

## General Information

**M**y contract and the laws referred to in this booklet are different. Does the law or my contract take precedence?

**Answer** The standards set in the Labour Standards Law are minimums and no employer can offer you less than these established standards (**Article 13**). On the other hand, if your contract offers you more than what is stated in the law your employer cannot lower your working conditions using the law as an excuse (**Article 2**).

**C**an an employer offer different working conditions or pay based on someone's nationality, sex, creed, or social status?

**Answer** The law states that workers can not be discriminated against on the basis of the above, and this includes wage discrimination. Unfortunately, the law on discrimination is very vague, and companies that discriminate against women and foreign workers get around the law by putting them in different job categories and then claiming that pay differentials are based on job category, not sex or nationality. (**Articles 3 & 4**).

**W**hat can the Labour Standards Office do for me and where should I go if I'm experiencing problems? (Chapter 11)

**Answer** Before approaching the Labour Standards Office you should contact the union. Some problems can be dealt with easily by the union calling the employer. In cases where this is not possible the union can help you relay information to the Labour Standards Office and intervene if the Labour Standards Office is unwilling to do anything.

The Labour Standards Office that you should go to depends on the location of your workplace. The Chuo Labour Standards Office in Osaka has English consultation services. Please call ahead to make an appointment.

People often confuse the Labour Standards Office with the Labour Commission. The best way to understand this is to think of the Labour Standards Office as dealing with work related problems in regards to the Labour Standards Law (unpaid wages, paid holidays, etc.) and the Labour Commission as dealing with violations of the Trade Union Law (union busting, refusing negotiations).

**I** went to the Labour Standards Office to complain after my company failed to pay me for time off as stipulated in the law. After a call from the Labour Standards Office I got my pay but I got fired. Can the Labour Standards Office help me now?

**Answer** It is illegal to fire someone or treat them disadvantageously for reporting a violation of the Labour Standards Law to the Labour Standards Office and the Labour Standards Office can order a company to rehire (just like they order companies to pay for paid holidays) if you are fired for such a reason (**Article 104**).

However, companies do not always give their real reasons for firing someone. If you're fired, the very first thing you should do is contact the Union.

**M**y employer told me that since I'm a foreigner the Labour Standards Law and other relevant labour laws don't cover me. Is this true?

**Answer** No. All workers in Japan, regardless of their status in Japan, are covered by all labour laws (**Article 8**).

**M**y employer boss said that we are going to have an election for a workers' representative at my workplace. What's this all about? (**Article 90**)

**Answer** This usually doesn't mean that your company is going to introduce democracy into your workplace but often means that your employer is going to use a workers' representative in order to deprive you of some of your legal rights.

The dangers of having a workers' representative (especially one that is picked by the employer) is that you may lose your rights to some paid holidays and you could end up in a situation where mandatory overtime is required. A workers' representative has a right to sign agreements with the company over these two issues which means that you may not have full access to your paid holidays (half of the paid holidays can be set if the workers' representative agrees, otherwise all your paid holidays are flexible) and that you could end up in a situation where the workers' rep also signs an agreement allowing for overtime (if there is no agreement, a company may not have any overtime past 40 hours per week).

The best kind of workers' representative is a representative elected properly by you and that means a union. With a union you decide if you want to allow overtime or give away some of your holidays (this is because a union may act in the place of a workers' representative).

If an election has already been held at your workplace, please document it and let us know about it. Your company may be in breach of the proper procedures which could render the election invalid.

## **Contracts**

**I** don't have a written contract. Isn't this illegal?

**Answer** No. Both written and oral contracts are valid in Japanese law. On the other hand, the employer is legally obligated to give full-time workers a 'hiring-notice' document which must include the employer's name, the period of employment, wages, and so on. In the case of part-time

workers, the Labour Ministry encourages the same practice. Oral contracts are often a source of trouble, and the union strongly recommends all employees to ask for a written contract at the time of hiring. Make sure that the starting date of the contract is correct. Some employers begrudgingly give contracts several months after you start work, without backdating the contract. This means you could lose out on paid holidays and Unemployment Insurance. The contract should be signed by the employee and the employer or his representative. If labour troubles arise later on, written contracts could become extremely important - at the Labour Standards Office, Unemployment Insurance Office, Labour Commission, and in the courts.

**W**hat is the maximum length of a labour contract?

**Answer** The maximum, legally recognized length of a contract is 3 years. There have been some recent changes to the Labour Standards Law which allow some "specialists" to have up to a five year contract but language industry and most other education workers are not included in this group.

