

# **The Model Rules of Employment**

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**Ministry of Health, Labour and Welfare Labour**

**Standards Bureau, Inspection Division**

## Introduction

### **1. Purpose of the rules of employment**

It is important for every workplace, regardless of its size or field of the business, to create a pleasant workplace where workers can work in a safe environment. Setting rules of employment in advance that clearly stipulate terms and conditions of employment and the standards for treatment, including working hours, wages, rules on personnel and responsibilities, is essential to preventing disputes between an employer and worker.

### **2. Contents of the rules of employment**

There are matters that are absolutely required to be set forth (hereinafter referred to as “mandatory matters”) in the rules of employment, and matters that are required to be set forth in the rules of employment in the case where a company provides their own rules for each workplace (hereinafter referred to as “conditional mandatory matters”) (Article 89 of the Labor Standards Act (Act No. 49 of 1947); hereinafter referred to as “Labor Standards Act”). There are also optional matters that can be included in the employment rules at the employer’s discretion.

The mandatory matters are as follows:

(1) Working hours

Matters pertaining to the start and end times of work, break times, days off, leave, and the transition of shifts when workers are divided into two or more groups for alternating shifts

(2) Wages

Matters pertaining to the methods for determining, calculating, and paying wages, the dates for closing wage accounts and for paying wages, and increases in wages

(3) Retirement

Matters pertaining to retirement (including grounds for dismissal)

The conditional mandatory matters are as follows

(1) Severance pay

Matters pertaining to the scope of workers covered, methods to apply for determining, calculating, and paying severance pay, and the timing of severance pay payments.

(2) Special wages and the amount of minimum wages

Matters pertaining to special wages and similar compensation (excluding severance pay)

	and minimum wage amounts
(3)	Costs to employees Matters pertaining to having workers bear the cost of food, work-related supplies, and other expenses
(4)	Safety and health matters pertaining to safety and health;
(5)	Vocational training matters pertaining to vocational training;
(6)	Accident compensation and support for injury or illness outside the course of employment matters pertaining to accident compensation and support for injury or illness outside the course of employment;
(7)	Presentation of commendations and sanctions matters pertaining to commendations and sanctions, and to their kind and degree;
(8)	Others Matters pertaining to the rules applicable to all workers at a workplace

The rules of employment shall not infringe upon any laws and regulations or the collective agreement with a union applicable to the workplace concerned. The director of the relevant prefectural Labor Standards Inspection Office may order the revision of the rules of employment which conflict with laws and regulations or with the collective agreement with the union (Article 92 of the Labor Standards Act).

### **3. Procedures for drawing up and changing the rules of employment**

The Labor Standards Act applies to every workplace where one or more workers are employed. However, it is stipulated that an employer who continuously employs 10 or more workers shall draw up the rules of employment and submit them to the director of the relevant prefectural Labor Standards Inspection Office that has jurisdiction over the company. In the event that the employer alters any item, the same shall apply (Article 89 of the Labor Standards Act).

The rules of employment must be drawn up and submitted for each workplace, not for each company. For example, in the case where a company owns two or more sales offices or retail stores, the number of workers at each office or store must be taken into consideration instead of the total number of workers for the whole company. A company has the obligation to draw up the rules of employment for each workplace where more than 10 workers are employed continuously. In addition, a company that owns a number of workplaces, such as sales offices and/or retail stores, can submit such rules

collectively through the director of the Labor Standards Inspection Office who has the jurisdiction over the location of the main office, provided that the contents of the rules of employment are identical to all the workplaces of the business before and after alterations are made.

It is stipulated that, when submitting the rules of employment to the director of the relevant prefectural Labor Standards Inspection Office that has jurisdiction over the company when the rules of employment are drawn up or changed, the employer shall attach a document (a letter of opinion) which states the opinions of either a labor union organized by a majority of the workers at the workplace concerned (in the case where such labor union exists), or a person representing a majority of the workers (in the case where such labor union does not exist)(Article 90 of the Labor Standards Act).

This document must be signed by the person who represents a majority of the workers or have their name printed and their seal put on it. In such case, the person who represents a majority of the workers must meet both of the following requirements:

- (a) a person who is not in a supervisory or management position as set out in Article 41-2 of the Labor Standards Act;
- (b) a person who is selected according to a procedure, such as a vote or a show of hands, after informing the workers that they are selecting the person who will be heard by an employer (as a representative of the workers) (Article 6-2 of the Ordinance for Enforcement of the Labor Standards Act (Ministry of Health and Welfare Ordinance No. 23 of 1947. Hereinafter referred to as the “Labor Standards Ordinance”)).

When drawing up or changing the rules of employment, an employer must comply with the aforementioned procedures while carefully reviewing the contents of the rules of employment. In particular, when changing the rules in a way that is disadvantageous to the workers, an employer needs to prudently examine whether the changes are reasonable and carefully consider the opinions of the representative of the workers.

Submission of the rules of employment may also be done by electronic application. For details, visit [here](https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000184033.html) (<https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000184033.html>).

#### **4. Dissemination of the rules of employment**

An employer must disseminate the drawn up rules of employment (Article 106-1 of the Labor Standards Act) in a number of ways, such as by distributing copies to each worker, posting and/or storing them at a conspicuous location for workers to be able to access them at all times, and/or making them available through digital media for workers to check them at any time.

It is understood that the rules of employment will not come into effect either by having them drawn

up or by hearing the opinions of a representative of the workers. The time when the rules of employment come into effect should be from the point when they are made known to the workers by some means, and if the date of enforcement of the rules is set out in the rules of employment, on that date, and if such date is not set out in the rules, it should principally be the day the rules of employment are made known to the workers.

## **5. On the utilization of the model rules of employment**

This model of rules of employment (hereinafter referred to as “these rules”) is presented as an example with guidelines in accordance with relevant laws and regulations as of the date shown on the cover page. These rules are to serve as a model only. The contents of the rules of employment must be realistic, taking into consideration the actual conditions at each workplace. Therefore, conditions such as working hours or wages at each workplace should be thoroughly reviewed when drawing up the actual rules of employment.

After page 10 of these rules, some articles have underlined blank spaces, e.g., '\_\_\_\_\_ Corporation' in Article 1-1 and 2-1, and 'within \_\_\_\_ weeks' in Article 5-1. Fill in these blanks with the actual company name or specific numbers, according to each workplace's conditions and in compliance with the law. There are some of these example articles partly underlined as well. For example, in the case of adopting the monthly variable work schedule system, such as two days off every other week, in example Article 19-2, the underlined blanks are already filled out as read “7 hours 15 minutes”, or under Article 43-2, “without pay/to pay the regular wages”. These are examples to explain the interpretation of the rules for convenience. The actual numbers or text should be entered according to the actual conditions at each workplace in compliance with the laws.

These rules are designed mainly to be applied to regular workers. In the case where part time or fixed-term workers are employed, an employer should draw up a different set of rules of employment for such workers. In such event, the employer is required to review each article in the rules whether such article is applicable to part-time or fixed-term workers.

When an employer intends to prepare or amend the rules of employment with regard to part-time and fixed-term workers, the employer must endeavor to hear opinions of a person who is found to represent a majority of the part-time and fixed-term workers employed at the workplace pursuant to Article 7 of the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers (Act No.76 of 1993; hereinafter referred to as the “Part-Time and Fixed-Term Employment Act”).

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## Chapter 1 General Provisions

General Provisions generally stipulate the purposes and scope of application for the rules of employment.

### **(Purposes)**

**Article 1** The rules of employment provide stipulations pertaining to employment for the workers at \_\_\_\_\_ Corporation conforming to Article 89 of the Labor Standards Act (hereinafter referred to as “Labor Standards Act”).

2. The Labor Standards Act and other labor laws apply to all matters pertaining to employment including what is stipulated in these rules.

### **[Article 1 Purposes]**

1. This example of the rules of employment (hereinafter referred to as “this example of the rules”) provides stipulations pertaining to the employment of workers. However, the legal standards underlying these rules of employment are stipulated in relevant laws, such as the Labor Standards Act.
2. Not all matters pertaining to the employment of workers are stipulated in this example of the rules. The matters that are not set forth in this example of the rules are governed by the relevant laws, such as the Labor Standards Act.
3. A labor contract that stipulates terms and conditions of employment that do not meet the standards established by the rules of employment shall be invalid with regard to such portions. In such case, the portions which have become invalid shall be in accordance with the standards established by the rules of employment (Article 12 of the Labor Contract Act (Act No. 128 of 2007); hereinafter referred to as the “Contract Act”). Furthermore, the rules of employment shall not infringe upon any laws and regulations or the collective agreement with a union applicable to the workplace concerned (Article 92 of the Labor Standards Act).

### **(Scope of application)**

**Article 2** These rules of employment shall apply to all workers employed by \_\_\_\_\_ Corporation.

2. The matters pertaining to employment of part-time workers are stipulated in a different set of rules.
3. The matters that are not stipulated in the different set of rules set forth in the preceding

provision are governed by these rules of employment.

**[Article 2 Scope of Application]**

1. An employer is required to draw up the rules of employment for all workers. However, it is not necessary for the rules of employment to be the same for all workers. Even at the same location of a business, an employer may establish special provisions concerning a specific matter or provide a different set of rules of employment for part-time workers whose terms and conditions of employment are separate from those of regular workers. In the case where some or all parts of the rules are not applicable to part time workers, such conditions must be clearly set forth in the rules of employment. The employer must then establish the provisions or prepare another set of rules of employment that are applicable to part-time workers. This example of the rules of employment is designed to have a different set of the rules of employment concerning the employment of part-time workers. For example regulations on rules of employment for part-time and fixed-term workers, visit [here \(https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000046152.html\)](https://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000046152.html).
2. Based on amendments to the Act on the Arrangement of Related Acts to Promote Work Style Reform (Act No. 71 of 2018) and part-time and fixed-term workers from April 2020 (April 2021 for part-time and fixed-term workers at small and medium-sized enterprises), employers shall be prohibited from establishing unreasonable differences in the treatment of part-time workers, fixed-term workers and dispatched workers compared to regular workers in consideration of the job responsibilities and scope of changes to job contents and position (Articles 8 and 9 of the Part-Time and Fixed-Term Employment Act), and Article 30-3 of the Act on Ensuring the Proper Operation of Worker Dispatching Services and Protecting Dispatched Workers (Act No. 88 of 1985). According to these laws, this includes all treatment such as welfare and leave in addition to wages. In case where differences in the treatment of part-time and fixed-term workers exist in regards to wages and the like, employers must explain the contents and reasons for the differences when requested by part-time and fixed-term workers (Article 14-2 of the Part-Time and Fixed-Term Employment Act).

**(Compliance with the rules)**

**Article 3** A company has an obligation to employ workers under the terms and conditions of employment set out in these rules of employment. The workers must comply with the rules of employment.

**[Article 3 Compliance with the Rules]**

Article 2 of the Labor Standards Act stipulates that workers and an employer shall abide by the rules of employment and other laws and regulations and discharge their respective duties faithfully.

## Chapter 2 Hiring and Transfers

In this chapter on hiring and transfers, matters with regard to the procedures in hiring, probationary periods, clear notification of terms and conditions of employment, personnel transfers and leave of absence are covered.

### **(Procedures for Hiring)**

**Article 4** A company shall conduct screening tests for the applicants and hire those who pass such tests.

#### **[Article 4 Procedures for Hiring]**

1. A company must provide equal opportunities for all persons regardless of gender when hiring (Article 5 of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment: Act No.113 of 1972. hereinafter referred to as “the Equality Act”).
2. When hiring an , it is prohibited as indirect discrimination to have requirements pertaining to their height, weight, and strength, or a requirement that a worker agrees to transfers that involve relocating their residence without reasonable grounds (Article 7 of the Equality Act).

### **(Documents to be Submitted at Hiring)**

**Article 5** A person who is hired as a worker is required to submit the following documents within \_\_\_\_\_ weeks from the day they are hired.

- (a) Certificate of items stated in the resident register;
  - (b) Copy of Driver’s License (for those who have a driver’s license);
  - (c) Copies of certificates of qualifications (for those who have certificates of qualifications);
  - (d) Other documents specified by the company;
2. In the event that any changes occur in any documents set out in the preceding paragraph after submission, the worker must immediately notify the company of such changes in written form.

#### **[Article 5 Documents to be Submitted at Hiring]**

It is not appropriate for a company to have a worker submit either a copy or an abstract of their family register or a copy of their resident register in order to verify their age or current address. It is appropriate to request the certificate of items stated in the resident register. In addition, an employer should clarify the purposes for the submission of the documents to the workers.

**Probationary Employment Period**

**Article 6** A probationary employment period of \_\_\_\_ months from the day of being hired shall apply to newly hired workers.

2. The probationary period prescribed in the preceding paragraph may be shortened or eliminated in the case where the company approves such an action.
3. During the Probationary Employment Period, a company may dismiss those who are assessed as unfit as workers. For those who are employed for more than 14 days after the commencement of their employment, the company must follow the procedures pursuant to Article 53-2.
4. The probationary period shall be added to the year of service.

**[Article 6 Probationary Employment Period]**

1. There are no stipulations in the Labor Standards Act that regulate the length of the probationary period. However, if applying probationary period, it is not desirable to have an excessively lengthy probationary period since it will destabilize the status of workers' employment.
2. Regarding dismissals during the probationary period, while dismissal may be done immediately within the first 14 days, for cases of dismissal after more than 14 days of employment during the probationary period, notice should generally be given at least 30 days in advance. In cases where no notice is given, a dismissal allowance equivalent to at least 30 days of average wages must be paid (Articles 20 and 21 of the Labor Standards Act).

**(Clear Declaration of Terms and Conditions of Employment)**

**Article 7** In the event of hiring a worker, a company is required to clearly declare the terms and conditions of employment in writing by issuing a notice that states matters such as wages, the location of employment, responsibilities, working hours, and days off in conjunction with the rules of employment.

**[Article 7 Clear Declaration of Terms and Conditions of Employment]**

1. An employer is required to clearly declare the terms and conditions of employment such as wages, working hours, and other conditions when hiring workers. When clearly declaring the terms and conditions of employment, it is especially mandatory to issue a document for the following items from (1) to (6) (excluding matters pertaining to wage increase) (Article 15 of the Labor Standards Act, Article 5 of the Labor Standards Ordinance).

- (1) Matters concerning the period of the labor contract
- (2) Matters concerning the standards in the case of renewal of a fixed-term employment contract (applies only to renewals of such contracts)

- |     |  |
|-----|--|
| (3) | Matters concerning the location of employment and responsibilities   |
| (4) | Matters concerning the start and end times, occurrence of overtime, break times, days off, leaves, and shift changes if applicable   |
| (5) | Matters concerning methods of determination, calculation and payment of wages (except for severance pay and other special wages), the pay period, payday and wage increase |
| (6) | Matters concerning retirement (including grounds for dismissal)  |

In cases where a worker requests one of the following methods, clear declaration of terms and conditions of employment is possible using the relevant method.

- Method of transmission via facsimile
- Method of transmission via electronic mail and other telecommunication methods (means the sending, transmitting, or receiving of codes, sounds, or images via wired, wireless, and other electromagnetic methods; hereinafter referred to as “electronic mail, etc.”) where the recipient is specified for sending information (limited to cases where the relevant worker can create documents by outputting the record in the relevant electronic mail, etc.).

\* “Electronic mail, etc.” shall include the following:

- (a) Email and webmail services such as Yahoo! Mail and Gmail
- (b) RCS (Rich Communication Service) such as +Message and SMS (Short Message Service)
- (c) SNS messaging features such as LINE and Facebook

However, since information transmitted via electronic communications like blog or homepage posts, where third parties can view the information entered by an individual, does not qualify as 'Electronic communication where the recipient is identified for transmitting information,' clear declaration of terms and conditions of employment is not possible using this method.

Furthermore, when hiring a worker, an employer is required to clearly declare in writing the matters concerning part-time and fixed-term workers, such as wage increases, severance pay, the possibility of bonuses, and the availability of a consultation office (paragraph 1 of Article 6 of the Part-Time and Fixed-Term Employment Act).

2. Furthermore, for cases where an employment contract is deemed concluded due to a preliminary offer, when a preliminary offer is made, the terms must be clearly stated in writing to the prospective employee.

<b>(Personnel Transfer)</b>
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**Article 8** A company may order a worker to change their responsibilities or locations of their employment if it is necessary for the business operation.

2. A company may second a worker to a different company related to the one that originally hired them, while their employment remains under the original company, when necessary.
3. In the case of the preceding paragraphs, a worker is not permitted to reject the order without justifiable reason.

#### [Article 8 Personnel Transfer]

1. After a worker is hired, a company can change the location of their workplace or their responsibilities in the ordinary course of business, unless there is a special agreement stipulating that no changes shall be made. However, a conflict may occur if an employer orders a transfer that is against the will of the worker. Therefore, it is desirable to clearly state the terms and conditions of employment in the rules of employment as in this example of the rules. It is also crucial to gain the agreement of the worker.  
Furthermore, in cases where a worker's workplace is changed, the circumstances of the worker in regards to childcare and family care must be considered (Article 26 of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (Act No. 76 of 1991); hereinafter referred to as the “Child Care and Family Care Leave Act”).
2. If an employer foresees seconding an employee to another company, stipulations concerning such a secondment are required.

#### (Leave of Absence)

**Article 9** If a worker falls under any of the following categories, they shall be granted a leave of absence for the specified duration.

- (a) In the case where a worker has been absent due to injury or illness outside the course of duties for more than \_\_\_\_ month(s), and they require further treatment and cannot work.  
(within \_\_\_\_ year(s))
- (b) In addition to the case of the preceding provision, where there are special circumstances in which allowing a leave of absence is considered to be appropriate.  
(the period required: \_\_\_\_\_)

2. In the case where the reason for the leave of absence is resolved during such leave, as a basic rule, the worker shall return to work in the position they held before taking the leave. However,



in the case where it is difficult or inappropriate for the worker to return to the position they held before taking the leave, the company may assign them to a different position.

3. In the event that a worker who is on leave of absence pursuant to paragraph 1-1 fails to recover from the injury or illness and still finds it difficult to return to work after the full term of the leave of absence, they shall retire immediately after the full term of leave of absence.

#### **[Article 9 Leave of Absence]**

1. Leave of absence means a special treatment where the duties of employment are exempted for a certain period of time while the worker's position is on hold in the case where an employer cannot expect them to work for a relatively long term mainly due to the worker's personal reasons, such as illnesses outside the course of duties. The "special circumstances" defined in paragraph 1-2 of this article may be the case where a worker takes office or is indicted on a criminal offence.
2. In the case where the reason for leave of absence is resolved during such leave, the leave will be discontinued and the worker shall rightly return to their work.
3. There are no stipulations in the Labor Standards Act with regard to definitions of leave of absence, restrictions on the duration of leave or matters concerning returning to work.

## Chapter 3 Responsibilities

### **(Responsibilities)**

**Article 10** Workers must be aware of their job responsibilities, fulfill their duties, obey the company's directions and orders, and endeavor to improve their efficiency and maintain the order of the workplace.

### **(Compliance Provisions)**

**Article 11** Workers must comply with the following matters:

- (a) Workers must not use the company's facilities or articles for purposes outside the course of their employment without permission.
- (b) Workers must not engage in any unlawful activities, such as pursuing their own profit or soliciting in relation to their job responsibilities, borrowing money or goods, or receiving gifts from others in an unjust manner.
- (c) Workers must devote themselves to their job responsibilities, and must not leave their workplace without good reason.
- (d) Workers must not engage in any activities that damage the company's reputation and credibility.
- (e) Workers must not disclose confidential information concerning the companies or clients they became acquainted with in the course of duties during their employment or after their retirement.
- (f) Workers must not work under the influence of alcohol.
- (g) Workers must not engage in any activities that are inappropriate as workers.

### **[Article 10 Responsibilities]**

### **[Article 11 Compliance Provisions]**

The articles concerning responsibilities and Compliance Provisions are not necessarily required items to be set out in the rules of employment. However, setting out such provisions plays an important role in maintaining order at the workplace. Therefore, matters that a company requires workers to comply with may be stipulated in the rules of employment.

### **(Prohibition of Power Harassment in Workplace)**

**Article 12** Workers are prohibited from engaging in any activities that take advantage of their positions of authority in employment or work relationships, which go beyond the necessary and

reasonable scope of job responsibilities and are damaging to the work environment for other workers.

**[Article 12 Prohibition of Power Harassment in Workplace]**

Workers must implement necessary measures for employment management to prevent power harassment in the workplace (Article 30-2 of the Act on Comprehensively Advancing Labor Measures, and Stabilizing the Employment of Workers, and Enriching Workers' Vocational Lives (Act No. 132 of 1966); hereinafter referred to as “Comprehensive Labor Measures Promotion Act”).

**(Prohibition of Sexual Harassment)**

**Article 13** Workers are prohibited from any activities that cause disadvantage or discomfort to other workers or that are damaging to the work environment by way of speech or behavior of a sexual nature.

**[Article 13 Prohibition of Sexual Harassment]**

It is stipulated that an employer shall take necessary measures in managing employment to prevent sexual harassment at a workplace (Article 11 of the Equality Act).

**(Rules Concerning Maternity, Child Care and Family Care Leave for Prohibition of Harassment)**

**Article 14** Workers are prohibited from damaging the work environment of other workers by way of speech or behavior related to maternity and speech or behavior related to the use of systems or measures intended for maternity, child care and family care.

**[Article 14 Prohibition of Harassment Related to Maternity, Child Care, and Family Care Leave]**

It is stipulated that an employer shall take necessary measures in managing employment to prevent harassment at a workplace related to maternity, child care and family care (Article 11-3 of the Equality Act and Article 25 of the Child Care and Family Care Leave Act).

