

# **Rules of Employment (sample)**

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## Introduction

### 1. Purpose of the rules of employment

It is important for every business, regardless of its size or field of the business, to create a pleasant workplace where employees can work in a safe environment. Setting the rules of employment in advance that clearly stipulate terms and conditions of employment and the standards for treatment, including working hours, wages, rules on personnel and duties, is essential to not cause disputes between an employer and employees.

### 2. Contents of the rules of employment

There are matters that are absolutely required to be set forth (hereinafter referred to as the “mandatory matters”) in the rules of employment pursuant to Article 89 of the Labour Standards Act, Act No.49 of 1947 (hereinafter referred to as “Labour Standards Act”), and matters that are required to be set forth in the rules of employment in the case where a company provides their own rules for each workplace (hereinafter referred to as “the conditional mandatory matters”). There also are optional matters that can be set forth in the rules of employment at the employer's discretion.

- (1) The mandatory matters are as follows: Working hours
- (2) matters pertaining to the times at which work begins and at which work ends, rest periods, days off, leaves, and matters pertaining to shifts when workers are employed in two or more shifts; Wages
- (3) matters pertaining to the methods for determination, computation and payment of wages, the dates for closing accounts for wages and for payment of wages; and increases in wages; Retirement matters pertaining to retirement (including grounds for dismissal);

The conditional mandatory matters are as follows:

- (1) Severance pay matter pertaining to the range of workers covered, methods for determination, computation, and payment of severance pay, and the dates for payment of severance pay;
- (2) Special wages and/or the amount of minimum wage matters pertaining to special wages and the like (but excluding severance pay) and minimum wage amounts;
- (3) Costs to employees matters pertaining to having workers bear the cost of food, supplies for work and other expenses;
- (4) Safety and health matters pertaining to safety and health;
- (5) Vocational training matters pertaining to vocational training;
- (6) Accident compensation and support for injury or illness outside the course of employment matters pertaining to accident compensation and support for injury or illness outside the course of employment;
- (7) Commendations and sanctions matters pertaining to commendations and sanctions, and to their kind and degree;
- (8) Miscellaneous matters pertaining to the rules applicable to all workers at a workplace;

The rules of employment shall not infringe upon any laws and regulations or the collective agreement with a union applicable to the workplace concerned. The directors of the relevant prefectural Labour Standards Inspection Offices may order the revision of the rules of employment which conflict with laws and regulations or with the collective agreement with the union (Article 92 of the Labour Standards Act).

### **3. Procedures for drawing up and changing the rules of employment**

The Labour Standards Act applies to every business where one or more workers are employed. However, Article 89 of the Labour Standards Act stipulates that an employer who continuously employs 10 or more workers shall draw up the rules of employment and submit the rules of employment to the director of the prefectural Labour Standards Inspection Office that has jurisdiction over the company. In the event that the employer alters any item, the same shall apply. The rules of employment must be drawn up for each workplace not for each company. For example, in the case where a company owns two or more sales offices or retail stores, the number of workers at each office or store must be taken into consideration instead of the total number of workers for the whole company. A company has the obligation to draw up the rules of employment for each workplace where ten workers or more are employed continuously.

Article 90 of the Labour Standards Act stipulates that, when submitting the rules of employment to the director of the prefectural Labour Standards Inspection Office that has jurisdiction over the company when the rules of employment are drawn up or changed, the employer shall attach a document (a letter of opinion) which states the opinions of either a labour union organized by a majority of the workers at the workplace concerned (in the case where such labour union exists), or a person representing a majority of the workers (in the case where such labour union does not exist). This document must be signed by the person who represents a majority of the workers or have his/her name printed and his/her seal put on it. In such case, the person who represents a majority of the workers must meet both of the following requirements: ① a person who is not in a supervisory or management position as set out in paragraph 2 of Article 41 of the Labour Standards Act; ② a person who is selected according to a procedure, such as a vote or a show of hands, after informing the workers that they are selecting the person who will be heard by an employer (as a representative of the workers) (paragraph 2 of Article 6 of the Ordinance for Enforcement of the Labour Standards Act).

In addition, an employer is required to submit a different set of rules of employment for every workplace. A company who owns a number of workplaces, such as sales offices and/or retail stores, can submit such rules collectively through the director of the Labour Standards Inspection Office who has the jurisdiction over the location of the main office, provided that the contents of the rules of employment are identical to all the workplaces of the business.

Electronic submission of the rules of employment is also available. For details, please confirm here (<https://shinsei.e-gov.go.jp/search/servlet/Procedure?CLASSNAME=GTAMSTDETAIL&id=4950000009642&fromGTAEGOVMSTDETAIL=true>). When drawing up or changing the rules of employment, an employer must comply with the aforementioned procedures while thoroughly investigating the contents of the rules of employment. In particular, when changing the rules in a way that is disadvantageous to the workers, an employer needs to prudently examine whether the contents of and grounds for the changes are reasonable while carefully considering the opinions of the representative of the workers.

#### **4. Dissemination of the rules of employment**

An employer must disseminate the rules of employment drawn up (paragraph 1 of Article 106 of the Labour Standards Act) in a number of ways, such as by distributing copies to each worker, posting and/or storing them at a conspicuous location for workers to be able to access them at all times, and/or making them available through digital media for workers to check them at any time.

It is understood that the rules of employment will not come into effect by only drawing them up and/or hearing the opinions of a representative of the workers. The time when the rules of employment come into effect should be from the point when they are made known to the workers by some means and later, and if the effective date of the rules is set out in the rules of employment, on that date, and if such date is not set out in the rules, it should be the day the rules of employment are made known to the workers on principle.

#### **5. On the utilization of the model rules of employment**

This model of rules of employment (hereinafter referred to as “these rules”) is presented as an example of the rules of employment with guidelines in accordance with laws, such as the Labour Standards Act which is in effect as of March 2013. The contents of the rules of employment must be realistic, taking into consideration the actual conditions at each workplace. Therefore, the conditions, such as working hours or wages at each workplace should be thoroughly reviewed when drawing up the actual rules of employment.

After page 6 of these rules, there are some articles with a blank space underlined, for example, “\_\_\_\_\_ Corporation” under paragraph 1 of Article 1 and “within \_\_\_ weeks” under paragraph 1 of Article 2 (in this example of the rules). Fill in the blanks with the actual name of the company or a specific number according to the actual conditions at each workplace in compliance with the laws. There are some of these example articles partly underlined as well. For example, in the case of adopting the monthly variable work schedule system, such as two days off every other week, the example paragraph 2 of Article 16, the underlined blanks are already filled out as read “7 hours 15 minutes”, or under paragraph 2 of Article 37, “without pay/to pay the regular wage”. These are examples to explain the interpretation of the rules for convenience. The actual numbers or text should be entered according to the actual conditions at each workplace in compliance with the laws.