**W**hat things should be included in my labour contract with my employer?

**Answer** Your labour contract must include the following: the length of the contract, wages, and set working hours. If your contract and actual working conditions differ you may cancel your contract immediately (**Article 15**).

The Labour Standards Law Ordinances also lay down that the methods for deciding on, calculating and paying wages, must be clearly stated in a written document delivered to the worker.

There is also a stipulation in the law that states that if you moved residence in order to start a new job and then your actual working conditions are different from the stated working conditions, you may quit and if you return home within 14 days the company is obligated to pay your way home. This would be the case for someone working at a school that recruits overseas. As far as the General Union knows, this law has never been tried with foreigners returning to their home countries. If you're in this situation, let us know (**Article 15**).

Furthermore, based on a new ordinance, employment contracts must now state whether they are renewable, non-renewable, or renewable based on performance or other criteria.

**O**utside of my contract, are there any other workplace rules that I should know about? (Chapter 9)

**Answer** Yes. All workplaces with over 10 employees must have working rules which are available for all workers to see and they must also be filed at the district Labour Standards Office. Not only must these rules exist and be made available to all workers, but the comment of either a trade union or a workers' representative must be attached and registered at the

Labour Standards Office.

The things that must be included in working rules are as follows: working hours, overtime regulations, wage calculations, wage payment dates, and all procedures for discipline, fines, or firings.

Also, because working rules are to be made accessible to all employees your employer should provide the rules in English (Article 106).

## **Firing, Quitting & Contract Non-Renewal**

**I** want to quit my job. How much notice do I have to give?

**Answer** This question is not covered under the Labour Standards Law but is based on precedents set in civil courts. It all depends on whether you have a limited or an unlimited term contract, and if you have a limited term contract what contract year you are in.

Unlimited Term Contract --- two weeks notice is sufficient.

First year of a one year contract --- you can quit at either the end of the contract or quit by following the procedures laid out in the contract for quitting. If you don't follow these rules your company has a theoretical claim against you but can only act on this by using civil court procedures.

Second year (plus) of a renewed one year contract --- two weeks notice could be sufficient in most cases.

The union recommends that you try to follow your employment contract as much as possible, as this is what we expect from employers.

**I** want to quit my job before the end of my contract and now my employer won't pay me this month's wages. He also wants me to pay a fine of one month's salary. Is this allowed?

**Answer** No. Your employer cannot set a predetermined fine for quitting during your contract (**Article 16**). Furthermore your employer must provide you with all outstanding wages, tax forms and a certificate of employment within seven days of you leaving your job (**Article 23**).

If this happens, it is very easy to retrieve both the fine and the back wages using the union's expertise and the Labour Standards Office.

If you do quit your job without the proper notice you may be liable for damages, but the company must actually prove business damage in a civil court for you to have to pay any damages regarding your quitting. In the last 15 years we have only seen one employer sue for damages relating to an employees sudden resignation and the employer lost the case.

**M**y employer fired me suddenly. Am I entitled to anything?

**Answer** This is a very difficult question to answer and includes many different factors; the Labour Standards Law, civil court precedents, Ministry of Labour guidelines on firings, and Japanese unions' perspectives on firings. Before we try to answer this question it is important for you to understand one important piece of advice. If you feel that you have been unfairly fired, don't sign anything (it may be a statement saying that you quit) and call the union immediately.

The Labour Standards Law states very simply that except in the most extreme of circumstances (you punch your boss, an earthquake destroys your workplace), an employer must give 30 days' notice or thirty days pay in lieu of notice. If you are fired, it is relatively easy to get this (Articles 19, 20).

Furthermore, the latest revision to the Labour Standards Law (Article 18-2) states, "A dismissal shall, where the dismissal lacks objectively rational grounds and is not considered to be appropriate in general societal terms, be treated as a misuse of that right and invalid." However, in discussions with Labour Bureau officials, we were told that even though this was the new law, the Labour Standards Office is not in a position to judge whether a dismissal is appropriate or not. We have yet to see whether this part of the law will improve protection against unfair dismissals.

The part of the law that is difficult are the many Japanese court rulings and Ministry of Labour guidelines on the propriety of firing someone. In Japan it is very difficult to fire someone in the middle of their contract (or workers who have an unlimited term contract) or someone with a one year contract which has already been renewed many times. Very difficult means that in a civil court, unless the firing is done for "socially acceptable reasons" (which is up to a judge to decide), a firing could be overruled.

