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In this *Panoramic Next* guide, leading employment law practitioners from across the globe discuss the most consequential recent trends and developments that employers should know about, while also sharing their insights into best practices and potential future developments.

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Japan

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Profiles

ABOUT

Ayako Kanamaru is a partner of Oh-Ebashi LPC & Partners. Her employment practice covers all areas of employment management issues, including harassment, reorganisation, redundancies and labour disputes before the courts. She regularly represents multinational and domestic companies and provides flexible advice considering each client's industry.

Ryotaro Yamamoto is a partner at Oh-Ebashi LPC & Partners. He has a wide range of experience in HR matters, advising both domestic and international clients as well as dispute cases, including domestic litigation and international arbitration.

Q&A

WHAT ARE THE MOST IMPORTANT NEW DEVELOPMENTS IN YOUR JURISDICTION OVER THE PAST YEAR IN EMPLOYMENT LAW?

The working-age population is declining in Japan due to a declining birthrate and an increasing number of elderly people. To address this issue, the 'work style reform' has been promoted to improve working environments and promote flexible and diverse work styles. One of the key developments in this regard is the passing of an act to protect freelancers.

The Freelance Act came into effect

The Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators (the Freelance Act) to protect persons working as freelancers came into effect in Japan in November 2024. In light of the diversification of working styles in Japan, the Freelance Act aims at optimising transactions and improving the work environment for freelancers so they can stably engage in the services with which they have been entrusted as enterprises, thereby contributing to the sound development of the national economy.

For the optimisation of such transactions, the Freelance Act requires a client enterprise that has outsourced work to a freelancer to indicate matters such as the details of the work and the amount of remuneration. It also requires the client enterprise to pay remuneration to the freelancer by a certain deadline, which is set within 60 days of the completion of the work or the delivery of the product. The Act prohibits a client enterprise that has outsourced work to a freelancer from engaging in the following acts:

- refusal to receive the work from the freelancer without grounds attributable to the freelancer;
- reducing the amount of remuneration without grounds attributable to the freelancer;
- returning the delivered product or creation to the freelancer without grounds attributable to the freelancer;
- unjustly setting an amount of remuneration at a level conspicuously lower than the price ordinarily paid; and
- coercing the freelancer to purchase goods or use services as designated by the client enterprise without good reason.

The Act also provides that the client enterprise must not unjustifiably harm the interests of the freelancer by causing the freelancer to:

- provide money, services or other economic gains to the client enterprise; or
- change the details of the work or perform the work again without grounds attributable to the freelancer.

The Act also makes it obligatory for a client enterprise to consider the balance between work and childcare/family care. Also, the client enterprise is required to take measures to establish a necessary system for dealing with harassment of freelancers, such as creation of a consultation service.

In light of the Freelance Act, companies that engage freelancers have reviewed their agreements and transactions with freelancers and taken necessary measures to comply with the law.

WHAT UPCOMING LEGISLATION OR REGULATION DO YOU ANTICIPATE WILL HAVE A SIGNIFICANT IMPACT ON EMPLOYMENT LAW IN YOUR JURISDICTION?

Following the revision of the Industrial Safety and Health Act (Act No. 57 of 1972), a stress check system was introduced in December 2015 as a mental health measure for workplaces to prevent mental health problems. However, for companies with fewer than 50 employees, conducting stress checks was only a voluntary obligation, not a legal requirement.

According to the Occupational Safety and Health Survey (Actual Survey) 2023 conducted by the Ministry of Health, Labour and Welfare (MHLW), the percentage of companies conducting stress checks is highest at 81.7 per cent for companies with 50 or more employees, while the percentage for companies with fewer than 50 employees is only 34.6 per cent.

It is not realistic for small companies to conduct stress checks in-house, and outsourcing is more practical from the perspective of the burden on the company and protecting employee privacy. Taking into consideration the burden on target companies, sufficient preparation time will be required before enforcement, and enforcement will start on a date to be determined by government ordinance within three years following promulgation (14 May2025).

HOW HAS THE #METOO MOVEMENT IMPACTED THE INVESTIGATION OR SETTLEMENT OF HARASSMENT OR DISCRIMINATION CLAIMS IN YOUR JURISDICTION?