These rules are designed mainly to be applied to regular employees. In the case where part time or temporary workers are employed, an employer should draw up a different set of rules of employment for such employees. In such event, the employer is required to review each article in the rules whether such article is applicable to part time or temporary workers.

When an employer intends to prepare or amend the rules of employment with regard to part time workers, the employer must endeavour to hear opinions of a person who is found to represent a majority of the part time workers employed at the workplace pursuant to Article 7 of the Act on Improvement of Employment Management for part time workers: Act No.76 of 1993 (hereinafter referred to as the “Part Time Labour Act”).

# Table of Contents

<b>Chapter 1</b>	<b>General Provisions</b> -----	<b>8</b>
Article 1	Purposes	
Article 2	Scope of Application	
Article 3	Compliance with the rules	
<b>Chapter 2</b>	<b>Hiring and Transfers</b> -----	<b>10</b>
Article 4	Procedures for Hiring	
Article 5	Documents to be submitted at the time of hiring	
Article 6	Probationary Employment Period	
Article 7	Clear Declaration of Terms and Conditions of Employment	
Article 8	Personnel Transfer	
Article 9	Leave of Absence	
<b>Chapter 3</b>	<b>Regulations in service</b> -----	<b>14</b>
Article 10	Regulations in service	
Article 11	Compliance Provisions	
Article 12	Prohibition of Power Harassment in Workplace	
Article 13	Prohibition of Sexual Harassment	
Article 14	Prohibition of Harassment due to Pregnancy, Childbirth, Child Care Leave, Family Care Leave, etc.	
Article 15	Prohibition of any Other Forms of Harassment.	
Article 16	Protection of Personal Information	
Article 17	Recording the start and end times of work	
Article 18	Late Arrival, Leaving Early and Absence	
<b>Chapter 4</b>	<b>Working hours, Rest Periods and Days Off</b> -----	<b>20</b>
[Example 1]	Example Provisions in the case where the system of two days off per week is adopted	
Article 19	Working Hours and Rest Periods	
Article 20	Days Off	
[Example 2]	Example Provisions in the case of the monthly variable work schedule system (in the case where the system of two days off every other week is adopted)	
Article 19	Working Hours and Rest Periods	
Article 20	Days Off	
[Example 3]	<b>Example of provisions for the annual variable work schedule system</b>	
Article 19	Working Hours and Rest Periods	
Article 20	Days Off	
Article 21	Overtime and Working on Days Off	
<b>Chapter 5</b>	<b>Leaves</b> -----	<b>35</b>
Article 22	Annual Paid Leave	
Article 23	Granting Annual Paid Leave by the hour	
Article 24	Maternity Leave	
Article 25	Measures to maintain mothers' health	
Article 26	Hours for Child Care and Menstrual Leave	
Article 27	Care Leave for Children and Other Family Members	
Article 28	Congratulatory and Condolence Leave	
Article 29	Sick Leave	
Article 30	Leave for Jury Duty	

<b>Chapter 6</b>	<b>Wages-----</b>	<b>42</b>
Article 31	Components of Wages	
Article 32	Base Pay	
Article 33	Family Allowance	
Article 34	Commuting Allowance	
Article 35	Executive Allowance	
Article 36	Skills and Qualification Allowance	
Article 37	Attendance Allowance	
Article 38	Premium Pay	
Article 39	Calculation of Wages in the annual variable work schedule system	
Article 40	Time Off in lieu of Overtime Pay	
Article 41	Wages during Leaves	
Article 42	Wages during Involuntary Leave	
Article 43	Policy for different types of Absences	
Article 44	Pay Period and Payday	
Article 45	Payment and Deductions of Wages	
Article 46	Emergency Payment of Wages	
Article 47	Wage Increase	
Article 48	Bonus	
<b>Chapter 7</b>	<b>Fixed Retirement Age, Retirement and Dismissal-----</b>	<b>59</b>
[Example1]	The case where the fixed retirement age is established at age 65	
Article 49	Fixed Retirement Age	
[Example 2]	The case where the fixed retirement age is established at age 60, and a company rehires a retiree who wishes to continue to work	
Article 49	Fixed Retirement Age	
Article 50	Retirement	
Article 51	Dismissal	
<b>Chapter 8</b>	<b>Severance Pay-----</b>	<b>65</b>
Article 52	Terms for Severance Pay	
Article 53	The Amount of Severance Pay	
Article 54	Method and Time of Payment for Severance Pay	
<b>Chapter 9</b>	<b>Safety, Health and Accident Compensation-----</b>	<b>67</b>
Article 55	Compliance Provisions	
Article 56	Health Examinations	
Article 57	Stress check	
Article 58	Policy for Personal Information concerning Health Management	
Article 59	Education on Safety and Health	
Article 60	Accident Compensation	
<b>Chapter 10</b>	<b>Vocational Training-----</b>	<b>72</b>
Article 61	Educational Training	
<b>Chapter 11</b>	<b>Commendations and Sanctions-----</b>	<b>73</b>
Article 62	Presentation of Commendations	
Article 63	Types of Disciplinary Actions	
Article 64	Grounds for Disciplinary Actions	

**Chapter 12 Switching to Indefinite Term Employment Contract-----76**  
Article 65 Switching to Indefinite Term Employment Contract

**Chapter 13 Protection of Whistleblowers-----79**  
Article 66 Protection of Whistleblowers

**Chapter 14 Side Job and Subsidiary Business-----80**  
Article 67 Side Job and Subsidiary Business

## Chapter 1 General Provisions

General Provisions generally stipulate purposes for drawing up the rules of employment and the scope of the application of the rules.

### **(Purposes)**

**Article 1** The rules of employment (hereinafter referred to as “the rules of employment”) provide stipulations pertaining to employment for the workers at \_\_\_\_\_ Corporation conforming to Article 89 of the Labour Standards Act (hereinafter referred to as “Labour Standards Act”).

2. The Labour Standards Act and other labour laws apply to all matters pertaining to employment including what is stipulated in these rules.

