

Overtime Payment

■ Statutory Working Hours and Holiday

The Japanese Labor Standards Act (“the Act”) requires an employer not to have an employee work more than 40 hours per week and 8 hours per day for each day of the week, excluding break time. This break time must be no less than 45 minutes for over 6 hours’ work, and no less than 1 hour for over 8 hours’ work. The employer shall also grant 1 day off per week or 4 days off in any 4-week period. This day off is called a statutory holiday (*Hotei kyujitsu*). It is not necessary for such statutory holidays to fall on Saturday or Sunday.

■ The 36 Agreement

Regardless of the preceding paragraph, the employer is able to have employees work overtime or on holidays when the employer has entered into a labor-management agreement with the employee who represents a majority of employees regarding overtime and filed the agreement with the Labor Standards Inspection Office. This agreement is prepared based on Article 36 of the Act, so is generally called “The 36 Agreement”. It must stipulate the specific reason overtime is required, the types of duties involved, the number of applicable employees, the extendable hours, the valid period (generally one year), etc. The limit to overtime hours is not specified in the Act, but there are standards set by the government, such as 15 hours per week, 45 hours per month, and up to 360 hours per year.

■ Overtime Pay

When an employee has worked overtime or on a holiday, the employer is required to pay increased wages with the premium rate as follows:

Overtime (after net 8 hours)	125%	150% for an excess of 60 hours/month*1)
Holiday work on statutory holidays	135%	
Holiday work on other holidays	125%	
Night work (22:00-5:00)	25%	
Overtime + night work	150%	125% + 25%
Statutory holiday work + night work	160%	135% + 25%

*1) Small/medium businesses under certain categories are currently exempt from the 150% premium rule.

■ Exemption for Managers

The regulations regarding overtime work, break time and holiday work are not applied to employees in managerial or supervisory positions. Those employees are accordingly not eligible for overtime pay. The sole exception is the wage for night work between 22:00 and 5:00. An extra 25% of normal wages should be paid for work in the night period.

Whether or not an employee is regarded as a manager exempt from overtime pay is determined comprehensively by working conditions and the nature of their duties. It should be noted that employees with business titles such as manager, supervisor, or officer are not always regarded as a manager for the purpose of overtime exemption.

According to government guidelines, a manager must satisfy all of the following conditions:

- 1) To closely work with the management of the company, i.e. being involved in decision making;
- 2) To have discretion to manage his/her own working hours, break time and holidays; and
- 3) To be paid an appropriate level of allowances for responsibilities or a higher salary in comparison with normal employees.