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LABOR AND EMPLOYMENT LAW BULLETIN (NO. 1)

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1. New Amendment on Standard for Unilateral Termination of Employment

On June 27, 2003, the Japanese Diet enacted an amendment to the Employment Standards Act (*Roudou-Kijun-Hou*, hereinafter “ESA”), ostensibly setting out a clearer standard for unilateral dismissal of employees. The new provision (ESA Article 18-2) states that a company’s unilateral termination of an employment contract “without objectively rational reasons and not in line with accepted social custom” would be illegal. The amendment will be enforced within half a year after its promulgation. The Tokyo Labor Bureau (*Toukyou-Roudoukyoku*) unofficially announced that it is more than likely that the amendment will start to be applicable on and from January 1, 2004.

In actual fact, the wording of ESA Article 18-2 tracks recent judicial decisions of the Japanese Supreme Court concerning the standard for unilateral termination of employment. Because non-lawyers such as regular employees tend not to be aware of Supreme Court rulings, the new ESA amendment means that the Japanese Supreme Court’s rulings will now be made widely known to all employees in Japan. As a practical matter, however, the new ESA amendment essentially confirms and codifies the Supreme Court rulings; thus, the new ESA amendment will not, in most cases, materially affect what companies should or must legally do prior to implementing a unilateral termination of employment.

Nonetheless, in order to remain in strict compliance with current labor and employment standards, it is advisable for companies doing business in Japan to amend their Rules of Employment (*Shuugyou-Kisoku*), to take into account this new amendment to the ESA. In most cases, the amendments to a company’s Rules of Employment will be relatively easy to make.

2. Increase in Fixed Period Employment Contracts to Three Years

In another major change of employment practice, the new ESA extends the duration of “employment contracts with a limited duration” from its current length of one year to a maximum of three years. This amendment will provide employers with greater flexibility in hiring and terminating employees, and is also expected to become effective on and from January 1, 2004.

3. Increase in “Temporary Employee” Period to Three Years

Almost simultaneously with the amendments to the LSA, the Japanese Diet amended the Employee Dispatch Act (*Roudosha-Haken-Hou*). This amendment essentially extends the maximum period of most types of “Employee Dispatch” or so-called “temp agency employees” from one year to three years. We will elaborate further on this amendment in our next bulletin.

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Should you wish to receive further information about the new amendments and/or how you can

bring your company into compliance with them and/or utilize them to benefit your business, please contact your regular Anderson Mori attorney, or Hideki Thurgood Kano (hidekithurgood.kano@andersonmori.com), one of our senior labor and employment attorneys.