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Japan's Labor Reform Caps Overtime in a Bid to Curb Karoshi

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From low productivity to the death of citizens by overwork, Japan's labor practices have long maintained a complicated relationship with the country's workforce. The problem of death by overwork is so prevalent the Japanese have created a word for it: *karoshi*. On June 29, 2018, Japan passed the "Work Style Reform Law" (the Law) to address some of these issues.

Currently, Japanese law permits employers to enter into special agreements with employees that require them to work an unlimited number of overtime hours. The Law however, generally will limit overtime work to 45 hours per month with a maximum of 360 hours in a year. During busy periods, the overtime limit will be relaxed allowing for up to 100 hours of overtime not to exceed a maximum of 720 hours in a year. In addition, employees may not work, on average, more than 80 hours of overtime per month. This figure will be averaged over a period of two, three, four, five, and six consecutive months. These overtime provisions will go into effect in April 2019 for large employers and April 2020 for small and mid-sized employers. Violation of these provisions will subject employers to financial penalties.

Highly skilled professional workers, however, are exempt from the protection of these overtime provisions. Under the law, highly skilled professional workers must: (i) work a job requiring specialized skills, and; (ii) earn an annual salary of ¥10.75 million or more (roughly $95,000 USD). Labor reform supporters have sharply criticized this exemption as a license to continue the practice of overwork. Meanwhile, supporters of the Law have characterized the exemption as a nod to the working style of professionals where hours and results do not necessarily correlate. Future administrative guidelines will provide employers insight as to what jobs fall into the exemption. The exemption will take effect in April 2019.

In addition, the Law will require employers to treat regular and fixed-term employees equally. Although further administrative guidelines will be issued regarding this provision, employers should: (i) prepare to provide increased compensation and benefits for fixed-term and other non-regular employees; and (ii) begin reviewing the compensation differences between their regular and fixed-term employees to identify any disparities. Enforcement of this provision will likely involve disclosure requirements for employers. This provision will take effect in April 2020 for large employers and April 2021 for small and mid-sized employers.

The Law also contains provisions mandating the use of paid time off. Japanese labor culture has long led to a chronic and voluntary under-usage of paid time off by employees. The Law addresses this issue by requiring that employees entitled to 10 days of annual paid leave or more use at least five of those days each year.

The use of a work-interval system is also encouraged under the law. The law notes that employers should “make efforts” to ensure that there is a minimum interval between the end of a day’s working hours and the beginning of the next day’s working hours. This provision will take effect in April 2019.

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