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# ***Work-Style Reform Legislation in Japan***

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## ***In brief***

On June 29, 2018, the Parliament passed work-style reform legislation which implements one of the core policies of Prime Minister Shinzo Abe's cabinet. The legislation is a package of changes to the eight statutory laws aimed at facilitating realization of a society where each worker may select a work style in line with his or her individual circumstances: the Labor Standards Act, the Pneumoconiosis Act, the Employment Measures Act, the Industrial Safety and Health Act, the Worker Dispatching Act, the Act on Special Measures for Improvement of Working Hours Arrangements, the Act on Improvement of Employment Management for Part-Time Workers, and the Labor Contracts Act. The legislation features the introduction of a legal cap on overtime hours during the busy season, work-hours restrictions exemptions for high-level professionals, and rules establishing an "equal work, equal pay" principle to address disparity in working conditions between regular workers and non-regular workers. It is expected to significantly affect employment practice in Japan.

This newsletter briefly illustrates the main points of the legislation.

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## ***In detail***

### ***1. Legal Cap on Overtime Hours***

Currently, an employer is allowed to have employees work in excess of the statutory working hours by executing a specific labor-management agreement pursuant to Article 36 of the Labor Standards Act, (an "**Article 36 Agreement**"). Generally, the upper limit on overtime working hours should be set at 45 hours per month and 360 hours per year. As an exception to this restriction, an employer may have employees work in excess of this limit during busy seasons (up to 6 months per year) by agreeing to a special clause in their Article 36 Agreement. The new legislation will set out a new legal cap of: (i) 720 hours per year; (ii) less than 100 hours per month (including holiday work); and (iii) 80 hours per month on average during each period of consecutive 2, 3, 4, 5 and 6 months. Violators may be subject to imprisonment with labor of up to 6 months or a fine of up to JPY 300,000. Specific businesses, including research and development of new technology or products, will be exempt from this legal cap.

The amendments to the Labor Standards Act will generally be applicable to Article 36 Agreements only covering the period subsequent to April 1, 2019 and not covering the period up to and including March

31, 2019<sup>1</sup>. However, there is a 1-year moratorium for small and medium-sized companies<sup>2</sup> under which the amendments will be applicable to Article 36 Agreements only covering the period subsequent to April 1, 2020. There are also 5-year moratoriums for other specific businesses including building construction, car drivers, and doctors.

## ***2. Introduction of Special Rules for High-Level Professionals***

By amending the Labor Standards Act, the new legislation will introduce special rules for high-level professionals (the “**HLP Rules**”) on April 1, 2019. The HLP Rules are aimed at providing a work-style option to workers who prefer to be appraised on the basis of their achievement rather than on the time actually spent for the work. The HLP Rules are available to employees who (i) are engaged in clearly defined work requiring specific skills (e.g., financial dealers, market analysts, and management consultants) the achievement of which is not closely related to the work time actually spent, and (ii) earn JPY 10.75 million or more per year. The employer of the workers who meet these requirements may apply the HLP Rules to them if, and to the extent, further requirements are satisfied. The requirements include a labor-management committee resolution, submission of that resolution to the governmental authority, and consent of the relevant employees. Once the HLP Rules are adopted, the overtime regulations under the Labor Standards Act concerning overtime hours, breaks, and overtime allowance for work on holidays and late-night work (defined as work between 22:00 and 05:00) will not be applicable to those employees subject to the HLP Rules.

Upon adoption of the HLP Rules, the employer is obligated to take measures to secure the good health of the relevant employees. Specifically, the employer must:

- ascertain the total hours during which each relevant employee is in the office and working outside the office (the “**Health Management Hours**”);
- ensure holidays of not less than 104 days per year and not less than 4 days every 4 weeks for each relevant employee; and
- take any of the following measures, to be selected by the employer, to ensure employees’ health care:
  - (i) implementation of a work-interval system and limitation of late-night overtime work;
  - (ii) setting the upper limit of Health Management Hours on the basis of 1 month or 3 months;
  - (iii) giving at least one holiday of two consecutive weeks per year; or
  - (iv) conducting health checks for employees working in excess of certain hours.

## ***3. Promotion of a Work-Interval System***

As a new measure to secure employees’ rest and help them strike a life-work balance, the new legislation will amend the Act on Special Measures for Improvement of Working Hours Arrangements urging employers to “make efforts” to ensure that a certain interval transpires between the end of working hours for one day and the beginning of working hours for the next day. This amendment will come into effect on April 1, 2019.

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<sup>1</sup> For example, if the term of an Article 36 Agreement includes March 31, 2019, the amendments will not be applicable for a year from the commencement date of the Article 36 Agreement.

<sup>2</sup> Companies whose capital amount is not more than JPY 300 million (JPY 50 million for the companies mainly engaging in retail or service businesses and JPY 100 million for the companies mainly engaging in wholesale business) and whose number of regularly working employees is not more than 300 (not more than 50 for the companies mainly engaging in retail or service businesses and not more than 100 for the companies mainly engaging in wholesale business).

#### 4. *The Equal Work, Equal Pay Principle*

The Act on Improvement of Employment Management for Part-Time Workers (the name of which will be changed to “the Act on Improvement of Employment Management for Part-time Workers and Fixed-term Contract Workers” (the “**Part-time and Fixed-term Contract Workers Act**”), the Labor Contracts Act, and the Worker Dispatching Act are amended to rectify irrational discrimination in respect of the working conditions of non-regular employees such as part-time workers, fixed-term contract workers, and dispatched workers. In principle, the amendments will come into effect on April 1, 2020. Exceptionally, for small and medium-sized companies, the Part-time and Fixed-term Contract Workers Act will be applied on and April 1, 2021.

Under the current laws, there are prohibitions on disparities in working conditions for regular employees (i.e., permanent, full-time employees) and non-regular employees to the extent those disparities are irrational taking into account the respective job duties of both types of employees, the degree of possible changes to job duties and positions of the respective employees, and any other circumstances surrounding the respective employees. However, the laws do not clearly state what constitutes “working conditions” and the method for determining the rationality of disparities. Therefore, there has been a need to amend the relevant provisions of the laws so that irrational discrimination is clear, and thus can be solved more effectively.

The amended Part-time and Fixed-term Contract Workers Act clarifies that (i) the working conditions include base salary and bonus as well as other allowances, and (ii) an employer must consider the rationality of each item of the working conditions individually taking into account the nature and purpose of such item<sup>3</sup>. The amendments align with the draft guidelines issued by the government in December, 2016 which describe permissible and prohibited work-condition disparities between regular workers and non-regular workers (essentially a draft of the equal work, equal pay guidelines). In addition, while fixed-term contract workers have not been given such protection under the current laws or the guidelines, the amended Part-time and Fixed-term Contract Workers Act will expand the protection to the fixed-term contract workers.

Further, the new Worker Dispatching Act will give dispatched workers protections substantially the same as those for part-time workers and fixed-term contract workers.

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<sup>3</sup> This interpretation approach is in line with the Supreme Court’s recent decisions in respect of the current Labor Contracts Act (the *Hamakyorex* case and the *Nagasawa Unyu* case both decided on June 1, 2018).

## **Let's talk**

For a deeper discussion of how this issue might affect your business, please contact:

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