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Table of Contents

WORK-STYLE REFORM-RELATED BILLS

The work-style reform-related bills were enacted on June 29, 2018. The work-style reform-related bills are a package of legislation intended to promote work-style innovation by diversifying and increasing the flexibility of the manner in which employees work. The bills consist of amendments to various laws, including the Employment Measures Act, the Labor Standards Act, the Industrial Safety and Health Act, the Working Hours Arrangement Improvement Act, the Labor Contracts Act, the Part-Time Workers Act and the Worker Dispatching Act.

1. Executive Summary

Key aspects of the work-style reform related bills that you should carefully consider include the following.

1.1 Overall Work-style Reforms: The amendments encourage employers to introduce more flexible and efficient working arrangements. You will need to consider (i) whether and to what extent to promote remote work and the introduction of other flexible working arrangements and (ii) whether and how to change current business operations. These points should be considered first because they will be relevant to all other changes.

1.2 Tracking of Working Hours: The amendments would bring in stricter rules and enforcement of the manner in which employee working hours are tracked. You will need to revisit the way in which employee working hours are recorded (eg, using time cards, computer-based log-ins / log-outs and/or employee self reporting) and assess compliance with the Labor Standards Act and relevant ministerial orders and guidelines.

1.3 White Collar Exemption: The introduction of the white collar exemption may have a significant impact on international companies doing business in Japan. This exemption applies to employees who engage in certain types of work and earn certain amount (currently expected to be at minimum JPY 10 million yen) per year subject to certain conditions. We believe a relatively large proportion of international companies' employees earn at least JPY 10 million while a much smaller percentage of the employees of domestic companies are likely to satisfy this threshold. International companies may therefore be able to significantly change their compensation structures to more performance-based systems. However, as explained in greater detail below, various challenges need to be addressed to enable the use of this new mechanism.

1.4 Non-Discriminatory Treatment of Non-Regular Employees: The amendments require that non-regular employees — including fixed term contract employees, part-time employees and dispatch employees — be treated equally with regular employees absent reasonable grounds for disparate treatment. You should confirm whether your company makes use of employees in these categories. If so, you will need to ensure that they are not treated differently from regular employees absent reasonable grounds.

Please see Section 2 below for further details on the above and other matters involved in the work-style reform-related bills.

Although there will be some time until the amendments will come into force, various actions will need to be considered/taken in the interim. It would be advisable to begin assessing the impact of the amendments and identifying necessary responses as soon as possible to ensure that you are prepared.

2. Summary of Work-Style Reform Bills:

2.1 Promotion of Work-Style Reforms

The Employment Measures Act will be substantially overhauled to promote employment security for employees in various situations, ensure a healthy work-life balance and enhance working efficiency.

The Act will require that the government enact a basic policy covering such matters as: (i) shorter working hours and other improvements in working conditions; (ii) fair treatment of employees with different employment and working arrangements; (iii) diversification of ways of working; and (iv) work-life balance. The Act will also require that employers make efforts to create working environments that enable employees to maintain an appropriate balance between work and their private lives depending on their levels of commitment and capability, including by introducing shorter working hours and/or other improvements in working conditions.

These amendments to the Employment Measures Act will come into force immediately.

2.2 Measures Against Long Working Hours

(a) Introduction of Strict Overtime Work Limits

Under this amendment to the Labor Standards Act, (i) the overtime hours will, in principle, be capped at 45 hours per month and 360 hours per year; and (ii) although it will be possible for employers to have employees work longer overtime hours where special circumstances exist, overtime hours (including holiday working hours) will be strictly capped at 100 hours per month, 720 hours per year and an average of 80 hours per month.

Before this amendment, the guidelines published by the Ministry of Health, Labor and Welfare allowed special circumstances to be agreed upon in a labor management agreement that would permit unlimited overtime work. The new amendment imposes a clear legal ceiling on overtime hours even where special circumstances exist.

This amendment to the Labor Standards Act will come into force on April 1, 2019. However, for small and medium-sized enterprises (please see the definition in Section 2.2(b) below), they will come into force in April 2020.

The new requirements apply broadly to all industries although certain exceptions and grace periods exist for automobile drivers, construction workers, medical practitioners, sugar processing workers in Kagoshima prefecture and Okinawa prefecture and workers engaged in research and development related to new technologies/products. The amendments also specifically require that the labor authorities be mindful of trends in working hours, available resources and the actual business environment faced by small and medium-sized enterprises (please see the definition in Section 2.2(b) below) when enforcing the new requirements.

(b) Review of Increased Overtime Rates for Excessive Working Hours

An amendment to the Labor Standards Act that came into force on April 1, 2010 raised the minimum overtime rate for working hours in excess of the 60

statutory overtime hours per month to 150% of an employee's hourly wage. However, small and medium-sized enterprises, as defined below, have been exempt from this requirement.