The problem with these precedents and guidelines is that the Labour Standards Office either won't enforce them or in many cases is powerless to do so. So unless you are prepared to go to civil court there is very little an individual can do to stop an unfair firing.

If you are fired call the union immediately and we can examine your situation. As stated in the Trade Union Law Q & A, a union can negotiate anything with an employer even if you are the only union member at your company.

On the other hand if you believe you have been fired for your union activity, we have many other ways to help you outside of the Labour Standards Law. Please see the General Union Q & A on the Trade Union Law.

If you are fired, remember one very important thing: tell the company that you don't accept their decision, offer to continue working, and make it clear that you are willing to work. Don't sign anything and don't try to one up your company by stating that you quit. The reasoning for this is that if you accept your firing or if you say that you quit, legally you may be accepting it and it will make it more difficult to deal with this in the future.

**L**ast week my boss fired me and told me to leave. He said he would pay the 30 days' dismissal allowance. Today he called me and ordered me back to work from tomorrow for the remainder of the 30-day period. He said I'm still an employee, and that I must obey him. Is he right?

**Answer** No. If he wants you back to work, he must withdraw the firing completely. The employer-employee relationship ended on the day he fired you; the 30-day dismissal allowance is not a month's salary, it is an allowance which must be paid within 7 days of the firing (**Article 23**). The only problem here is proving that he really told you not to come to work again. He may claim later that he simply gave you 30 days' notice of dismissal. If you have documentary evidence, or a tape-recording, you will almost certainly win your case through the Labour Standards Office or in a Small Claims case at court.

**I**t is stipulated in my contract that I can be fired without notice during a three month probation period. What does the Labour Standards Law say about this?

**Answer** Regardless of the length of probation written into your contract your employer cannot fire you without notice (see section regarding firings) after you have completed 14 days of your contract. During the first 14 days your employer may fire you without notice (**Article 21**).

**C**an my employer not renew my contract without offering me any reasons?

**Answer** There is a new ordinance attached to Article 14 of the Labour Standards Law in regards to contract non-renewals. The Labour Bureau has been explained it to the General Union like this:  
In cases of contract non-renewals after the second contract has been signed, the employer must give a reason for the non-renewal if asked. Also, employers should now give 30 days notice for non-renewal prior to the end of such a contract. Unfortunately, these are only ordinances and when asked whether they were enforceable by the Labour Standards Office, officials answered that they didn't know.  
Civil Law does deal with this issue but the only way to use this law for an individual is to sue the employer. Past civil rulings have said that a one year contract worker who has been renewed several times should be treated like a worker on an unlimited term contract and therefore an employer must have proper reasons for dismissal (non-renewal). In the past the General Union has been able to deal with this issue inside and outside of courts.

## Wages

The company I work for claims that they are having financial problems and therefore can't pay our salaries on time. Is this allowed?

**Answer** No it isn't. The law states that salaries must be paid at a predetermined time each and every month (Article 24). The problem again is that the Labour Standards Office will do very little about this especially if the company offers another date for payment. You should never take the late payment of wages lightly. Most workers try to be understanding about their employers' financial state but our experience shows that late payment of wages is most often a sign that your employer is not experiencing a minor problem but rather a very big problem that may lead to bankruptcy. It is very important that the Labour Standards Office be informed of such a problem even if you only report it without asking for action regarding the problem. This is so that if you return to the Labour Standards Office in the future for a consultation over the matter in the future, the case will already be documented and the Labour Standards Office won't deal with this as a first time case (which means they may treat the issue lightly).

My employer sent us home early from work the other day because there wasn't any work to do and now he won't pay us for this time. Is the employer obligated to pay my wages during this period?

**Answer** Your employer is obligated to pay 60% of your wages if they close the enterprise or do not allow you to work during your scheduled time (Article 26). In some cases, such as your school being destroyed in an earthquake, the law does not apply.

## Overtime, Lateness, Rest Periods and Days Off

What are the maximum number of working hours I can be made to work, and is there any kind of premium if I work over these hours? (Articles 32, 36, 37, 38)

**Answer** The maximum hours of work that you can be made to work is 40 over six days. Anything over this must be voluntary and even voluntary overtime work has a limit which is set by ordinance. This ordinance allows for overtime of up to 5 hours per week. Work over forty hours must be paid at a rate of 125% of your basic salary and all work between 10pm and 5am must be paid at 135%. Work on your designated rest day (one day per week) must also be paid at the rate of 135%. Employers must also have what's called an "Article 36 Agreement" which is signed by either a trade union or a workers'

representative. Without this agreement, which must be signed by either a trade union representing over 50% of the work force or a workers' representative, overtime, even voluntary, is not allowed. This agreement not only sets the amount of overtime but also sets how overtime is calculated (i.e. monthly, weekly, yearly). Please see the section on workers' representatives.

