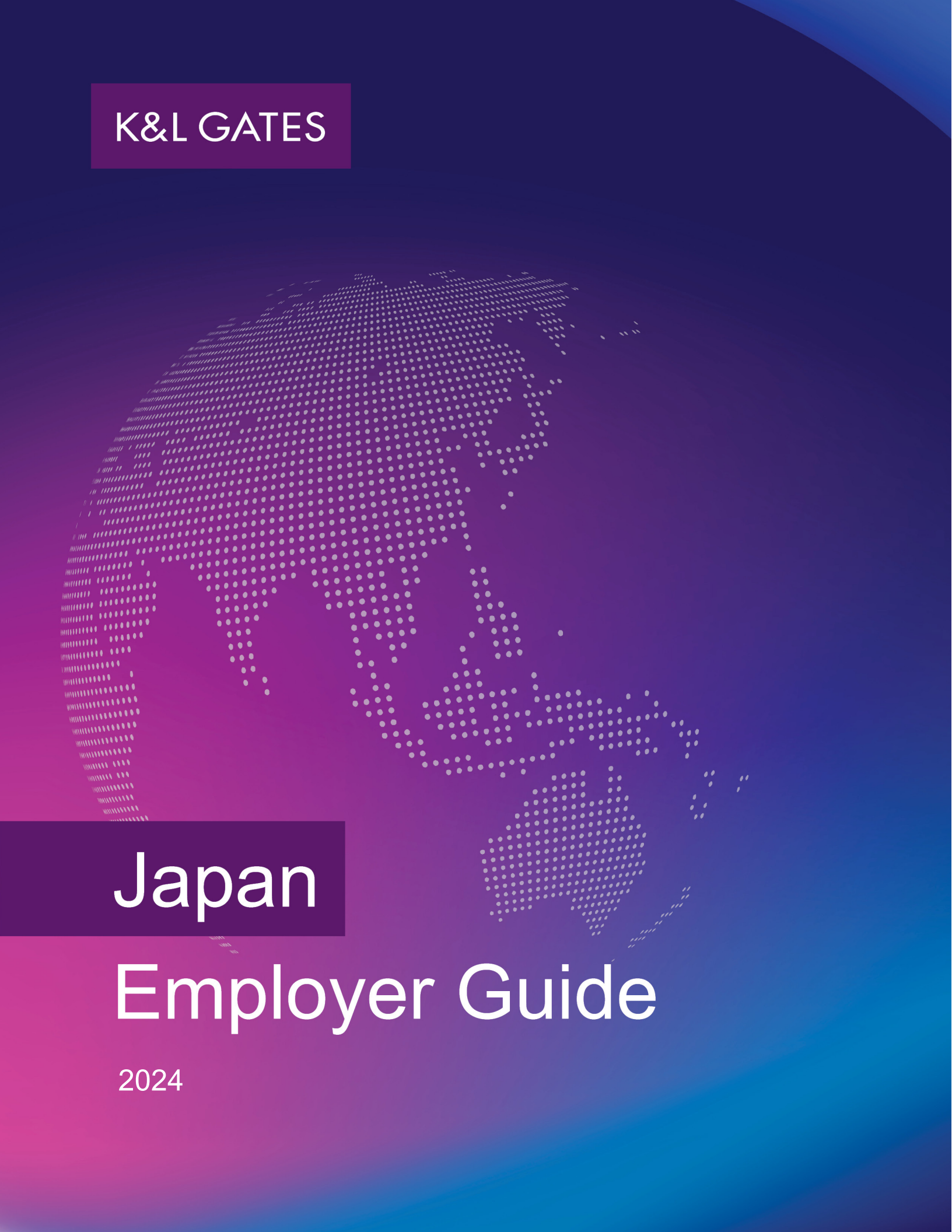


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Employer Guide

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INTRODUCTION

In Japan, the declining birthrate and aging society are well-known problems that have been rapidly progressing, and the labor force population has declined significantly. Against this backdrop, the government has taken various labor measures aimed at achieving sustainable economic development. These measures include: (i) improving the workplace environment and labor productivity, and (ii) creating new opportunities for human resources that have not been fully utilized in the past to play an active role in the workforce.

