

Employees' statutory rights to convert fixed-term contracts to indefinite term contracts

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Introduction

Article 18 of the Labour Contracts Act states that if an employee with a fixed-term employment contract has been continuously employed by the same employer for more than five years, the employee will have the right to convert his or her fixed-term employment contract to an indefinite term employment contract.

This right was introduced by an amendment to the Labour Contracts Act that took effect on April 1 2013. As the amendment applies only to employment contracts that commenced on or after April 1 2013, a significant number of employees became eligible to exercise this right on April 1 2018.

When can the right be exercised?

An employee can exercise the right to convert his or her employment contract to an indefinite term employment contract during the term of the employment contract that is effective when the employee's total length of service with an employer exceeds five years. For example, if an employee enters into an employment contract with a one-year term on April 1 2013 and renews his or her employment contract every year for another one-year term, once the employee has renewed his or her contract on April 1 2018, the employee will be able to exercise the right to convert his or her contract to an indefinite term contract during the term of the latest employment contract (ie, from April 1 2018 to March 30 2019).

With regard to the calculation of the five-year period, the employee must have had consecutive fixed-term employment contracts without interruption (so-called 'cooling-off periods') between the individual contracts. Notwithstanding the foregoing, in principle, cooling-off periods of less than six months will be regarded as not having interrupted the continuity of a consecutive fixed-term employment contract.

Effects of exercising the right

If the aforementioned right is exercised, the employee and his or her employer will be deemed to have entered into an indefinite term employment contract immediately after the expiration of the fixed-term employment contract that was effective when the right was exercised. Additionally, the terms and conditions of the indefinite term employment contract, other than the period of the employment contract, will be deemed to be the same as those set out in the fixed-term employment contract that was effective when the right was exercised, unless otherwise stated in the employer's work rules or other documents.

Employers may have to renew current fixed-term contracts

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Under Article 19 of the Labour Contracts Act, a fixed-term employee is entitled to have his or her employment contract renewed even if the employer refuses to do so if:

- the employee is deemed to have reasonable grounds to believe that his or her contract was going to be renewed; and
- such refusal lacks justifiable grounds.

When determining whether an employee has reasonable grounds for renewal, the courts will consider various factors, including:

- the employee's total length of service; and
- the number of renewals made in the past.

Due to this provision, after an employment contract has been renewed multiple times, an employer might not be allowed to refuse to renew the employment contract without justifiable grounds, which the courts tend to interpret narrowly. Thus, the employer may not be able to prevent the employee concerned from acquiring the right to convert his or her employment contract to an indefinite term employment contract.

Comment

If a Japanese employer has employees with fixed-term employment contracts and the employer simply continues to renew these employment contracts, employees will become entitled to become employees with indefinite term employment contracts. As this may affect an employer's personnel strategy, employers hiring employees with fixed-term employment contracts in Japan should be aware of the above provisions and ensure that such hiring and contract renewals are in line with their long-term plans.

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