

# Points of Labor Contract Act

**The Labor Contract Act came into effect on March 1, 2008**

With the diversification of employment formats and laborers' working conditions being decided and changed individually, individual labor disputes are increasing. The improvements of formalities have been promoted with the enactment of **Act on Promoting the Resolution of Individual Labor-Related Disputes** in 2001 and the **Labor Judgment System** in 2006 as a means of resolution of disputes other than trial system. But there has been no law regarding **civil rules** about labor contract to settle such disputes.

Under the circumstances, the **Labor Contract Act** was enacted in December 2007 and basic rules of the labor contract were clarified in an understandable way.

It is expected to prevent disputes and stabilize the individual labor relations while protecting workers.

## **To employers and workers**

This provides explanations of what to keep in mind regarding labor contract in accordance with the articles of Labor Contract Act in each situation of labor relations.

We hope employers and workers discuss matters with a full understanding of the points and contents of Labor Contract Act and work convinced and without anxiety through mutual understanding and cooperation.

### The definition of "worker" in the Labor Contract Act

In case a person works under the control and supervision of an employer and gets paid for his/her labor, he/she shall be a "worker" to whom the Labor Contract Act applies. (Article 2-1)  
→As to contractor or delegated worker, if he/she works under the control and supervision of an employer and get paid for his/her labor, he/she shall be a "worker".

## 1. Basic rules of labor contract

### ■ The principle of labor contract

- ◎ In conclusion and change of labor contract, a worker and an employer have to
  - ① reach an agreement on **equal footing** in principle. (Article 3-1)
  - ② consider **balance of treatment**. (Article 3-2)
  - ③ consider **work-life balance**. (Article 3-3)
  
- ◎ Workers and employers must
  - ④ act **faithfully** and **sincerely**. (Article 3-4)

⑤ not **abuse rights**. (Article 3-5)

■ **Both an employer and a worker have to abide by the labor contract. It is important to clarify contents of the contract to avoid troubles.**

◎ An employer has to **promote worker's understanding** of the contents of labor contract. (Article 4-1)

▶ for example, by making detailed explanation for workers about the labor contract.

◎ It is preferable that an employer and a worker **confirm the content of labor contract in writing** (including items regarding fixed-term employment contract). (Article 4-2)

▶ for example, by issuing a document stipulating working conditions to a worker after negotiation between labor and management.

▶ As to fixed-term employment contract, matters of renewal of the contract should be clarified, such as whether the contract will be renewed at the expiry of the term of contract or under what circumstances the contract will be renewed.

As to fixed-term employment contract, an employer is required to do the things listed below on the basis of **“The Standards Concerning the Conclusion, Renewal and Non-renewal of Fixed-term Employment”** (announcement).

① To clarify whether or not to renew the contract after the term of the contract

② To provide at least 30 days advance notice of non-renewal in the event that an employer does not renew the contract with a worker whose contract has been renewed more than three times or who has been working continuously for more than one year

③ To clarify the reason of non-renewal by request of a worker

④ To try to make the contract period as long as possible in case of renewal

■ An employer has to secure the safety of life and body of an employee. (Article 5)

## 2. To close a contract

■ **Labor contract shall be concluded with mutual agreement of both an employer and a worker**

◎ Labor contract is concluded when a worker and an employer agree on ‘working’ and ‘paying wages’. (Article 6)

■ **In case a place of work has rules of employment (the regulations which set the working conditions);**

◎ In concluding a contract between a worker and an employer, if an employer

• **informed a worker** (the contract can be viewed at any time)

• of rules of employment with **reasonable contents**,

the working conditions prescribed by rules of employment shall be the worker's working conditions. (Article 7 body)

► In such case where an employer put away the rulebook in a desk and a worker cannot read it even if he/she wants to, the rules of employment are not regarded as working conditions because they are not informed to the worker.

⊙ In case a worker and an employer individually agreed on working conditions whose contents are different from rules of employment, the contents on which both parties agreed are valid. (Article 7 proviso)

► Even if a place of work has rules of employment, working conditions can be decided flexibly to suit individual workers' circumstances.

