

Japan Knowledgebase

Labour laws

Legal framework

Labour law in Japan is primarily governed by the Constitution and three key labour laws: the Labour Standards Law, the Trade Union Law, and the Labour Relations Adjustment Law. This framework is further complemented by sector-specific collective agreements and company-level agreements. Fundamental labour standards, such as the right and duty to work, the prohibition of child labour, and the freedom of association, are enshrined in the Japanese Constitution. Rules concerning wages, working hours, rest, and other conditions are established by law, forming the basis of Japanese labour law.

This legal framework is shaped by the Constitution, statutes, ordinances, collective agreements, and work rules. While the Civil Code of 1896 provides a general definition of employment contracts, labour regulations are primarily governed by three major laws:

- The Labour Standards Law of 1947: Defines working conditions, workplace safety, and hygiene.
- The Trade Union Law of 1949: Secures the right to organise and bargain collectively.
- The Labour Relations Adjustment Law of 1946: Facilitates labour-management relations and dispute resolution.

These laws generally apply to private-sector employees in Japan, including foreign workers with valid work visas, but exclude specific categories such as seafarers.

Collective agreements are the second most authoritative legal norm under Japanese law. They are typically enterprise-based, as they are negotiated between the enterprise trade union and the employer. These agreements primarily apply to union members but may also influence the broader workforce.

By custom, agreements are only written to the extent legally required, with additional provisions often agreed upon verbally. As a result, the written content may be minimal or intentionally vague. Employers with more than 10 employees are required to consult with trade unions when drafting such agreements, ensuring that work rules align with the applicable collective agreement. These rules set the framework for labour contracts within the company, affecting all workers regardless of union membership.

Key contractual elements, such as wages, working hours, and working conditions, must be documented when a labour contract is signed. However, vague provisions are often

preferred to maintain flexibility and ensure alignment with work rules and collective agreements.

Employment contract

Types of employment contract

Under Japanese law, employment contracts include indefinite-term, fixed-term, part-time, dispatch, elderly employment, and non-regular contracts, each with specific legal frameworks. Japanese employment practices have traditionally focused on lifetime employment, where workers often stay with one company until the mandatory retirement age, providing long-term stability. Under this system, there is no need to explicitly define the length of employment, as the post is guaranteed until retirement. However, modern employment contracts in Japan have diversified.

Indefinite-term employment contracts remain the most common, and they are not bound by a set expiration date. The contract lasts until terminated by either party, under the terms prescribed by Japanese law. The indefinite-term contract offers job security and aligns with the traditional approach to employment.

Although fixed-term contracts are increasing, they are subject to specific regulations. Employers can use these contracts without having to provide an objective reason for the arrangement. The usual maximum duration for such contracts is three years, though it can extend to five years for employees with specialized expertise or those aged 60 and over. Employees who renew fixed-term contracts for over five years may request to convert the contract into an indefinite-term contract.

For part-time contracts, Japanese law requires clear terms about employee rights, including the possibility of pay raises, bonuses, and retirement allowances. The employer is obligated to ensure equal treatment for part-time workers in relation to full-time staff.

In addition to these common contract types, there are several others in Japan's legal framework:

- Temporary or dispatch contracts are governed by the Worker Dispatch Law, which typically limits assignments at a single client company to three years.

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- Elderly employment contracts, governed by the Act on Stabilization of Employment of Elderly Persons, encourage the employment of senior workers, especially those working post-retirement.

- Non-regular employment contracts encompass various temporary work arrangements, including seasonal and student jobs, all governed by the Labour Standards Act, though these often come with less stability and fewer benefits than full-time contracts.

Under Japanese labour law, employers of fixed-term contracts must provide written notice specifying whether the contract is renewable upon expiration. If renewal is possible, the criteria for deciding on renewal must also be included. This ensures transparency for the employee regarding the continuity of their employment.

Furthermore, under the Labour Contract Act (Article 18), if a fixed-term contract is renewed repeatedly and the employee's cumulative service exceeds five years, the worker may request the conversion of their contract to an indefinite-term contract. This request must be submitted before the fixed-term contract concludes. These provisions apply to both full-time and part-time fixed-term workers, safeguarding their rights across varying employment structures.

Equal treatment between fixed-term and permanent employees is not explicitly required by Japanese law. However, the principles of fairness in determining working conditions are emphasized under the Labour Standards Act. Trade unions and collective bargaining agreements often influence these determinations, but many fixed-term employees remain outside the scope of such agreements, leaving some disparities unaddressed. Notably, repeated renewals of fixed-term contracts do not automatically establish the status of a regular indefinite-term employee.

This legal framework balances employer flexibility with worker protections, addressing both renewal processes and opportunities for longer-term job security.

