

LABOR AND EMPLOYMENT LAW BULLETIN

**Partial Amendment to Act on Stabilization of
Employment of Elderly Persons / Partial
Amendment to Act on Promotion of Employment
of Persons with Disabilities****1. Partial Amendment to Act on Stabilization of Employment of
Elderly Persons**

In light of the rapid aging of the population in Japan, the "Act on Stabilization of Employment of Elderly Persons" has been partially amended, for the purpose of providing an environment in which elderly employees can continue to work according to each of their motivation and ability, at least until the age at which they can start to receive pensions.

**(1) Abandonment of System that Makes It Possible for Employers
to Limit the Persons who are Eligible to Use the Continuous
Employment System**

Under the Act, employers are prohibited from setting a retirement age lower than 60. In addition, employers that have a retirement age of less than 65 are required to take one or more of the following measures: (i) to raise their retirement age, (ii) to introduce the continuous employment system, or (iii) to abolish their retirement age (collectively, the "Measures to Ensure Employment of Elderly Persons"), for the purpose of ensuring the stable employment of employees until they reach the age of 65. The "continuous employment system" set forth in (ii) above means a system that enables older employees to continue to work even after their retirement age, if they wish to do so. Under the existing Act, if an employer sets certain eligibility requirements for participation in the continuous employment system under a labor-management agreement and introduces its own system based on such requirements, the employer is accordingly allowed to apply the continuous employment system only to the employees who fulfill such requirements. Under the amended Act, however, employers will be required to continuously employ all employees who wish to be employed continuously, if the employers use the continuous employment system. Exceptions to this rule are in the guideline published by the Ministry of Health, Labour and Welfare on November 9, 2012. In this guideline, employers are released from their obligation to continuously employ

the older employees, if the older employees fall under the causes of dismissal or resignation (excluding the causes that relate to age) stipulated in the rules of employment, such as those employees whose physical or mental health is so poor that they are unable to perform their duties and those whose work performance is extremely poor that they are unable to pursue their responsibilities as an employee.

(2) Expansion of Scope of Companies Eligible to Employ Employees who Wish to the Use Continuous Employment System

Under the existing Act, if the continuous employment system is introduced, the employers themselves are required to continue to employ their own employees who wish to use the system after their retirement age. However, under the amended Act, employers will be permitted to continue to employ such employees at any of the employers' group companies. Note that this is permitted only where the employers enter into an agreement with the group companies concerned in which it is agreed that such group companies continuously employ the older employees currently employed by the employers.

(3) Introduction of Provision that the Name of any Companies in Breach of their Obligation Will be Publicly Announced

The amended Act provides that, if any employer is in breach of its obligation to take measures to ensure the employment of elderly persons, and that employer fails to follow advice to cure such breach, the Minister of Health, Labour and Welfare may publicly announce that fact.

(4) Date of Enforcement

The amended Act will come into force on April 1, 2013. However, even prior to the enforcement of the amended Act, it is possible for the Minister of Health, Labour and Welfare to establish guidelines for the implementation and management of measures to ensure the employment of elderly persons. If, by the date of the enforcement of the amended Act, an employer sets certain eligibility requirements for participation in the continuous employment system under a labor-management agreement and introduces its own system based on such requirements, the employer can, until March 31, 2025, still continue to apply such requirements, but only to those employees who have reached the age at which they can start to receive a portion of their old-age employees' pensions proportionately to the amount of their respective remunerations (The amended Act provides that such age shall be set at 61 from April 1, 2013 to March 31, 2016, at 62 from April 1, 2016 to March 31, 2019, at 63 from April 1, 2019 to March 31, 2022, and at 64 from April 1, 2022 to March 31, 2025.). This is an interim measure taken for the purpose of avoiding the occurrence of a period during which the employment of certain employees may discontinue and no pension will be paid to such employees as a result of raising the age at which employees can start to receive old-age employees' pensions.

2. Partial Amendment to the Act on Promotion of Employment of Persons with Disabilities (Raising of Statutory Employment Rate of Persons with Disabilities)

The "Act on Promotion of Employment of Persons with Disabilities" has been partially amended for the purpose of promoting the employment of persons with disabilities. All employers are obliged to employ persons with disabilities at a rate equal to or above the statutory employment rate. Employers whose employment rate of persons with disabilities falls below the statutory employment rate will be obliged to pay "levies for the employment of persons with disabilities" in proportion to the difference between their actual employment rate and the statutory employment rate. On the other hand, employers whose employment rate of persons with disabilities exceeds the statutory employment rate will be granted "subsidies for the employment of persons with disabilities". As a result of the amendment to the Act, the above-mentioned statutory employment rate applicable to private employers will be raised from 1.8% to 2.0%. In connection with the raising of this rate, the scope of employers required to employ at least 1 person with disabilities will extend from employers that employ 56 employees or more to those that employ 50 employees or more.

