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Obligation to clarify the “Right to request the Conversion¹” and the “Terms and conditions of employment applicable after the Conversion” associated with the amendment to the Regulation for Enforcement of the Labor Standards Act
—Amendments to the rules concerning clarification of conditions of employment of April 2024—

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¹ Rule concerning conversion of fixed-term employment contracts to employment contracts without a definite period (the “**Conversion**,” wherefrom the “**Conversion Rule**”). In details, please refer to Chapter I below.

Introduction

Employers will be required to clarify additional specifications relating to employment upon the execution and the renewal of employment contracts on or after April 1, 2024.

This is required as a result of the promulgation and publication on March 30, 2023 of the “Ministerial Ordinance to Partially Amend the Regulation for Enforcement of the Labor Standards Act (the “**LSA**”) and the Ordinance for Enforcement of the Act on Special Measures for Improvement of Working Hours Arrangements” (Ordinance of the Ministry of Health, Labor and Welfare No.39 of 2023) and the “Ministerial Notification regarding Partial Amendment of the Standards on Conclusion, Renewal and Termination of Employment Contracts for Fixed-Term Employees” (Notification of the Ministry of Health, Labor and Welfare No.114 of 2023) (the “**Amendment**” or the “**Amendment Ministerial Ordinances**”) to amend the Ordinance for Enforcement of the LSA, and other laws and regulations.

In this newsletter, we will explain the new obligation to clarify to employees their eligibilities to request the Conversion and the terms and conditions of employment upon the renewal of a contract that gives rise to the Right to Request Conversion (defined chapter I below) based on the Conversion Rule. They should be clarified to fixed-term employees who are eligible to request the Conversion.

Employers will be required to clarify additional terms and conditions of employment upon the execution or renewal of an employment contract.	
Timing of clarification	New matters to be clarified
Execution of all employment contracts and renewal of a fixed-term employment contract	<p>1. Scope of the change in workplace and work description</p>
Execution or renewal of a fixed-term employment contract	<p>2. Existence and details of the upper limit of (the total term or the number of renewals of) a fixed-term employment contract</p> <p>If the upper limit of the number of renewals is newly set or shortened after the execution of the first employment contract, the reason should be explained to the employees in advance.</p>
Renewal of a contract that gives rise to the right to request the Conversion based on the Conversion Rule*	<p>3. Eligibility to request the Conversion</p> <p>4. Terms and conditions of employment which will be applied after the Conversion</p> <p>In determining the terms and conditions of employment after the Conversion, employers must make efforts to explain to fixed-term employees the matters determined with reference to the issue of equalization with non-fixed term employees, in accordance with the actual employment situation.</p>

*If the total term of a fixed-term employment contract with the same employer exceeds five years, an employee is eligible to request an application of the Conversion Rule.

Source: Leaflet by the Ministry of Health, Labor and Welfare “[Rules concerning clarification of terms and conditions of employment will be changed in April 2024.](#)”

For a general explanation of the clarification of terms and conditions of employment and the amendment to the obligation to clarify the terms and conditions of employment upon the execution of all employment contracts and renewal of a fixed-term employment contract, see the related article below.

Related article:

> [Requirement of Explicit Indication of Terms and Conditions of Employment Pursuant to Amendments to the Ordinance for Enforcement of the Labor Standards Act](#)

I. What is the Conversion Rule?

If a fixed-term employment contract with the same employer is renewed and its total employment term exceeds five years, the fixed-term employee is eligible to request the execution of an indefinite-term employment contract with such employer starting on the day following the expiration date of the currently effective fixed-term employment contract, before the execution date of the currently effective fixed-term employment contract. This is called the “**Right to Request Conversion.**” If a fixed-term employee exercises the Right to Request Conversion, it will be deemed that such employer has accepted the request, and an indefinite-term employment contract will be executed (Article 18 of the Labor Contracts Act (the “**LCA**”))². This is the application of the so-called “**Conversion Rule.**”

II. Amendment to the obligation to clarify certain points to fixed-term employees

1. Obligation of clarification of their eligibility to request the Conversion to fixed-term employees

² As an exception to the Conversion Rule under the Act on Special Measures Concerning Fixed-term Employees (official name: “Act on Special Measures Concerning Fixed-term Employees with Expert Knowledge and Skills”), the Right to Request Conversion is not granted (i) during the period for which the Type 1 Specified Fixed-term Employees (meaning fixed-term employees with advanced expert knowledge and skills) are engaged in operations which are designed to end within a certain period of time not exceeding 10 years, (ii) during the post-retirement employment period with respect to the Type 2 Specified Fixed-term Employees (meaning elderly people who are continuously employed after reaching the mandatory retirement age under a fixed-term employment contract with by the same employer), or (iii) during the first 10 years in principle with respect to researchers of a research corporation and university teachers under the Act to Partially Amend the Act on Improving the Capacity, and the Efficient Promotion of Research and Development through Promotion of Research and Development System Reform and Act on Term of Office of University Teachers, etc.

