

A SPECIALIST OFFERS ADVICE

How We Hire Well, and Protect Ourselves from Local Labor Laws

By Thomas J. Nevins, Founder and President of TMT Inc.

1) If you run a newspaper ad in Japan, or work with a search firm that's using advertising, unlike ten years ago, you should probably attract a number of applicants. If they are a part of the tens of thousands who are being encouraged to leave their firms through *kata tataki* ('shoulder tapping'), you may be dealing with an eager candidate, but one who has not had to make a difference for years. (It is astounding how long this phenomenon still does last, managers with so little achieved, for so many years.)

2) What can you do to even the odds that the person you are considering hiring is a productive, results-oriented executive who can think on his own, pick up the phone and make a cold call, or hustle about town setting up your office, and hiring people better than himself? (Please allow the male reference, for the chance of finding females at high executive levels in most industries in Japan is still remote.)

MISPLACED CULTURAL SENSITIVITY DOESN'T BRING IN SALES

3) Be as direct as you would be with any American, Frenchman, New Zealander, or Pakistani, and make it crystal clear what it is you want, and don't want. Put aside the hesitancy, the indirectness, traditional deference, the 'walking on eggshells' that have always opaquely enshrouded foreigners' relationships with Japanese.

4) Richard Chamberlain, in the popular Shogun television movie that ran years ago in the US, learned to be culturally sensitive through James Clavell's eyes. But now it is your new recruit's neck on the line. As is your own job at stake, if this investment in Japan fails. Better to be frank and honest with the candidate

from the start.

5) This doesn't mean we are rude, or at all arrogant in the midst of a somewhat humbled Japanese economy and people. It simply means that we are appropriate to the task before us. It also means you can set the same standards you are used to. It means that the traditional tolerance of 'because this is Japan', or 'in Japan it's not done that way' is lower, and is not an acceptable excuse or explanation.

FOREIGN INVESTMENTS LEFT ALONE TO THE LOCAL PRESIDENT USUALLY NEVER TAKE OFF

6) Remember that a Japanese executive, unlike so many from other countries, usually wants to work until he drops. If you hire a 40-year-old in the senior position, and he is largely left alone, what are the chances he will hire people better than himself? It is more difficult for Japanese to manage someone older than themselves. The grammar and honorifics of the very speech that is used day in and day out varies by age and/or ranking. So older is difficult for a younger manager, yet with the aging population, the market is a clutter with older folks.

Younger works for our 40 year old manager, but the insecure executive may go out of his way to hire those much younger, and he'll make sure their English is not too good. The insecure executive wants to be the only interface with the home office. (These days I've noticed some non-Japanese, *expat* executives with excellent Japanese and English, who also tend to keep Japanese who are fluent in English out of the line of competition.)

7) What is the ideal age for

the person starting up an organization, or in charge of a large division that should grow? I would say 50 to early or even mid 50s, providing you find one of the young-at-heart, flexible, sparkle-in-the-eye, energetic types. Make it clear that retirement age is (the still predominant) 60, but could possibly be extended up to 65 maximum, providing the executive builds up an organizational pyramid with a successor or two who are 5 to 10 years younger. In turn there should be bench strength and multiple successors a further 5 to 10 years down the age ladder, and on below that. I always wondered if IBM Japan's practice of picking presidents in their mid 40's, with an eye to keeping them on fifteen years was the best way for them to go. I recall at one point IBM had over 26,000 employees just in Japan. Even if it did work well there, in a labor market where the average employee age is getting into the early 40s, if you're starting out, you need to be able to harness and properly direct that 'gray and balding' power.

8) Let's look more closely at some of the things we can do to get the older ones and the younger ones back in the saddle. They may have been sleepy-headed with glazed eyes for years, but now they're all you've got! Watch out for the very young ones, too. They can be the worst of all. There are over ten million unmarried 'parasite singles' aged 20-34, living in their parents' homes. The assets and affluence of their parents, and the fact that Asian parents tend to set their children up with houses, cars, and financial support beyond marriage, has resulted in an entire tribe of young folk who find it hard to dig into anything. Fire in the belly, gumption, guts and drive can be

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FROM THE EDITORS

THREE YEARS, AND COUNTING

This month marks our third anniversary. Our thanks to those subscribers who have been with us and supported our unique mission over some or all of the time since our first issue appeared in September, 1997.

