

## NEW IMPORTANT EMPLOYMENT-RELATED REGULATIONS IN JAPAN ENFORCED FROM APRIL 1, 2019

In Japan, a new law called the, “Act on the Arrangement of Related Acts to Promote Work-Style Reform”, was enacted on July 6, 2018, which amended eight labor and employment-related laws (such as the Labor Standards Act) and introduced significant changes to Japan’s current labor and employment regulations (hereinafter called the “**Amendments**”). In addition, some of the new regulations contained in the Amendments have begun to be enforced as of April 1, 2019. Employers in Japan are thus required to take immediate and appropriate action to deal with such significant changes. In this Article, we will provide an outline of the new regulations enforced from April 1, 2019.

### Overview of the Amendments Enforced from April 1, 2019

#### 1. Maximum Time Limit of Overtime Work<sup>ii</sup>

As a basic rule regarding working hours, the Labor Standards Act (hereinafter, the “**Act**”) stipulates that work hours shall not exceed 40 hours per week and 8 hours per day. The Act also stipulates an exception to such basic rule that, if the employer has entered into a written Labor-Management Agreement (so-called “36-Agreement<sup>iii</sup>”) with an employee representative or labor union organized by a majority of the employees at the workplace (if any) and submitted it to the Labor Standards Inspection Office, the work hours of employees may exceed the above time limits under the Act up to the limits set forth in such 36-Agreement. Prior to April 1, 2019, there has been only a guideline without any legally binding effect with respect to the time limits stipulated in the 36-Agreement. Because of such lack of legally binding regulations as to the time limits, employers tend to stipulate excessive time limits, such as 1000 hours per year in their 36-Agreement. This has been considered a societal problem which has been imposing excessive work hours on workers in Japan.

The Amendments: (i) set forth legally binding maximum time limits of overtime work; and (ii) impose a criminal penalty for violation of such time limits.<sup>iv</sup> Specifically, the time limits stipulated in the 36-Agreement must not exceed 45 hours per week and 360 hours per year. Moreover, the amended Act stipulates that the limited exception to such time limits applies only to the case where the employer has a temporary and special situation (e.g., unexpected increase of work in significant volume) and the employer satisfies all of the requirements as set forth in the Amendments.<sup>v</sup>

Since the above new regulation now includes a criminal penalty provision, employers in Japan must immediately take appropriate action to avoid violation of such new regulation. Therefore, employers must first fully understand the actual numbers of working hours of their employees and review the provisions with regard to time limits for overtime work in the current 36-Agreement (if any) they maintain.

#### 2. Obligation to Ensure Use of Annual Paid Leave

In Japan, for various reasons, there is a tendency for Japanese employees to hesitate to take annual paid leave, even though taking annual paid leave is their right under the Act. Consequently, the rate of taking annual paid leave by employees in Japan has been significantly lower than that of other developed countries. In light of such circumstances, the Amendments oblige employers to make their employees (who have more than 10 days of annual paid leave under the Act<sup>vi</sup> or contract, including but not limited to part-time employees) take annual paid leave for 5 days per year by designating the specific timing of taking such annual paid leave. Therefore, despite the fact that annual paid leave is a right of employees granted by the Act, employers are obliged to make their employees exercise such rights. With regard to the timing of designation of annual paid leave by employers, employers are required to hear and respect the opinions of their employees prior to such designation, and employers are required to make and keep records of annual paid leave for 3 years. It should also be noted that the Amendments stipulate a criminal penalty of a fine of not

more than 300,000 Yen for violation of the above obligations by employers.

There is no violation of such obligations by employers if all of their employees voluntarily take 5 days or more of annual paid leave per year, or if the employer designates the dates of annual paid leave for more than 5 days using the “Scheduled Annual Paid Leave” system under the Act.<sup>vi</sup> However, if employees take less than 5 days of annual paid leave per year, employers need to take action to deal with the situation. First of all, employers must appropriately understand how many days of annual paid leave their employees used in the previous year. Employers should also pay attention to employees who did not take more than 5 days in the previous year. Employers should discuss with such employees their plans for taking annual paid leave for the current year. At the same time, employers should create a work environment in which employees can take voluntarily take their annual paid leave, and employers should also actively recommend that employees take their annual paid leave. To further compliance, employers should avoid imposing excessive workloads on their employees or consider implementing the “Scheduled Annual Paid Leave” system under the Act.

