers when recruiting. The amended law stipulates that if the working conditions change during hiring negotiations, the employer must highlight the changes to the candidate; and if there are changes in employment conditions and these include terms relating to probation periods, discretionary work arrangements, and fixed overtime payment systems.

In line with the Acts on Work Style Reform, to be applicable from April 2019 (for small and medium enterprises, the changes will be applicable from April 2020), the Labour Standards Act is amended by introducing special rules for High Level Professionals (HLPs). High-level professionals are those who are engaged in highly specialized work and who want to be appraised based on their work/product instead of the time actually spent on work. The provisions on work hours, holidays and extra wages for night work are not applicable to workers who earn at least JPY10.75 million. The only condition is that measures are taken to ensure such workers' health and wellbeing

(at least 104 weekly holidays per year and not less than 4 days in every 4 weeks) and that workers' consent and the resolution of the labour-management committee are in place. Employers are required to ensure a work hour interval system so that workers have a proper rest between the end of working hours on the previous day and start of working hours on the next day. Employers are further required to conduct health checks for employees working in excess of certain hours.

Sources: §14, 15 & 89 of the Labour Standards Act, 1947

Fixed Term Contracts

Provision for fixed term contracts originates from the Labour Standards Act of 1947.

There seems to be no provisions in law that gives the reasons and circumstance permitting the conclusion of a fixed term contract.

The term of contract must not exceed three years except in certain cases where it may be extended up to five years if the employee is highly specialized or is aged 60 years or above. An employer is required to, upon execution of the contract, state in writing the possibility of renewal of such contract (if there is a possibility to renew) and (ii) if there is a possibility to renew, the criteria to be used for the decision of renewal. There appears to be no provision specify the maximum number of renewals for fixed term contracts, thereby suggesting that contract can be renewed as many times as its desired between the employer and the employee. With regard to renewal of fixed term contracts, "an employer shall give consideration to not renewing such labour contract repeatedly as a result of

prescribing a term that is shorter than necessary in light of the purpose of employing the worker based on such labour contract".

The employment conditions of a fixed-term labour contract may not be unreasonable when compared to those in an indefinite-term labour contract in consideration of their duties, responsibilities, possible reassignment and the fixed-term employees must be granted the right to convert their contracts into indefinite term contracts after repeated renewals beyond a total of five years. These five years will begin to be counted no later than August 10, 2013, when the amendment came into effect.

Sources: §14 of the Labour Standards Act, 1947; §18 & 19 of the Labour Contract Act, 2007

Probation Period

The Labour Standards Act contains the provisions on probation period.

The Probation Period means the term during which employers judge an employee's skills and qualifications and decide whether he or she will be enrolled as a permanent employee. During this term, the labour contract between the employer and employee is considered to be a labour contract with a reserved dismissal right. Even if the employer has the dismissal right, the employer may only exercise such right for rational reasons and in line with accepted social custom. Also, if the employee works more than fourteen days of the probationary period, the requirement for thirty days' advance notice applies to him or her.

There is no limitation on keeping the duration of the probation period. There is no provision as to whether there should be a single or different probationary period for different types of jobs.

Source: § 20 & 21 of the Labour Standards Act, 1947

Notice Requirement

The legal provision on notice before contract termination stems from the Labour Standards Act. Employment contracts are terminated by retirement; a dismissal based on reasonable and socially acceptable grounds; redundancy; agreement between the parties; on expiry of its term (for fixed term contracts); on cancellation of a contract by either of the parties on the basis provided under the law; and on the death of an employee.

The Japanese law provides two types of dismissal: ordinary dismissal and summary dismissal. An ordinary dismissal requires a notice period while summary dismissal does not need any notice period.

A fixed term contract cannot be terminated by the employer prior to expiration of its term unless there is an unavoidable reason for such termination. Further, employers should not make the term of a fixed term agreement shorter than necessary, taking into consideration the purpose of the employment, in order to avoid repeated renewals.

Upon request of the dismissed employee, the employer shall issue a certificate indicating the reason for dismissal in writing and without delay. Both parties can terminate an employment contract of indefinite duration at-will provided that

two weeks' notice is given. A dismissal will, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of rights and be invalid. Furthermore, the employer is to include in the workplace rules matters pertaining to termination of employment, including grounds for dismissal. These rules must be established in all enterprises employing ten or more workers. Reasons for unfair dismissal include marital status; pregnancy; maternity leave; filing a complaint against the employer; temporary work- injury or illness; race; sex; religion; social origin; nationality/national origin; trade union membership and activities; and whistle blowing.

During probation, the labour contract between the employer and employee is considered to be a labour contract with a reserved dismissal right. Even if the employer has the dismissal right, the employer may only exercise such right for rational reasons and in line with accepted social custom. Also, if the employee works more than fourteen days of the probationary period, the requirement for thirty days' advance notice applies.

In the event that an employer wishes to dismiss an employee, the employer must provide at least 30 days' advance notice, or pay the employee his/her average salary for a period of not less than 30 days. Notice period can be reduced, if the employer pays the average wage for each day by which the period is shortened. The exceptions to the above rule are as follows:

- i. in the event that the continuance of the business of the employer has been made impossible due to a natural disaster or other unavoidable reasons;

- ii. in the event that the employee is dismissed for reasons attributable to him/her; or
- iii. in the event that the employee is dismissed during his or her probationary period and within 14 days from the start of employment;
- iv. for workers employed on a daily basis if they have worked for less than one month;
- v. for workers employed for a specific period not exceeding two months;
- vi. for seasonal workers employed for a specific period not exceeding four months;

agreement with the labour union. However, an employer is required to make a payment in lieu of notice or discretionary retirement allowances.

In order for the exception i) or ii) to be applicable, the approval of the head of the relevant Labour

Standards Inspection Office is required. Under the Civil Code, both parties can terminate an employment contract of indefinite duration at-will provided that two weeks' notice is given. Term of notice period is independent of the length of service.

