

Japanese Employment Law Update



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Recent Supreme Court Decisions Regarding Equal Work, Equal Pay

1. Introduction

In October 2020, the Supreme Court of Japan issued several important rulings in relation to the “Equal Work, Equal Pay” policy introduced by the government and implemented by various amendments to Japan’s labor laws. In the Osaka Medical and Pharmaceutical University case and the Metro Commerce case, the differences in bonus and retirement allowance granted to regular employees and to non-regular employees were recognized as “not unreasonable.” On the contrary, in a series of three separate actions brought against Japan Post, the Supreme Court found that non-regular employees’ lack of year-end/new-year holiday allowance, holiday work premium for performing work during the new-year holidays, paid sick leave for personal injury, summer/winter holidays, and family allowance – all of which were received by regular employees -- to be unreasonable. This newsletter provides an overview of these recent important judgments.

2. Concept of Equal Work, Equal Pay in Japan

The Act on Improvement etc. of Employment Management for Part-Time and Fixed-term Workers (the “**Part-Time/Fixed-Term Employment Act**”) prohibits employers from treating regular workers and non-regular workers unequally or in an unreasonable manner with regard to compensation and other working conditions. Whether disparate treatment is “unreasonable” is to be determined comprehensively by considering (i) the duties of the employees, (ii) the weight of their responsibility ((i) and (ii) collectively considered as “Content of Duties”), (iii) the scope of changes in the Content of Duties and reassignments, and (iv) other circumstances.

3. Overview of the Supreme Court Judgments

(1) Osaka Medical and Pharmaceutical University Case (October 13, 2020)

Plaintiff entered into a fixed-term employment contract with an employment term from January 29, 2013 to March 31 of the same year, and worked at the defendant university as a part-time employee. Thereafter, the contract was renewed three times, each for a period of one year, and Plaintiff resigned on March 31, 2016. Plaintiff claimed that the discrepancies in bonus and wages for being absent for personal illness, etc. were illegal, and sought damages in the amount equivalent to the wage difference based on tort. We will focus on the bonus element of the claim in this overview.

The Osaka High Court held that since the bonus was computed solely based on base salary, it was in essence compensation for working during a specific calculation period. Thus, not paying any bonus to part-time employees who were working full-time during the same period was unreasonable, and 60% of the standard payment for regular employees should have been paid to such part-time employees.

The Supreme Court reversed the High Court's holding, finding that, in light of the wage structure (where base salary generally increased in accordance with service years), the expected ability needed for the duties and the degree of responsibility of the regular employees, the purpose of the university's bonus compensation program was to retain personnel who could perform the duties of regular employees and not simply to compensate all employees for working. The Supreme Court then found, after considering the aforementioned elements to determine whether differences between regular and non-regular employees resulted in such treatment being unreasonable, that not paying bonus to a part-time employee was not unreasonable.

(2) Metro Commerce Case (October 13, 2020)

In April 2004 (X2) and August 2004 (X1), Plaintiffs entered into fixed-term employment contracts with defendant, a subsidiary of Tokyo Metro, as "Contractor B" type employees who worked at kiosks selling various items in Tokyo Metro subway stations. The initial contract term was for one year, which was then repeatedly renewed. On March 31, 2014 (X2) and March 31, 2015 (X2) when they reached the age of 65, respectively, they retired. Plaintiffs sought damages in tort, claiming that the refusal of the defendant company to provide them with a retirement allowance – which regular employees were granted – was illegal.

The Tokyo High Court found the discrepancy to be unreasonable, considering that retirement

allowance is generally designed to reward employees for long years of service, plaintiffs worked for about 10 years until they reached retirement age, and a retirement allowance had been introduced for “Contractor A” type employees in addition to regular employees. The High Court found that the plaintiffs should have received an amount equivalent to a quarter of the bonus allowance to which a regular employee would have been compensated.

Once again, the Supreme Court reversed. The Supreme Court concluded that the company’s retirement allowance was a combination of deferred pay as well as rewards for continuous service, and was paid for the purpose of retaining personnel who are capable of performing the duties of a regular employee. The Court then considered the aforementioned elements, and ruled that not paying the retirement allowance to these plaintiffs was not unreasonable. In this case, the Supreme Court’s decision was accompanied by a dissenting opinion by one judge stating that the original decision should be affirmed and a supplementary opinion by two judges stating that although there may be cases where not paying retirement allowance may be unreasonable, the discretion of companies in designing their retirement allowance systems should be respected.

(3) Japan Post Cases (October 15, 2020)

Plaintiffs respectively entered into fixed-term employment contracts with the defendant company and claimed damages based on tort, alleging that the differences in the lack of year-end/new-year holiday allowance, holiday work premium for working during the new-year holidays, paid sick leave, summer/winter holidays, and family allowance were illegal. The Supreme Court considered each of these claims as follows.

(a) Year-End/New-Year Holiday Allowance

The year-end/new-year holiday allowance was found to be consideration for the special work performed at the busiest season of the year, being paid uniformly to regular employees regardless of the content of their duties. Consequently, the Court found that the purpose of year-end/new-year holiday allowance applied similarly to contract employees such as plaintiffs.

(b) Holiday Work Premium for Working during the New-Year Holidays

This premium was paid to regular employees who worked during the new-year holidays although they were granted special leave; contract employees were not

granted special leave and were not eligible for this premium. The Supreme Court stated that the purpose of providing this holiday pay also applied to plaintiffs as they were expected to work constantly regardless of season, rather than a short period of time only during a busy season.

(c) Paid Sick Leave

The company granted paid sick leave up to 90 days to regular employees who suffered personal injuries or became ill. The Supreme Court noted that the purpose of this leave was to ensure continued employment of regular employees who were expected to work continuously for a long period of time, by allowing them to receive treatment while protecting their livelihood. The Court concluded that this purpose also applied to contract employees who were expected to work continuously to a certain extent.

(d) Summer/Winter Holidays

Summer and winter holidays, apart from annual paid leave and sick leave, were determined to be granted for the purpose of allowing employees to recuperate by taking a break from work. As with the other benefits, the Supreme Court concluded that this purpose also applied to plaintiffs and other contract employees who were expected to work constantly regardless of season.

(e) Family Allowance

Family allowance was provided to regular employees, the Supreme Court stated, because they were expected to work continuously for a long time, and the purpose of the allowance was to ensure their continuous employment by assisting them to support their family and making it easier for them to have long-term plans. The Supreme Court concluded that this purpose also applied to contract employees who, to a certain extent, were expected to work continuously.

As a result, based on its analysis, the Court ruled that the differences in each treatment as applied to the plaintiffs were unreasonable, even having taken into account the differences in the Content of Duties and the scope of changes in the Content of Duties and reassignments compared with those of regular employees.

4. Impact

The Supreme Court decisions in the **Japan Post Cases** indicated that disparity in benefits could be considered unreasonable even though the Content of Duties of the contract employees and regular employees was different. Companies should be especially careful when paying allowances that do not relate to the Content of Duties such as special holiday allowance, family allowance and housing allowance.

In addition, while the Supreme Court determined that the differences in bonus and retirement allowance was not unreasonable in the **Osaka Medical and Pharmaceutical University Case** and **Metro Commerce Case**, it should be noted that the scope of these decisions does not extend to bonuses and retirement allowances in general. Businesses having fixed-term employees who are working continuously should review the differences in their compensation structures, including bonus and retirement allowance, compared to regular employees, and whether the differences can be justified by an employment policy that is more concrete than an abstract need to attract and retain talent.

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