

## DOKUMENTATION / DOCUMENTATION

### The Japanese Work-Style Reform 2019

#### From the Practitioner's Perspective

*Keiko Ishikawa/Tobias Schiebe\**

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After a number of prominent fatalities that have been linked to excessive working hours at some of Japan's largest corporations in 2015/2016<sup>1</sup> and increasing public pressure, the government initiated a so-called “Work-Style Reform”. The reform aims at reducing excessive overtime hours of employees in order to prevent stress-induced illnesses and nourish a more balanced work-life culture. At the same time, the government strives to bring more flexibility to the labor market and increase productivity as Japan is facing an unprecedented socio-economic challenge with its aging population and shrinking labor force.

The Act on Arrangement of Relevant Acts to Promote the Work Style Reform [働き方改革を推進するための関係法律の整備に関する法律, *Hataraki-kata*

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1 Death of a 31-year-old female journalist due to heart failure at a public broadcaster after working 159 hours of overtime in the month prior to her death; suicide of a 24-year-old female employee at Japan's largest advertising agency after working consecutively for more than 100 hours of overtime per month.

*kaikaku o suishin suru tame no kankei hōritsu no seibi ni kansuru hōritsu*]<sup>2</sup> (“Act”) was promulgated on 6 July 2018 and is going to be implemented consecutively starting from 1 April 2019. Key aspects of the Act are as follows:

In order to balance working hours and promote a more diverse and flexible working style:

- Introduction of a legal cap on overtime (generally starting from 1 April 2019, provided for SMEs only from 1 April 2020).
- Extension of the application of the premium rate for overtime work that exceeds 60 hours per month (50 %) to SMEs (starting from 1 April 2023).
- Establishment of a “Highly Professional Workers System” (starting from 1 April 2019).
- Management of working hours of employees as designated by ministerial ordinance (starting from 1 April 2019).

In order to secure fair labor conditions regardless of employment status:

- Solidification of the “Equal Pay for Equal Work”-principle (generally starting from 1 April 2020, provided for SMEs only from 1 April 2021).
- Enhancement of the employer’s obligations to explain labor conditions (starting from 1 April 2019).

## I. INTRODUCTION OF A LEGAL CAP ON OVERTIME

### *1. General Cap on Overtime*

The Act stipulates for the first time a clear and binding ceiling on overtime working hours for employees. In principle, overtime shall not exceed 45 hours per month and 360 hours per year. Under special circumstances, the overtime cap can be extended to 100 hours per month (for a single month), 80 hours per month (for a period of two to six months), or 720 hours per year. Furthermore, the statutory monthly overtime limit of 45 hours shall not be exceeded more than six times a year. Noteworthy, the monthly statutory overtime limit will include holiday work while the yearly statutory overtime limit will exclude holiday work, which has been criticized for providing loopholes for employers.

Until the Act came into effect, guidelines of the Japanese Ministry of Health, Labor and Welfare (MHLW) allowed for the conclusion of a labor management agreement that, in principle, permits unlimited overtime work if certain conditions (e.g. extraordinary work demand), that needed to be

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<sup>2</sup> Law No. 71/2018.

specified in advance, are fulfilled. Under the new regime, it will no longer be possible to conclude agreements that exceed the legal overtime limit.

Former Rule (告示)		New Act		
<i>Time Frame</i>	<i>Overtime Limit</i>	<i>Time Frame</i>	<i>Overtime Limit</i>	
1 week	15h		General	Exceptional
2 weeks	27h	1 month	45h	100h
4 weeks	43h	2–6 months	–	Average of 80h
1 month	45h	1 year	360h	720h
2 months	81h			
3 months	120h			
1 year	360h			

The cap on legal overtime will be effective as of 1 April 2019. Small and medium sized enterprises (SMEs) are granted a grace period of one year (i.e. effective as of April 2020). There are further exceptions and grace periods for certain industries such as medical workers, construction workers, drivers, and workers in research and development in new technologies. Employers should be aware that the Act requires them to record the working hours of all the employees including employees in a management position by objective means and that they can be held liable for overtime related health issues of their employees. It should also be noted that starting from 1 April 2023 the premium rate for overtime work that exceeds 60 hours per month (50%) will be applied on SMEs as well. Whether a company is deemed as an SME depends on the industry, equity/capital and the number of employees (as shown in the table below).

