

**COVID-19 Impacts on
Human Rights and
Guidance on
Japanese Business Response
(First Edition)**

English Summary

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Japan COVID-19 & BHR Research Project

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Introduction

1. Increase of Negative Impact on Human Rights Associated with COVID-19

The pandemic of COVID-19 has had a significant impact on domestic and overseas business activities, and these changes in business activities also have a serious negative impact on human rights.

In an ILO's report published on March 19, 2020, "COVID-19 and world of work: Impact and policy responses " ILO initially predicted an increase of 25 million unemployed people worldwide due to the impact of COVID-19 pandemic. The ILO's updated report, "ILO monitor 2nd edition: COVID-19 and the world of work", published on April 7 states that more than four out of five people (81 per cent) in the global workforce of 3.3 billion are currently affected by full or partial workplace closures, and that the eventual increase in global unemployment during 2020 will depend substantially on future developments and policy measures, but there is a high risk that the end-of-year figure will be significantly higher than the initial ILO prediction.¹

Given the concerns about the widespread impact on workers, there is a possibility of serious damage to the livelihoods of workers and small and medium-sized enterprises positioned in the upstream of the supply chains, both in Japan and overseas. There is also a great concern about the impact on workers in unstable labor relationships, such as migrant workers, non-regular workers, gig workers, and informal workers in the entertainment industry.

In addition, healthcare professionals engaged in the treatment of patients with COVID-19 are faced with challenges on how to ensure occupational health and safety amid risk of infection and overwork.

Furthermore, the pandemic of COVID-19 may have a particularly serious impact on socially vulnerable groups, such as children, older persons, women, persons with disabilities, and foreigners, due to the unequal treatment in existing social structures. Human rights issues that existed before the COVID-19 pandemic were manifested through the pandemic in the form of negative impacts on the human rights of vulnerable people. Business are also expected to provide more cautious responses to respect for human rights, including the prevention of discrimination against such socially vulnerable people.

¹ https://www.ilo.org/tokyo/information/pr/WCMS_739052/lang--ja/index.htm

In addition, with the aim of preventing the spread of coronavirus infection, there is a rapidly expanding trend toward the use of digital technology by the governments, in cooperation with businesses, to monitor and track the location of infected patients, and it is becoming a challenge how to balance such measures with privacy concerns.

2. "Business and Human Rights" to Be Challenged

In the context of unprecedented crises for both business activities and human rights, it has been challenged how states can fulfill their duty to protect human rights and fulfill their responsibilities to respect human rights under the United Nations Guiding Principles on Business and Human Rights (the "Guiding Principles")

The Guiding Principles set out three pillars: (1) state duty to protect human rights; (2) corporate responsibility to respect human rights; and (3) ensuring access to remedies for victims of human rights abuses. Under the framework of this Guiding Principles, companies are also expected to conduct human rights due diligence (HRDD) to evaluate and address the negative impacts of their business activities on human rights through their supply chains in order to fulfill their responsibility to respect human rights. The elements of the Guiding Principles are also incorporated into OECD Guidelines for Multinational Enterprises and in ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).

In the face of serious damage to corporate activities due to the spread of COVID-19, governments are required to take measures to maintain the economic activities of corporations and the livelihoods and employment of citizens. Some measures have already been implemented by governments, including the Government of Japan. On the other hand, as mentioned above, there are concerns that the negative impact on human rights will increase as a result of changes in corporate activities, and companies are expected to consider and explore ways to mitigate the negative impact on human rights as much as possible.

The COVID-19 crisis has greatly changed the way people, including businesspersons, think and behave. This mindset change also provides opportunities for business to be transformed into truly sustainable ones adding values and fulfilling responsibilities to the society.