**(Prohibition of Various Other Types of Harassment)**

**Article 15** In addition to the provisions stipulated from Article 12 to the preceding article, workers are prohibited from damaging the work environment of other workers by any form of harassment in the workplace, such as through speech or behavior related to sexual orientation and gender identity.

**[Article 15 Prohibition of Various Other Types of Harassment]**

“Sexual orientation” shall refer to the gender for which a person has romantic or sexual feeling, and “Gender identity” shall refer to recognition of one’s own gender. It is important to deepen understanding of sexual orientation and gender identity in order to prevent discriminatory speech or behavior and harassment.

**(Protection of Personal Information)**

**Article 16** Workers shall pay due care to the management of information concerning the company and clients, etc., and must not unlawfully obtain information that is irrelevant to their duties.

2. In the event that a worker is transferred to a different workplace or position or retires, they must immediately return data or documents which they were handling, that contain information concerning the company and clients.

**[Article 16 Protection of Personal Information]**

Since the Act on the Protection of Personal Information (Act No.57 of 2003) was fully implemented, an employer is obligated to take measures with regard to the proper management of personal information.

**(Recording the Start and End Times of Work)**

**Article 17** Workers must record the daily start and end times of their work by punching time cards.

**[Article 17 Recording the Start and End Times of Work]**

With regard to managing working hours, the “Guidelines for Measures to Be Taken by Employers to Properly Monitor Working Hours” (established on January 20, 2017) prescribes the specifics of measures an employer should take. An employer shall adequately manage working hours by appropriately monitoring such times while complying with the aforementioned guideline.

Moreover, as will be explained later, based on the regulations stipulated in Article 66-8-3 of the

Industrial Safety and Health Act (Act No. 57 of 1972, hereinafter referred to as the "Industrial Safety and Health Act"), from April of 2019, employers must understand the working hours status of workers using an objective method and other appropriate means such as records using timecards, and records of computer usage times including personal computers (from the time of logging in until logging out) in order to provide face-to-face guidance (refer to 0 of these rules).

(References)

“Guidelines for Measures to Be Taken by Employers to Properly Monitor Working Hours”

(excerpt):

1. Purpose

The Labor Standards Act stipulates rules for things such as working hours, days off and late night work, and employers are required to properly manage working hours such as by tracking working hours.

2. Concept of working hours

Working hours refers to the time during which a worker is under the direction of an employer, and the time that a worker engages in work according to the explicit or implicit instructions of an employer shall count as working hours. Therefore, the times described in (a) to (c) below must be handled as working hours:

(a) Time spent preparing for work (such as changing to the specified clothing that must be worn) and time spent organizing after work (such as cleaning) under the direction of the employer

(b) Time spent on standby awaiting instructions by the employer for immediately engaging in work without the right to leave work (referred to as “waiting time”)

(c) Time spent on training and education that is required for performing work, and spent studying for job-required training under the direction of the employer

3. Recording and verifying the start and end times of work

An employer shall record and verify the workers' start and end times for each work day in order to adequately manage workers' working hours.

4. General methods to record and verify the start and end times of work

An employer shall adopt one of the following methods on principle to record and verify the start and end times of work:

(a) An employer shall record and verify through direct observation.

(b) An employer shall record and verify using objective recording methods such as time cards, IC cards, or computer usage time records.

5. Measures for recording and verifying the start and end times of work in the case where a method of self-reporting is adopted

In the case where the prescribed methods in the preceding paragraph 3 are not applicable and the self-reporting method is the only option, an employer shall take measures as follows:

- (a) As the self-reporting method, an employer shall provide the applicable workers sufficient guidance to accurately record the times and appropriately report them according to this guideline.
- (b) An employer shall provide those who actually manage working hours with sufficient guidance for implementing measures according to this guideline, including proper operation of the self-reporting method.
- (c) An employer shall conduct a factual survey as necessary to investigate whether the hours obtained through the self-reporting method correspond with the actual hours worked, and make corrections to the required working hours.

In particular, for cases where data indicating the time spent at the workplace, including access records and computer usage records, are available, if there is a significant difference in the working hours based on self-reporting by workers and the time spent in the workplace based on the relevant data, employers shall conduct a factual survey and make necessary adjustments to the working hours.

- (d) In cases where workers report the reason why the time spent in the workplace exceeds the working hours based on self-reporting, employers shall confirm that the relevant reports are properly being made.

At that time, even in the case where it is reported that it was not considered working hours since it was related to breaks, voluntary training, education and training or study, employers must treat the time recognized as actually being under the direction of the employer, including engaging in work at the direction of the employer, as working hours.

- (e) The self-reporting method is based on proper reporting by workers. Therefore, employers must not implement measures that interfere with the proper reporting of working hours by workers such as by setting an upper limit for overtime work with self-reporting to prevent reports in excess of the upper limit from being accepted.

In addition, an employer shall take measures to verify whether any business practices (with regard to working hours) to reduce the amount of hours of overtime, such as memorandums or a fixed overtime allowance, are factors that impede accurate reporting of working hours. If such case is verified, an employer shall take measures to improve the situation.

Furthermore, while employers are expected to observe the statutory working hours as stipulated in the Labor Standards Act and the number of hours that can be extended under the labor-management agreement on overtime work (known as the 36 Agreement), it is important to confirm that, in practice, those who manage working hours and workers do

not merely record compliance while workers are actually working more than the possible extended hours

6. Proper preparation of a wage ledger

According to Article 108 of the Labor Standards Act and Article 54 of the Ordinance for Enforcement of the said Act, employers must properly enter items for each worker including the number of working days, number of working hours, number of hours worked on holidays, number of overtime working hours, and number of late night working hours.

In addition, if these items are not recorded in the wage ledger or if the number of working hours is intentionally entered falsely, fines of up to 300,000 yen shall be imposed according to Article 120 of the said Act.

7. Storing documents concerning the record of working hours

In addition to a list of workers' names and the wage ledger, employers must also save documents related to working hours records, such as work attendance records and time cards, for three years according to Article 109 of the Labor Standards Act.

**(Late Arrival, Leaving Early and Absence)**

**Article 18** A worker must notify \_\_\_\_\_ in advance and obtain approval when they will be arriving late, leaving early, or absent for a full day or a part of a day for personal reasons during working hours. However, in the case where they could not notify prior to such event for unforeseeable reasons, they must notify immediately after the event and obtain approval.

2. In the case of the preceding article, on principle, the wage corresponding to the hours of absence will be deducted pursuant to 0.

3. A worker must submit a physician's certificate in the case where they will be absent for \_\_\_\_\_ consecutive day(s) or more due to injury or illness.

**[Article 18 Late Arrival, Leaving Early and Absence]**

1. In this example of the rules of employment, it is stipulated that a worker is required to notify and obtain approval when they are arriving late, leaving early, or absent. However, stipulations concerning such procedures are to be determined by each business. An employer should establish clear and concise clauses in respect to such procedures since they are important to maintain order in the company.

2. The number of days of absence that requires submission of a physician's certificate is to be determined by each business.

## Chapter 4 Working Hours, Rest Periods and Days Off

1. Matters concerning working hours, rest periods, and days off must be included in the rules of employment.
2. Article 32-1 of the Labor Standards Act stipulates that the maximum working hours per week shall be 40 hours. However, under a special exemption, an employer of businesses with fewer than 10 workers in the following fields (hereinafter referred to as “businesses applicable to special exemption”) are permitted to have their workers work a maximum of 44 hours per week. Such fields are: commerce and trade (The Labor Standards Act Appended Table 1-8), screen motion pictures and live theater (except motion picture production companies) (Table 1-10), public health (Table 1-13), and entertainment (Table 1-14) (Article 40 of the Labor Standards Act, Article 25-2 of the Labor Standards Ordinance).

In addition, Article 32-2 of the Labor Standards Act stipulates that the maximum working hours per day shall be 8 hours.

3. With regard to rest periods, an employer must provide at least 45 minutes of break time in the case where the working hours per day exceed 6 hours, and 1 hour of break time in the case where these exceed 8 working hours per day (Article 34 of the Labor Standards Act).
4. With regard to days off, an employer must provide a minimum of one day per week, or 4 days or more over a period of 4 weeks (Article 35 of the Labor Standards Act).
5. In order to provide terms and conditions of employment in accordance with the preceding paragraphs from 2 to 4, different schedule arrangements can be implemented, such as: (a) 2 days off per week; (b) 1 day off per week with reduced regular working hours each day; (c) a variable work schedule (monthly or annually). An employer should draw up the rules of employment adjusted to actual conditions at each workplace, using the following example of rules as a reference.

### [Example 1] Example provisions in the case where the system of two days off per week is adopted

The following are example provisions in the case where the system of two days off per week featuring 8-hour working hours is adopted.

#### **(Working Hours and Break Times)**

**Article 19** The total working hours shall be 40 hours per week and 8 hours per day.

2. The start and end times of work and break times shall be as follows. However, an employer is entitled to shift such times to an earlier or later time, under certain business circumstances or



other unavoidable events. In such case, an employer shall notify workers of the change a minimum of day(s) ahead of time.

(a) Regular Work Schedule

Start and End times of work	Break Times
Start: ____:____ am	____From ____:____ to ____:____
End: ____:____ pm	

(b) Shift work schedule

(i) The first shift (day shift)

Start and End times of work	Break Times
Start: ____:____ am	____From ____:____ to ____:____
End: ____:____ pm	

(ii) The second shift (evening shift)

Start and End times of work	Break Times
Start: ____:____ am	____From ____:____ to ____:____
End: ____:____ pm	

(iii) The third shift (night shift)

Start and End times of work	Break Times
Start: ____:____ am	____From ____:____ to ____:____
End: ____:____ pm	

3. An employer shall notify each worker of their shift schedule by providing them with a separate shift roster by the \_\_\_\_ day of the preceding month.
4. The rotation of the shift change in principle shall occur from \_\_\_\_ shift to \_\_\_\_ shift, \_\_\_\_ shift to \_\_\_\_ shift, and \_\_\_\_ shift to \_\_\_\_ shift every \_\_\_\_ days.
5. The change in the employment schedule from the regular work schedule to the shift schedule, or vice versa, in principle, should be done after a day off or a period of off duty, and \_\_\_\_\_ shall notify workers by the \_\_\_\_ day of the preceding month.

**[Article 19 Working Hours and Break Times]**

1. The start and end times of work and break times must be established in the rules of employment. In the case where the shift work schedule is adopted, the start and end times of work, break times as

well as the rotation of the shift work must be specified in the rules of employment.

2. As a basic rule, an employer must have all workers take breaks simultaneously. However, in the case where a shift work schedule is adopted, as in this example of the rules of employment, and where it is difficult to have all workers take breaks at the same time, an employer is allowed to have workers take breaks in turns upon a written agreement with a representative of the workers (hereinafter referred to as the “labor-management agreement (which applies to all workers within the company)”) (Article 34 of the Labor Standards Act). In such case, the workers who are not given breaks and the method for allowing breaks for those workers must be determined in the labor-management agreement (Article 15 of the Labor Standards Ordinance).

In addition, employers of businesses in the following fields are not required to have all their workers take a break at the same time as stipulated in Article 31 of the Labor Standards Act Ordinance pursuant to Article 40 of the Labor Standards Act. Such fields include: transportation (Appended Table 1 No.4), commerce and trade (No.8), finance and advertising (No.9), screen motion pictures and live theater (No.10), communication (No.11), public health (No.13), services and entertainment (No.14), and public offices,

Please refer to the information under Article 0 of the rules of employment for the details concerning the representative specified in the labor-management agreement.

3. During a break, an employer must allow workers to freely utilize such time. An employer should be aware that time spent in standby awaiting instructions by the employer for immediately engaging in work without the right to leave work (referred to as “waiting time”) is considered working hours and not a break.

#### **(Days Off)**

**Article 20** The days off shall be as follows:

- (a) Saturdays and Sundays
  - (b) National Holidays (if a national holiday falls on a Sunday, it shall be observed on the following Monday)
  - (c) The end and the beginning of the year (from December \_\_\_\_ to January \_\_\_\_)
  - (d) Summer Break (from \_\_\_\_\_ (month/day) to \_\_\_\_\_ (month/day))
  - (e) Other days specified by the company
2. The employer may switch a day off specified in the preceding paragraph with a work day if necessary under certain business circumstances.

**[Article 20 Days Off]**

1. The Labor Standards Act does not stipulate which day of the week or which national holidays should be set as days off. An employer is entitled to determine at their discretion which day of the week or different day(s) of each week as days off. Moreover, an employer may set different days off for different workers in turns adjusting to their work situation.
2. An employer must provide the days off on principle, by a whole calendar day, which means a period of 24 consecutive hours from 0 am until 12 pm. However, in the case where the shift work schedule (such as three 8 hour shifts) is adopted, providing a rest period of 24 consecutive hours instead of a whole calendar day is acceptable provided that the following requirements are met (The Notice from the Chief of the Labor Standards Bureau No.150 dated March 14, 1988).
  - (i) The shift work schedule is operated as a system in accordance with regulations, such as the rules of employment which have clauses concerning such schedules.
  - (ii) The rotation of the shift schedule is established in a regular schedule and not randomly determined each time the shifts rotate by using the shift schedule chart.
3. The so-called “switched day off” specified in paragraph 2 of this article means switching a specified day off with a work day. For example, if an employer requires workers to work on a day specified as a day off, such as a Sunday, the employer can switch such Sunday with a work day, such as a Monday, in advance, making that Monday the day off instead.

Moreover, a “replacement day off” means providing workers a day off by waiving their duties on a selected work day or a work day of the workers' choice if an employer has workers work on a day off. The differences between the “switched day off” and the “replacement day off” as set out in the Labor Standards Act are as follows:

“The differences between the switched day off and the replacement day off”

- (a) A switched day off refers to a regularly scheduled day off that is switched to another day, and because of this, working on the day prior to the switch is the same as normal work. Therefore, no premium wage is given for working on the day off. However, if the switched day off falls on a different week, it may occur that the number of working hours for the relevant week exceeds the legal maximum working hours. In such cases, a premium wage rate for the overtime hours is required.

A replacement day off occurs when an employer makes workers work on a legal day off. Consequently, providing the replacement day off retroactively does not cancel out the fact of having them work on a day off, and the employer is required to pay the premium wages rate for that day.

- (b) Days off are the days on which workers are not required to work. Switching a day off requires the following measures:
- (i) to set out the clauses for the switched days off under the rules of employment;
  - (ii) to specify the switched day off;
  - (iii) to set the switched day off provided that a minimum of four days off over four weeks is maintained, and to be as close as possible to the day it is being replaced.
  - (iv) to provide workers with a minimum of one day's notice of the switch in advance.

**[Example 2] Example Provisions in the case of the monthly variable work schedule system (in the case where the system of two days off every other week is adopted)**

[Example 2] provides the example provisions in the case of the monthly variable work schedule system while applying the system of 40 working hours per week, based on two days off every other week with 7 hours and 15 minutes of scheduled working hours per day.

**(Working Hours and Break Times)**

**Article 19** The scheduled working hours per week shall be 40 hours averaged out over 2 weeks with the pay period starting from \_\_\_\_\_ (month) \_\_\_\_\_ (day), 20\_\_ (year).

2. The scheduled working hours per day shall be 7 hours and 15 minutes.
3. The start and end times of work and break times shall be as follows. However, an employer is entitled to shift such times to an earlier or later time, under certain business circumstances or other unavoidable events. In such event, \_\_\_\_\_ shall provide workers with a minimum of one day's notice of the change in advance.

Start and End times of work	Break Times
Start: ____:____ am	____ From ____:____ to ____:____
End: ____:____ pm	

**(Days Off)**

**Article 20** The days off shall be as follows:

- (a) Sundays
  - (b) The second Saturday of every two weeks according to the pay period starting from \_\_\_\_\_ (month/day), 20\_\_ (year).
  - (c) National Holidays (if a national holiday falls on a Sunday, it shall be observed on the following Monday)
  - (d) The end and the beginning of the year (from December \_\_\_\_\_ to January \_\_\_\_\_)
  - (e) Summer Break (from \_\_\_\_\_ (month/day) to \_\_\_\_\_ (month/day))
  - (f) Other days specified by the company
2. The employer may switch a day off specified in the preceding paragraph with a work day if necessary under certain business circumstances.

**[Article 19 Working Hours and Break Times]****[Article 20 Days Off]**

1. The monthly variable work schedule system is a system that allows an employer to have workers work beyond 8 hours per day and 40 hours per week on a specific day or week in accordance with rules, such as a labor-management agreement or the rules of employment, provided that such rules stipulate that workers shall not work beyond the average of 40 working hours per week within a fixed term of one month (Article 32-2 of the Labor Standards Act). In such event, a labor-

While the number of scheduled working hours per day set out in this example of the rules is fixed, an employer may alter daily working hours according to business needs. In such case, the average working hours per week must not exceed 40 hours over a specified period of time.

If the monthly variable work schedule system is adopted, the first day of the variable work period, the start and end times of each workday, and the working hours for each day and week should be clearly defined in the rules, such as the rules of employment.

As shown below, in the case of Example 2, the total number of scheduled working hours for 2 weeks is 79 hours and 45minutes. The average number of scheduled working hours per week is 39 hours and 53 minutes. Thus it meets the requirement of 40 working hours per week or less.

43 hours 30 minutes		36 hours 15 minutes	
Days off			14 Sun
Days off			13 Sat
"			12 Fri
"			11 Thu
"			10 Wed
"			9 Tue
7 hours 15 minutes			8 Mon
Days off			7 Sun
"			6 Sat
"			5 Fri
"			4 Thu
"			3 Wed
"			2 Tue
7 hours 15 minutes			1 Mon

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**[References]** “the method for determining the specified working hours under the monthly variable work schedule system”

Under the monthly variable work schedule system, the specifics of the working hours for each day and week must be set forth in the rules of employment within the legal maximum of 40 hours of work per week on average over the specified term (known as the variation term) up to one month. In such case, the total number of working hours in a variation term is established within the number of hours calculated using the following equation:

$$\text{the maximum legal working hours per week (40 hours)} \times \frac{\text{The number of calendar days in the variation term}}{7}$$

According to the preceding equation, if the variation term is one month, the calculated working hours for the full variation term are as follows:

Items the number of calendar days in one month	The total scheduled working hours for each full variation term	
	If the legal maximum working hours is 40 hours (per week)	If the legal maximum working hours is 44 hours (per week)
In the case of 31 days	177.1 hours	194.8 hours
In the case of 30 days	171.4 hours	188.5 hours
In the case of 29 days	165.7 hours	182.2 hours
In the case of 28 days	160.0 hours	176.0 hours

(Note) Numbers are calculated to the first decimal place.

In addition, the following are the variations in scheduled working hours per week for different schedule patterns of the monthly variable work schedule system with two days off per week.

Schedule variations for two days off per week  scheduled working hours per day	Days off on Sundays and two Saturdays per month			Days off on Sundays and three Saturdays per month			Days off on Sundays and four Saturdays per month		
The number of days in January	28 days	30 days	31 days	28 days	28 days	31 days	28 days	30 days	31 days
Number of days off per month	6 days	6 days	6 days	7 days	7 days	7 days	8 days	8 days	8 days
Number of working days	22 days	24 days	25 days	21 days	23 days	24 days	20 days	22 days	23 days
8 hours/day	44:00	44:48	45:10	42:00	42:56	43:22	40:00	41:04	41:33
7 hours 50 mins./day	43:05	43:52	44:13	41:07	42:03	42:27	39:10	40:13	40:41
7 hours 45 mins./day	42:38	43:24	43:45	40:41	41:36	42:00	38:45	39:47	40:15
7 hours 40 mins./day	42:10	42:56	43:17	40:15	41:09	41:33	38:20	39:22	39:49
7 hours 30 mins./day	41:15	42:00	42:21	39:23	40:15	40:39	37:30	38:30	38:57
7 hours 20 mins./day	40:20	41:04	41:24	38:30	39:22	39:45	36:40	37:39	38:05
7 hours 15 mins./day	39:53	40:36	40:56	38:04	38:55	39:18	36:15	37:13	37:39
7 hours 10 mins./day	39:25	40:08	40:28	37:37	38:28	38:50	35:50	36:47	37:13
7 hours/day	38:30	39:12	39:31	36:45	37:34	37:56	35:00	35:56	36:22

Note:  (The highlighted) results exceed the average of 40 working hours per week over a one-month period. These patterns require adjustments, such as reducing the working hours on specific day(s), to ensure the result is 40 hours or less.



**[Example 3] Example of provisions for the annual variable work schedule system**

**(Working Hours and Break Times)**

**Article 19** In the case where an employer enters into a labor-management agreement with a representative of the workers concerning the annual variable work schedule system, the average working hours per week shall be 40 hours over the designated term for the workers to whom such agreement applies.

2. The working hours per week shall be 40 hours, and 8 hours per day for workers to whom the annual variable work schedule system does not apply.
3. The start and end times of work and break times are as follows:

- (a) The regular term

Start and End times of work	Break Times
Start: ____:____ am	____ From ____:____ to ____:____
End: ____:____ pm	

- (b) The special term (the specific term set forth in the labor-management agreement with regard to the annual variable work schedule system)

Start and End times of work	Break Times
Start: ____:____ am	____ From ____:____ to ____:____
End: ____:____ pm	

- (c) The start and end times of work and break times for workers to whom the annual variable work schedule system does not apply.