Industry	Amount of capital or total amount of equity contributions		Number of regular employees
Retail	JPY 50,000,000 or less	or	50 or less
Service industries	JPY 50,000,000 or less	or	100 or less
Wholesale	JPY 100,000,000 or less	or	100 or less
Other	JPY 300,000,000 or less	or	300 or less

## 2. Introduction of the “Highly Professional Workers System”

As an exception to the new cap on overtime, the Work-Style Reform introduces a “Highly Professional Workers System”. It will exclude highly qual-

ified white collar workers from the restrictions on total working hours and the application of overtime, holiday, and late-night premiums. This system is designed for employees, who are

- (i) engaged in a field that requires a high degree of professional knowledge (e.g. analysts, dealers of financial instruments, research and development specialists, consultants),
- (ii) where the hours spent at work and the work product are not necessarily correlated, and
- (iii) the annual salary exceeds a certain threshold (at a minimum of JPY 10.75 million per year).

In order to protect the employees' health, employers are however required to grant at least 104 days off annually. Furthermore, employers and employees should mutually agree on at least one of the following measures to prevent overwork: (i) setting an upper limit of working hours, (ii) setting a certain rest period between leaving the office and coming back to work, (iii) granting two weeks of consecutive vacation, or (iv) providing a special medical check-up. In addition, employers who would like to establish such a system must adhere to the following procedure:

- A labor management committee resolution must be passed.
- The labor management committee resolution must be submitted to the relevant Labor Standards Inspection Office.
- Each employee concerned must agree to participate in the “Highly Professional Workers System” (employees can withdraw their consent at any time).

### 3. *To-Do's for Employers*

Employers should review their employees' overtime accounts and consider introducing a working time records system to monitor excessive working hours. It is further worth considering to reduce overtime hours from a legal perspective by making use of the special working hours systems of the Labor Standards Act (e.g. Flextime System, Variable Working Hours System, Discretionary Labor System). If certain employees exceed the statutory overtime limit, companies have to re-evaluate the work scheduling within the company.

Companies should also consider whether the introduction of the “Highly Professional Workers System” may be applicable within their company and whether a salary increase for certain professionals (if the further conditions for eligibility for the “Highly Professional Workers Systems” are fulfilled) would outweigh the burden of overtime payments.

Last, but not least, employers should review their rules of employment and internal policies with regard to the new requirements.

## II. SOLIDIFICATION OF THE “EQUAL PAY FOR EQUAL WORK”-PRINCIPLE

The reform stipulates an obligation for equal treatment of regular employees and non-regular employees, the latter including part-time employees, fixed-term employees, and dispatched employees. The principle of equal treatment at the work place is not entirely new and has been previously established in the Japanese Labor Contract Act (LCA)<sup>3</sup> and Part-Time Workers Act (PTWA)<sup>4</sup>. Both laws prohibit “unreasonable differences” in working conditions between regular employees and part-time and fixed-term employees. These laws however do not further specify the term “unreasonable differences”.

In 2016, the MHLW proposed a guideline (Guideline) providing direction when determining which differences in treatment are deemed “unreasonable”. The Guideline is expected to be finalized now that the Work-Style Reform is underway. The Supreme Court of Japan also interpreted the term “unreasonable differences” in two cases involving allegations of “unreasonable differences” in wages and allowance payments in June 2018.<sup>5</sup>

### 1. *Part-Time and Fixed-Term Employees*

#### a) *Base Salary and Bonus Payments*

In principle, part-time employees and fixed-term employees shall be paid a similar base salary if they are equal to regular employees with regard to (i) work experience and ability, (ii) performance and results, and (iii) length of service within the company. If the experience or abilities or performance evaluation of non-regular employees deviate from regular employees, differences in the base salary can be made in accordance with such differences.

Bonus payments are to be handled in a similar manner as the base salary. If non-regular employees contribute to the employer’s performance similar to regular employees, they are entitled to equal gratification. Deviations in performance can be however subject to lower bonus maximum payments and of course also to the individual paid-out bonus if such bonus depends on the employee’s performance.

#### b) *Overtime Premiums and Allowances*

Non-regular employees are entitled to the same overtime, late night and holiday work premiums as regular employees. As set out in the Guideline,

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3 *Tan-jikan rōdō-sha no koyō kanri no kaizen-tō ni kan suru hōritsu*, Law No. 76/1993.

4 *Rōdō keiyaku-hō*, Law No. 128/2007.

