

西川シドリーオースティン

法律事務所・外国法共同事業

SIDLEY AUSTIN NISHIKAWA

FOREIGN LAW JOINT ENTERPRISE

SEPTEMBER 2, 2011



JAPAN UPDATE

## LABOR DISPUTES IN JAPAN: OVERVIEW OF SUBSTANTIVE LAW AND DISPUTE SETTLEMENT PROCEDURES

Our clients, particularly foreign business enterprises, frequently ask questions related to Japanese labor law. They often seek our advice on such matters as the rules of employment, conditions justifying transfer, demotion or termination and workforce downsizing. In response to such inquiries, we have provided a brief overview of the subject, including information about basic employer-employee relations (except those involving labor unions) and settlement procedures for individual labor disputes<sup>1</sup>.

### Brief Overview of Substantive Labor Law

The Labor Standards Act (Act No. 49 of April 7, 1947) and the Labor Contracts Act (Act No. 128 of December 5, 2007)<sup>2</sup> regulate the basic relations between employers and employees. However, their provisions are rather general, leaving the Japanese courts to decide such specifics as the validity of terms and conditions of labor contracts, transfers, demotions, sanctions and dismissals in individual labor disputes. The courts have been extremely cautious about finding in favor of the employers, particularly in disputes over dismissals.

According to the Labor Standards Act, any employer consistently employing 10 or more workers must establish the rules of employment and submit them to the relevant authorities. Those rules should include matters related to work hours, holidays, leave and wages, as well as causes for dismissals and sanctions. When establishing or amending these rules, the employer must consult the labor union or other entity that represents the majority of its employees. The Labor Contracts Act provides that the employer may not, as a general rule, amend the rules of employment to the detriment of its employees without their consent. However, an employer may amend the rules without their consent if it is deemed reasonable in view of the necessity for making the intended changes. Other factors to consider include the

<sup>1</sup> The Labor Union Act (Act No. 174 of June 1, 1949) and the Labor Relations Adjustment Act (Act No. 25 of September 27, 1946) apply to matters involving labor unions, for example, group negotiations on labor conditions or dispute settlements. Such matters are outside the scope of this Japan Update.

<sup>2</sup> The Labor Contracts Act was enacted in 2007 to stipulate some of the basic terms and conditions of employment that the Labor Standards Law does not provide for, based on the past court decisions.

degree of detriment caused to the employees, measures taken to compensate for such detriment, negotiation history and whether the employees have been thoroughly informed of such amendment.

Under certain conditions, the courts have recognized the discretion of the employer to transfer employees within the company without their consent, based on operational needs. The employer may do so when: the employment agreement and rules of employment provide for the possibility for transfers due to business needs; that such transfers are frequent in practice, and that there was no agreement upon employment to limit the employee's workplace or line of work. In cases where there is an agreement to limit the employee's line of work, the employee's consent is required in principle for the employer to transfer him/her. The courts have sometimes judged transfers to be valid without such consent. This has occurred in instances where the transfer was deemed justified based on the passage of time or the existence of special needs and reasons for transfer, as well as the employer having given a thorough explanation to the employee concerned.

The Labor Contracts Act provides that sanctions lacking objectively reasonable causes, and not deemed due on the basis of socially accepted standards, constitute abuse of rights by the employer and are therefore not valid. Demotions as a means of sanctions need to be executed in compliance with such provision, and in accordance with the rules of employment. As for demotion as a means of transfers, the courts tend to carefully consider the negative effects caused to the employee concerned, e.g., reduction in wages, and to apply the same standards to other forms of transfers.

Poor performance alone is not generally sufficient to justify an employee's dismissal. The Labor Standards Law requires the employer to specify the causes for dismissals in the rules of employment. The Labor Contracts Act stipulates that dismissals lacking objectively reasonable causes constitute abuse of rights by the employer and are therefore not valid.

Termination of employment caused by downsizing is also subject to strict reviews by the courts. Unless the so-called "four conditions" — inevitability and necessity of termination; insufficiency of alternative measures (such as transfers, temporary layoffs and voluntary retirement); reasonable and fair criteria for selection of employees; and proper and appropriate termination procedures — are met, the employer may not discharge its employees, even due to economic downturn.