### **[Article 1 Purposes]**

1. This example of the rules of employment (hereinafter referred to as “this example of the rules”) provides stipulations pertaining to the employment of workers. However, the legal standards which precede the rules of employment are stipulated in the relevant laws, such as the Labour Standards Act.
2. Not all matters pertaining to the employment of workers are stipulated in this example of the rules. The matters that are not set forth in this example of the rules are governed by the relevant laws, such as the Labour Standards Act.
3. A labour contract that stipulates terms and conditions of employment that do not meet the standards established by the rules of employment shall be invalid with regard to such portions. In such case, the portions which have become invalid shall be in accordance with the standards established by the rules of employment (Article 12 of the Labour Contract Act: Law No. 128 of 2007. Hereinafter referred to as the “Contract Act”). Furthermore, the rules of employment shall not infringe upon any laws and regulations or the collective agreement with a union applicable to the workplace concerned (Article 92 of the Labour Standards Act).

### **(Scope of application)**

**Article 2** These rules of employment shall apply to all workers employed by \_\_\_\_\_ Corporation.

2. The matters pertaining to employment of part time workers are stipulated in a different set of rules.
3. The matters that are not stipulated in the different set of rules set forth in the preceding provision, are governed by these rules of employment.

### **[Article 2 Scope of application]**

1. An employer is required to draw up the rules of employment to be applicable to all workers. However, the rules of employment don't have to be identical for all workers. Even at the same location of a business, an employer may establish special provisions concerning a specific matter or provide a different set of rules of employment for part time workers whose terms and conditions of employment are different from those of regular employees. This example of the rules of employment is designed to have a different set of the rules of employment concerning the employment of part time workers. The examples of the rules of employment for part time workers are found at each location in [PDF format](#) and [WORD format](#) although the Japanese version only).

(The URL of PDF version: <http://www.mhlw.go.jp/topics/2007/06/dl/tp0605-1k.pdf>)

(The URL of WORD version: <http://www.mhlw.go.jp/file/06-Seisakujouhou-11650000-Shokugyouanteikyokuhakenyukiroudoutaisakubu/0000046206.doc>)

In the case where some or all parts of the rules are not applicable to part time workers, such conditions must be clearly set forth in the rules of employment, then the employer must



establish the provisions or prepare another set of rules of employment that are applicable to part time workers.

**(Compliance with the rules)**

**Article 3** A company has an obligation to employ workers under the terms and conditions of employment set out in these rules of employment. The workers must comply with the rules of employment.

**[Article 3 Compliance with the rules]**

Article 2 of the Labour Standards Act stipulates that workers and an employer shall abide by the rules of employment and other laws and regulations and discharge their respective duties faithfully.

## Chapter 2 Hiring and Transfers

In this chapter on hiring and transfer, matters with regard to the procedures in hiring, probationary periods, clear notification of terms and conditions of employment, personnel transfers and leave of absence are covered.

### **(Procedures for Hiring)**

**Article 4** A company shall conduct screening tests for the applicants and hire those who pass such tests.

### **[Article 4 Procedures for Hiring]**

1. A company must provide equal opportunities for all persons regardless of gender when hiring (Article 5 of the Act of Ensuring Equal Opportunities for and Treatment between Men and Women in Employment: Act No.113 of 1972. hereinafter referred to as “the Equality Act”).
2. When hiring a employee, it is prohibited as indirect discrimination to have requirements pertaining to their height, weight and strength, or a requirement that an employee agrees to transfers that require him/her to move his/her residence for a regular position without reasonable grounds (Article 7 of the Equality Act).

### **(Documents to be submitted at the time of hiring)**

**Article 5** A person who is hired as an employee is required to submit the following documents within \_\_\_\_ weeks from the day he/she is hired.

- ① Resumé;
- ② Certificate of items stated in the resident register;
- ③ Copy of Driver's Licence (for those who have a driver's licence);
- ④ Copy of Certificates of qualifications (for those who have certificates of qualifications);
- ⑤ Other documents specified by the company;

2. In the event that any changes occur in any documents set out in the preceding clause after submission, the employee must immediately notify of such changes to the company in written form;

### **[Article 5 Documents to be submitted at the time of hiring]**

1. It is not appropriate for a company to have an employee submit either a copy or an abstract of their family register or a copy of his/her resident register in order to verify his/her age or current address. It is appropriate to request the certificate of items stated in the resident register. In additions, an employer should clarify the purposes for the submission of the documents to the employee.

**(Probationary Employment Period)**

**Article 6** A probationary employment period of \_\_\_\_\_ months from the day of being hired shall apply to a newly hired employee.

2. The probationary period prescribed in the preceding paragraph may be shortened or eliminated in the case where the company approves such an action.

3. During the probationary period, a company may dismiss those who are assessed as unfit for employment. For those who are employed more than 14 days from the commencement of their employment, the company must follow the procedures pursuant to paragraph 2 of Article 49.

4. The probationary period shall be added to the period of service.

**[Article 6 Probationary Employment Period]**

1. There are no stipulations in the Labour Standards Act that regulate the length of the probationary period. However, if applying a probationary period, it is not desirable to have an excessively lengthy probationary period since it will destabilize the positions of employees.
2. An employer may immediately dismiss an employee who is within the probationary period provided that it is within the first 14 days of his/her employment. However, in the case where an employer dismisses an employee who is within a probationary period but after 14 days from the commencement of his/her employment, on principle, the employer must provide at least a 30-day advance notice or pay a dismissal allowance in lieu of such notice an amount equivalent to the average wage for a period of no less than 30 days (Article 20 and 21 of the Labour Standards Act).

**(Clear Declaration of Terms and Conditions of Employment)**

**Article 7** In the event of hiring an employee, a company is required to clearly declare the terms and conditions of employment in writing by issuing a notice with regard to the terms and conditions of employment which states matters, such as wages, the location of employment, regulations in service, working hours, days off, in conjunction with the rules of employment.

**[Article 7 Clear Declaration of Terms and Conditions of Employment]**

1. An employer is required to clearly declare the terms and conditions of employment, such as wages, working hours and other conditions when hiring an employee. In such event, issuing a document especially for the following items from (1) to (6) (exception of the item with regard to wage increase) is mandatory (Article 15 of the Labour Standards Act, Article 5 of the Ordinance for Enforcement of the Labour Standards Act).