Before the Amendment, employers were not required to announce to or inform employees of whether they had the Right to Request Conversion. Since the Conversion Rule was not widely known³, fixed term employees often missed the opportunity to exercise their Right to Request Conversion because they did not know about it.

In the Amendment, in order to help each fixed-term employee understand their company's system regarding the Conversion, to subjectively determine whether to exercise the Right to Request Conversion, and to prevent any disputes, employers are required to clarify that employees are entitled to request the Conversion (clarification of their eligibility to request the Conversion) at each renewal in which the Right to Request Conversion is granted (i.e. at each time of renewal of a fixed-term employment contract whose total contract term will exceed five years and subsequent renewals; hereinafter the same)⁴.

2. Obligation to clarify the terms and conditions of employment which will be applied after the Conversion

(1) Obligation to clarify

Under the current Act, the terms and conditions of employment of an employee who has converted to an indefinite-term employment contract are provided as follows, under the basic rule that, unless otherwise provided, the terms and conditions of employment are the same as the currently effective fixed-term employment contract:

Second sentence of Article 18, Paragraph 1 of the LCA

The terms and conditions of employment that are the contents of said non-fixed term employment contract are to be the same as the terms and conditions (excluding the contract term) of the currently effective fixed-term employment contract (excluding parts separately provided for with regard to the said terms and conditions (excluding the contract term)).

If an fixed-term employee exercises the Right to Request Conversion, an indefinite-term employment contract with the commencement date under the Conversion Rule will be executed, and an employer must clarify the terms and conditions of employment to the employee upon the execution of the indefinite-term employment contract pursuant to Article 15, Paragraph 1 of the LSA.

³ According to page 7 of the “[Report on the Panel on the Rules of Diversifying Employment Contracts](#)” (March 2022) issued by the Labor Standards Bureau of the Ministry of Health, Labor and Welfare, only approximately 40% of fixed-term employees are acquainted with the Conversion Rule, meaning that many employees do not know whether they have the Right to Request Conversion. On the other hand, the report points out that while approximately 80% of companies know the Conversion Rule in some form, the smaller the size of the company, the lower the percentage of companies that know about it.

⁴ With respect to the Right to Request Conversion, since it is up to employees to decide whether to convert to an indefinite-term employment contract, even if they do not do so at the time when the total contract term exceeds five years, they are entitled to request the Conversion at the time of subsequent renewals.

In the Amendment, in order to help each fixed-term employee understand their company's system regarding the Conversion and subjectively determine whether to exercise the Right to Request Conversion and prevent any disputes, employers are required to clarify the terms and conditions of employment which will be applied after the Conversion at each renewal in which the Right to Request Conversion is granted in addition to the time of its execution (Article 15 of the LSA and Article 5, Paragraph 5 and Paragraph 6 of the Ordinance for Enforcement of the LSA after the Amendment).

(2) Explanation of matters determined with reference to the issue of equalization

By the operation of Article, Paragraph 1 of the LCA, in order to deepen the understanding of the content of an employment contract and encourage discussions between labor and management, employers are required to make efforts to explain to fixed-term employees the matters determined with reference to equalization in accordance with the actual employment situation in determining terms and conditions of employment such as wages after the Conversion pursuant to the meaning of Article 3, Paragraph 2 of the LCA, at each renewal in which the Right to Request Conversion is granted (Article 5 of the Standards on Conclusion, Renewal and Termination of Employment Contracts after the Amendment). “Matters determined with reference to equalization,” such as the scope of duties and responsibilities and the applicability and the scope of transfer, are determined considering the treatment of employees other than fixed-term employees (i.e. regular employees or full-time employees with indefinite term of employment).

Article 4, Paragraph 1 of the LCA

An employer is to ensure that an employee gains an in-depth understanding of the terms and conditions of employment and the contents of the employment contract presented to the employee.

Article 3, Paragraph 2 of the LCA

A employment contract is to be concluded or changed between an employee and an employer while giving consideration to the balance of treatment according to the actual conditions of work.

III. Practical operational matters

1. Timing, method of clarification, and sample description

(1) Timing

As stated above, in the Amendment, employers are required to clarify “the employee’s eligibility to request the Conversion” and the “terms and conditions of employment which will be applied

after the Conversion” at each renewal in which the Right to Request Conversion is granted pursuant to the Conversion Rule.

(2) Method

The “the employee’s eligibility to request the Conversion” and the “terms and conditions of employment which will be applied after the Conversion” should be clarified by way of delivering a written document (second sentence of Article 15, Paragraph 1 of the LSA, Article 5, Paragraph 6 of the Ordinance for Enforcement of the LSA); provided, however, that these may be clarified by email or other methods if employees so desire.

