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BLOG

Spotlight on Japan: Japan's New Freelance Act – A Comparative Overview with U.S. and EU Legal Frameworks

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SPOTLIGHT ON JAPAN

This blog is part of our Spotlight on Japan series, featuring blogs written by our current Japanese legal trainees—bengoshi who have completed U.S. LLM programs and are now training with Winston & Strawn LLP as part of their professional development. These blogs offer unique insights into cross-border legal practice through the lens of rising Japanese legal talent. They reflect not only the trainees' curiosity and capabilities but also Winston's deep commitment to nurturing global legal exchange.

As work styles continue to diversify globally, businesses are increasingly engaging with freelance workers across industries. Japan's new law governing freelance work, officially the *Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators* (Japan Freelance Act), was enacted and came into effect in November 2024. The Japan Freelance Act aims to ensure fair transactions and improve the working environment for freelance workers. It intersects with areas of labor law as well as Japan's *Subcontract Act*, which governs the relationship between subcontracting entrepreneurs and subcontractors in the context of competition law.

This post highlights key aspects of the Japan Freelance Act and compares them with relevant legal frameworks in the United States—particularly in California and New York—as well as in Europe with an aim to help businesses operating globally understand the important legal considerations when working with freelance workers across jurisdictions.

JAPAN: NEW FREELANCE ACT

The following section outlines the newly enacted Japan Freelance Act.

Scope

The Japan Freelance Act applies to business transactions that satisfy the following two criteria:

i. the transaction is between a "specified entrusted business operator" (a freelancer) and a "specified entrusting business operator" (an outsourcer) and

ii. the transaction qualifies as business entrustment (outsourcing).

The Japan Freelance Act applies only to business-to-business transactions. A “specified entrusted business operator,” or freelancer, is defined as an individual business operator who does not employ any workers and is engaged by outsourcers to perform work. A “specified entrusting business operator,” or outsourcer, is a business operator that employs workers and outsources work to freelancers. There are no restrictions on the types of jobs to which the Act applies. The Japan Freelance Act applies exclusively to business entrustment (outsourcing) transactions, so other types of transactions, such as sales transactions, are not covered by the Act.

Key Obligations

Ensuring Fair Transactions: Outsourcers must comply with the following regulations to ensure fairness in their transactions with freelancers. These rules reflect similar obligations imposed under Japan’s Subcontract Act.

- **Clear Indication of Transaction Terms**: Clearly specifying the statutorily required key transaction terms, either in writing or by electronic means.
- **Timely Payment of Compensation**: Setting a due date for payment and paying the compensation within 60 days from the date the outsourcer accepts the work delivered by the freelancer.
- **Seven Prohibited Acts**: When outsourcing arrangements continue for one month or longer, outsourcers are prohibited from doing any of the following:

  1. Refusing to receive the work delivered by freelancers without just cause.
  2. Reducing compensation without just cause.
  3. Returning goods resulting from the work without just cause.
  4. Unjustly setting compensation at a level that is conspicuously lower than the price ordinarily paid for the same or similar type of work.
  5. Coercing freelancers to purchase or use designated goods or services without just cause.
  6. Causing freelancers to provide economic benefits in a manner that unjustly harms their interests.
  7. Forcing freelancers to change the content of the work or to redo the work without just cause, thereby unjustly harming their interests.

Improvement of the Working Environment: Outsourcers are also required to take the following measures to improve the working conditions of freelancers.

- **Accurate Job Advertisements**: When posting job offers through advertisements or other means, avoiding the inclusion of false or misleading information and ensuring that the information remains accurate and up to date.
- **Support for Work-Life Balance**: For contracts lasting six months or longer, upon freelancers’ request, making necessary accommodations to enable freelancers to balance work with pregnancy, childbirth, child-rearing, or caregiving responsibilities.
- **Harassment Prevention Measures**: Taking appropriate steps to prevent and address harassment, including providing a system for handling complaints and consultations.
- **Advance Notice and Disclosure of Reasons for Mid-Term Termination**: In the event of mid-term termination of an outsourcing contract lasting six months or more, providing at least 30 days’ prior notice and disclosing the reason for termination without delay if requested by freelancers.

Sanctions

Failure to comply with the Japan Freelance Act may result in administrative actions being taken against outsourcers by the Japan Fair Trade Commission, the Commissioner of the Small and Medium Enterprise Agency, or the Minister of Health, Labor and Welfare. These actions may include advice, guidance, collection of reports, on-site inspections,

recommendations, orders to take recommended measures, and public announcements. Failure to comply with an order or refusing to cooperate with an inspection subjects offenders to fines of up to JPY 500,000 (approximately $3,500).

UNITED STATES: STATE-LEVEL APPROACHES

This section briefly outlines examples of legal frameworks for protecting freelance workers in the United States, focusing on California and New York. Freelance worker protections in the U.S. are largely shaped at the state level, with New York and California leading the way through some of the most proactive legislative frameworks in the country.

