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LABOR AND EMPLOYMENT LAW BULLETIN (NO. 20)

Whistleblower Protection Act (Follow-Up Report)

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As we mentioned in our LABOR AND EMPLOYMENT LAW BULLETIN (NO. 6) dated March 17, 2004, the Whistleblower Protection Act (*Kouekituuhousya-Hogo-Hou*) (“WPA”), which is expected to be effective in encouraging private companies to abide by regulations, will come into effect on and after April 1, 2006.

The WPA disallows employers from engaging in retaliation (such as unilateral termination of the employee, demotion of the employee, and reduction of the employee’s salary) against those workers who, without any illicit purposes (such as trying to obtain unjustifiable benefits or to damage other persons), inform (x) their employer or other people (e.g., lawyers) whom the employer designates beforehand, (y) the competent national/municipal administrative authorities or their public officers, or (z) a third party (e.g., actual or probable victims, consumer organizations, or mass media), of illegal acts and misconduct (“**Reportable Conduct**”) which have been committed, or are about to be committed, by their employer or by their employer’s officers, employees, agents, and so forth.

The WPA defines “Reportable Conduct” as infringements of the following statutes:

- (a) the Criminal Act (*Kei-Hou*);
- (b) the Food Sanitation Act (*Syokuhin-Eisei-Hou*);
- (c) the Securities and Exchange Act (*Syouken-Torihiki-Hou*);
- (d) the Act concerning Standardization & Proper Quality Representation of Agricultural Materials (*Nourinbussi-Kikakuka-Tekiseihinsituhyouji-Hou*);
- (e) the Air Pollution Prevention Act (*Taiki-Osen-Bousi-Hou*);
- (f) the Industrial Waste Disposal and Cleansing Act (*Haikibutu-Syori-Seisou-Hou*);
- (g) the Personal Information Protection Act (*Kojin-Jouhou-Hogo-Hou*); and
- (h) other statutes, designated by Cabinet Orders, the infringements of which may directly or indirectly result in the employer facing criminal punishment..

The Cabinet has very recently announced that (h) includes 406 statutes, such as the Commercial Act (*Syou-Hou*), the Anti-Trust Act (*Dokusen-Kinsi-Hou*), the Drugs, Cosmetics & Medical Instruments Act (*Yakuji-Hou*), the Prostitution Prevention Act (*Baisyun-Bousi-Hou*), the Unfair Competition Prevention Act (*Husei-Kyousou-Bousi-Hou*), the Patent Act (*Tokkyo-Hou*), the Utility Model Act (*Jituyou-Sinan-Hou*), the Design Act (*Isyou-Hou*), the Trademark Act (*Syouhyou-Hou*), the Copyright Act (*Tyosakuken-Hou*), the School Education Act (*Gakkou-Kyouiku-Hou*), the Construction Standards Act (*Kentiku-Kijun-Hou*), the Public Bath Act (*Kousyuu-Yokujou-Hou*), the Medical Treatment Act (*Iryou-Hou*), the Medical Doctors Act (*Isi-Hou*), the Dentists Act (*Sikaisi-Hou*), the Veterinarians Act (*Juuisi-Hou*), the Architects Act (*Kentikusi-Hou*), the National Health Insurance Act (*Kokumin-Kenkou-Hoken-Hou*), the National Pension Act (*Kokumin-Nenkin-Hou*), the Child Welfare

Act (*Jidou-Hukusi-Hou*), the Specified Commercial Transactions Act (*Tokutei-Syoutorihiki-Hou*), the Bankruptcy Act (*Hasan-Hou*), and the Broadcasting Act (*Housou-Hou*).

The below-mentioned are some of those statutes related to labor/employment areas:

- the Labor Union Act (*Roudou-Kumiai-Hou*);
- the Employment Safety & Sanitation Act (*Roudou-Anzen-Eisei-Hou*);
- the Employment Standards Act (*Roudou-Kijun-Hou*);
- the Child Care & Family Care Leave Act (*Ikuji-Kyuugyou-Kaigo-Kyuugyou-Hou*);
- the Lowest Salary Amount Act (*Saitei-Tingin-Hou*);
- the Defined Contribution Pension Act (*Kakutei-Kyosyutu-Nenkin-Hou*);
- the Defined Benefit Pension Act (*Kakutei-Kyuuhu-Kigyuu-Nenkin-Hou*);
- the Health Insurance Act (*Kenkou-Hoken-Hou*);
- the Welfare Pension Insurance Act (*Kousei-Nenkin-Hoken-Hou*);
- the Workers Accident Compensation Insurance Act (*Roudousya-Saigai-Hosyou-Hou*);
- the Unemployment Insurance Act (*Koyou-Hoken-Hou*);
- the Labor Insurance Premiums Collection Act (*Roudou-Hoken-Ryou-Tyousyuu-Hou*);
- the Occupation Security Act (*Syokugyou-Antei-Hou*); and
- the Employees Dispatch Act (*Roudousya-Haken-Hou*).

Please be informed that a whistleblower will be protected by the WPA when he/she blows the whistle about an incident of Reportable Conduct which occurred before April 1, 2006, as long as the action of whistleblowing itself is done on or after April 1, 2006.

2004年3月17日付のブルティン第6号で述べましたように、公益通報者保護法が2006年4月1日以降に施行される予定ですのでご報告申し上げます。

不正の目的(不正の利益を得る目的とか他人に損害を加える目的など)を有さない労働者が、通報対象事実が生じているか或いは生じようとしている旨を次の者に対して通報したことについて、不利益取扱(解雇・降格・減給など)を労務提供先としてなすことが禁じられます。(x)労務提供先或いは労務提供先の指定した法律事務所など。(y)国の行政機関やその職員或いは地方公共団体の機関。(z)被害者、消費者団体、マスコミなど。

通報対象事実を構成するのは次の法律への違反です。

- (α) 刑法
- (β) 食品衛生法
- (γ) 証券取引法
- (δ) 農林物資規格化品質表示適正化法
- (ε) 大気汚染防止法
- (ζ) 廃棄物処理清掃法
- (η) 個人情報保護法
- (θ) これらのほか、個人の生命侵害の保護、消費者の利益の擁護、環境の保全、公正な競争の確保、そのほかの国民の生命身体財産その他の利益にかかわる法律として政令で定めるもの

先日(θ)の内容が政令で公表されました。主な法律としては次のものがあります。

商法、独占禁止法、薬事法、売春防止法、不正競争防止法、特許法、実用新案法、意匠法、商標法、著作権法、学校教育法、建築基準法、公衆浴場法、医療法、医師法、歯科医師法、獣医師法、建築士法、国民健康保険法、国民年金法、児童福祉法、特定商取引法、破産法、放送法。

(θ)の中で、労働法に絡む法律の主なものは次のとおりです。

労働組合法、労働安全衛生法、労働基準法、育児休業介護休業法、確定拠出年金法、確定給付企業年金法、健康保険法、厚生年金保険法、労働者災害補償法、雇用保険法、労働保険料徴収法、職業安定法、労働者派遣法。

通報対象事実の発生時期が2006年4月1日より前のものであっても、通報自体が2006年4月1日以降になされるときには保護対象となります。ご注意ください。

Should you wish to receive further information regarding the above-mentioned, and/or whether your company is in compliance with labor/employment law, contact **Hideki Thurgood Kano** (telephone: 81-3-6888-1061, e-mail: hidekithurgood.kano@amt-law.com) or other lawyers of Anderson Mori & Tomotsune.