Our editorial approach has always been to address the concerns of subscribers through fact-based, detailed discussions with our interview subjects and sources. These subjects are Japanese and non-Japanese executives alike who know what's going on simply because they are focused on Japan business opportunities everyday.

So we hope you understand by now, that our goal is not to deliver news. News is a commodity. A growing number of organizations provide news for free or for a moderate fee with the support of advertisers. These groups pick up company news releases and governmental announcements. Although they monitor the news, they rarely seek it out. When they write about it, it's 50-50 whether they really understand the topic they're addressing. Nor can you be sure if they really asked the right questions (or any questions at all).

Our approach is different. There was a time not many years ago when you could be sure of getting 95 percent of the Japan news and market information you needed by keeping track of the activities of about thirty top Japanese corporations, ten or twelve leading financial institutions, and the Japanese central government ministry that oversees your industry.

But as is said so often, Japan is changing. No longer can you rely only on Dow Jones, FT, Nikkei, your favorite online tech news source, and the translations of Japanese trade publications to get by. No longer is it just new product and merger announcements about which

you need to hear. Now information and analysis of changing business models, market entrants, start-up companies and venture capital, structural economic changes, multi-company alliances, and customer preferences is essential as well.

Our mission is to provide insight and analysis. To uncover innovative Japan business practices and strategies that fall below the radar of mainstream business media. To expose you to Japan specialists who are tops in their field. To tell you the 'how' as well as the 'what'. And to do it all in an interesting and concise way.

Many realize that it's the increasing number of foreign companies active in Japan who are initiating change, yet we think the mainstream media doesn't provide as much depth as they should.

While we hope we're serving you well, and leading companies are increasingly warming to our concept, we know we can always do better. That's where you come in. Having no advertisers means subscribers pay 100 percent of the freight. So please tell us what you're interested in reading and learning more about. Unlike much of the advertiser-supported media, we actually cover topics because subscribers request us to. And we actually try to speak with subscribers on a regular basis. But how can we help you unless you tell us what you need?

Three years ago nobody had heard of Ripplewood or Hikari Tsushin. Nobody could anticipate the bankruptcies of Long-Term Credit Bank, Yamaichi Securities, or Toshoku. Softbank was primarily a technology publishing firm. Japanese women didn't start internet businesses. Tokyo wouldn't have dared to impose its own municipal bank tax. DoCoMo was just one of several mobile phone competitors.

The question isn't whether Japan is changing. It's how, and how fast. That's what we try to help you understand. We hope you'll help us to serve you better.

How We Hire Well, and Protect... (Continued)

lacking to the surprise and chagrin of the Westerner who was tossed out of the nest even if his or her parents were extremely affluent.

HOW CAN WE GET EMPLOYMENT CONTRACTS, RULES OF EMPLOYMENT, AND PAY PRACTICES TO CONTRIBUTE TO SUCCESS?

9) So what can we do to protect ourselves from this labor force, and Japan's protective labor practices?

A) Japanese labor laws in terms of the statutes are not such a problem. Article 20 of the Labor Standards Law (LSL) says that you can fire someone with thirty days notice or thirty days pay, even if there is no cause. The problem arises when it comes to inconsistent interpretations of what is abuse of this right of dismissal. If a termination goes to court, a judge rarely writes a decision. Instead the parties are brought back even for years, until the company is willing to pay a high settlement to end the process.

B) Although the most common probationary period is three months, I have always recommended that our clients have a no-exception, six-month probationary period. If someone is afraid to join because of this, we're lucky that we've screened out a potential problem employee in advance. Unfortunately courts will not categorically back up an employer even if the termination takes place well within the probationary period.

