



Law Reform for “Equal Work for Equal Pay”



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I. Introduction

As part of the working style reforms being made in Japan, the Act on Improvement, etc., of Employment Management for Part-Time and Fixed-Term Workers¹ (the “Part-Time/Fixed-Term Employment Act” or the “Act”) took effect in April 2020. The Act aims to achieve “Equal Pay for Equal Work.” In other words, the Act intends to correct the disparity in the treatment of regular workers and non-regular workers, which is a unique problem in Japan. In October 2020, the Supreme Court issued judgments for five important cases regarding such disparity problem. These judgments clarified that an unreasonable disparity may give rise to a monetary risk. What this means is that the working conditions of non-regular workers should be considered a legal and monetary risk in cases such as when a person or entity is contemplating to acquire or manage a Japanese company. This article gives an overview of the Supreme Court’s rulings and explains the background of the problem of non-regular workers to better understand the Supreme Court’s reasoning in each case.

II. Background

– Who is a Non-Regular Worker?

The gap between regular workers and non-regular workers is a unique problem in Japan and it may not be a

familiar one especially to people in Europe and the US. First, we need to determine what “non-regular worker” means because this term has no official definition. Traditionally, the Japanese working style has been characterized by long-term employment and a seniority wage system. It was common for new graduates to enter and continue to work for the same company until their retirement age. Reflecting on such working style, the Supreme Court has allowed lay-offs only in limited cases that involve a high necessity therefor and the reasonableness of reducing employees.

However, with the recession of the 1990s and international competition getting harder, such traditional working style that lacked employment flexibility became a hindrance to competition for Japanese companies. This is one reason why many Japanese companies increased the number of their fixed-term workers, part-time workers and temporary workers, which deviates from the traditional working style. These workers are called “non-regular workers” in contrast to regular workers who are protected by long-term employment (non-fixed term) practices and seniority-based wages. Due to such historical reasons, non-regular workers are commonly subject to less favorable working conditions in terms of wages, bonuses, retirement allowances, vacation and other benefits, as compared to regular workers.

1. Law No. 76 of 1993, as last amended by Law No. 71 of 2018. The full text is available at <http://www.japaneselawtranslation.go.jp/law/detail/?id=3499&vm=04&re=02>.



The number of non-regular workers has increased year after year.² As of November 2020, non-regular workers account for 37% of all workers in Japan.³ As a result, the disparity between regular and non-regular workers has become more serious. This social problem brought about the “Equal Pay for Equal Work” movement and working style reforms.

III. Overview of Article 8 of the Part-Time/Fixed-Term Employment Act

On April 1, 2021, the scope of the coverage of the Part-Time/Fixed-Term Employment Act, which originally took effect on April 1, 2020, will be expanded to include small and medium-sized businesses. Under Article 8 of the Act, an employer must not establish “an unreasonable difference” in the working conditions between part-time/fixed-term workers⁴ and regular workers. The article prescribes that each working condition should be judged on whether or not the disparity is reasonable, and lists the following three factors that should be considered in making the determination:

- (a) The content of the duties and the weight of responsibility attached thereto,
- (b) The scope of changes to the content of the subject duties and the scope of a possible relocation or reassignment, and
- (c) Other factors deemed appropriate in light of the nature and purpose of such treatment.

Based on an analysis of the Supreme Court cases, in judging the unreasonableness of each relevant working condition, it is very important to identify the purpose of the condition and consider the three factors above.

IV. Overview of the Supreme Court Cases

In October 2020, the Supreme Court issued five judgments that show how to apply the Part-Time/Fixed-Term Employment Act to specific cases. An overview of these judgments is provided in the charts below.⁵

Judgments by the 3rd Petty Bench
of the Supreme Court on October 13, 2020

- Case 1: The case of Osaka Medical and Pharmaceutical University
- Case 2: The case of Metro Commerce

Judgments by the 1st Petty Bench
of the Supreme Court on October 15, 2020

- Case 3: The case of Japan Post Tokyo
- Case 4: The case of Japan Post Osaka
- Case 5: The case of Japan Post Saga

Case 1	
Difference	Granting of bonuses
Conclusion	Not unreasonable
Reasoning	<ul style="list-style-type: none"> ● Considering the wage system, the required ability, and the degree of responsibility of the regular workers, the purpose of granting the bonus to regular workers is to secure and retain human resources who can perform their duties as regular workers. ● There was a certain difference in the job content of the regular and non-regular workers. Regular workers can possibly be ordered to be subject to personnel changes, and thus, there is a certain difference in the scope of reassignment between regular and non-regular workers.

2. For a historical overview of the increasing number of non-regular workers, see White Paper on the Labour Economy 2013 Summary, at <https://www.mhlw.go.jp/english/wp/l-economy/2013/index.html>.