⊙ In the event that the working conditions individually agreed on by a worker and an employer are below the rules of employment, worker's working conditions shall be raised to the contents of rules of employment. (Article 12)

⊙ Rules of employment which go against law or collective agreement shall not be a worker's working conditions. (Article 13)

### 3. To change labor contract

■ As a worker works, working conditions such as wages and working hours often change. It is important for an employer and a worker to have thorough discussion to avoid problems regarding changes to working conditions.

⊙ If a worker and an employer agree, labor contract can be changed. (Article 8)

■ If a place of work has rules of employment, which provide working conditions,

⊙ an employer cannot change working conditions disadvantageously to a worker when the employer unilaterally changes the rules of employment. (Article 9)

⊙ in the event that an employer changes working conditions by changing rules of employment,

① the changes must be rational in the light of circumstances listed below.

- extent of disadvantage a worker incurs
- necessity of change to working conditions
- suitability of changed contents of rules of employment
- status of negotiations with labor union etc.

② a worker shall be kept fully informed of the changed rules of employment.

Listed below are court precedents as to change of rules of employment.

● **Supreme court decision on Shuhoku bus case**

It is not allowed in principle to deprive a worker of rights already acquired and unilaterally impose working conditions unfavorable to a worker by establishing or changing rules of employment. But a worker cannot refuse its application on the ground of individual worker's disagreement, as long as the concerned provision of regulation is rational.

● **Supreme court decision on Oomagari Agricultural Cooperative Association case**

A change of important working conditions such as wages is valid, so long as its content is rational and based on high degree of necessity.

● **Supreme court decision on Daishi Bank case**

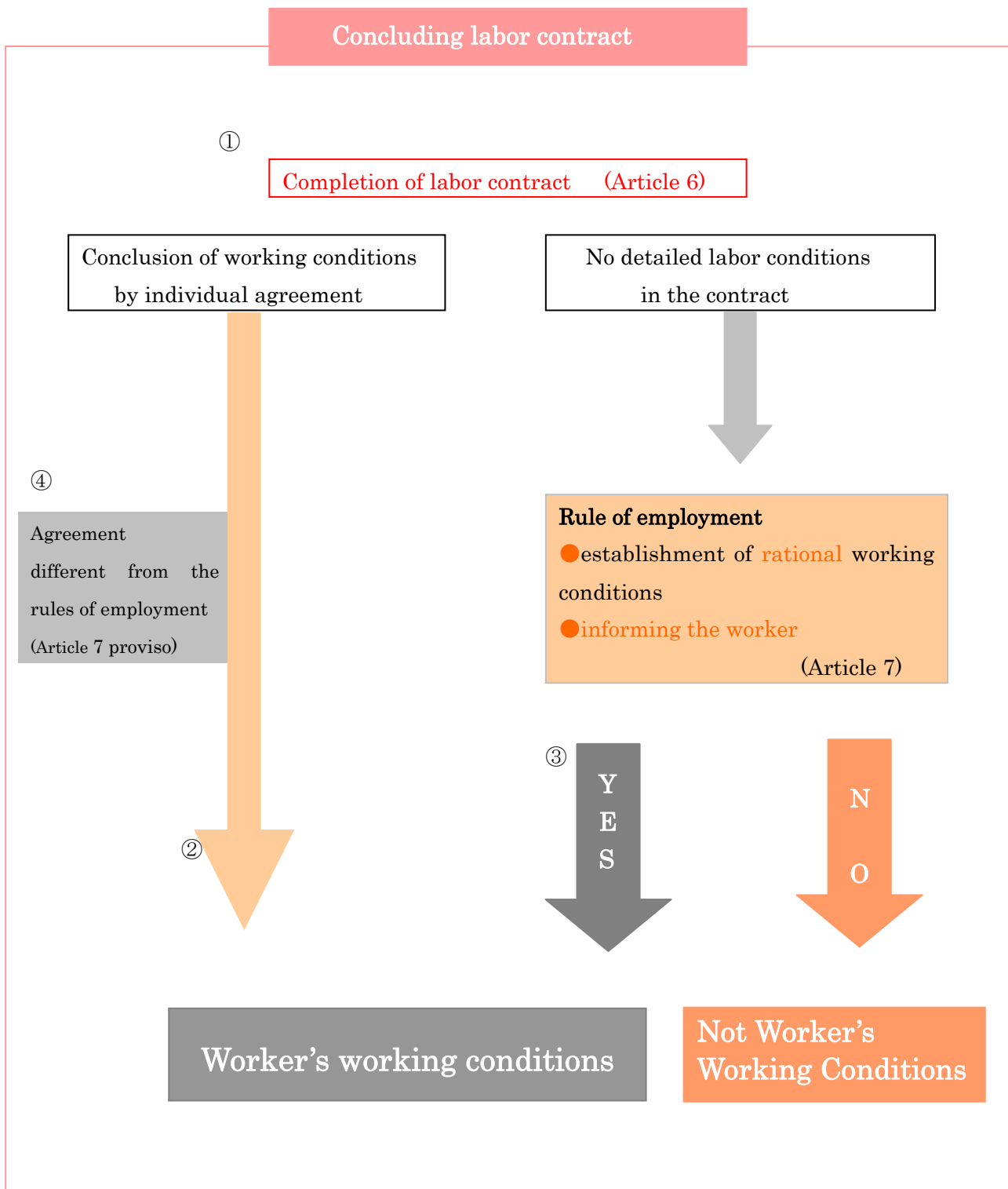
In case wages are reduced in exchange for extending mandatory retirement, ①the extent of disadvantages which a worker incurs by the change of rules of employment, ②content and extent of necessity of the change for an employer, ③validity of content of the changed rules of employment, ④improvement of other relevant working conditions such as compensatory measures, ⑤details of negotiations with labor union and so on, ⑥response of other labor union or other workers, and ⑦general situation regarding similar cases in our country should be taken into consideration comprehensively in judging its rationality.