The new amendments to the Labor Standards Act state that this grace period for the higher overtime rate requirements for excessive working hours will end on April 1, 2023.

Type of business	Capital	or	Number of employees on an ongoing basis
Retail Business	¥50,000,000 or less	or	No more than 50
Service Business	¥50,000,000 or less	or	No more than 100
Wholesale Business	¥100,000,000 or less	or	No more than 100
Others	¥300,000,000 or less	or	No more than 300

(c) Ensuring Use of Annual Paid Leave

The relevant amendments to the Labor Standards Act require employers to annually designate five days of annual paid leave for employees who receive 10 or more days of annual paid leave to ensure that they use at least five days of annual paid leave each year.

The Labor Standards Act requires employers to provide full-time employees with between 10 and 20 days of annual paid leave at minimum each year depending on their number of years of service. However, in practice, employees have felt pressure to not use their annual paid leave. Many do not use the majority of their annual paid leave and allow it to expire (annual paid leave expires after two years). The amendment is intended to make it easier for employees to take more of the annual paid leave to which they are legally entitled.

This amendment to the Labor Standards Act will come into force on April 1, 2019.

(d) Tracking of Working Hours

An amendment to the Industrial Safety and Health Act requires employers to track employees' working hours in accordance with the relevant ministerial ordinance.

Currently, employers are required to accurately track their employees' working hours. However, no clear legal requirements exist as to how exactly working hours should be recorded, although guidelines have been issued. This amendment and the ministerial ordinance pursuant to it would add greater clarity regarding the manner in which working hours must be recorded.

This amendment to the Industrial Safety and Health Act will come into force on April 1, 2019.

(e) Encouraging Intervals Between Work Days

An amendment to the Working Hours Arrangement Improvement Act will require employers to make efforts to secure a certain number of break hours for employees between the times at which their work ends on one day and resumes the next.

This amendment to the Working Hours Arrangement Improvement Act will come into force on April 1, 2019.

(f) Health and Safety

An employer is required to submit a report accompanied by certain relevant information to the health committee if it receives instructions from an industrial doctor relating to the maintenance of the health of its employees at a workplace with 50 or more employees.

For workplaces with 50 or more employees, the employer must provide industrial doctors with any information necessary to enable them to properly conduct industrial medical services. Also, where doctors/medical practitioners have been designated for a workplace with fewer than 50 employees, employers must endeavor to provide said doctors/medical practitioners with information necessary to enable them to properly conduct industrial medical services.

2.3 Diverse and Flexible Work-Styles

(a) Amendment to Flextime System

Under the current Labor Standards Act, an employer can average an employee's working hours for a period of up to one month and only pay an overtime allowance if the working hours so averaged exceed 40 hours per week.

Under an amendment to the Labor Standards Act, this period can be up to three months, subject to certain conditions. This would enable employers to more flexibly deal with workload fluctuations over longer periods of time.

This amendment to the Labor Standards Act will come into force on April 1, 2019.

(b) White Collar Exemption for Highly Professional Employees

The amended Labor Standards Act establishes a new category of employees — highly professional employees —who are exempt from overtime allowances, holiday allowances and late night work allowances.

In order to be classified as a highly professional employee, an employee must:

- receive the minimum total annual salary designated under the ministerial ordinance (currently expected to be at minimum JPY 10 million); and
- engage in a type of work that requires highly professional knowledge as designated under the ministerial ordinance.

The following procedures must be completed before this exemption can be applied.

- A labor management committee resolution must be passed.
- The labor management committee resolution must be submitted to the Labor Standards Inspection Office.
- Consent must be obtained from each employee to whom the exemption is to apply. Each employee must also be permitted to withdraw his/her consent based on the procedures set forth in the labor management committee resolution.

In addition, the following measures must be taken to ensure the health and safety of exempt highly professional employees.

- 104 days or more of holidays must be provided each year.

- At least one of following measures must be taken. (i) An employer must ensure an interval of a certain number of hours between the times at which the employee's work ends on one day and resumes the next. (ii) An employer must cap the number of hours during which the employee must be present at the workplace over a one-month or three-month period. (iii) An employer must ensure that the employee has holidays two weeks in a row. (iv) Employer must perform extraordinary medical check ups.

This amendment to the Labor Standards Act will come into force on April 1, 2019.

2.4 Non-Discriminatory Treatment of Non-Regular Employees

Amendments to the Labor Contracts Act, the Part-Time Workers Act and the Worker Dispatching Act will require reasonably equal treatment of regular employees and non-regular employees, including fixed-term contract employees, part-time employees and dispatch employees. Non-regular employees' compensation may not be unreasonably reduced nor may they be unreasonably excluded from benefits, unless the reduction or exclusion is justified by the nature and purpose of the compensation and/or benefits.

