

LABOR AND EMPLOYMENT LAW BULLETIN

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Amendment to the Worker Dispatching Act

1 Amendment to the Worker Dispatching Act

The Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers (Act No. 88 of July 5, 1985, as amended, the "Act") was recently amended, for the purpose of making fundamental reforms to the system of worker dispatching in order to ensure the protection of dispatched workers. The title of the Act will change to the "Act for Securing the Proper Operation of Worker Dispatching Undertakings and Ensuring the Protection of Dispatched Workers" after the amendment comes into effect. The amendment shall come into effect as of the date which will be specified by a Cabinet Order and will be within a period not exceeding six (6) months from the date of promulgation of the amendment (April 6, 2012).

2 Tightening of business regulation

Under the amendment, *Hiyatoi-Haken* (hiring of dispatched workers by the day or for a term of thirty (30) days or less) is prohibited in principle. However, operations which are found unlikely to be detrimental to the proper management of employees or any other cases specified by Cabinet Order are excluded from the banned categories of operations. The amendment also sets a limit on the ratio of dispatched workers who

will be dispatched to other group companies. Furthermore, dispatching a worker to a company from which his/her employment had previously been severed is prohibited during the period of one (1) year from the date of such severance.

3 Employment of dispatched workers with indefinite term / Improvement of dispatched workers' working conditions

Under the amendment, a dispatching business operator shall endeavor to take measures to promote shifting dispatched workers who are retained on fixed-term contracts to being retained on contracts without fixed terms. When a dispatching business operator determines the wages for dispatched workers, it shall (i) consider balancing the wages of dispatched workers with those of the regular workers who engage in the same type of work in the same receiving company, (ii) disclose information such as the ratio on the difference between the fees received for worker dispatching and the wages of the workers dispatched over the fees received for worker dispatching (the so called "margin ratio") and (iii) clearly indicate the fees received for worker dispatching to each dispatched worker at the time of the commencement of their employment and of each dispatch. Furthermore, if a worker dispatch contract is cancelled for the convenience of a receiving company, at the time of such cancellation the receiving company shall be obliged to ensure that new employment opportunities are provided for dispatched worker(s) and take measures such as of bearing the cost of leave allowance for such worker(s). The dispatching business operator and the receiving company shall stipulate these matters in every worker dispatch contract.

4 Strengthening of the sanctions against illegal dispatch

There were articles in the Act which obligate a receiving company, under certain circumstances, to offer an employment contract to a dispatched worker. However, under these articles, if a receiving company does not offer an employment contract in violation of such obligation, an employment contract between the receiving company and the worker will not be formed regardless of the obligation. Under the amendment, in cases where an illegally dispatched worker is accepted by a receiving company who is aware of such illegality, the receiving company shall be deemed to have offered an employment contract to the dispatched worker. In such cases, if the worker manifests his/her intention to accept such offer within a certain period of time, an employment contract between the receiving company and the worker will be formed. Note that this amendment concerning deemed offers of employment contracts will only be introduced after three (3) years from the date on which the amended Act comes into force. Further, causes for disqualification regarding permission of worker dispatching operations are set forth in order to prevent the elusion of administrative penalties.

5 Miscellaneous

As a result of revisions made by the Diet, propositions to ban registration-type dispatching and dispatching to the manufacturing industry were rejected from this amendment.

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1 労働者派遣法の改正

派遣労働者の保護のため、労働者派遣事業に係る制度の抜本的見直しを行うことを目的として、「労働者派遣事業の適正な運営の確保及び派遣労働者の就業条件の整備等に関する法律」(昭和 60 年 7 月 5 日法律第 88 号)が改正されました。改正後の同法の名称は、「労働者派遣事業の適正な運営の確保及び派遣労働者の保護等に関する法律」と変更されます。本改正は、公布の日(平成 24 年 4 月 6 日)から 6 か月以内の政令で定める日から施行されます。

2 事業規制の強化

改正法により、日雇派遣(日々又は 30 日以内の期間を定めて雇用する労働者派遣)は原則として禁止されます(ただし、適正な雇用管理に支障を及ぼすおそれがないと認められる業務の場合その他の政令で定める場合は、禁止の対象から除外されます。)。また、グループ企業内での派遣割合に一定の制限が設けられます。さらに、離職した労働者を元の雇用主のもとに派遣することが、離職後 1 年間は禁止されます。

3 派遣労働者の無期雇用化・派遣労働者の待遇の改善

派遣元事業主は、一定の有期雇用の派遣労働者について、無期雇用への転換を推進するための措置を講じる努力義務を負います。また、派遣労働者の賃金等の決定にあたり、同種の業務に従事する派遣先の労働者との均衡を考慮すること、派遣料金と派遣労働者の賃金の差額が派遣料金に占める割合(いわゆるマージン率)等の情報を公開すること、雇入れ及び派遣の際に派遣労働者に対して派遣料金の額を明示することが義務化されます。さらに、派遣先の都合による労働者派遣契約の解除にあたり、派遣労働者の新たな就業機会の確保、休業手当等の支払いに要する費用負担等の措置が義務化されるとともに、労働者派遣契約にもこれらの事項を定めることが義務化されます。

4 違法派遣に対する制裁の強化

従来から、労働者派遣法には、一定の場合に派遣先に雇用契約の申込みを義務づける規定が存在していましたが、このような規定のもとでは、派遣先が当該義務に違反して申込みを行わない場合には、派遣先との間で雇用契約関係は成立しませんでした。本改正では、違法派遣であることを知りながら派遣先が派遣労働者を受け入れている場合には、派遣先が派遣労働者に労働契約を申し込んだものとみなされ、労働者が一定期間内に申込みを承諾する旨の意思表示をすれば、派遣先との間で雇用契約関係が成立することとなります(ただし、この労働契約申込みのみなし制度の施行日は、改正法の施行から 3 年経過後です。)。また、処分逃れを防止するため、労働者派遣事業の許可等の欠格事由が整備されます。

5 その他

国会での修正により、本改正では、登録型派遣・製造業務派遣の原則禁止は見送られました。



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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