

International Comparative Legal Guides

Employment & Labour Law 2026

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Contemporary Challenges in Japanese Employment Law: Worker Classification and Modern Work Styles



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Introduction

Japan's labour laws do not permit at-will termination and, overall, provide relatively strong protections for workers, requiring careful attention from employers. This chapter outlines key issues under Japanese law, including the definition of “worker”, the Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators (the “Freelance Protection Act”), employers' duty of care, the Discretionary Labour System (the “System”), and legal considerations surrounding remote work.

Worker Status Under Japanese Law and the Freelance Protection Act

Determination of worker status

Under Japanese labour laws, not only employment contracts but also outsourcing agreements, contracts for work, or agency agreements may be judicially characterised as employment contracts if, in substance, the arrangement is deemed to involve the provision of labour. In such cases, labour protection statutes – including strict regulations on dismissal – apply to the relationship between the company and the individual, and employers must comply with these rules. Accordingly, where a company does not intend to create an employment relationship and merely seeks to outsource work, it must take care to structure and conclude the contract in a manner that prevents the arrangement from being characterised as employment and must also ensure that its actual operational practices remain consistent with that structure.

Worker status under the Labour Standards Act (the “Act”)

Whether an individual qualifies as a “worker” subject to labour-related statutes, including rules concerning working hours and wages, is determined not by the contract's form or title, but on the basis of its substantive content. Regardless of whether the contract is formally designated as an outsourcing arrangement, contract for work, or agency agreement, the worker's status is assessed comprehensively in each case by examining whether:

- the individual performs labour under the direction and supervision of another, meaning whether they are subordinate to the employer in providing services; and
- remuneration is paid as consideration for labour performed under such direction and supervision.

To determine whether labour is performed under direction and supervision, Courts take into account factors such as:

- the degree of freedom to accept or refuse work assignments or instructions;

- the existence of specific instructions concerning the content and manner of work;
- whether the place and hours of work are designated and controlled by the principal; and
- whether substitution (i.e., delegating performance to another) is permitted.

Regarding whether remuneration constitutes consideration for labour, the inquiry focuses on whether payments are deemed remuneration for the provision of labour for a certain period under the principal's control.

Other considerations supplementing the assessment include:

- the individual's business independence (e.g., whether they bear their own equipment costs);
- exclusivity to a particular employer; and
- freedom to engage in transactions with other business operators.

Observations

At present, the Ministry of Health, Labour and Welfare has convened an expert panel – the “Study Group on Worker Status under the Labour Standards Act” – to review whether existing criteria adequately reflect increasingly diverse working arrangements. Should the definition of “worker” be revised, it may have a significant impact on the Japanese labour market, making continued attention to this issue essential.

The Freelance Protection Act

Background and enactment

The Freelance Protection Act was enacted against the backdrop of increasing diversification in working styles in Japan and the growing prevalence of freelance work. With the development of the digital economy, new forms of work – such as gig workers and crowd workers – have proliferated. The Act aims to create conditions in which sole proprietors can engage in work through outsourcing and work stably.

The Act was introduced in response to widespread issues faced by freelancers, including non-payment and delayed payment of remuneration, as well as disparities in bargaining power and access to information *vis-à-vis* client companies. Accordingly, companies subject to the Act must comply with its prescribed obligations.

Covered entities and transactions

The Act applies where a Specified Outsourcing Business Operator (defined below) enters into an outsourcing arrangement with a Specified Receiving Business Operator (defined below).

Outsourcing (Article 2(3) of the Act)

“Outsourcing” refers to the act of entrusting another business operator, for the entrusting party’s business purposes, with the manufacture of goods, the creation of information products, or the provision of services. It involves specifying the required specifications or content and requesting the manufacture, creation, or provision of such deliverables or services.

Specified Receiving Business Operator (Article 2(1))

A “Specified Receiving Business Operator” is defined as either:

- (1) an individual who employs no workers; or
- (2) a corporation with no officers other than a single representative that employs no workers.

“Employing workers” refers to engaging workers whose prescribed weekly working hours are 20 hours or more and whose employment is expected to continue for at least 31 days. Using cohabiting family members alone does not constitute “employing workers”.

While category (1) corresponds to the conventional notion of a freelancer, category (2) includes so-called “one-person companies”.

Outsourcing Business Operator/Specified Outsourcing Business Operator (Article 2(5), (6))

An “Outsourcing Business Operator” is a business operator that outsources work to a Specified Receiving Business Operator. Whether an operator outsources work is determined substantively, not merely by the formal status of the contract counterparty.

