

## Freelance Act Comes into Effect in November 2024

A new law for protecting persons working as freelancers will be in effect in Japan on November 1, 2024. The Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators (“Freelance Act”) was passed by the plenary session of the House of Councilors unanimously on April 28, 2023, and was promulgated on May 12 that year. The Act aims at optimizing transactions and improving the work environment for freelancers “can stably engage in services with which they have been entrusted as enterprises, in view of the progress in the diversification of ways of working in Japan, thereby contributing to the sound development of the national economy.” It obligates for the client enterprises to clearly state the contract details and pay remuneration to freelancers within 60 days after the completion of the work or delivery of the product. The client enterprises are required to consider the balance between work and childcare and family care for freelancers and to take necessary measures to prevent harassment.

### I. Definitions

#### **The Act covers persons who undertake work and have no employee**

The parties and transactions covered under the Freelance Act are defined in Article 2 as follows. The business contractor—called in the Act “specified entrusted business operator” (*tokutei jutaku jigyo-sha*)—is an individual or a corporation to whom business is entrusted (to whom work is “outsourced,” in a broad sense) and who does not use any employees. Freelance worker—“specified person engaged in

entrusted business” (*tokutei jyutaku gyomu jigyo-sha*)—is an individual who is a specified entrusted business operator and the representative of a corporation to whom business is entrusted and who does not use any employees.

Besides these terms given respectively in the Act, both are “freelancer” collectively. It should be noted that the same single freelancer is regarded as a business contractor from an economic-legal point of view by the Japan Fair Trade Commission (JFTC) which has jurisdiction over this new law, and, on the other hand, is considered as a freelance worker from a labor policy point of view by the Minister of Health, Labour and Welfare (MHLW), and that both of entities have placed provisions for each.

As for the client side, the Act defines as follows. Similar to the above, the following two are “client enterprise” collectively. One is “entrusting business operator (*gyomu itaku jigyo-sha*)” regarded as an enterprise that entrusts business to a freelancer. The other is “specified entrusting business operator (*tokutei gyomu itaku jigyo-sha*)” considered as an individual or a corporation that uses employees.

“Business entrustment” (*gyomu itaku*) is defined as an activity in which an client enterprise, for the business purposes, entrusts business such as the manufacturing of goods, creation of information-based products, or provision of services to another enterprise. The term “employee” used in the Act does not include a person employed temporarily for short hours or a short term.

## II. Prohibitions and obligations

### 1. Prohibiting the unjust reduction of remuneration and the return of the delivered product

For the optimization of transactions, the Freelance Act requires a client enterprise that has outsourced work to a freelancer to clearly indicate matters such as the details of the work and the amount of remuneration (Art.3). It also requires the client enterprise to pay remuneration to the freelancer by a due date, which is set within 60 days after the completion of the work or the delivery of the product (Art.4).

The Act prohibits a client enterprise that has outsourced work to a freelancer from engaging in the following acts (Art.5): (i) refusal to receive the work from the freelancer without grounds attributable to the freelancer; (ii) reducing the amount of remuneration without grounds attributable to the freelancer; (iii) returning the delivered product or creation to the freelancer without grounds attributable to the freelancer; (iv) unjustly setting an amount of remuneration at a level conspicuously lower than the price ordinarily paid; and (v) coercing the freelancer to purchase goods or use services as designated by the client enterprise without good reasons. The Act also provides that the client enterprise must not unjustifiably harm the interest of the freelancer by (vi) having the freelancer provide money, services, or other economic gains for the client enterprise or (vii) having the freelancer change the details of the work or perform the work again without grounds attributable to the freelancer.

### 2. Making it obligatory for a client to consider the balance between work and childcare and family care

The Act also provides for measures to improve the work environment for freelancers. Specifically, (i) when providing recruitment information by advertisement, the client enterprise must not make false representation and must keep the information accurate and up-to-date (Art.12); (ii) the client enterprise must give necessary consideration upon

request to enable the freelancer perform the work related to the contracted work for a period longer than the specified by Cabinet Order or a longer period (hereinafter “continued business entrustment”) while balancing work and childcare and family care, etc. (Art.13); (iii) the client enterprise must take measures to set up necessary systems for providing consultation to the freelance worker on harassment, etc. (Art.14); and (iv) if the client enterprise cancels the contract for continued business entrustment before the expiry date, the client enterprise must notify the freelancer 30 days prior to the date of cancellation in principle (Art.16).

With regard to the client enterprise that have violated the Act, the Fair Trade Commission, the (Director-General of) Small and Medium Sized Enterprise Agency, or the MHLW may provide advice and guidance, collect reports, conduct on-site inspection, make recommendations, issue orders, and publicize the facts about the recommendation or order. Those who have violated an order or refused inspection are punished by a fine of up to 500,000 yen.

## III. Labor unions’ reaction

### “First step toward protection and support for freelancers” (JTUC-Rengo)

How does the labor side regard the new legislation? Considering that the Act would lead to increase protection for working person, Japan’s largest national confederation of trade unions, JTUC-Rengo (Japanese Trade Union Confederation), prioritized this bill in this plenary session and demanded that it should be passed. On April 28, 2023, in the name of the General Secretary Hideyuki Shimizu, JTUC Rengo issued a statement that it would evaluate the Act as the “first step toward protection and support for freelancers” and appreciated the fact that the bill was passed unanimously. It raised the issue of how to ensure the effectiveness of the Act in terms of payment of remuneration and the consideration of the balance between work and childcare and family care as a challenge, stating that discussion should be held at an

open forum with the participation of stakeholders toward shaping related supplementary resolutions. JTUC-Rengo also pointed out that “working as a freelancer is similar to working as a ‘worker’ in the meaning under the Labor Standards Act, but quite a few freelancers engage in work under a contract for work as an ambiguous employment contract.” It stressed that “reviewing and improving the criteria for judging the worker status was an urgent issue and discussion should be started as soon as possible.”

Zenroren (National Confederation of Trade Unions) argued in the discussion on the bill in the Diet that the bill should be amended to apply to short-term transactions, to introduce the minimum wage regulation, and to set the due date for payment of remuneration with due consideration for freelancers’ livelihood (shortening the period until the payment date from 60 days to 30 days).

#### **IV. MHLW study group’s report on improving freelancers’ working environment**

In preparation for the enforcement of the Act, the MHLW’s study group had been studying the specifics of the items included in the Act, for improvement of

the working environment for the business contractors. Their report, compiled on May 22, 2024, presents specific methods of providing information on the accurate display of recruitment information (as stipulated in Article 12 of the Act) including written documents, faxes and e-mails. The matters to be indicated were enumerated, including the nature of the work, place of work, duration, hours and remuneration. In relation to Article 13, which stipulates that consideration shall be given so that business contractors can work in a way that is compatible with pregnancy, childbirth, childcare, or nursing care, the report clearly states that “six months” is an appropriate period of continued business entrustment in cases where consideration is required, and gives examples of the specific details of the consideration.

For information on Japanese government’s policies on freelance work, Hamaguchi 2022 provides detailed explanation and commentaries including comparison with those in other countries.

#### **Reference**

Hamaguchi, Keiichiro. 2022. “Labor Law Policy on Freelance Work.” *Japan Labor Issues* 6, no.38: 6–12. [https://www.jil.go.jp/english/jli/documents/2022/038\\_02.pdf](https://www.jil.go.jp/english/jli/documents/2022/038_02.pdf).

#### **Errata**

The editor corrected as follows on October 25, 2024.

page 2

8th line: freelance worker → freelancer

12th line: a person engaged in business/work → a freelance worker