3. Importance of Sharing Information in Japan and Overseas

In the United States and Europe, where the spread of COVID-19 and the impact on business activities as a consequence have occurred earlier than in Japan, the information regarding the negative impacts on human rights and the responses of companies, governments, and other stakeholders to those impacts have started to be accumulated. It is useful for Japanese companies, governments, and other stakeholders, when considering responses, to refer to such information and lessons abroad, including recommendations from international organizations².

On the other hand, there are issues and challenges unique to Japan due to differences in the pandemic stages, government measures, legal systems, and business practices in each country, and it is necessary to tackle with these issues by considering local contexts.

4. Purpose of this Report

In light of the above, our research project team, which is comprised of Japanese lawyers specialized in legal compliance and sustainability, including in areas of international human rights and labor law, has summarized this report. The report analyses an impact of the COVID-19 pandemic on human rights related with Japanese business activities and provide guidance for Japanese business to how to respond to it, both in Japan and overseas. The report aims to provide useful information for Japanese companies, governments, and other stakeholders in considering their responses.

Please note that the report compiled the information at the time of publication, and the revisions will be made in light of the future situation changes and the progress of initiatives by companies, governments, and stakeholders. We hope that companies, governments, and stakeholders will share their feedback and information with us to the extent possible for updating the report properly.

5. Structure of this Report

This report summarizes the impacts and responses in the following six areas of particular concern. The report also lists the useful websites, guidance, and tools in the end of the report.

² For example, Business and Human Rights Resource Centre has established a special website to collect information on BHR issues related to the COVID-19 pandemic (<https://www.business-humanrights.org/en/covid-19-coronavirus-outbreak>).

[Chapter 1: Supply Chains](#)

[Chapter 2: Migrant Workers](#)

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Executive Summary

Chapter 1. Supply Chains

The stagnation of business activities caused by the COVID-19 pandemic does not only affect workers directly employed by the enterprises, through layoff and furlough. The effects of cancellation of orders and delays in payments also have a negative impact on supplier companies and their workers in domestic and overseas supply chains.

In particular, workers in SMEs and emerging economies positioned in the upstream of the supply chain are not adequately protected by governments and enterprises. They are at risk of serious impacts on their livelihoods and are actually affected both in Japan and overseas. This chapter analyzes the situation of such impacts in Japan and overseas, and overviews the responses and recommendations by international organizations, governments, companies, and related organizations.

In Japan, the Ministry of Economy, Trade and Industry (METI) is requesting buyer companies to take further consideration of transactions with subcontractors affected by the COVID-19 pandemic³. Private-sector stakeholders such as the Japan Business Federation (KEIDANREN)⁴, Japanese Trade Union Confederation (RENGO)⁵, the National Conference of the Association of Small Business Entrepreneurs⁶ have also published recommendations also related to supply chain issues. While taking into account these efforts in Japan, this chapter presents following five key points for Japanese companies to mitigate COVID-19 impacts on domestic and overseas suppliers and their workers and to implement responsible corporate conduct.

(1) Evaluate and disclose COVID-19 impacts, including its impact on workers in the supply chain

OECD's Due Diligence Guidance⁷ and its policy note on COVID-19 and RBC⁸ should be referred to in assessing impacts. It is also beneficial to utilize simplified and rapid

³ https://www.meti.go.jp/english/press/2020/0310_001.html

⁴ <https://www.keidanren.or.jp/policy/2020/031.html>

⁵ <https://www.jtuc-rengo.or.jp/activity/kizuna/covid19/>

⁶ <https://www.doyu.jp/policy/seisaku/doc/20200330kinkyuyoubou.pdf>

⁷ <https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>

⁸ https://read.oecd-ilibrary.org/view/?ref=129_129619-6upr496iui&title=COVID-19-and-Responsible-Business-Conduct

human rights due diligence tools published by UNDP⁹, ILO¹⁰, and BSR¹¹. It is also crucial to understand what measures are taken to protect workers by governments in the countries and regions where their suppliers are located. ILO¹², OECD¹³, and Fair Labor Association¹⁴ is gathering such information.