A “Specified Outsourcing Business Operator” is an outsourcing operator that:

- (1) is an individual who employs workers; or
- (2) is a corporation with two or more officers or that employs workers.

Principal obligations of Outsourcing Business Operators*Duty to clarify transaction conditions (Article 3)*

Upon entering into an outsourcing arrangement, operators must immediately provide the Specified Receiving Business Operator with written or electronic documentation specifying the details of the deliverables, remuneration amount, payment due date, and other essential terms.

Setting payment due dates (Article 4)

Specified Outsourcing Business Operators must set and observe a payment due date that falls within 60 days from the date they receive the deliverables. In the case of re-outsourcing, payment must be made within 30 days from the date payment is received from the first entrusting party.

Prohibited Acts (for contracts of one month or longer) (Article 5)

For outsourcing arrangements of one month or more, Specified Outsourcing Business Operators must not:

- (1) refuse to accept deliverables without justification attributable to the freelancer;
- (2) reduce remuneration without such justification;
- (3) set remuneration at an unjustifiably low level compared with normal market rates;
- (4) unjustifiably compel freelancers to purchase designated goods or use designated services; or
- (5) otherwise engage in conduct that unjustifiably harms the interests of freelancers, including reducing remuneration or returning deliverables.

Measures for the working environment

Specified Outsourcing Business Operators must implement certain measures, including:

- (1) ensuring accurate and up-to-date recruitment information (Article 12);

- (2) providing consideration to enable balancing work with childcare or nursing-care responsibilities in arrangements of six months or more (Article 13);
- (3) establishing systems to address harassment against freelancers (Article 14); and
- (4) providing advance notice – generally at least 30 days – before mid-term termination or non-renewal of arrangements lasting six months or more (Article 16).

Duty of Care for Employee Safety and Workplace Power Harassment**Introduction**

When workplace power harassment (abusive or intimidating behaviour by someone in a position of power that exceeds legitimate job instructions) results in an employee suffering mental illness or other harm, the employer may bear vicarious liability in tort together with the individual perpetrator under the principle of employer liability (the Civil Code, Article 715). Furthermore, where an employer fails to establish preventive mechanisms or respond appropriately after the occurrence of harassment, the employer may be liable for damages arising from the employer’s breach of its independent contractual duty of care to ensure employee safety (the Labour Contract Act, Article 5).

This section provides an overview of the obligations stipulated in the Power Harassment Prevention Act and its guidelines and introduces the content of employers’ general duty of care through relevant judicial precedents.

Overview of the Power Harassment Prevention Act

Amendments to the “Act on Comprehensive Promotion of Labour Policies, Stabilization of Employment of Workers and Enrichment of Their Vocational Lives” (the “Power Harassment Prevention Act”) came into force on June 1, 2020. The amended Act requires the national government, business operators, and workers to make efforts to prevent power harassment, and further obligates business operators to implement necessary employment management measures – such as establishing consultation systems – to prevent and address workplace harassment.

The Act defines “power harassment” as:

“Any speech or behaviour in the workplace that is based on a superior relationship and that exceeds what is necessary and appropriate for the performance of work.”

Business operators are required to take employment management measures to prevent situations in which such conduct impairs the working environment of workers, and to respond appropriately to consultations from affected workers in a manner that enables proper fact-finding and effective prevention of recurrence.

The Act further prohibits adverse treatment – such as dismissal or disadvantageous changes to employment conditions – on the grounds that a worker consulted about power harassment or cooperated with an employer’s investigation by providing factual information.

For dispute resolution, where conflicts arise between workers and employers regarding power harassment, the Prefectural Labour Bureau Chief may provide advice, guidance, or recommendations (Article 30-5). Upon application by a party, a labour dispute resolution commission may conduct

mediation (Article 30-6). Additionally, the Minister of Health, Labour and Welfare may issue advice, guidance, or recommendations to employers as necessary (Article 33), and may publicly announce the names of employers who fail to comply with such recommendations (Article 33(2)), thereby creating an effective deterrent.