Sources: §14 of the Constitution of Japan, 1946; §3, 19-22, and 104 of the Labour Standards Act, 1947; §627 of the Civil Code, 1896; §6 & 9 of the Act on Securing of Equal Opportunity and Treatment between Men and Women in Employment, 1973; §7 of the Trade Unions Act, 1949; §3 of the Whistle Blower Protection Act, 2004

Severance Pay

In Japan, there is no legal provision for giving severance pay. Employers are not required to provide severance pay to employees who are dismissed in addition to a retirement allowance or pension, as provided in the employers' own rule of employment or a collective bargaining

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation 165: Workers with Family Responsibilities (1981)

Japan has ratified the Convention 156 only.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991
- Ordinance for Enforcement of the Act on the Welfare of Workers Who Take Care of Children and Other Family Members etc, 1991
- Employment Insurance Act, 1974
- Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment, 1972

Paternity Leave

The 2021 amendment in the Child Care and Family Care Leave Act provides for a fully paid four-week paternity leave. This leave is referred to as "Child Care Leave at Birth". It allows workers to take child care leave of up to four weeks within the eight weeks following childbirth. The paternity or child care leave at birth is in addition to the existing child care leave (available until a child reaches one year/maximum two years in exceptional circumstances). The paternity leave can be taken in two separate instalments. The worker must apply for the paternity leave at least two weeks prior to the intended start date of leave. The workers may also work during the leave period, in line with the agreement between the worker and employer. The provision will be effective October 2022 onward.

Parental Leave

Each parent can take parental leave (referred to as childcare leave under the law), being individual entitlement, until a

child is 12 months old. The leave can, however, be extended until the child is 14 months old if both parents take some of the leave even though each parent is only entitled to 12 months after birth including the maternity leave period. The first 180 days of the parental leave are paid at 67% of the average earnings and the remaining period at 50%. Parental leave can be further extended to 18 months where the child needs care for a period of two weeks or more due to injury, sickness, etc.; or admission to a childcare centre has been requested but denied for the time being.

A fixed term employee can take parental leave only when he/she meets all of the following conditions: he/she has been employed by the same employer for a continuous period of at least one year; he/she is likely to be kept employed after the day on which his/her child turns one year of age; and it is not clear that his/her employment contract will end by two days before the child's second birthday and will not be extended. Workers who don't meet above requirements (and those working two days or less per week) are not eligible for parental leave.

The 2021 amendment in the Child Care and Family Care Leave Act abolishes the above eligibility criteria for fixed-term contract workers. However, the labour-management agreements are still allowed to exclude employees engaged for one year or less. The provision will be effective from April 2022.

Under the previous law, employees were not allowed to take child care leave in instalments. However, the 2021 amendment in the Child Care and Family Care Leave Act allows employees to take child care leave in up to two instalments after their child reaches its first birthday.

The provision will be effective no later than December 2022.

Sources: §2-16 & 61 of the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991; §1-7 & 23 of the Ordinance for Enforcement of the Act on the Welfare of Workers Who Take Care of Children and Other Family Members etc, 1991; §61-4 to 7 of the Employment Insurance Act, 1974

Flexible Work Option for Parents / Work-Life Balance

Provisions for flexible work option for parents with minor children can be found in the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave.

An application for shortened working hours (to six hours per day) or other measures to facilitate work and family responsibilities may be made by a worker who:

- a) cares for a child under the age of 1 year, and who have not taken child care leave in respect of that child;
- b) cares for a child over the age of 1 but under the age of 3; or
- c) cares for a child over the age of 3 but under the age of elementary school.

In line with the amendment in the above law, childcare leave can now be extended until the child is two if certain requirements are met, e.g. the extension is needed because childcare arrangements fall through.

An application for shortened hours or other measures that facilitate the balancing of work and family responsibilities may also be made by a worker who cares for a

prescribed family member who is in a condition requiring constant care for a period of 2 weeks or more due to injury, sickness or physical or mental disability. The prescribed family members are the worker's spouse or de facto partner, parent, child, parent of a spouse, grandparent, brother, sister, grandchild or other relative living with the worker.

If a worker with carer responsibilities seeks shortened hours and/or the benefit of other measures that facilitate the balancing of the worker's work and family responsibilities, the employer is obliged to take at least one of a number of prescribed measures in relation to that worker, however, where a request is made by a parent who cares for a child over the age of 3 and under the age of commencing elementary school, the employer must endeavour to take the measures as requested, but is not compelled to do so by statute.

The Law further prohibits employers from requiring an employee with a child below compulsory school age to work more than 24 hours per month or 150 hours per year of overtime; or work night shifts, i.e. between 22.00 and 05.00 – if the employee requests not to work these hours. Employers are also required to give consideration to the worker's situation with regard to child care or family care changing assignment of a worker. Especially when the change in assignment leads to a change in workplace, employer should make sure that such change must not make it difficult for the worker to take care of his/her children or other family members while continuing working.

Further, the Act on Securing Equal Opportunity and Treatment between Men and Women in Employment obliges

employers to take necessary measures, such as change of working hours and reduction of work, in order to enable the women workers to comply with the directions they receive from medical specialists in relation to pre- and post-natal health.

Sources: §2, 5-10 & 17-29 of the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991; §1-3 & 31-34 of the Ordinance for Enforcement of the Act on the Welfare of Workers Who Take Care of Children and Other Family Members etc, 1991; §12-13 of the Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Japan has not ratified the Conventions 103 and 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Child Welfare Act, 1947
- Industrial Safety and Health Act, 1972
- Act on Improvement, etc. of Employment Management for Part-Time Workers 1993
- Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment, 1972
- Guidelines Concerning Measures to be Taken for Pregnant and Postpartum Workers, 1997
- Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991
- Ordinance for Enforcement of the Act on the Welfare of Workers Who Take Care of Children and Other Family Members etc, 1991

Free Medical Care

Where an expectant and nursing mother is unable to receive in-hospital midwifery care due to economic reasons, regardless of the necessity in terms of healthcare, the Welfare Office of the prefecture, city, town or village in which the expectant or nursing mother lives will provide midwifery care to her in a midwifery home, when the expectant and nursing mother applies. However, this obligation will not apply where there is an *unavoidable reason* such as nonexistence of an adjacent midwifery home. Mothers who qualify for midwifery care in a midwifery home may also be referred for additional assistance in a Midwifery Care Practice or Maternal and Child Aid Practice.

Where an expectant or nursing mother is unable to finance in-hospital midwifery care, the services shall be financed by the

relevant municipal or prefectural government.

