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Understanding Job Offer Revocation in Japan: Legal Framework and Essential Considerations under Japanese Employment Law

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Introduction

Navigating employment practices in Japan requires a comprehensive understanding of the country's unique legal landscape. One of the more complex areas for employers is managing job offers and the potential revocation of such offers. The legal framework surrounding employment in Japan emphasizes stability and employee protection, which makes any form of dismissal—including job offer withdrawal—a delicate and often scrutinized action. This column provides an overview of the critical aspects of job offer revocation in Japan, including its legal foundations, the implications for employers, and key considerations to ensure compliance and minimize potential risks.

Overview of Japan's Employment Law System and Dismissal Regulations

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Japan's employment law framework is highly protective of employees. It emphasizes job stability and security, making it challenging for employers to unilaterally terminate employment relationships. The foundation of this legal system is built on various statutes, including the Labor Standards Act and the Labor Contract Act, which outline the rights and obligations of both employers and employees.

In Japan, dismissal regulations are notably stringent, often surprising international companies with the high threshold for dismissal. Under the Labor Contract Act, dismissals must be carried out with an objectively reasonable cause and must align with socially accepted norms. The "doctrine of abuse of the right to dismiss" serves as a critical standard. Under this doctrine, a dismissal lacking reasonable grounds and deemed socially unacceptable will be rendered invalid.¹

This rigorous approach extends to job offer revocation, where similar principles apply.

Hypothetical Case: Revocation of Job Offer

In this Section, we will discuss the legal risks associated with revoking a job offer and explore methods to mitigate those risks, using the following hypothetical scenario:

A recruitment officer from the HR department received a completed selection process application for a mid-career applicant ("A") and issued an official job offer. However, after conducting a reference check through A's former supervisor, it was revealed that A had a poor work attitude and low performance evaluations in the previous workplace. As a result, the company is now considering revoking A's job offer. They seek advice on whether such a revocation would be legally permissible and, if not, what potential risks might arise.

A short response to the recruitment officer in the above hypothetical scenario is as follows:

In general, when a company extends a job offer to an applicant, it is often interpreted as forming a conditional employment contract (known as a "contract with a reserved right to cancel"), where the company reserves the right to withdraw the offer under certain conditions. Therefore, if the company decides to revoke the job offer, it may be subject to the "abuse of dismissal rights doctrine," meaning that, in certain cases, the revocation could be deemed unlawful.

If the revocation is considered unlawful, applicant A may file a claim to confirm their right to employment under the labor contract. Additionally, the company could face potential liability for contractual breach and tortious conduct.

¹ Article 16 of the Labor Contract Act

The following sections provide a more detailed analysis of this issue.

Analysis

1. Legal Nature of Job Offers and Revocation

Under Japanese case law, a job application submitted by an applicant is generally regarded as an offer for employment. When the company issues a job offer in response, it is viewed as an acceptance of that offer, thereby forming a conditional employment contract (often referred to as a "contract with a reserved right to cancel"). Once this employment contract is established, any unilateral cancellation of the offer by the company is treated as a dismissal, to which the "abuse of dismissal rights doctrine"² applies.

If the revocation of the job offer is deemed an abuse of dismissal rights, it would be considered invalid. In such cases, the applicant may file a claim to confirm their employment status under the established contract. Additionally, an unlawful revocation may expose the company to liability for damages, either on the grounds of tort or for contractual breach.

2. Assessing the Legality of Job Offer Revocation

The legality of revoking a job offer (i.e., exercising the reserved right to cancel) and whether it constitutes an abuse of dismissal rights under Article 16 of the Labor Contract Act is determined based on an analysis of specific circumstances.

Typically, offer letters include certain conditions for revocation, such as:

1. Inability to work due to severe health issues,
2. False statements on resumes or during interviews,
3. Involvement in criminal or similar misconduct,
4. Significant deterioration in the company's financial condition.
5. Failure to graduate from school (for candidates being recruited as new graduates)

However, the abuse of dismissal rights doctrine is applied mandatorily. Therefore, even if certain conditions are specified in the offer, the company must demonstrate objective reasonableness and social appropriateness in revoking the offer based on these conditions.

For example, if concerns about the candidate's abilities surfaced during the selection process, it would not be considered valid to revoke the offer for reasons that could have been investigated at

² Article 16 of the Labor Contract Act

that stage.³ Additionally, any newly discovered information after issuing the offer must be supported by concrete and reliable evidence.⁴

In cases where the offer is revoked due to the company's deteriorating financial condition, the doctrine of economic dismissal applies. This requires an assessment based on the "four factors of economic dismissal"— (i) the necessity of personnel reduction, (ii) efforts to avoid dismissal, (iii) reasonableness of the selection process, and (iv) procedural appropriateness.⁵

3. Informal Job Offers ("*Nainaitai*" in Japanese)

Informal offers refer to verbal notifications indicating a company's intent to hire a candidate, often made before issuing a formal offer letter. Whether an informal offer forms a "contract with a reserved right to cancel" depends on specific facts.