Start and End times of work	Break Times
Start: ____:____ am	____ From ____:____ to ____:____
End: ____:____ pm	

**(Days Off)**

**Article 20** The days off for workers to whom the annual variable work schedule system applies shall be specified as more than one day per week, and \_\_\_\_ days per year from the first day of the designated term, which is to be the first day of the pay period, pursuant to the labor-

management agreement with regard to the annual variable work schedule system. In such case, the employer shall notify each worker of such days off indicated on the annual days off calendar at least 30 days in advance counting from the first day of the designated term.

2. An employer shall notify each worker to whom the annual variable work schedule system does not apply, of the designated days off indicated as follows on the monthly days off calendar at least 30 days in advance counting from the first day of the designated term.

(a) Sundays (except during the specified term under the paragraph 3 of the preceding Article).

(b) National Holidays (if a national holiday falls on a Sunday, it shall be observed on the following Monday)

(c) The end and the beginning of the year (from December \_\_\_\_ to January \_\_\_\_)

(d) Summer Break (from \_\_\_\_\_ (month/day) to \_\_\_\_\_ (month/day))

(e) Other days specified by the company

#### **[Article 19 Working Hours and Break Times]**

#### **[Article 20 Days Off]**

1. The annual variable work schedule system is a system that allows an employer to have workers work beyond 8 hours per day and 40 hours per week during the specified day and/or week within a maximum average of 40 hours per week over a specific period of time, beyond one month but within a year (Article 32-4 of the Labor Standards Act). This system is suitable for the case where an employer can predict that the business will have busy periods of time at specific times during the year.

2. An employer must meet the following requirements in order to adopt the annual variable work schedule system.

(a) The outline for adopting the annual variable work schedule system shall be provided in the rules of employment. In addition, the start and end times of work for each work day, duration of breaks, days off and the like shall be specified.

(b) An employer must conclude a written labor-management agreement with a representative of the workers with regard to the following matters and submit such agreement in the specified format to the director of the relevant local Labor Standards Inspection Office.

In such event, the matters required to be set forth in the labor-management agreement are as follows:

(i) Range of workers to whom the system applies

(ii) Designated term (which should be a fixed term longer than one month within one year) and the starting day of such term

(iii) Special term (can be established for special busy periods during the designated term)

(iv) Work days during the designated term and scheduled working hours for each work day

(if the designated term is divided into months or longer terms, it is required to specify the work days and the scheduled working hours for each work day in the first term divided, but only the total number of work days and of work hours are required to be set forth for the rest of the terms)

(v) Effective term (approximately one year is desirable)

With regard to (iv), if the designated term is longer than 3 months, on principle, the number of work days must be within 280 days per year, and the number of consecutive work days must be 6 days or fewer. However, during the special term, at least one day off per week should be ensured. The scheduled working hours must be 10 hours or less per day and 52 hours or less per week. If the designated term exceeds 3 months, within a 3 month period, there may be only one block of 3 consecutive weeks where a worker works more than 48 hours per week. Alternatively, if not consecutive, there may be only a total of 3 weeks where a worker works more than 48 hours per week within that 3 month period.

3. In order to conform to the labor system of 40 working hours per week while adopting the annual variable work schedule system, an employer is required to ensure the annual days off as in the table shown below corresponding to the scheduled working hours per day. For example, if an annual variable schedule system with 8 scheduled working hours per day is adopted, the annual days off must be 105 days or more in order to keep the working hours per week within 40 hours.
4. Please refer to the guideline under Article 19 in this example of the rules for the method of selecting the representative of the workers for the labor-management agreement.

[References]

The number of days off per year to ensure conformity to the labor system of 40 working per week is according to the following table:

Calendar days in a year Scheduled working hours per day	365 days	366 days (leap year)
	Number of days off per year	
9 hours	134 days	134 days
8 hours	105 days	134 days
7 hours 50 minutes	99 days	100 days
7 hours 45 minutes	96 days	97 days
7 hours 30 minutes	87 days	88 days
7 hours 15 minutes	*85 days	*86 days
7 hours	*85 days	*86 days

The method of calculation:

$$\frac{(\text{Scheduled hours of work per day} \times 7 \text{ days} - 40 \text{ hours}) \times 365 \text{ days (or 366 days)}}{\text{Scheduled hours of work per day} \times 7 \text{ days}} \leq \text{Number of days off per year}$$

\* According to the annual variable work schedule system, the number of working days per year is limited to 280 days, so the days off mentioned above need to be ensured.

5. The annual variable work schedule is designed to eliminate overtime or working on days off. Therefore, in the case of unavoidable overtime, the employer must conclude a labor-management agreement in respect to the matters concerning overtime pursuant to Article 36 of the Labor Standards Act, and such agreement must be submitted to the relevant local office. At the same time, the payment of the premium wages for the applicable workers is required.

## [References]

The annual days off calendar below indicates an example of the days off for a year. In this example, the annual days off are 111 days to maintain the 40 working hours per week under the annual variable work schedule system. During the regular term in which business is less busy, in this case, April, May, July, August, November, December, January, and March, the scheduled working hours per day are 8 hours. However, during the special term in which business activity is high, which is June, September, October, and February, the scheduled working hours per day are 8 hours and 30 minutes.

The first day of the designated term is set on April 1 and days off are those days which numbers are highlighted.

4月	日	月	火	水	木	金	土
							1
2	3	4	5	6	7	8	
9	10	11	12	13	14	15	
16	17	18	19	20	21	22	
23	24	25	26	27	28	29	
30							

5月	日	月	火	水	木	金	土
	1	2	3	4	5	6	
7	8	9	10	11	12	13	
14	15	16	17	18	19	20	
21	22	23	24	25	26	27	
28	29	30	31				

6月	日	月	火	水	木	金	土
				1	2	3	
4	5	6	7	8	9	10	
11	12	13	14	15	16	17	
18	19	20	21	22	23	24	
25	26	27	28	29	30		

7月	日	月	火	水	木	金	土
							1
2	3	4	5	6	7	8	
9	10	11	12	13	14	15	
16	17	18	19	20	21	22	
23	24	25	26	27	28	29	
30	31						
8月	日	月	火	水	木	金	土
		1	2	3	4	5	
6	7	8	9	10	11	12	
13	14	15	16	17	18	19	
20	21	22	23	24	25	26	
27	28	29	30	31			
9月	日	月	火	水	木	金	土
					1	2	
3	4	5	6	7	8	9	
10	11	12	13	14	15	16	
17	18	19	20	21	22	23	
24	25	26	27	28	29	30	
10月	日	月	火	水	木	金	土
1	2	3	4	5	6	7	
8	9	10	11	12	13	14	
15	16	17	18	19	20	21	
22	23	24	25	26	27	28	
29	30	31					
11月	日	月	火	水	木	金	土
			1	2	3	4	
5	6	7	8	9	10	11	
12	13	14	15	16	17	18	
19	20	21	22	23	24	25	
26	27	28	29	30			
12月	日	月	火	水	木	金	土
					1	2	
3	4	5	6	7	8	9	
10	11	12	13	14	15	16	
17	18	19	20	21	22	23	
24	25	26	27	28	29	30	
31							
1月	日	月	火	水	木	金	土
	1	2	3	4	5	6	
7	8	9	10	11	12	13	
14	15	16	17	18	19	20	
21	22	23	24	25	26	27	
28	29	30	31				
2月	日	月	火	水	木	金	土
				1	2	3	
4	5	6	7	8	9	10	
11	12	13	14	15	16	17	
18	19	20	21	22	23	24	
25	26	27	28				
3月	日	月	火	水	木	金	土
				1	2	3	
4	5	6	7	8	9	10	
11	12	13	14	15	16	17	
18	19	20	21	22	23	24	
25	26	27	28	29	30	31	

## (Overtime and working on Days Off)

**Article 21** An employer may have a worker work beyond the working hours prescribed in Article 0 or on days off prescribed in Article 0 due to certain business circumstances.

2. In the case of the preceding paragraph, the employer shall conclude the written labor-management agreement ahead of time with a representative of a majority of the workers

concerning working beyond the working hours or on days off stipulated in the law and submit such agreement to the director of the relevant local Labor Standards Inspection Office.

3. An employer shall not have a female worker who is pregnant or who gave birth within one year (hereinafter referred to as “expectant or nursing mothers”), who requests not to work, and a worker who is under 18 years of age to work overtime, or on days off as noted in paragraph 2, or late night or early morning (from 10 pm to 5 am).
4. An employer may have a worker work overtime beyond the limits prescribed in paragraphs 1 to 3, the scheduled working hours, or on days off in the case of an emergency, such as a certain unavoidable incident or a natural disaster. However, even in such case, an employer shall not have expectant or nursing mothers who request not to work, work overtime or on days off.

#### **[Article 21 Overtime and Working on Days Off]**

1. In the case where an employer has a worker work beyond the legal working hours, which are 40 hours per week (or 44 hours per week for businesses with special exemptions) and 8 hours per day, or on the legal days off, which are one day off per week or 4 days off per 4 weeks, the employer is obligated to conclude a labor-management agreement concerning Article 36 of the Labor Standards Act (so-called Agreement 36) and submit such agreement to the relevant local office.

A worker is permitted to have workers work overtime and on days off within the scope of such labor-management agreement after concluding such agreement with a representative of workers and submitting such agreement to the director of the relevant local Labor Standards Inspection Office.

2. A “representative of workers” means a labor union if such a union organized by a majority of the workers at that business exists, or if such a union does not exist, a person who represents a majority of the workers (representative of the majority).

Such a representative of the majority of workers must be selected from those who meet both of the following criteria (Article 6-2 of the Labor Standards Ordinance):

- (a) A person who is not employed at a supervisory or management level as stipulated in Article 41-2 of the Labor Standards Act;
  - (b) A person who is selected by way of voting, which is conducted after informing workers that the purpose is to select a person to conclude a labor-management agreement, and who is not selected based on the preference of the employer.
3. Disadvantageous treatment against the representative of the majority of workers is prohibited. An employer must not treat the representative of the majority of workers disadvantageously with regard to their terms and conditions of employment, such as dismissal, wage reduction, or demotion, on the basis of being or trying to be a representative of the majority of workers, or acting appropriately as the representative of the majority of workers. In addition, employers must implement necessary measures to ensure that the representative of the majority of workers is able to handle matters related

to concluding the labor-management agreement, including providing office equipment and space necessary for collecting feedback from workers.

4. A worker must make Agreement 36 known to the workers as well as the rules of employment (Article 106-1 of the Labor Standards Act).
5. Since the limit on extended working hours stipulated in Agreement 36 is determined in the Labor Standards Act, an agreement cannot allow hours that exceed the upper limit.

<Upper Limit on Overtime>

(a) Maximum hours

Overtime must be no more than 45 hours a month, and within 360 hours a year (for workers to whom the annual variable work schedule system applies, within 42 hours a month and 320 hours a year).

(b) When asked to work more than the maximum hours

When it is necessary to have a worker temporarily work more than the maximum hours, they can exceed the limits in (a), but the total hours for overtime and working on days off in a month must be less than 100 hours, and the total for overtime in a year must be no more than 720 hours. In addition, the number of months during which the maximum hours can be exceeded (no more than six months per year) must be determined.

(c) Limits on overtime and work on days off

Even if it is within the number of hours stipulated in Agreement 36, the total number of hours for overtime and work on days off must be less than 100 hours a month and within an average of 80 hours for two to six months.

\* For the following businesses and work, application of the upper limit on overtime may be postponed until March 31, 2024.

- Businesses in the fields of construction and civil engineering
- Driving of vehicles
- Doctors engaged in medical practice
- Sugar production in Kagoshima and Okinawa prefectures

\* Research and development in new technologies or new products are excluded from application of the upper limit.

6. The contents that must be agreed upon in Agreement 36 are as follows (Article 36-2 of the Labor Standards Act, Article 17 of the Labor Standards Ordinance):

- (a) The range of workers that may be required to work overtime or on days off;
- (b) Designated term (limited to one year)

- (c) Specific reasons why the employer requires workers to work overtime or on days off
  - (d) Maximum number of hours beyond the legal maximum working hours or number of days on days off that a worker may work per day, per month and per year
  - (e) Effective term of the agreement
  - (f) Start day of the designated term (1 year)
  - (g) Total number of hours of overtime and work on days off must be less than 100 hours a month and within an average of 80 hours for two to six months
  - (h) Specific reasons why an employer requires work beyond the maximum hours
  - (i) Measures to protect the health and welfare of workers who are required to work beyond the maximum hours
  - (j) Premium wage rate for overtime beyond the maximum hours
  - (k) Procedure for requiring workers to work beyond the maximum hours  
(Article 36-2 of the Labor Standards Act, Article 17 of the Labor Standards Ordinance).
7. An employer is prohibited from having a worker under 18 years of age work overtime, on days off, or under the variable work schedule system (Article 60 of the Labor Standards Act), with certain exceptions. Furthermore, in principle, an employer is also prohibited from having such worker work late night or early morning from 10 pm to 5 am (Article 61 of the Labor Standards Act).
8. An employer, if requested by an expectant or nursing mothers, is prohibited from having such workers work overtime, on days off, or late night (Article 66 of the Labor Standards Act). An employer shall not dismiss or treat such worker disadvantageously on the grounds of making such request or not working upon such request (Article 9-3 of the Equality Act).

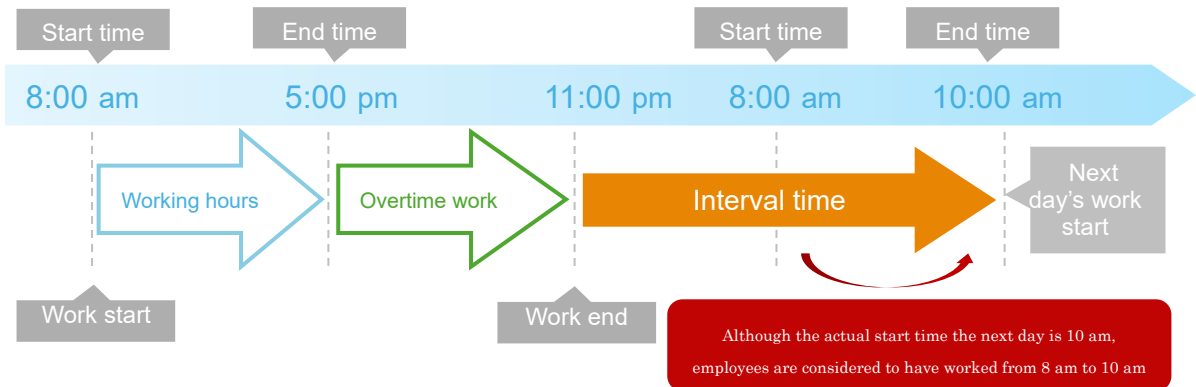
#### **[Article 22 Work Interval System]**

1. Based on revisions to the Act on Special Measures for Improvement of Working Hours Arrangements (Shorter Working Hours Promotion Act), starting from April 2019, employers are obligated to make efforts to implement the work interval system.
2. The work interval system refers to the provision of a certain amount of rest time (interval time) between the end of one work day and the start of the next in order to ensure that workers have sufficient time for daily activities and for sleep.
3. Ensuring a certain interval allows employees to have sufficient time for daily activities and for sleep so that they can continue working with a proper work-life balance.
4. The following are possible methods for handling the case where the interval time overlaps with the scheduled working hours of the next shift, along with examples of regulations for the rules of employment.
5. Moreover, depending on the need, it is also necessary to establish regulations for rules of employment such as the application procedure for the work interval system and the handling of



working hours.

**[Example 1] Case where it is deemed the person worked during the overlap between the interval and scheduled working hours the next day**

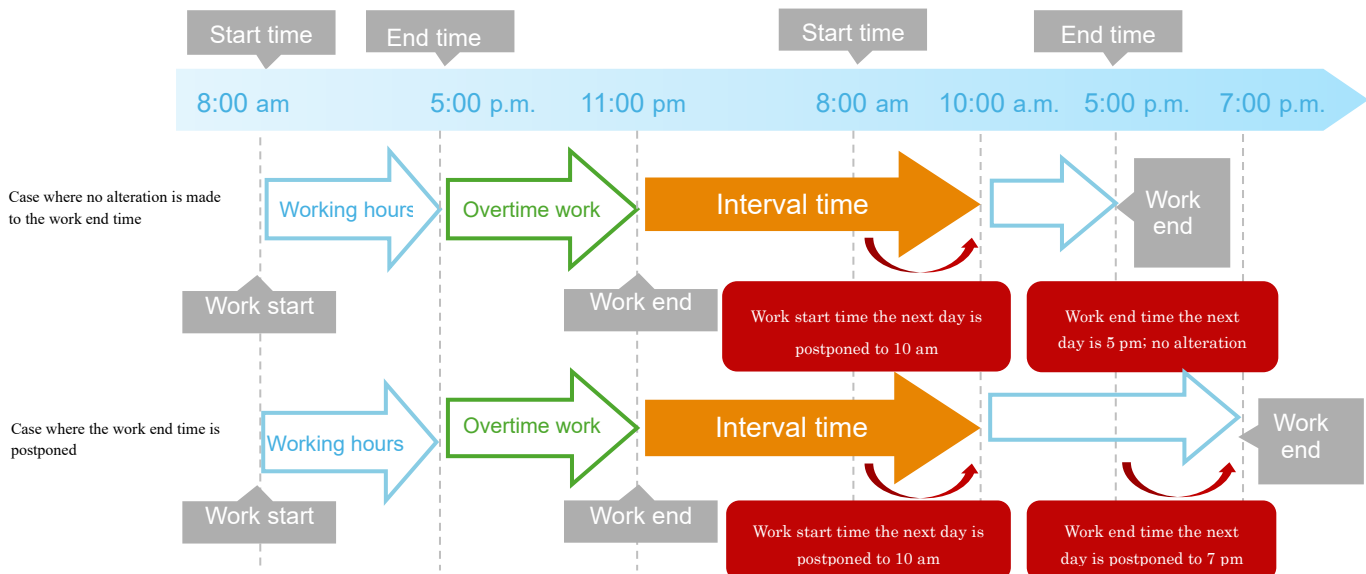


**(Work Interval)**

**Article 22** In all cases, each worker shall be given at least 0 hours of continuous rest between the end of one work day and the start of the next shift. However, this shall not apply in the case of a disaster or other unavoidable circumstances.

2. If the expiration time for the rest time in the preceding paragraph is extended beyond the scheduled start time for the next shift, the hours from the start time to the expiration time shall be considered time worked.

**[Example 2] Case where the work start time is postponed if there is overlap between the interval and scheduled working hours the next day**



**(Work Interval)**

**Article 22** In all cases, each worker shall be given at least 0 hours of continuous rest between the end of one work day and the start of the next shift. However, this shall not apply in the case of a disaster or other unavoidable circumstances.

2. If the expiration time for the rest time in the preceding paragraph is extended beyond the scheduled start time for the next shift, the start time for work the next day shall be postponed to the expiration of the rest time in the preceding paragraph.

One other possible way of ensuring the interval time is to prohibit overtime after a specified time so that work prior to the start of the next work shift is not approved.

## Chapter 5 Leaves

Matters regarding leave, including statutory leave, annual paid leave, and other leave established by a company, must be stipulated in the rules of employment.

### (Annual Paid Leave)

**Article 23** An employer shall provide a worker who has worked for 6 consecutive months since the first day of their employment, with at least 80 percent attendance of the scheduled workdays during such period, with 10 days of annual paid leave. An employer shall provide a worker who continues their service beyond 6 months with the specified number of days of annual paid leave for each additional year of service, provided that their attendance is at least 80% during that year. The corresponding annual paid leave granted based on the length of service is shown in the following table:

The length of service	6 months	1 year and 6 months	2 years and 6 months	3 years and 6 months	4 years and 6 months	5 years and 6 months	6 years and 6 months or longer
Days given	10 days	11 days	12 days	14 days	16 days	18 days	20 days

2. Notwithstanding the preceding provision, an employer shall provide a worker whose scheduled working hours per week are less than 30 hours and whose scheduled work days are 4 days or fewer per week, and whose scheduled work days are based on other than weekly basis, if their annual scheduled work days are 216 days or fewer, with the specified number of days of annual paid leave corresponding to the length of service as shown in the table below:

Specified work days per week	Specified work days per year	The length of service						
		6 months	1 year and 6 months	2 years and 6 months	3 years and 6 months	4 years and 6 months	5 years and 6 months	6 years and 6 months or longer
4 days	169 to 216 days	7 days	8 days	9 days	10 days	12 days	13 days	15 days

3 days	121 to 168 days	5 days	6 days	6 days	8 days	9 days	10 days	11 days
2 days	73 to 120 days	3 days	4 days	4 days	5 days	6 days	6 days	7 days
1 days	48 to 72 days	1 days	2 days	2 days	2 days	3 days	3 days	3 days

3. An employer shall allow a worker to take the annual paid leave established in the preceding paragraph 1 or 2, at the times requested in advance. However, if taking the annual paid leave at the requested times will impede regular business operations, an employer may have the worker take the leave at other times.
4. Notwithstanding the preceding paragraph, an employer may assign the time in advance for a worker to take their annual paid leave for the portion beyond 5 days of their annual paid leave pursuant to the written labor-management agreement with a representative of the workers.
5. Notwithstanding the provision in paragraph 3, when a worker has been granted 10 or more days of annual paid leave as mentioned in paragraph 1 or 2, the company shall consult with the worker within one year of granting the leave and specify in advance the period during which 5 days of leave is to be taken. However, if the worker takes the annual paid leave stipulated in paragraph 3 or 4, the number of days taken shall be subtracted from the 5 days.
6. When calculating attendance rate set forth in the preceding paragraphs 1 and 2, the following periods shall be considered time worked:
  - (a) the period for the annual paid leave
  - (b) the period for maternity leave
  - (c) the period for child care leave and family care leave based on the Child Care and Family Care Leave Act
  - (d) the period for leave of absence for recovery from injury or illnesses caused in the ordinary course of duties
7. A worker is entitled to carry over the unused portion of their annual paid leave from the preceding year, up to 2 years from the day such paid leave was granted.
8. In the case of the preceding paragraph, an employer shall have a worker take the portion of annual paid leave which was carried over before taking the annual paid leave granted for the current year.
9. A company shall notify each worker of their leave balance of annual paid leave as of the last day of every pay period by stating it in their pay statement.