Source: §22-23 & 50-53 of the Child Welfare Act, 1947

No Harmful Work

The legal provision on protecting health and safety of pregnant workers is found in the Labour Standards Act, where it is specified that an employer shall not assign pregnant women or women with one year after childbirth to any work injurious to pregnancy, childbirth and nursing.

Pregnant women are banned from doing work for a year, which is harmful to their pregnancy. This includes arduous work, work involving exposure to biological, chemical or physical agents and work involving physical strain.

With respect to a pregnant woman, the law has created a lot of responsibilities on the employers to ensure there is no harm to her pregnancy. Employers will be required to ensure the safety and health of workers in workplaces through creating a comfortable working environment and improving working conditions. Employers will also have to take necessary measures with regard to maternity health care of pregnant and postpartum women workers, such as (1) mitigation of commuting; (2) extending break times and increasing the number of breaks; and (3) limiting work, reducing working hours and granting a day off. Furthermore, upon a request made by the pregnant employee, the employer will not assign her to night work, overtime work and work on rest days, and must also transfer her to other lighter activities upon her request. Lastly, Employers will also secure the necessary time off so that women

workers may receive the health guidance and medical examinations prescribed in the Maternal and Child Health Act.

A mother who is taking care of a child before the time of commencement of elementary school may take up to 5 days' leave per fiscal year to look after the child in the event of injury or sickness to the child. There is also a general obligation on employers to take necessary measures, such as change of working hours and reduction of work, in order to enable the women workers to comply with the directions they receive from medical specialists in relation to pre- and post-natal health.

Sources: §64-66 of the Labour Standards Act, 1947; §3 of the Industrial Safety and Health Act, 1972; §2 of the Act on Improvement, etc. of Employment Management for Part-Time Workers 1993; §12-13 of the Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment, 1972; and Guidelines Concerning Measures to be Taken for Pregnant and Postpartum Workers, 1997

Maternity Leave

Maternity leave is provided under the Labour Standards Act. The normal duration of maternity leave is 14 weeks (6 weeks pre-natal and 8 weeks post-natal, of which 6 weeks is compulsory leave). In the event of multiple births, maternity leave can start 14 weeks prior to the expected date of birth (thus increasing the leave duration from 14 weeks to 22 weeks).

An employer must not have a woman work within 8 weeks after childbirth, except where the worker asks to return after 6 weeks and provides medical certification of

the work activities which will have no adverse effect on her. Similarly, an employer may not require a pregnant employee to work if she is expected to give birth within six weeks and requests leave days.

The employer does not have to pay for maternity leave, unless the employment contract or the work rules provide otherwise. The employee is in principle entitled to resume the same job/on the same conditions after the maternity leave, because the employer is prohibited from treating a female employee disadvantageously for taking maternity leave. The maternity leave entitlements of the Labour Standards Act apply to all women workers who are employed in an enterprise or office and receive wages therefrom, regardless of the type of occupation in which the woman is employed.

Sources: §9 & 65 of the Labour Standards Act, 1947; §5-9 of the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991; §4-7 of the Ordinance for Enforcement of the Act on the Welfare of Workers Who Take Care of Children and Other Family Members etc, 1991; Act on Securing, etc. of Equal Opportunity and Treatment between Men and Women in Employment, 1972

Income

Maternity leave benefits are payable to women workers who are insured under either the Employment Insurance Act or the National Health Insurance Law. The benefits provided by the Employment Insurance Act are payable to insured workers who take child care leave in

accordance with the Act on the Welfare of Workers Who Take Care of Children or Other Family Members etc.

As with parental leave, to qualify for the child care leave allowance under the Employment Insurance Act, the mother must meet the qualifying conditions under the Act on the Welfare of Workers Who Take Care of Children or Other Family Members etc 1991 and have been insured under the Employment Insurance Act for a total period of 12 months or more within the two-year period preceding the day on which the family care leave was commenced. The qualifying conditions for maternity benefits under the National Health Insurance Law are set by city, town or village ordinance. The child care leave allowance payable under the Employment Insurance Act is to be paid for the duration of the child care leave period taken in accordance with the Act on the Welfare of Workers Who Take Care of Children or Other Family Members etc 1991.

As mentioned above, the employer does not pay for maternity leave, unless the employment contract or the work rules provide otherwise. The currently available allowance is paid at approximately 66.67% (two-third) of the average daily basic wage, according to wage class, for the period of maternity leave.

Source: §6, 8, 61 & 66 of the Employment Insurance Act, 1974; National Health Insurance Law

Protection from Dismissals

The provision on dismissal during pregnancy is present in the Labour Standards Act and the Act on Securing of

Equal Opportunity and treatment between Men and Women in Employment.

Accordingly, dismissal of women workers who are pregnant or in the first year after childbirth shall be void, unless the employer can prove that the dismissal was for reasons other than that of pregnancy, childbirth, exercising her rights under Article 64-67 of the Labour Standards Act or reduced capacity arising from pregnancy or childbirth. Employers are also prohibited from stipulating marriage, pregnancy or childbirth as a reason for retirement of women workers. The said prohibition applies during the pre-natal leave of 6 weeks (14 weeks in the case of multiple pregnancies) and eight weeks after the childbirth and 30 days thereafter. Further, an employer may not dismiss for reasons of applying for or taking childcare leave or family care leave. Finally, a dismissal shall be treated as an abuse of right and be invalid under the Labour Contract Act if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms

Source: §19 of the Labour Standards Act, 1947; §9 of the Act on Securing of Equal Opportunity and treatment between Men and Women in Employment, 1972; §2 of the Ordinance for Enforcement of the Act on the Securing, Etc. of Equal Opportunity and Treatment of Men and Women in Employment, 1986; §10 & 16 of the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991; and §16 of the Labour Contract Act, 2007

Right to Return to Same Position

There are various prohibitions on discriminatory dismissal and dismissal during a period of maternity-related leave. Further, employers are required to give special consideration to re-employing former employees who resigned because of pregnancy, childbirth or child care of family care.

