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LABOR AND EMPLOYMENT LAW BULLETIN

Amendment to the Labor Standards Act

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The Labor Standards Act of Japan was recently amended for the purpose of maintaining workers' health and achieving work-life balance by seeking to limit long working hours. The amendment will become effective on **April 1, 2010**.

Increase in the Overtime Work Compensation Rate

Under the amendment, if an employee works overtime and the amount of overtime exceeds **60 hours in one calendar month**, then with respect to that excess, the employer must pay extra overtime compensation that exceeds, by at least **50%**, the regular, non-overtime wage. In other words, the employer must pay at least 150% of the regular wage for the overtime worked in excess of 60 hours per month. Currently, the extra overtime pay rate is 25% regardless of the number of overtime hours worked. Certain "small and medium-sized companies" will be exempt under the amendment from paying the increased overtime compensation rate, at least for the time being. With respect to the increased overtime rate required by the amendment (i.e., 25% of the regular non-overtime wage, which is the difference caused by the increase from 25% to 50%), the employer can provide leave at the regular wage rate instead of paying extra wages, provided that an employer first enters into a labor-management agreement with the employees to that effect. The amendment will not affect the holiday work extra pay ratio (35%) and late-night work extra pay ratio (25%).

Employer's Obligation to Make Efforts to Increase Overtime Work Compensation Rate

Currently, an employer must enter into a labor-management agreement to have its employees work overtime, and must provide for special provisions in that agreement in order to require its employees to work overtime in excess of 45 hours per month. Under the amendment, if an employer enters into a labor-management agreement with the aforementioned special provisions, that employer will be obliged to stipulate an overtime compensation rate applicable to overtime work in excess of 45 hours per month. In that case, an employer is also required to make efforts to set the overtime compensation rate higher than 25% and to reduce the overtime hours exceeding 45 hours per month as much as possible.

Taking Annual Paid Leave by the Hour

Currently, an employee is supposed to take annual paid leave by the day. Under the amendment, however, an employee may take it by the hour, up to 5 days, if a labor-management agreement to that

effect is entered into at the workplace. An employee may choose at his/her discretion whether he/she will take annual leave by the day or by the hour.

労働基準法の改正

長時間労働を抑制することにより、労働者の健康を保持するとともに仕事と生活の調和を実現することを目的として、労働基準法が改正されました。本改正は、**2010年4月1日**から施行されます。

時間外労働に対する割増賃金率の引き上げ

特に、本改正は、**1ヵ月 60 時間を超える**時間外労働について、通常の労働時間の賃金の **50%**以上の割増賃金を支払わなければならないとしています。すなわち、雇用主は、月 60 時間を超える時間外労働に対して、通常の労働時間の賃金の **150%**以上を支払わなければなりません。現行法では、時間外労働の割増賃金率は、時間数に関係なく **25%**です。一定の中小企業については、当面の間割増賃金率の引き上げは猶予されます。本改正による引き上げ分 (**25%**から **50%**に引き上げた差の、通常の労働時間の賃金の **25%**分)については、雇用主は、労使協定を締結することにより、割増賃金の支払に代えて、通常の労働時間の賃金率での休暇を付与することができます。本改正では、休日労働の割増賃金率 (**35%**) 及び深夜労働の割増賃金率 (**25%**) には変更はありません。

割増賃金率引き上げの努力義務

現行法上、時間外労働を行うためには労使協定を締結しなければならず、月 45 時間を超えて時間外労働を行うためには特別条項を設けなければなりません。改正法下では、雇用主は、特別条項付きの時間外労働協定を締結する場合には、月 45 時間を超える時間外労働に対する割増賃金率を定めなければなりません。その場合、雇用主は、**25%**を超える割増賃金率を定めるよう、また、月 45 時間を超える時間外労働をできるだけ短くするように努めなければなりません。

年次有休休暇の時間単位での取得

現行法では、年次有給休暇は日単位で取得するものとされていますが、本改正により、事業場において労使協定を締結すれば、1年に5日分を限度として、時間単位で取得できるようになります。労働者は、年次有給休暇を日単位で取得するか時間単位で取得するか、自由に選択することができます。

Should you wish to receive further information regarding the above-mentioned matters, and/or wish to consult as to whether your company is in compliance with labor/employment law, please contact Kazutoshi Kakuyama (email: kazutoshi.kakuyama@amt-law.com, tel: 81-3-6888-1036), Hideki Thurgood Kano (e-mail: hidekithurgood.kano@amt-law.com, tel: 81-3-6888-1061), or Yukiko Imazu (email: yukiko.imazu@amt-law.com, tel: 81-3-6888-1063).

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