

## **No.17 Working Hours** (text 240-259)

### **1 Significance and Status Quo of Legislations on Working Hours**

- Purpose of legislations on working hours
- Status quo of problems over working hours in Japan
- Overall picture of legislations on working hours

### **2 Basic Framework of Working Hours System**

#### **2.1 Concept of Working Hours**

- Duty-nature (“labor”)
- Employer’s involvement (“to force”)  
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#### **2.2 Principles of Working Hours, Recess, Holiday**

- Legal working hours (Art. 32 and 40 of Labor Standards Law)
- Recess (Art. 34 of Labor Standards Law)  
\*Is an employer permitted to put restrictions on a worker’s behavior in a recess?  
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- Holiday (Art. 35, para. (1) and (2) of Labor Standards Law)  
Under what condition is a transfer of a holiday possible?  
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#### **2.3 Exemption from Application**

- Art. 41 of Labor Standards Law  
\*What is a job scope of an “administrative supervisor” (para. (2))?

**Example** Store manager of a company-owned store of Munch Burger, Mr. Fujita is treated as an “administrative supervisor” under the corporate regulation and paid an annual remuneration of ¥6.35 million (ranging from ¥5.8 million to ¥5.9 million depending on the evaluation); but he is not paid extra wages for the work exceeding 8 hours a day, 40 hours a week. Can Fujita request Munch Burger to pay for the extra wages? Furthermore, while Fujita, as person in charge of the store, employs part-time workers and decides on their work- shift schedule, he is not given a duty or authority concerning an overall corporate management. In addition, although store manager is supposed to be able to determine own work schedule, Fujita is compelled to work quite long hours as in being over 40 a week and 100 a month that are not uncommon. The wages for store manager are set to be higher a certain degree than ones (an average remuneration of ¥5.9 per annum including overtime pay) for assistant manager (not treated as an administrative supervisor) positioned right below the store-manager rank, but they sometimes go into reverse depending on the evaluation as store manager and the overtime pay for

assistant manager.

## 2.4 Overtime/Holiday Work

### 2.4.1 Requisites

#### ◎ Requisites under Labor Standards Law

- Overtime/holiday work for extraordinary reasons (Art. 33 of Labor Standards Law)
- Overtime/holiday work due to a labor-management agreement (Art. 36 of Labor Standards Law)
  - Art. 36: Matters to be mentioned in this agreement (Art. 16 and 17 of Ordinance for Enforcement of Labor Standards Law)
  - ← Standard on the limit of overtime work (Notification No.154 of 1998 on the labor laws)
  - Art. 36: Effectiveness of the agreement

#### ◎ Grounds under the agreement

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### 2.4.2 Extra Wages

#### ◎ Premium rate

- Extra wages for overtime/holiday works (Art. 37, para. (1) of Labor Standards Law, and Cabinet Order Concerning Extra Wages)
  - ← Proposal for an amendment of Labor Standards Law
- Extra wages for late-night work (Art. 37, para. (3) of Labor Standards Law)

#### ◎ Calculation

- When overtime/holiday works overlap with late-night work (Art. 20 of Ordinance for Enforcement of Labor Standards Law )
- Calculation base for extra wages
  - “Ordinary working hours, wages for a working day” (Art. 37, para. (1) and (3) of Labor Standards Law, Art. 19 of Ordinance for Enforcement of Labor Standards Law)
  - Exempted wages (Art. 37, para. 4 of Labor Standards Law, and Art. 21 of Ordinance for Enforcement of Labor Standards Law )

\*Is it possible to pay a certain fixed amount in place of an extra wage, or to pay an ordinary wage including a fixed amount for an extra wage?

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<b>RESEARCH</b>	What sort of legal policy should be adopted to resolve the problem of long working hours in Japan?
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## 3 Special Rule for Working Hours System—Making Working Hours Flexible

### **3.1 Making Legal Working Hours Flexible**

#### **3.1.1 Variable Working Hours System**

◎ Three types

- One-month unit (Art. 32-2 of Labor Standards Law)
- One-year unit (Art. 32-4 of Labor Standards Law)
- One-week unit (Art. 32-5 of Labor Standards Law)

◎ Requisites

- Necessity (or the lack thereof) of a prior specification of normal working hours
- Necessity of a labor-management agreement
- Presence or absence of an upper limit regulation on working hours

#### **3.1.2 Flextime**

Art. 32-2 of Labor Standards Law

### **3.2 Special Rule for Calculation of Working Hours**

#### **3.2.1 Aggregate System of Working Hours**

Art. 38, para. (1) of Labor Standards Law

#### **3.2.2 Pit-Mouth Calculation System for Underground Working**

Art. 38, para. (2) of Labor Standards Law

#### **3.2.3 Imputed Working-hour System**

◎ Imputed outside-company work system (Art. 38-2 of Labor Standards Law)

◎ Imputed discretionary work system

- Significance and effect
- Discretionary work system for specialist-business-type works (Art. 38 -3 of Labor Standards Law)
  - ① Business designated by Ministry of Health, Labour and Welfare (qualified enumeration)
  - ② Conclusion of a labor-management agreement
  - ③ Measure for securing health, one for processing complaints
- Discretionary work system for planning-business-type works (Art.38-4 of Labor Standards Law)
  - ① Business affairs that are entrusted to the discretion of workers in the fields of planning, programming, research, and analysis regarding the business operation
  - ② Resolution by a majority of more than four-fifths in a labor-management committee
  - ③ Measure for securing health, one for processing complaints
  - ④ Consent of the worker concerned



