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Measures to be Taken for the Exercise of the Right to Request Conversion to an Indefinite-term Employment Contract

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In preparation for and in advance of the exercise of the right to request conversion to an indefinite-term employment contract in or after April 2018, companies should consider how to address fixed-term employees' requests for conversion to indefinite-term employment contracts, and should take measures which are appropriate such as amending their rules of employment.

1. Summary of the Conversion Rule

The rule concerning conversion to indefinite-term employment contracts (the "Conversion Rule") applies to fixed-term employees who have been continuously employed under fixed-term employment contracts with the same employer. Under the Conversion Rule, if the fixed-term employee's contract term is more than five years in total as a result of renewal, then that fixed-term employee may, by the date of expiration of the current term of his/her fixed-term employment contract, request that his/her employer execute an employment contract without a definite term (i.e., conversion to an indefinite-term employment contract) commencing on the day following the expiration date. If the fixed-term employee so requests, the employer shall be deemed to have accepted the employee's request and an employment contract without a definite term shall come into effect (Article 18 of the Labor Contract Act).

By way of example, a fixed-term employee who has been continuously employed under one year fixed-term employment contracts may, pursuant to the Conversion Rule, request conversion to an indefinite-term employment contract during a period from the first day after his/her fixed-term contract is renewed for the fifth time until the expiration of the sixth year of employment. In that case, the fixed-term employment contract will be converted into an indefinite-term employment contract following the expiration of the sixth year of employment. By contrast, a fixed-term employee who has been continuously employed under three year fixed-term employment contracts may, pursuant to the Conversion Rule, request conversion to an indefinite-term employment contract during a period from the first day after his/her fixed-term employment contract is renewed for the first time until the expiration of the sixth year of employment. As in the former example, in this case, the fixed-term employment

contract will be converted into an indefinite-term employment contract following the expiration of the sixth year of employment.

The Conversion Rule will be broadly applied to employees on fixed-term employment contracts regardless of the term used to describe their employment status (e.g., a contract employee, contingent employee, non-regular employee, part-time employee, or dispatched employee), working hours, job type and purpose of employment, etc. The Conversion Rule, therefore, will affect many companies employing fixed-term employees.

Article 2 of the Supplementary Provisions of the Amended Labor Contracts Act provides that Article 18 of the Labor Contract Act shall be applied to fixed-term employment contracts executed or renewed on and after April 1, 2013. Accordingly, it is expected that the cases where fixed-term employees who have been on fixed-term employment contracts for a total of more than five years have obtained and exercise the right to request conversion to an indefinite-term employment contract will increase beginning in April 2018.

2. Measures to be taken in preparation for the exercise of the right to request conversion to an indefinite-term employment contract

In preparation for and in advance of the exercise of the right to request conversion to an indefinite-term employment contract, companies are advised to take appropriate measures including the following:

- (1) to confirm the number of fixed-term employees which are currently employed, the number of times the contract of each such employee has been renewed, the total period for which each such employee has been employed, the work duties and responsibilities of each such employee, and other relevant circumstances concerning each such employee;
- (2) to review and consider the types of work that will be assigned to each category of fixed-term employees;
- (3) to consider the terms and conditions of employment for employees who will have the right to request conversion to an indefinite-term employment contract which will be applicable after their contract is converted to an indefinite-term employment contract and establish the new rules of employment or amend the existing rules of employment if the terms and conditions of employment which will be applied after conversion are different from those applicable before conversion (e.g., if such employees will be treated differently from the way they were treated before conversion, if a new retirement age will be set, or if a different retirement age will apply to fixed-term employees whose contract are converted to an indefinite-term employment contract after they have reached the retirement age (the so-called "second retirement age")) and/or if the terms and conditions of employment which will be applied after conversion are different from those applied to other indefinite-term employees who are hired under indefinite-term employment contracts (e.g., if the rules on retirement allowance applicable to other indefinite-term employees will not be applied to those whose contract is converted to an indefinite-term employment contract) (*1);

- (4) to add in the rules of employment which are applicable to fixed-term employees a provision regarding the procedure to request conversion to an indefinite-term employment contract (*1); and
- (5) to inform fixed-term employees of the Conversion Rule by, for example, holding an explanatory meeting and/or distributing documents concerning the same.

(*1) In addition to the above, when establishing the new rules of employment or amending the existing rules of employment, companies must also take actions required by the applicable laws and regulations such as notifying the director of the relevant Labor Standards Inspection Office of the new or amended rules of employment (Articles 89 and 90 of the Labor Standards Act) and informing employees of the new or amended rules of employment (Article 106 of the Labor Standards Act).

In order to prevent a fixed-term employee from being entitled to request conversion to an indefinite-term employment contract, companies may wish to stop renewing the employment of each fixed-term employee upon expiration of the term before the total period of employment of each such employee exceeds five years. It should be noted, however, that refusing to renew a fixed-term employment contract upon its expiration solely to impede the right to request conversion to an indefinite-term employment contract may be found illegal (e.g., a breach of Article 19 of the Labor Contract Act).

