

# Amendments to regulations on working hours and paid annual leave

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- [Monitoring of employee working hours](#)
- [Mandatory exercise of paid annual leave](#)
- [Highly professional system](#)
- [Settlement period for flexible working hours](#)
- [Overtime limits](#)
- [Comment](#)

Amendments to Japan's labour and employment laws took effect on 1 April 2019 (although some amendments will not take effect for small or medium-sized companies until 2020, as set out below). This article provides a brief overview of the main amendments regarding working hours and paid annual leave.

## Monitoring of employee working hours

As of 1 April 2019, employers must monitor the hours during which employees are capable of undertaking their intended work.<sup>(1)</sup> In principle, this monitoring should be based on an objective standard, such as timecards or computer login records. These records must be retained for three years. In practice, this regulation applies only to employees in managerial and supervisory positions or positions for which employers were not previously required to monitor working hours using an objective standard.<sup>(2)</sup>

If the number of recorded hours per month exceeds the statutory standard working hours of 40 hours per week (ie, 160 hours per 28-day month) by 80 hours or more, the employer should notify the employee of the recorded hours and, at the employee's request, arrange for them to see a doctor if they are suffering from chronic fatigue.

## Mandatory exercise of paid annual leave

As of 1 April 2019, if an employee is granted 10 or more days of paid annual leave in one year, their employer must designate when five of these days should be taken within that year. However, if the employee voluntarily takes (or designates a time in which to take) five or more days of their paid annual leave before the employer makes such a designation, the employer cannot designate the period in which the employee should take the leave. Based on these amendments, employers must amend their work rules to set out how they can make such a designation.

## Highly professional system

As of 1 April 2019, employers can adopt a so-called 'highly professional system' regarding working hours and overtime regulations. Under the system, employees will be exempt from working hour regulations (eg, overtime regulations) where they:

- engage in work that is highly professional and not tied to a set number of hours (an exhaustive list of what constitutes highly professional work is set out in the regulations); and
- earn a salary of ¥10.7 million or higher.

In order to adopt this system, employers must:

- create a labour management committee, which must issue a resolution designating certain work as highly professional (in accordance with the list set out in the regulations);
- submit the above resolution to the relevant authority; and
- obtain consent from employees who will be subject to the system.

## Settlement period for flexible working hours

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As of 1 April 2019, the maximum settlement period under the flexible working hours system will be extended from one to three months.

### **Overtime limits**

Previously, the maximum monthly and annual overtime limits, which should be set out in an employer's labour management agreement, were regulated by a guideline, which did not provide for criminal penalties in the case of infringement. The guideline provided that, in principle, employee overtime could not exceed 45 hours per month and 360 hours per year. However, it also provided an exception, under which employers could – in special circumstances – extend these limits up to six times per year to an amount that is currently unregulated, but which must be specified in the labour management agreement.

As of 1 April 2019, the maximum overtime limits are regulated by law, with any infringement being liable to criminal penalties. The maximum overtime limits remain unchanged; however, the law specifically regulates the abovementioned exceptional overtime hours. Notably, this amendment has taken effect only for large companies. Small and medium-sized companies will have to comply with this change from 1 April 2020.

This amendment applies only to labour management agreements that will commence in or after April 2019 (or April 2020 for small and medium-sized companies). Thus, if an employer has, for example, entered into a labour management agreement that is effective until late 2019, the agreement will not have to be amended.

### **Comment**

Employers should ensure that their policies and practices comply with the above amendments to ensure an easy transition to Japan's new employment framework.

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### **Endnotes**

(1) This may differ from an employee's working hours in situations where, for example, they finished their work but did not log out of their computer while having non-work related conversations with co-workers.

(2) For employees whose actual working hours were already required to be monitored using an objective standard under the Ministry of Health, Labour and Welfare guideline, employers could deem such working hours to be the hours during which the employees were capable of undertaking their intended work for the purpose of the regulations. Working hours should be recorded in a wage register.

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