

# Manager's Claim Poses Questions for Company-Operated or Franchised Restaurants

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Franchising, Japan

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In general, restaurants in Japan are either franchised or operated by the company that owns them. On January 28 2008 the Tokyo District Court issued a significant judgment affecting company-operated restaurants. Although the judgment does not directly concern a restaurant franchise, it is likely to influence investors in the food service industry when deciding whether to adopt the company-operated or franchised model.

## Facts

The manager of a number of company-owned restaurants run by a famous fast-food restaurant company filed a lawsuit against the company for, among other things, non-payment of overtime for the two preceding years.

The Labour Standards Law generally offers employees considerable protection. Regulations stipulate that employers must pay overtime to employees who work beyond their statutory working hours. However, these regulations do not apply to persons in supervisory or managerial positions, who have no legal right to overtime.

The company treated the restaurant manager as a person in a supervisory or managerial position and chose not to pay him overtime, a policy that also applied to its other restaurant managers. The company based this decision on the fact that the manager:

- supervised several dozen employees in two restaurants and arranged their work schedules;
- was in charge of certain matters involving subordinate employees, such as hiring decisions, performance evaluations and pay rises; and
- earned an average salary of between ¥5.79 million and ¥7.80 million, which was considerably higher than that of his subordinates.

Moreover, the company argued that the nature of the plaintiff's managerial role made it difficult to evaluate his performance on the basis of hours worked.

Among other issues, the court was required to decide whether the restaurant manager should be treated as a person in a supervisory or managerial position and should be considered exempt from working time regulations.

## Decision

The court ordered the company to pay the restaurant manager for unpaid overtime.

The court stated that a person in a supervisory or managerial position must not only have the word 'manager' in his or her job title, but must also have a sufficient degree of autonomy to justify his or her exclusion from the working time regulations established in law for employees. The court also found as follows:

- The restaurant manager played an important role in the management of the restaurants, but his autonomy was limited to matters solely affecting the restaurants; he did not hold real power at corporate level, which would have justified his exclusion from working hour regulations;
- Although the restaurant manager was supposed to have been delegated discretion to set his own working hours according to the company's own rules, he considered it necessary to work well in excess of the statutory working hours simply to carry out the responsibilities that the company assigned to him. Thus, in practice the restaurant manager had little discretion in setting his own working hours; and
- The restaurant manager's remuneration was insufficient to render the working hours regulations inapplicable on the grounds of his supervisory or managerial position.

Therefore, the court ruled that the company should not have treated the manager as being in a supervisory or managerial position, and ordered it to pay him Y7.55 million in overtime and additional pay - a form of penalty under the law - with penalty interest.

The decision has been appealed to the Tokyo High Court.

### **Comment**

The decision attracted considerable attention and has had a significant impact on the food service industry because the defendant in the case was a famous fast-food company with many company-operated restaurants in Japan.

Before the decision was rendered, several food service companies treated managers of company-operated restaurants as persons in supervisory or managerial positions for the purposes of the law and did not pay them overtime. Although the powers and duties of each restaurant manager must be evaluated on an individual basis to determine whether he or she can be said to hold such a position, the decision prompted a number of food service companies to reorganize their company-operated restaurants as franchised restaurants; some are even reported to have entered into franchising agreements with restaurant managers who have left the company to become franchisees.

The decision has focused far greater attention on the franchising system and its application to the food service industry in Japan. Franchise owners or potential franchise owners should pay close attention to recent and future changes in the relevant regulations, case law and business practices.

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