Employers cannot give disadvantageous treatment to women workers because of pregnancy, childbirth or absence from work because of these reasons. Thus, it is implicitly provided under the Law that a woman worker is entitled to return to same position on completion of her maternity leave. As decided by the Supreme Court in a 2012 case, an employer cannot demote a worker on the pretext of moving her to lighter work during pregnancy unless the demotion is with the consent of a worker or the demotion is in line with the smooth running of business and staffing requirements or there are special circumstances due to which such measure is not found to be discriminatory. There must be objective grounds to justify such an action.

Source: §27 & 30-33 of the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991; §9 of the Act on Securing of Equal Opportunity and treatment between Men and Women in Employment, 1972; Supreme Court Judgment concerning whether or not the measure taken by an employee to demote a woman worker upon transferring her to light activities during pregnancy constitutes treatment that is prohibited under Article 9, paragraph (3) of the Act on Securing, etc. of Equal Opportunity and

Treatment between Men and Women in Employment

Breastfeeding

If a worker who cares for an infant seeks shortened hours and/or the benefit of other measures that facilitate the balancing of the worker's work and family responsibilities, the employer is obliged to take at least one of a number of prescribed measures, which include establishing and operating a nursery facility for workers' children under three years of age, or providing services equivalent to those under said nursery system. Furthermore, women raising an infant under the age of one year are upon request entitled to two 30-minute nursing breaks a day in addition to the statutory rest periods. These breaks are not referred to as "nursing breaks" under the law however these can be used by the women workers to breastfeed their infants.

Source: §67 of the Labour Standards Act, 1947; §23 of the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, 1991; §34(1)(iv) of the Ordinance for Enforcement of the Act on the Welfare of Workers Who Take Care of Children and Other Family Members etc, 1991

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Japan has ratified the Convention 81 only.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Labour Standards Act, 1947
- Industrial Safety and Health Act, 1972
- Ordinance on Industrial Safety and Health, 1972

Employer Cares

The legal provisions on health and safety of workers come from the Labour Contract Act and the Industrial Safety and Health Act.

An employer is required to ensure safety of his/her life, body and the like. More specifically, an employer must provide its employees with a safe working environment and protect employees from work-related accidents (injury and sickness, including mental illness).

Employers are required to appoint various officers for health and safety for the prevention for work related accidents, which includes setting up a health committee and a safety committee and also train them in an effort to prevent accidents. The employer will also undertake to provide safety to employees against dangers due to machines, instruments and other equipment, dangers due to substances of an explosive nature, substances of a combustible nature and substances of an inflammable nature, dangers due to electricity, heat and other energy excavation, quarrying, cargo handling, lumbering and also prevent any impairment to health that may arise due to engagement in such activities. Where the premises pose an imminent danger to the workforce, arrangements for evacuation should also be made. Furthermore the law also requires the employers to use

appropriate measures to investigate the work place for any dangers to in order to meet the standards set by law.

Lastly, Employers must have their employees undergo a medical check-up on hiring, and then on annual intervals at the employer's cost. The employer is also responsible for making appropriate arrangements as necessary, based on the results of the medical check-up. The employer must arrange a medical consultation for an employee, who is overworking to an extreme level, if requested by the employee, and take appropriate measures based on the results of the consultation. Employers must also implement a health and safety management system, according to the number of employees and the type of business concerned.

Sources: §5 of the Labour Standards Act, 1947; §3, 20-28 & 66 of the Industrial Safety and Health Act, 1972

Free Protection

Employers are required to provide workers with the appropriate personal protection equipment after inspecting the conditions of work. This may include assessing the toxicity of chemical substances or the work place etc.

Employers who fail to provide protective equipment after assessing the risks of the workplace will be punished with imprisonment for a period not exceeding six months, or with a fine not exceeding 500,000 yen.

Workers will also be required to use the personal protective equipment once

instructed by employer to use such equipment.

Sources: §57-3 & 119 of the Industrial Safety and Health Act, 1972; §105, 106, 348, 592-598 of the Ordinance on Industrial Safety and Health, 1972

Training

The Industrial Safety and Health Act and the Ordinance on Industrial Safety and Health require employers to provide training to workers on OSH issues.

In order to prevent any industrial accidents and the occurrence of fires or explosions employers are required to take safety measures to protect the workers. These measures include providing the workers with the appropriate training. The matters on which the employers are required to conduct training are (i) matters relating to how to use machines, (ii) matters relating to the method of first aid resuscitation and other kinds of first aid and (iii) in addition to above pointed points, matters relating to the method of safety relief and protection.

Furthermore, the employer will on the occasion of employing a new worker, or on changing the content of work assigned to a worker, give education on items which are necessary as regards safety and health. These include education on a wide variety of matters, depending on the nature of job such as matters relating to danger and toxicity of machines, performance of safety devices, operation procedures, inspection at the time of commencement of work, causes and prevention of diseases of which workers are susceptible related to the work concerned, housekeeping and maintenance of sanitary conditions,

emergency measures and evacuation at the time of an accident.

An employer who fails to provide training to prevent the occurrence of industrial accident as a measure relating to relief and protection of workers will be punished with imprisonment term not exceeding six months, or with a fine not exceeding 500,000 yen, while an employer who fails to provide the employees with the appropriate education will be punished by a fine of 500,000 yen.

Source: § 25-2, 59, 69 and 119-120 of the Industrial Safety and Health Act, 1972; §24-4 & 35 of the Ordinance on Industrial Safety and Health, 1972

Labour Inspection System

The Labour Standards Bureau is a bureau of the Ministry of Health, Labour and Welfare responsible for maintaining work standards in Japan. It is tasked with securing and improving working conditions, ensuring the safety and health of workers, and is also responsible for managing Workers' Accident Compensation Insurance.

Various law acts contain provisions, which impose a duty on the bureau to enforce the laws enshrined in those acts. Some of the laws which with regards to which the bureau has to duty enforce are Labour Standards Act; the Industrial Safety and Health Act, the Minimum Wages Act; the Home Work Act; the Act on Security of Wage Payment; the Industrial Accident Compensation Insurance Act; and the Labour Contract Act.