Employers will be required to treat fixed-term contract employees and part-time employees impartially with regular employees who are similarly situated in light of (i) job assignments and (ii) the level of flexibility of the employer in changing job assignments/locations.

For dispatched employees, employers are required to either (i) treat dispatched employees and regular employees equally or (ii) ensure that dispatched employees are treated in a manner generally comparable to or more favorable than other employees engaged by similar businesses in the relevant market through the labor management agreement.

Also, if an employer treats non-regular employees differently than regular employees, the employer will be required to explain the details and reasons for the differences in treatment upon employee request. The government will take enforcement measures and make ADR available to the relevant parties.

In the meantime, the government plans to promulgate guidelines pursuant to this amendment which will add greater clarity with regard to what must be considered in ensuring reasonable treatment of non-regular employees when compared to that of regular employees.

These amendments will all come into force on April 1, 2020. However, they will not apply to small and medium-sized enterprises (please see the definition in Section 2.2(b) above) until April 1, 2021.

3. Recommended Actions

Because the amendments are very broad, it is difficult to make an exhaustive list of all necessary responses. Some of the key actions that companies will need to take are summarized below.

No.	Rating	Sections	(A) Topic (B) Effective Date	Action Items
1.	High	2.1	(A) Work-style Reforms (General) (B) Effective Immediately	• Consider whether and to what extent remote work and other flexible working arrangements should be introduced from a business perspective. • Consider whether and how current business operations need to be changed.

				Note: These points should be addressed first because they are relevant to all of the other changes.
2.	Medium	2.2(a)	(A) Introduction of Higher Overtime Work Limits (B) April 1, 2019 (April 2020 for small or medium sized enterprises)	• Review overtime data and determine whether any employees' overtime hours exceeded the limits in the past. • If so, consider how to avoid similar occurrences in the future.
3.	Medium	2.2(b)	(A) Increased Overtime Rate for Excessive Working Hours (B) April 1, 2023	• Confirm whether you are a small or medium-sized enterprise and therefore currently excluded from the increased overtime rate for excessive working hours. • If so, consider how to address the increased overtime rates for excessive working hours when the amendment comes into force.
4.	Medium	2.2(c)	(A) Ensuring Use of Annual Paid Leave (B) April 1, 2019	• Consider how to arrange for employees to take their annual paid leave. • Consider the business impact and year-round management of human resources.
5.	High	2.2(d)	(A) Tracking of Working Hours (B) April 1, 2019	• Confirm how employee working hours are recorded (eg, using time cards, computer log in / log out, employee self reporting, etc.). • Assess compliance with the Labor Standards Act and the relevant ministerial orders and guidelines.
6.	Low	2.2(e)	(A) Encouraging Intervals Between Work Days (B) April 1, 2019	• Consider whether and how to introduce intervals between work days.
7.	Low	2.2(f)	(A) Health and Safety (B) April 1, 2019	• Confirm whether you have 50 or more employees at the workplace. If so, ensure that you follow the additional procedural requirements. • Consider proactive involvement by the industrial doctor in various employment-related matters, including sick leave.
8.	Low	2.3(a)	(A) Amendment	• Confirm whether you

			to Flextime System (B) April 1, 2019	already have a flextime policy. • If so, consider whether the flextime policy should be amended in light of the greater degree of flexibility allowed under the amended law. • If no flextime policy exists, consider whether to introduce one.

9.	High	2.3(b)	(A) White Collar Exemption
			(B) April 1, 2019
				• Consider whether to introduce white collar exemptions.
				• Consider the scope of the employees to be covered:
				  • existing employees / new employees / both
				  • grades/functions
				• Consider when and how to implement the exemptions.
				Notes:
				• This change is potentially very significant for international companies doing business in Japan because it is likely that a considerable number of their employees earn at least the expected threshold of JPY 10 million.
				• It would be relatively straightforward to apply this to new hires as long as the procedural requirements are followed. However, it would not be straightforward to do so for existing employees especially given that sufficiently informed consent would need to be obtained from each.

10.	High	2.4	(A) Non-Discriminatory Treatment of Non-Regular Employees (B) April 1, 2020 (April 2021 for small and medium-sized enterprises)	• Confirm whether you employ any non-regular employees, including fixed-term contract employees, part-time employees and dispatch employees. • If so, determine whether they are treated differently from similarly situated regular employees. • If any differences are found, consider whether any justifiable reasons exist for each difference. • If no justifiable reasons can be found for any of the differences, consider eliminating them.

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