In Japan, the highest profile #MeToo movement case involved a female journalist who went public using her real name in 2017 with the sexual assault she suffered at the hands of a male journalist. Although the criminal case was not prosecuted due to insufficient evidence, the victim filed a civil lawsuit for damages against the male journalist. In July 2022, the Supreme Court turned down the appeal from the male journalist, and the Tokyo High Court decision, which found that he had committed the sexual assault and ordered him to compensate the victim for damages in the amount of ¥3.32 million, was finalised.

During the period the #MeToo movement was spreading, in 2019, several not guilty verdicts were handed down at the district court level in sexual assault cases due to the high burden of proof in criminal cases. This led to the spread of a demonstration movement called the Flower Demonstration, in which people wore flowers to appeal for the eradication of sexual violence.

After these movements, the revised Penal Code was passed by the Diet and came into effect in July 2023, unifying the crimes of 'forcible sexual intercourse' and 'quasi-forcible sexual intercourse' into 'sexual intercourse without consent'. As the provisions of the previous forcible and quasi-forcible sexual intercourse crimes were abstract in wording, and there is a high burden of proof in criminal cases, convictions were difficult to obtain. Through this unification, sexual acts without consent were clarified as a crime, and in addition to the 'assault and threat' stipulated in the old law as a requirement for punishment, eight specific acts such as 'use of economic and social status', 'causing fear and surprise' and 'psychological reactions caused by abuse' were also stipulated. Furthermore, under the revised Penal Code, the country's age of consent for sexual intercourse was raised to 16 from 13.

In addition, sexual assaults in the entertainment industry have come to light and in recent years, the sexual assault of minors perpetrated by the founder of Johnny & Associates Inc (the company name was changed and is currently SMILE-UP. Inc), one of the leading talent agencies in Japan, has become a major issue. Further, in 2023, a female announcer at Fuji Television, which is one of Japan's leading television stations, claimed that she had been sexually abused by a male entertainer who had been hosting a programme on Fuji Television. In 2025, an independent third-party committee was established by the company to investigate the allegations against the abuser and the company's response. The committee's report ultimately determined that the incident was sexual violence and occurred as an extension of work. The committee also criticised Fuji Television's executives for siding with the abuser and acting in his interests, which could have contributed to the 'secondary victimisation' experienced by the female announcer.

In Japan, sexual harassment in the workplace is defined as 'acts in the workplace that cause an employee to suffer disadvantages in their working conditions or harm to their work environment due to sexual conduct, and the employee's response to such sexual conduct' under the Equal Opportunity Act. Also, it provides that employers must take necessary measures to prevent sexual harassment in the workplace. Furthermore, the sexual harassment guidelines issued by the MHLW specify the details of specific preventive measures, including (1) clarifying and promoting policies on sexual harassment prevention, (2) establishing a system to respond appropriately to employee consultations, (3) ensuring prompt and appropriate responses after incidents, (4) protecting the privacy of those involved in consultations or post-incident responses and (5) raising awareness about the prohibition of adverse treatment based on consultations or cooperation in light of the facts. These statutory requirements were available before the #MeToo movement but not many cases were reported to companies and systems to handle such issues were immature.

Owing to the recent amendment of the Whistleblower Protection Act, companies with more than 300 employees are obliged to establish necessary systems to respond appropriately to internal reports from June 2022. Although acts subject to reporting under this Act are limited, harassment issues, including sexual harassment, are increasingly being reported

to companies, and these cases have become one of the most reported issues in internal reporting systems.

According to the laws and guidelines above, the employer is required to take specific preventive measures and respond appropriately, including conducting sufficient investigation into the facts. Not only for employees in an employment relationship but also for freelancers, a client enterprise is required to take measures to establish a necessary systems for dealing with the harassment of freelancers under the Freelance Act mentioned above.

WHAT ARE THE KEY FACTORS FOR COMPANIES TO CONSIDER REGARDING THE ENFORCEMENT OF RESTRICTIVE COVENANTS AGAINST DEPARTING EMPLOYEES?

Restrictive covenants, such as non-compete clauses and non-solicitation clauses, are often included in the work rules, employment agreements and separate agreements. Basically, these covenants are agreed voluntarily between the parties and considered valid unless the covenants are so extensive and restrictive as to be considered to be against public policy or morality.