The Labour Standard Inspection Office is the lead organization that has direct

contacts with workers and businesses. It provides advice on laws and regulations concerning labour standard administration as well as the following services:

1. Supervision and guidance for businesses;
2. Judicial punishment against serious and vicious violations of laws;
3. Handling of applications for approval, reports, etc., submitted by business operators, etc;
4. Dealing with declarations and consultations;
5. Inspection for the safety of manufacturing facilities;
6. Carrying out investigations for industrial accidents and giving guidance for recurrence prevention; and
7. Payment of the industrial accident compensation insurance benefits

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Japan has ratified the Convention 102 and 121 only.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Labour Standards Act, 1947
- Ordinance for Enforcement of the Labour Standards Act, 1947
- Employees Health Insurance Act, 1922
- Industrial Accident Compensation Act, 1947

Income

In general, there is no right for sick leave in Japan. When employees get sick, they use their paid vacation to take leave of absence.

Employees are statutorily entitled to time off due to work related injuries or illness, but not for non-work related injuries or illness. An employer cannot terminate an employee during a period of medical treatment for work-related injuries or illness and the 30 days after it ends. However, if the employee has not recovered within three years from the start of the medical treatment, the employer can terminate the employee at any time, after paying compensation equivalent to 1,200 days of the employee's average wage. The employer must pay compensation for leave of absence of the employee due to work related injury or illness at a rate of 60% of the employee's average wage plus medical costs.

Sickness benefit is paid by the Employees Health Insurance. All persons employed in the workplace are covered. When an insured person is unable to work for 4 days or more while undergoing medical care due to sickness or injury, an amount equivalent to 2/3 of the daily standard remuneration is paid for up to 18 months. However, the allowance is suspended or reduced when, the insured person receives a part or all of

the remuneration from the employer or the insured receives the basic disability pension, the disability allowance, or the employees' disability pension, deriving from the same injury of sickness and if the insured receives the Old-age employees' pension, the Old age basic pension, or the retirement Mutual Aid pension after the insured's retirement. All community members such as self-employed who are not covered under the Employees Health Insurance are covered under the National Health Insurance.

Source: §19, 75-76 & 81 of the Labour Standards Act, 1947; Employees Health Insurance Act, 1922

Medical Care

In the event of injury or sickness due to non-occupational causes, the insured person is entitled to medical care benefits which include consultations, provisions of medication or medical care supplies, emergency treatment, surgery and other medical treatment, home medical care, hospitalization and nursing. The insured person pays 30% of cost of medical care as partial cost sharing. However, special charges such as for private or semi-private hospital beds or certain types of nursing care, are not covered. The rate of cost sharing is determined by the insured person's age and income.

In the event of occupational disease, the law imposes a duty on the employer to provide for medical treatment this can include a medical examination, provision of medicine or some other treatment material, medical measure, operation or some other remedy, caretaking for recuperation at home and relevant help and other nursing care, hospitalization for

medical treatment and relevant help and other nursing care in hospitals or clinics and transportation.

Source: §75 of the Labour Standards Act, 1947; §36 of the Ordinance for Enforcement of the Labour Standards Act, 1947; Employees Health Insurance Act, 1922

Job Security

Under Japanese Law, an employer will not dismiss a worker during a period of absence from work for medical treatment with respect to injuries or illnesses suffered in the course of employment nor within 30 days thereafter. However, if the employee has not recovered within three years from the start of the medical treatment, the employer can terminate the employee at any time (on passing of three years), after paying compensation equivalent to 1,200 days of the employee's average wage.

Source: §19 & 81 of the Labour Standards Act, 1947

Disability / Work Injury Benefit

Provisions for Work-related Injuries and the subsequent benefits are contained in the Labour Standards Act and the Industrial Accident Compensation Act

The employer pays compensatory payments during the first 3 days during which the employee sustains an injury at a rate of 60% of the employee's wage. Afterwards, the affected employees get the payment from the insurance in the three months before the temporary disability began plus a temporary disability supplement of 20% of the insured's average daily wage. If an occupationally injured or diseased worker does not recover within 18

months from the date of first medical treatment, injury and sickness compensation is provided instead of temporary disability compensation benefit. From the 19th month, persons with less severe disabilities continue to receive the same level of benefit until recovery; persons with more severe disabilities receive the disease compensation pension, which is 100% of the average daily wage in the preceding three months multiplied by 245 to 313 days until recovery, plus a special supplement based on the worker's annual salary bonus. Benefits are paid every two months

An annual pension of 131 to 313 times the insured's average daily wage in the three months before the disability began is paid to persons with serious disabilities (Grades 1 to 7). The pension varies according to the assessed degree of disability. A lump sum of 56 to 503 times the average daily wage in the three months before the disability began is paid to persons with less serious disabilities (Grades 8 to 14). Benefits are paid monthly.

An annual pension of the insured worker's average daily wage in the three months before the insured's death multiplied by 153 to 245 days is paid according to the number of survivors. Eligible survivors include a widow or widower (aged 60 or older), children and grandchildren (under 18), parents and grandparents (aged 60 or older), and brothers and sisters (under 18 or over 60 years) who were dependent on the deceased worker at the time of death. Benefits are paid every two months. Benefits are automatically adjusted annually according to changes in wages.

If a worker dies for occupational reasons, there is also provision for funeral expenses.

Source: §75-77 of the Labour Standards Act, 1947; §14 & Appended Table 1 of the Industrial Accident Compensation Act, 1947

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions
Employment Injury Benefits: Conventions 121 (1964),
Invalidity, Old age and survivors' benefits: Convention 128(1967)
Medical Care and Sickness Benefits: Convention 130 (1969)
Unemployment Benefits: Convention 168 (1988).

Japan has ratified the Convention 102 and 121 only.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Employees' pension insurance Act, 1954
- National Pension Act, 1959

Pension Rights

In Japan, the pension scheme is covered by the employees' pension insurance scheme and the national pension scheme.

Under the national pension program, residents aged 20 to 59 are covered. Residents (aged 60 to 64 years) and Japanese citizens residing abroad (aged 20 to 64 years) are also covered, though on a voluntary basis. Under the Employees' Pension Insurance, employees younger than the age of 70 in covered firms in industry and commerce are covered. Self-employed persons who run an incorporated business with up to four workers are also covered under the national pension program, however they are excluded from the employees' pension insurance scheme.