Content of an employment contract

Under Japanese law, employment contracts must outline key terms as stipulated by the Labour Standards Act (LSA) and Civil Code to ensure transparency and protect workers' rights. Under Japanese law, when entering into any form of employment contract, the employer must provide a written statement of key employment conditions, including wages, working hours, and other essential terms. This requirement is mandated by the Labour Standards Act (LSA) and includes the following details:

- Employment duration or term
- Place of work

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- Job description and the employee's duties
- Starting and finishing hours
- Overtime work conditions
- Rest periods
- Holidays and leave entitlements, including shift changes
- Wage determination, calculation, and payment (excluding retirement allowance and special wages)
- Dates for wage calculation and payment
- Rules regarding the termination of employment, whether by resignation, retirement, dismissal, or other reasons

Failure to provide this information can result in significant fines for the employer. Additionally, if the terms provided in the contract differ from the actual conditions, the employee has the right to immediately cancel the employment contract.

For fixed-term employment contracts, employers must provide a clear explanation regarding:

- The term of employment
- The criteria for renewing a fixed-term contract
- The maximum number of contract renewals
- The maximum total duration of employment under a fixed-term contract

Under Japanese law, work rules addressing topics such as working hours, holidays, and salary are crucial. Employers with 10 or more employees are required to establish these rules and submit them to the Labour Standards Inspection Office (LSIO).

While employers generally have the authority to amend work rules unilaterally, they must first consult with employees and ensure that any changes, including those affecting working conditions, duties, or workplace locations, are reasonable.

Oral, written, or electronic employment contracts

Under Japanese law, employment contracts can be oral, written, or electronic, with written contracts being recommended for clarity, though key terms must always be provided in writing to ensure legal compliance. Under Japanese law, particularly the Labour Contract Act, an employment contract does not necessarily have to be in writing, meaning that oral contracts are legally valid. Employment contracts can also be in written or electronic form.

However, written contracts are generally recommended to avoid potential disputes, as they provide clearer terms and conditions for both parties.

Additionally, the Labour Standards Act mandates that key terms such as job duties, salary, and working hours must be provided in writing, even if the contract itself is not formally written. This written documentation helps ensure both clarity and legal protection for both the employer and the employee.

In Japan, electronic contracts are permitted, and the use of electronic signatures and digital agreements is recognised, provided they comply with the Electronic Signatures and Certification Business Act. However, for legal clarity and protection, written contracts remain the preferred method, especially for formal or complex agreements.

While electronic contracts are legally binding, a written agreement provides more assurance in the event of disputes or the need for detailed terms.

Key requirements

Working hours

Under Japanese law, working hours are regulated to a standard of 8 hours per day and 40 hours per week, with provisions for overtime and flexible arrangements allowed under certain conditions and agreements. The statutory working hours in Japan are set at 40 hours per week and 8 hours per day. These limits can be temporarily adjusted through an agreement between the employer and either the enterprise trade union or, in the absence of a union, a worker representing the majority of employees. Employers may also require employees to work overtime if a separate agreement is concluded with the union or employee representatives.

Flexible working time arrangements are allowed provided they are outlined in the work rules or labour-management agreements. Such arrangements enable employees to work beyond statutory hours without additional overtime pay, as long as the average working hours over a specified period do not exceed 8 hours per day or 40 hours per week.

Additionally, flexible working hours systems may allow employees to choose their start and finish times under certain conditions, as stipulated in the work rules and agreements. The discretionary working system is available for employees in specialized roles requiring expert skills or for those engaged in tasks like planning, research, analysis, or proposal development related to business operations.

Under Japanese law, overtime work may be permitted through an agreement between the employer and the trade union or employee representatives. Employers must compensate overtime at rates ranging from 125% to 150% of the normal hourly wage. However, if an employee works more than 60 overtime hours in a month, the employer must pay a premium wage of at least 150% (and up to 175%) of the normal hourly wage for those additional hours.

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Managerial employees are generally exempt from overtime entitlements, except for late-night work (performed between 10:00 p.m. and 5:00 a.m.). For overseas employers, accurately tracking overtime entitlements can be challenging, often leading to disputes, particularly over whether an employee qualifies for overtime exemptions.

A discretionary work scheme applies to specific legally defined professionals, such as highly skilled white-collar workers. Under this system, no overtime premiums are paid, and the working hours are fixed by agreement regardless of statutory limitations.

There is no absolute legal cap on the number of overtime hours worked, except for certain protected categories like female workers caring for children and senior employees, who are entitled to special safeguards. However, the standard limit for overtime is typically set at 360 hours per year and 45 hours per month, per employee on average.