The amended Act will come into force on April 1, 2013. However, the amounts of the levies and subsidies for the employment of persons with disabilities that are to be paid or granted for the fiscal year 2012 and before will still be calculated in accordance with the existing Act.

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1 高年齢者雇用安定法の一部改正

急速な高齢化の進行に対応し、高年齢者が少なくとも年金受給開始年齢までは意欲と能力に応じて働き続けられる環境の整備を目的として、「高年齢者等の雇用の安定等に関する法律」(高年齢者雇用安定法)の一部が改正されました。

(1) 継続雇用制度の対象者を限定できる仕組みの廃止

事業主は、60歳を下回る定年を定めることができないとされているほか、65歳未満の定年を定めている事業主は、65歳までの安定した雇用を確保するため、①定年の引上げ、②継続雇用制度の導入、③定年の定め廃止のいずれかの措置(高年齢者雇用確保措置)を講じることを求められています。②の継続雇用制度とは、希望する高年齢者を定年後も引き続いて雇用する制度です。これまで、事業主が同制度の対象者につき労使協定により基準を定めて当該基準に基づく制度を導入した場合には、希望者全員を同制度の対象としないことも許されていましたが、改正法により、継続雇用制度は希望者全員を対象とすることが義務付けられました。この例外として、心身の故障のため業務の遂行に堪えられないと認められる者や、勤務状況が著しく不良で従業員としての職責を果たしえない者など、就業規則に定める解雇事由または退職事由(年齢に係るものを除く)に該当する場合には継続雇用しないことができる旨が、平成24年11月9日に公告された厚生労働省の指針において定められています。

(2) 継続雇用制度の対象者を雇用する企業の範囲の拡大

これまで、継続雇用制度において、事業主は、定年後も対象者を自ら引き続いて雇用する必要がありましたが、改正法により、グループ企業において雇用することもできるようになりました。この場合、事業主は、その雇用する高年齢者をグループ企業が引き続いて雇用することを約する契約を、当該グループ企業との間で締結しなければなりません。

(3) 義務違反の企業に対する公表規定の導入

改正法では、高年齢者確保措置を講ずる義務に違反した事業主が是正勧告に従わないときは、厚生労働大臣は、その旨を公表することができます。

(4) 施行日

改正法は、平成 25 年 4 月 1 日から施行されます。ただし、厚生労働大臣は、高年齢者雇用確保措置の実施及び運用に関する指針を、施行前においても策定できるとされています。また、改正法の施行日において、労使協定により継続雇用制度の対象者について基準を定め、当該基準に基づく制度を導入している事業主については、平成 37 年 3 月 31 日までの間は、老齢厚生年金に係る報酬比例部分の受給開始年齢に到達した以降の者を対象とする場合に限り、当該基準を引き続き利用することができます。(受給開始年齢は、平成 25 年 4 月 1 日から平成 28 年 3 月 31 日までの間は 61 歳、平成 28 年 4 月 1 日から平成 31 年 3 月 31 日までの間は 62 歳、平成 31 年 4 月 1 日から平成 34 年 3 月 31 日までの間は 63 歳、平成 34 年 4 月 1 日から平成 37 年 3 月 31 日までの間は 64 歳です。)これは、老齢厚生年金の支給開始年齢の引き上げに伴い、雇用が継続されず、年金も支給されない期間が生じる者が発生しないようにするための経過措置です。

2 障害者雇用促進法の一部改正(障害者法定雇用率の引上げ)

障害者雇用を進めることを目的として、「障害者の雇用の促進等に関する法律」(障害者雇用促進法)の一部が改正されました。

すべての事業主は、法定雇用率以上の割合で障害者を雇用する義務があります。法定雇用率を下回る事業主は、不足率に応じた額の障害者雇用納付金を納付する義務を負い、法定雇用率を超えて障害者を雇用している事業主には、障害者雇用調整金が支給されます。改正法により、この法定雇用率が民間事業主については 1.8%から 2.0%に引き上げられます。これに伴い、障害者を 1 人以上雇用しなければならない事業主の範囲が、従業員 56 人以上を雇用する事業主から 50 人以上を雇用する事業主に拡大します。

改正法は、平成 25 年 4 月 1 日から施行されます。ただし、平成 24 年度以前の年度分として納付すべき障害者雇用納付金及び支給されるべき障害者雇用調整金の額については、なお改正前の法に基づいて算定されます。



This law bulletin is published as a general service to clients and friends and does not constitute legal advice. Should you wish to receive further information regarding the above-mentioned matters, and/or wish to consult as to whether your company is in compliance with labor/employment law, please contact:

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