3. See Ministry of Health, Labour and Welfare, Labour Survey, <https://www.stat.go.jp/data/roudou/rireki/tsuki/pdf/202011.pdf> (in Japanese).

4. In the Act, a part-time worker means a worker whose prescribed weekly working hours are shorter than those of a worker with a standard employment status who is employed by the same employer (art. 2(1)). Also, a fixed-term worker means a worker who has entered into a fixed-term labor contract with an employer (art. 2(2)).

5. The charts do not cover all of the issues in the cases.



Case 2	
Difference	Granting of severance pay
Conclusion	Not unreasonable
Reasoning	<ul style="list-style-type: none"> • The basic salary, which is the basis of the calculation of the severance pay, is determined based on both age and work performance. Considering such basis, the purpose of granting severance pay to regular workers is to secure and retain human resources who can perform their duties as regular workers. • There was a certain difference in the job content of regular and non-regular workers. Because of business necessity, regular workers can possibly be ordered to be subject to personnel changes, and thus, there is a certain difference in the scope of the reassignment between regular and non-regular workers.

Cases 3, 4 and 5	
Difference	Granting of summer and winter vacations
Conclusion	Unreasonable
Reasoning	<ul style="list-style-type: none"> • The purpose of granting summer and winter vacations is to restore the mind and body of employees by giving them an opportunity to leave work, apart from their annual paid vacation and sick leave. • The contract period of non-regular workers is six months or less, and they are expected to work regardless of whether they are busy or not, rather than for a short-term limited to a busy season. • Therefore, the purpose of granting summer and winter vacations is applicable even to non-regular workers.

Cases 3 and 4	
Difference	Granting of year-end and new-year working allowances
Conclusion	Unreasonable
Reasoning	<ul style="list-style-type: none"> • The allowance is paid in addition to the basic salary when the workers are actually working during the year-end and new-year holidays, which are the busiest periods in the postal service industry, and when many workers take leaves. • The amount of the allowance is the same regardless of the content of the work and the degree of difficulty thereof, and depends solely on the periods when the actual work is done. • It is unreasonable that the allowance is not paid to non-regular workers who are engaged in postal services during the same periods, the year-end and new-year holidays.

Case 4	
Difference	Granting of dependent allowance
Conclusion	Unreasonable
Reasoning	<ul style="list-style-type: none"> • The purpose of granting a dependent allowance is to secure continuous employment by helping workers who have dependents to build their life plans while ensuring their livelihood and welfare. • Even if an employee is a non-regular worker, if he/she has a dependent and is expected to continue working, then such purpose is applicable to him/her.

In Cases 1 and 2, the Supreme Court recognized that the purpose of paying the bonuses and the severance pay was to secure and retain talented human resources who can engage in their duties as regular workers. In Japan, this purpose is called “the theory of securing talented human resources.” This theory is clearly based on the traditional Japanese working style which distinguishes between regular workers who are protected by long-term employment, and non-regular workers who do not enjoy such protection. Therefore, even under the Part-Time /Fixed-Term Employment Act, the Supreme Court has considered the traditional Japanese working style still acceptable.

However, if a company cannot prove such purpose to justify a problematic working condition that distinguishes between regular and non-regular workers, then a court would likely declare such working condition invalid under the Act. For example, as mentioned in Cases 3, 4, and 5, the Supreme Court recognized that the purpose of summer and winter vacations is to restore the mind and body of workers (even non-regular workers) by giving them the opportunity to leave work. Also, in Cases 3 and 4, the Supreme Court affirmed that the year-end and new-year working allowances are given based on work done during such periods when many people take a vacation. Because the purposes of these allowances do not fall within the purpose of securing talented human resources, the differences in granting these allowances between regular and non-regular workers were not justified.



Moreover, even if the purpose of a working condition is apparently to secure continuous employment, the disparity may still be considered unreasonable if the purpose is also applicable to non-regular workers after considering the actual working condition. For example, in Case 4, the purpose of paying the dependent allowance is applicable even to non-regular workers who have dependents and are still expected to continue working.

Importantly, in the cases where the differences were considered unreasonable, the Supreme Court recognized that the non-regular workers suffered pecuniary damages and ordered the payment of monetary compensation. Hence, if a company has a large number of non-regular workers whose working conditions are unreasonably different from those of regular workers, then the monetary risk can be enormous.

V. Conclusion

Even though the Part-Time/Fixed-Term Employment Act clarifies the factors that should be considered in determining whether a disparity in a working condition is unreasonable or not, the courts still have to make case-by-case judgments. The above five Supreme Court cases provide important examples. To judge the unreasonableness of a disparity, the purpose of the subject working condition must be specified, taking into account the factors listed in Article 8 of the Act. Moreover, at present, an important factor is to determine whether the condition is justified by the theory of securing talented human resources, which was affirmed by the Supreme Court.

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