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Workforce Management Newsletter
Newsletter for Labor Issues

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The Workforce Management
Newsletter, which is issued every
other month, covers important
topics related to HR / labor
management.
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- 1. Increase in the Welfare Pension Insurance Premium Rate**
- 2. Partial Revision to the Labor Contract Law including the Conversion of Fixed-Term Labor Contract to a Termless Labor Contract**
- 3. Matters to Note with Regards to Company Establishment and Hiring of Employees**

1. Increase in the Welfare Pension Insurance Premium Rate

(1) Details

Beginning September 2012, the welfare pension insurance premium rate will be increased by 0.00354 to 0.16766.

*Until the welfare pension insurance premium rate reaches a fixed rate of 0.183 in September 2017, the rate will be increased by 0.00354 each year.

(2) Applicable date

September 1, 2012

2. Partial Revision to the Labor Contract Law including the Conversion of Fixed-Term Labor Contract to a Termless Labor Contract

(1) Details

i. Conversion of Fixed-Term Labor Contract to a Termless Labor Contract

A system by which a fixed-term labor contract will be converted into a termless labor contract in the event the fixed-term labor contract is repeatedly renewed over a period of time exceeding 5 years, will be adopted.

- ✓ In principle, in the event a blank period of 6 months or more exists, the previous contract period will not be included in the computation of the contract period.
- ✓ Unless otherwise provided, the working conditions from the prior contract can be applied to the converted contract, where there will be no need for the working conditions to be revised.

In the event a fixed-term labor contract is converted to a termless labor contract, the concept of termination of employment due to expiration of contract will be nullified. Accordingly, an employer will not be able to terminate a labor contract without meeting harsh requirements for a dismissal, it will become more difficult for an employer to lay off employees in accordance with the worsening of economy, business performance of the employer, or the busy/slack times in business, or to terminate employees in accordance with the performance/ability of the employees.

ii. Theory against termination of employment

The “theory against termination of employment” was introduced in the law. The “theory against termination of employment” was the determination of the court that “In the event that a fixed-term labor contract exists in a state where it is not much different, in actuality, from a termless labor contract due to it being subject to a repeated renewal, or a reasonable expectation of a continuation of employment after expiration of the fixed term labor contract period can be recognized, if a termination of employment lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, the fixed-term labor contract will be considered to have been renewed (i.e. concluded.)”

iii. A ban on unreasonable working conditions attributable to a contract with a limited employment term

In the event the working conditions for an employee under a labor contract for a limited period is different from those for an employee under a termless labor contract, such difference in conditions cannot be recognized as being unreasonable in light of any consideration given to the scope of change in staff deployment and to job content.

Due to the above, with respect to contract employees who share the same job content and job assignment as with regular full-time employees, a re-examination of the working conditions and their amendment will become necessary, which may result in a large increase in personnel costs.

(2) Effective date

- With respect to ii above, August 10, 2012.
- With respect to i and iii above, a date stipulated by a legislative decree within a period not exceeding 1 (one) year from August 10, 2012.

3. Matters to Note with Regards to Company Establishment and Hiring of Employees

In the event of establishing a company or hiring an employee, various procedures for labor and social insurances as required will become necessary. The following items are of particular importance amongst the registration processes as required by law. Has your company completed all of the items below?

- ✓ Has a labor contract been concluded and rules of employment been drafted?
- ✓ Have the required working conditions been clearly laid out?
- ✓ Has the necessary labor-management agreement been concluded?
- ✓ Have you prepared and maintain a record of the roster of workers, attendance record, and the wage ledger?
- ✓ Have the employees been enrolled in labor and social insurance system?
- ✓ Has a health examination been conducted at the time of hiring?

In this current issue, we would like to introduce the following topics that require careful attention as they are particularly prone to a misunderstanding or forgetfulness: 1. Clear provision of the working conditions; 2. Labor-management agreement; 3. Preparation and maintenance of a roster of workers, attendance record, and wage ledger; and 4. Health examination at the time of hiring.