For example, regarding workplace environment and productivity issues, it was common in Japan for workers to be forced by their employers to work long hours, as typified by the term “death from overwork.” In response, various measures have been taken by the government to reduce long working hours and improve work-life balance, such as implementing an employer’s duty to manage working hours, promoting remote work, and increasing the rate of overtime. As to increasing the pool of available human resources, the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers was revised to make it easier for people who had not previously actively participated in the labor market to do so for the first time.

Going forward, the government is expected to continue to take additional measures to further improve the work environment and address the various labor issues facing Japan.

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EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure their employees are lawfully allowed to work in Japan by checking their visa status. This status can be confirmed by reviewing their passport or residence card.

Foreign workers must have visas to live and work in Japan on either a temporary or a permanent basis. There are different types of visas (e.g., skilled worker, engineer, instructor) administered by the Immigration Bureau of Japan.

The permitted working period for foreign temporary workers varies depending on visa status, but it generally ranges from three months to five years.

Reference/Background Checks

So long as employers obtain consent from prospective employees, employers may contact a prospective employee's referrals and previous employers to gather and verify information.

Police and Other Checks

Police do not disclose any information requested by employers on prospective employees.

Medical Examinations

In principle, when hiring an employee, employers must have the new employee undergo a predetermined medical examination before hiring him or her.

Minimum Qualifications

Employers may ask for relevant qualifications to ascertain an applicant's suitability for a role.

II. TYPES OF RELATIONSHIPS

Employee

Employees in Japan can be classified into four categories.

Regular Employee

A regular employee is an employee who is hired directly by his or her employer without a predetermined period of employment up to the prescribed retirement age.

Fixed-Term Employee

A fixed-term employee is an employee who is hired directly by his or her employer with a fixed-term contract of employment. In most cases, the contract term is up to three years. The employee is protected by the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers.

There is a growing trend toward enhancement of protections for fixed-term employees in Japan. In response to this, the Labor Contract Act and relevant regulations have been amended to improve fixed-term employee rights. For example, a fixed-term employee who has worked more than five years by renewal of the term has the right to change his or her status from a fixed-term employee to a non-fixed-term employee.

Part-Time Worker

A part-time worker is an employee who is hired directly by his or her employer and works fewer hours in a day or week than a full-time employee. The employee is protected by the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers.

Dispatched Worker

A dispatched worker is a worker who is employed by third-party dispatching agencies and supplied to companies under a worker dispatch contract. The worker is protected by the Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatching Workers.

Independent Contractor

Businesses often engage independent contractors on a fee-for-service basis. A business will engage the independent contractor by means of a service agreement.

Unlike employees, independent contractors are not protected by labor laws. Independent contractors are determined by their actual conditions more than their “agreement.” A major criterion is whether the independent contractor has discretionary power in performing assignments and in deciding working hours and place of work. Employers should carefully avoid “misclassification risk,” the same as in other jurisdictions.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Under the Labor Standard Act, employers must provide a written notice to the employee setting out basic employment conditions, such as wages, working hours, holidays, and the nature of the work. To satisfy this legal requirement, it is common practice in Japan that an employer and an employee execute a written employment agreement.

Any company that employs 10 or more workers on a continuous basis must establish rules of employment (Rules of Employment) and submit them to the Labor Standards Inspection Office together with a written opinion from the representative of the employees. The Rules of Employment stipulate working conditions in detail.

The main working conditions covered in the Rules of Employment are:

- Matters relating to the time work begins and work ends, breaks, days off, and leave.
- Matters relating to calculation and payment of wages (including overtime work salary), the date of payment, and pay raises.
- Matters relating to termination, dismissal, disciplinary actions, retirement, etc.

Policies

Policies are not mandatory, but they are desirable. Policies that should exist include those relating to details of discrimination, harassment, bullying, work health, safety, anti-corruption, confidentiality, etc.

IV. ENTITLEMENTS

Minimum Employment Rights

Minimum employment rights in Japan are provided in the Labor Standards Act as detailed below.