CALIFORNIA

California's *Freelance Worker Protection Act* (FWPA) came into effect on January 1, 2025.

Scope

The FWPA applies to every "freelance worker" who provides "professional services" to a "hiring party." A "freelance worker" is a solo contractor providing professional services for $250 or more, either per contract or in aggregate over 120 days with the same hiring party. A "hiring party" refers to a person or organization in California that retains a freelance worker to provide professional services, except for government entities and individuals hiring for personal, family, or household purposes. "Professional services" are specified in the California Labor Code and include a wide range of services such as marketing, human resources administration, travel agent services, graphic design, fine art creation, photography, writing, translation, and licensed services by estheticians and barbers, as well as performance-related services and appraisers (in each case, subject to requirements defined by statute).

Key Obligations

Hiring parties have the following obligations:

- **Timely Payment of Compensation**: Paying the agreed-upon compensation by the date specified in the contract, or within 30 days after completion of the services if no date is specified.
- **No Additional Demands**: Avoiding additional demands following the commencement of services by not requiring freelance workers to accept less pay, provide additional services, or grant additional intellectual property rights as a condition for timely payment.
- **Written Contract**: Providing a written contract that includes the statutorily required information.
- **Recordkeeping**: Retaining the written contract for no less than four years after execution.
- **Anti-Retaliation Protection**: Avoiding retaliation by not discriminating against or penalizing freelance workers for asserting their rights, participating in proceedings, or opposing violations of the FWPA.

Sanctions

Freelance workers may bring civil actions to enforce their rights under the FWPA. Courts may grant injunctive relief, award reasonable attorneys' fees, and order double damages for unpaid compensation. Statutory damages of $1,000 may be awarded if a hiring party refuses to provide a written contract upon request by a freelance worker. The FWPA does not provide for administrative penalties.

Additional Note

In addition to the FWPA, California has also enacted *California Labor Code Section 2775* to protect freelance workers by making it more difficult to lawfully classify such workers as independent contractors (instead of employees).[1] These provisions apply the so-called "ABC test" to determine whether certain freelance workers are correctly classified as independent contractors. Under the ABC test, workers are presumed to be employees unless the hiring entity can establish all of the following:

A. Workers are free from the direction and control of the company;

B. Workers perform work that is outside the company's main business; and

C. Workers are normally performing work in an independent business or trade that is in the same vein as the work they are performing for the company.

If the ABC test is not satisfied and workers are determined to be employees and not independent contractors, companies may be required to provide them with employee benefits such as workers' compensation, paid sick leave, unemployment insurance, and other protections under the California Labor Code.

The ABC test does not apply to all freelance workers. For example, freelance workers providing certain professional services (as defined above) and certain individuals in the music industry—such as recording artists, songwriters, managers, producers, engineers, musicians, vocalists, photographers, independent radio promoters, and others providing creative, production, or promotional services—are exempt from the ABC test. These other workers are instead subject to a different, less strict test (similar to the tests used in many other U.S. states) for determining classification as independent contractors.

NEW YORK

Following a local law of the same title originally enacted in New York City,[2] the New York State *Freelance Isn't Free Act* (FIFA) broadened protections for freelance workers statewide in a new Article 44-A of the New York's *General Business Law* (GBL), which took effect on August 28, 2024.

Scope

The FIFA applies to agreements where a "freelance worker" is hired by a "hiring party" to provide services valued at $800 or more, either in a single contract or in the aggregate over 120 days. A "freelance worker" is a natural person or a one-person entity (regardless of incorporation) working as an independent contractor, but excludes sales representatives,[3] licensed attorneys, licensed medical professionals, and construction contractors. A "hiring party" is any person or entity that retains a freelance worker, excluding some government bodies.

Key Obligations

Hiring parties have the following obligations:

- **Timely Payment of Compensation**: Paying the agreed-upon compensation by the due date specified in the contract, or within 30 days after completion of services if no date is specified.
- **Written Contract**: Providing a written contract that includes the statutorily required information.
- **Recordkeeping**: Retaining the written contract for at least six years.
- **Anti-Retaliation Protection**: Refraining from retaliating against or penalizing freelance workers for exercising their rights under the FIFA.

Sanctions

The FIFA may be enforced by the New York State Attorney General, who is authorized to investigate violations, seek injunctive relief, and pursue restitution for affected freelance workers. Civil penalties may be imposed, ranging from up to $1,000 for a first violation to $3,000 for a third or subsequent violations.

Freelance workers may also file civil actions directly in court. For violations of the written contract requirement, claims must be filed within two years, while claims under the payment and anti-retaliation provisions must be filed within six years. Prevailing freelance workers may be entitled to statutory damages, double damages for unpaid compensation, injunctive relief, attorneys' fees, and costs, depending on the nature of the violation. Courts may impose up to $25,000 in civil penalties where hiring parties have engaged in a pattern or practice of violations.