Breaks and night work

Under Japanese law, the provisions related to breaks and night work are governed by the Labour Standards Act. Under Japanese law, employers must provide at least one rest day per week and mandatory rest periods during working hours, at least 45 minutes after 6 hours of work, and 1 hour after 8 hours.

Breaks must occur during working hours and cannot be scheduled at the beginning or end of a shift. They are for the employee's personal use and should be free of work obligations. Breaks must be provided simultaneously to all employees, unless a special exemption is granted through a labour-management agreement.

Statutory holidays must be granted at least once every week or four times every four weeks. Designated working hours may be further specified within the statutory working hours.

In Japan, night work is legally permitted with increased wages but cannot be assigned to workers who are raising a child and request exemption, nor to minors under 18 years old (except in certain industries with approval).

Night work is defined as work performed between 10:00 PM and 5:00 AM.

Employers must pay an additional 25% of the normal hourly wage for work during this period, which increases to 50% if the night work is also considered overtime. However, certain employees, such as those in managerial positions or covered by discretionary work systems, may be exempt from regular overtime pay but are still entitled to night work premiums.

Annual leave

Under Japanese law, employees are entitled to annual paid leave, with the amount of leave increasing based on the length of employment, starting from 10 days per year. Under Japanese law, statutory holidays must be granted once a week or four times every four weeks, though it is common practice to provide additional holidays.

According to the Labour Standards Act, employers must grant paid annual leave to employees who have been employed continuously for at least 6 months, provided they have attended work for at least 80% of the scheduled working days during the preceding six months.

The entitlement to paid annual leave ranges from 10 to 20 days, depending on the employee's length of service. After 6 months of continuous employment, employees are entitled to 10 days of annual leave, with one additional day added each year for the first two years. After two and a half years of continuous service, employees are entitled to two additional days per year, up to a maximum of 20 days.

- 6 months of service: 10 days
- 1 year and 6 months: 11 days
- 2 years and 6 months: 12 days
- 3 years and 6 months: 14 days
- 4 years and 6 months: 16 days
- 5 years and 6 months: 18 days
- 6 years and 6 months or more: 20 days.

Provided that business operations are not disrupted; employees may take their paid annual leave at their discretion.

Generally, paid annual leave is taken in full-day units, but employers may allow employees to take leave in half-day units. It is also possible to grant paid annual leave on an hourly basis if a labour-management agreement includes such a provision, though the total number of hours granted in this manner is limited to 5 days per year.

Additionally, employers are required to ensure that employees use at least 5 days of paid annual leave annually. Unused leave may be carried over to the following year.

Public holidays

In Japan, there are 16 national holidays a year, which are not legally binding for the private sector.

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The official holidays for 2025 for Japan are listed below:

- Wednesday, 1 January – New Year's Day (Ganjitsu)
- Monday, 13 January – Coming of Age Day (Seijin no Hi)
- Tuesday, 11 February – National Foundation Day (Kenkoku Kinen no Hi)
- Sunday, 23 February – Emperor's Birthday (Tennō Tanjōbi) Observed on Monday, 24 February
- Thursday, 20 March – Vernal Equinox Day (Shunbun no Hi)
- Tuesday, 29 April – Shōwa Day (Shōwa no Hi)
- Saturday, 3 May – Constitution Memorial Day (Kenpō Kinenbi)
- Sunday, 4 May – Greenery Day (Midori no Hi) Observed on Tuesday, 6 May
- Monday, 5 May – Children's Day (Kodomo no Hi)
- Monday, 21 July – Marine Day (Umi no Hi)
- Monday, 11 August – Mountain Day (Yama no Hi)
- Monday, 15 September – Respect for the Aged Day (Keirō no Hi)
- Tuesday, 23 September – Autumnal Equinox Day (Shūbun no Hi)
- Monday, 13 October – Health and Sports Day (Taiiku no Hi)
- Tuesday, 3 November – Culture Day (Bunka no Hi)
- Sunday, 23 November – Labour Thanksgiving Day (Kinrō Kansha no Hi)

Observed on Monday, 24 November

Employers are not legally required to provide paid leave on public holidays under Japanese law.

However, if employees work on a public holiday, they are typically entitled to premium pay (usually 1.35 times the regular hourly wage), unless otherwise specified in a labour contract or collective agreement.

If a public holiday falls on a Sunday, the following weekday may be designated as a substitute holiday, subject to employer agreements, or another day if the employee is already off.

Salary

The Japanese wage system is heavily influenced by factors such as an employee's tenure with the same company, level of education, and age.

Under Japanese law, wages are defined as any form of payment made by the employer to the employee, including salaries, allowances, and bonuses. The amount of these payments is often closely tied to the employee's length of service with the company, educational background, and age.