Guidelines on employment management measures relating to workplace power harassment

Alongside the statutory amendments, the Ministry of Health, Labour and Welfare issued the “Guidelines on Measures to Be Taken by Employers with Respect to Problems Arising from Behaviour Based on Superior Relationships in the Workplace” (the “Guidelines”), which specify employers’ obligations in greater detail. The principal requirements are as follows:

- **Clarification of policies and dissemination**
 - (a) Employers must clearly define the types of conduct constituting workplace power harassment and establish a policy prohibiting such conduct. This policy must be communicated to all workers, including managerial personnel.
 - (b) Employers must specify, in work rules or other internal disciplinary documents, that acts of power harassment will be subject to strict disciplinary action, and must adequately disseminate such rules.
- **Establishment of systems for handling consultations**
 - (a) Employers must establish and publicise a consultation place where workers may bring concerns or complaints.
 - (b) Personnel responsible for handling consultations must be able to respond appropriately depending on the nature and circumstances of the case.
- **Prompt and appropriate post-incident responses**
 - (a) Employers must promptly and accurately ascertain the facts of the case.
 - (b) Where harassment is confirmed, employers must take appropriate protective measures for the affected worker.
 - (c) Where harassment is confirmed, employers must take appropriate measures against the perpetrator.
 - (d) Employers must take steps to prevent recurrence, including reiterating relevant policies.
- **Additional required measures**
 - (a) Employers must take steps to protect the privacy of complainants, alleged perpetrators, and other involved parties, including sensitive personal information such as sexual orientation, gender identity, medical history, and infertility treatment.
 - (b) Employers must ensure that workers are not subjected to dismissal or other disadvantageous treatment for consulting about power harassment.

Employers’ duty of care in light of judicial precedents

Although the Guidelines define specific employment management obligations, employers also owe a broader duty of care to ensure employee safety. This duty is extensive, and merely implementing the measures described above in a formalistic manner may not be sufficient.

Content of the duty of care

Under Article 5 of the Labour Contract Act, employers must take necessary care to ensure that workers can work safely

with respect to their life and physical wellbeing. This includes adequate management of both the physical work environment and the organisational structure, including instructions given to workers.

Judicial precedents

In the Supreme Court decision of March 24, 2014 (*Toshiba Depression Dismissal Case*), the Court held that employers owe a duty to pay close attention to working environments that may affect employees’ health. Where prolonged excessively burdensome work results in clear indications of deterioration in an employee’s health condition, the employer is obliged to take measures – such as reducing the employee’s workload – regardless of whether the employee has made a request.

In a decision of the Nara District Court on May 31, 2022 involving an employee who committed suicide due to a work-induced mental disorder, the employer argued that it had held interviews with the employee and urged them to leave work early. However, the Court held that these measures were insufficient in light of the employee’s conscientious and meticulous personality and found that the employer had breached its duty of care. Where an employee’s psychological burden becomes excessive, employers must take effective steps to alleviate that burden.

Discretionary Labour System

General overview

Under the Act, Working Hour Systems are categorised into the following three types:

- (1) Actual Working Hour Systems (fixed working hours, variable working hours, flextime).
- (2) Deemed Working Hour Systems (deemed working hours for work outside the workplace, the Discretionary Labour System for Professional Work, and the Discretionary Labour System for Planning Work).
- (3) Exemptions (e.g., managerial and supervisory employees, the Highly Professional System).

Among the three types mentioned above, the Deemed Working Hour System allows for exceptional treatment of work hour calculation by deeming a certain number of hours as worked regardless of the employee’s actual working hours. Within this category, the System applies when an employee engages in work legally defined as requiring a high degree of professional or autonomous judgment. Under this system, predetermined “deemed working hours” are treated as the actual working hours, irrespective of the actual number of hours actually worked.

For example, if the deemed working hours are set at eight hours per day, the system treats the employee as having worked eight hours even if they actually worked seven or nine hours.

There are two types of Discretionary Labour Systems:

- Discretionary Labour System for Professional Work (Article 38-3) – for employees engaged in specialised professions listed under the Act and its Enforcement Regulations (the “Regulation”, Article 24-2-2).
- Discretionary Labour System for Planning Work (Article 38-4) – for employees engaged in planning, drafting, researching, or analysing business operations as defined by the Act.

Establishment and amendments

The Act was originally designed for factory workers and similar employees working collectively at the same place and time under uniform employer direction. However, with the growth of the service sector and technological innovation, work became increasingly specialised and autonomous, making traditional hour-based regulation less suitable.

Consequently, the System for Professional Work was introduced, followed later by the System for Planning Work in response to the increasing number of white-collar workers and the rise of performance-based compensation.

Given this history, the purpose of the system is described as follows:

“To ensure that, for work whose nature requires the execution methods and allocation of time to be largely left to the employee’s discretion, employees can work autonomously and independently outside the employer’s control of actual working hours, while still ensuring employee health management based on grasping working hour conditions, and enabling compensation based on abilities or outcomes rather than actual working hours. This system aims to allow employees to utilize their own knowledge and skills and demonstrate creative abilities under a regulatory framework distinct from actual working hour regulation.”