Hours of Work

An employer must not require an employee to work more than 40 hours a week or more than eight hours a day, unless a written agreement about overtime work and work on holidays is executed between the employer and the representative of the employees and submitted to the Labor Standards Inspection Office. As a general rule, the upper limit of overtime work is 45 hours per month or 360 hours per year. However, there are exceptional rules to allow further overtime work.

The employer shall pay increased wages for overtime work or holiday work. As a general rule, the rate of premium for overtime work is 25% (50% for overtime exceeding 60 hours per month), and the rate for work on a statutory holiday is 35%.

Annual Leave

An employer is required to grant annual paid leave of 10 working days to all employees continuously employed for six months or more and who have worked not less than 80% of the total working days, in principle. Thereafter, the employer shall grant the following annual paid leave in addition to the 10 days' paid leave above:

- One year of service – additional one day of leave.
- Two years of service – additional two days of leave.
- Three years of service – additional four days of leave.
- Four years of service – additional six days of leave.
- Five years of service – additional eight days of leave.
- Six years of service or more – additional 10 days of leave.

Wages

Principles applied to payment of wages:

- Wages must be paid in cash (employee consent is required for payment by wire transfer to employee's bank account).
- Wages must be paid directly to the employee.
- Wages must be paid in full.
- Wages must be paid at least once a month on a definite date.

Guarantee of wages and minimum wages:

- The minimum hourly wage is set by region. For Tokyo, that is JP¥1,113 per hour as from 1 October 2023.

Child Care-Related Leave

Maternity leave and child care hour:

- Expectant female employees may take six weeks of maternity leave before childbirth and eight weeks after giving birth in principle.
- Female employees nursing an infant aged up to 12 months are also entitled to take nursing breaks twice a day, each for at least 30 minutes, in addition to legally allowed break times. This nursing time can be taken by arriving at work 30 minutes late or leaving work 30 minutes early or taking 60 minutes off at one time.

Child care leave:

- Child care leave allows an employee, either male or female, to take up to one year off work to look after a child under one year of age. If both parents decide to take a leave, each parent

may take off up to one year until the child reaches the age of 14 months. If certain conditions are met, an employee is further entitled to child care leave until his or her child reaches two years of age.

Short working hour system:

- An employer is required to take measures to shorten scheduled working hours that make it easier for the worker to take care of the child for those employees with a child below three years of age.

Family Care-Related Leave

An employee with one or more family members in need of nursing care may take nursing leave of up to five days per year for one such family member and 10 days per year for two or more such family members, upon request to the employer.

Employees who look after a family member requiring full-time care are entitled to family care leave. This includes up to 93 days' leave per family member, per year.

Community Service Leave

Employers may grant community service leave, although it is not mandatory. Japan introduced a quasi-jury system in 2009, and such community service leave typically covers leave to serve on a jury.

Long Service Leave

Employers may grant long service leave, although it is not mandatory and the majority of Japanese companies do not grant it.

Notice of Termination

An employer must provide at least 30 days' advance notice if the employer wishes to dismiss an employee or pay 30 days' average salary in lieu of such advance notice for immediate dismissal. In order to dismiss an employee, there must be substantive and reasonable reasons, as discussed in the "Termination of Employment" section below.

Discretionary Benefits

Bonuses

Bonuses may be paid to employees at the discretion of the employer unless otherwise set out in the employment agreement or the Rules of Employment.

It is customary in Japan that employees working for traditional Japanese companies are paid seasonal bonuses twice a year (in summer and winter).

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination can be effected (i) by mutual agreement, (ii) upon expiry of a fixed-term contract, (iii) by termination by the employer with or without notice (i.e., dismissal), and (iv) by termination by the employee (i.e., resignation).

Dismissal

Under Japanese law, Japanese employers generally have the right to dismiss employees. However, there are numerous restrictions on this right, as set out below. Additionally, there are substantive and procedural requirements for certain types of dismissals.

Below are the basic rules in relation to dismissal.

Explicit Reasons for Dismissal

The employer must specify the situation or grounds that allow the employer to dismiss its employees and should specify the details of the procedure for dismissal in the employment agreement or the Rules of Employment.