5 Supreme Court, 1 June 2018, Hanrei Jihō 2390 (2019) 96 (*Hamakyorex*); Supreme Court, 1 June 2018, Hanrei Jihō 2389 (2019) 107 (*Nagasawa Un'yu*).

non-regular employees are also entitled to the same commuting allowance and travel expense allowance as regular employees. Other types of allowances are not (yet) regulated by the Guideline. The Supreme Court ruled however on the (un)reasonableness of differential treatment between regular and non-regular employees with regard to the following types of allowances (Hamakyorex Case).

<i>Allowance Type</i>	<i>Supreme Court Decision</i>
Accident allowance	Unreasonable
Special work allowance	Unreasonable
Meal allowance	Unreasonable
Commuting allowance	Unreasonable
Perfect attendance allowance	Unreasonable

## *2. Dispatched Employees*

Employers also have to treat dispatched employees either (i) equal to regular employees or (ii) in a manner generally comparable to or better than other employees employed by similar businesses in the relevant market (through conclusion of a labor management agreement). The aforementioned obligation is mainly with the dispatching entity. However, the host company must (i) provide information with regard to equal treatment compared to regular employees and (ii) permit use of company facilities such as a cafeteria, lounge or changing rooms.

The outlined amendments will come into force on 1 April 2020. SMEs are granted a grace period of one year (i.e. effective as of April 2021).

## *3. To-Do's for Employers*

Employers should compare and review the conditions of their regular and non-regular employees and evaluate whether the differences are justifiable.

If deviating treatment occurs and is not justifiable, appropriate remedial actions should be taken and, if necessary, the salary rules revised (a salary reduction generally requires the consent of the employees concerned).

Non-regular employees should also be informed about deviating treatment from regular employees to the extent required.

### III. OTHER MEASURES OF WORK-STYLE REFORM

#### *Flex-time*

The reference period for work time accounts (previously one month) can be extended up to three months in certain cases. This amendment is effective starting from 1 April 2019.

#### *Annual Paid Leave*

Employers are required to designate 5 days of paid leave if employees are entitled to 10 or more days of annual paid leave starting from 1 April 2019, provided that they are not required to designate paid vacations days designated by the employees or planned granted paid vacations days

#### *Intervals Between Work Days*

Employers are required to make efforts to grant employees a certain number of resting hours between leaving the office and returning the next morning starting from 1 April 2019.

### SUMMARY

*The Japanese Act on Arrangement of Relevant Acts to promote the Work-Style Reform (“Work-Style Reform”) was promulgated on 6 July 2018 and is implemented consecutively starting from 1 April 2019. The Work-Style Reform aims to reduce excessive overtime hours and to promote a more balanced flexible working style. To this end, for the first time, inter alia a clear and legally binding ceiling on overtime working hours will be established. Another aim of the Work-Style Reform is to ensure fair labor conditions regardless of the employment status which becomes more and more important considering the change of the Japanese labor market with “non-regular” employment positions steadily increasing. Therefore, the “Equal Pay for Equal Work”-principle was solidified under the Work-Style Reform to provide for an equal treatment of regular and non-regular employees. This article summarizes the main changes introduced by the Work-Style Reform and gives an overview on the practical responses employers should take in light of the reform.*

### ZUSAMMENFASSUNG

*Die am 6. Juli 2018 verkündete Work-Style Reform in Japan tritt ab dem 1. April 2019 schrittweise in Kraft. Das Ziel der Reform ist eine Reduzierung von exzessiven Überstunden und eine Förderung eines flexibleren Arbeitsstils*

*mit einer besseren Work-Life Balance. Diesbezüglich wird unter anderem zum ersten Mal eine klare und rechtlich bindende Obergrenze für Überstunden eingeführt. Ein weiteres Ziel der Work-Style Reform ist die Sicherstellung von fairen Arbeitsbedingungen unabhängig von dem Beschäftigungsstatus. Dies wird in Anbetracht der Veränderung des Arbeitsmarktes in Japan mit einer steigenden Zahl von irregulären Beschäftigungsverhältnissen immer relevanter. Insofern wird auch der Grundsatz des gleichen Entgelts für gleiche Arbeit durch die Work-Style Reform gefestigt. Der vorliegende Artikel fasst die wichtigsten Änderungen der Work-Style Reform zusammen und gibt einen Überblick über die praktischen Maßnahmen, die Arbeitgeber vor dem Hintergrund der Work-Style Reform ergreifen sollten.*