- (1) matters concerning the period of the labour contract;
- (2) matters concerning the standards in the case of renewal of a fixed term employment contract (apply only to the case of renewal of a fixed term employment contract) (came into effect on April 1, 2013);
- (3) matters concerning the location of employment and regulations in service;
- (4) matters concerning the start and end times, occurrence of overtime, rest periods, days off, leaves and shift change if applicable.
- (5) matters concerning methods of determination, calculation and payment of wages (exception of severance pay and other special wages), the pay period, payday and wage increase;
- (6) matters concerning retirement (including grounds for dismissal)

Furthermore, when hiring an employee, an employer is required to clearly declare the matters concerning part time workers, such as wage increase, severance pay, occurrence of bonuses, in writing (paragraph 1 of Article 6 of the Part Time Labour Act).

2. In addition, if there is a job offer, it may be interpreted that a labor contract has been established. In case a labor contract is established by a job offer, it is necessary to explicitly indicate the working conditions in writing to the prospective employee when offering a job.

#### **(Personnel Transfer)**

**Article 8** A company may order an employee to change his/her regulations in service and/or locations of his/her employment if it is necessary for the business operation.

2. A company may loan an employee to a different company related to the company who originally hired him/her while his/her employment remains under the original company, when necessary.
3. In the case of the preceding paragraph, an employee is not permitted to reject the order without rightful reasons.

#### **[Article 8 Personnel Transfer]**

1. After an employee is hired, a company can change the location of his/her workplace or his/her regulations in service in the ordinary course of business, unless there is a special agreement between the company and the employee that terms and conditions of employment, such as the location of employment, shall not change. However, a conflict may occur if an employer orders a transfer that is against the will of the employee. Therefore, it is desirable to clearly state the terms and conditions of employment in the rules of employment as in this example of the rules. However, needless to say, it is important to gain the agreement from an employee.

In making a change to an employee's workplace, a company must give consideration for the employee's situation with regard to childcare or family care (Article 26 of Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (Act No. 76 of 1991, hereinafter referred to as the "Child Care and Family Care Leave Act."))

2. If an employer foresees loaning an employee to another company, stipulations concerning such a loan are required.

**(Leave of Absence)**

**Article 9** If an employee falls under any of the following categories, he/she shall be granted a leave of absence for the specified duration.

- ① In the case where an employee has been absent due to injury or illness outside the course of duties for more than \_\_\_\_\_ month(s), and he/she requires further treatment and cannot work. (within \_\_\_\_\_ year(s))
  - ② In addition to the case of the preceding provision, where there are special circumstances in which allowing a leave of absence is considered to be appropriate. (the period required: \_\_\_\_\_)
2. In the case where the reasons for leave of absence are resolved during such leave of absence, as a basic rule, the employee shall return to work in the position he/she held before taking the leave. However, in the case where it is difficult or inappropriate for the employee to return to the position he/she held before taking the leave, the company may assign him/her to a different position.
3. In the event that an employee who is on leave of absence pursuant to the first paragraph of 1, fails to recover from the injury or illness and still finds it difficult to return to work after spending the full term of the leave of absence, he/she shall retire immediately after the full term of leave of absence.

**[Article 9 Leave of Absence]**

1. Leave of absence means a special treatment that duties of employment is exempted for a certain period of time while the employee's position is on hold in the case where an employer cannot expect him/her to work for a relatively long term mainly due to the employee's personal reasons, such as illnesses outside the course of duties. The "special circumstances" defined in paragraph 1-2 of this article may be the case where an employee takes office or is indicted on a criminal offence.
2. In the case where the reasons for leave of absence are resolved during such leave, the leave will be discontinued and, as a course of event, the employee shall return to his/her work.
3. There are no stipulations in the Labour Standards Act with regard to definitions of leave of absence, restrictions on the duration of leave or matters concerning returning to work.

## Chapter 3 Regulations in service

### **(Regulations in service)**

**Article 10** Employees must be aware of their responsibilities for their work, fulfil their duties, obey the company's directions and orders, endeavor to improve their efficiency and to maintain the order of the workplace.

### **[Article 11 Compliance Provisions]**

Employees must comply with the following matters:

- 1 Employees must not use the company's facilities or articles for purposes outside the course of their employment without permission.
- 2 Employees must not engage in any unlawful activities, such as pursuing their own profit/soliciting in the relevant field of their duties, borrowing money or goods or receiving gifts from others in an unjust manner.
- 3 Employees must devote themselves to their work, and must not leave their workplace without good reason.
- 4 Employees must not engage in any activities that damage the company's reputation and trust.
- 5 Employees must not disclose confidential information concerning the companies or clients they became acquainted with in the course of duties during their employment or after their retirement.
- 6 Employees must not work under the influence of alcohol.
- 7 Employees must not engage in any activities that are inappropriate as employees.

### **[Article 10 Regulations in service]**

### **[Article 11 Compliance Provisions]**

The articles concerning regulations in service and compliance provisions are not necessarily required items to be set out in the rules of employment. However, setting out such provisions plays an important role in maintaining order at the workplace. Therefore, matters that a company requires employees to comply with may be stipulated in the rules of employment.

**(Prohibition of Power Harassment in Workplace)**

**Article 12** Employees are prohibited from any activities which take advantage of their positions of authority with regard to their employment or relationships in the work environment, which go beyond the reasonable scope of duties, that cause other employees mental or physical suffering or that are damaging to the work environment.

**[Article 12 Prohibition of Power Harassment in Workplace]**

Employers are expected to engage in prevention and resolution of power harassment issues at a workplace which has recently become a social problem. It is important that the executive members of an organization clearly show their proactive attitude towards elimination of power harassment (“Recommendations for Prevention and Resolution of Workplace Power Harassment”).

**[References]**

In March 2012, the aforementioned recommendations were compiled by the “Round-table Conference regarding Workplace Bullying and Harassment” which was held by the Ministry of Health, Labour and Welfare. In this compilation of recommendations, the concept of workplace power harassment is defined as follows:

“Any act by a person using his/her authority in the workplace, such as job position or human relationship with a co-worker, beyond the appropriate scope of business conduct, which causes such co-worker mental distress or physical pain or degradation of the working environment.”

The words, “power harassment” are used to describe bullying or harassment from the superior to the subordinate in many cases. However, there are cases where the act is conducted between employees in different levels of seniority or even from the subordinate to the superior and these cases must also be considered power harassment. Therefore, in the above definition of power harassment, “superiority in the workplace” is not limited to “job position” but other factors of the superiority, such as in human relationship or expertise.

