Japan “work style” reform bill

1. The Labor Standards Act

I. Introduction

On June 29, 2018, the “work style” reform bill was passed by the Japanese Diet. It was one of Prime Minister Shinzo Abe’s key legislations this year. The bill was comprehensive and sought to modernize Japan’s work systems by amending a number of labor related laws in order to create a more fair and equal workplace, improve chronically long working hours, and give more freedom and flexibility to workers. The laws amended include, among others, the Labor Standards Act (“LSA”), the Employment Measures Act, the Industrial Safety and Health Act (“ISHA”), the Pneumoconiosis Act, the Worker Dispatching Act, the Labor Contracts Act, the Act on Improvement of Employment Management for Part-Time Workers, and the Act on Special Measures for Improvement of Working Hours Arrangements.

The amendments will include criminal penalties and monetary fines for their violations.

Many of the amendments will become effective on April 1, 2019, while the rest some time up to April 1, 2024. Given the little time remaining between now and April 1, 2019, when many of the amendments become effective, it is recommended that you start preparations now to ensure that you will be ready to meet many of the new work-style requirements.
This article will focus only on the amendments to the LSA. A separate article will discuss the amendments to the ISHA. Please keep in mind this article is intended only to provide a general overview of the amendments to the LSA. Please refer to the LSA for specific details of the current and amended LSA requirements or contact Junya Kubota at junya.kubota@jp.ey.com for further details.

II. Amendments to the Labor Standards Act

(1) Flex-time System

The current flextime system sets forth the total working hours during a certain period of time (called the “settlement period”) for overtime allowance and workers can choose the start and end times for each work day during the settlement period. The current settlement period is up to a maximum of 1 month.

Under the revised system, the maximum settlement period will be extended for up to 3 months. This change will increase the flexibility to both employees and companies under the flextime system.

This amendment will be effective April 1, 2019.

(2) Overtime Work and Work on Days Off

Under the LSA, an employer is not to have a worker work more than 40 hours per week or more than 8 hours per day (excluding rest periods). These are referred to as “statutory working hours” and, working over the statutory working hours, “overtime work.” In addition, an employer is required to give the worker at least one day off per week (which can also be met by giving the worker at least 4 days off during a four-week period). This minimum day off is referred to as “statutory day off,” and working on a statutory day off is referred to as “work on day off.”

While the LSA permits an employer to have a worker perform overtime work in certain cases, the LSA does not establish the maximum number of hours of overtime work an employer can have a worker work. Rather, an employer has to refer to administrative guidelines for guidance.

The amendment clarifies this ambiguity by setting a limit for overtime work at 45 hours per month and 360 hours per year. In the case of unexpected and temporary needs, the following limits apply:

• Total hours of overtime work and work on day off in a month must be less than 100 hours;
• Total hours of overtime work in a year must be no more than 720 hours; and
• Average hours of overtime work and work on day off per month over a 2- to 6-month period is to be no more than 80 hours.

Criminal penalties may be imposed on violators. Before overtime work or work on day off can be permitted, a labor-management agreement (roshi kyotei) with the workers’ representative is required and the agreement has to be submitted to the Labor Standards Inspection Office. The LSA sets forth the terms that must be included in the agreement.

This will be effective April 1, 2019. However, for small and medium size companies (“SMEs”), the amendment will be effective April 1, 2020. (The definition of SMEs is explained in section III, below). For certain industries or professions, such as construction, transportation by automobiles, and doctors, the amendment only becomes effective on April 1, 2024. This amendment will not apply to workers engaged in research and development with regard to new technology, product or service, and workers in managerial positions continue to be exempt from the regulations on working hours, rest times and day off.

(3) Annual Paid Leave

Under the LSA, an employer must grant at least 10 days paid leave to a worker who has worked continuously for 6 months from the date of hire, with at least 80% of those total working days worked. Beginning from after 1 year and 6 months of continuous service (i.e., after 1 year of the first grant), the employer is required to grant the worker an additional day paid leave each year, up to a maximum of 20 days paid leave (which would represent 6-1/2 years of continuous service). Because many workers in Japan end up not using much of the paid leave they are entitled to, leaving many unused leave to expire after 2 years from the grant (employers are not required to encash unused paid leave days), employers will now be required to track each worker who receives 10 or more days annual leave of his or her use of the paid leave and to designate the date when the worker must use such leave if less than 5 days have been
used before the end of 1 year of the grant. For example, if a worker is granted 10 days paid leave on January 1 and has only taken 2 days paid leave by the end of October, the employer is required to designate 3 days from November 1 to December 31 (e.g., designating November 15, November 30 and December 15) which the worker must take as paid leave days.

An employer will be required to maintain an annual paid leave management book to record matters concerning annual paid leave for each worker, including the number of remaining days of paid leave.

Violators will be subject to criminal penalties.

This amendment will be effective April 1, 2019.

(4) High-Level Professional System

This new system will exempt the regulations on working hours, rest times, day off and late-night work allowance under the LSA to workers who engage in work requiring advanced specialized knowledge, skills or experience.

The requirements to meet this exemption are strict -- such as minimum annual salary threshold (expected to be around JPY 10,750,000), consent of the worker, written confirmation of the job scope, and approval from the committees composed of the employer and workers' representatives.

Careful planning will be required to meet all of the requirements.

This will be effective April 1, 2019.

(5) Extra Wage Rate

Under the LSA, the minimum premium rate for extra wage payable to a worker for overtime work is 125%. If overtime work exceeds 60 hours per month, the rate is 150%. However, this 150% rate did not apply to SMEs. The amendment removed the special treatment for SMEs, which will now be subject to the same 150% rate if overtime work exceeds 60 hours per month.

This amendment will be effective April 1, 2023.

(6) Clearly Expressing Working Conditions

Under the LSA, an employer must specify certain working conditions in writing at the time of hiring. The amendment will now allow an employer to provide this by e-mail if requested by the worker.

This will be effective April 1, 2019.

(7) Representative of Workers

The labor-related laws and regulations, including the LSA, have the concept of "workers' representative." For example, an employer must obtain the opinion of the workers' representative when establishing employment policies (shugyo kisoku). As mentioned above, in the event an employer requires a worker to work overtime, it must first conclude a labor-management agreement with a workers' representative.

If there is a labor union organized by a majority of the workers, such union becomes the workers' representative. In the absence of such a union, the workers' representative must be those representing a majority of the workers. The workers' representative will need to be elected through a democratic process, such as voting by ballot or show of hands.

The amendment now mandates that the employer cannot seek to have influence the election of the workers' representative. Accordingly, employers need to make sure not to take any action which might be considered as having an influence in the election of workers' representatives.

III. Definition of Small and Medium-Sized Employers

As mentioned above, the amendment applies different effective dates depending on whether the employer is a SME. An employer meeting either the stated capital or the number of regular employees will be considered a SME.

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<tr>
<th>Type of Business</th>
<th>Stated Capital</th>
<th>Number of Regular Employees</th>
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