**[Article 23 Annual Paid Leave]**

1. An employer must provide a minimum of 10 days of annual paid leave to a worker who has worked 6 consecutive months from the first day of their employment, with higher than 80 percent attendance of all work days (Article 39-1 of the Labor Standards Act).

In addition, an employer must provide the worker whose scheduled working hours are fewer than 30 hours per week and whose scheduled work days are 4 days per week or fewer, or whose scheduled annual work days are 216 days or fewer (hereinafter referred to as “a worker with fewer scheduled work days”), with at least the number of days of annual paid leave pursuant to Article 24-3 of the Labor Standards Ordinance referring to the ratio of scheduled work days to those of the regular workers (item 3 of Article 24).

2. In the case where a worker has variable scheduled working hours or work days, whether paragraph 1 or 2 of this article applies to the worker shall be determined based on the number of scheduled working hours, the scheduled work days per week, or the scheduled work days per year calculated from the “base date” established for the annual paid leave. The “base date” means the day the right to take annual paid leave is given to a worker, which is the first day after 6 months have passed from the start of employment, and every year thereafter.
3. The base date for the annual paid leave can be established collectively regardless of the start dates of each worker. In such case, the period of service must always be rounded up, and rounding down is not accepted. For example, if the base date is established on April 1st, a worker who started working on January 1st must be given the annual paid leave for the first fiscal year on April 1st, after 3 months of work as of that date, which is 3 months earlier than the statutory requirement.
4. An employer must provide 5 days of annual paid leave to workers who have been granted 10 or more days per year within one year from the reference day (the first day of the period divided into one-year segments starting from the day six months after the continuous employment period) (Article 39-7 of the Labor Standards Act). However, employers are not required to provide annual paid leave if the days taken are requested by the worker or through planned provision under a labor-management agreement (Article 39-8 of the Labor Standards Act).

Moreover, when an employer specifies the period, they must request feedback from workers and respect their opinions.

5. An employer must provide a regular worker with the specified number of days of annual paid leave, increased with each year of continual service (Article 39-2 of the Labor Standards Act).
6. The period of continuous employment means the period of the labor contract, meaning the period while a worker is on record as a worker of the company. The form of employment that should be considered “continuous employment” must be determined for all intents and purposes based on the actual state of employment. For example, when a retiree is rehired as a contract worker, or when a part-time worker becomes a regular worker, their employment is, for all intents and purposes, continuous, and such employment period shall be counted as the period of continuous service.

7. When calculating the attendance of a worker to determine whether it is 80 percent or more, the following periods shall be considered work days attended:

- (a) the period for absence due to injury or illness caused in the course of duties;
- (b) the period while expectant or nursing mothers takes (maternity or parental) leave pursuant to Article 65 of the Labor Standards Act;
- (c) the period of care leave for a child or other family member pursuant to the Child Care and Family Care Leave Act;
- (d) the period taken for annual paid leave;

In addition, menstrual leave, which is set forth in Article 27-2 in this example of the rules, may be considered work days attended in calculating the attendance for annual paid leave.

8. In the case where a worker did not reach 80% attendance, the employer is not obligated to grant the annual paid leave for the following fiscal year. In such event, when such a worker reaches 80% or more in attendance for that year in which they did not receive annual paid leave, the employer must grant the annual paid leave for the following fiscal year as stipulated in this article, corresponding to the length of their service.

9. The annual paid leave should be taken generally as whole days. However, in the case where a worker requests and the employer agrees to such a request, the paid leave may be taken in half-day units. Furthermore, paying out the annual paid leave ahead of time and not granting such leave to workers is a violation of the law.

The right to request annual paid leave expires after 2 years. Therefore, the unused leave must be held over from the previous year.

10. An employer must grant a worker their annual paid leave during the particular period requested by the worker, except when conforming to the system of planned scheduling of annual paid leave. However, in the case where granting annual paid leave during such a period requested by the worker will impede regular business operations, the employer is entitled to change the period to be granted (Article 39-5 of the Labor Standards Act).

11. Under the system of planned scheduling of annual paid leave, a minimum of 5 days of annual paid leave, as stipulated in paragraph 4 of this article, will be granted based on the worker's request. For the portion exceeding these 5 days, the leave will be scheduled according to a labor-management agreement with a representative of the workers (Article 39-6 of the Labor Standards Act).

12. An employer must not treat a worker who took annual paid leave disadvantageously, such as reducing their wages or considering paid leave as an absence when calculating perfect attendance allowance or bonuses (Supplementary Clauses Article 136 of the Labor Standards Act).

<b>(Granting Annual Paid Leave by the Hour)</b>
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**Article 24** Conforming to the written agreement with a representative of workers, an employer shall grant annual paid leave by the hour (hereinafter referred to as “annual leave by the hour”) for up to 5 days of annual paid leave per year in accordance with the following stipulations:

- (1) The annual leave by the hour shall be applicable to all workers;
- (2) When taking the annual paid leave by the hour, the equivalent number of hours to one day of annual paid leave shall be as follows:
  - (a) A worker whose scheduled working hours is between 5 and 6 hours: 6 hours
  - (b) A worker whose scheduled working hours is between 6 and 7 hours: 7 hours
  - (c) A worker whose scheduled working hours is between 7 and 8 hours: 8 hours;
- (3) The annual leave by the hour will be granted in one hour blocks;
- (4) The sum paid for the annual leave by the hour taken shall be calculated by multiplying the hourly regular wage which would be paid for the scheduled working hours by the number of hours of annual paid leave taken.
- (5) Other matters not set forth in this article shall be governed by the clauses concerning the annual paid leave prescribed in the preceding article.

**[Article 24 Granting Annual Paid Leave by the Hour]**

1. An employer may grant annual paid leave by the hour up to a maximum of 5 days per year provided that the employer concludes a labor-management agreement concerning such matters (Article 39-4 of the Labor Standards Act).
2. The hourly wage for annual leave by the hour shall be (a) the average wage, (b) the regular wage which would be paid for the scheduled working hours, (c) the amount derived from dividing the amount equivalent to 1/30 of the standard monthly wage set forth in Article 40-1 of the Health Insurance Act (rounded to the ones place) by the number of scheduled hours for the day. Note that (c) requires a written agreement with a representative of the workers. An employer is required to choose one of the options (a) to (c) as a clause in the rules of employment (Article 39-7 of the Labor Standards Act).
3. The contents which must be stipulated in the labor-management agreement are as follows:
  - (a) The range of workers to whom the annual leave by the hour applies (establish the range of workers);
  - (b) The number of days of annual paid leave allowed to be taken as annual leave by the hour (should be a maximum of 5 days, even with the days held over from the previous fiscal year).
  - (c) The number of hours of annual leave by the hour equivalent to one day of annual paid leave (based on the number of scheduled working hours which correspond to one day of annual paid leave. The scheduled working hours with a partial hour must be rounded up to a whole hour.)
  - (d) The number of hours per block if more than one hour per block (however, such number of hours per block must not be more than the scheduled working hours per day).

4. An employer has the right to change the time when the annual paid leave by the hour to be taken disrupts normal business operations since the annual leave by the hour is annual paid leave. However, it is not permitted to change the annual paid leave requested by the day to one by the hour, or vice versa.

**(Maternity Leave)**

**Article 25** An employer shall grant maternity leave when a request is received from a female worker who is expecting to give birth within 6 weeks (or 14 weeks in the case of multiple births.)

2. An employer shall not allow a female worker to work within 8 weeks of giving birth.
3. Notwithstanding the preceding article, if a female worker requests to return to work after 6 weeks of giving birth, an employer may allow such female worker to work on duties that a physician approves as safe for her to work.

**[Article 25 Maternity Leave]**

1. An employer must not have a female worker who is expecting to give birth within 6 weeks (or 14 weeks in the case of multiple births) work if she requests maternity leave (Article 65-1 of the Labor Standards Act).
2. An employer must not have a female worker work within 8 weeks of giving birth, except where, after 6 weeks of giving birth, a female worker requests to work on duties that a physician approves as safe (Article 65-2 of the Labor Standards Act). It is necessary to give maternity leave to female workers who are at least 4 months into a pregnancy even in the event of a miscarriage or stillbirth.
3. An employer must not treat a worker disadvantageously on grounds of requesting and taking maternity leave (Article 9-3 of the Equality Act).



**(Measures to Maintain Mothers' Health)**

**Article 26** When a female worker who is pregnant or gave birth within the last year makes a request, an employer shall approve her visits to the hospital during the scheduled working hours for health guidance or medical examinations in compliance with the Maternal and Child Health Act with the following limits:

(a) Before giving birth:

up to 23 weeks .....once every 4 weeks

from 24 weeks to 35 weeks ...once every 2 weeks

from 36 weeks to birth..... once every week

When a physician or midwife (referred to hereafter as a “physician or other medical professional”) gives instructions otherwise, the required time shall be approved according to such instructions.

(b) After giving birth (within one year):

The time required according to a physician's instructions

2. In the case where a female worker who is pregnant or within one year of giving birth requests adjustment in her work conditions or hours based on a physician's instructions at a health guidance or medical examination, the employer shall take measures as follows:

(a) In the case where a worker is instructed to avoid commuting in a crowded condition during pregnancy to alleviate commuting stress, the employer shall, in principle, approve reducing their working hours by hour(s) or shifting their start and end times of work by up to a maximum of hour(s).

(b) In the case where a worker is instructed regarding rest periods during pregnancy, an employer shall increase the frequency or extend the duration of her rest periods as required.

(c) In the case where a female worker who is pregnant or has given birth is given instructions to alleviate her symptoms, an employer shall take measures, such as reducing her workload or working hours, or granting leave of absence to comply with such instructions by a physician.

**[Article 26 Measures to Maintain Mothers' Health]**

1. An employer shall secure the time off that a female worker requires to receive health guidance and medical examinations (Article 12 of the Equality Act) pursuant to the clauses in the Maternal and Child Health Act (Act No.141 of 1965). In addition, an employer must take necessary measures, such as changing working hours and/or reducing the work load, in order to enable the female worker to comply with the instructions she receives based on health guidance and medical examinations (Article 13 of the Equality Act). Moreover, it is possible to receive measures to maintain mothers' health for up to 1 year after a miscarriage or stillbirth regardless of the number of weeks of the

pregnancy 2. An employer must not dismiss or treat a female worker disadvantageously on grounds of requesting or receiving the benefits of the measures to maintain mothers' health (Article 9-3 of the Equality Act).

**(Hours for Child Care and Menstrual Leave)**

**Article 27** When requested by a female worker who is raising a child (or children) under the age of one, the employer shall provide such worker with two 30-minute break times for child care per day in addition to their regular rest periods.

2. When an employer receives a request from a female worker who has significant difficulties managing her work during her menstrual period, the employer shall provide the necessary leave of absence.

**[Article 27 Hours for Child Care and Menstrual Leave]**

1. With regard to child care leave, when requested by a female worker who is raising a child (or children) under the age of one, an employer must provide at least 30 minutes for child care twice a day in addition to general break times (Article 67 of the Labor Standards Act). An employer must not dismiss or treat such workers disadvantageously on grounds of requesting or receiving such time (Article 9-3 of the Equality Act).
2. In the case where a female worker is having significant difficulties managing her work during her menstrual period and she requests leave, an employer shall not have such worker work during the requested period (Article 68 of the Labor Standards Act). Moreover, such leave may be granted by the calendar day, the half day or by the hour.

**(Care Leave for Children and Other Family Members)**

**Article 28** When required by a worker, they are eligible to receive benefits such as child care leave, child care leave after giving birth, care leave for other family members, exemption from overtime for child care, limits on overtime and limits on late night shifts for the care of children and nursing care members, and reduction of regular working hours (hereinafter referred to as “Child Care and Family Care Leave Act”) based on the Act on Child Care and

Family Care Leave Act.

2. The policy for care leave for children and other family members is stipulated in the “rules concerning Child Care and Family Care Leave Act.”

**[Article 28 Care Leave for Children and Other Family Members]**

1. This example of the rules is designed to have a separate set of rules for matters with regard to the Child Care and Family Care Leave Act.

Visit [here](#) for details about the Child Care and Family Care Leave Act. Example rules are also available here.

URL for the Child Care and Family Care Leave Act:

<http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/0000130583.html>

2. In the case where an employer establishes matters concerning Child Care and Family Care Leave Act separately from the main rules of employment, such a set of stipulations is a part of the rules of employment and must be submitted to the director of the relevant local Labor Standards Inspection Office.

**(Fertility Treatment Leave)**

**Article 29** When a worker requests leave for fertility treatment, up to ○ days shall be provided per year.

2. A worker who requests leave for fertility treatment may take up to 1 year of leave within a period of 5 consecutive fiscal years during which the leave begins (April 1st of each year until March 31st of the following year).

**[Article 29 Fertility Treatment Leave]**

1. Fertility treatment leave is not a matter that must be provided according to the laws related to work. Establish the necessary detailed terms based on the needs of your company.
2. Make the leave system for fertility treatment available to workers regardless of gender or employment type. In addition, it is hoped that employers develop the system details based on an understanding of worker' needs. For example, to balance work and fertility treatment, implementing annual paid leave in hourly or half-day units, flextime, and telework for having flexible working hours is helpful.

**(Congratulatory and Condolence Leave)**

**Article 30** An employer shall grant congratulatory and condolence leave to a worker if requested for any of the following events for the number of days as indicated:

- (a) the worker's marriage: \_\_\_\_\_ days
- (b) the worker's wife giving birth: \_\_\_\_\_ days
- (c) death of the worker's spouse, children or parents: \_\_\_\_\_ days
- (d) death of the worker's siblings, grandparents, spouse's parents or siblings: \_\_\_\_\_ days

**(Sick Leave)**

**Article 31** In the case where a worker requires treatment for personal injury or illness and the employer finds such worker's absence is inevitable, the employer shall grant such worker sick leave of \_\_\_\_\_ days.

**[Article 30 Congratulatory and Condolence Leave]**

**[Article 31 Sick Leave]**

Congratulatory and condolence leave and sick leave are not required matters to be provided according to the Labor Standards Act. Each company may establish the necessary terms in detail.

**(Leave for Jury Duty)**

**Article 32** An employer shall grant leave for a worker who is selected as a juror, alternate juror, or juror candidate as follows:

- (a) In the case of a juror or a supplemental juror: the number of days required
- (b) In the case of a juror candidate: the number of days required

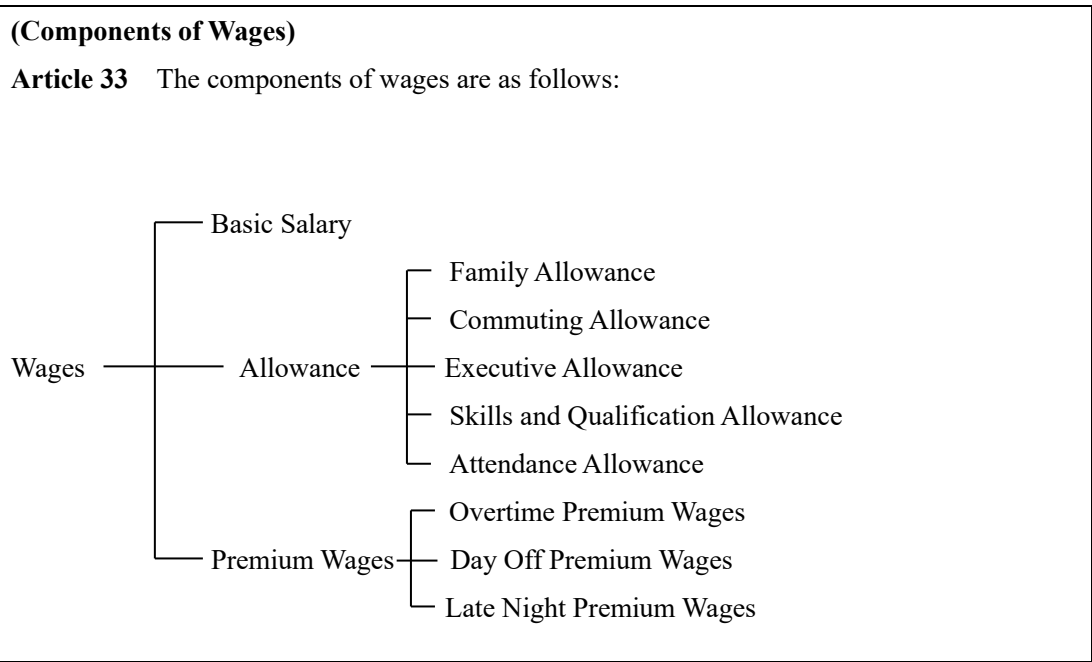
**[Article 32 Leave for Jury Duty]**

In accordance with the jury system, if a worker is selected as a juror, alternate juror, or juror candidate, an employer must not reject the worker's request for leave for the time required to fulfill such job responsibilities. Therefore, an employer is required to implement the system to grant leave for jury duty at each workplace.

An employer must not dismiss or treat such worker disadvantageously on grounds of receiving leave for serving job responsibilities, or their status as being or having been a juror, alternate juror, or juror candidate (Article 100 of the Act on Criminal Court with Participation of Jurors) (Act No. 63 of 2009).

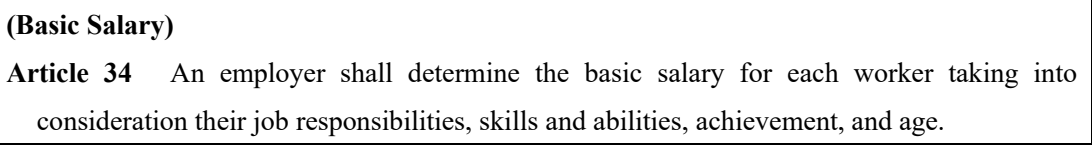
# Chapter 6 Wages

An employer may provide a separate set of rules for matters related to wages different from this example of the rules of employment. In such case, these separate sets of rules must be submitted as part of the main rules of employment to the director of the relevant local Labor Standards Inspection Office.



[Article 33 Components of Wages]

Matters regarding the methods of determination, calculation and payment of wages, the cut-off dates, the pay period, and wage increase are mandatory for the rules of employment (Article 89 of the Labor Standards Act).



[Article 34 Basic Salary]

1. It is important that an employer establishes fair basic salary for each workplace by taking into consideration work-related factors such as job responsibilities and work performance, and personal factors such as tenure, age, qualifications, and education.
2. There are different types of basic salary, including: monthly salary, which is a fixed wage for the scheduled working hours per month; monthly salary on a daily wage basis, which is a form of fixed salary system with a fixed wage per month and includes a deduction of the daily wage multiplied by the number of days of absence, if any; daily wage, which is determined by the wage for scheduled working hours per day; and hourly wage, which is determined by the wage per hour corresponding to the number of hours engaged in work.
3. An employer must pay at least the minimum wage as determined pursuant to the Minimum Wage Act (Act No. 137 of 1959).

Whether the wage an employer is going to pay or is currently paying is at least minimum wage can be assessed by comparing such hourly wage with the minimum wage in the case of wages determined by the hour (hereinafter referred to as “hourly wages”). In cases of wages determined by the day, week or month, it can be assessed by comparing each wage divided by the number of scheduled working hours over each specified period (which are a day, week or month), with the minimum wage (Article 4 of the Minimum Wage Act, Article 2 of the Act on Enforcement of the Minimum Wage Act).

#### **(Family Allowance)**

**Article 35** Family allowance shall be paid to a worker who supports their family members as follows:

(a) Children under the age of 18:

\_\_\_\_\_ yen per child per month

(b) Parents who are 65 years of age or older:

\_\_\_\_\_ yen per person per month

#### **[References]**

##### **Matter to be Considered when Examining the Status of Spouse Allowance**

(Status of Spouse Allowance)

Spouse allowance is a factor in employment adjustment, which leads to a restriction on working hours, in addition to taxation and social security systems.

Since the population will decrease in the future, it is good to review the spouse allowance,

which has income conditions that affect spouses who work part-time and causes them to adjust their employment, to make it more neutral regarding spouses' work conditions, so that those who want to work more can properly demonstrate their abilities.

**(Points to Consider Regarding Spouse Allowance)**

For smoothly reviewing the wage system including spouse allowance, it is necessary to consider the following points based on the Labor Contracts Act, legal precedents and cases at companies.

- (a) Measures to raise the consent of workers including understanding needs
- (b) Clear discussions and agreement among labor and management
- (c) Maintaining total wage funds
- (d) Necessary transitional measures for persons whose income is reduced
- (e) Clear explanation of the new system after a decision is made

For more details, refer to the “Examination on the Status of Spouse Allowance.”

<http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/haigusha.html>

**(Commuting Allowance)**

**Article 36** Commuting allowance shall be paid in the amount equivalent to the actual cost required for commuting to and from work up to the maximum amount of \_\_\_\_\_ yen per month.

**(Executive Allowance)**

**Article 37** Executive Allowance shall be paid to a worker who is in one of the following positions at the rate indicated:

Director (Head of department): \_\_\_\_\_ yen per month

Manager (Head of section): \_\_\_\_\_ yen per month

Supervisor (Head of unit): \_\_\_\_\_ yen per month

2. In the case of a promotion to a position to which the executive allowance applies, such payment shall start from the pay period (month) in which such promotion takes effect. In such event, the executive allowance for the previous position held shall not be paid in that pay period (month).