(3) Sample description

The “the employee’s eligibility to request the Conversion” and the “terms and conditions of employment which will be applied after the Conversion” may be explained to employees in any format. The following model format disclosed by the Ministry of Health, Labor and Welfare in RED can be used as a reference.

Model format of notice of employment (excerpt)

(For general employees; regular and fixed-term employment)	
Notice of Employment	
[MM] [DD], [YY]	
<u>To</u>	Company’s name and address Name and title of employer
Term of employment	<p>Indefinite term, Fixed-term (From [MM] [DD], [YY] to [MM] [DD], [YY])</p> <p>*Please fill out if, regarding the “term of employment,” you answered “Fixed-term.”</p> <p>1 Renewal of contract</p> <p>[The contract is automatically renewed./ The contract may be renewed./ The contract is not renewable./ Others ()]</p> <p>2. Renewal of the contract shall be determined by the following factors;</p> <ul style="list-style-type: none"> · Volume of work to be done at the expiration of the contract term; · Employee’s work record and work attitude; · Employee’s capabilities; · Business performance of the company; · State of progress of the work done by the employee; and/or · Others (). <p>3. Existence of an upper limit for renewal of the contract (No Yes (Maximum number of renewals: [] times/Maximum total contract term:[] years))</p> <p>[If the employee executes a fixed-term employment contract with the same company under the LCA, and the total contract term will exceed five years]</p> <p>If the employee requests the execution of an indefinite-term employment contract with the Company during the term of this Contract, such employment</p>

	<p>may be converted to employment under an indefinite-term employment contract from the day following the last day of the term of this Contract ([MM] [DD], [YY]). Existence of any change to the terms and conditions of employment under this Contract in such case (No: Yes: (as shown in the Exhibit))</p> <p>[If the employee is subject to the exceptions under the Act on Special Measures Concerning Fixed-term Employees] Period for which the Right to Request Conversion is not granted: I (Employee with advanced expert knowledge and skills) II (Elderly person after reaching the mandatory retirement age) I Period for which the employee is engaged in a specified fixed-term operation (years and months (up to 10 years)) II Period of the continuous employment after reaching the mandatory retirement age</p>
Place of employment	(Immediately after employment) (Scope of changes)
Details of the work to be engaged in	(Immediately after employment) (Scope of changes)
	<p>[If the employee (employee with advanced expert knowledge and skills) is subject to the exceptions under the Act on Special Measures Concerning Fixed-term Employees]</p> <p>· Specific fixed-term operation (Commencement date:) Completion date:)</p>

Source: Website of the Ministry of Health, Labor and Welfare

The Ministry of Health, Labor and Welfare shows a detailed sample description of the “the employee’s eligibility to request the Conversion” and the “terms and conditions of employment which will be applied after the Conversion”, as follows⁵.

⁵ Leaflet by the Ministry of Health, Labor and Welfare “Are you ready for the changes to the rules concerning clarification of conditions of employment in April 2024?” p.12

[Sample description]

· **The employee's eligibility to request the Conversion**

“If the fixed-term employee requests for the execution of an indefinite-term employment contract during the term of this Contract, such employment may be converted to employment under an indefinite-term employment contract from the day following the expiration date of this Contract.”

· **Terms and conditions of employment which will be applied after the Conversion**

“The terms and conditions of employment which will be applied after the Conversion will be the same as this Contract” or “The working hours will be changed to [] hours, and the wages will be changed to [] yen after the Conversion.”

2. “Other provisions” of terms and conditions of employment applicable after the Conversion

(1) If there are no “other provisions”

As stated in II-2 (1), unless “otherwise provided,” if a fixed-term employee converted their employment contract to an indefinite-term employment contract, the terms and conditions of employment except the contract term are the same as the currently effective fixed-term employment contract.

(2) If “other provisions” are newly established or amended

On the other hand, if there are “other provisions,” it is possible to provide different terms and conditions of employment. “Other provisions” may be provided in any of a collective agreement, rules of employment or an individual employment contract. In addition to providing terms and conditions of employment that are more favorable than those before the Conversion, it is not prohibited to provide terms and conditions of employment that are less favorable than the previous conditions of employment. For instance, if a fixed-term employment contract with higher wages and more favorable conditions than those of regular employees (i.e. an employment contract with more favorable conditions than those of regular employees considering the status of a fixed-term employee (so-called fixed-term premium)) is converted to an indefinite-term employment contract, it is possible that terms and conditions of employment will be set to less favorable ones upon the Conversion.

If terms and conditions of employment which will be applied after the Conversion will be less favorable than those of the previous fixed-term employment contract by newly establishing or amending “other provisions,” the matters listed in the following table should be noted.