Since employees are not legally obliged to, and have no incentive to, accept restrictive covenants, it is extremely difficult to include these covenants, especially non-compete clauses, in a separate agreement when an employee is departing unless fair special compensation is offered.

Therefore, these covenants, if necessary, need to be proposed and accepted upon joining a company either in the form of an employment agreement or a special agreement because, at this time, the company has bargaining power over its employees.

At the same time, it is important to note, however, that an employee is guaranteed the freedom to choose their occupation (article 22(1), Constitution of Japan) and this guarantee of freedom includes the right to secure the employee's livelihood. Any non-compete clause that restricts this freedom, therefore, comes with the inherent risk that it will threaten the employee's livelihood. Accordingly, non-compete clauses will be deemed contrary to public policy and void if the restrictions go beyond what is considered necessary and reasonable, taking into consideration various factors, such as the following:

- whether it is intended to protect the legitimate interests of the employer;
- the employee's position before resignation;
- the types and scope of business to be restricted;
- the geographical area covered;
- the period during which competition is prohibited; and
- whether the employer provided compensation.

There are plenty of court cases regarding this issue, however, the judgments vary case-by-case, and it is extremely difficult to find specific criteria for judgment of whether a non-compete clause is contrary to public policy.

Generally, the narrower the scope of the restriction, the less likely that a non-compete clause will be considered contrary to public policy and void. For employers that wish to include a non-compete clause that generally prohibits an employee from working directly or

indirectly in competition with the company's business, it is understood that the standards for determining enforceability are quite high and the company must consider paying significant compensation in exchange for such a covenant. However, instead of seeking broader restrictions, for example, if the employer includes a non-compete clause that specifically prohibits an employee from joining a direct competitor (identifying such competitors), the cases where such a non-compete clause is deemed to be contrary to public policy seem to be decreasing. In any event, when drafting non-compete clauses, all of the above factors should be adequately taken into account for such clauses to be valid and enforceable.

In contrast to non-compete clauses, non-solicitation clauses specifically included in the employment agreement or a separate agreement at the time of resignation do not, in principle, restrict any right guaranteed under the Constitution of Japan, and such clauses are generally considered to be enforceable.

IN WHICH INDUSTRY SECTORS HAS EMPLOYMENT LAW BEEN A HOT TOPIC RECENTLY? WHY?

The construction and logistics industries are drawing attention considering the recent application of the working hours' regulations. For vehicle drivers in the logistics industry, the revised improvement standards notice issued by the MHLW (Revised Notice), which is enforced through administrative penalties under the Freight Motor Vehicle Transportation Business Act, was applied to regulate the total hours truck drivers spend at work (working hours plus rest periods), and further strengthened so that allowable working hours are shorter than before. The background of this amendment is that the vehicle transport industry has the highest number of work-related injuries, and the long working hours and excessive work by truck drivers were becoming an issue in Japan.

As a result of these amendments, it has been suggested that if no specific measures are taken, there is a possibility that transport capacity will be limited by a certain percentage based on the statistics of the Ministry of Land, Infrastructure, Transport and Tourism. There are cases where what could previously be transported by one person in one day now needs to be transported by two people over two days. For long-distance transport, if the same operating methods as before are used, there is a possibility that they will violate the Revised Notice in relation to working hour regulations.

Thus, in the logistics industry, it is necessary to review the way drivers work and the way transportation is carried out to comply with the employment regulations and meet the needs of businesses.

Further, industries that do a lot of business with freelancers, such as logistics and IT services, are also required to comply with the Freelance Act, including the conclusion of contracts, reviewing transactions and taking required measures.

WHAT ARE THE KEY POLITICAL DEBATES ABOUT EMPLOYMENT CURRENTLY PLAYING OUT IN YOUR JURISDICTION? WHAT EFFECTS ARE THEY HAVING?

On 8 January 2025, the MHLW 's Labour Standards Legislation Study Group, which is examining medium- to long-term revisions to the Labour Standards Act and other laws in response to diversifying work styles, compiled a report (the Report).

Based on the Report, the MHLW will consult with the Labour Policy Council toward legal reform within 2025, aiming to revise the Labour Standards Act and other laws as early as 2026. To provide an overview of the direction of future legal reform, we will provide an overview of the major points mentioned in the Report. The Report primarily addresses the following issues:

1. the definition of 'workers' in the Labour Standards Act;
2. the nature of labour-management communication; and
3. specific issues in work time legislation.