3. In the case of a demotion to a position to which the executive allowance applies, the payment shall start from the pay period (month) following the month in which such demotion takes effect.

**(Skills and Qualification Allowance)**

**Article 38** Skills and Qualification Allowance shall be paid to a worker with the qualifications required for the position as follows at the rate indicated.

Health and Safety Manager (including health and safety promoters\*\*):\*\*  
\_\_\_\_\_ yen per month

Food Safety Manager: \_\_\_\_\_ yen per month

Licensed Cook: \_\_\_\_\_ yen per month

Nutritionist: \_\_\_\_\_ yen per month

**(Attendance Allowance)**

**Article 39** Attendance allowance shall be paid to a worker whose attendance meets the following criteria during that pay period at the rate indicated:

(a) No absences: \_\_\_\_\_ yen per month

(b) One day of absence or less: \_\_\_\_\_ yen per month

2. With regard to the calculation of Attendance Allowance, workers are considered to have worked in the following cases.

(a) When the annual paid leave was taken

(b) When the leave of absence was taken for injury or illness caused in the course of duties

3. In calculating the Attendance Allowance in paragraph 1, arriving late or leaving early \_\_\_\_\_ times shall be considered equivalent to one day of absence.

[Article 35 Family Allowance]

[Article 36 Commuting Allowance]

[Article 37 Executive Allowance]

[Article 38 Skills and Qualification Allowance]

[Article 39 Attendance Allowance]

There are different types of allowances other than those in this example of the rules of employment, such as housing allowance, duty allowance, single assignment allowance, and sales allowance.



### **Premium Wages**

**Article 40** The premium wages for overtime shall be paid based on the premium wage rate indicated below using the calculation method in the following paragraph.

(1) The premium wage rates for the total number of overtime hours during a period of one month are as follows. In this case, the starting day of the one-month pay period is the \_\_\_\_\_ (day) of each month.

(a) 45 hours or less of overtime: 25%

(b) more than 45 hours up to 60 hours of overtime: 35%

(c) more than 60 hours of overtime: 50%

(d) the hours in 3. minus time off in lieu of overtime pay: 35% (the remaining 15% of the premium wages shall be allotted to such substitute leave).

(2) In the case where the total number of hours of overtime during a period of one year exceeds 360 hours, the premium pay rate for such portions beyond 360 hours shall be 40%. In such case, the starting day of the one year pay period is \_\_\_\_\_ (month/day) of each year.

(3) In calculating the premium wages for overtime, if overtime meets both criteria (1) and (2), the higher rate shall apply.

2. The premium wages shall be calculated using the following equations.

#### **(1) In the case of monthly salary**

##### **(a) Premium wages for overtime**

(for the portion of 45 hours or less overtime during a period of one month)

$$\frac{\text{Basic Salary} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.25 \times \frac{\text{total number of overtime hours worked}}{\text{hours worked}}$$

(for the portion beyond 45 hours up to 60 hours of overtime during a period of one month)

$$\frac{\text{Basic Salary} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.35 \times \frac{\text{total number of overtime hours worked}}{\text{hours worked}}$$

(for the portion beyond 60 hours of overtime during a period of one month)

$$\frac{\text{Basic Salary} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.50 \times \text{total number of overtime hours worked}$$

(for the portion beyond 360 hours of overtime during a period of one year)

$$\frac{\text{Basic Salary} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.40 \times \text{total number of overtime hours worked}$$

**(b) premium wages for working on days off (in the case of working on legal days off)**

$$\frac{\text{Basic Salary} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.35 \times \text{total number of hours worked on days off}$$

**(c) premium wages for working late night (in the case of working between 10 pm and 5 am)**

$$\frac{\text{Basic Salary} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 0.25 \times \text{total number of hours worked late night}$$

**(2) In the case of daily wage**

**(a) Premium wages for overtime**

(for the portion of 45 hours or less overtime during a period of one month)

$$\left[ \frac{\text{Daily wages}}{\text{Scheduled working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.25 \times \text{total number of overtime hours worked}$$

(for the portion beyond 45 hours up to 60 hours of overtime during a period of one month)

$$\left[ \frac{\text{Daily wages}}{\text{Scheduled working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.35 \times \text{total number of overtime hours worked}$$

(for the portion beyond 60 hours of overtime during a period of one month)

$$\left[ \frac{\text{Daily Wage}}{\text{Scheduled working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.50 \times \text{total number of overtime hours worked}$$

(for the portion beyond 360 hours of overtime during a period of one year)

$$\left[ \frac{\text{Daily wages}}{\text{Scheduled working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.40 \times \text{total number of overtime hours worked}$$

**(b) Premium wages for working on days off**

$$\left[ \frac{\text{Daily wages}}{\text{Scheduled working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.35 \times \text{total number of hours worked on days off}$$

**(c) Premium pay for working late night**

$$\left[ \frac{\text{Daily wages}}{\text{Scheduled working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 0.25 \times \text{total number of hours worked late night}$$

**(3) In the case of hourly wage**

**(a) Premium wages for overtime**  
 (for the portion of 45 hours or less overtime during a period of one month)

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.25 \times \text{total number of overtime hours worked}$$

(for the portion beyond 45 hours up to 60 hours of overtime during a period of one month)

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.35 \times \text{total number of overtime hours worked}$$

(for the portion beyond 60 hours of overtime during a period of one month)

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.50 \times \text{total number of overtime hours worked}$$

(for the portion beyond 360 hours of overtime during a period of one year)

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right]$$

$$\times 1.40 \times \text{total number of overtime hours worked}$$

**(b) Premium wages for working on days off**

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.35 \times \text{total number of hours worked on days off}$$

**(c) Premium pay for working late night**

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills and Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 0.25 \times \text{total number of hours worked late night}$$

3. The average number of scheduled working hours per month set out in the preceding paragraph shall be calculated using the following equation:

$$\frac{(365 - \text{the number of annual days off}) \times \text{scheduled working hours per day}}{12}$$

**[Article 40 Premium Wages]**

1. An employer must pay the premium wages calculated with the additional rate of a minimum of 25% in the case where a worker is required to work overtime beyond the legal working hours, a minimum of 35% for working on legal days off (once a week or 4 days per 4 weeks). Additionally, a minimum of 25% is required for working late night/early morning (between 10 pm and 5 am) (Article 37-1 and 37-4 of the Labor Standards Act).

Furthermore, an employer must pay the premium wages calculated with the additional rate of a minimum of 50% in the case where overtime extends into the late-night hours, a minimum of 60% in the case where the working hours on days off extend into the late-night hours.

2. In the case where the scheduled working hours established by the company are shorter than the legal working hours, an employer is not required to pay a premium wages for the portion of hours beyond

the company's scheduled working hours up to the legal working hours unless the contract specifies otherwise in compliance with the Labor Standards Act.

3. The hourly wage that is the basis for calculating premium wages for the monthly salary system is calculated by dividing the total from the basic salary plus allowances (in the example used in these rules, this includes Executive Allowance, Skills and Qualification Allowance, and Attendance Allowance; however, allowances that can be excluded from the calculation bases for premium pay, such as Family Allowance and Commuting Allowance, are excluded) by the number of scheduled working hours for one month (however, if the number of scheduled working hours varies each month, it shall be the average number of scheduled working hours per month for a year). Moreover, in the case of hourly wage, such hourly wage is the wage per hour (Article 19 of the Labor Standards Ordinance).
4. The types of wages which are excluded from the calculation basis for premium wages, other than the family allowance or commuting allowance, include separate living allowance, child education allowance, housing allowance, and special wages such as severance pay or bonuses paid over a period longer than one month (Article 37-5 of the Labor Standards Act, Article 21 of the Act on Enforcement of the Labor Standards Act).
5. While the stipulations concerning the working hours, rest periods, and days off do not apply to "a worker who is in a supervisory or management position" (hereinafter referred to as "management staff") under Article 41-2 of the Labor Standards Act, these workers are still subject to the regulations for late night work. Therefore, while the premium wages for overtime and the hours worked on days off do not apply to such positions, the employer must pay the premium pay for working late night.
6. The premium wage rate for the portion beyond 60 hours of overtime during a period of one month is set at a minimum of 50%. However, the application of such a premium rate is currently delayed for small and medium-sized enterprises (SMEs) until March 31, 2023. The premium rate of 25% for overtime exceeding 60 hours shall apply to such companies.

The criteria for SMEs to whom the aforementioned premium does not apply are based on the sum of their capital or contribution and the number of regularly employed workers. In cases where there is no capital or contribution, such as an incorporated social welfare organization, the only relevant criteria are the number of workers.

[SMEs for whom the deferral of the premium wage applies]

Type of business	The sum of capital or contribution		The number of regularly employed
------------------	------------------------------------	--	----------------------------------

			workers
Retail	Up to 50 million yen	or	Up to 50 people
Service	Up to 50 million yen	or	Up to 100 people
Wholesale	Up to 100 million yen	or	Up to 100 people
Others	Up to 300 million yen	or	Up to 300 people

However, the standards for the limits on overtime still apply to the small to medium-sized companies. Therefore, in the event that such companies provide the premium rates for overtime beyond the limits on the maximum hours of overtime, in the case where having a worker work overtime beyond such limits for special circumstances, the provisions concerning such matters must be set out in the rules of employment when concluding Agreement 36 with special clauses.

Furthermore, when calculating the total number of overtime hours worked beyond 60 hours, the hours worked on legal days off shall not be included, but the overtime worked on other days off shall be included.

**(Calculation of Wages in the annual variable work schedule system)**

**Article 41** In cases where a worker under the annualized variable working hour system (Article 0 and 0) works for only part of the designated term, the average weekly working hours should be calculated over the actual worked period to determine hours worked beyond 40 hours per week. An employer must pay a premium rate of 0.25 as specified in the preceding article, for any overtime beyond 40 hours per week, excluding hours already covered by the premium rate as per the previous article.

**[Article 41 Calculation of Wages in the annual variable work schedule system]**

In cases where a worker works only part of the designated term, such as when they are newly hired or retire during that term under the annual variable working hours system, the employer must pay a premium wages for any hours worked beyond 40 per week. The average weekly working hours should be calculated based on the actual hours worked within the designated term.

**(Substitute Leave)**

**Article 42** An employer may grant substitute leave in lieu of overtime pay to workers whose

- overtime per month exceeds 60 hours according to the labor-management agreement.
2. The period over which such worker can take substitute leave is within 2 months following the day of the cut off date of the pay period in which the overtime was worked.
  3. Substitute leave shall be granted by the half day or by the day. In such case, the half day means between the following hours: \_\_\_\_:\_\_\_\_(hh:mm) to \_\_\_\_:\_\_\_\_(hh:mm) am or \_\_\_\_:\_\_\_\_(hh:mm) to \_\_\_\_:\_\_\_\_(hh:mm) pm  
\_\_\_\_\_
  4. The hours of substitute leave is the portion of hours of overtime beyond 60 hours per month multiplied by the conversion rate. In such case, the conversion rate is 15%. This rate is derived from the premium wages of 50%, which would be paid out if a worker does not take substitute leave, minus the premium rate of 35%, which would apply if time off is taken. In addition, when a worker takes substitute leave, the premium rate is not required for the hours calculated by dividing the hours of time off by the conversion rate of 15%.
  5. If the number of hours for substitute leave is a fraction of a half day or a full day, the employer may provide a full half day or a full day off, considering this portion as paid leave. However, any portion beyond the actual hours of substitute leave, which is considered as paid leave, shall not be included in calculating the hours that do not require the premium wages as noted in the preceding paragraph.
  6. A worker who wishes to take substitute leave must request it from the company within 5 days following the last (cut-off) day of the pay period in which they worked more than 60 hours of overtime in a month. The days permitted to take such leave shall be determined taking into consideration the worker's request.
  7. When a company receives such a request as outlined in the previous paragraph, the company shall pay the portion of the total premium wages, excluding the portion replaced by taking substitute leave, on the regular payday. However, if time off in lieu of overtime pay is not taken within 2 months from the end of the month in which overtime was worked, the employer shall pay the remaining premium rate of 15% on the payday for the pay period of the month in which the decision to cancel such time off was confirmed.
  8. In the case where a company did not receive the request (time off in lieu of overtime pay) within the prescribed period in paragraph 6, the company shall pay the total premium wages for overtime worked during the pay period on the regular payday. However, if a worker who did not request within the prescribed period in paragraph 6 does so afterward, but still within the period permitted for substitute leave, the company may grant this time off pending approval. In such event, the excess payment shall be settled on the payday of the pay period in which such time off was taken.



**[Article 42 Substitute Leave]**

1. The legal premium wage rate for overtime beyond 60 hours per month is set at 50% to limit excessively long overtime. However, workers may be required to exceed this limit under unavoidable circumstances.

Since April 1, 2010, an employer has the option to grant paid leave to workers who work more than 60 hours of overtime per month in place of the raised premium wage rate, as established in the labor-management agreement, to ensure worker health.

2. An employer is required to conclude a labor-management agreement for each workplace in order to implement the leave prescribed in Article 37-3 of the Labor Standards Act (hereinafter referred to as “substitute leave”). Such a labor-management agreement does not require individual workers to take substitute leave. At a workplace where a labor-management agreement for time off in lieu of overtime pay has been concluded, each worker is allowed to decide whether they take substitute leave.

In addition, matters with regard to time off in lieu of overtime pay fall under the category of “leave” under Article 89 of the Labor Standards Act. Therefore, such matters must be included in the rules of employment to implement the system of substitute leave.

3. In order to provide substitute leave, the following matters must be provided in the labor-management agreement.

- (1) The method of calculation for the number of hours that can be applied to substitute leave.

The detailed method to calculate the number of hours that can be applied to substitute leave is:

- (a) the number of hours of overtime worked beyond 60 hours per month; multiplied by:
- (b) The rate (ii) (hereinafter referred to as “conversion rate”) which is the difference between the premium wage rate which would be paid out if substitute leave is not taken (i) and the premium wage rate which would be paid out if substitute leave is taken (see diagram 1).

(diagram 1)

$$\boxed{\begin{array}{l} \text{Number of hours} \\ \text{available for substitute} \\ \text{leave} \end{array}} = \left[ \boxed{\begin{array}{l} \text{Total hours of} \\ \text{overtime per} \\ \text{month (a)} \end{array}} - 60 \right] \times \boxed{\begin{array}{l} \text{Conversion} \\ \text{Rate (b)} \end{array}}$$

$$\boxed{\begin{array}{l} \text{Conversion} \\ \text{Rate (b)} \end{array}} = \boxed{\begin{array}{l} \text{The premium wage rate (a} \\ \text{minimum of 50\%)} \text{ to be paid} \\ \text{out if a worker does not take} \\ \text{substitute leave (i)} \end{array}} - \boxed{\begin{array}{l} \text{Premium rate (a minimum of} \\ \text{25\%)} \text{ to be paid out if a worker} \\ \text{takes substitute leave (ii)} \end{array}}$$

An employer must detail the method of calculation in the labor-management agreement according to the above method.

The minimum of 50% is required for the premium rate which would be paid out if a worker does not take time off in lieu of overtime pay as prescribed in (i), and the minimum of 25% is required for the premium rate which would be paid out if a worker takes substitute leave as prescribed in (ii). These rates are mandatory for the rules of employment under “the method for determination, computation and payment of wages” and must be stipulated in the rules of employment.

(2) Unit of substitute leave

Taking multiple units of substitute leave simultaneously is considered more advantageous for the worker’s rest. Such units are established as either a half day or a full day. Either or both must be established as the unit for time off in lieu of overtime under the labor-management agreement. “One day” refers to the number of scheduled working hours per day for that worker, and “a half day” means half of one day, but it need not be precisely 50% of the number of hours for one day. Therefore, the definition of “a half day” is required to be set forth in the labor-management agreement for each work place in such event.

(3) The period permitted to take substitute leave

The period permitted to take substitute leave is set within 2 months from the day after the last day of the pay period in which overtime exceeded 60 hours. This period must be stipulated in the labor-management agreement.

(4) The aforementioned items in paragraph (1) to (3) must be stipulated in the labor-management agreement (Article 19-2 of the Labor Standards Ordinance). Additionally, an employer may stipulate the following items under the labor-management collective agreement:

The aforementioned items in paragraph (1) to (3) must be stipulated in the labor-management agreement (Article 19-2 of the Labor Standards Ordinance). Additionally, an employer may stipulate the following items under the labor-management collective agreement:

(a) Method for determining the dates to take time off in lieu of overtime pay, taking into consideration workers’ requests. An employer should establish an agreement on how to determine the dates for the leave. For example, within 5 days from the end of the preceding month, an employer shall verify whether the worker wishes to take time off. If they do, then the dates for such time off should be determined.

However, a worker can decide whether to take time off in lieu of overtime pay of their own free will. Therefore, the worker’s will shall be taken into account to determine the dates

for such leave.

(b) Payday for the premium wages for overtime beyond 60 hours per month

The payday for the premium wages for overtime beyond 60 hours per month shall be as follows, based on the worker's preference (see diagram 2).

(a) In the case where the worker wants to take time off in lieu of overtime pay, the employer is required to pay the portion of the premium pay for overtime which an employer has the obligation to pay (the premium wages calculated at a minimum of 25% premium wage rate pursuant to Article 37 of the Labor Standards Act) on the payday for the pay period in which such overtime occurred.

Furthermore, if a worker wishes to take the leave but does not, the employer must pay the additional premium wages for overtime beyond 60 hours per month as per Article 37 of the Labor Standards Act. This should be paid on the payday of the period when the employer verified that the worker decided against taking the leave (see diagram 4).

(b) If a worker has no intention to take time off, or the employer cannot verify their intention, the employer must pay the premium pay at a rate including the raised premium as required by the law. This includes a minimum of 50% premium rate according to Article 37 of the Labor Standards Act on the payday for the pay period in which the overtime occurred.

Furthermore, if an employer receives a request for time off after the premium wages, including the raised rate, has already been paid, the employer may stipulate that the worker is not entitled to the time off. This applies even if the request falls within the permitted term defined by the labor-management agreement.

As stated above, in cases where premium wages including the increased statutory premium wage rate have already been paid and then a worker requests to take time off in lieu of overtime pay,

- A worker may take time off in lieu of overtime pay if they request it during the period permitted to take such time off;
- In the case where a worker takes such time off, the employer must arrange a settlement for the portion of the raised premium pay which has already been paid out.

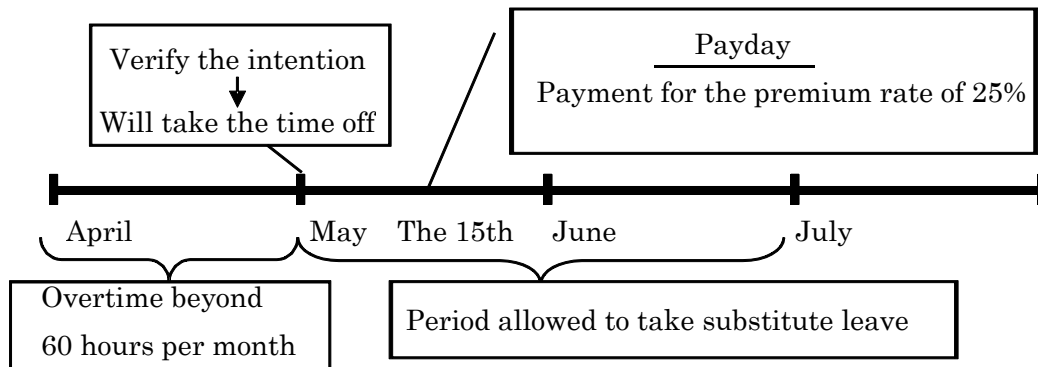
(diagram 2)

- The cut off date of a pay period is at the end of the month.	- The premium wage rate of 50% applies if time off in lieu of overtime pay is not taken.
- The payday is on the 15th of the following month.	- The premium wage rate of 25% applies if time off in lieu of overtime pay is taken.

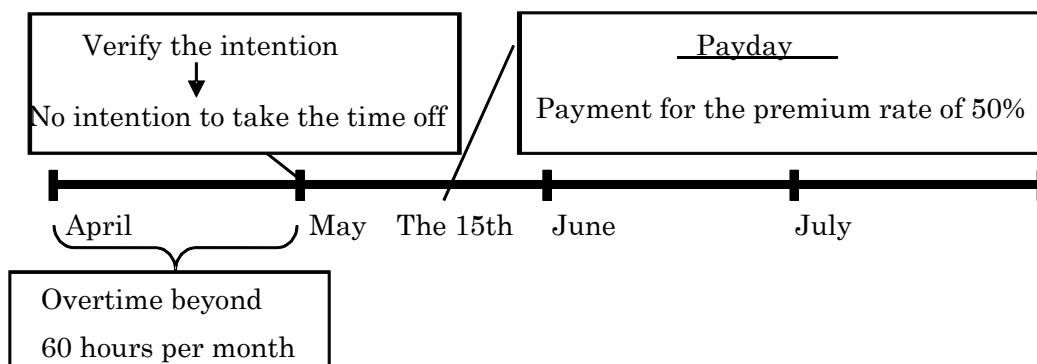
- Time off in lieu of overtime pay must be taken within 2 months.

The following are examples of terms and conditions a company may establish:

(a) The case in which a worker has the intention of taking time off in lieu of overtime pay.



(b) Cases other than (a) (in the case where a worker does not have the intention to take time off in lieu of overtime pay or an employer cannot verify such intention, etc.)



