

Supreme Court rules on different working conditions for employees rehired after reaching retirement age

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Introduction

Traditionally, Japanese companies have adopted a so-called 'lifetime employment system' under which they hire new graduates from high school or university as non-fixed-term employees with the expectation that they will remain with the company until their retirement. For the most part, companies adopting a lifetime employment system include a mandatory retirement age in their work rules, at which point employees are automatically terminated. However, the Act on the Stabilisation of Employment of Elderly Persons prohibits employers from setting a mandatory retirement age below 60 years old. Further, in response to Japan's increasing aging population and the financial necessity of raising the pension age from 60 to 65 years old to finance the public pension fund, the act requires employers who set a mandatory retirement age below 65 years old to take at least one of the following measures:

- raise the mandatory retirement age to 65 years or over;
- introduce a continuous employment system under which they or the relevant entities continue to hire their current employees after the mandatory retirement age, if such employees wish to be employed; or
- abolish the mandatory retirement age.

In accordance with the above requirement, many companies have chosen the second option and introduced a continuous employment system under which they typically rehire employees as fixed-term employees following the termination of their original employment once they reach the mandatory retirement age. One of the controversial issues in this regard is whether and to what extent employers can impose different working conditions (eg, salaries, bonuses and allowances) when they rehire employees who were once non-fixed-term employees as fixed-term employees (for further details please see "[Are differences in employment conditions of fixed-term and permanent employees reasonable?](#)").

On 1 June 2018 the Supreme Court handed down a significant decision addressing this issue.

Facts

In this case, tanker truck drivers who had been rehired as fixed-term employees after reaching the mandatory retirement age sued their employer, asserting that their new salaries, bonuses and allowances were unreasonably different to those received by non-fixed term employees. They argued that such difference violated Article 20 of the Labour Contracts Act, which provides as follows:

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If a labor condition of a fixed-term labor contract for a worker is different from the counterpart labor condition of another labor contract without a fixed term for another worker with the same employer due to the existence of a fixed term, it is not to be found unreasonable, considering the content of the duties of the workers and the extent of responsibility accompanying the said duties, the extent of changes in the content of duties and work locations, and other circumstances.

Decision

As there was no difference in the content of the duties and the extent of responsibilities given to the employees prior to their termination and after being rehired as fixed-term employees, the Supreme Court focused on the fact that the employees had been rehired after reaching the mandatory retirement age and the different nature between such rehired employment and non-fixed term employment. In this context, the court proceeded to determine the reasonableness of the differences regarding each item of the employees' salaries, bonuses and allowances, ruling in effect that the difference in the total amount of the employees' salaries and benefits was not a decisive factor.

The Supreme Court held that, other than with respect to allowances for full attendance and overtime, the differences in working conditions regarding salaries, bonuses and allowances between the rehired employees and non-fixed-term employees were not unreasonable. In its decision, the court referred to the fact that:

- the employees had been rehired after the mandatory retirement age and were entitled to receive their pension on fulfilment of certain conditions; and
- the company also pays an adjustment allowance to the employees as a result of collective bargaining between the company and a labour union.

Comment

As the Supreme Court's decision is new, its implications should be carefully examined and will require further analysis going forward. Nonetheless, the key takeaway from the ruling is the fact that the court distinguished between the nature of rehiring employees and non-fixed-term employment and confirmed that different treatment can apply to each irrespective of Article 20 of the Labour Contracts Act.

Notably, the Supreme Court adopted an item-by-item approach to evaluate the reasonableness of the differences in salaries, bonuses and allowances and did not draw its conclusion directly from the difference in the total amount of annual salaries between rehired employees and non-fixed-term employees – even though the total amount of annual salaries and other benefits was reduced after they had been rehired. This item-by-item approach was similarly adopted by the Supreme Court in another decision handed down on the same day, which also involved a disputed difference in working conditions between fixed-term and non-fixed term employees.

Given that the Supreme Court adopted an item-by-item approach in evaluating the reasonableness of the differences regarding salaries, bonuses and allowances, employers that intend to rehire employees after they reach the mandatory retirement age in accordance with the statutory requirement under the Labour Contracts Act should ensure that they have a sufficient reason to support the reasonableness of a difference in any item of the salaries, bonuses and allowances of their rehired employees and non-fixed-term employees in order to best prepare for any possible disputes with rehired employees.

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