Furthermore, if you work over the number of hours stated in your contract, but less than 40 hours, you should be paid for this time (though not at 125%). In recent complaints filed by the union at the Labour Standards we have come to understand that teachers whose working hours start and/or end at the same time as their first and/or last lesson may be entitled to overtime pay. If you are in this situation, please contact the union.

**C**an I be fined for being late?

**Answer** First we must clarify what a fine is. For example, if you came to work 5 minutes late and your employer didn't pay you for those 5 minutes, this would not be a fine. A fine is the amount subtracted from your pay over and above the deduction for the time you were late.

Even though the General Union considers fines to be unfair, they are legal if they fall within certain limits. The fine for one instance of lateness cannot exceed half a day's pay, and the total fines in a month cannot exceed 10% of your monthly salary (**Article 91**).

The calculation for a half day's pay is as follows:

**Total Salary for the three months preceding the fine ÷ the total number of days in the three months preceding the fine × 0.5**

One important factor when deciding if your company has the right to fine you (or suspend you without pay) is whether your company has properly registered working rules (please see the question on working rules). If your company doesn't have working rules they may not be able to fine you for lateness. Moreover, courts have ruled that procedural fairness is also necessary. A minimum condition is that the penalized person be given the opportunity to defend themselves. If this is not allowed, the fine could be ruled an 'abuse of the right to impose discipline'.

**H**ow many hours can I be made to work without a break?

**Answer** Japanese law does legislate break time which a company must give their employees (even though it's unpaid). If your shift exceeds 6 hours, you must be given a forty-five minute break. For a shift exceeding 8 hours you must be allowed a one hour break (**Article 34**).

**W**hat are the laws about sick days, days off, and national holidays in Japan?

**Answer** Regarding sick days and national holidays there is no law (though having national holidays off is the norm), and you must have at least one day off per week (**Article 35**).

Your company is required by law to offer you a set number of flexible holidays based on the number of years service (days to be used at your discretion). Part timers are also covered by this law and their paid holidays are based on the number of days worked per week and the length of service (**Article 39**). Please see the chart below for a clear breakdown of days owed to you.

When you take time off your are paid the following for the day:

Full time salaried employee: For the number of hours you would have normally worked.

Part timers: based on either of the following formulas depending on which is higher:

Last 3 months total wages  $\div$  49 days  $\times$  0.6  $\times$  (number of days)= Xyen

Last 3 months total wages  $\div$  92 days  $\times$  (number of days) =Xyen

The paid holidays owed to you by your company are separate from the set holidays offered by the company (Obon, New Years). In most cases, days set by the company cannot be subtracted from your own personal holidays but there are exceptions (look at the section on workers' representative).

Days worked per week/year	Years Worked						
	0.5	1.5	2.5	3.5	4.5	5.5	6.5
5 days or 30 hrs/week	10	11	12	14	16	18	20
4 days/ 169-216 days	7	8	9	10	12	13	15
3 days/ 121-168 days	5	6	6	7	9	10	11
2 days/ 73-120 days	3	4	4	5	6	6	7
1 day/ 48-72 days	1	2	2	2	3	3	3

## Women

**D**oes the Labour Standards Law say anything about menstrual leave?

**Answer** The law states that if a woman is unable to work during menstrual periods an employer must grant a request for time off (**Article 64**).

**D**oes the law provide any time off for maternity leave?

**Answer** Yes. A company, if requested, must grant pregnant women six weeks of leave before giving birth (ten weeks in the case of twins) and eight weeks after child birth. (**Article 65**) Also, there are stipulations in the law which do not allow companies to designate heavy work or work that is injurious to the pregnancy, childbirth or nursing (**Article 64-5**).

A woman with a child under the age of one year is also allowed two thirty minute breaks (outside of regular break time) to nurse their child (**Article 67**).

Furthermore, you may also be able to receive payments for your time off work and the costs associated with childbirth through on your enrolment in Unemployment Insurance and Health and Pension Insurance.

After 8 weeks of maternity leave, you may be eligible for further leave under Child Care Leave laws. Contact the General Union for more details.