#### 4. The hours for which payment for the raised legal premium wage rate is not required

Substitute leave is given to replace the payment for the raised the premium wage rate. Therefore the hours for which payment for the raised premium wages are not required are the working hours equivalent to substitute leave taken by the worker out of the hours of overtime beyond 60 hours per month. That means, to explain further, the number of hours derived from dividing the number of hours taken for time off in lieu of overtime pay by the conversion rate. Therefore, if a worker intends to take substitute leave but does not, the raised premium wage rate must be paid for the

working hours equivalent to the time off not taken.

5. The relation between time off in lieu of overtime pay and the annual paid leave

substitute leave is a separate leave from the annual paid leave. If a worker takes time off in lieu of overtime pay and does not work for the whole day, such a day is considered a day of exemption from work duties through proper procedures and shall not be included in the base number of work days for calculating the annual paid leave.

**(Wages for Leaves and Other Absences)**

**Article 43** An employer shall pay the regular wage, which is paid for working the scheduled working hours, for the period of annual paid leave taken.

2. An employer shall (not pay / pay the regular wage) for the period of maternity/parental leave, hours for child care, menstrual leave, leave for mothers' health management, child care leave period, family care leave period, sick child care leave period, and nursing care leave period based on the Child Care and Family Care Leave Act, congratulatory and condolence leave, sick leave and leave for jury duty.

3. An employer shall not pay for the period of leave set forth in Article 9 on principle (\_\_\_% will be paid for \_\_\_ months).

**[Article 43 Wages for Leaves and Other Absences]**

1. In the case where a worker takes annual paid leave, an employer must pay them using one of the following methods: (a) average wage, (b) the regular wage which would be paid for working the scheduled working hours, (c) the amount derived from dividing the amount equivalent to 1/30 the standard monthly wage set forth in Article 40-1 of the Health Insurance Act. However, in the case of (c), a written agreement is required with a representative of the workers. Moreover, an employer must establish clauses concerning the method chosen under the rules of employment (Article 39-7 of the Labor Standards Act).

2. An employer shall determine whether maternity/parental leave, hours for child care, menstrual leave, leave for mothers' health management, child care leave period, family care leave period, sick child care leave period, and nursing care leave period based on the Child Care and Family Care Leave Act, congratulatory and condolence leave, sick leave, leave for jury duty and other leaves of absence are to be paid or unpaid leave and provide stipulations in the rules of employment.

Furthermore, the employer should specify the details for each paid leave if so determined, for example, "pay the regular wage" or "pay \_\_\_% of basic salary" and so on.

**(Wages during Involuntary Leave)**

**Article 44** In the case where an employer requires a worker to take leave on a scheduled work day due to business circumstances, the employer shall pay 60% of the average (daily) wage per day off pursuant to Article 12 of the Labor Standards Act. In such case, if such leave is for a part day, the employer shall guarantee the equivalent of 60% of the average wage for that day pursuant to Article 26 of the Labor Standards Act.

**[Article 44 Wages during Involuntary Leave]**

In the case where an employer has a worker take leave on a scheduled work day due to business circumstances (for reasons attributed to the company), the employer must pay 60% of the average wage as allowance for involuntary leave (Article 26 of the Labor Standards Act).

Moreover, in the case where an employer requires a worker to take leave for a part-day due to business circumstances, and the payment for the actual hours worked is less than 60% of the average daily wage, the employer must pay the difference.

**(Policy for Different Measure of Absences)**

**Article 45** An employer shall deduct the wage equivalent to the days or hours of absence from the basic salary in cases such as full-day absence, arriving late, leaving early, and part-day leave for personal reasons.

2. In the case of the preceding paragraph, the calculation for the wage equivalent to one hour of work is as follows:

(1) In the case of monthly salary

Basic salary ÷ the number of average scheduled working hours over a period of one month

(calculate the average number of scheduled working hours per month using the equation set out in Article 40-3)

(2) In the case of daily wage

Basic salary ÷ scheduled working hours per day

**[Article 45 Policy for Different Measure of Absences]**

An employer is not required to pay wages for the days or hours which a worker did not work as a result of their full-day absence, arriving late or leaving early. In addition, the employer is entitled to deduct wages according to the number of days or hours for which such worker was absent.

**(Wages Calculation Period and Payday)**

**Article 46** Wages will be paid according to the pay period ending on the \_\_\_\_ (day) of each month, and the payday will be on the \_\_\_\_ (day) of the following month. However, if the payday falls on a day off, wages will be paid on the preceding day.

2. In the case where a worker is hired or retires during the pay period described in the preceding paragraph, an employer shall pay for the days worked based on the daily wage calculated by monthly wage divided by the number of scheduled work days.

**[Article 46 Wages Calculation Period and Payday]**

Wages are required to be paid no less than once a month on a fixed payday (Article 24-2 of the Labor Standards Act).

**(Payment and Deductions of Wages)**

**Article 47** An employer shall pay wages directly to workers in currency and in full.

2. With regard to the preceding paragraph, an employer may pay wages by transferring to the checking, savings or consolidated trading account at a financial institution specified by the worker upon agreement.
3. The following items shall be deducted from wages:
  - (a) Withholding income tax
  - (b) Residents' tax
  - (c) The worker's (the insured person's) portion of the premium payments for health insurance, worker's welfare pension insurance, and employment insurance
  - (d) Other deductions set forth in the written agreement with a representative of workers, such as fees for the company's residential properties, contributions for payroll saving plans, and union dues.

**[Article 47 Payment and Deductions of Wages]**

1. Wages must be paid in currency and in full directly to a worker (Article 24-1 of the Labor Standards Act). However, an employer is entitled to deduct the worker's portion of payments from wages based on the laws and regulations (statutory deductions), such as income tax or residents' tax. Moreover, an employer may make deductions authorized in the written agreement with a

representative of the workers from wages (Article 24-1 of the Labor Standards Act). However, the deductions from wages acceptable in accordance with the aforementioned agreement with a representative of the workers shall be limited to easily identifiable items, such as payments for worker's purchases, fees for company residential properties or dormitories and other welfare facilities, premiums for life or indemnity insurance, and union dues.

2. Principally, an employer shall pay wages directly to workers. However, the employer is permitted to transfer wages to accounts under the worker's name at a financial institution, such as a bank, specified by the worker with the worker's consent (Article 7-2 of the Labor Standards Ordinance).

**(Emergency Payment of Wages)**

**Article 48** An employer may pay for the hours a worker has already worked prior to the regular payday if the worker requests it, in the case where the worker or those who depend on their income are experiencing one of the following situations.

- (a) In the case where a person is required to go back to their hometown for one week or longer under unavoidable circumstances.
- (b) In the case of marriage or death.
- (c) In the case of birth, infectious disease or disaster.
- (d) In the case where a worker leaves the company due to retirement or dismissal.

**[Article 48 Emergency Payment of Wages]**

This article stipulates that a worker is entitled to request wages for hours which the worker has already worked, even if prior to the regular payday, in the case where the worker or those who maintain their livelihood from the income of such worker, are experiencing situations that require emergency expenses, such as birth, infectious disease, disaster, etc. (Article 25 of the Labor Standards Act).

**(Wage Increase)**

**Article 49** Wage increases shall take effect as of \_\_\_\_\_ (month/day) of each year for workers whose work performance was satisfactory. However, in the case where the employer experiences significant decline in their business performance or other unavoidable circumstances, the employer may not increase wages.

2. An employer may increase the wages of a worker whose outstanding achievement is



recognized, despite the preceding paragraph.

3. An employer shall determine the amount of wage increase for each worker based on each worker's performance.

#### [Article 49 Wage Increase]

Wage increase matters are essential for the employment rules. Conditions for wage increases, like the assessment period, must be established.

#### (Bonus)

**Article 50** Principally, an employer shall award bonuses to recorded workers during the applicable period, considering the company's business performance. Such bonuses will be paid on the days specified below. However, if the company experiences a significant decline in business performance or faces other unavoidable circumstances, the employer may postpone or cancel bonuses.

Applicable Period	Payment Dates
From _____(month/day) to _____(month/day)	_____(month/day)
From _____(month/day) to _____(month/day)	_____(month/day)

2. An employer shall determine the amount of bonus prescribed in the preceding paragraph for each worker, considering company performance and individual worker achievements.

#### [Article 50 Bonus]

1. An employer is not obligated to award bonuses by the Labor Standards Act or any other laws. However, in the case where an employer establishes bonuses, the employer is required to clearly stipulate matters concerning bonuses, such as the applicable period, standards for calculating bonuses, and assessment period and method of payment under the rules of employment.
2. An employer is entitled to set forth a clause that limits the range of eligible workers by establishing the applicable period to a specific day, such as June 1st, December 1st, or the day of payment. Workers who are employed by the company on such a given day will be eligible, while those not employed on that day are not eligible.

## Chapter 7 Fixed Retirement Age, Retirement and Dismissal

Matters with regard to retirement are mandatory matters for the rules of employment. In addition, matters pertaining to retirement prescribed in Article 89 of the Labor Standards Act refer to matters concerning all forms of retirement in which a worker loses their status (as a worker), such as voluntary retirement, dismissal and retirement due to an expiration of the term of contract.

### [Example 1] Case where the fixed retirement age is established at age 70

#### **(Fixed Retirement Age)**

**Article 51** The fixed retirement age shall be 70 years of age and a worker shall retire on the last day of the month in which the worker reaches such age.

### [Example 2] Case where the fixed retirement age is established at age 65, and a company continues to employ a retiree who wishes to continue to work

#### **(Fixed Retirement Age)**

**Article 51** The fixed retirement age shall be 65 years of age and a worker shall retire on the last day of the month in which the worker reaches such age.

2. Notwithstanding the preceding paragraph, an employer shall continue a worker's employment if they wish to continue to work after retirement until they reach age 70, if no causes or reasons for dismissal or retirement apply to the worker.

### [Example 3] Case where the fixed retirement age is established at age 60, and a company continues to employ a retiree who wishes to continue to work (eligibility criteria are established for those age 65 and over)

#### **(Fixed Retirement Age)**

**Article 51** The fixed retirement age shall be 60 years of age and a worker shall retire on the last day of the month in which the worker reaches such age.

2. Notwithstanding the preceding paragraph, an employer shall continue a worker's employment if they wish to continue to work after retirement until they reach age 65, if no causes or reasons for dismissal or retirement apply to the worker.
3. After continuous employment ends according to the preceding paragraph, workers who wish to continue working and to whom no causes or reasons for dismissal or retirement apply, and who meet any of the following criteria, may continue working until they reach age 70.
  - (1) Those with a personnel evaluation rating of at least ○ over the past ○ years

- (2) Those with an attendance rate of at least ○% over the past ○ years
- (3) Those deemed to have no issues with work over the past ○ years based on regular health examination results evaluated by an industrial physician

**[Example 4] Case where the fixed retirement age is established at age 65, and a company continues to employ a retiree or concludes an outsourcing agreement based on their wishes, with eligibility criteria for both scenarios.**

**(Fixed Retirement Age)**

**Article 51** The fixed retirement age shall be 65 years of age and a worker shall retire on the last day of the month in which the worker reaches such age.

2. Notwithstanding the preceding paragraph, workers who wish to continue working after reaching retirement age and to whom no causes or reasons for dismissal or retirement apply, and who meet any of the following criteria, may continue working until they reach age 70.

- (1) Those with a personnel evaluation rating of at least ○ over the past ○ years
- (2) Those with an attendance rate of at least ○% over the past ○ years
- (3) Those deemed to have no issues with work over the past ○ years based on regular health examination results evaluated by an industrial physician

3. Notwithstanding paragraph 1, workers who wish to conclude an outsourcing agreement after reaching retirement age and to whom no causes or reasons for dismissal or retirement apply may continue to work under an outsourcing agreement. This applies to those who meet any of the criteria set for each job until they reach age 70. Moreover, the details of each job based on the relevant agreement shall be according to the plan for implementing startup support measures that are determined separately.

(1) For ○○ job, those who meet the following criteria

- (i) Those with a personnel evaluation rating of at least ○ over the past ○ years
- (ii) Those who have ○○ qualification for the relevant job

(2) For △△ job, those who meet the following criteria

- (i) Those with a personnel evaluation rating of at least ○ over the past ○ years
- (ii) Those who have at least ○ years of experience with the relevant job prior to retirement, and to whom the following apply indicating ability to perform the relevant job

(a) ○○○○

(b) △△△△

**[Article 51 Fixed Retirement Age]**

1. Fixed age retirement is a system where reaching the fixed age is the grounds for retirement.
2. The fixed retirement age cannot be below age 60 if establishing the fixed retirement age (Article 8 of the Act on Stabilization of Employment of Elderly Persons No. 68 of 1971).
3. Article 9 of the Act on Stabilization of Employment of Elderly Persons stipulates that an employer has the obligation to take measures to secure the employment of an elderly worker until they reach the age of 65. Therefore, an employer who sets a fixed retirement age (only when such age is set under 65) must take one of the following measures: (a) raise the fixed age for retirement, (b) implement a system of continued employment, and (c) abolish the fixed retirement age system.

In addition, an employer who set standards to limit eligibility for the continued employment system in a labor-management agreement by March 31, 2013, is permitted to maintain these standards until March 31, 2025. This acts as a transitional measure under the Amendments of the Act on Stabilization of Employment of Elderly Persons (Act No. 78 of 2012) for those over the age at which old age pension benefits commence.

Table: Age at which the payment for old-age workers' pension benefits commence for the benefit proportion of worker's old age pension (for males) \*Five years later for females

From April 2, 1953 until April 1, 1955	Age 61
From April 2, 1955 until April 1, 1957	Age 62
From April 2, 1957 until April 1, 1959	Age 63
From April 2, 1959 until April 1, 1961	Age 64

4. Regarding fixed retirement age, an employer must not discriminate against workers on grounds of gender (Article 6 of the Equality Act).
5. From April 1, 2021, Article 10-2 of the Act on Stabilization of Employment of Elderly Persons stipulates that an employer has the duty to endeavor in the measures for ensuring employment for older workers until they reach the age of 70. Therefore, (1) employers who set the retirement age to 65 and older up to age 70, and (2) employers who have implemented a continuous employment system (excluding systems for continuously employing persons up to over age 70) must make an effort to implement one of the following measures.
  - (a) Raise the fixed retirement age to 70
  - (b) Abolish the fixed retirement system
  - (c) Implement a system where work continues up to age 70 (re-employment and extended employment systems) (including other employers in addition to employers with special relationships)
  - (d) Implement a system for concluding continuous outsourcing agreements up to age 70 with workers
  - (e) Implement a system for allowing workers to engage in the following activities until age 70

- a. Projects that contribute to society handled by employers themselves
- b. Projects that contribute to society handled by organizations entrusted or invested in (funded) by employers

While labor and management are principally allowed to set the eligibility criteria for limiting the scope of the system when implementing measures to ensure employment for older workers, it is recommended that employers acquire the consent of those representing a majority of workers based on a discussion between the employer and those representing a majority of workers. However, even if an agreement is reached through thorough discussions between labor and management, employers are not permitted to arbitrarily exclude older workers or violate the spirit of the law, other labor-related laws, and public order or morality.

Among the measures for ensuring employment for older workers, when setting eligibility criteria for outsourcing agreements or projects that contribute to society allowing workers to continue working up to age 70, specific criteria must be established. These criteria should be based on the planned tasks and include whether the person has the ability, qualifications, and experience needed to perform the job adequately without the employer's direction or supervision.

#### **(Retirement)**

**Article 52** In addition to the preceding article, a worker to whom one of the following applies shall retire.

- (a) In the case where a worker submits a resignation request and the company approves, or \_\_\_\_ days after such submission;
  - (b) In the case where a fixed-term employment contract expires;
  - (c) In the case where the period of leave of absence stipulated in Article 9 expires but the cause of the leave remains unresolved;
  - (d) In the case of death;
2. In the case where a worker retires or is dismissed, the employer must immediately issue the letter of verification upon request which states the period of service, type of work, position, wages and the reasons for retirement.

#### **[Article 52 Retirement]**

1. A worker who is employed for an indefinite term may request retirement at any time. Article 627-1 of the Civil Code (Act No. 89 of 1896) stipulates that after 14 days from the day a worker submits such a request, the retirement takes effect without approval of the company.
2. In the case where a fixed-term employment contract is considered not different from an indefinite term employment contract due to its repeated renewals, or where the renewal of a fixed-term employment contract is considered likely, a company's decision to terminate the fixed-term

employment contract (which means the contract expires but will not be renewed) is invalid unless there are reasonable grounds for such termination from an objective point of view, or such termination is considered appropriate according to general consensus. Such a fixed-term employment contract shall be renewed under the same conditions as in the previous contract (Article 19 of the Contract Act).

3. If a worker requests a certificate stating the length of service, type of work, position, wages, or reasons for retirement (including grounds for dismissal if applicable), the employer is obliged to issue such a document concerning the requested matter (Article 22-1 of the Labor Standards Act).

#### **(Dismissal)**

**Article 53** An employer may dismiss a worker to whom one of the following applies.

- (a) A worker who cannot fulfill their duties due to significantly poor attendance or unacceptable behavior and where there is no prospect for improvement;
  - (b) A worker unable to perform their duties and who cannot be transferred to a different position due to significantly poor performance, productivity, or efficiency and where there is no prospect for improvement;
  - (c) A worker, who after 3 years of treatment, does not recover from injury or illness caused in the course of duties, and where the worker is receiving or is going to receive the compensation pension for injury or illness, including the case where the company pays the expiry compensation;
  - (d) A worker who cannot endure the work due to their mental or physical disability;
  - (e) An employer ascertains that a worker is incompetent due to their poor efficiency or unacceptable behavior during their probationary term;
  - (f) An employer confirms that a worker is under conditions for disciplinary dismissal in Article 0-2;
  - (g) An employer is required to curtail their business operation or to close down part of their business operations due to business circumstances, natural disasters or other unavoidable reasons, and transferring workers to different positions is difficult;
  - (h) Other unavoidable reasons comparable to the above items.
2. In the case where an employer dismisses a worker in accordance with the clauses in the preceding paragraph, the employer must notify the worker a minimum of 30 days in advance. In the case where an employer does not notify the worker, the employer must pay a dismissal allowance equivalent to a minimum of 30 days' average wages. However, the number of days required prior to such notice can be compensated for by the corresponding amount of dismissal

allowance.

3. The stipulation in the preceding paragraph does not apply to the case where an employer dismisses a worker pursuant to stipulations concerning disciplinary dismissal in Article 0-1-4 with the authorization of the director of the Labor Standards Inspection Office or the case where such worker meets one of the following criteria.
  - (a) Workers who are hired by the day (excluding those who have been hired continuously for one month or longer.)
  - (b) Workers who are employed with a fixed term of 2 months or less (excluding those who have been employed beyond such term.)
  - (c) Workers who are under the probationary term (excluding those who have been employed for 14 days or longer.)
4. In cases where a worker is dismissed as prescribed in paragraph 1 and they request a certificate which states reasons for such dismissal, an employer shall issue such a certificate.

#### **[Article 53 Dismissal]**

1. Matters pertaining to retirement which are stipulated in Article 89-3 of the Labor Standards Act are mandatory for the rules of employment and must be included in the rules of employment.
2. Article 89 of the Labor Standards Act does not set forth special restrictions with regard to grounds for dismissal which should be prescribed in the rules of employment. However, Article 16 of the Contract Act stipulates, "A dismissal shall, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of right and be invalid".

Moreover, various laws, such as the Labor Standards Act, stipulate grounds for dismissal that are prohibited. Therefore, an employer must establish provisions in the rules of employment with regard to grounds for dismissal, which do not infringe upon stipulations under those laws.

\* The prohibited grounds for dismissal are:

- (a) Dismissal on the grounds of nationality, beliefs, social status of workers (Article 3 of the Labor Standards Act).
- (b) Dismissal on the grounds of gender of workers (Article 6 of the Equality Act).
- (c) Dismissal during leave of absence due to injury or illness caused in the course of duties, and 30 days after such leave, during pregnancy and parental (child care) leave prior to and after childbirth (within 6 weeks or 14 weeks in the case of multiple birth, prior to the birth and 8 weeks after the birth) and 30 days after such leave (Article 19 of the Labor Standards Act).
- (d) Dismissal on the grounds of reporting to the Labor Standards Inspection Office (Article

104 of the Labor Standards Act, Article 97 of the Safety and Health Act).

- (e) Dismissal on the grounds of marriage, pregnancy, or childbirth of a female worker (Article 9-2 and 9-3 of the Equality Act). Furthermore, dismissal of a female worker during her pregnancy or within 1 year after childbirth shall be invalid unless the employer proves that such dismissal is not based on the pregnancy or childbirth (Article 9-4 of the Equality Act).
- (f) Dismissal based on the worker requesting support or mediation from the director at the local Labor Standards Office for resolving an individual labor-related dispute (Articles 4-3 and 5-2 of the Act on Promoting the Resolution of Individual Labor-related Disputes (Act No.112 of 2001)).
- (g) Dismissal on the grounds that a worker requests support or mediation from the director at the local Labor Standards Inspection Office for resolving a labor-related dispute. This applies to matters concerning the Equality Act, Child Care and Family Care Leave Act, Comprehensive Labor Measures Promotion Act, and the Part-Time and Fixed-Term Employment Act (Article 17-2 and Article 18-2 of the Equality Act, Articles 52-4-2 and 52-5-2 of the Child Care and Family Care Leave Act, Articles 30-5-2 and 30-6-2 of the Comprehensive Labor Measures Promotion Act, and Article 24-2 and Article 25-2 of the Part-Time and Fixed-Term Employment Act).
- (h) Dismissal on the grounds of making a request for or taking child care and family care leave (Article 10, 16, 16-4, 16-7, 16-10, 18-2, 20-2, 21-2, and 23-2 of the Child Care and Family Care Leave Act).
- (i) Dismissal on the grounds that a worker is a union member, joins a union, attempts to organize a union or engages in appropriate union activities (Article 7 of the Labor Union Act (Act No. 174 of 1949)).
- (j) Dismissal on the grounds that the fixed-term workers request an explanation about the reasons why fixed-term workers and regular workers are treated differently (Article 14-3 of the Part-Time and Fixed-Term Employment Act).
- (k) Dismissal on the grounds of the act of whistleblowing (Article 3 of the Whistleblower Protection Act (Act No. 122 of 2004)), etc.