3. Exception to the Conversion Rule

The Act on Special Measures concerning Fixed-term Employees with Expert Knowledge and Skills (the "Act") provides an exception to the Conversion Rule. Specifically, the Act states that (a) any fixed-term employee with certain expert knowledge and skills, who engages in a project that is contemplated to be completed within a certain period which is more than five years and receives salary above a certain level (no less than the annualized salary of 10.75 million yen), and (b) any employee who is continuously employed under a fixed-term employment contract after having reached the retirement age shall not be entitled to request conversion to an indefinite-term employment contract for a certain period (for (a), up to 10 years, and for (b), while the employee is continuously employed after having reached the retirement age).

Companies seeking to apply this exception are required to prepare a plan addressing the measures for employment management which will make effective use of the abilities of the employees subject to this exception. Furthermore, each such company must obtain a certification from the director of the prefectural labor bureau that has jurisdiction over the company's headquarters or principal office. Since the number of applications for a certification has been increasing nationwide, the prefectural labor bureaus have requested that companies which wish to obtain a certification by the end of March 2018 file their applications by January 2018. Therefore, those companies which wish to obtain a certification need to accelerate their application processes.

無期転換申込権の行使への対応

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平成 30 年 4 月以降の無期転換申込権の行使に備え、企業は、無期転換申込みへの対応方針を事前に検討し、就業規則の変更等必要な措置を講じておく必要があります。

1. 無期転換ルールの概要

無期転換ルールとは、同一の使用者の下で有期労働契約が更新されて通算契約期間が 5 年を超える有期雇用労働者が、使用者に対し、現在の有期労働契約の契約期間の満了日までに、その満了日の翌日から開始する期間の定めのない労働契約の締結(いわゆる無期転換)の申込みをすれば、使用者がその申込みを承諾したものとみなされ、期間の定めのない労働契約が成立するものとする制度をいいます(労働契約法 18 条)。

無期転換ルールは、契約社員、臨時社員、嘱託社員、パート、アルバイト、派遣社員等の呼称の如何にかかわらず、また、勤務時間や職種、雇用の目的等を問わず、有期労働契約を締結している労働者に広く適用されることとなりますので、有期雇用労働者を抱える多くの企業に影響を及ぼすこととなります。

労働契約法 18 条は、平成 25 年 4 月 1 日以降に締結又は更新された有期労働契約に適用されるものと定められたため(改正附則 2 項)、平成 30 年 4 月以降、有期労働契約の通算契約期間が 5 年を超える有期雇用労働者が無期転換の申込権を取得し、行使することが本格化するものと予想されます。

2. 無期転換申込権の行使に備えた対応について

無期転換申込権の行使に備え、企業では、事前に以下の事項につき検討し、必要な措置を講じておくことが望ましいといえます。

- ①有期雇用労働者の就労実態(雇用している有期雇用労働者の人数、更新回数、通算契約期間、担当業務の内容等)を確認する
- ②社内の業務の種類を整理し、有期雇用労働者の区分毎に担当する仕事を検討する
- ③無期転換申込権を行使した労働者について、無期転換後に適用される労働条件を検討し、無期転換前とは異なる労働条件を適用する場合(例えば、無期転換前とは異なる処遇を行う場合、新たに定年の定めを設ける場合、定年年齢到達後に無期転換した有期雇用労働者に適用される別の定年(いわゆる第二定年)の定めを設ける場合等)や、通常の無期雇用労働者とは異なる労働条件を適用する場合(例えば、通常の無期雇用労働者に適用される退職金規程を、無期転換した労働者には適用しない場合)には、就業規則を作成又は変更する(※)
- ④有期雇用労働者に適用されている就業規則に無期転換申込手続に関する規定を設ける(※)

⑤無期転換ルールに関する説明会の開催、文書の配布等により、当該ルールを有期雇用労働者に周知させる

(※)その他に、法令上要求されている労働基準監督署長への届出(労働基準法 89 条、90 条)及び労働者への周知(同法 106 条)等の手続も必要になります。

なお、無期転換申込権の発生を回避するために、通算契約期間が5年を超える前に契約期間の満了をもって有期雇用労働者を雇止めするという対応をとることも考えられますが、無期転換申込権の発生時期が到来することだけを理由とする雇止めは、違法(労働契約法 19 条違反)と判断される可能性があることに留意が必要です。

3. 無期転換ルールの特例

専門的知識等を有する有期雇用労働者等に関する特別措置法により、無期転換ルールの例外的措置として、(a)5年を超える一定の期間内に完了すること予定されている業務に一定の収入(年換算で1075万円以上)を得て就く高度専門的知識等を有する有期雇用労働者と、(b)定年後に有期労働契約に基づいて引き続き雇用される労働者については、一定期間((a)については、上限10年、(b)については、定年後引き続き雇用されている期間)、無期転換申込権が発生されないものとされます。

この特例の適用を受けるためには、特例の対象労働者に関して、その能力が有効に発揮されるような雇用管理に関する措置についての計画を作成し、本社・本店を管轄する都道府県労働局長の認定を受ける必要があります。この認定を受けるための申請は全国的に増加していることから、都道府県労働局は、平成30年3月末までに認定を受けることを希望する場合には、同年1月までに申請を行うことを要請しています。そのため、早期に認定を受けることを希望する企業は、対応を急ぐ必要があります。

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