

Ministry of Health, Labour and Welfare strengthens overtime regulations

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Working hour regulations

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New development

In recent years, excessively long overtime has been an issue in Japan. The Ministry of Health, Labour and Welfare (MHLW) has strengthened overtime-related regulations and enforcement thereof and, as a result, several large, renowned companies have been charged with violating the Labour Standards Act. These cases have been referred to the prosecutor's office, which will consider whether to indict the companies.

Working hour regulations

In accordance with Article 32 of the Labour Standards Act, the maximum working hours are eight hours a day, 40 hours a week. Company directors who violate this article are subject to up to six months' imprisonment with labour or a maximum fine of Y300,000. Under the Labour Standards Act, 'working hours' are the hours during which an employee is subject to his or her employer's supervision and direction.

If an employer has entered into a written agreement with either a labour union organised by a majority of the employees at the workplace (if such labour union exists) or a person representing a majority of the employees (if such union does not exist) and has notified the head of the relevant labour standards inspection office of such an agreement, the employer may extend its employees' working hours or have them work while on holiday in accordance with the provisions of the agreement (a so-called '36 agreement').⁽¹⁾

However, an employer cannot have its employees engage in unlimited overtime by entering into a 36 agreement. The MHLW's Upper Limit Guideline sets out the upper limits for overtime that can be agreed under a 36 agreement, which – for ordinary employees⁽²⁾ – are as follows.

Period	Upper limits of extended working hours
One week	15 hours
Two weeks	27 hours
Four weeks	43 hours
One month	45 hours
Two months	81 hours
Three months	120 hours
One year	360 hours

In special circumstances, an employer can have its employees work beyond the upper limit⁽³⁾ if:

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- the parties agree in advance in a 36 agreement that the working hours can be extended in special circumstances; and
- the working hours are extended for a certain length in the manner agreed by the parties.(4)

However, at present, no criminal penalties are imposed on employers that violate the Upper Limit Guideline. To reinforce the enforcement of overtime regulations, the government is considering proposing an amendment to the act to set an upper limit for overtime hours and introduce criminal penalties for violations thereof.

New guideline regarding management of working hours

In January 2017 the MHLW issued a new guideline regarding measures that an employer should take to monitor working hours properly. It is commonly understood that this new guideline does not create new standards; rather, it confirms and clarifies past precedents.

The guideline clearly states that the definition of 'working hours' includes:

- time in which an employee must prepare to engage in work required by his or her employer;
- so-called 'waiting time', (ie, the time during which an employee is waiting to engage immediately in duties – from which his or her release is not guaranteed – if his or her employer so directs); and
- time in which an employee attends a mandatory training programme or seminar.

Further, the new guideline stipulates measures that an employer should take to monitor working hours properly. As with the previous guideline, self-reporting of working hours is still permitted. It states that, in principle, working hours should be recorded via objective measures, such as:

- time cards;
- records of the employee's log-in and log-out times for his or her work computer; and
- security key or card records.

In addition, if a self-reporting system is adopted, an employer is required to monitor whether there is a discrepancy between such objective records and the working hours reported by employees and investigate the actual circumstances if such a discrepancy exists.

Risks associated with overtime work

Legal risks

If an employee who worked long hours died, committed suicide or suffered a significant physical or mental injury due to being overworked, an employer may be held liable for breach of its obligation to give necessary consideration to the employee's safety. Such liability may be pursued against an individual director, as well as the hiring company. Further, an employer whose employees work illegally long hours is subject to criminal penalties and, in severe cases, a compulsory investigation. An individual director as well as the hiring company may be referred to a public prosecutor and be subject to criminal penalties. Failure to pay the premium concerning overtime is also subject to criminal penalties.

Reputational risks

In recent years – in view of the rise of the Internet and social networks, among other things – dissatisfaction or complaints regarding working conditions can instantly be disseminated outside the company.

Society labels companies that force employees to work under poor working conditions as 'black companies'. Once such a company has its reputation tarnished or is subject to rumours, it may become increasingly difficult for it to recruit talented employees. In addition, the MHLW announced in its policy that if large companies with a strong influence on society repeatedly make their employees work illegally long hours at multiple workplaces, the chief of the competent prefectural labour bureau must instruct them to rectify the illegality promptly and on a company-wide basis, and may make such fact public. Consequently, the fact that a particular company has made its

employees repeatedly work illegally long hours at multiple workplaces can be made public and therefore poses a significant reputational risk.

New development

The government is now promoting a Work Style Innovation as its policy and on March 28 2017 it announced an Action Plan for Work Style Innovation, which states the direction of the relevant legal reform.

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Endnotes

(1) The employer may – notwithstanding the working hours provisions stipulated in Articles 32 to 32-5 and 40 of the act or the holidays provisions stipulated in Article 39 – extend its employees' working hours or have employees work on holidays in accordance with the provisions of the relevant 36 agreement. However, an extension of working hours for below-ground labour and other work particularly harmful to health, as stipulated by the MHLW ordinance, must not exceed two hours a day. These agreements are called 36 agreements because they are made in accordance with Article 36 of the Labour Standards Act.

(2) A different upper limit will be applied to employees who are subject to an irregular working hours system with a one-year term.

(3) At present, an amendment to the Labour Standards Act which will strengthen the regulations relating to overtime work is being discussed.

(4) Special circumstances are limited to temporary or sudden circumstances that require overtime work; it is expected that they will not exceed six months in total.

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