

New Legislation for Overtime Work

The amended Labor Standards Act (LSA), which took effect in 2019, added to Article 36 the provisions of limits of overtime work. Until then, there were only guidelines set by the government. The upper limit number for a month remains unchanged, but was stipulated by law with a binding force. The new rules have been implemented for small/mid-sized companies starting April 2020 after a one-year exemption period.

■ Statutory Working Hours

Article 36 of the LSA requires an employer not to have an employee work more than 40 hours per week and 8 hours per day for each day of a week and also to provide one day off per week or 4 days off in any 4-week period. The day off, called legal holiday (*Houtei-Kyujitsu*), is not necessarily Saturday or Sunday. If an employee is provided one day off on any day of a week, it is understood that it is provided as a legal holiday. “Holiday” as referred to in this article means a legal holiday, not company holidays generally designated in the work rules. In spite of those principle rules, the employer is allowed to have employees work overtime in excess of the statutory working hours, provided the labor-management agreement concerning overtime work and holiday work has been entered into with the employee who represents a majority of all employees and has been submitted to the labor authorities. This agreement is generally called The 36 Agreement, as is pursuant to the Article 36 of the LSA.

■ Limits of Overtime Work Hours

General Term: Overtime work shall not exceed 45 hours in a month and 360 hours a year excluding holiday work.

Special Term: An employer can request employees to work beyond the upper limit set in the General Term when it becomes necessary to do so due to unavoidable circumstances, such as in the case of an unexpected large volume of work or due to periodical/seasonal work required by business needs. Allowable hours are as follows. Breach of the rules will be subject to penalty.

- 720 hours per year, excluding holiday work
- 80 hours monthly average for each period of the immediate preceding 2-6 months, including holiday work.
- Less than 100 hours in each month, including holiday work.
- Overtime work beyond the upper limit set in the General Term up to 6 times per year

■ Changes to The 36 Agreement

The new agreement form consists of 2 parts. One is the agreement on the General Terms that determines the limits of overtime hours, number of applicable employees, type of jobs, etc. The other part is on the Special Terms. To apply the Special Terms, the employer is required to implement some measures to ensure the health and wellness of employees. The law prepares a list of items for the employer to establish appropriate measures. The employer will choose some items and describes details of actions to be taken. This is the major change to the new agreement form.

- 1) Prepare an opportunity of counselling by doctor
- 2) Set a limit to the number of late night work (22:00-5:00)
- 3) Ensure certain rest hours between the finish of a day's work to the start of the following day's work
- 4) Provide a compensatory or special day-off
- 5) Prepare an opportunity for medical check
- 6) Encourage employees to take consecutive days of annual paid leave
- 7) Set up a consultation desk for employees who have any physical and/or mental concerns
- 8) Change duties/location if deemed necessary
- 9) Prepare an opportunity for getting advice, instructions or guidance from the company doctor
- 10) Other