● **Supreme court decision on Michinoku Bank case**

In the event that significant disadvantage occurs by change of wage system, appropriate reliefs should be provided for a worker who unilaterally suffers disadvantage, by taking provisional measures such as easing disadvantage. And there is no denying that it is unreasonable to let a part of the workers accept great disadvantage without it.

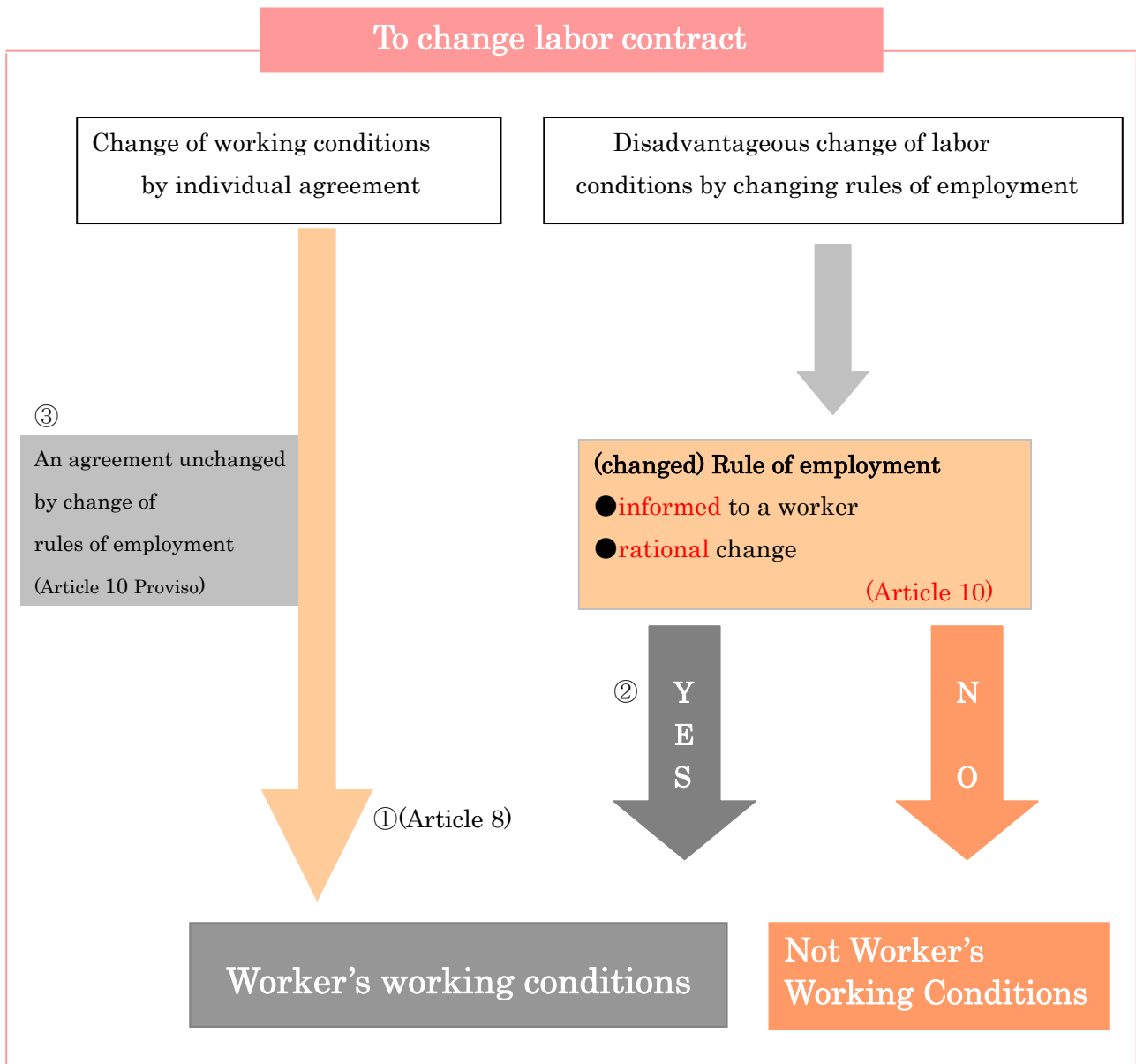
Taking into account the extent and content of disadvantage which a part of the workers suffer, it can be said that it is not rational to regard the agreement of labor union as a significant factor in judging the rationality of change of wages.

