



Labor

Japanese Supreme Court Decision on Overtime Payments to Doctors

In a court case in which a doctor employed by a health care corporation sought extra pay for overtime and late-night work (collectively, "overtime"), the Supreme Court (Second Petty Bench) issued a decision on July 7, 2017 overruling the Tokyo High Court's original decision dismissing the claim for extra pay and remanded the case to the Tokyo High Court.

In the case, there was an agreement between the health care corporation and the doctor that the doctor's annual wage of JPY 17,000,000 included extra pay for overtime (except for certain limited allowances paid pursuant to overtime rules established by the health care corporation). However, it was not clear how much of the doctor's annual wage corresponded to pay for work done during regular working hours and how much corresponded to the extra pay mentioned above. The High Court decision affirmed the validity of the agreement by taking into account factors such as the characteristics of the work of a doctor, the fact that the doctor was able to control his work at his own discretion, and his considerably high salary.

In contrast, the decision did not give special consideration to the fact that the employee was a doctor in deciding the extra pay issue. The decision mentioned the purpose of Article 37 of the Labor Standards Act, which obliges employers to provide extra pay for overtime, and referred to judicial precedents that held that if a company intends to provide extra pay to an employee by including the extra pay in his or her basic wage or allowances, it is necessary to differentiate clearly the portion corresponding to pay for regular working hours and the portion corresponding to extra pay. The decision concluded that the payment of the annual wage to the doctor could not be considered the provision of extra pay for overtime because there was no clear differentiation in the agreement.

While the scope of the decision is debatable, since the decision held that it is not permissible even in the case of a doctor—a typical job involving high expertise and a high salary—to include extra pay for overtime in the basic wage without clear differentiation, there is the possibility of similar rulings in the future with respect to employees with other jobs involving high expertise and a high salary. In cases in which an employer enters into an agreement with its employee to include extra pay for overtime in his or her basic wage, the employer should carefully examine the validity of such agreement regardless of the employee's job type, and if such an agreement is already provided for in an existing contract, the employer should reconsider the agreement in light of the decision.

Finance

Amendments to the Cabinet Office Ordinance on the Disclosure of Corporate Affairs and Cabinet Office Ordinance on Restrictions on Securities Transactions

Cabinet Office Ordinance No. 40 "Cabinet Office Ordinance for Partial Amendment of the Cabinet Office Ordinance on the Disclosure of Corporate Affairs, etc. and the Cabinet Office Ordinance on Restrictions on Securities Transactions, etc." was promulgated and came into force on July 14, 2017 ("Amendment").

As a result of the Amendment, if a company allocates restricted stock, performance shares, or stock compensation (meaning a fixed number of shares that will be allocated as remuneration during a specified period.) to the company's or its affiliate's officers, among others, as remuneration after the effective date of the Amendment, then: (i) it is unnecessary to describe in the securities registration statement for such allocation the "matters to be specially mentioned in the case of a third-party allocation" (for instance, a description of the third party that will receive the allocation, the relationship between the company and the third party, the reason for selecting the third party, and the number of shares to be allocated); and (ii) Sale and Purchase Report Submissions and Claims for the Restitution of Profits from Short-term Sales and Purchases do not apply to such allocation.

As for (i) above, the 2016 amendment to the Cabinet Office Ordinance on the Disclosure of Corporate Affairs, etc. already made it unnecessary to describe "matters to be specially mentioned in the case of a third-party allocation" in the case of restricted stock being allocated to officers, among others, as remuneration. Now, however, the Amendment has expanded the scope of the exemption to cover the general case of directly allocating shares to such individuals as remuneration or salary.

As for (ii) above, the exemption of Submissions and Claims for Restitution reduces the burdens associated with the receipt by officers of a listed company, among others, of an allocation of the shares of the listed company as remuneration and eliminates the risk of an interpretation stating that short-term profits arising from the transfer of allocated shares must be returned to the listed company or other entities.

The Amendment will more easily enable companies to allocate shares to their officers and others as incentive compensation and will improve the flexibility of remuneration payments. The Amendment will therefore motivate foreign and Japanese companies to review their systems of remuneration to their officers, among other individuals, residing in Japan and to consider introducing new forms of remuneration such as restricted stock.

International Trade

Promulgation of Cabinet Orders for Enforcement of Amended Foreign Exchange and Foreign Trade Act

As discussed in the [April 2017](#) and [June 2017](#) issues of this newsletter, the Amended Foreign Exchange and Foreign Trade Act was enacted in May 2017. On July 14, 2017, the cabinet and ministerial orders and the public notices necessary for the enforcement of the Amended Act ("Cabinet Orders") were promulgated. First, the Cabinet Orders set October 1, 2017, as the effective date of the Amended Act. Second, in connection with "specified acquisitions" (certain acquisitions by a foreign investor of the shares of a Japanese unlisted company from another foreign investor) for which the Amended Act newly introduces prior notification requirements, the Amended Act delegates to a cabinet order the designation of the types of industries to which such prior notification requirements apply. Accordingly, the Cabinet Orders designate certain industries as subject to such requirements (including the weapons manufacturing industry, among others).

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