(2) Particularly consider the impact on vulnerable stakeholders such as migrant workers

Because socially vulnerable individuals are particularly at high risk of being seriously affected by COVID-19 pandemic, it is important to carefully assess and respond to the effects, as described in Chapter 2 below.

(3) Explore ways to mitigate impacts while communicating with suppliers and workers as much as possible

The guidance documents on supply chain management published by Fair Labor Association¹⁵ and Fair Wear Foundation¹⁶ provide various options for mitigating COVID-19 impacts on suppliers and their workers. Appropriate consideration to subcontractors requested by the METI can be given not only to domestic but also overseas suppliers, including taking actions for subcontractors' delay in delivery behind schedule; bearing cost burden appropriately; completing quick and flexible payment to subcontractors; and taking appropriate actions for cancellation and change of orders.

(4) Respond appropriately to issues and complaints raised by workers and other stakeholders through supply chains

It is important for Japanese business to strengthen their grievance mechanisms, by referring to the Engagement and Remedy Guidelines¹⁷. This will enable companies to collect information useful for the assessment and mitigation of impacts and to ensure access to remedies for workers and other stakeholders. In order to respond quickly in the current crisis response, it is useful to refer to the Basic Actions for the Engagement

⁹ <https://www.undp.org/content/dam/undp/library/km-qap/RBAP-2020-Human-Rights-Due-Diligence-and-COVID-19.pdf>

¹⁰ https://www.ilo.org/empent/units/boosting-employment-through-small-enterprise-development/WCMS_741012/lang-en/index.htm

¹¹ <https://www.bsr.org/files/general/BSR-Rapid-Human-Rights-Due-Diligence-Tool.pdf>

¹² Country Policy Response (<https://www.ilo.org/global/topics/coronavirus/country-responses/lang-en/index.htm>)

¹³ Country Policy Tracker (<http://oecd.org/coronavirus/en/>)

¹⁴ <https://www.fairlabor.org/blog/entry/country-specific-updates-provisions-workers-response-covid-19-pandemic>

¹⁵ <https://www.fairlabor.org/report/protecting-workers-during-and-after-global-pandemic>

¹⁶ <https://www.fairwear.org/covid-19-guidance>

¹⁷ <https://www.bhrlawyers.org/en-erguidelines>

and Remedy Guidelines.

(5) Investors can provide a clear message to Japanese companies on how to respond through supply chains

While referring to the initiatives of overseas investors overseas¹⁸, Japanese institutional investors can give clear messages to Japanese companies that support and endorse the promotion of responsible business conduct through supply chains by responding to the COVID-19 pandemic.

Chapter 2. Migrant Workers

While migrant workers contribute to the economic development of destination countries worldwide, they and their families have vulnerabilities stemming from foreign nationality, language barrier and cultural differences, especially in accessing social security and healthcare system. These vulnerabilities are dramatically highlighted by the multifaceted economic and social impacts and limitations associated with the social response to coronavirus. Without adequate protection, they could immediately fall into poverty and are deprived of their human rights.

For example, there have been reports of cases in which restriction of immigration at the national border prevents migrant workers from meeting their families in country of origin, and in which access to safety nets such as unemployment insurance becomes unavailable despite difficulties in continuing activities to earn income. There are concerns about the difficulties and discrimination for migrant workers and their families in accessing to medical care. In Japan, unfortunately, dismissal of technical intern trainees, non-payment of leave allowances, and cancellation of job offers for international students have been reported. Given that their visa status restricts their free choice of jobs, there is an increasing concern that the number of workers who lose their jobs and fall into poverty will rise further.

