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Legal issues for foreign employers when dismissing employees working in Japan

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1. The effect of an “applicable law” provision in a labor contract is limited

Some foreign companies think that Japanese labor law is not applicable to a labor contract as long as the contract specifies that the applicable law is the law of another country besides Japan. However, even if the labor contract specifies that the applicable law is the law of another country besides Japan, the mandatory provisions of Japanese labor law will likely still be applicable to an employee working in Japan. Also, foreign companies should be careful when dismissing employees, since employment under Japanese law is not “at will”, in contrast to the U.S.¹

2. Labor Contract Law, Article 16 (“dismissal of an employee requires reasonable grounds”) will likely be applicable.

Under Japanese law, generally, the applicable law of a contract can be chosen by the parties.² However, as far as the formation and effect of a labor contract is concerned, even if the contract specifies that the applicable law is the law of another country besides Japan, if an employee has shown his/her intention to an employer that a specific mandatory provision from the law of the “place with which the labor contract is most closely connected” should be applied, then such mandatory provision shall also apply.³ In this connection, the law of the place where the work should be provided under the labor contract shall be presumed to be the law of the “place with which the labor contract is most closely connected”.⁴ So, if the work is done in Japan, then Japanese law is presumed to be the law of the “place with which the labor contract is most closely connected”.⁵ Therefore, if a company dismisses an employee working in Japan, and if the employee shows his/her intention of the application of a certain mandatory provision from Japanese labor law, such as Labor Contract Law, Article 16, which provides that a dismissal requires objectively reasonable grounds, then such mandatory provision is likely to apply, even if the labor



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¹ Under Japanese law, an employee working in Japan can file a lawsuit to challenge the effect of dismissal, etc. with the court of Japan (Code of Civil Procedure, Article 3-4, Paragraph 2) and any previous agreement which chooses the jurisdiction of a court outside of Japan is not effective, in principle (Code of Civil Procedure, Article 3-7, Paragraph 6). Therefore, it is practically impossible for a foreign company to avoid the risk of a lawsuit in Japan if it dismisses an employee working in Japan.

² The Act on General Rules for Application of Laws, Article 7

³ The Act on General Rules for Application of Laws, Article 12, Paragraph 1

⁴ The Act on General Rules for Application of Laws, Article 12, Paragraph 2

⁵ Since the Act on General Rules for Application of Laws, Article 7 is a presumptive rule, if the company succeeds at overturning this presumption, the law of a place besides Japan will be considered to be the law of the place with which the labor contract is most closely connected.

contract specifies that the applicable law shall be the law of another country besides Japan.

3. Words of caution for dismissal under Japanese labor law

Under Japanese Labor Contract Law, a dismissal is invalid if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms (Article 16). Accordingly, companies need to consider whether the dismissal will be acceptable and valid under Japanese labor law, in comparison with previous court cases and in light of the specific situation. In addition, if a company intends to terminate an employee by disciplinary dismissal, it has to check not only whether the rules of employment (an employer's internal rule stipulating the conditions of employment etc. which is required to be prepared under Japanese labor law) allows disciplinary dismissal on the grounds of the specific case, but also whether the disciplinary dismissal is consistent with other cases of disciplinary actions in the company. Furthermore, companies should note that under Labor Standards Law, Article 20, notice of dismissal needs to be given at least 30 days before the intended dismissal date, unless the employer makes a payment of adequate allowance in lieu of such notice. Practically, in order to avoid the risk of legal disputes, companies often encourage employees to leave voluntarily, implying to employees the grounds of a dismissal, instead of giving formal notice of dismissal. In any case, companies wishing to dismiss an employee should get advice from lawyers familiar with Japanese labor law and practice, since there will likely be many important legal considerations.