



# Overview of the Japanese Mandatory Retirement Age System

Yuriko Asada

yuriko.asada@ohebash.com

## I. Introduction

In Japan, where the population is rapidly aging, promoting employment stability and opportunities for elderly employees has become a critical policy focus. While Japanese law allows employers to adopt a mandatory retirement age system, whereby an employment contract automatically terminates when the employee reaches a certain age, some legal restrictions apply to the mandatory retirement age that can be set by employers.

The 2012 amendment to the Act on Stabilization of Employment of Elderly Persons (the “Act”)<sup>1</sup> requires employers to maintain the employment of employees until the age of 65, but currently, employers are allowed to limit the range of employees eligible for continued employment until the age of 65 under certain transitional measures. However, the said transitional measures will end in March 2025, and from April, employers will be obligated to “employ all applicants” among their employees who wish to continue their employment until the age of 65.

This article outlines key aspects of the laws and regulations on the mandatory retirement age system in Japan that employers should be mindful of.

## II. Laws and Regulations on the Mandatory Retirement Age

### 1. Duties to Secure Stable Employment

A mandatory retirement age system is legally valid if it is made part of the labor contract through the work rules. Although not required by law, most Japanese companies have adopted a mandatory retirement age system. According to the 2022 General Survey on Working Conditions of the Ministry of Health, Labour and Welfare (“MHLW”), 94.4% of companies of all sizes and 99.3% of companies with a thousand or more employees have such system.

Under Article 8 of the Act, where the employers have set the retirement age of their employees, such retirement age should not be lower than 60. According to one court decision, a violation of this rule would render the mandatory retirement age system invalid and void.<sup>2</sup> With regard to the retirement age, there should be no distinction between nationalities.

Also, under Article 9(1) of the Act, where employers have set the retirement age at less than 65 years old, such employers must take any of the following measures to secure the stable employment of their employees until the age of 65:

1. Act No. 68 of 1971, as amended by Act No. 78 of 2012.

2. Fukuoka High Court, Miyazaki Branch, Judgement, November 30, 2005, Rodo Hanrei No. 953, 71.



- (a) raise the mandatory retirement age;
- (b) introduce a continuous employment system (i.e., a system that requires the continuous employment of elderly employees beyond their retirement age if they so desire); or
- (c) abolish the mandatory retirement age.

According to the MHLW's report as of December 22, 2023 (the "**Report**"), almost all Japanese companies have already implemented one of the above measures.

Additionally, under Article 10-2(1) of the Act, where employers have set the retirement age at 65 years old or over but under 70 years old, or a continuous employment system (except to continue to employ elderly employees until they reach the age of 70 or over), employers must endeavor to take any of the following measures to secure the stable employment of their employees until the age of 70:

- (a) raise the mandatory retirement age;
- (b) introduce a continuous employment system for those at the age of 65 years old and over; or
- (c) abolish the mandatory retirement age.

According to the Report, 30% of Japanese companies have already implemented one of the above measures.

## 2. Continuous Employment System

There are two main systems for continuous employment, namely, re-employment and employment extension. The former involves allowing employees to first retire upon reaching the mandatory retirement age, and then rehiring them. They may be re-employed as full-time, part-time or contract-based employees. Typically, re-employment contracts are for a one-year period, with annual renewals.

In contrast, the employment extension system enables employees to continue working without retiring once

they reach the mandatory retirement age, thereby maintaining their original employment contract without interruption.

Based on a survey, 63.9% of companies have only adopted the re-employment system, while 10.5% of companies have only adopted the employment extension system. Notably, 19.8% of companies have adopted both systems.

Even if a company adopts a continuous employment system, the company may not continue to employ an employee who has reached the mandatory retirement age if there are grounds for his or her dismissal or retirement (except on account of age) as provided in the work rules. However, it should be noted that there must be objectively reasonable grounds for not providing continued employment, and such grounds must be socially acceptable.<sup>3</sup>

## III. Reduction of Wages After Reaching the Mandatory Retirement Age

If an employee's role, responsibilities and options for assignment changes remain the same before and after re-employment as a fixed-term employee (e.g., one year) upon reaching the mandatory retirement age, then a reduction in wages after re-employment could violate Article 9 of the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers (the "**Part-Time and Fixed-Term Employment Act**").<sup>4</sup> Therefore, such practice should be avoided.

Specifically, Article 9 of the Part-Time and Fixed-Term Employment Act prohibits differing employment conditions for fixed-term employees if their job duties and potential changes in job description and assignments are the same as those of regular employees. "**Job description**"

3. Guidelines for the Implementation and Operation of Measures to Secure Employment of Elderly Persons.

4. Act No. 76 of 1993, as amended by Act No. 71 of 2018.



refers to the nature of duties and the associated level of responsibility, which includes the scope of authority, role expectations in achieving outcomes, required responses in urgent or unexpected situations, and the level of performance targets. “**Changes in job description**” include alterations due to reassignments or job orders, while “**changes in assignments**” indicate personnel transfers between positions.

Thus, it is generally advisable to adjust the employee’s role, responsibilities or options for assignment changes if the employer wishes to make a reduction in wages after re-employment to justify such reduction.

Please also note that Article 8 of the Part-Time and Fixed-Term Employment Act prohibits establishing unreasonable differences in the base pay, bonuses or other payments between fixed-term employees and regular employees, considering the relevant circumstances, including the roles, responsibilities and options for assignment changes. Therefore, it is essential to ensure that any changes in payment after re-employment with a fixed term are limited to reasonable changes considering the change in such circumstances.

#### IV. Concluding Remarks

The current laws and regulations on the mandatory retirement age system in Japan may continue to change as the need to secure stable employment for elderly employees increases. It is important to continue to pay attention to any such further amendments and related court decisions interpreting them.

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