C) If the probationary period is further backed up by a term contract with specific dates, an employer's legal position is strong when that term contract is not renewed. However, the problem with hiring someone on such a

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term contract is that you are pretty much stuck with that person, or with shouldering the salary costs until the term expires. Thus to hire an executive on a one year contract can be expensive should you realize you made a mistake after three or four months.

D) In Japan, predominant industry practice is to pay five or six months 'bonus', about half each, twice a year, usually around mid-June and mid-December. Members of the Board of Directors, or *torishimariyaku*, are an exception to this, as such 'bonus' is not a tax-deductible expense when paid to such Directors. Therefore each month Directors have annual income divided by twelve, instead of by the seventeen or eighteen that is used on other employees. In Japanese, and also the majority of foreign companies, this five or six months of bonus is paid based on individual and corporate performance. In virtually all Japanese firms, offer letters and employment contracts indicate only a monthly salary. They do not refer to the 'bonus'. There is no annualized income figure given.

TYPICAL AND PROPER APPLICATION OF JAPANESE SUMMER AND WINTER BONUS SHOULD BE KEPT, NOT GIVEN-UP

E) As the Japanese economy slowed, the traditional five or six months bonus often became four or three months. At the same time, to shelter themselves from this, self-serving managers in some foreign firms and large Japanese companies came up with a concept of *nenposei*, or annualized income. Essentially the summer and winter bonus was added in and the total divided by 12. This is supposed to be modern, performance based pay, where a manager signs for his salary level each year based on his results. In

reality this pay level is rarely reduced, and if it is, the managers often don't accept and don't sign. If further pressed, they threaten to call the very busy, rather newly-established 'Manager's Union', or threaten to contest the pay reduction in court. At that point the company usually backs off. *Nenposei* has not solved the lack of performance problem. If anything, it has taken the traditional pay-for-performance summer and winter bonus element out of Japanese compensation.

F) The vast majority of Japanese and foreign firms and employees still use the traditional summer and winter bonus. I recommend you hire all but Director/*torishimariyaku* with five or preferably six months bonus. Your offer letter should give a firm monthly salary figure, but only a 'targeted' annual income figure because of the performance range on the bonus, which is 6 months in 'principle'. This means right out of the starting blocks you have 33 percent of pay subject to performance, or even non-payment possible in extreme cases ($6 \div 18 = 33$ percent).

WITH STRATEGICALLY SMART OFFER LETTERS, POLICIES, AND FLEXIBLE SALARY SYSTEM, YOU CAN SOLVE PERFORMANCE PROBLEMS WITHOUT OUTRIGHT TERMINATIONS

G) Your employment contract should be upfront and honest, designed to scare away people who lack confidence and have not done a good job in the past. You should have and talk about a flexible salary system that allows for pay adjustments. At the interview, a candidate may indicate uneasiness because of foreign firms' tendency to quick-

ly fire people. Your answer could be "I don't know that we would fire you, but certainly it would be difficult to continue paying you at this salary level if you were not earning your keep, and doing what we need you to do." (In fact TMT has consulted on the de-hiring of over 30,000 Japanese, but we have never fired anyone and have always secured their resignation.)

H) Also make sure you have strategically sound Rules of Employment (ROE), which are legally required in Japan and must be submitted to the Labor Standards Office (LSO). They should clearly indicate that you can adjust employees pay levels for performance and contribution reasons. Make sure your only ROE language is not the typical clause that limits you to the LSL-specified pay cut penalty of one-half days pay, or maximum 10% reduction of pay during the applicable pay period.

But guess what? Japan never seems to be that easy! Please keep in mind that there will be hundreds of (in fact virtually all) experts, attorneys, and other professionals who will tell you, "you can't reduce people's pay unless they agree", or "there can be no negative change once people have such an entitlement", or "the union has to agree".

Over the last 22 years since establishing TMT, if I and my clients could not have done better than that, many of those clients would not still be in Japan today. Or they would be a fraction of their current size.

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