Regarding (1), the Report calls for clarification of the criteria for determining whether a person is a worker in order to address new working styles such as gig workers and ensure that the Labour Standards Act is applied to those who are actually workers, and to increase the predictability of determining whether a person is a worker under the Labour Standards Act. As working styles become more diverse, there are many cases where it is difficult to determine whether a gig worker is an actual worker, and if new standards are introduced, this is expected to have a major impact on practice.

In terms of (2) above, in order to create an environment in which workers can gather their opinions and communicate effectively with employers, future revisions are expected to include provisions on the legal status of majority representatives, clarification of fair and impartial election procedures, duties and powers, provision of information to majority representatives, support and convenience and prohibitions on unfavourable treatment.

The specific issues regarding the regulation of long working hours set out in (3) can be broadly categorised into three categories. The first is regarding regulations on maximum working hours, which include measures to ensure the effectiveness of regulations limiting overtime and holiday working hours, promoting the disclosure of information on working hours by companies, establishing a partial flextime system that can be applied only on certain days in order to promote flexible working styles such as teleworking and introducing a deemed working hours system for teleworking. Among these points, the partial introduction of a flexitime system, which allows workers to independently choose their start and finish times for work only on specific days, is expected to encourage more companies to consider introducing a flexitime system. Furthermore, many companies are currently struggling with how to manage actual working hours during teleworking, and the introduction of a deemed working hours system for teleworking, along with effective ways to ensure health, is likely to be welcomed by both companies and workers. However, opposition from some labour unions is also expected, so it is unclear whether it will actually be introduced. The next category is 'regulations on liberation from work' and include the introduction of a work interval system and the establishment of guidelines regarding the 'right to be disconnected'. Regarding the latter right to disconnect, it is not anticipated that the Labour Standards Act will be amended, and the government is expected to first formulate guidelines to promote discussions between labour and management. The final category is regulations regarding overtime pay, specifically referring to changes in regulations regarding overtime pay for side jobs and multiple jobs. Under the current interpretation of the Labour Standards Act, when an employee has a second job, the overtime pay must be calculated by adding up the total hours worked at the second job, and this is said to be one of the reasons why companies avoid allowing second jobs.

Furthermore, it is proposed that a system be established to prevent evasion of overtime pay regulations in cases where employees work for multiple businesses under the orders of the same employer. The Report requires the development of the legal system, rather than a change in the interpretation of the current Article 38 of the Labour Standards Act, and it is expected that fundamental reforms to the system will be made.

The Inside Track

WHAT ARE THE PARTICULAR SKILLS THAT CLIENTS ARE LOOKING FOR IN AN EFFECTIVE LABOUR & EMPLOYMENT LAWYER?

When it comes to labour matters, if clients wish to resolve them risk-free, the client's options will be limited and the client's costs will increase as a result. Therefore, after appropriately assessing risks, we present a concrete solution for resolving labour issues practically and effectively and provide our clients with the necessary measures and communication strategies in an easy-to-understand manner.

WHAT ARE THE KEY CONSIDERATIONS FOR CLIENTS AND THEIR LAWYERS WHEN HANDLING EMPLOYMENT DISPUTES?

In practice, many employment disputes are resolved through court or out-of-court settlements. Therefore, while seeking to obtain a judgment in favour of the client at trial, we must consider when and under what conditions it would be in the best interests of the client to reach a settlement and discuss with the client at every stage. Based on such considerations, we always suggest what steps should be taken to lead to a desirable settlement and to achieve a settlement in favour of the client.

WHAT ARE THE MOST INTERESTING AND CHALLENGING CASES YOU HAVE DEALT WITH IN THE PAST YEAR?

We regularly handle cases of investigations into harassment-related allegations. These cases are challenging because where there are conflicting statements or no witnesses, there are limitations on what the investigation can discover, and it is often difficult to determine whether harassment has occurred. In case the accused person was part of the top management of the company, the matter also affects corporate governance issues. We provide our clients with detailed advice, including preservation of evidence, communication with employees and interviews with various personnel, to determine the facts and propose appropriate remedial measures.

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