

## Employee dismissal practice in Japan

Let's assume that a Japanese Company A (the number of employees is 15) is going to dismiss an employee X due to his/her unfavorable performance. Following the Japanese Labor Standards Act, company A can simply dismiss X by giving 30 days pre-notice or paying an average salary equivalent to 30 days without violation. The dismissal regulation in Japan seems not strict when compared to international standards. However, even if company A satisfies the Act, it is not always legally effective; the reality in Japan is more challenging and difficult.

First of all, company A, whose employees are 10 or more, should file written work rules with the Labor Inspection Office, in which the terms and conditions of employee dismissal must be clearly defined. Company A should make the work rule available for all employees to explain such dismissal terms and conditions.

Secondly, the judicial precedent has been established that a dismissal with no objectivity or rationality, or socially conventional acceptance, is invalid. In fact, the same rule is regulated in Article 16 of the Labor Contract Act. Unless company A meets such conditions, the dismissal would be deemed invalid by a court.

In order to avoid such court decision, company A should conduct the following measures:

1. Prepare a written record to describe X's negative performance objectively;
2. Prepare a written record to describe skills education/training conducted and X's potential for improvement;
3. Provide X other appropriate job opportunities and dismissal avoidance plans.

It is very crucial to provide such education, training and job opportunities again and again, and to describe what were provided to X in a written record.

There is no legal obligation to pay severance pay based upon the length of services in Japan. In cases of dismissal, paying an average salary equivalent to 30 days is common, but with no extra payment. There are some restrictions for dismissal under certain conditions, such as injury, sickness and maternity leave.

It is recommended to consult with a "Sharoshi", a Social and Labor Insurance Attorney, a unique professional qualification in Japan, before a lawsuit.