Japan Update: Retirement, Benefit and Employment Issues

February 2012

Older Age Employment Stability Act Set For Revision

Background
Currently, the law requires employers that have an company mandatory retirement age (“MRA”) set at an age less than 65 to provide continuing employment opportunities for their retiring employees until the age of 65.

This current law was effected in 2006 to allow people to earn some income beyond age 60 (typical age then used by the majority of employers as mandatory retirement age). In theory this will help to cope with the gradual change in the commencement age to receive public pensions to age 65 by 2025 for men and 2030 for women.

Employers may be compliant by adopting either one of the 3 measures:

• To raise the current MRA to 65.

• To keep the current MRA (if less than 65) while introducing a system of continuation of employment (or “Rehire System”) to provide employment opportunities to all employees who wish to continue working beyond the MRA.

• To completely eliminate the MRA system of forcing employees to retire at a certain age.

Current Market Practice
It is market practice for many companies to still keep their current MRA (typically set at 60 by most employers) while providing the retiring employee with the opportunity to continue working beyond the MRA by rehiring that employee on a fixed term renewable labor contract until 65.

Companies using the Rehire approach would typically apply a different work contract to the rehired employees which may include changing their job roles and reducing the salary level. Therefore, the working conditions including pay and benefits may differ from those prior to 60 and may be set out separately from other employees.

It is estimated that approximately 83% (Source: Ministry of Health Labor and Welfare) of employers are utilizing the Rehire approach to comply with the current legal requirements.

The law also allows a special measure in the above-mentioned Rehire case, by allowing the employer to select the employees to be rehired using certain objective criteria and based on a documented employer-labor agreement following negotiations with the workforce. Companies using this measure should have introduced the agreement by 2011 at the latest.
**Proposed Changes**

The government is discussing these issues and indicates in their proposed revised draft of the law that it plans to:

*Eliminate* the special measure of allowing employers to select eligible employees to be rehired; all employees who wish to continue working beyond 60 for example must be given the opportunity to do so.

*Allow* employers to use affiliated companies under their control to rehire the employees

*Introduce* a new set of special transition measures such as allowing employers to screen out those employees who are eligible to receive public pensions at the time of reaching mandatory retirement age.

The law, if revised through parliament, would be placed in effect from April 1, 2013

**Actions for Employers**

- Review the current MRA and Rehire policy including any criteria currently used to determine rehire eligibility
- Check the employment terms for rehired employees compared to regular employees
- Check the number of employees who are expected to reach the MRA over the next 5 to 10 years and the impact if all were rehired until age 65
- Consider appropriate measures to control costs based on the above including setting appropriate salary and benefit levels
- Monitor for updates on the proposed changes

**Contact Information**

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