Because the deemed working hours apply regardless of actual hours worked, the system releases employees from actual working time regulations – including overtime caps and premium pay rules – making it suitable for performance-based compensation and annual salary structures. Although the system, like flextime or variable schedules, grants employees control over their working hours, the latter systems remain subject to premium pay based on actual hours worked, clearly distinguishing them from the system.

2024 amendments

Despite the intended purpose outlined above, the system has faced criticism in practice:

- It tends to result in long working hours.
- The scope of eligible duties and workers can be ambiguous.
- Rules on employee consent and operational procedures have been insufficient.

Examples of problematic cases include:

- Findings suggesting that employees may not actually have discretion over how they conduct their work.
- Employers adopting the system unilaterally to reduce overtime costs without adequate negotiation with employees.
- Employees being subjected to long hours and low compensation without genuine discretion on the part of the employee.

In response to these inadequacies, on March 30, 2023, amendments to the Regulations and related ministerial notices were promulgated, followed by implementing guidance and Q&A documents (all came into effect on April 1, 2024). Key changes are as follows:

Addition of eligible duties

For the System for Professional Work, one new duty was added to the previous list of 19 categories, bringing the total to 20:

- “Investigation and analysis related to mergers and acquisitions, and the formulation and provision of advice based on such analysis, conducted at banks or securities companies” (i.e., mergers and acquisitions advisory work).

Expansion of matters required in labour-management agreements/committee resolutions

The System for Professional Work

The following items must now be included in the labour-management agreement between employers and employees:

- (a) Obtaining the employee’s consent before the system applies to the employee.
- (b) Prohibition of disadvantageous treatment of employees who do not consent.
- (c) Procedures for employees for withdrawing their consent.
- (d) Retention of records concerning consent and withdrawal for a specified period.

The System for Planning Work

The following items must now be included in the labour-management committee resolution:

- (a) Procedures for withdrawal of consent.
- (b) Explanation to the committee when wage or evaluation systems applicable to target employees are changed.
- (c) Retention of records related to withdrawal of consent for a specified period.

Expansion of procedures within the labour-management committee

For the System for Planning Work, the labour-management committee’s operational rules must now specify:

- (a) Matters concerning explanations of applicable wage/evaluation systems (including timing and content of such explanations).
- (b) Matters necessary to ensure proper operation consistent with the system’s purpose (e.g., frequency and methods of monitoring implementation).
- (c) A requirement for the committee to meet at least once every six months.

Change in frequency of periodic reports

For the System for Planning Work, the reporting frequency to the Labour Standards Inspection Office has been amended. Previously, employers were required to report every six months from the date of the committee resolution to adopt the system. Under the amendment:

- The first periodic report must be submitted within six months from the start of the resolution’s effective period.
- Subsequent reports are required once every year.

Expansion of health and welfare protection measures

New matters have been added to the issues that are of concern for health and welfare measures under the system, including:

- (a) Ensuring rest intervals between workdays (inter-work intervals).
- (b) Limiting the number of nighttime workdays from 10:00 p.m. to 5:00 a.m.
- (c) Measures to set an upper limit on working hours (including potential removal from the system if certain working time thresholds are exceeded).
- (d) Medical checks for employees whose working hours exceed specified levels.

Remote Work

General overview

With the spread of COVID-19, Japan also experienced government-mandated restrictions on going out based on a declaration of a state of emergency. As a result, remote work rapidly developed as a work style suited to the “new normal”

and “new lifestyle”, enabling employees to work with greater flexibility in terms of time and location.

Specifically, while only 14.8% of people nationwide reported having remote work experience in 2019, the figure rose to 27.0% in 2021. In the Tokyo metropolitan area, the increase was even more dramatic – from 19.1% in 2019 to 42.3% in 2021.

Responding to this trend, in March 2021 the Ministry of Health, Labour and Welfare revised the Guidelines for the Appropriate Introduction and Implementation of Telework (the “2021 Guidelines”). The revision clarifies important considerations and recommended practices – primarily concerning labour management – for both employers and employees to promote high-quality remote work that ensures proper labour administration and provides workers with a safe and secure working environment.

However, Japanese labour law contains no provisions directly regulating remote work, and employees working remotely remain subject to the same statutory framework as other workers.