(1) Clear provision of the working conditions

Under the Labor Standards Law, a company, in concluding a labor contract, is required to clearly provide the following working conditions therein. The absolutely required items must be provided in writing excluding the “Item with regards to pay raise” (Article 15 of the Labor Standards Law, Article 5 of the Ordinance for Enforcement of the Labor Standards Law.)

i. Absolutely required items

- A. Matters concerning the term of the labor contract;
- B. Matters concerning the workplace and work engaged in;
- C. Matters concerning starting hour and closing hour, presence of labor to be done exceeding the prescribed working hours, rest period, days off, leave, and change in shifts (in the event workers work in two or more shifts);
- D. Matters concerning methods of determination, calculation, and payment of wages (excepting retirement allowance, etc.), the dates for closing the account for wages and for payment of wages, and increase in wages; and
- E. Matters concerning retirement (including grounds for dismissal).

ii. In addition to the above, retirement allowance, extraordinary wage payments, and etc. must be clearly provided in the event they are set forth as working conditions.

(2) Labor-management agreement

A labor-management agreement is a written agreement concluded between the employer and the labor union comprised by a majority of the employees or the representative of the majority of the employees. In the event of adding any restrictions to the legal rights of an employee, a labor-management agreement must be concluded. We would like to introduce the 36 Agreement and the agreement related to deduction from wages, which tend to be forgotten.

i. 36 Agreement

In order to have employees work overtime or holiday hours, it is not enough to pay them overtime or holiday work allowance. This is made possible only by concluding a 36 Agreement and submitting it to the Labor Standards Office.

ii. Labor-management agreement related to deduction from wages

Under the principle of payment of the entire amount of wages under the Labor Standards Law, in principle, it is impermissible to deduct money from wages other than social insurance premium payments, taxes, and etc. that are permitted for a deduction under the laws and regulations. However, by concluding a labor-management agreement related to a deduction from wages (i.e. its submission is not required), a deduction from wages can be conducted lawfully with respect to items other than those permitted for a deduction under the laws and regulations including rent for company housing and asset-building savings.

(3) Preparation and maintenance of the roster of workers, attendance record, and wage ledger

In the event an employee is hired, the employer has a duty to prepare the roster of workers, attendance record, and wage ledger, and to maintain them for a period of 3 (three) years.

i. Required items and forms for each document

Please follow the URL of Ministry of Health, Labour and Welfare below to access forms for roster of workers and wage ledger, etc. (Japanese only)

⇒ <http://www.mhlw.go.jp/bunya/roudoukijun/roudoujouken01/index.html>

ii. Starting date for maintenance of the above documents for the three year period

Type of Document	Starting Date
Roster of Workers	Date of death/Date of resignation or dismissal
Attendance Record	Date of completion (*)
Wage Ledger	Date in which the last entry was made

*The “date of completion” refers to the “date in which the last entry had been made.” (Labor Standards Bureau Notification No. 339, April 6, 2001)

iii. How to maintain records of the wage ledger, etc.

Although in principle, the original versions are required to be maintained as a record, in the event any all of the requirements below can be met, a record of a document can be maintained on a personal computer.

- A. The document meets all the requirements for a “complete” document as required by the laws and regulations, and such document is able to be displayed on a screen and printed out;
- B. A system is in place where in the event of an official inspection carried out by the Labor Standards Inspector, etc. the required items can be immediately made available and submitted;
- C. The document cannot be deleted by mistake; or
- D. The document can be preserved for a long period.

(4) Health examination at the time of hiring

i. Details

Under the Industrial Safety and Health Act, a company has the duty to conduct a health examination of an employee at the time he/she is hired.

ii. Applicable individuals

This requirement applies to individuals who meet both of the below conditions.

- A. Individuals who are employed under a termless labor contract or an individual whose contract period is for more than 1 (one) year (i.e. includes one for whom a period of one year or more can be anticipated); or
- B. An individual whose fixed working hours per week are in excess of 3/4 those of a regular worker.

*Under the ordinance for enforcement, in the event an individual meets the requirements in A above but do not meet the requirements in B, it is recommended that a health examination be conducted for such individual in the event that his/her fixed working hours per week are approximately more than 1/2 those of regular workers.

iii. Payment of health examination fee

It is provided in the ordinance for enforcement, and not under the Industrial Safety and Health Act, that “As long as the employer fulfills its duty to conduct a health examination as required by the law, the employer shall be held responsible for payment of the health examination fee.”

iv. Treatment of wages during a health examination

It is provided in the ordinance for enforcement, and not under the Industrial Safety and Health Act, that “Provided that as a matter of course, it is not the responsibility of the employer to pay wages but is a matter to be determined under deliberations between the employer and its employees, it is still advisable for the employer to pay wages during this period.”

For more information, please contact any of the following members listed below:

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