With respect to (c), provided that an employer acquires the authorization of the director at the Labor Standards Inspection Office in advance, there is no restriction on dismissal on the grounds that, as of the first day after 3 years of the commencement of treatment or at some point later, a worker starts to receive the benefit of compensation pension for injury or illness caused in the course of duties, or that an employer is not able to continue the business for reasons such as natural disaster or other unavoidable circumstances.



3. An employer must notify a worker of the dismissal a minimum of 30 days in advance in principle, or pay the dismissal allowance equivalent to the average wage for a minimum of 30 days (Article 20-1 of the Labor Standards Act).

However, such advance notice is not required for the following workers:

- (a) workers who are hired by the day (excluding those who were employed for one month or longer);
- (b) workers who are employed under a fixed-term contract of 2 months or less (excluding those who are employed beyond such term);
- (c) seasonal workers who are employed for a fixed term of 4 months or less (excluding those who are employed beyond such term);
- (d) workers who are under a probationary period (excluding those who are employed for longer than 4 days).

Furthermore, such advance notice is not required in the following cases (i) or (ii), and with the approval of the director of the local Labor Standards Inspection Office:

- (i) In the case where the continuation of the business operation is no longer possible due to natural disaster or other unavoidable circumstances;

Examples: destruction due to fire, collapse due to earthquake, etc.

- (ii) In the case where the grounds for dismissal are attributed to the worker;

Examples: embezzlement, infliction of injury upon another and absence for 2 weeks or longer without notice/permission

An employer can reduce the number of days required for advance notice of dismissal by paying the average wage for the corresponding number of days (Article 20-2 of the Labor Standards Act).

4. An employer must issue a certificate which states the grounds for dismissal without delay if the worker who is dismissed requests such a certificate at the time of dismissal (Article 22-1 of the Labor Standards Act).

An employer must issue the certificate which states the grounds for dismissal without delay if the worker who receives the notice of dismissal requests such a certificate during the period from the day such notice is given to the worker until the day of the dismissal (Article 22-2 of the Labor Standards Act).

5. It is stipulated that an employer shall not dismiss a worker under an employment contract with a fixed term (a fixed-term employment contract) during such a term unless under unavoidable circumstances (Article 17-1 of the Contract Act). There is considered to be a higher possibility that a dismissal during a fixed-term employment contract will be judged as invalid than a dismissal under an indefinite-term employment contract.

In addition, in the case where an employer does not renew the employment contract with a worker whose fixed-term employment contract has been renewed more than three times, or a worker who has been employed under a fixed-term employment contract continuously for over one

year, the employer must notify the worker of the termination of their employment contract at least 30 days prior to the expiry date of such contract, excluding the case where the intention to terminate the contract was clearly announced in advance (Article 1 of the Standards on Conclusion, Renewal and Termination of Fixed-Term Employment Contract (the Ministry of Health, Labour and Welfare Notice No. 357 of 2003)).

In addition, in a case where a worker requests a certificate stating the reason for the termination of employment after being given notice, the employer must issue such without delay. This shall also apply to the case where a request is made by a worker after the termination of their employment (Article 2 of the Standards on Conclusion, Renewal and Termination of Employment Contracts). “The grounds for termination of employment” should be clearly specified and must not simply be the expiry of the contract term. Please refer to the following examples.

- The termination of the contract was agreed upon by both parties at the time of renewal
- The maximum number of renewals is established at the time of initial signing, and such maximum number has been reached
- The task which the worker is engaged in is completed or canceled
- Due to business contraction
- An employer concludes that the worker is incompetent to perform the tasks
- The worker violates an order on job responsibilities, or has poor attendance such as absence without notice

## Chapter 8 Severance Pay

### (Terms for Severance Pay)

**Article 54** An employer shall pay severance pay to a worker when the worker retires or is dismissed pursuant to the clauses under this chapter. However, an employer may not pay all or part of the severance pay to a worker who is dismissed as a disciplinary action conforming to Article 68-2.

2. An employer shall pay severance pay to a worker who is eligible for the continued employment system at the time of retirement but shall not pay severance pay for employment after such retirement.

### [Article 54 Terms of Severance Pay]

While severance pay is not mandatory, in the case where an employer implements severance pay, matters pertaining to severance pay, such as the range of workers covered, requirements for receiving severance pay, the methods for calculation and payment, and the time for the payment must be stipulated in the rules of employment. In addition, if an employer establishes grounds for non-payment or for reduced payment, it is necessary to clearly stipulate these in the rules of employment since it is a matter pertaining to the determination and calculation of severance pay as stipulated in Article 89-3-2 of the Labor Standards Act.

### (The Amount of Severance Pay)

**Article 55** The amount of severance pay shall be calculated by multiplying the basic salary at the time of retirement or dismissal by the pay rate which is established according to the number of years of service as follows:

Years of service	Pay rate
Less than 5 years	1.0
From 5 to 10 years	3.0
From 11 to 15 years	5.0
From 16 to 20 years	7.0
From 21 to 25 years	10.0
From 26 to 30 years	15.0
From 31 to 35 years	17.0
From 36 to 40 years	20.0
40 years or longer	25.0

2. The period of leave of absence taken pursuant to Article 9 shall not be included in the years of service established in the preceding paragraph, except when such leave occurs due to reasons attributed to the company.

**[Article 55 The Amount of Severance Pay]**

While the example calculation for severance pay indicated in this example of the rules of employment takes into account the basic salary at the time of retirement or dismissal and the number of years of service, other factors to be considered include the level of achievement or contribution to the company by the worker. An employer is entitled to choose the method for determining the amount of severance pay, taking into consideration the actual circumstances at each company.

**(Method and Time of Payment for Severance Pay)**

**Article 56** An employer shall pay severance pay to a worker who retires, or to the family of the worker in the case of retirement due to their death, within \_\_\_\_ month(s) from the day that the reason for paying occurred.

**[Article 56 Method and Time of Payment for Severance Pay]**

1. An employer shall determine the method and time of payment for severance pay taking into consideration the actual circumstances at each company.

In the case where the payment for severance pay is due to the worker's death, unless there are special provisions, payment to the heir of the deceased is considered appropriate.

2. An employer may pay severance pay by transferring funds to an account at a bank or other financial institution specified by the worker if there is an agreement with the worker. In such cases, the payment can also be made by a certified check issued by a bank or other financial institution or a postal money order.
3. In the case where an employer establishes a severance pay system, the employer must take security measures, such as concluding a guaranteed contract with a financial institution to cover the amount to be paid for severance pay (Article 5 of the Act on Security of Wage Payment (Act No. 34 of 1976)). However, in the case where a company participates in the Smaller Enterprise Retirement Allowance Mutual Aid scheme or the Specific Industry Retirement Allowance Mutual Aid scheme, the aforementioned security measures are not required.

## Chapter 9 Switching to Indefinite Term Employment Contract

**\* It is also possible to create separate rules of employment that apply to workers with a fixed-term employment contract.**

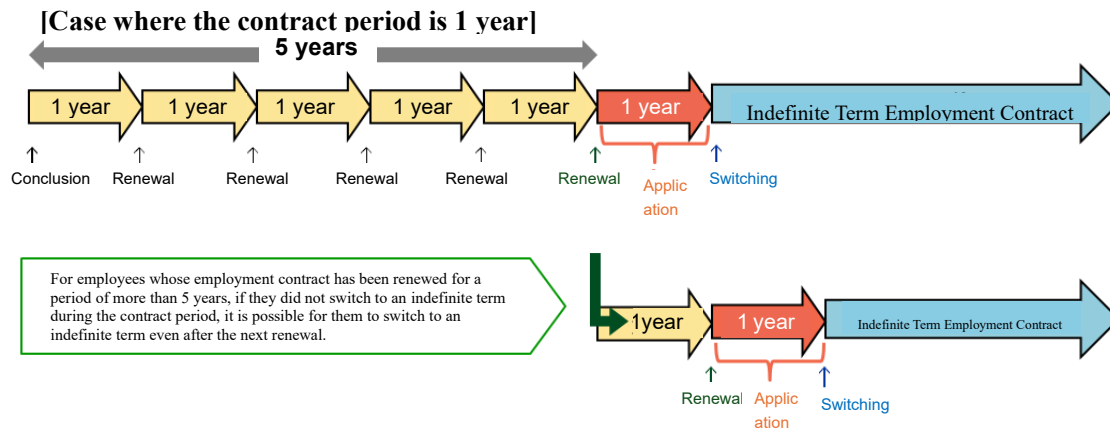
### **(Switching to Indefinite Term Employment Contract)**

**Article 57** A worker who is employed under a fixed-term employment contract where the total duration of term contracts is more than 5 years, is entitled to switch their contract to an indefinite-term employment contract by applying using a separately specified form. In such an event, such a switch shall take effect from the day following the last day of the current fixed-term employment contract.

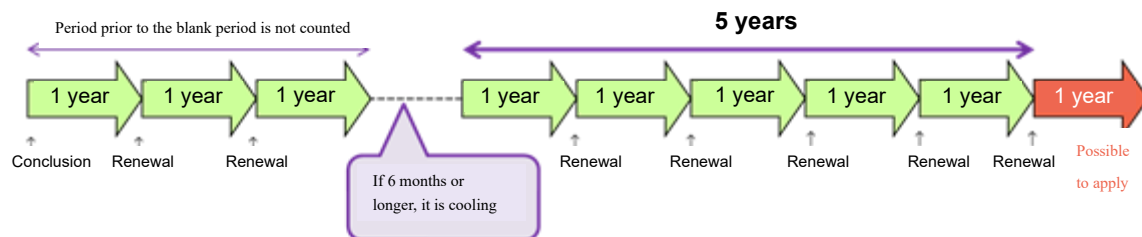
2. The total duration of the term of the contract described in the preceding paragraph shall be the total duration of the fixed-term employment contract which starts after April 1, 2013. However, in the case where a worker goes without a contract for 6 consecutive months or longer due to retirement based on the expiration of the contract, the period of the contract prior to such interval shall not be included in the total duration of the contract period.
3. The terms and conditions of employment stipulated in these rules of employment remain in effect after such a switch to an indefinite-term employment contract pursuant to the provision in paragraph 1. However, in the case where the fixed age for switching to an indefinite-term employment contract is over the retirement age stipulated in Article 49, the retirement age for the relevant worker shall be \_\_\_\_\_, and their retirement shall begin on the last day of the month in which they reach such fixed age for retirement.

### **[Article 57 Switching to Indefinite Term Employment Contract]**

1. In the case where a worker whose fixed-term employment contract starts after April 1, 2013, and is renewed for 5 years or more in total with the same employer, the worker may apply to have their employment contract switched to an indefinite-term employment contract (Article 18 of the Contract Act). It is recommended that an employer establishes a specified application form in a written format for such a switch to avoid disputes as to whether the worker's application is valid.



2. Moreover, if the period between one fixed-term employment contract and the next fixed-term employment contract is six months or longer (period without a contract), the period prior to that shall not be counted.



However, if the total contract period prior to the period without a contract was less than one year, and there is a period without a contract in the right column corresponding to the total contract period in the left column of the table below, the contract period prior to relevant period without a contract shall not be counted.

Contract period of a fixed-term employment contract that can be counted	Period without a contract
2 months or less	1 month or longer
Over 2 months up to 4 months	2 months or longer
Over 4 months up to 6 months	3 months or longer
Over 6 months up to 8 months	4 months or longer
Over 8 months up to 10 months	5 months or longer
Over 10 months	6 months or longer

3. The terms and conditions of employment after switching to an indefinite-term employment contract, such as job responsibilities, location of workplace, wages, and working hours, shall be identical to those of the fixed-term employment contract that came immediately before such switch, unless there are stipulations set out in different regulations, such as a collective agreement, the rules of employment, or an individual employment contract. In the case where an employer is required to establish terms and conditions of employment that normally do not apply to a worker under a fixed-term employment contract, such as a fixed age for retirement, but do apply to a worker under an indefinite-term employment contract, the employer should clearly define the detailed terms and conditions under the rules of employment, a collective agreement with a union, or an individual employment contract.

However, based on the spirit of the law, it is not proper to set the fixed retirement age with the purpose of undermining the rules for switching to an indefinite term for stabilizing employment by switching to an indefinite term employment contract such as by setting the fixed retirement age to 66 for someone switching to an indefinite term at age 65.

For more details about the rules for switching to an indefinite term, refer to pages 4 to 7 of the “Overview of Amendments to the Labor Contract Act” pamphlet and the “Portal Site for Switching Fixed-Term Contract Workers to Indefinite Contracts.”

(<https://muki.mhlw.go.jp/>).

Site for switching to indefinite contract	Search
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## Chapter 10 Safety, Health and Accident Compensation

Matters pertaining to safety, health, and accident compensation are conditional mandatory matters for the rules of employment, and the clauses regarding these matters must be set forth in the rules of employment.

### **(Compliance Provisions)**

**Article 58** A Company shall take necessary measures to secure and improve the safety and health of workers, and to create comfortable and adequate workplaces.

2. Workers must comply with the laws pertaining to safety and health and the directions given by the company, and endeavor to prevent occupational accidents by cooperating with the company.
3. Workers must comply with the following directions to ensure safety and health in the workplace:
  - (a) Thoroughly check machines, equipment, and tools before the commencement of work. In the case where a worker acknowledges any abnormality, report it immediately to the company and follow the instructions.
  - (b) Do not remove safety equipment or impair its effectiveness.
  - (c) Wear safety equipment or protective gear if required at work.
  - (d) Workers under age 20 must not enter smoking areas.
  - (e) People who wish to avoid passive smoking must not be taken to areas where smoking is permitted.
  - (f) Do not enter prohibited areas or paths.
  - (g) Keep the work area organized and tidy. Do not place objects in passageways, emergency exits, or areas where there is a fire extinguisher.
  - (h) In the case of fire, accidents, or other emergency situations, take appropriate actions for the situation and report to \_\_\_\_\_ (place/person) and follow the instructions given.

### **[Article 58 Compliance Provisions]**

1. The Safety and Health Act provides stipulations regarding detailed measures to be taken by an employer in order to prevent occupational accidents. An employer is expected to actively engage in the prevention of occupational accidents and to establish a comfortable and adequate work environment in accordance with the Safety and Health Act. For such reasons, it is important to establish a safety and health management system at workplaces on a daily basis.
2. The Safety and Health Act stipulates that an employer is required to appoint a General Safety and



Health Manager, a Safety Manager, a Health Manager, and an occupational physician at workplaces with a certain number of workers in certain industries (Article 10 of the Safety and Health Act). In addition, an employer is required to appoint a Safety and Health Promoter or a Health Promoter at a workplace where the number of workers is continuously between 10 and 49 (Article 12-2 of the Safety and Health Act). A company must have those personnel manage the matters pertaining to safety and health at the workplace.

3. Based on revisions to the Health Promotion Act (Act No. 103 of 2002; hereinafter referred to as the “Revised Health Promotion Act”) by the Act Partially Amending the Health Promotion Act (Act No. 78 of 2018), it is stipulated that smoking be prohibited in certain areas at facilities that are used by many people according to the type so as to prevent passive smoking, and that measures should be implemented by those managing such facilities.

Specifically, as of April 2020, smoking is prohibited at offices, restaurants, and other indoor facilities except in designated smoking areas that meet technical standards for preventing the emission of tobacco smoke, and smoking areas designated for heated tobacco products (as of July 2019, smoking is prohibited at type I facilities such as schools, hospitals, and child welfare facilities except at designated outdoor smoking areas where measures have been implemented to prevent passive smoking). In addition, the managing authority of such facilities must not allow people under age 20 to enter areas where smoking is permitted.

The Safety and Health Act also stipulates that employers are required to make efforts to implement practical measures to protect workers from passive smoking.

Based on the provisions in the Revised Health Promotion Act and Safety and Health Act, it is important to prohibit smoking in the workplace except in designated areas such as designated smoking areas, and to make the policies known and understood.

It is also possible to make the whole worksite a nonsmoking area. In such cases, the rules of employment should stipulate that “(d) Smoking is not permitted at this worksite.”

In addition to this, to prevent passive smoking by those who wish to avoid it, workers who wish to avoid passive smoking must not be taken to areas where smoking is permitted, including outside the workplace.

Moreover, for other examples of measures to prevent passive smoking, refer to the guidelines for preventing passive smoking at the workplace.

#### **(Health Examinations)**

**Article 59** An employer shall provide regular medical examinations for workers at the time of hiring and once a year, or once every 6 months for those who engage in late night shifts.

2. An employer shall conduct periodic medical examinations for special issues for workers who engage in hazardous duties specified by laws in addition to the medical examinations set out

in the preceding paragraph.

3. As a result of the medical examinations set out in paragraph 1 and the preceding paragraph, if required, an employer may order necessary measures, such as prohibition from work for a certain length of time, reduced working hours, or transferring positions in order to maintain the health of a worker.

#### **[Article 59 Health Examinations]**

1. An employer must provide general medical examinations on a regular basis, once a year, or once every 6 months for those who engage in the types of work stipulated in Article 13-1-3 of the Ordinance on Industrial Safety and Health for work in the late night (the Ministry of Labor Ordinance No. 32 of 1972) (Article 66-1 of the Safety and Health Act).
2. In the case where workers engage in hazardous work where they are exposed to dust or organic solvents, such workers are required to take special medical examinations in addition to the general medical examinations (Article 66-2 of the Safety and Health Act). The types of hazardous work which require the special medical examinations are stipulated in the Order for Enforcement of Industrial Safety and Health Act (Cabinet Order No. 318 of August 19, 1972).
3. The employer must bear the cost for such medical examinations since such medical examinations are mandated by law.
4. In the case where a worker submits the results of the health examination they took within 3 months prior to the time of hiring, the medical examination to be taken at the time of hiring may be omitted for those items covered by the medical examination taken.
5. An employer must provide health examinations to regular full-time workers as well as part-time workers whose working hours are shorter than those of regular workers, provided that such part-time workers have been employed for one year or longer and their scheduled working hours per week are 3/4 or more of those of regular workers.
6. If an issue is discovered as a result of a health examination, an employer must seek the opinion of a doctor or other medical professional, and measures must be implemented based on that, such as making changes to the work contents, shortening working hours, or reducing the frequency of late night work (Articles 66-4 and 66-5 of the Safety and Health Act). In addition, the results of the health examination must be notified to the worker being examined (Article 66-6 of the Safety and Health Act).

**(Face-to-Face Guidance for Persons Working Long Hours)**

**Article 60** A company must understand the status of worker working hours.

2. An employer shall arrange face-to-face guidance with a physician for workers who appear to be developing fatigue due to long working hours if requested.
3. If required based on the result of the face-to-face guidance in the preceding paragraph, an employer may order necessary measures, such as prohibition from work for a certain length of time, reduced working hours, or transferring positions in order to maintain the health of a worker.

**[Article 60 Face-to-Face Guidance for Persons Working Long Hours]**

1. Employers must understand the working hours status of workers using an objective method and other appropriate means such as records using timecards, and records of computer usage times including personal computers (from the time of logging in until logging out) in order to provide face-to-face guidance.
2. In the case where an employer has a worker work more than 40 hours per week excluding break times, and the number of working hours beyond such 40 hours is more than 80 hours per month, and the employer acknowledges that such a worker has developed fatigue, the employer must provide face-to-face guidance by a physician to such worker upon their request (Article 66-8-1).
3. In the case where a worker whom the employer recognizes as having developed fatigue or whose health condition is uncertain, even without exceeding a certain number of hours of overtime, the employer must provide face-to-face guidance by a physician to such worker upon their request, or proactively take equivalent measures (Article 66-9).
4. It is stipulated that the employer must keep a record of the results of such face-to-face guidance for 5 years.
5. Based on the results of the face-to-face guidance, an employer must take measures, such as changing the workplace, changing the work contents, reducing the working hours or reducing the frequency of late night work (Article 66-8-2 of the Safety and Health Act).

**(Stress Check)**

**Article 61** An examination (stress check) for determining the psychological load placed on workers should be conducted once a year by a doctor, public health nurse, or similar professional.

2. Based on the results of the stress check in the preceding paragraph, if it is recognized by a doctor or public health nurse that a worker has a high level of stress requiring face-to-face guidance, such guidance shall be provided to the relevant worker by a doctor at their request.

3. If the need is recognized based on the result of the face-to-face guidance in the preceding paragraph, it may be deemed necessary to order measures such as changing the workplace, adjusting work contents, shortening working hours, or reducing the frequency of late-night work.

**[Article 61 Stress Check]**

1. The employer must conduct an examination for determining the psychological load (stress check) once a year (Article 66-10-1 of the Safety and Health Act). Moreover, because such measures are required of employers by law, costs for the stress check and face-to-face guidance based on the result shall be borne by the employer.
2. Stress checks must be administered by a doctor, public health nurse, dentist who has completed required training, nurse, mental health welfare professional, or licensed psychologist (Article 66-10-1 of the Safety and Health Act). In addition, results of the stress check must be notified by the doctor or public health nurse directly to the worker, and must not be notified to the employer without the person's consent (Article 66-10-2 of the Safety and Health Act).
3. Based on the results of the stress check, if it is recognized by a doctor or public health nurse that a worker has a high level of stress requiring face-to-face guidance, face-to-face guidance must be given to the relevant worker by a doctor at their request (Article 66-10-3 of the Safety and Health Act).
4. An employer must seek the opinion of a doctor regarding measures related to the work based on the result of the face-to-face guidance, and implement measures such as making changes to the work contents, shortening working hours, or reducing the frequency of late-night work (Articles 66-10-5 and 66-10-6 of the Safety and Health Act).
5. If consent is given by a worker, the results of the stress check and face-to-face guidance with a doctor that are provided to the employer must be recorded and stored by the employer for 5 years (Articles 52-13 and 52-18 of the Ordinance on Industrial Safety and Health).

