

Labor & Employment Law Newsletter**Regulations Concerning Rules of Employment (Work Rules)****Jiro Abe**

The Japanese Labor Standards Act requires an employer who regularly employs no less than 10 employees to draft work rules and submit them to the Labor Standards Supervision Office.

Work rules are regulations established by an employer that prescribe the employment conditions or disciplines for a work place. If an employer and its employees agree on employment conditions that are less favorable to that employee than the conditions established by the employer's work rules, then such agreed conditions will be deemed invalid, and the standards established by the work rules will apply (Article 12 of the Employment Contract Act).

Outline of the procedures for establishing the work rules and related regulations/requirements are as follows:

1. Obligation to Draft and Submit Work Rules

An employer that regularly employs no less than 10 employees is required to draft written work rules and submit them to the local Labor Standards Supervision Office.

Concerning these requirements:

- (a) the requirement of "no less than 10 employees" is judged on a per workplace basis, not on a per company basis;
- (b) the requirement of "no less than 10 employees" include personnel such as part-time employees and employees under fixed term employment contracts; however, it does not include dispatched workers, directors (except a director who is also an employee), and other workers who are not hired by the employer.
- (c) work rules must cover all employees so that there is no employee who is not covered by the work rules. An employer may, however, provide a separate set of work rules for different categories of employees (e.g., one set for regular employees and one set for part-time employees); and
- (d) work rules must include all the items required to be included under the Labor Standards Act.

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2. Items to be Provided Under the Work Rules

Items provided under work rules consist of (i) “mandatory matters”, which are items required to be included in the work rules pursuant to the Labor Standard Act, and (ii) “voluntary matters”, which employers may, but are not required to, include in the work rules.

“Mandatory matters” further consist of (i) matters that must be stipulated at all times under all circumstances (the “Required Matters”), and (ii) matters that must be stipulated in the work rules if an employer implements certain matters as a particular system within the company (the “Conditionally Required Matters”).

Outline of the Required Matters and Conditionally Required Matters are as follows:

A. Required Matters

Matters below must be stipulated under the work rules:

- 1) Matters relating to working hours, days off, recess, etc.
 - Starting time and finishing time
 - Recess hours
 - Days off and holidays
 - Leave
 - Shift working hours for employees working in two or more shifts
- 2) Matters relating to wages
 - Methods for determining, calculating and paying wages (excluding extraordinary wages, etc.)
 - The dates for closing accounts for wages and payment of wages
 - Wage increase
- 3) Matters relating to termination of employment
 - Retirement age
 - Grounds for dismissal
 - Other causes of termination

B. Conditionally Required Matters

Matters below must be stipulated under the work rules if an employer implements any systems listed below within the company:

- 1) Matters relating to retirement allowance
- 2) Matters relating to extraordinary wages and allowances such as commuting allowance
- 3) Obligations imposed on employees to bear expenses such as meals and equipment
- 4) Matters relating to safety and health regulations provided by the employer
- 5) Matters relating to trainings provided by the employer

- 6) Compensation for work related accidents or non-work related injury or illness if any program or support above the legal requirement are provided by the employer
- 7) Matters relating to commendations and/or disciplinary actions (including causes of disciplinary actions)
- 8) Any other regulations applicable to all employees at the workplace

3. Obligation to Solicit Opinions of Employees

Prior to submitting the work rules to the Labor Standards Supervision Office, an employer is required to solicit the opinions of either (a) a labor union organized by a majority of the employees at the workplace concerned (where such labor union is organized), or (b) a person representing a majority of the employees at the workplace concerned (where a labor union organized by a majority of the employees at the workplace is not organized). The employer is then required to attach all such opinions in writing to the draft work rules to be submitted to the Labor Standards Supervision Office.

The obligation is merely to solicit the opinions of the employees; therefore, from a procedural perspective, it is not necessary to obtain their consent.

If a labor union is not organized at the workplace concerned, the person representing a majority of the employees must be both:

- (a) a person who does not hold a supervisory or management position; and
- (b) a person who has been elected by a majority of the employees in accordance with a procedure, such as by voting or a show of hands, after the employees have been clearly informed that a person to represent a majority of the employees will be chosen pursuant to such procedure.

With regards to (ii) above, the specific electoral procedure that must be taken is not specified by law; provided, however, that if the procedure used is one other than actual voting or a show of hands, it must at a minimum be one by which it can easily be recognized that the elected representative is supported by a majority of the employees in the workplace concerned, such as by passing around a petition among employees or sending e-mails from employees.

A person who is (i) elected by the employer, (ii) not elected through an appropriate procedure, or (iii) elected by only a limited number of employees in the work place, would not meet the requirements as a person representing a majority of the employees.

4. Obligation to Make Work Rules Known to Employees

An employer is required to make its work rules known and easily accessible to its employees using one of the following methods:

- (a) by posting or maintaining a copy of the work rules at a location that is easily accessible to employees at each relevant workplace at all times;
- (b) by handing out copies of the work rules to all employees; or
- (c) by recording the work rules on digital media, and providing appliances at each workplace so that the employees can easily access the work rules at all times.

Recently, many Japanese companies post their work rules electronically on their company intranet system as a means of making their work rules known and easily accessible to their employees.

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