

# Guidelines for creating an safe environment where people can work on a freelance basis (outline)

Tentative

○ Effective and comprehensive guidelines were established jointly by the Cabinet Secretariat, the Japan Fair Trade Commission, the Small and Medium Enterprise Agency, and the Ministry of Health, Labour and Welfare for the purpose of clarifying the application of the Antimonopoly Act, the Subcontract Act, and labor-related laws and regulations to transactions between business operators and freelance workers, as well as clarifying problematic behaviors in relation to these laws and regulations.

## No. 1 Definition of “freelance workers”

○ In these guidelines, “freelance workers” are defined as any self-employed persons or sole traders (sole business owners) who have neither fixed physical business premises nor any employees and who earn income utilizing their own experience, knowledge and skills.

## No. 2 Relationship to Antimonopoly Act, Subcontract Act and labor-related laws and regulations

- The Antimonopoly Act is generally applicable to transactions between business operators and freelance workers because the Act applies to any transaction in which the party ordering the transaction is a business operator, even when the other party is an individual.
- The Subcontract Act is generally applicable to transactions between certain businesses and freelance workers because the Act applies to transactions in which the ordering party is a business entity with capital in excess of ¥10 million, even if the other party is an individual.
- In addition to the application of the above laws, labor-related laws and regulations may also apply to cases that correspond to “employment” under existing laws, e.g., when a person is deemed to be working in effect under the command of the ordering business operator, even if performing work as a freelance worker.

## Antimonopoly Act and Subcontract Act

### No. 3 Compliance requirements of business operators that place orders with freelance workers

#### 1 Basic concept concerning abuse of superior bargaining position in transactions with freelance workers

○ If an ordering business operator with a superior bargaining position to a freelance worker makes use of its superiority to disadvantage the freelance worker, unjustly in light of normal business practices, such an act is regulated under the Antimonopoly Act as an abuse of superior bargaining position.

#### 2 Basic concept concerning issuance of a document to clarify the terms and conditions of transactions at the time of order

- If an ordering business operator refuses to issue to the freelance worker a document clarifying the terms and conditions of the transaction at the time of order, this can be considered, under the Antimonopoly Act, to be a cause of triggering an abuse of superior bargaining position, and therefore inappropriate.
- If a case falls under the Subcontract Act, a failure by the ordering business operator to provide terms and conditions in writing to a freelance worker is a violation of the obligation to issue documentation as defined in Article 3 of the Subcontract Act.

#### 3 Categories of behavior that are problematic under the Antimonopoly Act (abuse of superior bargaining position) and Subcontract Act

○ Clarification of the concept of behaviors that may lead to abuse of superior bargaining position, including behaviors that may fall under the Subcontract Act.

(1) Delay in payment of remuneration	(2) Reduction of remuneration	(3) Unilateral decision of extremely low remuneration
(4) Request to redo work	(5) Unilateral cancellation of an order	(6) Unilateral treatment of rights pertaining to outputs of services
(7) Refusal to accept outputs of services	(8) Return of outputs of services	(9) Compulsion to purchase or use unwanted goods or services
(10) Request to provide unfair economic benefit	(11) Unilateral imposition of confidentiality obligations, etc. beyond the reasonable scope of necessity	(12) Unilateral imposition, modification, or implementation of other transaction conditions

### No. 4 Compliance requirements of intermediary business operators

#### 1 Transactions between intermediary business operators and freelance workers

- Intermediary business operators help freelance workers to acquire and expand opportunities to provide their services, etc., and help other business operators and consumers to receive high-quality, low-cost services from freelance workers.
- At the same time, as the volume of transactions between freelance workers and intermediary business operators increases in the future, there may be cases in which an intermediary business operator stands in a superior position to a freelance worker and makes use of its superiority to disadvantage the freelance worker, unjustly in light of normal business practices.

#### 2 Unilateral modification in transaction conditions due to change of terms

○ If an intermediary business operator with a superior bargaining position to a freelance worker unilaterally changes the terms to disadvantage the freelance worker, unjustly in light of normal business practices, such an act is regulated under the Antimonopoly Act as an abuse of superior bargaining position.

## Labor-related laws

### No. 5 Criteria for determining what constitutes “employment” under current laws

#### 1 When labor-related laws and regulations apply to freelance workers

- Even if a person works as a freelance worker under a formal agreement, such as a work contract or semi-delegation agreement, when labor-related laws and regulations are applied, the question of whether the person qualifies as a “worker” under the laws and regulations is based on the actual conditions of the work performed, regardless of the form or name of the work agreement.
- If a person is recognized as a “worker” under the Labor Standards Act, the rules of the Labor Standards Act regarding working hours, wages, etc. need to be applied.
- If a person is recognized as a “worker” under the Labor Union Act, it is illegal to refuse them the right of collective bargaining without justifiable grounds.

#### 2 & 3 Definition and detailed concept of “worker” under the Labor Standards Act

- (1) Judgment criteria for “subordination to employer”
  - (i) The work is “under direction and supervision” (i.e., the work is performed under the direction and supervision of another person)
  - (ii) There is “compensatory remuneration” (i.e., remuneration is paid as compensation for “labor under direction and supervision”)
- (2) Factors that reinforce the judgment of “worker”
  - (i) Business owner or not (e.g., which party pays for the cost of machinery, etc., necessary for the work? The party ordering or the party receiving the work?)
  - (ii) Degree of exclusivity (does the worker need to work exclusively with a specific ordering party to a high degree?)

#### 4 & 5 Definition and detailed concept of “worker” under the Labor Union Act

- (1) Basic judgment factors
  - (i) Inclusion in the business organization (is the labor supplier secured within the organization as an indispensable or important worker for the execution of business operation?)
  - (ii) Unilateral and standardized determination of contract provisions (does the other party determine the working conditions and work description unilaterally and in a standardized way?)
  - (iii) Compensatory remuneration (does the remuneration of the labor supplier have the character of payment in compensation for the supply of labor?)
- (2) Supplementary judgment factors
  - (iv) Relationship of having to respond to requests for services (is the relationship one in which the labor supplier essentially cannot avoid responding to individual service requests from the other party?)
  - (v) Supply of labor under direction and supervision in a broad sense (can the relationship be broadly interpreted as one in which the labor supplier provides labor under the direction and supervision of the other party?)
- (3) Negative judgment factor (if this factor is affirmed, the labor supplier is less likely to be recognized as a “worker” under the Labor Union Act.)
  - (vi) Obvious fact that the labor supplier is a business owner (does the labor supplier assume the risk of business personally, while having consistent opportunities to earn profit through their talent?)