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No Specification of Employees under the Employee Dispatch System

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The Employee Dispatching Act (*Roudousya-Haken-Hou*) concerns the “dispatch of employees” by an Employee-Dispatching Company to another company that desires to utilize an employee of the Employee-Dispatching Company (hereinafter called the “Accepting Company”). The Employee Dispatching Act and its administrative ordinances provide that an Accepting Company is under an obligation to refrain from specifying which particular employees are to be dispatched to it. For instance, no Accepting Company is allowed to (i) interview prospective employees or (ii) obtain resumes regarding prospective employees prior to accepting such employees from the Employee-Dispatching Company.

There are many companies that do not know about this legal obligation, unfortunately. Thus, quite a few Accepting Companies are virtually certain to request that an Employee-Dispatching Company give them more freedom in specifying employees to be dispatched by engaging in the above-mentioned practices.

Note, however, that those employees who have worked as dispatched employees for some time tend to be aware of the protection of the Employee Dispatching Act, and, therefore, of the obligation imposed upon Accepting Companies. If they are treated unjustly by an Accepting Company utilizing the above-mentioned practices, they tend to blow the whistle on the Accepting Company concerning the infringement. The Regional Labor Bureau (*Todouhukun-Roudoukyoku*), which is under the aegis of the Ministry of Health, Labor & Welfare, is given the authority to investigate an Accepting Company if such allegations are brought to its attention. If an allegation concerning a violation is substantiated through such an investigation, the Regional Labor Bureau may issue a Rectifying Advice Sheet (*Zesei-Sidou-Hyou*) to the Accepting Company.

労働者派遣法のもとでは、派遣される労働者の特定をしないよう努力する義務が派遣先に課されています(26条7項)。たとえば、事前面接や履歴書送付要請は、労働者特定を目的とする行為の典型例であり、おこなわないよう要請されます(派遣先指針)。

ところが、おおくの派遣先企業は労働者派遣法に明るくありません。このためかかる義務について違反をしている企業が少なくありません。他方で、派遣で長年生計を立てている労働者のほうは労働派遣法をよく知っており、上のような特定目的行為禁止の努力義務についても熟知していることが少なくありません。

かかる労働者が結果として派遣対象とされなかった場合、派遣先の努力義務違反状態を都道府県労働局に告知することが多くあります。その場合には、都道府県労働局が派遣先に調査に入り、調査の結果努力義務違反状態が認められれば、努力義務違反を解消するよう命じる是正指導票を発行します。

Should you wish to receive further information as to the above-mentioned, and/or wish to consult as to whether your company is in compliance with labor/employment law, please contact Hideki Thurgood Kano (e-mail: hidekithurgood.kano@andersonmori.com, tel: 81-3-6888-1061).