

Equal pay for equal work: differences in working conditions between fixed-term and indefinite-term employees

07 April 2021 | Contributed by [Nagashima Ohno & Tsunematsu](#)

[Introduction](#)

[Retirement allowances](#)

[Bonuses](#)

[Allowances and special leave](#)

[Comment](#)

Introduction

On 1 April 2020 amendments to the Act on the Improvement of Personnel Management and the Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers (the Part-Time and Fixed-Term Employment Act) entered into force. Article 8 of the amended act prohibits employers from creating differences in base salary, bonuses and other treatments between part-time and fixed-term employees (so-called 'irregular employees') and non-fixed-term employees (so-called 'regular employees') in light of duties, the level of responsibility and the scope of changes in their job descriptions and assignment. The amendments aim to achieve equal pay for equal work to some extent and improve working conditions for irregular employees. Small and medium-sized enterprises had a one-year exemption but since 1 April 2021 have had to comply with the amendments.

In October 2020 the Supreme Court delivered five judgments regarding differences in working conditions between fixed-term and non-fixed-term employees. In these cases, the plaintiffs claimed that their employers had violated Article 20 of the Labour Contract Act. Article 20 regulated differences in working conditions between fixed-term and non-fixed-term employees and was abolished and incorporated into Article 8 of the Part-Time and Fixed-Term Employment Act as part of the 2020 amendments.

This article outlines the Supreme Court's judgments on this matter.

Retirement allowances

In *Metro Commerce*,⁽¹⁾ the plaintiffs were fixed-term employees who had worked for the company for approximately 10 years but were ineligible for a retirement allowance as only non-fixed-term employees were eligible for the retirement allowance. The court held that such difference was not unreasonable considering the complex nature of retirement allowances and the purpose of payment (ie, to secure and retain personnel capable of performing duties as non-fixed-term employees).

One of the justices highlighted that retirement allowances must be funded over a long period and there is room to respect employers' discretion in establishing retirement allowance systems.

Bonuses

In *Osaka Medical University*,⁽²⁾ the Supreme Court concluded that the employer's practice of paying bonuses to non-fixed-term and full-time (regular) employees but not to part-time employees (the plaintiff) was not unreasonable.

The court held that the purpose of bonuses in this case was not linked to performance, but rather was used to monetarily compensate for labour worked during the calculation period, provide rewards and promote a willingness to work in the future. Bonuses were paid to regular employees to secure and retain talent.

The court held that the plaintiff's duties, as a part-time employee, were considerably lighter than that of regular employees, even though there were some similarities. In addition, there were some tasks for which only regular

AUTHOR

[Eriko Ogata](#)



employees were responsible. Regular employees also faced the possibility of personnel changes and changes in the scope of their assignments.

As such, the court ruled in favour of the employer and concluded that its differing payment of bonuses was not unreasonable given the context.

Allowances and special leave

In *Japan Post*,⁽³⁾ the Supreme Court considered three appeals. The plaintiffs were engaged in the postal service and claimed that the differences in the following between non-fixed-term and fixed-term employees violated Article 20 of the Labour Contract Act:

- year-end and new-year service allowances;
- holiday pay;
- family support allowances;
- sick leave; and
- summer and winter holidays.

The Supreme Court held that such differences in working conditions were unreasonable in light of the purpose of each element, even if there was certain differences in non-fixed-term and fixed-term employees' content of duties and scope of changes in assignments.

The court found that regular employees were paid year-end and new-year service allowances because the year-end and new-year holidays were the busiest periods for the postal service. However, fixed-term (irregular) employees who worked during this period received no allowances. The court held that this was unreasonable because the purpose of the allowances also applied to irregular workers.

The court found that holiday pay is the compensation for having worked during the busy beginning of the year despite the fact that special holidays are supposed to be granted, which is the specified premium of wages for normal work. As fixed-term employees were expected to work regardless of business fluctuation, the court held that the purpose of holiday pay as compensation for work during the beginning of the year also applied to them.

The court found that the purpose of family support allowances was to ensure regular employees' continuous employment by providing security for their life and welfare and facilitating the planning of those with dependents, as it was expected that regular employees will continue to work for a long period. The court held that the purpose of such payments also applied to fixed-term employees if they were expected to continue working for a long period.

The court found that the purpose of granting paid sick leave to regular employees was to guarantee their livelihoods and secure their continuous employment because regular employees are expected to continue working for a long period. The court held that this purpose also applied to fixed-term employees who were expected to continue working for a long period. Even though there are certain differences in the scope of duties and the scope of changes in duties and job assignments between regular and irregular employees, the court stated that it was unreasonable that there was a difference in payment for sick leave (apart from a difference in the number of days of sick leave).

The court found that the purpose of granting summer and winter holidays to regular employees was to provide them with time for mental and physical recovery, in addition to paid annual leave and sick leave. The availability and number of days of a holiday were not determined according to a regular employee's period of service. Fixed-term employees were expected to work for six months or less regardless of whether they were busy or not. Therefore, the court held that the purpose of granting summer and winter holidays also applied to fixed-term employees.

Comment

Although Article 20 of the Labour Contract Act has been abolished, the regulation has now been incorporated into Article 8 of the Part-Time and Fixed-Term Employment Act. The Supreme Court judgments regarding Article 20 of the Labour Contract Act will still be valid in the context of Article 8 of the Part-Time and Fixed-Term Employment Act.

The Japanese courts tend to consider the differences in allowances between fixed-term and non-fixed-term employees unreasonable, as long as the purpose of the allowances still applies to fixed-term employees. On the other hand, the courts tend to respect employers' discretion with respect to differences in bonuses and retirement allowances. As the amendments to the Part-Time and Fixed-Term Employment Act are now in force for all employers, employers should review the differences in working conditions between fixed-term and non-fixed-term employees and be prepared to explain the reasonableness of such differences.

For further information on this topic please contact [Eriko Ogata](#) at Nagashima Ohno & Tsunematsu by telephone (+81 3 6889 7000) or email (eriko_ogata@noandt.com). The Nagashima Ohno & Tsunematsu website can be accessed at www.noandt.com.

Endnotes

- (1) Supreme Court judgment, 13 October 2020.
- (2) Supreme Court judgment, 13 October 2020.
- (3) Supreme Court judgment, 15 October 2020.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).