If such “other provisions” are deemed ineffective, an indefinite-term employment contract will

be executed under the same conditions as the fixed-term employment contract before the Conversion.

Method of establishing “other provisions”	Timing of new establishment/amendment	Matters to be noted
Collective agreement ⁶	There is no difference depending on the timing.	<p>Generally effective (Article 16 of the Labor Union Act)</p> <p>However, an agreement will be ineffective if it deviates from the purpose of a labor union, including but not limited to the case where such agreement is executed to deliberately treat specific labor union members unfavorably.</p>
Rules of employment	(i) Such “other provisions” are newly established or amended before the Right to Request Conversion is granted	The employee should be informed of the rules of employment, and the terms and conditions of employment thereunder should be reasonable ⁷ (Article 7 of the LCA).
	(ii) Such “other provisions” are newly established or amended after the Right to Request Conversion is granted but such right is not	In light of the purpose of the Amendment requiring the clarification of terms and conditions of employment which will be applied after the Conversion at each time that the Right to Request Conversion is granted, it is assumed that the rules

⁶ A collective agreement is effective only to the parties to the agreement. According to page 11 of the “Overview of the Survey on Labor Union Activities in 2021” issued by the Ministry of Health, Labor and Welfare, with respect to labor unions with employees other than regular employees at the workplace, 37.3% of part-time employees answering the Survey were eligible for participation in a collective agreement, of which 30.0% of respondents actually participated in one, and 41.5% of answering fixed-term employees were eligible for participation in a collective agreement, of which 32.9% of respondents actually participated in one, indicative of low percentages. Therefore, in the case of amending the terms and conditions of employment for part-time employees or fixed-term employees unfavorably as applicable after the Conversion, it may be of lesser significance whether or not a collective agreement with labor unions with part-time employees or fixed-term employees is executed...

⁷ Page 17 of the “Report on the Panel on the Rules of Diversifying Labor Contracts” (March 2022) issued by the Labor Standards Bureau of the Ministry of Health, Labor and Welfare points out that there is a judicial precedent that considers the reasonableness of a fixed-term employment contract that was executed before the execution of an indefinite-term employment contract by applying Article 7 of the LCA (*Hamakyorex* (employees with a non-fixed term contracts) Case, Decision of the Osaka District Court, dated November 25, 2020, *Rohan* No.1237, p.5).

	executed	stated in (iii) below (Article 10 of the LCA may be applied or analogous application thereof) will be applied.
	(iii) Such “other provisions” are newly established or amended after the Right to Request Conversion is executed	The employee should be informed of the rules of employment, and the terms and conditions of employment thereunder should be reasonable (Article 10 of the LCA may be applied or an analogous application thereof). *Attention should be paid to the difference between the “reasonableness” standard provided here and the standard provided in Article 7 of the LCA ⁸ .
Individual employment contract	There is no difference depending on the timing.	The agreement by the each fixed-term employees is required (Article 8 of the LCA). *It is necessary to carefully consider whether it is objectively deemed that there are reasonable grounds to believe that each fixed-term employee agreed to the amendment of terms and conditions of employment based on their free will ⁹ .

IV. Penalty for the breach of the obligation to clarify the points concerning the Conversion

In the case of a breach of the obligation to clarify the terms and conditions of employment, any person or an employer who violates the obligation is subject to a fine of not more than 300,000 yen (Article 120, Item 1 and Article 121 of the LSA).

V. Measures to be taken by the effective date

⁸ Unlike the “reasonableness” standard provided in Article 10 of the LCA, the “reasonableness” standard provided in Article 7 of the LCA is generally considered to be widely accepted.

⁹ See Decision of the Second Petty Bench of the Supreme Court, dated February 19, 2016, Minshu Vol.70, No.2, p.123. There are some judicial precedents that have denied the validity of the consent given by employees if they have affixed their names and seals on a contract but where sufficient explanation was not given (Decision of the Tokyo District Court, dated February 4, 2020, *Rohan* No.1233, p.92 and others).

The Amendment will come into effect on April 1, 2024 (Article 1 of the Supplementary Provisions of the Amendment Ministerial Ordinances).

Companies need to provide in a notice of employment for a fixed-term employee, who is eligible to request the Conversion, the employee's eligibility to request the Conversion and the terms and conditions of employment which will be applied after the Conversion by reference to the sample description shown in III-1 (3) above, when the companies provide the said notice to their fixed term employees on or after the effective date. In the case of providing the terms and conditions of employment that are different from those provided in a fixed-term employment contract after the Amendment, the description of III-2 (2) above should be noted.

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- This newsletter is published as a general service to clients and friends and does not constitute legal advice. Should you wish to receive further information or advice, please contact the authors below.

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