International organizations such as the ILO, IOM, and OHCHR have issued guidance on protecting migrant workers affected by coronavirus and encouraged governments and businesses to take appropriate measures. There are cases overseas where government support is provided to migrant workers as well as to provide guidance for business to protect vulnerable workers in the supply chain. In case of Japan, government responses to extend the stay in the country for those who have difficulty returning to the country

¹⁸ ICCR (<https://www.iccr.org/investor-statement-coronavirus-response>), PRI (<https://www.unpri.org/covid-19>)

of origin, and financial aid for leave allowances and scholarships has also been put in place. In addition, support for job placement services has also been provided in industries where labor shortages emerge due to restrictions on immigration, such as agriculture.

As a recommendation to Japanese companies, it is important to conduct human rights due diligence on whether foreign workers (including part-time workers among foreign students) are involved in their own business including those in supply chains, whether foreign workers and their families are adversely affected by COVID-19, whether their safety and health and livelihoods are secured, and whether the business operation does not impose adverse impacts on their human rights. In cases where the foreign workers have lost their income, they need adequate compensation for leave of absence paid in accordance with the applicable law, and tangible and intangible support based on their needs may be considered. In Japan, it is also effective to provide assistance for health and medical consultation, and help accessing to the administrative support and consultation service, since those foreign workers often have difficulty in accessing medical care and administrative information due to language barriers in particular. Labor unions and NGOs also offer some assistance available for foreign workers, so it is recommended to help them access those information as well.

It is important for companies to secure the employment of foreign workers to the extent possible, ensure health and safety, provide accurate information, give sufficient guidance on social security system, ensure equality with Japanese nationals, and give due consideration to gender-sensitive measures, while referring to requests from the central and local governments as well as the guidance issued by the ILO and the IOM mentioned above. Again, many foreign workers working in Japan have limited freedom to move back to their home countries, lose the opportunity to meet their families, have difficulty in finding other jobs due to visa restraints, and have difficulty in accessing resources needed for their livelihoods, such as medical care and social security. Listening to their voice and needs as much as possible is of paramount importance.

Chapter 3. Non-regular Employment, Gig Workers, and Informal Workers

The rate of non-regular workers in Japan was approximately 38% in 2019, with women accounting for two-thirds of this rate. The number of people who work self-employed as their own main business and are not employed by others (such as individual contractors, freelancers, cloud workers, and home occupation) is amounting to about 1,200,000. (JILPT, results of surveys and estimates of people who engage in “Employment-like Working Style”,). In this chapter, non-regular workers, gig workers, and informal workers are

collectively referred to as “workers in non-standard employment”.

Efforts have been made in Japan to redress the inequalities between regular and non-regular workers, such as equal pay for equal work. There remain in general, however, the cases where labor protection for non-regular workers is not sufficient, in comparison with regular workers, especially wages or compensation, employment security, social security, skills development, and protection from liability for compensation. Besides, gender gap is disproportionate in these ways of working.

The multifaceted economic and social impacts and limitations associated with responding to coronavirus have left many non-regular workers in vulnerable situation, resulting in impoverishment and infringement of their rights unless adequate protection being provided. Unfortunately in Japan, unemployment of dispatched workers, poverty of single mothers and women working in entertainment sector, and homelessness of day laborers and online cafe refugees have been reported. From overseas, it has been reported that the insufficient social security or support for gig workers who provide delivery services, and the situation where they have no choice but to continue working with an exposure to infection risks. Such gig-workers reported to organize a large-scale strike, and dismissed informal workers have to receive food assistance for keeping them alive.

In order to address these situation, efforts have been made at both the international and national levels to apply social insurance benefits to those non-standard employment even though they have not contributed to the insurance. Whereas in Japan, there are measures to provide social benefits and livelihood support to individuals and to provide financial support for businesses so that they can maintain the employment.

For Japan's business, the majority of business seem to have a lot of relationships with gig workers, non-regular workers and self-employed. As a recommendation to Japanese companies, it is important to conduct human rights due diligence on whether workers in non-standard employment and their families fall in poverty, whether they are forced to continue their work with risks, and whether their business operation, including those in supply chains, do not make adverse impacts on human rights.

