



## Japanese Employment Law Update



June 20, 2024

### **Recent Changes to Discretionary Labor System**

Under the discretionary labor system, the working hours determined by labor-management agreements or resolutions of labor-management committees are considered as the official working hours, rather than the actual hours worked. This system applies to work that requires the method of execution to be left to the worker's discretion due to the nature of the tasks.

On April 1, 2024, significant amendments to Japan's discretionary labor system came into effect, necessitating new procedures for the introduction and continuation of the system. Existing labor-management agreements and labor-management committee resolutions will become invalid if they do not conform to the amendments, requiring new procedures such as obtaining consent from workers. Companies that are considering the introduction of discretionary labor systems, as well as those that have already implemented them, need to review and adapt to these changes.

In this newsletter, we will explain the basics of the discretionary labor system and the main contents of the revision to the laws and regulations.

### **1. Basics of the Discretionary Labor System**

#### **A. Discretionary Labor System for Professional Work and Planning Work**

There are two types of discretionary labor systems: the Discretionary Labor System for Professional Work and the Discretionary Labor System for Planning Work.

- ◆ Discretionary Labor System for Professional Work: This applies to certain categories of work stipulated by laws and regulations that require the method of execution to be left largely to the discretion of the worker.
- ◆ Discretionary Labor System for Planning Work: This applies to work involving planning, drafting, researching, and analyzing matters related to business operations, requiring the method of execution to be left largely to the discretion of the worker.

The laws and regulations stipulate the requirements for the introduction and continuation of these two types of discretionary labor systems.

## **B. Introduction Procedures**

- ◆ Discretionary Labor System for Professional Work: To introduce this system, the employer must stipulate certain matters, such as the work to be covered and the deemed working hours, in a labor-management agreement with a labor union organized by a majority of the workers (if one exists) or with a person representing a majority of the workers (if no such union exists), and submit the agreement to the Labor Standards Inspection Office.
- ◆ Discretionary Labor System for Planning Work: To introduce this system, the employer must establish a labor-management committee consisting of representatives of the employer and the workers. The committee must pass a resolution by a four-fifths majority on matters such as the work to be covered, the scope of covered workers, and the deemed working hours, and the employer must submit the resolution to the Labor Standards Inspection Office.

## **C. Effects and Points to Note**

When the discretionary labor system is applied, the employee is considered to have worked the deemed working hours determined by a labor-management agreement or a resolution of a labor-management committee, not the actual working hours. However, the application of the Labor Standards Law's restrictions such as breaks, overtime, holidays and late-night work is not exempted. If the deemed working hours exceed the statutory working hours (8 hours per day, 40 hours per week), overtime regulations apply, and overtime premiums must be paid. Additionally, if work is performed on a statutory holiday (one day per week) or late at night (10:00 p.m. to 5:00 a.m.), premium wages must also be paid for those hours.

## **2. Main Contents of the Revisions to Laws and Regulations**

### **A. Major Revisions Specific to the Discretionary Labor System for Professional Work**

#### **(1) Addition of Applicable Work**

Previously, the Discretionary Labor System for Professional Work applied to 19 specific types of work, such as “system consultant” and “securities analyst.” With the revision, “M&A advisory services” has been added, bringing the total to 20 types of work.

#### **(2) Addition of Labor-Management Agreement Items**

New items must be stipulated in the labor-management agreement, including:

- Obtaining the worker’s consent for the application of the system
- Ensuring no disadvantageous treatment for workers who do not consent
- Procedures for withdrawing consent
- Retaining records of consent and withdrawal of consent for each worker during the term of the agreement and for three years after its expiration

It is important to note that, previously, obtaining the consent of workers was not required to apply the Discretionary Labor System for Professional Work. However, due to the amendment, obtaining worker consent is now necessary.

### **B. Major Revisions Specific to the Discretionary Labor System for Planning Work**

#### **(1) Addition of Labor-Management Committee Resolutions**

New items must be resolved at the labor-management committee meeting, including:

- Procedures for withdrawing consent to the application of the system
- Explanation to the labor-management committee of any changes to the wage and evaluation system for covered workers
- Retaining records of consent and withdrawal of consent for each worker during the effective period of the resolution and for three years after its expiration

The amendment aligns the consent and withdrawal requirements for the Professional Work and Planning Work Systems.

#### **(2) Other Revisions**

Employers implementing the Discretionary Labor System for Planning Work must establish rules for the operation of the labor-management committee. The amendments have added new items that must be included in these rules. Additionally, employers

implementing the Discretionary Labor System for Planning Work are required to report the status of working hours and other relevant information to the Labor Standards Inspection Office on a periodic basis. The amendments have also changed the timing and frequency of these reports.

### **C. Main Revisions Common to the Professional Work and Planning Work Systems**

To implement a discretionary labor system, measures to ensure workers' health and welfare are required. The revision adds appropriate measures to be stipulated for both the Professional Work and the Planning Work Systems.

As described above, there are numerous considerations for companies applying the discretionary labor system based on the revisions. Please feel free to contact us if you have any questions or concerns, whether you are considering introducing a discretionary labor system or have already implemented one.

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