For entitlement to pension under the national pension program, the normal age is 65 years for both men and women with at least 25 years of contributions, including any periods exempt from contribution requirements such as low-income periods. The full pension is paid with 40 years of paid contributions. The employees are also entitled to early pension. The age for early pension is 60 to 64 for both male and female with at least 25 years of contributions. Pension can also be deferred till the age of 70. For the employees' pension insurance, the age is 60 with at least 25 years of coverage.

As far as the calculation of the pension is concerned, there is a difference in both the

schemes. Under National pension program: The full pension is paid as a fixed sum, which can vary on a yearly basis. A reduced pension is paid according to the number of contributions paid and credited. The pension is paid every two months.

The Act on the Stabilisation of Employment of Elderly Persons prohibits employers from setting a mandatory retirement age below 60 years. The law requires employers who set a mandatory retirement age below 65 years to take at least one of the following measures:

- raise the mandatory retirement age to 65 years or over;
- introduce a continuous employment system to keep employing those workers who after the mandatory retirement age if such workers wish to remain employed; or
- abolish the mandatory retirement age.

Source: Employees' pension insurance Act, 1954; National Pension Act, 1959

Dependents' / Survivors' Benefit

The pension for survivors is covered by the national pension program and employees' pension insurance scheme.

Under the national pension program, pension will be paid to the survivors of a deceased person, provided that the deceased was an old-age pensioner; i.e. he was an insured person or a resident of Japan aged 60 to 64 with paid contributions during 66.7% of the period from age 20 to two months before the month of the death or, if younger than age 65, has paid continuous contributions for one year before the two-month period before the month of the death.

Source: Employees' pension insurance Act, 1954; National Pension Act, 1959

Unemployment Benefits

In Japan, the unemployment benefits are covered by the Employment Insurance Act.

Employees up to age 65 are entitled to unemployment benefits. There is also coverage for employees in agricultural, forestry, and fishery establishments with fewer than five regular employees on a voluntary basis. However, workers with less than 20 scheduled working hours a week and self-employed persons are not entitled to such benefits.

In order to qualify for obtaining unemployment benefits, a concerned person must have at least 12 months of coverage during the last 24 months before unemployment, and in case of unemployment due to insolvency or dismissal, at least six months of insurance during the last 12 months. The person must also be registered with the Public Employment Security office and be capable of, and willing to, work. He/she must report to the aforesaid office every 4 weeks. Unemployment must not be due to voluntary leaving, serious misconduct, refusal of a suitable job offer, or non-attendance at vocational training, otherwise the benefit maybe limited to one to three months. In order to qualify for special or daily allowances, the concerned person must have at least 3 years (one year if receiving the benefit for the first time) of coverage to receive education and training benefits and must take designated educational and training courses.

The rate of unemployment benefit amounts to 50% to 80% of the insured's average daily wage in the six months before

unemployment is paid. This rate is 45% to 80% for those aged 60 to 64. The benefit is paid after a seven-day waiting period for 90 to 330 days, according to the length of coverage, age, and reasons for unemployment. The benefit may be extended for another 60 days for insured persons who are unemployed due to insolvency or dismissal and are having difficulty finding a new job, taking into consideration age and regional circumstances, although this is only a temporary measure until March 31, 2017. The daily benefit cannot be less than 1,848 yen and not more than 7,830 yen.

Source: §6, 13, 16, 22, 23 of the Employment Insurance Act, 1974

Invalidity Benefits

In Japan, the provision of invalidity benefits is covered by the employees' pension insurance scheme and the national pension scheme.

In order to qualify for invalidity benefits under the national pension scheme, the relevant person will be assessed as to whether he falls into the two groups of disability. If upon assessment, the person is found to fall within the two groups, he/she will be entitled to benefits based on the basis of the group he/she is a part of. The first group is concerned with people who suffer from total disability and require constant attendance while the second group consists of people who severely restricted in their ability to live independently disability. Furthermore, the person must have been insured at the first medical exam and must have also paid contributions during 66.7% of the period from age 20 to two months before the month of the first medical exam. Alternatively, the person must have paid

continuous contributions for one year from age 20 to two months before the month of the first medical exam.

Source: Employees' pension insurance Act, 1954; National Pension Act, 1959

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

Japan has ratified the Convention 100 only.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Constitution of Japan, 1947
- Employment Security Act, 1947
- Labour Standards Act, 1947
- Civil Code, 1896
- Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, 1972

Equal Pay

The legal provision on equal pay is contained in the Labour Standards Act, which imposes an obligation on employers not to engage in discriminatory treatment with respect to wages, working hours or other working conditions by reasons of nationality creed, social status or sex.

Employers who fail to comply with this requirement are punished by imprisonment with work of not more than 6 months or by a fine of not more than 300,000 yen.

Source: §3-4 & 119 of the Labour Standards Act, 1947

Sexual Harassment

The legal provision on the prevention of sexual harassment comes from the Equal Employment Opportunity Act. There are no legal provisions, which provide a definition of the term harassment or sexual harassment with in Japanese statutory law.

The Equal Treatment Act places obligations on business owners to take necessary measures to prevent sexual harassment at work. Accordingly, the employers are required to establish necessary measures in terms of employment management (to give

advice to workers to cope with problems of work) and take other necessary measures so that workers do not suffer any disadvantage in their working conditions by reason of said workers' responses to sexual harassment in the workplace or do not suffer any harm due to said sexual harassment.

An employer is also liable to compensate for damages when an employee's act of sexual harassment appears to have been done within the scope of the employee's job duties.

There appears to be no statutory provision of punishment for sexual harassment either for the offender or for the employer who fails to take appropriate measures to prevent such harassment.

Source: §715 of the Civil Code; §11 of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, 1972

Non-Discrimination

The legal provision on discrimination in Japan comes from the Constitution, The Labour Standards Act, Equal Employment Opportunity Act, The Employment Security Law and The Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment.

The constitution guarantees equality under law and non-discrimination on the basis of race, creed, sex, social status or family origin. Furthermore, an employer will not engage in discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed or social status of any

worker. It is also forbidden to discriminate against a person in employment placement, vocational guidance or the like by reason of any previous profession or membership in a labour union, as well as by reason of race, nationality, creed, sex, social status and family origin. Lastly the law prohibits discriminatory treatment based on sex in relation to the following matters:

- i. discrimination at the recruitment and hiring stage;
- ii. assignment, promotion, demotion and training of employees;
- iii. loans for housing and certain other similar fringe benefits;
- iv. change in job type and employment status of employees; and
- v. encouragement of retirement, mandatory retirement age, dismissal, and renewal of the employment contract.