There are two types of minimum wages in Japan:

Regional minimum wage: Specific to each of Japan's 47 prefectures.

Industry-specific minimum wage: Determined based on the industry in which the company operates.

The exact amounts are not fixed by legislation but are established and regularly updated by the Ministry of Health, Labour and Welfare in consultation with the Minimum Wage Deliberation Commission.

Currently, the national average hourly minimum wage is ¥1,054.

Wages must be paid on a fixed date, in full, in currency, and directly to the employee, unless specific conditions for non-monetary payments are met.

Employees are entitled to a minimum of 25% additional pay for overtime hours worked beyond the statutory limits of 40 hours per week or 8 hours per day.

For work performed on statutory holidays, employees are entitled to a premium of at least 35% above their regular wage.

Night work carried out between 10 PM and 5 AM qualifies for an additional pay of at least 25%. When overtime and night work overlap, these premiums are cumulative.

Sick leave

Under Japanese law, there is no statutory entitlement to paid sick leave, neither legal disposition on the matter. In Japan, there is no statutory requirement for employers to provide paid sick leave. Instead, employees typically use their accrued statutory annual leave to cover absences due to illness, provided they have sufficient days available.

Nevertheless, sick leave provisions can be established through employment contracts, company policies, or collective labour agreements. Many companies voluntarily include paid sick leave in their work rules to support employees.

For unpaid sick leave, employees may request time off if they fall ill; however, approval is generally subject to the company's internal policies.

Employees enrolled in the national health insurance system are entitled to a sickness and injury allowance if they are unable to work due to illness or injury. This benefit provides compensation equal to two-thirds of the employee's average daily salary, beginning after three consecutive days of absence and continuing for up to 18 months.

Employers are prohibited from dismissing employees during periods of medical treatment resulting from work-related injuries or illnesses, as well as for 30 days following the conclusion of such treatment.

For work-related illnesses or injuries, employees are covered under the industrial accident insurance system. This system provides comprehensive compensation, including wage replacement benefits and full medical coverage for the duration of the injury or illness.

Parental leave

Japanese law provides maternity leave and childcare leave under the Labour Standards Act and the Child Care and Family Care Leave Act. Under Japanese law, maternity leave benefits are available to employees for a duration of 14 weeks: 6 weeks before and 8 weeks after childbirth.

There is no statutory requirement for employers to pay wages during maternity leave. However, if the mother is covered by the Employees' Health Insurance (excluding self-employed women, part-time, or casual employees), she is entitled to receive a tax-free payment equivalent to two-thirds of her average daily earnings. This benefit is funded by contributions shared equally between employees and employers through the Employees' Health Insurance system.

The mother may return to work after a minimum of six weeks postpartum, provided a doctor confirms that the work will not adversely affect her health.

The duration of leave can be extended in certain circumstances, such as multiple or premature births, the poor health or disability of the child or mother, or if the mother is a lone parent. In cases of multiple births, maternity leave can commence up to 14 weeks before childbirth.

Japan does not have a statutory entitlement to paternity leave.

While there are no specific leave provisions for adoption, adoptive children under special adoption are treated the same as biological children for parental leave purposes.

Termination

Methods of employment termination

The termination of employment contracts varies depending on the grounds for termination and which party initiates the process. In Japan, an employment contract can be terminated at the initiative of either the employee or the employer. However, to uphold job security, it is extremely challenging for an employer to unilaterally and lawfully terminate permanent employment.

This statutory protection against dismissal does not apply to independent contractors. Even after a client reaches a contract with an independent contractor, the client can terminate the contract without any reason at any time.

Disciplinary dismissal is the most severe form of termination for both parties. It generally requires a 30-day prior notice (except in rare cases) or payment in lieu thereof and must be based on "sufficient reasons" that meet stringent legal standards. Upon request, the employer is obligated to promptly issue a certificate stating the reasons for dismissal.

Case law establishes that a dismissal must have a reasonable cause. If the employer's decision to terminate lacks objectively reasonable grounds or fails to align with societal norms, it constitutes an abuse of rights and is deemed invalid. The primary legal remedy is reinstatement, although the employee may opt to claim damages instead.

Under Japanese law, arbitration is prohibited for employment disputes including unlawful dismissal cases.

In Japan, the following are considered "objectively reasonable grounds" for dismissal:

- Inability to provide labour.
- Lack of skills or insufficient performance, provided dismissal is a "last resort" providing reasonable efforts to reassign the employee to an alternative role; objective and reasonable standards applied in determining which employees are to be dismissed, and good faith discussions with the affected employees to explain the basis and manner of the dismissal.
- Inappropriate attitude or lack of aptitude.
- Violation of workplace discipline or neglect of duties, such as:
 - Unlawful acts breaching workplace discipline (e.g., violence or verbal abuse).
 - Neglect of duties (e.g., unapproved absences or excessive tardiness).
- Business management necessity.
- Union shop agreements.

