



Labor
& Employment Update

Momo-o, Matsuo & Namba



Truly Indispensable

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Client Update

Labor Trial Proceedings in Japan

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The labor tribunal proceeding (“LTP”) was introduced in 2006. It is essentially a court procedure involving mediation conducted by a labor tribunal committee (“Committee”) and is aimed at encouraging settlement between employees and employers. In LTP, once a petition for a labor tribunal has been filed by the petitioner with the court, regardless of the consent of the other party, participation in the tribunal is compulsory, and the procedure commences.

Over 70 percent of labor tribunal cases end by reaching a mediation agreement during LTP. We believe that this is because the number of hearing dates is limited (basically three times), and many respondents (employers) tend to hope for early settlement. For example, a person who is dismissed can choose either LTP or an ordinary civil litigation procedure. If such person wants to settle with the previous employer by monetary solution as soon as possible, he or she typically chooses LTP. On the other hand, if such person wishes to return to the company, he or she is more likely to choose the civil procedure.

The cooperation of the parties is essential for the speedy progress and conclusion of LTP. In particular, it is important to note that both parties are required to present all arguments related to the case and to provide a mediation plan in line with the actual circumstances of the case and/or the information that can be used as a reference for LTP before the first hearing date. In around 80 percent of labor tribunal cases, both parties are represented by an attorney although a party does not necessarily need to obtain an attorney.

The Committee consists of three persons: one labor tribunal judge and two labor tribunal members. Two labor tribunal members are appointed from among persons who have expert knowledge and experience in labor relations; one is an expert for the employee-side and the other, the employer-side.

The Committee attempts to obtain a rough picture of the case during the hearing procedure and if, necessary, recommends that both parties settle the case even at the first hearing date. When an attorney for a party attends the hearing date, it is not required by law but highly recommended for the party himself/herself to attend the hearing date as well. The Committee typically asks various questions regarding the facts of the case during the hearing procedure to understand the framework of the case.

At the first hearing date (out of a maximum of three), in a room where both parties (including attorneys for both sides, if applicable) and the Committee are present, the Committee asks various questions regarding the facts of the case to both parties and both parties need to orally reply to these questions immediately. This exchange allows the Committee to gain a rough picture of the case. It typically takes about one to one-and-a-half hours. Following this meeting, the Committee will confer by itself (for about 10 to 20 minutes). The Committee then commences the mediation procedure even at the first hearing date.

During the mediation procedure, generally speaking, the Committee speaks only with one party (for example, the applicant) while the other party (for example, the respondent) waits outside the room. The roles are then reversed and the process is repeated several times. The Committee then offers an outline of a mediation plan, and each party considers it until the next hearing date. At the second hearing and third hearing dates, the Committee holds discussions with the parties to finalize the mediation plan. If a mediation agreement is not reached, the Committee will render a labor tribunal decision in most cases.¹

In employee-dismissal cases, for example, if, as a result of the examination of evidence, it is found that there is no reasonable cause for dismissal, and the parties wish to settle the matter by means of a monetary settlement, but the mediation agreement is not reached, the Committee renders a decision which states that the previous employee (i.e., the applicant) is deemed retired on a certain date and employer shall pay a certain amount of settlement money to employee. The Committee decides the amount of the

¹ When the Committee finds that conducting the LTP is unsuitable for the prompt and proper resolution of the dispute due to the nature of the case, it may close the case. An action on the claim made in the petition for LTP is deemed to have been filed with the district court before which the labor tribunal case was pending in case that the labor tribunal case was closed. However, such case rarely happens.

settlement money based on the impression which was obtained by the Committee (basically) during the hearing dates.

The basic differences between labor tribunal proceeding and civil litigation procedure are as follows:

	Labor Tribunal Proceeding	Civil Litigation Procedure
Body to hear case	Labor Tribunal (three members: a judge, and labor tribunal members from employee-side and employer-side, respectively)	Judge(s)
Number of Hearing dates	Limited to three times	No limit to number of hearing dates, but until the judge(s) decides that the arguments have been exhausted
Limitation to submission of briefs and evidence	Both parties have opportunity to submit briefs and evidence by second hearing date unless exceptions are absolutely necessary	Principally, both parties can submit briefs and evidence before oral argument is concluded unless it is determined that a party has presented after the time for doing so and the court finds that such allegations or evidence will delay the conclusion of litigation
Place where the procedure takes place/Whether procedure is public	A room at the district court/Not open to public	A room at the district court on the date for preparatory proceedings, and courtroom on the date for oral argument or the date of judgment/Preparatory proceedings are not open to public, but oral arguments and date of judgment are open to

		public
Attendance of Parties themselves (in addition to attendance of attorney)	Not required, but highly recommended since the Committee asks various questions about the facts of the case to both parties during hearing	Not required
Basic Procedure	<p>(i) At the first hearing date, the Committee asks both parties various questions</p> <p>(ii) After (i) above, usually mediation procedure begins</p> <p>(iii) At the second hearing date and/or the third hearing date, the Committee holds discussions with parties to finalize the mediation plan</p> <p>(iv) Mediation agreement/Committee decision</p>	<p>(i) Exchange of briefs and evidence</p> <p>(ii) Sorting out the issues based on briefs submitted by each party/ Sorting out whether the claimed facts can be recognized by documentary evidence</p> <p>(iii) Examination of witness (if the court determines it is necessary for fact finding)</p> <p>(iv) Judgment/Settlement</p> <p>*Usually, before and after (ii) above (examination of witness), settlement negotiation is conducted</p>
Form of Decision	The Committee renders a labor tribunal decision if the mediation by the Committee fails. The contents of the decision are flexible. In dismissal cases, if, as a result of the examination of evidence, it is found that there is no reasonable cause for dismissal, and the applicant (i.e., previous employee) wishes to settle	Judge(s) renders a judgment and the contents of which are restricted by law. In dismissal cases, the judgment would be either that dismissal is valid or invalid.

	<p>the matter by receiving a certain amount of money, and the respondent (i.e., employer) also wishes to do so, then the decision states that the applicant is deemed retired on a certain date, and that respondent shall pay a certain amount of money to the applicant.</p>	
<p>Filings of Challenges/ Appeals</p>	<p>Both parties are able to file a challenge with the court against the labor tribunal decision within two weeks from the day on which the party was served with the written labor tribunal decision or the day on which the labor tribunal decision was announced. If either party appeals the labor tribunal decision, the case is automatically transferred to a district court and the civil procedure begins.</p>	<p>Both parties can appeal the judgment. If either party appeals, the case will be tried at the high court (and then to the Supreme Court, if appealed again).</p>
<p>Duration of Procedure</p>	<p>Less than three months on average</p>	<p>One to two years on average</p>

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