### 3. Conclusion

We have herein provided a brief overview of the important new regulations enforced as of April 1, 2019 under the

Amendments. However, the Amendments include other amendments which will be enforced subsequently from April 1, 2020, as well as other new rules related to employment.

In order to appropriately comply with the new regulations introduced by the Amendments, it is recommended for employers in Japan to consult with their attorneys regarding how best to comply with these new rules.

We at Kitahama Partners have a team of highly skilled and experienced international employment attorneys who are able to assist with any employment and labor-related legal needs you may have.

<sup>i</sup> In Japanese, “Hataraki-kata kaikaku kanren-hou” or “働き方改革関連法”.

<sup>ii</sup> This amendment will be enforced with respect to small to medium-sized companies as of April 1, 2020. Small to medium-sized companies include: a retail company capitalized not more than 50 million yen or employs not more than 50 employees; a service company capitalized not more than 50 million yen or employs not more than 100 employees; wholesalers capitalized at not more than 100 million yen or employing not more than 100 employees; other employers capitalized at not more than 300 million yen or employing not more than 300 employees. There are also some exemptions under this regulation for specific industries.

<sup>iii</sup> This Labor Management Agreement is so called “36-Agreement”, or in Japanese, “36 Kyoutei” or “36 協定” because this is required under Article 36 of the Labor Standards Act.

<sup>iv</sup> Criminal penalty of imprisonment at labor of not more than 6

months or a fine of not more than 300,000 yen.

<sup>v</sup> The requirements are: (i) total overtime work hours shall be below 720 hours per year; (ii) average overtime and holiday work hours shall be below 80 hours in any consecutive period of 2 months, 3 months, 4 months, 5 months of 6 months throughout the year; and (iii) overtime and holiday work hours shall be less than 100 hours per month. In addition, such exception can only be applied within 6 months per year.

<sup>vi</sup> The Labor Standards Act stipulates that employees who have continuously worked for 6 months under the same employer and fulfill the conditions stipulated by the Act have the right to at least 10 days annual paid leave per year.

<sup>vii</sup> Scheduled Annual Paid Leave System (in Japanese “計画年休”) requires the execution of a Labor-Management Agreement with an employee representative or a labor union organized by a majority of the employees .

【Contact】

**Masataka Shitanishi**

Partner (Osaka Office)

Attorney at law admitted in Japan, New York and California, U.S.A

【E-mail】 [MShitanishi@kitahama.or.jp](mailto:MShitanishi@kitahama.or.jp)



**OSAKA OFFICE**

OSAKA SECURITIES EXCHANGE BLDG.

1-8-16 KITAHAMA, CHUO-KU, OSAKA 541-0041, JAPAN

TEL:81-6-6202-1088 FAX:81-6-6202-1080

**TOKYO OFFICE**

SAPIA TOWER 14F

1-7-12 MARUNOUCHI, CHIYODA-KU, TOKYO 100-0005, JAPAN

TEL:81-3-5219-5151 FAX:81-3-5219-5155

**FUKUOKA OFFICE**

CANALCITY BUSINESS CENTER BLDG.

1-2-25 SUMIYOSHI, HAKATA-KU, FUKUOKA 812-0018, JAPAN

<http://www.kitahama.or.jp/>

**Yuki Kawata**

Associate (Osaka Office)

Attorney at law admitted in Japan

【E-mail】 [ykawata@kitahama.or.jp](mailto:ykawata@kitahama.or.jp)



**DISCLAIMER:** This newsletter does not constitute legal advice and is provided for informational purposes only. It is recommended to obtain formal legal advice from licensed attorneys with respect to any specific or individual legal matters. The contents of this newsletter are based solely on the personal opinions and experience of the author. If you wish not to receive our newsletters, wish to inform us of any change in your contact information, or have any other general questions regarding our newsletters, please contact us by e-mail at [newsletter@kitahama.or.jp](mailto:newsletter@kitahama.or.jp)