Depending on the individual, a person may feel dissatisfaction when given the instructions, advice or guidance necessary in the ordinary course of business. In such cases where these actions are conducted within the scope of appropriate business practice, they should not fall under the category of power harassment. Furthermore, in the aforementioned recommendations, the acts of power harassment are categorized as follows (please note that it is only a representative and not comprehensive list):

- ① assault or injury (physical abuse);
- ② threats, defamation, insult or slander (mental abuse);
- ③ isolation, ostracization or neglect (cutting off from human relationships);
- ④ forcing an employee to perform certain tasks, which are clearly unnecessary for the business or impossible to be performed or interrupting their normal duties (excessive work demands);
- ⑤ ordering an employee to perform menial tasks which are far below the employee's ability or experience and do not provide any work at all for the employee relevant to the business (insufficient work demands)
- ⑥ Excessively inquiring into the private affairs of an employee (invasion of privacy)

① The acts in this category may be relevant to the business, however it is not within “the scope of appropriate business conduct”.

② and ③ the acts in these categories should not normally be considered necessary for business conduct. Therefore, they are, on principle, considered beyond “the scope of appropriate business conduct”.

④ to ⑤ The acts in these categories may not be easy to clearly judge as to whether they are appropriate business guidance. With regard to those acts, judging what part is “beyond the scope of appropriate business conduct” depends on the type of the business and their business culture. With respect to more concrete judgements, some aspects of the acts may also depend on the circumstances where the acts were conducted and whether the acts were ongoing. Therefore, it is desirable to take measures to

clearly define the scope of appropriate business conduct by establishing standards in such recognition within each company and workplace.

**(Prohibition of Sexual Harassment)**

**Article 13** Employees are prohibited from any activities that cause disadvantage or discomfort to other employees or that are damaging to the work environment by way of speech or behaviour of a sexual nature.

**[Article 13 Prohibition of Sexual Harassment]**

It is stipulated that an employer shall take necessary measures in managing employment to prevent sexual harassment at a workplace (Article 11 of the Equality Act).

**(Prohibition of Harassment due to Pregnancy, Childbirth, Child Care Leave, Family Care Leave, etc.)**

**Article 14** Employees are prohibited from any activities that are damaging to the work environment of other employees by way of speech or behaviour related to pregnancy, childbirth, etc., or use of systems or measures related to pregnancy, childbirth, child care, family care, etc.

**[Article 14 Prohibition of Harassment due to Pregnancy, Childbirth, Child Care Leave, Family Care Leave, etc.]**

It is stipulated that an employer shall take necessary measures in managing employment to prevent harassment due to pregnancy, childbirth, child care leave, family care leave, etc. at a workplace (Article 11-2 of the Equality Act, Article 25 of Child Care and Family Care Leave Act.).

**(Prohibition of any Other Forms of Harassment)**

**Article 15** In addition to what are provided for from Article 12 to the preceding paragraph, employees are prohibited from any other forms of harassment at the workplace that are damaging to the work environment of other employees such as by way of speech or behaviour related to sexual orientation or gender identification.

**[Article 15 Prohibition of any Other Forms of Harassment]**

"Sexual orientation" refers to the gender or genders that a person is romantically or sexually attracted to, and "gender identification" refers to a personal conception of oneself as male or female. It is important to deepen employees' understanding of sexual orientation and gender identification to prevent discriminatory language and behavior and harassment.

**(Protection of Personal Information)**

**Article 15** An employee shall pay careful attention to the management of the information concerning the company and clients, etc., and must not unlawfully obtain information that is irrelevant to their duties.  
2. In the event that an employee is transferred to a different workplace or position or he/she retires, he/she must immediately return data or documents which he/she was handling, that contain information concerning the company and clients.

**[Article 16 Protection of Personal Information]**

In April 2005, since the Act on the Protection of Personal Information (Act No.57 of 2003) was fully implemented, an employer is obligated to take measures with regard to the rightful



management of personal information.

**(Recording the start and end times of work)**

Article 17 Employees must record the daily times of starting and ending of their work by stamping time cards.

**[Article 17 Recording the start and end times of work]**

With regard to managing working hours, the “Guidelines for measures employers should take to adequately ascertain employees' working hours” (issued on January 20, 2017) prescribes the specifics of measures an employer should take. An employer shall adequately manage working hours by appropriately monitoring such times while complying with the aforementioned Guidelines.

**(References)**

“Guidelines for measures employers should take to adequately ascertain employees' working hours” (excerpt):

1. Purport

There are stipulations pertaining to working hours, days off and late night shifts in the Labor Standards Law, which oblige employers to properly manage working hours by means such as accurately understanding working hours.

2. Interpretation of Working Hours

"Working hours" is defined as the hours when employees are directed and managed by their employer, including those hours when such employees engage in work pursuant to the express or implied instructions of their employer. Therefore, hours in the following examples (1) to (3) shall be treated as working hours.

(1) Any time that employees spend in the workplace at the instruction of their employer preparing for the assigned work (such as changing into the clothes which employees are obliged to wear) or engaging in work-related cleanup activities after work (such as cleanup);

(2) Any time when employees are not permitted to leave work and are "on call" and obligated to engage in work immediately if so instructed by their employer (so-called “waiting time”); and

(3) Any time spent participating in mandatory work-related training or education or learning subjects deemed necessary for work by the employer.

3. Recording and verifying the start and end times of work

An employer shall record and verify the employees' start and end times for each work day in order to adequately manage employees' working hours.

4. General methods to record and verify the start and end times of work

An employer shall adopt one of the following methods on principle to record and verify the start and end times of work:

(1) An employer shall record and verify by eyewitness.

(2) Record and verify using objective recording apparatus, such as time cards or IC cards.

5. Measures for recording and verifying the start and end times of work in the case where a method of self-reporting is adopted.

In the case where the prescribed methods in the preceding paragraph 3 are not applicable and the self-reporting method is the only option, an employer shall take measures as follows:

(1) Employers must explain to the employees subject to the self-reporting method the necessity for accurately recording and properly reporting their actual working hours in accordance with the Guidelines and other matters.

(2) Employers must explain to personnel who are responsible for managing employees' working hours ("manager(s)") the measures to be taken under the Guidelines, including the proper operation of the self-reporting method.

- (3) Employers must, as necessary, conduct a survey on the self-reporting method in order to confirm that the self-reported working hours correspond to the actual working hours, and correct the working hours as necessary.

In particular, if the employer has data that shows the time spent by employees in the workplace (such as a record of each employee's entrance and exit or computer usage time), and if that data shows a major discrepancy between the self-reported working hours and the employee's actual time spent in the workplace, the employer must conduct a survey on the actual working hours and correct the working hours as necessary.

