

## Key topic

# Proposal on Extinctive Prescriptions of Claims for Wages: The Labor Policy Council

The revised Civil Code, enacted in June 2017, was scheduled to go into effect on April 1, 2020. Under it the extinctive prescription period of general claims was to become uniform, and various short-term extinctive prescriptions including employees' salaries were to be abolished. The Labor Policy Council (Chair: Koichi Kamata, Professor Emeritus of Toyo University) started discussions in July 2019, concerning the extinctive prescriptions of claims for wages, retirement allowances, annual paid leave, work-related accident compensation and so forth (hereinafter referred to as "wages, etc.") in its tripartite committee on working conditions (Chair: Takashi Araki, Professor of the University of Tokyo) and issued a proposal on the matter to Katsunobu Kato, the Minister of Health, Labor and Welfare on December 27, 2019. According to the proposal, the extinctive prescription period of claims for wages will be extended from the current 2 years to 5 years in principle in the future, but for the time being, set at 3 years to match the obligatory period for preservation of records. Based on this, the Ministry of Health, Labor and Welfare (MHLW) submitted a bill for the Partial Amendment to the Labor Standards Act to the ordinary session of the Diet which started on January 20, 2020, aiming for implementation on April 1, 2020.

## The Civil Code and Article 115 of the Labor Standards Act

The former Civil Code stipulated that in principle, claims expired if they were not exercised for 10 years (based on the "objective starting point" for the extinctive prescription period). The short-

term extinctive prescriptions of 3 years, 2 years, and 1 year for specific occupations were set forth as exceptions. The former Civil Code stipulated that "a claim pertaining to the salary of an employee which is fixed by one month or any shorter period shall be extinguished if not exercised for one year." Meanwhile, from the standpoint of worker protection and transaction safety, Article 115 of the LSA prescribes that claims for wages, accident compensation and others are subject to lapse if not exercised within 2 years.<sup>1</sup> (Claims for retirement allowance, this is 5 years.<sup>2</sup>) As for the starting point for the extinctive prescription of claims for wages under Article 115 of the LSA, it has been interpreted and implemented as an "objective starting point" in practice and in past court cases. Documents such as wage ledgers must be preserved for 3 years (Article 109 of the LSA).

### Article 115 of the former Labor Standards Act

Claims for Wages (excluding retirement allowances), accident compensation and other claims under the provisions of this Act shall lapse by prescription if not made within two years; and claims for retirement allowances under the provisions of this Act shall lapse by prescription if not made within 5 years.

## The revised Civil Code

The Civil Code underwent partial but large scale amendments. The provisions for short-term extinctive prescription which now lacks rationality

were abolished to unify and simplify the period of prescription. One-year short-term extinctive prescription regarding employees' salaries has been abolished. As for extinctive prescriptions for general claims, a "subjective starting point" has been newly established in addition to the "objective starting point" that has been used thus far. Specifically, claims lapse due to prescription in the following occasions (1) and (2).

- (1) If the obligee does not exercise the right within 5 years from the time when the obligee came to know that it was exercisable ("subjective starting point").
- (2) If the obligee does not exercise the right within 10 years from the time when it became exercisable ("objective starting point").

The newly established (1) is based on concerns that if the short-term extinctive prescriptions are abolished and their prescription periods become 10 years across the board, obligors' costs to preserve proof of payment would increase due to greatly prolonged period.

## Discussions at the Council's Committee on Working Conditions

### Extinctive prescription of claims for wages set at 5 years in principle, 3 years provisionally

According to the proposal, the Council's Committee found the abolition of the short-term extinctive prescriptions due to the partial revision of the Civil Code as an opportunity to examine matters such as the extinctive prescription periods under the LSA, and comprehensively considered matters such as the need to protect the rights of workers to claim unpaid wages after leaving their employment. Specifically, the following proposals were made.

(1) The extinctive prescription period of claims for wages shall be 5 years, taking into account the balance with the extinctive prescription period of contractual claims after the abolition of the short-term extinctive prescription.

(2) In line with the interpretation and implementation of the current LSA, an "objective starting point" shall be maintained and explicitly stipulated in the amended LSA.

(3) However, immediate introduction of a long-term (5-year) extinctive prescription of claims for wages may destabilize the labor-management relationship on rights and obligations. It is necessary to cautiously consider its impact in light of the role of extinctive prescription of claims for wages in preventing and/or swiftly resolving disputes. In this context, for the time being a 3-year extinctive prescription period will be set to match the period of required record preservation stipulated in Article 109 of the LSA, so that a certain degree of worker protection regarding unpaid wages can be ensured without increasing the burden on employers of preserving records.

The proposal also recommends that the current extinctive prescription period for retirement allowance (5 years) be maintained.

### Extinctive prescription periods of claims other than claims for wages remain 2 years

As for claims other than those for wages, such as those regarding annual paid leave, accident compensation and so forth, the Council's Committee proposes that the former extinctive prescription period of 2 years should be maintained because they are rights established by the LSA and the extinctive prescription periods have been uniformly set at 2 years under the LSA up to the present regardless of the extinctive prescription period for general claims (10 years) under the Civil Code. The proposal adds the following reasons for maintaining the current 2-year extinctive prescription.