SUMMARY

California and New York's freelance laws share some common features but also have notable differences. California's FWPA applies to freelance workers providing professional services for $250 or more per transaction or in aggregate over 120 days. In contrast, New York State's FIFA applies to contracts valued at $800 or more. Both laws impose obligations on hiring parties, including written contracts, timely payment, recordkeeping, and anti-retaliation protections. However, the FWPA also prohibits coercive practices such as requiring freelance workers to accept reduced pay or provide additional services as a condition of timely payment, while FIFA includes stricter enforcement provisions, such as civil penalties and additional fines for repeat violations. Similarly, other states have implemented various frameworks to protect freelance workers. Therefore, businesses that operate across jurisdictions must navigate and comply with a complex patchwork of laws and regulations in this area.

EUROPE: THE EU'S PLATFORM WORK DIRECTIVE

There are several freelance protections in Europe, but the most recent law relating to freelance workers relates to digital platform workers. The *Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work* ("Directive") took effect on December 1, 2024. Among other provisions, the Directive includes rules aimed at protecting people from being misclassified as freelance workers by introducing a rebuttable presumption of an employment relationship with the digital platform through which those people work. While the Directive itself has entered into force, the new rules will be effective beginning on December 2, 2026, subject to transposition by member states. The specific regulatory measures to implement the Directive will be determined by the laws and regulations that each EU member state must adopt by that date, and therefore, how the Directive is applied or executed in each member state remains to be seen.

Scope

By establishing the Directive, the EU aims to improve the working conditions of people working in the gig economy. The Directive applies to "platform work" organized through a "digital labour platform," defined as a service provided remotely through electronic means (such as websites or mobile applications) that organizes paid work by individuals, at the request of users, and involves the use of automated monitoring or decision-making systems.The Directive introduces the rebuttable presumption of an employment relationship where the facts indicate direction and control of the worker by the digital platform. Such indications are determined in accordance with national law, collective agreements, or established practice within the EU member states, considering the case law of the Court of Justice of the European Union.

Key Obligations

Where the legal presumption of employment applies, digital labour platforms bear the burden of proving that the contractual relationship does not constitute an employment relationship under the applicable national law. This presumption applies in all relevant administrative or judicial proceedings where the determination of the person's employment status is at issue. However, it does not apply to tax, criminal, or social security matters, unless an EU member state explicitly chooses to apply the presumption in those contexts under its national legislation.

Sanctions

The Directive does not specify penalties for misclassification. Instead, the establishment of sanctions is left to the discretion of EU member states, which must implement appropriate laws, regulations, and administrative provisions by December 2, 2026.

KEY TAKEAWAYS FOR GLOBAL BUSINESSES

Protections for freelance workers vary significantly across countries, states, and regions. In addition to legal sanctions, violations may also carry significant reputational risks. Thus, global businesses must ensure compliance with local freelance worker protection laws in each jurisdiction where they operate and are encouraged to consult legal experts where appropriate to address these obligations properly.

The Japan Freelance Act, California's FWPA, and New York's FIFA all establish specific obligations aimed at protecting freelance workers. However, there are notable differences in the details of each regulation, requiring

careful analysis when developing compliance strategies. For example, the Japan Freelance Act is particularly characterized by its relatively broad requirements regarding harassment prevention, which presents a practical compliance challenge. Moreover, because freelance protections in the United States are regulated at the state-level, businesses must be aware of requirements within the specific states in which they employee freelance workers.

The EU's Directive on platform work extends protections related to freelance workers from the perspective of preventing their misclassification. However, as an EU directive, it sets out general regulatory objectives, while the concrete rules will be determined through the laws and regulations adopted by individual member states. It is therefore essential to closely monitor developments in national legal frameworks in Europe.

Yuka Minoda, who authored this blog post, joined Winston & Strawn as a Foreign Legal Advisor in the fall of 2024 from Oh-Ebashi LPC & Partners, a full-service Japanese law firm with offices in Tokyo, Osaka, Nagoya, and Shanghai. Founded in 1981 in Osaka, the firm has grown into one of Japan's leading law firms, providing a wide range of legal services to both domestic and international clients. Its practice areas include corporate law, mergers and acquisitions, risk management and compliance, intellectual property, bankruptcy and restructuring, competition and antitrust, consumer protection, dispute resolution, finance and insurance, employment, administrative law, and tax.

Yuka has experience in a variety of legal areas, including mergers and acquisitions, corporate law, consumer law, and labor and employment law. Yuka earned her LL.M. from New York University School of Law in 2024 and was admitted to the New York State Bar in 2025.

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[1] *See* Winston's client alert, "California's Independent Contractor Bill Signed Into Law—What's Next for Employers?" (Sept. 18, 2019).

[2] Regarding the New York City's Freelance isn't Free Act, *see* Winston's client alert, "New York City Passes Nation's First Law Protecting Freelance Workers From Wage Theft" (Nov. 3, 2016).

[3] Sales representatives are generally covered by New York Labor Law Section 191-a, et seq., which provides requirements for written contracts and payment to such persons.

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