Legal Grounds for Dismissal

Even if an employer finds that an employee falls under the situation or grounds for dismissal, this is not sufficient to justify dismissal. Article 16 of the Labor Contracts Act states that any dismissal that lacks reasonable grounds and is against good social “appropriateness” is regarded as an abuse of the employer’s right and is accordingly null and void. Consequently, it is difficult for employers in Japan to dismiss an employee without careful precaution and consideration. Court precedents demonstrate that the following instances constitute “an objectively reasonable and socially appropriate reason”:

- Significant physical or mental disability.
- Material infringement of the internal disciplinary rules in the workplace.
- Redundancy due to economic circumstances, provided that four established criteria are satisfied (see “Redundancy” below).

Lack of ability or poor performance is difficult to prove in court unless it has been well documented that the dismissed employee’s performance was substantially substandard.

Practical Approach

Given the substantive and procedural difficulties involved in dismissing an employee and the difficulty of convincing a Japanese court of legitimate grounds for dismissal, it is typical in Japan for an employer to try to obtain an employee’s voluntary resignation.

II. MINIMUM ENTITLEMENTS

Payments/Notice

When an employer terminates or dismisses an employee, the employer is required to provide at least 30 days’ notice of the termination date. Employers may dismiss an employee with immediate effect if the employee is paid an amount equal to 30 days’ average salary.

Restrictions on the Dismissal of Employees

Employers may not dismiss an employee during either of the following periods:

- Absence from work for medical treatment for injuries or illnesses suffered during the course of employment or within 30 days thereafter.
- Before and after childbirth for female employees or within 30 days thereafter.

An employee may resign at any time by serving 14 days' notice.

Statutory Entitlements

Payment on termination includes:

- Outstanding wages for days and hours already worked.
- (If applicable) 30 days' average salary in lieu of 30 days' notice.

Employers are not required to pay out any accrued but not taken annual paid leave.

III. REDUNDANCY

Genuine Redundancy

Redundancy is available only if the following four criteria are met:

- There is a strong necessity to decrease the number of employees and no other alternatives are available but for decreasing the headcount.
- Reasonable measures in order to avoid dismissal have been fully explored.
- Employees whose employment contracts are to be terminated have been selected pursuant to reasonable criteria.
- Due process has been ensured, including genuine dialogue with employees or labor unions.

As it is often difficult to meet the above-mentioned criteria for redundancy, employers in Japan often solicit a resignation from employees by offering a severance package (including payment of a severance amount and other benefits).

Consultation

See above under "Genuine Redundancy" of this Japan guide.

Payment

An employee is only entitled to receive retirement wages in accordance with the retirement wage rules or the Rules of Employment (if any).

IV. REMEDIES

Dismissal Action

Unfair Dismissal

Employees may bring an unfair dismissal claim against a former employer and seek reinstatement as well as back pay plus interest. The claim may be by formal lawsuit or labor tribunal process.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

There is a guideline issued by the government that sets out the details of an employment transfer process (including consultation procedure) in the event of a business transfer.

II. RESTRUCTURING

Notification

There are no particular laws or regulations regarding the protection of employees upon restructuring of a corporate organization, provided that the termination process is made in compliance with the Labor Standards Act and established court precedents (please see the above “Termination of Employment – Grounds” and “Genuine Redundancy”).

Consultation

See above.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

At the commencement of employment, employees are generally required by the employment agreement and the Rules of Employment to acknowledge confidentiality obligations in writing, which should include provisions to protect the employer's confidential information, including intellectual property, clients, and the business's employees.

II. CONFIDENTIAL RESTRAINTS AND NON-COMPETES

Confidentiality provisions restrict employees from using confidential information for anything other than their duties.

In general practice, employment contracts, separate non-competition agreements, and the Rules of Employment impose non-compete provisions on employees during employment.

A retired or former employee does not have any non-compete obligations to a past employer unless there is an agreement to that effect or an obligation is contained in the Rules of Employment.

III. PRIVACY OBLIGATIONS

According to the Act of the Protection of Personal Information, employers may not disclose any personal information of an employee to a third party without consent of the employee.