Gig workers and freelancers who rely on their income solely from working outsourced online, and families who are dependent with those workers are particularly vulnerable and provided less social security protection than regular workers. Among those, there are particularly vulnerable people who may be in immediate poverty if they lose job (e.g., single mothers). Conversely, even if they have work, they are forced to accept outsourcing offers for keeping life even if they are somewhat dangerous. In addition to ensuring safety and health, it is desirable to consider tangible and intangible support based on

their needs. In addition, it is also useful to give sufficient information or help accessing to the government's livelihood support and counseling services, as well as those provided by labor unions, and NGOs where available.

It is also important for companies to secure the employment of non-regular workers to the extent possible, and to endeavor to ensure safety and health, provide accurate information, give sufficient guidance on the social security system, ensure equality with regular workers, and give due considerations to gender-sensitive measures, while referring to requests from the government for appropriate business considerations (refraining from terminating contracts, extending delivery deadline, and other flexible responses) and requests from local governments, as well as measures taken overseas.

Chapter 4. Health Care Workers

Healthcare professionals such as physicians, nurses, midwives, public health nurses, pharmacists, laboratory technicians, radiologists, emergency care technicians, assistants to nurses, trainees, nursing care professionals, administrative staff, cleaning staff, and medical waste disposal personnel are engaged in their duties on a daily basis while combating the risk of new coronavirus infection. There are problems such as lack of medical materials such as masks, gowns and gloves, labor shortages, long working hours, impacts on mental health, and discrimination and prejudice against healthcare professionals. In terms of women's share of healthcare professionals, the new coronavirus has a disparate impact on men and women.

As a corporate approach from the viewpoint of "business and human rights", it is useful to analyze the impact of the company's own business on healthcare professionals and to take measures, to the extent possible depending on the size and nature of business, from the viewpoint of how to prevent and mitigate the negative impact on healthcare professionals. Specifically, investments to foster healthcare professionals in the long term can be considered, for example, by securing a system for increasing production and converting business fields to produce healthcare materials, providing other physical support to healthcare professionals, technical measures to reduce the burden on healthcare sites through healthcare and IoT/AI businesses, labor management software businesses, protesting against discrimination and bias, and expressing appreciation and respect for medical professionals.

With regard to national efforts, at the present stage when the number of cases of infection is increasing, securing medical materials to protect the lives and safety of healthcare professionals is of paramount importance, and the provision of information

on safety measures such as personal protective equipment and observation of health status and segregation in the case of infection has become a priority. The actual situation of the management of working hours and the grant of breaks is unknown at present. It is thus required to grasp the present state of the working environment of healthcare professionals, to grant special allowances, etc., and to secure care facilities for children and older persons to maintain a comfortable working environment. As suggested by the WHO and ILO, the prolongation of infectious diseases will also require measures that are focused on the mental health care of healthcare professionals working hard to fight the fear of daily infections.

Healthcare professionals support the infrastructure of the society, and their lives, safety and health are of utmost importance. At this moment, protection of healthcare professionals needs to be our priority. Governments, businesses, and other stakeholders are required to recognize the current situation and take further measures to protect the lives and health of healthcare professionals, prevent overwork and exhaustion, and prevent further shortages of human resources.

Chapter 5. Children, Older Persons, Women, Persons with Disabilities, Foreigners, etc.

This chapter presents the overview of the impact which the spreading coronavirus infection has made on people who are particularly vulnerable in the society and international initiatives followed by some suggestions for Japanese companies.

People who are placed in vulnerable situation described below are not only directly affected by corporate activities as workers, but also face human rights challenges caused by social structures. The latter does not necessarily directly link to corporate activities, but both aspects are interrelated. In Japan, the increased time spent at home because of school closures and remote work has increased the risk of abuse against children, women, and older persons. Additionally, this situation has increased the burden on women in child and nursing care. In Japan, where the declining birthrate and the aging population are progressing and the shortage of labour in the nursing care service sector is an issue, the limitation of nursing care services significantly affects older persons and their families. There are many challenges in terms of reasonable accommodations for workers with disabilities. Not only linguistic barriers but also discriminatory behaviors based on specific races have been also found.