- (4) If employees are required to explain the reasons for any time spent in the workplace beyond their self-reported working hours, employers must confirm that such explanation is properly made. Even when the employee explains that he/she spent the time in question resting or engaging in voluntary training, education, learning or the like, such time must be treated as working hours if it is found that such time was actually spent performing work as instructed by the employer or otherwise being directed or managed by the employer.

- (5) The self-reporting system is effective on the premise of proper reporting by employees. Therefore, employers must refrain from taking measures to prevent employees from properly reporting their own actual working hours, such as setting an upper limit on the hours of overtime work that the employees can report and prohibiting them from reporting working hours beyond such upper limit.

In addition, an employer shall take measures to verify whether any business practices (with regard to working hours) to reduce the amount of hours of overtime, such as memorandums or fixed overtime allowance, are factors that impede accurate reporting of working hours. If such case is verified, an employer shall take measures to improve the situation.

Furthermore, it is naturally expected to observe the number of hours that can be extended from the statutory working hours stipulated by the Labor Standards Act and the number of hours that can be extended in accordance with an agreement under Article 36 of the Labor Standards Act on overtime work (so-called 36 agreements), the employer must confirm that the time records have not been customarily prepared by personnel who are responsible for managing employees' working hours or employees to appear as if the employees were not working more than the maximum hours permitted, when, in fact, they were.

6. Proper preparation of a salary payment record

Employers are required to input certain information in salary payment records pursuant to Article 108 of the Labor Standards Act ("LSA") and Article 54 of the Ordinance for Enforcement of the LSA. Such information includes, among other things, each employee's working days and hours as well as his/her hours of holiday work, overtime work and late-night work.

If the employer fails to input the requisite information in the salary payment record or intentionally inputs false information, a fine of up to JPY 300,000 will be imposed on the employer pursuant to Article 120 of the LSA.

7. Storing documents concerning the record of working hours.

An employer shall keep not only roster of employees and salary payment records, but the documents concerning the record of working hours such as attendance records and timecards for 3 years pursuant to Article 109 of the Labour Standards Act.

**(Late Arrival, Leaving Early and Absence)**

**Article 18** An employee must notify \_\_\_\_\_ in advance and obtain approval when he/she will be arriving late, leaving early, absent for a full day, absent for a part day for personal reasons during the working hours. However, in the case where he/she could not notify prior to such event for unforeseeable reasons, he/she must notify immediately after the event and obtain approval.

2. In the case of the preceding article, on principle, the wage corresponding to the hours of absence will be deducted pursuant to Article 43.

3. An employee must submit a physician's certificate in the case where he/she will be absent for \_\_\_\_\_ consecutive day(s) or more due to injury or illness.

**[Article 18 Late Arrival, Leaving Early and Absence]**

1. In this example of the rules of employment, it is stipulated that an employee is required to notify and obtain approval when he/she is arriving late, leaving early or absent. However, stipulations concerning such procedures are to be determined by each business. An employer should establish clear and concise clauses in respect to such procedures since they are important to maintain order in the company.
2. The number of days of absence that requires submission of a physician's certificate is to be determined by each business.

## Chapter 4 Working hours, Rest Periods and Days Off

1. Matters concerning working hours, rest periods and days off are the mandatory matters for the rules of employment.
2. paragraph 1 of Article 32 of the Labour Standards Act stipulates that the maximum working hours per week shall be 40 hours. However, under a special exemption, an employer of businesses with fewer than 10 employees in the following fields (hereinafter referred to as “businesses applicable to special exemption “) are permitted to have their employees work a maximum of 44 hours per week. Such fields are: commerce and trade (The Labour Standards Act Appended Table 1-8), screen motion pictures and live theater (except motion picture production companies) (Table 1-10), public health (Table 1-13), entertainment (Table 1-14) (Article 40 of the Labour Standards Act, Article 25-2 of the Ordinance for Enforcement of the Labour Standards Act).  
In addition, paragraph 2 of Article 32 stipulates that the maximum working hours per day shall be 8 hours.
3. With regard to rest periods, an employer must provide a minimum 45 minute break in the case where the working hours per day exceed 6 hours, and 1 hour break in the case where they exceed 8 working hours per day (Article 34 of the Labour Standards Act).
4. With regard to days off, an employer must provide a minimum of one day per week, or 4 days or more over the period of 4 weeks (Article 35 of the Labour Standards Act).
5. In order to provide terms and conditions of employment in accordance with the preceding paragraphs from 2 to 4, a different arrangement of schedules can be implemented including the following examples: ①2 days off per week; ②1 day off per week with reduced regular working hours each day; ③a variable work schedule (monthly or annually). An employer should draw up the rules of employment adjusted to actual conditions at each workplace, using the following example of rules as a reference.

### **[Example 1] Example provisions in the case where the system of two days off per week is adopted**

The following is the example provisions in the case where the system of two days off per week with 8 working hours per day is adopted.

**(Working Hours and Rest Periods)**

**Article 19** The total working hours shall be 40 hours per week and 8 hours per day.

2. The start and end times of work and rest periods shall be as follows. However, an employer is entitled to shift such times to an earlier or later time for certain business circumstances or other unavoidable events. In such case, an employer shall notify employees of the change a minimum of one day ahead of time.

1 Regular work schedule

Start and End times of work

Duration of Break

Start: \_\_\_:\_\_\_ am

From \_\_\_:\_\_\_ to \_\_\_:\_\_\_

End: \_\_\_:\_\_\_ pm

2 Shift work schedule

(i) The first shift (day shift)

Start and End times of work

Duration of Break

Start: \_\_\_:\_\_\_ am

From \_\_\_:\_\_\_ to \_\_\_:\_\_\_

End: \_\_\_:\_\_\_ pm

(ii) The second shift (afternoon shift)

Start and End times of work	Duration of Break
Start: ___:___ am	From ___:___ to ___:___
End: ___:___ pm	

(iii) The third shift (night shift)

Start and End times of work

Duration of Break

Start: \_\_\_:\_\_\_ am

From \_\_\_:\_\_\_ to \_\_\_:\_\_\_

End: \_\_\_:\_\_\_ pm

3. An employer shall notify each employee of their shift schedule by providing them with a separate information sheet with a time table by the \_\_\_ day of the preceding month.

4. The rotation of shift change on principle shall occur from \_\_\_ shift to \_\_\_ shift, \_\_\_ shift to \_\_\_ shift and \_\_\_ shift to \_\_\_ shift every \_\_\_ days.