## **Brief Overview of Special Dispute Settlement Procedures**

Ordinary civil procedure can be used for the settlement of individual labor disputes. However, it tends to be time-consuming and costly, as well as more adversarial, making it ill-suited for amicable resolution of individual labor disputes or sustainable employer-employee relations.

The Labor Tribunal Act (Act No. 45 of May 12, 2004) was enacted to create a dispute settlement system aimed at prompt and effective resolution of individual labor disputes. A party to an individual labor dispute may file a motion for the Labor Tribunal proceeding with a district court. A Labor Tribunal Committee is composed of one judge of the district court and two Labor Tribunal Commissioners, selected from citizens with knowledge of, and experiences in, labor issues, such as former labor union officials and former human resources managers. The Labor Tribunal Commissioners represent neither employers nor employees, and are required to remain neutral. The proceedings of the Labor Tribunal Committee are in principle finished on the third date.

Although the Committee tries to reconcile the parties, it makes a Labor Tribunal Committee decision failing an agreement by the parties. A Committee decision can be more flexible than an ordinary court decision. For instance, the Committee may decide to award compensation to the employee on the assumption of termination of his/her employment even if the disputed dismissal is found to be invalid. This is provided that such a solution appears more appropriate given the specifics of the dispute. The parties may file an objection to the Committee decision within two weeks, in which case the decision loses its effect. In such an event, an action for an ordinary civil lawsuit is deemed to have been filed at the time of the motion for the Labor Tribunal proceedings. Without such objection, the Committee

decision has the same effect as a judicial settlement. The use of Labor Tribunal Committees is said to be increasing since its inception on April 1, 2006.

Another alternative to the ordinary civil procedure is mediation by the Prefectural Labor Bureaus pursuant to the Act on Promotion of the Resolution of Individual Labor-related Disputes (Act No. 112 of July 11, 2001). The Prefectural Labor Bureaus, prefectural branches of the Ministry of Health, Labour and Welfare, offer advices and/or give guidance upon request, to one or both parties of a specific labor dispute. Upon filing an application for mediation, the Director of the Prefectural Labor Bureau may have a Dispute Adjustment Committee, consisting of experts (e.g., lawyers, university professors and certified social insurance and labor consultants [*shakai hoken romu shi*]) designated by the Minister of Health, Labour and Welfare, conduct mediation. The agreement reached in such mediation has the same effect as a settlement agreement under the Civil Code. Such mediation is terminated upon non-participation by the party other than the one requesting mediation, or upon failure of the parties to reach an agreement. In this case, other means of dispute settlement need to be used.

If you have any questions regarding this update, please contact the Sidley Austin Nishikawa lawyer with whom you usually work.

To receive future copies of this and other Sidley updates via email, please sign up at [www.sidley.com/subscribe](http://www.sidley.com/subscribe)

BEIJING BRUSSELS CHICAGO DALLAS FRANKFURT GENEVA HONG KONG LONDON LOS ANGELES NEW YORK  
PALO ALTO SAN FRANCISCO SHANGHAI SINGAPORE SYDNEY TOKYO WASHINGTON, D.C.

[www.sidley.com](http://www.sidley.com)

Sidley Austin LLP, a Delaware limited liability partnership which operates at the firm's offices other than Chicago, London, Hong Kong, Singapore and Sydney, is affiliated with other partnerships, including Sidley Austin LLP, an Illinois limited liability partnership (Chicago); Sidley Austin LLP, a separate Delaware limited liability partnership (London); Sidley Austin LLP, a separate Delaware limited liability partnership (Singapore); Sidley Austin, a New York general partnership (Hong Kong); Sidley Austin, a Delaware general partnership of registered foreign lawyers restricted to practicing foreign law (Sydney); and Sidley Austin Nishikawa Foreign Law Joint Enterprise (Tokyo). The affiliated partnerships are referred to herein collectively as Sidley Austin, Sidley or the firm.

西川シドリーオースティン  
法律事務所・外国法共同事業

**SIDLEY AUSTIN NISHIKAWA**  
FOREIGN LAW JOINT ENTERPRISE