An employer who engages in discriminatory treatment with respect to wages, working hours or other working conditions by reasons of nationality, creed or social status of any worker will be punished by imprisonment with work of not more than 6 months or by a fine of not more than 300,000 yen. While if an employer has carried out or engaged in employment placement, labour recruitment or labour supply by means of violence, intimidation, confinement or other unjust restraint on mental or physical freedom, he/she will be punished by imprisonment with work for not less than one year and not more than ten years or a fine of not less than 200,000 yen and not more than 3,000,000 yen.

The Act on Improvement of Employment Management for Part-time Workers and Fixed-term Contract Workers, the Labour Contracts Act and the Worker Dispatching

Act are amended to remove irrational discrimination in respect of working conditions on irregular employees such as part-time, fixed term contract workers and dispatched workers.

The changes shall be applicable from April 2019 (for small and medium enterprises, the changes will be applicable from April 2020). Under the amended law, any fixed-term workers must be accorded treatment equal to employees as long as the specifics of their work and the scope of their work and assignment are the same. With regard to the Dispatch Workers, employers are required to ensure that dispatch workers are accorded treatment equal to employees or they are accorded treatment based on a labour-management agreement meeting certain requirements (wages equal to those engaged in the same line of work).

Under the Promotion of Employment of Persons with Disabilities, amended in 2017 and effective April 2018, the statutory employment rate (SER) for persons with disabilities has been raised from 2% to 2.2%. Private sector employers engaging at least 46 workers have to hire specified percentage (2.2%) of persons with disabilities.

Source: §14 of the Constitution of Japan, 1947; §3 & 119 of the Labour Standards Act, 1947; §3 & 63 of the Employment Security Act, 1947; §5&6 of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, 1972

Equal Choices of Profession

Under the Constitution, workers are free to choose their occupation to the extent that it does not interfere with the public welfare.

Under the Equal Treatment Act, workers should be able to engage in full working lives without any discrimination based on sex. Furthermore, under the Employment Security Act, every person may freely choose any job, provided that it does not conflict with the public welfare. No restrictive provisions could be found in law.

Source: §22 of the Constitution of Japan, 1947; §2 of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, 1972; §2 of the Employment Security Act, 1947

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Japan has ratified the Conventions 138 and 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Constitution of Japan, 1947
- Labour Standards Act, 1947
- Civil Code, 1896

Minimum Age for Employment

Article 27 of the Constitution imposes a ban on child labour. Under the Labour Standards Act, An employer may not employ a child until after the March 31st following the child's 15th birthday. Although a parent or guardian is not permitted to conclude an employment contract in place of a minor (i.e., a person who is younger than 20 years of age), the approval of a person with parental power is necessary for a minor to enter into an employment contract. Even after this approval has been obtained and an employment contract has been concluded by the minor, the parent, guardian or administrative office may still cancel the employment contract prospectively if they consider it disadvantageous to the minor. Children under 15 years of age must not be employed, except for those working for motion picture production and theatrical performances. Children under age 18 may be employed outside of school hours in light labour that is not being dangerous or harmful.

Minors who are aged 13-15 years can work for 7 hours per day including school hours. Those aged 15-18 years may be required to work 10 hours in a day, provided that the total weekly working time does not exceed 40 hours and the working hours on another day is reduced to no more than 4 hours.

Any employer who attempts to employ a child under the age of 15 will be punished by imprisonment with labour of not more

than one year or by a fine of not more than 500,000 yen.

Source: §27 of the Constitution of Japan, 1947; §56, 58, and 118 of the Labour Standards Act, 1947; §5 & 283 of the Civil Code of Japan, 1896

Minimum Age for Hazardous Work

The legal provision on the minimum age for hazardous work is provided for in the Labour Standards Act.

The minimum age for hazardous work is 18 years. Hazardous work includes putting on or taking off the driving belts or ropes of any machinery or power-transmission apparatus while in operation; operating a crane; the handling of poisons; deleterious substances or other injurious substances, or explosive, combustible or inflammable substances; or work in places where dust or powder is dispersed; or harmful gas or radiation is generated; or places of high temperatures or pressures. Underground work is also prohibited.

Furthermore, young workers under 16 are not allowed to work at night between 22:00 and 05:00, however, this does not apply to males who are 16 years or more of age employed on a shift work basis. With respect to children employed aged 13-15, these hours extend from 20:00 to 05:00.

An employer will face varying punishments if he tries to employ children for night work, hazardous work and underground work. For night work and hazardous work, an employer can be punished by imprisonment with labour of not more than 6 months or by a fine of not more than 300,000 yen, while for underground work, the punishment will be of imprisonment

with labour of not more than one year or a fine of not more than 500,000 yen.

Source: §61-63 & 118-119 of the Labour Standards Act, 1947

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Japan has ratified the Convention 29 only.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Constitution of Japan, 1947
- Labour Standards Act, 1947
- Civil Code, 1896

Prohibition on Forced and Compulsory Labour

The constitution of Japan and the Labour Standards Act prohibit forced labour. Under Article 18 of the Constitution of Japan, “No person shall be held in bondage of any kind, involuntary servitude, except as punishment for crime”. Article 5 of Labour Standards Act stipulates that “an employer shall not force workers to work against their will by means of physical violence, intimidation, confinement, or any other unfair restraint on the mental or physical freedom of the workers. In addition, an employer who violates the Article 5 will be punished by imprisonment with labour of not less than one year and not more than 10 years, or by a fine of not less than 200,000 yen and not more than 3,000,000 yen.

Source: §18 of the Constitution of Japan, 1947; §5 & 117 of the Labour Standards Act, 1947

Freedom to Change Jobs and Right to Quit

Under Article 22 and Article 27 of the Japanese Constitution, every person has the freedom to choose his occupation to the extent that it does not interfere with the public welfare, and also has the right and the obligation to work. Under the Civil Code, both parties can terminate an employment contract of indefinite duration at-will provided that two weeks’ notice is

given. Term of notice period is independent of the length of service.