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These criteria must be demonstrably reasonable and objective, evaluated from a societal perspective rather than solely from the employer's viewpoint.

Dismissals based on conduct, performance, or redundancy, which might be straightforward in many countries, are seldom recognised as valid in Japan. Notably, no specific rules apply to collective redundancies beyond notifying Public Employment Security Offices.

Japanese courts are particularly stringent in reviewing dismissals, often invalidating them even when the employee demonstrates poor performance or an uncooperative attitude, unless there is clear evidence of self-examination or attempts at improvement.

However, courts are more inclined to uphold dismissals in cases involving mid-career hires brought in for their advanced skills or expertise. If such employees fail to meet the expected standards of performance or competence, their dismissal is more likely to be deemed valid.

Ordinary dismissal by the employer

The employer may terminate an employment contract with notice if a valid reason exists. However, the preferred approach to ending an employment relationship in Japan is through resignation. Resignation is typically based on mutual agreement between the employer and the employee and can be initiated by either party. Employers often propose resignation to employees, negotiating a compensatory amount in exchange for voluntary resignation. The terms, including the amount paid to the employee, are determined through mutual negotiation and agreement.

In such cases, the employee effectively agrees not to pursue claims of wrongful termination in return for a lump-sum payment. This payment usually combines notice or payment in lieu of notice and severance pay. For employees who have passed their probationary period, companies commonly offer three months' salary or more, often averaging six months, for an amicable resolution.

Before initiating resignation negotiations, it is strongly recommended that employers provide clear performance warnings and allow the employee a reasonable opportunity to improve.

In practice, employees may initially reject an offer of resignation with a favorable package. However, they often reconsider and accept after the employer slightly improves the terms. Employers frequently offer voluntary separation packages to employees during termination scenarios, framing the resignation as a mutually beneficial agreement accompanied by severance pay.

For fixed-term contract employees, termination occurs automatically upon the expiration of the contract's fixed term. Early termination before the term's expiry is prohibited unless unavoidable circumstances exist—a standard with a very high threshold.

Mandatory retirement is permissible provided the retirement age is set at 60 years or older. Mandatory retirement systems are common, but employers are generally required to implement measures ensuring employment opportunities up to the age of 65.

Notice period and challenging the dismissal

Under Japanese law, employees are generally entitled to a notice period before dismissal and have the right to challenge the dismissal in court if they believe it was unlawful. In principle, dismissal requires at least 30 days' notice before it takes effect. However, this period may be shortened if the employer compensates the employee by paying the average wage for each day of reduction.

While written notice is recommended by court rulings, it is not a legal requirement.

Advance notice is not obligatory in the following exceptional cases specified in Article 20 of the Labour Standards Law (LSL):

- The enterprise's operations have been rendered impossible due to a natural disaster or an equivalent unavoidable event.
- The dismissal is attributable to the employee's misconduct or fault.
- The employee is within their probationary period and has been employed by the company for no more than two weeks.
- The employee committed crimes or very serious ethical breaches.
- The employee made a false statement in his or her resume at the time he or she applied for employment.
- The employee had an unreasonable absence.

Employees who consider their dismissal to be unlawful have the right to challenge it before the supreme court. If the court determines that the termination is invalid, it may annul the decision.

Employees may also file a petition with the Labour Tribunal to initiate proceedings or pursue their case through the courts. If the dismissal is deemed null and void, the employee may be reinstated to their position within the company.

In such circumstances, the employee is entitled to receive their salary, with interest, for the period between the dismissal and the court's decision. While the right to contest a dismissal

is not subject to any statute of limitations, claims for wages, retirement allowances, and other labour entitlements are generally subject to a five-year limitation period under the Labour Standards Act.

Rights and obligations of unemployed persons

In Japan, the rights and obligations of unemployed persons are primarily governed by the Employment Insurance Act, outlining the framework for unemployment benefits and support systems. Under Japanese law, specifically the Employment Insurance Act, workers who meet eligibility criteria and lose their jobs are entitled to unemployment benefits through the Employment Insurance system. The amount and duration of these benefits depend on factors such as employment history, age, and the reason for job termination. Typically, the benefit amount ranges from approximately 50% to 80% of the average daily wage earned in the six months prior to unemployment. The duration of benefits can vary from 90 to 360 days, based on the length of insured employment and the reason for job loss.

The benefit amount is generally calculated as 50% to 80% of the average daily salary over the last six months, divided by 180 days. Higher earners typically receive a percentage closer to 50%, while lower earners may receive closer to 80%. The duration of benefits depends on individual circumstances.

