

## **Spring Partners, Yasuko Fukuyama**

### **Legal updates regarding Japan as influenced by the COVID-19 pandemic:**

#### **Declaration of State of Emergency**

On April 7, 2020, the Head of the COVID-19 Response Headquarters declared a state of emergency under Article 32, paragraph 1 of the Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response. The period during which emergency measures should be taken under the declaration is 29 days from April 7 to May 6, 2020. In such declaration, the areas where emergency measures should be taken were *Saitama, Chiba, Tokyo, Kanagawa, Osaka, Hyogo* and *Fukuoka* Prefectures, and then, all other prefectures were also added on April 16, 2020. If the emergency measures are deemed no longer necessary, the state of emergency will be released immediately even within the period. Even under the state of emergency, the Government of Japan will work to minimize the impact on social and economic functions and will not take compulsory measures such as "lockdown" (city blockade) that is being implemented in other countries.

Under the state of emergency, each prefecture may request and issue an order to restrict the use of facilities including schools and the holding events.

#### **Shareholder Meeting**

The ministry of Economy, Trade and Industry describes methods of holding shareholder meetings online and some companies are holding hybrid virtual shareholder meetings. The term "hybrid virtual shareholder meetings" means the physically-conducted shareholder meetings attended by board members and shareholders in which shareholders who are not physically present at the meetings place are able to virtually participate over the internet or through other means.

#### **Allowance for Absence from work**

Article 26 in Labor Standards Act stipulates "in the event of an absence from work for reasons attributable to the Employer, the Employer shall pay an allowance equal to at least 60 percent of the Worker's average Wage to each Worker concerned during said period of absence from work". In the case of absence from work due to force majeure, the employer is not obliged to pay the allowance for absence from work. In order to be considered an absence from work due to force majeure, both of (i) the cause of the event is an accident that occurred outside of the business, (ii) the accident is unavoidable even though the business owner has exercised the

utmost care as an ordinary manager, must be met.

For example, in the case where it is possible to have a worker work from home, etc., and it is recognized that the Employer does not sufficiently consider this and has not made the best effort to avoid absence from work as an ordinary employer, it may fall under the category of "an absence from work for reasons attributable to the Employer" and the payment of allowance for absence from work may be necessary.

If a worker is infected with the COVID-19 and is absent from work due to work restrictions imposed by the prefectural governor, it is generally considered not to fall under "an absence from work for reasons attributable to the Employer", so there is no need to pay the allowance for absence from work.

For example, a declaration of a state of emergency or a request to suspend business under the Act on Special Measures for Pandemic Influenza and New Infectious Diseases Preparedness and Response ("Declaration or Request"), etc., which occurs outside the business and business operations become difficult, falls under "(i) the cause of the event is an accident that occurred outside of the business". However, even in the case of Declaration or Request, "(ii) the accident is unavoidable even though the business owner has exercised the utmost care as an ordinary manager" is not necessary met. Therefore, even if a company suspends its business and orders workers to be absent from work upon Declaration or Request, it does not uniformly eliminate the obligation of the Employers to pay the allowance for absence from work under the Labor Standards Act.

Regarding the termination of employment agreements with employees as restructuring, the impact of COVID-19 does not automatically justify the termination of employment agreements by companies. Validity of the termination of employment agreements as restructuring is strictly ruled under the Labor Contract Act in Japan; thus, each company shall carefully review the satisfaction of all requirements for the valid termination of employment agreements as restructuring.

### **Requests related to Transaction with Subcontractors**

The ministry of Economy, Trade and Industry issued the requests for main subcontracting companies in which main subcontractors should take into consideration that their subcontractors' situation affected by the COVID-19.

[https://www.meti.go.jp/english/press/2020/0310\\_001.html](https://www.meti.go.jp/english/press/2020/0310_001.html)

### **Submission of Annual Securities and Other Reports**

Regarding the disclosure of the documents based on the Financial Instruments and Exchange Act (annual securities report, internal control report, quarterly securities report, semi-annual securities report, Status Report of Parent Company, etc., Foreign Company Report, Foreign Company Quarterly Securities Report, and Foreign Company Semiannual Securities Report), the submission deadline was extended to the end of September.