For example, if the company's actions indicate a firm intention to hire—such as discussing specific employment conditions—causing the candidate to stop pursuing other job opportunities, an employment contract may be considered established.

Even if an employment contract is *not* established, the company may still be liable for damages due to the breach of good faith obligations or harm to the candidate's reasonable expectations if the

³ ***Dai Nippon Printing Case***, Supreme Court Second Petty Bench, Judgment of July 20, 1979; *Minshu* Vol. 33, No. 5, p. 582. The Supreme Court held that "when a company, in hiring a prospective university graduate, initially deems the individual unsuitable as an employee due to a perceived gloomy impression but proceeds with a tentative offer in the hope that this impression may be disproved, it cannot later cancel the offer under a reserved right to cancel solely because no positive factors emerged to counter this initial impression. Such a cancellation, when viewed in light of the purpose and intent of the reserved cancellation right, cannot be regarded as reasonable under societal norms and constitutes an abuse of the cancellation right, rendering it invalid."

⁴ ***Opt Electronics Case***, Tokyo District Court, Judgment of June 23, 2004; *Rohan* No. 877, p. 13. The court held that, "in light of the process where the job offer was initially put on hold, followed by further investigation and re-interview before the offer was reissued, for the revocation of this job offer to be lawful, there must be new facts discovered after the offer was issued that indicate issues with the plaintiff's abilities, character, or judgment. These facts must also be supported by reliable evidence." In this case, the court found that the negative hearsay information about the employee uncovered post-offer was insufficient, stating, "the information used to justify the revocation of the job offer is merely hearsay, amounting only to rumors without substantive evidence to confirm its truth." Consequently, the court deemed the revocation an abuse of the right to cancel the offer.

⁵ ***Informix Case***, Tokyo District Court, Decision of October 31, 1997; *Rohan* No. 726, p. 37. In this case, the plaintiff, previously employed at a major computer company, was recruited by the defendant and received an informal job offer. However, the defendant later revoked the offer, citing deteriorating business conditions. The plaintiff then applied for a provisional disposition to secure employment status, claiming the revocation was unlawful. The Tokyo District Court found that the defendant's request for the plaintiff to refrain from joining was made only two weeks prior to the intended start date. By this point, the plaintiff had already submitted a resignation notice to the former employer, leaving the plaintiff with no way to reverse the decision. The court held that imposing such severe consequences on the plaintiff was unreasonable and could not be deemed acceptable under societal norms, thereby declaring the job offer revocation invalid.

candidate's trust in the hiring process was undermined. In practice, there have been instances where courts awarded damages due to the company's improper conduct, even though a formal employment contract had not yet been concluded.⁶

4. Case Evaluation

In this case, given that the company issued an official job offer to A following the selection process, it is likely that a conditional employment contract was established. Therefore, the revocation of the offer based on subjective opinions from A's former supervisor, such as poor work attitude or performance, would generally not be deemed valid grounds for revocation.

Furthermore, feedback from a former supervisor may lack objectivity, especially if A's prior employment ended under unfavorable circumstances, further diminishing the impartiality of the evaluation.

Consequently, if the company proceeds with revocation on these grounds, there is a risk that the revocation could be deemed unlawful, potentially exposing the company to liability for damages under tort or for breach of contractual obligations.

Conclusion

Determining whether a conditional employment contract has been established and whether revoking an offer constitutes an abuse of dismissal rights requires a careful evaluation of individual circumstances. Employers considering revoking a job offer should carefully assess: 1) whether the job offer constitutes a labor contract, 2) the objective evidence supporting the reason for revocation and 3) compliance with the doctrine of abuse of dismissal rights.

⁶ **Kose RE Case**, Fukuoka High Court, Judgment of March 10, 2011; *Rohan* No. 1020, p. 82. In this case, the defendant rescinded an informal job offer two days before the formal offer was due, citing a downturn in business performance. The court noted that (i) the plaintiff's expectation of a finalized employment contract had risen to a level deserving full legal protection and that (ii) the defendant canceled the informal offer without adequately explaining its change in hiring policy and failed to respond to the plaintiff's protests regarding the cancellation. Consequently, the court ordered the defendant to pay damages to the plaintiff.

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