To be eligible for unemployment benefits, employees must meet the following criteria:

- Have contributed to the Employment Insurance system for at least 12 months within the past two years,
- Be currently enrolled in the Employment Insurance system,
- Not have voluntarily resigned from their last position, unless due to compelling circumstances, and not have been terminated for misconduct,
- Actively seek employment and be available for work,
- Regularly attend Hello Work offices to report job search activities,
- Promptly and truthfully notify Hello Work of any changes in status,
- Participate in reemployment programs when recommended.

These requirements ensure that employees who are genuinely seeking new employment can receive financial support during their job search.

Under Japanese law, the basic unemployment allowance is provided to individuals who meet the eligibility criteria, with the amount determined based on their previous earnings. However, in certain circumstances and cases of hardship, additional benefits may be granted, including:

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- Education and training allowance: Unemployed individuals who participate in government-approved vocational training programs to enhance their skills and employability may receive an allowance to help cover part of the tuition fees.
- Access to job placement services: Unemployed individuals can utilise services through Hello Work, Japan's government employment service. These services include job matching, career counseling, access to job fairs and recruitment events, and skill development programs.
- Financial support for vocational training: Financial assistance is available to help unemployed individuals acquire new skills or qualifications through vocational training programs.
- Special benefits for elderly and disabled workers: Additional benefits are available for unemployed individuals aged 60 and above, as well as for those with disabilities.
- Reemployment allowance: Unemployed individuals who secure employment before their unemployment benefits expire may qualify for a reemployment allowance.
- Public assistance: For individuals experiencing severe financial hardship, public assistance may be provided.

These benefits are designed to support individuals in regaining employment and improving their skills during periods of unemployment.

Severance pay

Under Japanese law, employees may be entitled to severance pay if their dismissal is deemed unlawful by the courts. Typically, there is no statutory severance pay or fixed formula, except when payment is made in lieu of notice. However, many companies choose to include severance pay in their contracts to incentivize voluntary resignation, avoiding the risks associated with unilateral dismissal. In practice, most employment contracts offer severance pay ranging from six to twelve months of the employee's salary.

Restrictive covenants

Prohibition of competition

Under Japanese law, non-compete clauses are enforceable to protect a company's legitimate business interests, but they must be reasonable in scope, duration, and compensation to be considered valid by the courts. Non-compete clauses are considered an employee's concurrent obligation under the principle of good faith arising from the employment contract. During the term of employment, employees are prohibited from engaging in activities that compete with their employer.

Regarding the validity of non-compete clauses after the termination of the employment contract, courts tend to apply strict scrutiny. Consequently, the scope of the non-compete

obligation must be reasonably limited to what is necessary to protect the legitimate interests of the company.

When assessing the validity of a non-compete clause, the following factors are typically considered:

- The nature, specificity, and significance of the proprietary information or trade secrets the employee has access to,
- The employee's job position, seniority, and level of responsibility,
- The scope of prohibited activities and the parties with whom the employee is restricted from engaging,
- The confidentiality and importance of the services provided,
- The duration of the non-compete obligation following termination,
- The geographical scope of the restriction,
- Any post-employment compensation provided to the employee as an alternative to the non-compete clause.

As is often the case with many laws and regulations in Japan, the legal framework surrounding non-compete clauses is not always clear-cut, with considerable room for interpretation. In general, overly broad, vague, or poorly defined non-compete clauses that lack clear boundaries on the scope of restricted activities are less likely to be upheld.

Non-compete clauses following the termination of an employment contract are typically considered valid only if the scope of the restriction is reasonably narrow and the confidentiality and importance of the services involved are deemed exceptionally high.

Additionally, non-compete clauses are more likely to be enforced if the duration of the restriction is limited to one year and if reasonable compensation is provided to the employee for adhering to these obligations.

Additional items

Probationary period

Under Japanese law, a probationary period serves as a trial phase, typically lasting three to six months, during which employers can evaluate a new hire's suitability while remaining bound by strict legal safeguards against unjust dismissal. Under Japanese law, probationary periods are often included in employment contracts to allow employers to assess an employee's performance, skills, and cultural fit, while also enabling employees to evaluate whether the role meets their expectations. Although such clauses are not mandatory, they are common for permanent employees.

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The length of the probationary period is not legally fixed, and its renewal is not prohibited, but in practice, it generally lasts up to three months and can be extended to a maximum of six months, provided this is expressly agreed upon with the employee.

If an employee fails to meet expectations, the employer may terminate the contract during the probationary period with minimal notice, typically between one to two weeks, as specified in the employment contract.