5. The change in the employment schedule from the regular work schedule to the shift schedule or vice versa on principle should be done after a day off or a period of off duty, and \_\_\_ shall notify employees by the \_\_\_ day of the preceding month.

**[Article 19 Working Hours and Rest Periods]**

1. The start and end times of work and rest periods must be established in the rules of employment. In the case where the shift work schedule is adopted, the start and end times of work, rest periods as well as the rotation of the shift work must be specified in the rules of employment.

2. An employer must have all employees take a break at the same time as a basic rule. However, in the case where a shift work schedule is adopted as in this example of the rules of employment, and where it is difficult to have all employees have a break at the same time, an employer is allowed to have employees take a break in turns upon the written agreement with a representative of the workers (hereinafter referred to as the “labor-management agreement (which applies to all employees within the company)”) (Article 34 of the Labour Standards Act).

In addition, the employer of the businesses in the following fields are not required to have all their employees take a break at the same time as stipulated in Article 31 of the Ordinances of Enforcement of the Labour Standards Act pursuant to Article 40 of the Labour Standards Act. Such fields are: transportation (Appended Table 1 No.4), commerce and trade (the same table No.11), finance and advertising (the same table No.9), screen motion pictures and live theater (the same table No.10), communication (the same table No.11), public health (the same table No.13), services and entertainment (the same table No.14) and public offices.

Please refer to the information under Article 18 of the rules of employment for the details concerning the representative specified in the labor-management agreement.

3. During a break, an employer must allow employees to freely utilize such time. An employer should be aware that any time when employees are not permitted to leave work and are "on call" and obligated to engage in work immediately if so instructed by their employer (so-called “waiting time”) is considered working hours and not a break.

#### **(Days Off)**

**Article 20** The days off shall be established as follows:

- ① Saturdays and Sundays
  - ② National Holidays (when the actual holiday falls on a Sunday, it shall be observed on the following day.)
  - ③ The end and the beginning of the year (December \_\_\_\_ to January \_\_\_\_ )
  - ④ Summer Break (from \_\_\_\_\_(month/day) to \_\_\_\_\_(month/day))
  - ⑤ Other days specified by the company
2. A company may switch the days off established in the preceding paragraph with another work day if necessary under certain business circumstances.

#### **[Article 20 Days Off]**

1. The Labour Standards Act does not stipulate which day of the week or which national holidays should be set to be days off. An employer is entitled to determine at their discretion which day of the week or different day(s) of each week to be days off. Moreover, an employer may set different days off for different employees in turns adjusting to their work situation.
2. An employer must provide the days off on principle, by a whole calendar day, which means a period of 24 consecutive hours from 0 am until 12 pm. However, in the case where the shift work schedule, such as three 8 hour shifts, is adopted, providing a rest period of 24 consecutive hours instead of a whole calendar day is acceptable provided that the following requirements are met (The Notice from the Chief of the Labour Standards Bureau No.150 dated March 14, 1988).

- (a) The shift work schedule is operated as a system in accordance with regulations, such as the rules of employment which have clauses concerning such schedule.
  - (b) The rotation of shift schedule is established in a regular schedule and not randomly determined each time the shifts rotate by using the shift schedule chart.
3. The so called “switched day off” specified in paragraph 2 of this article, means to switch a specified day off with a work day. For example, in the case where an employer requires employees to work on a day specified as a day off, such as a Sunday, the employer can switch such Sunday with a work day, such as a Monday, ahead of time, and make such Monday a day off instead.

Moreover, “replacement day off” means to provide employees a day off by exempting their duties on a selected work day or a work day of the employees' choice in the case where an employer has employees work on a day off. The differences between the “switched day off” and the “replacement day off” as set out in the Labour Standards Act are as follows:

“The differences between the switched day off and the replacement day off”

- ① The switched day off is a work day turned to a day off due to the switch with a legal day off in advance. Consequently, working on the day which was a day off before such a switch is equivalent to working on a regular work day and the premium pay rate for working on a day off does not apply. However, in the case where such switched day off and work day spread over two weeks, the actual working hours for one of those two weeks may exceed the specified legal working hours. In such case, a premium pay rate for overtime worked would be required. The replacement day off occurs in the case where an employer has made employees work on a legal day off. Therefore, providing the replacement day off retroactively does not cancel out the fact of having them work on a day off. In such case, therefore, the employer is required to pay the premium pay rate for working on the day off.
- ② 2. Days off are the days on which employees are not required to work. Switching a day off requires the following measures:
  - (i) to set out the clauses for the switched days off under the rules of employment;
  - (ii) to specify the switched day off;
  - (iii) to set the switched day off provided that a minimum of four days off over four weeks is maintained, and to be closest possible to the day being switched with.
  - (iv) 4. to provide employees with a minimum of one day advance notice of the switch.

**[Example 2] Example Provisions in the case of the monthly variable work schedule system (in the case where the system of two days off every other week is adopted)**

[Example 2] provides the example provisions in the case of the monthly variable work schedule system while applying the system of 40 working hours per week, on a basis of two days off every other week with 7 hours and 15 minutes of scheduled working hours per day.

**(Working Hours and Rest Periods)**

**Article 19** The scheduled working hours per week shall be 40 hours averaged out over 2 weeks with the pay period starting from \_\_\_\_\_ (month) \_\_\_\_\_ (day), 20\_\_\_\_ (year).

2. The scheduled working hours per day shall be  7  hours  15  minutes.

3. The start and end times of work and rest periods shall be as follows. However, an employer is entitled to shift such times to an earlier or later time, under certain business circumstances or other unavoidable events. In such event, \_\_\_\_\_ shall provide employees with a minimum of one day advance notice of the change.

Start and End times of work	Duration of Break
Start:     ___:___ am	From ___:___ to ___:___
End:       ___:___ pm	

**(Days Off)**

**Article 20** The days off shall be as follows:

- ①Sundays
- ②The second Saturday of each 2 week according to the pay period starting from \_\_\_\_\_(month/day), 20\_\_\_\_ (year).
- ③National holidays (when the actual holiday falls on a Sunday, it shall be observed on the following day)
- ④The end and the beginning of the year (from December \_\_\_\_ (day) to January \_\_\_\_ (day))
- ⑤Summer break (from \_\_\_\_\_(month/day) to \_\_\_\_\_(month/day))
- ⑥Other days specified by the company

2. The employer is entitled to switch a day off specified in the preceding paragraph with a work day if necessary under certain business circumstances.

