

Equal Pay for Equal Work in Japan

As part of the Work Style Reform Bill enacted in 2018, Equal Pay for Equal Work regulations came into effect in April 2020 (April 2021 for small/medium sized companies) aiming to improve unreasonable disparities in working conditions between non-regular employees (part-time employees or fixed-term employees) and regular employees. In 2020, the Supreme Court ruled on five cases filed by fixed-term employees regarding differences in wages and benefits. This article provides an overview of Equal Pay for Equal Work in Japan considering the judgements of the five cases and the background of the Japanese employment system.

■ Japan's Employment System and Recent Changes in the Labor Market

A practice of long-term employment until mandatory retirement has been a major characteristic of Japan's employment system. Companies hire new graduates who have no specific skills or work experience and train them to develop their work ability to perform various jobs. This traditional employment system is changing to meet the need for a more flexible labor market in the period of economic recession since the 1990s. As one of the trends, the number of non-regular employees has been increasing and the difference in treatment of working conditions between non-regular employees and regular employees has become a serious social problem.

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The traditional wage system under the life-time employment system is based on seniority and ability to perform job duties developed by experiencing various jobs within a company. It can be called an ability-based wage system. Thus, it is not easy to adopt the Western-style Equal Pay for Equal Work system where wages are based on the specific job regardless of the length of the employment period, regular/non-regular, etc. In Japan there is no law that directly prescribes "equal pay for equal work". Article 20 of the Labor Contract Act (Prohibition of Unreasonable Labor Conditions by Providing a Fixed Term) was transferred to the Part-Time and Fixed-Term Work Act (Act) in April 2020 and prohibits *unreasonable* differences in working conditions between regular employees and non-regular employees and states how to judge whether or not the treatment is unreasonable. The Act does not uniformly deny any difference, it denies an *unreasonable* difference. In this sense, it can be said that Japan's Equal Pay for Equal Work concept includes "balanced treatment".

■ Summary of the Five Supreme Court Cases

The judgements in the five cases of Osaka Medical and Pharmaceutical University, Metro Commerce, Japan Post Tokyo, Japan Post Osaka and Japan Post Shiga were issued in October 2020. The Supreme Court judged that non-payment of bonus and retirement allowance to fixed-term employees is not unreasonable considering that the purpose of those payments for regular employees includes deferred payment of compensation, reward for long service or encouragement for future contribution. On the other hand, the Court judged that differences in the treatment of granting sick leave, wages for new-year holiday work and family allowances would violate the law, considering it reasonable grounds that the non-regular employee has worked for many years by renewing the fixed-term employment contract, and that those payments are primarily aimed at improvement of employees' health and welfare conditions regardless of their assignment, scope of responsibility, length of service years, etc.

■ Conclusion

Even when courts judge a case based on the Act, each judgement will be made on a case-by-case basis, considering the nature and purpose of specific benefits and various circumstances of each case. Defendants in the above five cases are large-sized companies adopting the long-term employment system. Courts may issue a different judgement in the case of small/medium sized companies. Thus, it is important to recognize the above five cases as examples and to not assume those judgements are easily applicable to your company. We will need to see further similar cases until the case law is established.