After the first 14 days of the probationary period, the employer is legally required to adhere to the standard 30-day notice period when terminating the employment. If the employer fails to provide 30 days' notice, they must compensate the employee with the average wage the employee would have earned over the 30-day period.

However, this obligation does not apply if business continuity is no longer possible due to compelling reasons, nor if the employee is dismissed for reasons attributable to the employee. The notice period may be shortened if the employer compensates the employee with the average wage they would have earned for each day the notice period is reduced.

Additionally, the employer's ability to dismiss the employee is only temporarily extended during the probationary period.

Intellectual property rights

Under the Japanese Patent Act, the right to an employee's invention typically belongs to the employee. However, following the 2017 amendment, if an advance contract between the employer and employee specifies that the patent rights will belong to the employer, these rights are transferred to the employer as soon as they arise. According to the Japanese Patent Act, an "employee's invention" refers to an invention that is primarily within the employer's business field, that arises from activities related to the employee's current or past job duties, with the definition of job duties being broadly interpreted according to case law.

The "work for hire" doctrine is applicable to copyrights and mask works, and it also applies to patents, provided that the work rules or employment agreement stipulate that the patents created under this doctrine are inherently owned by the employer from the outset.

If the employee's invention is assigned to the employer or if an exclusive usage right is granted to the employer, the employee is entitled to reasonable remuneration or other economic benefits, as a compensation for the added value that exceeds the usual non-exclusive license typically due to the employer.

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The law does not specify exact compensation amounts, but provides certain factors that must be considered, and the amount must be deemed reasonable. Compensation is typically considered reasonable in case of prior negotiations between employer and the employee. The amount of compensation is based on the profit the employer gains from the invention, the extent of the employer's contribution to the invention, the treatment of the employee, and any other relevant circumstances.

If this compensation is deemed unreasonable, a reasonable amount must be determined through judicial decision.

For copyrights, a work must be publicly disclosed under the employer's name, with the exception of computer program-related copyrights.

Even if the employer does not specify in the work rules or employment agreement that patents created by employees are automatically owned by the employer upon creation, the law grants the employer a right similar to a shop right, limited to a non-exclusive license. This provision applies solely to patents.

Employee data privacy

The Personal Information Protection Act (PIPA) governs the collection, use, disclosure, and storage of employees' personal information in Japan. This legislation strictly prohibits employers from using employees' personal data for purposes that are not disclosed or authorized. The collection and processing of employees' data by employers must comply with the following legal requirements:

- Purpose limitation: Personal data must be collected and used solely for specific, clear, and lawful purposes.
- Informed and voluntary consent: Employers must obtain the employee's explicit consent, ensuring that it is informed, voluntary, and specific to the intended purpose.
- Data minimization: Employers should only collect the data strictly necessary to achieve the declared purpose, avoiding any excessive or irrelevant collection.
- Data security measures: Employers are required to protect personal data from unauthorized access, loss, destruction, or leakage. This includes implementing secure storage systems, encrypting sensitive data, establishing access controls, and creating protocols for preventing and responding to data breaches.
- Secure data transmission: Specific channels, such as encrypted communication tools, must be used to ensure the safe transfer of data.

Employees have rights under the law to request access to their personal data held by the employer, correct inaccuracies, request deletion of data in certain circumstances, and seek the transfer of their data to another entity (data portability).

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To further ensure compliance and mitigate risks, employers should regularly provide employees with training on best practices for data handling and privacy protection.

"Personal information" is defined as any information related to a living individual that can identify the person, either directly (e.g., name, address, date of birth) or indirectly (e.g., employee ID combined with other data).

Sensitive personal information, such as health or biometric data, is subject to stricter protections under the law.

While employers are permitted to monitor employee activity (e.g., email usage, internet access) for legitimate business purposes, they must adhere to specific legal guidelines. This includes notifying employees in advance about monitoring practices, avoiding invasive methods, and ensuring that the monitoring remains proportionate to its stated purpose and is not excessive.

Non-compliance with the Personal Information Protection Act (PIPA) can result in significant consequences, including administrative guidance, correction orders, and public disclosure of violations. In severe cases, criminal penalties and fines may apply:

- Negligence resulting in data breaches may incur fines of up to ¥500,000.
- Unauthorized use of sensitive personal information can result in fines of up to ¥1,000,000 or imprisonment for up to one year.

The 2022 amendments to PIPA introduced additional measures to strengthen data protection. These include mandatory notifications to the Personal Information Protection Commission (PPC) and affected individuals in the event of a data breach, as well as increased penalties for non-compliance, particularly for intentional violations. These changes underscore the importance of robust data protection practices for employers handling personal information.