First, annual paid leave should be taken without fail during the year in which the annual leave right is granted, given that the purpose of annual paid leave system is to ensure worker health and relieve mental and physical fatigue. The Council's Committee pointed out that if the extinctive prescription period of annual paid leave is made longer than it is now, it will not be in line with the purpose of this system, and it may contradict the policy direction of improving the rate of paid leave usage.

Second, an essential requirement of the accident compensation system is to verify the claim as early as possible and seek remedy for workers. Under this system, it is necessary to make it clear that the

worker's injury or illness are caused in the course of employment. However, it becomes more difficult over time for both labor and management to prove or disprove cause and effect of injury or illness. In addition, prompt claims for accident compensation in the event of a work-related accident will enable worker's recover and return to work swiftly, and also encourage companies to take safety and health measures to address work-related accidents early on.

For other claims (traveling expenses for returning home, certificates on the occasion of leaving employment, return of money and goods [excluding wages]<sup>3</sup>), it is necessary to maintain incentives for early verification of claims. In addition to this early verification as the original purpose of the system, in general, if a long period has passed since the termination of a labor contract, it becomes difficult for the worker and employer to verify their rights and obligations under the terminated contract, and there is a possibility that unnecessary confusion may arise.

#### **Records of documents to be preserved for 5 years in principle, 3 years provisionally**

The obligation to preserve records, such as rosters of workers and wage ledgers, is stipulated so as to preserve evidence for dispute resolution and supervision purposes (Article 109 of the current LSA). Given this purpose of record preservation, the proposal states that the current 3-year period of preservation, responding to the new regulations of the extinctive prescription period, should be 5 years in principle but should be maintained at 3 years for the time being.

Article 114 of the LSA provides for "additional amount." When an employer has not paid overtime premium or other payments required by the LSA and the worker requests the payment thereof within 2 years from the date of the violation, the court may order, in addition to the unpaid portion of the amount that the employer was required to pay under the LSA, the additional payment of that identical amount. The purpose of additional amount scheme is to establish a kind of sanction for breach of payment obligations such as premium wages, so as to secure payment of unpaid amounts, and to give individuals

incentive to bring lawsuits which would hinder the employers' violation of the LSA. Concerning additional amounts, the proposal states that the claim period should be 5 years in principle and 3 years for the time being, in line with the extinctive prescription period of claims for wages.

#### **Effective date of the revision and claims subject to the new regulations**

The proposal stated that the amended LSA should come into effect on April 1, 2020, the same date as the revised Civil Code. As to claims that shall be subject to the revised LSA, it proposed that the new regulations of the extinctive prescription period should apply to claims for wages when wages are due after April 1, 2020 irrespective of the date of conclusion of the employment contract. The same applies to the request for additional amounts.

The Committee's discussion covered whether the new regulation should apply to (1) claims arising from contracts concluded after April 1, 2020 in the same manner as the revised Civil Code, or (2) all claims that are due after April 1, 2020 regardless of the fact that the contract had been concluded prior to or after April 1, 2020.

Since parties to civil law contracts take it for granted that the law applicable at the time of conclusion applies to them, it is natural that the revised Civil Code applies to contracts that are concluded after the effective date of the revision (April 1, 2020). However, if this rule were applied to employment contracts, workers in the same workplace would be subject to different periods of the extinctive prescription in accordance with the timing of the conclusion of their contract, which might lead to confusion in human resource management. In addition, workers' claims for wages arise in large quantities and regularly and thus there is a strong request for universal treatment. Considering these situations, the Committee proposed that all claims for wages due after the effective date of the revised LSA should be subject to the new rules of the extinctive prescription period, namely a 3-year period for the time being. The Committee also proposed that the request period for additional

amounts should be treated similarly.

### **Review to be conducted 5 years after enforcement**

The proposal calls for examining the situations of implementation 5 years after the revision of the LSA, and for necessary measures to be taken based on the results. As for the principle of the 5-year extinctive prescription period for claims for wages being set at 3 years for the time being, the proposal took note that the Committee members representing workers expressed the opinion that “in light of the LSA’s purpose of protecting workers, the 5-year principle should be followed when reviewing the situation of the revised LSA after 5 years.”

The proposed revision of the extinctive prescription for claims

for wages, etc. in the Labor Standards Act passed in the Diet on March 27, 2020 and was put into effect on April 1, 2020.

1. The reason for the 2-year period under the LSA is that extinctive prescriptions of claims that are important to workers provide insufficient protection if set at 1 year (short-term extinctive prescription) under the Civil Code, but if it is set at 10 years, it would place too severe a burden on employers and have a significant impact on transaction security.

2. The extinctive prescription period of claims for retirement allowances was 2 years when the LSA was enacted in 1947. However, retirement allowance amounts may be larger and employers may take time to pay because of the difficulty procuring finances, and for such reasons the period was extended to 5 years when the LSA was amended in 1987.

3. Traveling expenses for returning home should be paid within 14 days from the date of cancellation of contract. Certificate on the occasion of leaving employment shall be issued without delay when requested by a worker. Regarding return of money and goods, in the event of a request by one with the right thereto, the employer shall return money and goods within 7 days.