Applicability of the Deemed Working Hour System for Work Outside the Workplace

A key legal issue for remote work is whether the Deemed Working Hour System for Work Outside the Workplace (the Labour Standard Act, Article 38-2) can apply.

Under this system, when an employee performs work outside the employer’s premises during all or part of their working time, and when it is difficult to calculate the employee’s actual working hours, the employee is deemed to have worked the prescribed working hours. If the work normally requires more than the prescribed hours to perform, the employee is deemed to have worked the amount of time normally required for the work.

Although not a case directly involving remote work, the Supreme Court decision of April 16, 2024 (*Cooperative Union Globe Case*) provides useful guidance. In that case, an employee of a supervising organisation for foreign technical intern trainees principally engaged in off-site tasks, such as:

- conducting onsite guidance for host organisations;
- picking up and transporting trainees;
- providing daily-life instruction; and
- interpreting during unexpected troubles.

The employee was not managed by timecards or other attendance systems, arranged their own schedule including coordination with the host organisations, and was allowed to go straight home after off-site tasks based at their own discretion. However, the employee submitted a work report each month describing duties and working hours.

The Supreme Court held that the mere fact that an employee self-reports their working hours does not automatically exclude the possibility that their working hours are “difficult to calculate”, and that a more detailed, fact-specific examination is required.

The concurring opinion further noted:

“With the diversification of working styles – including the spread of telework and working from home – it has become even more difficult to make a standardized assessment of the extent to which employers can grasp employees’ working conditions. Courts must therefore determine whether working hours are ‘difficult to calculate’ by carefully considering the specific circumstances of each case.”

The 2021 Guidelines also state that the system may be applied to remote work if:

- the employee is not required by the employer to maintain constant connection through ICT devices (e.g., the employee is free to disconnect communication lines during working hours); and
- the employee is not performing work based on the employer’s detailed instructions (instructions are limited to basic matters such as purpose, goals, or deadlines, and do not predetermine the daily schedule, amount of work, timing, or methods).

In light of this judicial precedent and the 2021 Guidelines, the current legal interpretation suggests that the Deemed Working Hour System for Work Outside the Workplace generally applies only to employees who have a fairly high degree of discretion over their work. Its applicability appears limited for employees who collaborate with colleagues and must remain in regular communication during their work.

Validity of orders to return to the office

Another issue concerning remote work is under what circumstances an employer can validly order an employee to report to the office.

On this point, the Tokyo District Court issued a decision on November 16, 2022 in this regard. The case involved an employee hired as a designer by an IT company. Although the employment contract specified the “head office” as the employee’s workplace, in practice the employee reported to the office only twice – including on the first day of employment – and otherwise worked entirely remotely.

Later, because the employee had criticised the company’s representative on an internal chat tool, the employer prohibited the employee from teleworking and ordered them to report to the office. The employee refused to comply, and the company subsequently terminated their employment. The validity of both the order to return to the office and the termination was disputed.

The Court held that, in light of the actual work practices and the employer’s conduct, the employee’s place of work should be regarded in principle as the employee’s home, regardless of the contractual provision. The company could require attendance at the office only when operational necessity existed, and the Court found that no such necessity existed in this case.

Although this ruling was made under the very unusual circumstances in which the employee had almost never reported to the office, the gradual shift among companies from remote work back to on-site work following the waning of the COVID-19 threat suggests that similar disputes may increase in the future. Accordingly, the Court’s approach – determining the place of work based on the actual nature of the work and the employer’s handling of the situation – provides practical guidance for labour management.

Note

Japanese labour law is subject to frequent legislative amendments and continuous developments in case law. Companies operating in Japan should therefore take appropriate measures, including consulting local legal professionals, to ensure compliance with the evolving regulatory framework.



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Chuo Sogo LPC is a full-service law firm comprising upwards of 80 lawyers in offices located in the financial and business centres of Tokyo, Osaka and Kyoto. For about 60 years, the firm has been assisting international and domestic clients in an efficient and cost-effective manner. Chuo Sogo's lawyers graduated from top Japanese and U.S. law schools. As a member of Globalaw, a leading network of some 100 law firms worldwide, Chuo Sogo serves clients virtually anywhere in the world. Chuo Sogo's main areas of practice are commercial law, finance, compliance/risk management, M&A, corporate reorganisations, insurance and reinsurance, labour law, transportation, IP, securitisation matters, bankruptcy/business rehabilitation, real estate, international business, tax, administrative law, organised crime countermeasures, and litigation and dispute resolution.

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