



Labor & Employment

Outline of Japanese Legislation for the Promotion of Work Style Reform Held Reasonable

On September 8, 2017, Japan's Labour Policy Council announced its opinion that the "Outline of Legislation for the Promotion of Work Style Reform" ("Outline") is reasonable, in response to the Ministry of Health, Labour and Welfare's ("MHLW") request for review.

Going forward, the MHLW will prepare draft legislation based on the Outline and will begin preparations for submitting the legislation at the next session of the Diet.

The Outline is based on the "Action Plan for the Realization of Work Style Reform" (discussed in the [April 2017](#) issue of this newsletter) but is more detailed than the action plan. Below are the Outline's key provisions.

- Limits on Overtime:** The Outline, as a general rule, limits overtime to 45 hours per month and 360 hours per year. Even in the case of special, temporary circumstances, overtime for any individual month must be less than 100 hours, the monthly overtime average over multiple months may not exceed 80 hours, and annual overtime may not exceed 720 hours.
- Expanding the Scope of the Discretionary Working System for Management-Related Work:** The Outline expands the scope of the Discretionary Working System for Management-Related Work, which is one of the systems under which employees are deemed to have worked the number of hours prescribed by the labor-management agreement regardless of the actual number of hours worked. The discretionary working system now applies to making development proposals that involve problem-solving and discretionary implementation of PDCA (plan-do-check-act) cycles.
- Establishing a Sophisticated Professional System:** The Outline includes a plan to establish a "Sophisticated Professional System," which would exempt employees engaged in certain specialized work from regulations on working hours while strengthening measures for the protection of employee health, such as obligating employers to provide such employees with at least 104 days of annual leave. For more details regarding the proposed system, please see the [March 2015](#), [May 2015](#), and [August 2015](#) issues of this newsletter.
- Securing Fair Working Conditions Regardless of Employment Type:** The Outline sets out rules intended to eliminate unreasonable differences between the working conditions of regular employees and those of part-time employees, fixed-term employees, and dispatched employees. The Outline also imposes a heavier burden on employers to explain working conditions to employees.

Although the Outline will not be submitted to the Diet as a bill and enacted until next year at the earliest, most of the Outline has been scheduled to come into force on April 1, 2019, which gives an indication of the timing of future legislation. Companies should pay close attention to the Outline, as it will have significant implications for labor management and will reveal future legislative trends.

Mergers & Acquisitions

Supreme Court Decision Restricts Minority Shareholders' Speculative Conduct with Respect to Cash-Out Demands

On August 30, 2017, the Supreme Court (second petty bench) held that, with respect to the shares of minority shareholders subject to a demand for the sale of shares (i.e., a cash-out demand), other minority shareholders acquiring such shares after public notice of the target company's approval of the

TOKYO OFFICE CONTACTS

[John C. Roebuck](#)

[Yuichiro Mori](#)

[Harukuni Ito](#)

[Yuki Yoshida](#)

[Kyosuke Katahira](#)

[Shinji Kadomatsu](#)

[Yusuke Hanada](#)

[Hiroyuki Fujimoto](#)

[Douglas J. Goldstein](#)

cash-out demand may not object to the purchase price and petition a court for a share price determination.

Cash-out demands were introduced in the 2014 amendments to the Companies Act. They allow the holder of at least 90 percent of the voting rights of a target company ("Special Controlling Shareholder") to demand that the other minority shareholders sell all of their shares to the Special Controlling Shareholder. Under this system, the Special Controlling Shareholder may, on a certain date thereafter, forcibly acquire the minority shareholders' shares if: (i) a Special Controlling Shareholder notifies the target company of certain specified matters, including the purchase price; and (ii) the target company approves the cash-out demand and notifies the shareholders of its approval either individually or by public notice.

Although minority shareholders that object to the purchase price may petition the court for a share price determination, until this decision it was unclear whether such a petition could also be made by a separate minority shareholder that acquired the shares after public notice of the target company's approval of a cash-out demand. Because the Supreme Court held that separate minority shareholders may not make such post-notice petitions, minority shareholders are now unable to speculate on the share price by first acquiring shares (after public notice) and then petitioning the court for a higher price in order to profit on the difference. The ruling will result in increased predictability and procedural stability for cash-out demand transactions.

Finance

Financial Services Agency Establishes FinTech Sandbox

On September 21, 2017, the Financial Services Agency ("FSA") established a "FinTech Sandbox" to eliminate concerns regarding potential compliance and supervisory risks arising from the implementation of an experimental FinTech innovation. As part of the FinTech Sandbox, a specially composed team within FSA provides continual assistance to FinTech companies introducing unprecedented FinTech experiments, including with respect to compliance or supervisory risks and by providing legal interpretations regarding the provision of FinTech services to end users. Upon receiving a business's application for assistance, the FSA will investigate and then decide whether to provide such assistance. The establishment of the FinTech Sandbox will make it easier for businesses to experiment with FinTech products and will help accelerate the pace of innovation in the FinTech sector.

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