Source: §22 & 27 of the Constitution of Japan, 1947; §627 of the Civil Code, 1896

Inhumane Working Conditions

The provisions on working time are contained in the Labour Standards Act.

As the employer and the employee are free to determine the overtime work under their specific work agreement, there is no limit of overtime work defined under the law. However, overtime work may not exceed the limits provided under the agreements between the employer and the employee.

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize: Convention 87 (1948)
Right to Organize and Collective Bargaining: Convention 98 (1949)

Japan has ratified both Conventions 87 and 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Constitution of Japan, 1947
- Labour Union Act, 1949
- Labour Relations Adjustment Act, 1946
- Labour Standards Act, 1947

Freedom to Join and Form a Union

Article 28 of the Constitution guarantees the right of workers to participate in a union and to bargain and act collectively. The trade union activity in Japan is governed under the Labour Union Act.

In order to qualify as a labour union, a labour union has to submit evidence to the Labour Relations Commission and demonstrate that all the requirements as described below have been satisfied. The requirements regarding the substance of a labour union are:

- i. It is mainly composed of workers; (Article 2 of LUA)
- ii. It is formed and operated independently of management control;
- iii. There is no member who represents the interests of management;
- iv. It receives no financial support from the employer for defraying or operation;
- v. Its main purpose is to maintain or improve the conditions of employment or the financial situation of workers; and
- vi. It is the association of two or more members who have a constitution and an organization necessary for operating such association (or a federation of such associations).

A labour union, which is not qualified as a "labour union" under the LUA as it lacks the abovementioned requirements, would still enjoy the rights granted under the Constitution. An exception to this is where a labour union lacks requirement ii) above, in which case it does not enjoy the rights under the Constitution. The trade union's constitution must inter alia include the members' right to participate in all affairs and prohibit the disqualification for union membership on the basis of race, religion, gender, social status or family origin. Any discrimination because of trade union activities is forbidden, and the employer must not have any influence on the trade union's management. Furthermore, an employer cannot dismiss an employee by reason of being a member of a labour union, having tried to join or organize a labour union, or having performed proper acts with respect to a labour union.

A labour union can request an employer to hold a collective bargaining session on any issue, provided that such issue relates to the labour union itself or the economic status of a worker who is a union member. The employer is required to accept such request and faithfully negotiate with the labour union. In relation to certain matters, such as the establishment of, or a change to, the employment rules, an employer is required to hear the opinion of the labour union organized by a majority of the workers concerned. Further, a labour union is guaranteed the right to act collectively, which is centred on labour dispute actions such as strikes. A worker will not bear any civil or criminal liability with respect to his or her justifiable labour dispute action.

Source: §28 of the Constitution of Japan, 1947; §1-7 & 14 of the Labour Union Act, 1949

Freedom of Collective Bargaining

The right to bargain collectively is provided under Article 28 of the Constitution and under the Labour Union Act. The issues which are discussed within the collective bargaining will vary depending on the purpose for which the meeting was called by the employer and the union, but it is usually understood that the primary issues are usually the wages, the work timing and collective redundancies.

Parties to collective bargaining must be, on one side, a trade union and, on the other, either the employer or an employers' association. The employer must bargain with the appropriate trade union in good faith. Written and signed collective agreements may have different terms of validity, but must not exceed three years. Only those agreements in which no term of validity is provided for can be terminated at either party's initiative at any time. All collective agreements apply primarily to those employees who are trade union members. If in one workplace, three-fourths of comparable workers fall under a collective agreement, this agreement applies to all workers of the same kind within the workplace. Collective agreements have a normative effect on work rules and labour contracts. Work rules must not infringe upon the collective agreement. The implementation of collective agreements is supervised by the Labour Standards Bureau.

Sources: §28 of the Constitution of Japan, 1947; §7 & 14-17 of the Labour Union Act, 1949; §92 of the Labour Standards Act, 1947

Right to Strike

Article 28 of the Constitution gives the right to workers to “act collectively” and thus the right to strike is guaranteed. However, under the Labour Relations Adjustment Act, an Act of Labour Dispute, i.e., a disagreement over claims regarding labour relations arising between the parties will be regarded as a “strike, a slowdown, a lock-out or other act or counteract hampering the normal business operation performed by the parties concerned with labour relations with the purpose of attaining their respective claims.”

The members of a union will not be liable either under civil law nor criminal law as long as they act properly. Furthermore, an employer cannot make a claim for damages against a labour union member for damages received through strikes which are justifiable.

There are no specific indications of the issues on which a strike maybe called, although it is understood that a strike maybe called if there is a disagreement between the employer and the trade union. Since there is no indication on what type of issues may be discussed in meetings between the employers and trade unions, it is highly likely that any of the issues including wages, work times, redundancies could be grounds for strike.

If a trade union is in a dispute that involves public welfare, and decides to resort to collective action/strike, it will have to notify the Labour Relations Commission and the Minister of Health, Labour and Welfare or the prefectural governor at least 10 days prior to the day on which the act of dispute is to be commenced. However, where it has been publicly announced that a decision for

an emergency adjustment has been made, the parties concerned, including the trade unions will not resort to any act of dispute for 50 days from the date of such announcement. If a trade union fails to notify the relevant authorities of the proposed act of dispute at least 10 days beforehand, they will be subject to a fine of 100,000 yen. Finally, a worker will not be paid his wages for the period he is on strike.

Sources: §28 of the Constitution of Japan, 1947; §8 of the Labour Union Act, 1949; §6-7 & 37-39 of the Labour Relations Adjustment Act, 1946

QUESTIONNAIRE

DECENTWORKCHECK.ORG

Check

Decent Work Check Japan is a product of WageIndicator.org and
<http://kyuryocheck.jp/home>



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input checked="" type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

06/13 Maternity & Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".





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- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |

09/13 Social Security













- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |

10/13 Fair Treatment



- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |

* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.




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	Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
	Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
	Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
	Age		<input type="checkbox"/>	<input type="checkbox"/>
	Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
	Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
	Language		<input type="checkbox"/>	<input type="checkbox"/>
	Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
	Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
	Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
	Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40	I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41.	In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42.	In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43.	I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44.	My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45.	My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46.	I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47.	I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48.	My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49.	I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

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Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Japan scored 44 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.