IV. WORKPLACE SURVEILLANCE

There is no law that regulates workplace surveillance. However, it is prohibited to conduct surveillance that leads to violation of privacy, such as employee monitoring in toilets, bathrooms, and changing rooms.

V. WORKPLACE INVESTIGATIONS

There is no law that regulates workplace investigations.

WORKPLACE BEHAVIORS

I. MANAGING PERFORMANCE AND CONDUCTS

Employment contracts, the Rules of Employment, policies, and agreements provide for management of employee performance and conduct.

Poor Performance

When employers intend to dismiss an employee due to poor performance, Japanese courts require that employers shall take reasonable measures to avoid dismissal. This includes considering alternatives, such as providing training, reducing salary, transferring to another job, secondment, and encouraging voluntary retirement. Dismissal is considered a last resort for employers.

Employee Misconduct

An employer may take disciplinary action against employees who violate policies as long as the consequences are clearly stipulated in the Rules of Employment.

II. BULLYING AND HARASSMENT

Bullying

Bullying is prohibited by the amended Act on Comprehensively Advancing Labor Measures, and Stabilizing the Employment of Workers, and Enriching Workers' Vocational Lives and guidelines issued by the Ministry of Health, Labour and Welfare. A worker is bullied at work if they are:

- Assaulted (physical abuse).
- Intimidated, defamed, insulted, or slandered (mental abuse).
- Isolated, ostracized, or neglected (cut off from human relationships).
- Forced to perform certain tasks that are clearly unnecessary for the business of the company, impossible to be performed, or interfere with and interrupt his or her normal duties (excessive work demands).
- Ordered to perform menial tasks that are unreasonable in relation to the company's business or tasks that are far below the employee's ability or experience. This also includes not providing any work at all for the employee (insufficient work demands).
- Recipient of excessive inquiry into his or her private affairs (invasion of privacy).

Reasonable management action carried out in a reasonable way is not bullying.

Harassment

With regard to sexual harassment, the Equal Employment Opportunity Act mentions that an employer is under an obligation to take "necessary steps" to prevent:

- Quid pro quo or retaliatory sexual harassment (defined as a worker suffering any disadvantage, such as dismissal, demotion, or a decrease in wages, as a result of the worker's response to sexual harassment that occurs against his or her will in the workplace).
- Hostile work environment sexual harassment (defined as a worker suffering a serious adverse effect on the exercise of his or her abilities because the working environment has become unpleasant due to sexual harassment that occurs against his or her will in the workplace).

The administrative ordinance refers to guidelines detailing necessary steps for employers to take to prevent such conduct.

III. DISCRIMINATION

Gender discrimination in employment is prohibited by the Equal Employment Opportunity Act. The obligation imposed on employers to ensure equal treatment on the basis of race, nationality, creed, or social status is in accordance with the Employment Standards Act.

IV. UNIONS

Representation

A minimum of two employees are required to form a labor union. A labor union is entitled to request the employer to hold collective bargaining sessions or to act in a collective manner in relation to an employment issue.

The Labor Union Act contains the rights granted to labor unions and prohibits employers from engaging in unfair labor practices.

Right of Entry

Union officials (beyond employee union members) are not entitled to enter workplaces.

Industrial Disputation

It is only lawful to take industrial action (e.g., strikes, lockouts, slowdowns) under certain circumstances prescribed by the Labor Relations Accommodation Act.

V. REMOTE/HYBRID WORK

It is general interpretation that employers shall be responsible to take necessary measures for protecting employees' health in the workplace. In this regard, as one of the applicable measures for suspending infection of the COVID-19 virus, though no specific laws are enacted, employers have tended to amend their business practices by adapting remote working, partial or entire closure of business places, etc. The Japanese government has not mandated work-from-home, business shutdowns, or avoidance of face-to-face meetings, but it has issued various requests or recommendations for the implementation of the foregoing measures. Due to these efforts, remote working or hybrid working has become popular among relatively large or major business enterprises in Japan. However, it should be noted that employees do not have a right to demand remote working or hybrid working accommodations from their employers.

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