Remote working

"remote working" vs "work at a separate workplace"

In Japan, remote work is not explicitly defined in legislation but is regulated through guidelines issued by the Ministry of Health, Labour and Welfare (MHLW), which provide additional frameworks and recommendations for its implementation. In addition to ministerial guidelines, employers in Japan are required to apply, without distinction, the laws and regulations governing all employment relationships.

Native Teams

They must also define clear terms and conditions for remote work in their Work Rules, ensuring these are consistent with those applicable to non-remote employees, where relevant.

To ensure that remote work arrangements are fair, transparent, and compliant with both existing labour laws and recommended practices these internal policies should address key aspects such as:

- Working hours and record-keeping,
 - Rest periods,
 - Communication protocols,
 - Performance expectations,
 - Expense reimbursements: While Japanese law does not explicitly require employers to reimburse telework-related expenses, such as internet or utility costs, it is considered good practice to avoid imposing excessive financial burdens on employees.
 - Equal pay for work of equal value,
 - Personal data protection: Employers must implement security measures to safeguard employees' personal data,
 - Prevention of work-related health issues: Employers must ensure that remote work arrangements do not negatively impact employees' mental or physical health.
- Furthermore, employers are required to pay particular attention to the following:

- Ensuring a clear separation between professional and personal life by upholding the right to disconnect,
- Maintaining regular and effective communication between employers and remote workers,
- Providing necessary and tailored training to help employees master digital tools and remote work methods,
- Conducting regular performance evaluations to monitor and support productivity.

In response to evolving work styles, Japan introduced a digital nomad visa in April 2024, allowing remote workers to live and work in the country for up to six months. Applicants must meet specific income thresholds and other eligibility criteria to qualify.

Additionally, the Japanese government is actively promoting flexible work arrangements, including the implementation of a four-day workweek, as part of its efforts to address labour shortages and enhance work-life balance for employees.

Responsibilities within a remote work arrangement

Under Japanese law, the distinction between "remote working" and "working at a separate workplace" is not explicitly defined in a single legal framework but is guided by the Ministry of Health, Labour and Welfare's guidelines. The key difference lies in the work environment: remote work typically occurs in the employee's home or other non-company-controlled spaces, while work at a separate workplace involves a physical location that the employer owns or manages.

In Japan, "Remote Working" is a form of telework, generally referring to employees working from a location outside the company's primary office, often from home. While the Japanese legal framework does not have specific provisions that define remote work separately, it is addressed within broader employment regulations, particularly under the Labour Standards Act, which applies to all employees, including those working remotely. Employers are obligated to ensure the health, safety, and well-being of remote workers, just as they do for on-site employees.

Compliance with general labour laws regarding working hours, rest/break times, overtime, and work conditions is also required. Additionally, the Ministry of Health, Labour and Welfare (MHLW) provides comprehensive guidelines for telework arrangements, covering issues such as:

- Establishing clear work conditions (e.g., work hours, performance expectations),
 - Providing necessary equipment (e.g., computers, ergonomic office furniture),
 - Safeguarding employees' mental health, including ensuring the right to disconnect.
- "Work at a separate workplace" refers to employees performing their job duties at a designated physical location other than the company's main office, such as a branch office, client site, or a temporary project-based location. While this type of arrangement falls under the general framework of employment law, it may differ from remote work in terms of oversight, working hours, and reporting requirements. As a result, the employer is obligated to:
- Ensure that the safety and working conditions at the new location are equivalent to those at the main office,
 - Comply with the Occupational Health and Safety Act, providing necessary training and supervision for employees working at separate locations in accordance with company policies,
 - Maintain consistent standards for working hours, overtime, and health and safety at these separate workplaces,
 - Accurately track employees' working hours and ensure that the safety of employees is not compromised at any off-site location.

Health and safety at home

Under the Industrial Safety and Health Act (ISHA), employers are responsible for maintaining a safe and healthy working environment, which extends to remote work settings. In Japan, as with any other employee, employers are obligated to take proactive measures to prevent work-related health issues, including mental health concerns, and to ensure the safety of remote workers. This includes providing appropriate support and resources to employees working off-site.

Employers are expected to implement measures to prevent workplace accidents, including harassment, even if these occur at the employee's home. These responsibilities include organizing home-based medical check-ups if necessary and conducting risk assessments related to remote work. This involves evaluating psychosocial risks stemming from isolation, risks associated with the setup of the home workstation, and ergonomic hazards linked to poor working postures.

To fulfill these obligations, employers must provide ergonomic work equipment (e.g., computers, ergonomic chairs) and cover the costs associated with their use. Additionally, employers are required to offer safety training, including awareness of the specific risks inherent to remote work, to ensure employees can work in a safe and healthy environment.