It is critical to observe the influence that the current social situation makes on the human rights of each stakeholder from multiple viewpoints to respond to coronavirus

effectively. Companies are expected to research specific influence of each stakeholder on the basis of the guidance provided in the previous chapters. Subsequently, companies are encouraged to implement measures including proactive support in addition to existing policies and practices to mitigate the influence.

(1) Children

- The burden on workers who take care of children increasing due to school closures etc.
- The impact on the possibility of violation of children's rights, including child abuse due to measures associated with school closures, remote work, and decline of income influencing workers
- Changes in the risk of child labour

(2) Older persons

- The economic and health risks of older workers
- The burden on workers who take care of older persons increasing due to limitation of nursing care services

(3) Women, gender and sexual minority

- The impact of remote work and income decline on female workers
- The risk of domestic violence increasing due to longer home hours
- Mechanisms incorporating women's voices on measures against coronaviruses, from planning to implementation
- The impacts on sexual minorities

(4) Persons with disabilities

- Reasonable accommodation for workers with disabilities due to changes in living and employment environments including delivery of information adapting to specific needs
- Mechanisms incorporating voices of persons with disabilities on measures against coronaviruses from planning to implementation

(5) Foreigners

- Implementation of providing information in multiple languages
- Prevention of discrimination and bias against a specific race as well as a clear message to the public that discrimination is not allowed

Chapter 6. Privacy

Governments around the world, in cooperation with businesses, have started to utilize digital surveillance technologies to collect location information of patients with COVID-

19 and those subject to quarantines, and to track and monitor their behaviors. In Japan, the Government has also requested business to provide information that contributes to the countermeasures against coronavirus clusters¹⁹. The government also announced that it would collaborate with the private sectors to provide an app for smartphones that warns people who may have come into close contact with patients with COVID-19²⁰.

In response to these developments, NGOs and media are becoming increasingly concerned about violation of privacy rights because these measures may allow the governments to monitor citizens and that there is a risk of unauthorized use of personal information. Amnesty International and more than 100 NGOs have issued joint statements to clarify eight conditions in using digital surveillance technologies for protecting human rights and preventing excessive monitoring²¹.

Given these concerns, companies are expected to respect privacy rights when collaborating with the government in developing technologies and providing information. Also in this engagement, it is beneficial to conduct Human Rights Due Diligence to assess impacts on human rights, including an indirect impact, caused by business activities. When companies develop and provide digital technologies such as tracking apps, it is important to check and monitor how the technology provided by the companies to the governments will be used. When companies provide government with data of their employees, and customers, it is also important to prudently check out how the data will be used by the governments as well as complying with data protection regulations. Access Now's recommendations²² summarize check points in the public-private partnership on digital surveillance technologies.

In addition, European Commission has developed principles²³ and has clarified requirements under its toolbox²⁴ in developing mobile phone tracking applications to be in consistency with data privacy laws. It is also useful for business to analyze the gap between their related digital surveillance technologies and EU's principles and requirements.

¹⁹ https://www.mhlw.go.jp/stf/newpage_10506.html

²⁰ <https://prtimes.jp/main/html/rd/p/000000008.000039198.html>

²¹ <https://www.amnesty.org/en/latest/news/2020/04/covid19-digital-surveillance-ngo/>

²² <https://www.accessnow.org/cms/assets/uploads/2020/03/Access-Now-recommendations-on-Covid-and-data-protection-and-privacy.pdf>

²³ https://ec.europa.eu/commission/presscorner/detail/en/ip_20_626

²⁴ https://ec.europa.eu/health/sites/health/files/ehealth/docs/covid-19_apps_en.pdf

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