If a place of work has rules of employment, a worker's working conditions are decided as follows:



◆Explanation

- ① Labor contract is established with mutual agreement between a worker and an employer on **worker's working by employer's employment** and on **employer's paying for it**.
- ② Worker's working conditions are determined by mutual agreement between a worker and an employer.
- ③ In the event that a worker gets employed without setting detailed working conditions in labor contract, worker's working conditions shall be the ones specified in the rules of employment if **the rules of employment set rational working conditions** and **rules of employment are informed to the worker**.
- ④ However, if they have agreement on the labor conditions a portion of which is different from the content of rules of employment, the agreement precedes (unless contents of agreement fall short of the standards of rules of employment).



#### ◆Description

- ① Worker's working conditions are changed by agreement of a worker and an employer.
- ② In the event of changing working conditions due to change of rules of employment, they shall not be changed disadvantageously to a worker in principle. However, if **an employer has informed a worker of changed rules of employment and the changed rules of employment is rational**, the worker's working conditions shall be the working conditions set in the changed rules of employment.
- ③ However, if they have an agreement a portion of which should not be changed by change of rules of employment, the agreement precedes (unless contents of agreement do not meet the standards of rules of employment).

#### 4. To Terminate Labor Contract

■ **Temporary transfer to another company, disciplinary punishment or dismissal often cause troubles because they have considerable impact on a worker. Be careful not to develop into a dispute.**

◎ **Temporary transfer order** ~ Order of temporary transfer to another company which is recognized as **abuse of power** shall be invalid. (Article 14)

▸ Whether it is abuse of power or not is judged from a comprehensive viewpoint such as its necessity or adequacy of appointment of the worker.

◎ **Disciplinary punishment** ~ Disciplinary punishment which is recognized as **abuse of power** shall be invalid. (Article 15)

▸ Whether it is abuse of power or not is judged from a comprehensive viewpoint such as quality or condition of the worker's act.

◎ **Dismissal** ~ **Dismissal which lacks in objectively rational reason and is not acceptable to current social standards** shall be invalid as **abuse of power**. (Article 16)

#### 5. To conclude fixed-term employment contract

■ In case of concluding fixed-term employment contract (for example concluding one year contract with a part-time worker), please keep the following things in mind to prevent troubles, as dispute is likely to arise upon termination of contract.

◎ An employer cannot dismiss a worker until the expiry of term of contract, unless **absolutely necessary**. (Article 17-1)

◎ An employer should not renew the contract repeatedly by making its term shorter than necessary in light of the purpose of hiring a worker with fixed-term employment contract. (Article 17-2)

We post the latest information on the website of the Ministry of Health, Labour, and Welfare.

(<http://www.mhlw.go.jp>)

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