**(Proper Handling of Information related to the Mental and Physical Health of Workers)**

**Article 62** Employers must handle information related to the mental and physical health of workers properly.

**[Article 62 Policy for Personal Information concerning Health Management]**

1. When collecting, storing, or using information related to the mental and physical health of workers, an employer must store and use such information within the necessary scope of ensuring the health

of workers (Article 104-1 of the Safety and Health Act).

2. Employers must implement necessary measures for properly managing information related to the mental and physical health of workers (Article 104-2 of the Safety and Health Act).
3. In harmony with separately determined provisions, measures must be implemented for properly handling information related to the mental and physical health of workers.

#### **(Education on Safety and Health)**

**Article 63** In the case where an employer hires a new worker or transfers a worker resulting in changes to their duties, an employer shall provide training with respect to the safety and health necessary for the work in which the worker is to be engaged.

2. Workers must comply with the knowledge gained through the training on safety and health.

#### **[Article 63 Education on Safety and Health]**

In the case where an employer hires a new worker or changes the work contents of a worker, the employer must provide training in safety and health necessary for the work in which the worker will be engaged (Article 59 of the Safety and Health Act). In such event, the hours required for such training in safety and health are considered working hours. In the case where such training is provided outside the legal working hours, premium pay is required.

#### **(Accident Compensation)**

**Article 64** In the case where a worker is injured, becomes ill or dies in the course of duties or while commuting, an employer must provide compensation pursuant to the Labor Standards Act and the Industrial Accident Compensation Insurance Act (Act No.50 of 1947).

#### **[Article 64 Accident Compensation]**

1. The Industrial Accident Compensation Insurance (hereinafter referred to as the “Industrial Accident Insurance”) System is a public system for accident compensation which is designed to provide insurance benefits necessary in cases of worker injuries, illnesses and disabilities caused in the course of duties or while commuting, as well as to promote social rehabilitation of the workers who experience accidents and to support the relevant worker and the family members of deceased workers.

However, in the case where a worker requires a leave of absence due to an occupational accident,

the Industrial Accident Insurance does not provide compensation benefits for absence during the first 3 days of such leave. Therefore, an employer is required to provide compensation for the absence during the first 3 days at 60% of average wage conforming to the Labor Standards Act.

2. Every company that employs workers must enroll in Industrial Accident Insurance, with the exception of enterprises managed directly by the government or government offices (excluding businesses set out in Appended Table 1 of the Labor Standards Act). However, enrollment is optional for individual businesses in the fields of agriculture, forestry, and fishery with fewer than 5 workers (excluding those specified by the Minister of Health, Labor and Welfare as having a high risk of industrial accidents).
3. All workers employed by a company who is enrolled in the Industrial Accident Insurance may be covered by the Industrial Accident Insurance regardless of the type of employment or title, including part-time workers and temporary workers.

## Chapter 11 Vocational Training

Matters pertaining to vocational training are conditional mandatory matters in the rules of employment. In the case where an employer establishes such matters, the employer must set forth the stipulations concerning such matters in the rules of employment.

### **(Educational Training)**

**Article 65** A company shall provide educational training necessary for the workers to gain the necessary knowledge, and improve their skills, abilities, and endowments.

2. Workers must take the educational training provided by the company if so instructed, unless they have justifiable reasons to be excluded from such training.
3. An employer shall provide a written notice of such instruction specified in the preceding paragraph to the applicable workers a minimum of \_\_\_\_ week(s) prior to the day of the educational training.

### **[Article 65 Educational Training]**

An employer is prohibited from discriminating against workers on the grounds of gender during the educational training (Article 6 of the Equality Act).

## Chapter 12 Commendations and Sanctions

Matters pertaining to commendations and sanctions and their types and levels are conditional mandatory matters. In the case where an employer provides such matters, they must be set out in the rules of employment. Policies and details regarding power harassment, sexual harassment, and other harassment related to pregnancy, childbirth, childcare leave, family care leave, and the like, including measures to be taken against those who commit such acts, need to be stipulated in rules of employment and other documents, and must be made known to workers including managers and supervisors. (Article 30-2 of the Comprehensive Labor Measures Promotion Act, Articles 11 and 11-3 of the Equality Act, and Article 25 of the Child Care and Family Care Leave Act)

### **(Presentation of Commendations)**

**Article 66** A company may present commendations to workers who meet one of the following criteria:

- (a) A worker who makes profitable inventions or designs for the business operation;
  - (b) A worker who works faithfully for a long period of time and whose achievement serves as an excellent model for other workers;
  - (c) A worker who works for a long period of time continuously without accident;
  - (d) A worker who has a social achievement that honours the company or other workers;
  - (e) A worker who practices good deeds or renders distinguished service that is comparable to the above.
2. The presentations of commendations shall principally be held on the anniversary of the foundation of the company. Monetary awards shall be presented with commendations.

### **[Article 66 Presentation of Commendations]**

The presentation of commendations is established for the purpose of raising the morale among workers and to improve the business performance and productivity of the company.

### **(Types of Disciplinary Actions)**

**Article 67** A company shall take disciplinary actions, classified as follows, against workers to whom any of the following items apply according to the actual circumstances.

#### **(a) Reprimand**

Have the worker submit a letter of apology and reprimand the worker for their future conduct.



(b) Wage reduction

Have the worker submit a letter of apology and reduce their wage. However, the amount of wage reduction at a time shall not exceed 50% the daily average wage, and the total reduction shall not exceed 10% of the total wage for a single pay period.

(c) Suspension

Have the worker submit a letter of apology and suspend them from working for a maximum of \_\_\_\_\_ work day(s) without pay.

(d) Disciplinary Dismissal

Dismiss the worker immediately without providing the notification period. In such event, the employer shall not provide a dismissal allowance (equivalent to the average daily wage for 30 days) provided that the employer obtains authorization from the director of the relevant local Labor Standards Inspection Office.

**[Article 67 Types of Disciplinary Actions]**

1. The types of disciplinary actions are not limited to those set out in this article. The types of disciplinary actions are not limited to those listed in this article.
2. An employer may establish the types of disciplinary actions to take within the public order and for the common good for each workplace. However, the amount of wage reduction per instance must not exceed 50% of the daily average wage, and the total amount of wage reduction must not exceed 10% of the wage for a single pay period (Article 91 of the Labor Standards Act). However, wage reduction beyond the amount for the hours of absence due to arriving late or leaving early is considered sanction, therefore the clauses pertaining to sanction in Article 91 of the Labor Standards Act shall apply.
3. However, wage reduction beyond the amount for the hours of absence due to arriving late or leaving early is considered sanction, therefore the relevant clauses in Article 91 of the Labor Standards Act shall apply. In the case where the employer intends to immediately dismiss a worker as a disciplinary measure without paying a dismissal allowance for 30 days at the daily average wage, the employer must apply for an exemption from the dismissal notification and obtain approval for such exemption from the director of the relevant Labor Standards Inspection Office in advance (Article 20 of the Labor Standards Act).

**(Grounds for Disciplinary Actions)**

**Article 68** In the case where a worker falls under one of the following categories, the employer shall take disciplinary actions according to the circumstances, such as reprimand, wage

reduction, or suspension.

- (a) A worker who is absent for \_\_\_\_ days or longer without notice or justifiable reasons.
- (b) A worker who is absent, arrives late or leaves early frequently without justifiable reasons.
- (c) A worker who causes loss to the company by their error or negligence.
- (d) A worker who causes damage to the order or public morale within the company by their unacceptable behaviors.
- (e) A worker who violates 0, 0, 0, 0 or 0.
- (f) A worker who contravenes the rules of employment or engages in activities comparable to the above paragraphs.

2. In the case where a worker falls under one of the following categories, the employer shall execute disciplinary dismissal against such worker. However, the employer may execute regular dismissal as described in 0, wage reduction, or suspension prescribed in the preceding article, taking into consideration their usual behavior regarding responsibilities at work and other circumstances.

- (a) An employee who is hired by presenting a false career history which is deemed essential.
- (b) A worker who is absent for \_\_\_\_ day(s) or longer without notice or justifiable reasons and does not respond to demands to attend work.
- (c) A worker who arrives late, leaves early or is absent repeatedly without notice or justifiable reasons, and still does not improve after receiving admonishment \_\_\_\_ times.
- (d) A worker who frequently does not follow directions or orders concerning business operations without justifiable reasons.
- (e) A worker who causes significant loss to the company intentionally or through gross negligence.
- (f) A worker who engages in an activity which is a violation of the Penal Code or other punitive laws within the company and such violation becomes known (excluding the case where such violation is insignificant).
- (g) A worker who causes significant damage to the order or public morale within the company by their unacceptable behavior.
- (h) A worker who shows no sign of improvement in their behavior or attitude despite the multiple disciplinary actions taken.
- (i) A worker who violates 0, 0, 0 or 0, and their intent is acknowledged as malicious.
- (j) A worker who uses facilities or articles which belong to the company without permission for purposes outside the course of job responsibilities.
- (k) A worker who seeks personal profit by taking advantage of their position in the company or receives illicit money or goods from clients or others, or demands money or goods, or receives any gifts.

- (l) A worker who seeks personal profit by taking advantage of their position in the company or receives illicit money or goods, or demands or accepts gifts from clients or others.
- (m) A worker who causes damage to the company or disrupts regular business operation by disclosing classified information critical to business operations of the company to the outside without justifiable reason.
- (n) A worker who engages in any other inappropriate activities comparable to the above items.

**[Article 68 Grounds for Disciplinary Actions]**

1. This article stipulates the grounds for “reprimand, wage reduction, suspension” under paragraph 1, and for “disciplinary dismissal” under paragraph 2.
2. According to the Supreme Court judgment (for the Japanese National Railways Sapporo Train Sector case / Supreme Court 3rd Petty Bench judgment October 30, 1979), as long as the stipulations are established pertaining to disciplinary actions, an employer may take disciplinary actions against workers who violate rules, directions, or orders. Therefore, no disciplinary action can be taken for a reason that is not specified in the rules of employment.

There is no restriction on the grounds for disciplinary actions under the Labor Standards Act. However, Article 15 of the Labor Contract Act stipulates, “in the case where a disciplinary action lacks reasonable grounds from an objective point of view, considering the act by the worker in question, and the characteristics and attitude of that worker and other circumstances and is found inappropriate according to common consensus, such disciplinary action shall be invalid on the grounds of an abuse of the right to administer disciplinary actions.” A disciplinary action without reasonable grounds, may be judged an abuse of the right to administer disciplinary actions.

3. An employer is required to administer fair disciplinary action proportionate to the level of violation of rules, taking into consideration the details of past disciplinary action in comparable cases. There have been some cases where a disciplinary action taken by an employer was found unjust and such case was judged invalid on the grounds of an abuse of the right to administer disciplinary action.

An employer shall not administer a disciplinary action retroactively against an activity in which a worker engaged prior to the time when the stipulations pertaining to disciplinary actions in the rules of employment are provided, nor shall they administer multiple disciplinary actions for a violation justifying a single action.

## Chapter 13 Protection of Whistleblowers

### (Protection of Whistleblowers)

**Article 69** A company shall follow the procedures stipulated separately in the case where a worker submits a report or consultation to a public office regarding organizational or personal activities that violate laws.

### [Article 69 Protection of Whistleblowers]

Workers who work at a company are often the ones who make reports that bring to light scandals at businesses which threaten the safety and security of people.

Regarding such scandals at businesses, the Whistleblower Protection Act was established to protect workers from disadvantageous treatment by employers for making a report about a business that violates a law, and to reinforce the employers' compliance with laws during their business operations.

As of June 1, 2022, businesses with at least 301 regular workers are legally required to establish internal guidelines defined by law and implement them according to the provisions (businesses with 300 or fewer workers are encouraged to make efforts in this regard).

(Source: Website of the Consumer Affairs Agency)

[https://www.caa.go.jp/policies/policy/consumer\\_partnerships/whistleblower\\_protection\\_system/](https://www.caa.go.jp/policies/policy/consumer_partnerships/whistleblower_protection_system/)

- Example of internal rules (Compliance provisions + Recommended version of provisions, Material prepared by outside lecturers at briefings hosted by the Consumer Affairs Agency)

[https://www.caa.go.jp/policies/policy/consumer\\_partnerships/whistleblower\\_protection\\_system/pr/assets/pr\\_220221\\_0001.pdf](https://www.caa.go.jp/policies/policy/consumer_partnerships/whistleblower_protection_system/pr/assets/pr_220221_0001.pdf)

- Example of internal rules (Version of compliance provisions, Material prepared by outside lecturers at briefings hosted by the Consumer Affairs Agency)

[https://www.caa.go.jp/policies/policy/consumer\\_partnerships/whistleblower\\_protection\\_system/pr/assets/pr\\_220221\\_0003.pdf](https://www.caa.go.jp/policies/policy/consumer_partnerships/whistleblower_protection_system/pr/assets/pr_220221_0003.pdf)

## Chapter 14 Side Jobs and Concurrent Employment

### **(Side Jobs and Concurrent Employment)**

**Article 70** Workers may engage in work at other companies, etc., outside of working hours.

2. Based on notification made by a worker to engage in the work mentioned in the preceding paragraph, a company may prohibit or restrict such work if one of the following applies when the relevant worker engages in the relevant work.

- (a) It interferes with the provision of labor
- (b) Company secrets are leaked
- (c) The action damages the reputation, credibility, or trustworthiness of the company
- (d) The competition is against the interests of the company

### **[Article 70 Side Jobs and Concurrent Employment]**

1. This article serves as model provisions for side jobs and concurrent employment, and since the contents of the rules of employment must be according to the situation at the actual workplace, comprehensive discussion is needed between management and labor when implementing side jobs and concurrent employment. Workers who consult or report about side jobs and concurrent employment must not receive disadvantageous treatment. Keep in mind that “Side Jobs and Concurrent Employment” include side jobs and concurrent employment when hired by other companies, as well as when they act as an employer, and when done via contracts, outsourcing, or quasi-mandate contracts. Moreover, whether it is considered an employment contract or not depends on the actual situation. Side jobs and concurrent employment which ignore regulations on working hours in the Labor Standards Act or the regulations on safety and health in the Safety and Health Act, or where labor conditions are changed that negatively impact workers without a valid reason shall not be approved. The provisions of the Labor Standards Act and other laws shall apply according to the actual work situation for cases involving illegally falsified contracts and cases where employment contracts are made to look like subcontracts.

2. Regarding side jobs and concurrent employment of workers, according to judicial precedent, workers are free to use their time outside of work as they want, and are able to engage in side jobs and concurrent employment as stated in paragraph 1.

Moreover, when engaging in any form of side job and concurrent employment, efforts should be made to avoid long shifts that result in overwork so as not to interfere with work.

3. If a side job and concurrent employment is approved for a worker, paragraph 2 stipulates that the company must understand the situation of the side job and concurrent employment by acquiring

notification from the worker in advance in order to confirm that there is no conflict in providing labor services, that company secrets are not leaked (\*1), and it does not result in excessive work. In particular, for cases when a worker is simultaneously employed by both your company and another company for a side job and concurrent employment, based on Article 38 of the Labor Standards Act, it is possible to confirm the following matters to understand the contents of a worker's side job and concurrent employment.

- Business contents at the worksite of the other employer
- Business contents engaged in by the worker at the worksite of the other employer

It must be confirmed whether a worker's working hours count towards total working hours, and if so, the following items must also be confirmed before an agreement is made between each employer and the worker (\*2).

- Date and period of the employment contract concluded with the other employer
- Scheduled working days, scheduled working hours, and start and end times of work at the worksite of the other employer
- Existence of work outside the scheduled working time, number of expected hours and maximum hours at the worksite of the other employer
- Procedure for reporting actual working hours and related activities at the worksite of the other employer
- Frequency of confirming these items

\*1. Regarding cases where a worker has a side job and concurrent employment, and the situation is understood based on reporting by the worker, but the health condition of the worker is observed to have deteriorated, refer to the Guideline on Promoting Side Jobs and Concurrent Employment (formulated in January 2018 and revised in September 2020 and July 2022) which stipulates that proper measures be implemented, and warn the worker engaging in side jobs and concurrent employment about the scope of prohibited competitive acts and the need to give notice on preventing interference with the interests of your company.

\*2. For details on calculations of working hour management for cases involving side jobs and concurrent employment, refer to "Interpretation of Article 38-1 of the Labor Standards Act on Managing Working Hours for Cases Involving Side Jobs and Concurrent Employment (Notice No. 0901-3 dated September 1, 2020)," which provides ideas for calculating working hours and simplified methods for managing working hours.

(References)

- Labor Standards Act

Article 38 To apply the provisions on working hours, hours worked are aggregated, even if the hours worked were at different workplaces.

- Notice No. 769 of May 14, 1948

“Different workplaces” includes when the employer is different.

4. According to judicial precedent, cases where a company is permitted to place restrictions on a worker’s side jobs and concurrent employment are considered to be cases where the provisions in each item of paragraph 2 apply.

Although each company decides whether a case applies to each item, it is important to properly apply the rules. This helps avoid placing excessive restrictions on side jobs and concurrent employment by broadly interpreting the provisions in the rules of employment. In addition, it is believed that item 1 (When it interferes with the provision of labor) includes scenarios such as when work at your company cannot be properly fulfilled due to a side job and concurrent employment. There is also concern for potential harm to workers' health, including long working hours. Furthermore, there is a risk that a worker may not comply with the laws and regulations on the upper limit of overtime work based on Articles 32-6-2 and 32-6-3 of the Labor Standards Act. Such laws stipulate that total overtime and holiday work hours should be less than 100 hours per month, with an average of no more than 80 hours over 2 to 6 months. Additionally, the Standards for Improvement of Working Hours of Motor Vehicle Drivers (the Ministry of Health, Labor and Welfare Notice No. 7 of 1989) must be observed. Keep in mind that judicial precedence exists where a taxi driver, working every other day, engaged in part-time work for handling exported cars without notifying the company. The court ruled, “due to the nature of taxi driving work, rest is required prior to driving. Therefore, this part-time employment was considered prohibited concurrent employment based on the rules of employment” (Miyako Taxi Case, Hiroshima District Court Ruling, December 18, 1984).

Moreover, if the rules of employment require that a worker notify the employer about side jobs and concurrent employment, including the work contents and working hours, the employer should first request notification from the worker if it is found that such activities were engaged in without notice. This ensures that none of the cases stipulated in paragraph 2 of this article applies. If the working hours are counted toward the total working hours despite these not applying, the employer should confirm the scheduled working hours at the worksite of the other employer to manage working hours properly.

Other judicial precedents related to side jobs and concurrent employment have been posted, so please refer to these when implementing side jobs and concurrent employment.

(Judicial precedents related to side jobs and concurrent employment)

- Manna Unyu Case (Kyoto District Court decision, July 13, 2012)

Case where a transportation company denied an application for part-time work by an associate worker four times, two of which had no legitimate reason, and the claim for damages based on tort was granted in part (consolation money only).

- Tokyo Private University Professor Case (Tokyo District Court decision, December 5, 2008)

Case where a professor was given a punitive dismissal on the grounds that he gave a lecture at a language school without permission, and the professor canceled lectures, but the dismissal was ruled to be invalid since the side job was performed at night and on holidays and did not interfere with main employment.

- Towada Unyu Case (Tokyo District Court decision, June 5, 2001)

Case where a driver at a transportation company was dismissed on the grounds that they engaged in part-time work at a freight transport company once or twice a year, but the dismissal was ruled to be invalid since it cannot be considered a violation of the job responsibilities to devote oneself to work or damaging trustworthiness.

- Ogawa Construction Case (Tokyo District Court decision, November 19, 1982)

Case involving a dismissal for working six hours every day at a cabaret without permission. The side job was at night and was considered beyond the scope of leisure time part-time work. There was a high possibility it would interfere with honest work at the company based on social morals. Thus, the dismissal was ruled to be valid.

- Hashimoto Unyu Case (Nagoya District Court decision, April 28, 1972)

Case where punitive dismissal was ruled to be valid since a manager at the company was appointed as a director at a competitor even though they were not directly involved in management.

(Reference: Court case involving obligation of confidentiality while being employed)

- Furukawa Mining Case (Tokyo High Court decision, February 18, 1980)

Case where punitive dismissal was ruled to be valid since the worker had duplicated and distributed copies of a draft of the basic policy for the long-term management plan that the company had taken special effort to keep confidential. The worker was considered obligated to maintain the company secrets of the employer based on the principle of good faith, in addition to providing labor according to the employment contract.



(Reference: Court case involving non-competition obligation while being employed)

- Kyoritsu Bussan Case (Tokyo District Court decision, May 28, 1999)

Case where it was ruled that a worker at a company with an agency contract for importing food ingredients from a company outside Japan had violated their non-competition obligation by establishing a competitive company while being employed. The worker was considered obligated to not wrongfully infringe on the legitimate interests of the employer based on the principle of good faith, in addition to providing labor according to the employment contract.

#### **Appendix**

**(date of enforcement)**

**Article 1** These rules of employment shall be enforced from \_\_\_\_\_ (month/day/year).