**[Article 19 Working Hours and Rest Periods]**

**[Article 20 Days off]**

1. The monthly variable work schedule system is a system that allows an employer to have employees work beyond 8 hours per day and 40 hours per week on a specific day or week pursuant to the rules, such as labor-management agreement or the rules of employment, provided that such rules stipulate that employees shall not work beyond the average of 40 working hours per week within a fixed term of one month (Article 32.2 of the Labour Standards Act). In such event, labor-management agreement must be submitted to the director of the relevant local Labour Standards Inspection Office. With regard to the methods and other matters on selecting a representative of the workers for labor-management agreement, please refer to Article 18 of this example of the rules.



2. While the number of working hours per day set out under this example of rules is fixed, employers are permitted to change such working hours per day depending on the circumstances. While the number of scheduled working hours per day set out in this example of the rules is fixed, an employer is permitted to change such working hours per day depending on the circumstances at a business. In such case, the average working hours per week must not exceed 40 hours over a specified period of time.
3. In the event where the monthly variable work schedule system is adopted, the first day of the pay period, the start and end times of each work day and the working hours for each day and week for the specified term must be clearly defined in the rules, such as the rules of employment.
4. As shown below, in the case of Example 2, the total number of scheduled working hours for 2 weeks is 79 hours and 45 minutes. The average number of scheduled working hours per week is 39 hours 53 minutes. Thus it meets the requirement of 40 working hours per week or less.

Day			
1	Mon	7 hours 15 minutes	43 hours 30 minutes
2	Tue	"	
3	Wed	"	
4	Thur	"	
5	Fri	"	
6	Sat	"	
7	Sun	Day off	
8	Mon	7 hours 15 minutes	36 hours 15 minutes
9	Tue	"	
10	Wed	"	
11	Thur	"	
12	Fri	"	
13	Sat	Day off	
14	Sun	Day off	

Under example provision Article 17 of Example 2, the Saturday of every second week is set to be a day off. In the case where a national holiday is set to be a day off, and in the case where a national holiday falls on the week of 2 days off, making that Saturday a work day will still allow the 2 days off per week system to be maintained. If an employer is to adopt such scheduling, a employer is required to append a clause in Article 17 of this example of the rules stipulating “However, the 3rd day off falls on the week of 2 days off, the Saturday on such week shall be a work day.

[References] “the method for determining the specified working hours under the monthly variable work schedule system”

Under the monthly variable work schedule system, the specifics of the working hours for each day and week must be set forth in the rules of employment within the legal maximum of 40 hours of work per week on average over the specified term (a variation term: a term for the pattern of variation) up to one month. In such case, the total number of working hours in a variation term is established within the number of hours calculated using the following equation:

$$\text{the legal (maximum) hours of work per week (40 hours)} \times \frac{\text{The number of calendar days in a variation term}}{7}$$

According to the preceding equation, if the variation term is one month, the calculated working hours for the full variation term are as follows:

Items the number of calendar days in one month	The total scheduled working hours for each full variation term	
	If the legal maximum working hours is 40 hours (per week)	If the legal maximum working hours is 44 hours (per week)
In the case of 31 days	177.1 hours	194.8 hours
In the case of 30 days	171.4 hours	188.5 hours
In the case of 29 days	165.7 hours	182.2 hours
In the case of 28 days	160.0 hours	176.0 hours

Note: the numbers are calculated to the first decimal place.

In addition, the following are the variations in scheduled working hours per week for different schedule patterns of the monthly variable work schedule system with two days off per week.

Schedule variations for two days off per week scheduled working hours per day	Days off on Sundays and two Saturdays per month			Days off on Sundays and three Saturdays per month			Days off on Sundays and four Saturdays per month		
	28 days	30 days	31 days	28 days	30 days	31 days	28 days	30 days	31 days
Number of Calendar Days per month	28 days	30 days	31 days	28 days	30 days	31 days	28 days	30 days	31 days
Number of Days Off per month	6 days	6 days	6 days	7 days	7 days	7 days	8 days	8 days	8 days
Number of Work Days per month	22 days	24 days	25 days	21 days	23 days	24 days	20 days	22 days	23 days
8 hours/day	44:00	44:48	45:10	42:00	42:56	43:22	40:00	41:04	41:33
7 hours 50 mins./day	43:05	43:52	44:13	41:07	42:03	42:27	39:10	40:13	40:41
7 hours 45 mins./day	42:38	43:24	43:45	40:41	41:36	42:00	38:45	39:47	40:15
7 hours 40 mins./day	42:10	42:56	43:17	40:15	41:09	41:33	38:20	39:22	39:49
7 hours 30 mins./day	41:15	42:00	42:21	39:23	40:15	40:39	37:30	38:30	38:57
7 hours 20 mins./day	40:20	41:04	41:24	38:30	39:22	39:45	36:40	37:39	38:05
7 hours 15 mins./day	39:53	40:36	40:56	38:04	38:55	39:18	36:15	37:13	37:39
7 hours 10 mins./day	39:25	40:08	40:28	37:37	38:28	38:50	35:50	36:47	37:13
7 hours/day	38:30	39:12	39:31	36:45	37:34	37:56	35:00	35:56	36:22

Note: (The highlighted) results exceed the average of 40 working hours per week over a one month period. These patterns require adjustment on the factors, such as reducing the working hours on some specific day(s) to have the results of 40 hours or less.

**[Example 3] Example of provisions for the annual variable work schedule system**

**(Working Hours and Rest Periods)**

**Article 19** In the case where an employer enters into labor-management agreement with a representative of the workers concerning the annual variable work schedule system, the average working hours per week shall be 40 hours over the designated term for the employees whom such agreement applies to.

2. The working hours per week shall be 40 hours, 8 hours per day for employees whom the annual variable work schedule system does not apply to.

3. The start and end times of work and rest periods are as follows:

① The regular term

Start and End times of work	Duration of Break
Start: ___:___ am	From ___:___ to ___:___
End: ___:___ pm	

② The special term (the specific term set forth in labor-management agreement with regard to the annual variable work schedule system)

Start and End times of work	Duration of Break
Start: ___:___ am	From ___:___ to ___:___
End: ___:___ pm	

③ The start and end times of work for the employees whom the annual variable work schedule system does not apply to.

Start and End times of work	Duration of Break
Start: ___:___ am	From ___:___ to ___:___
End: ___:___ pm	

**(Days off)**

**Article 20** The days off for the employees whom the annual variable work schedule system applies to shall be specified to be more than one day per week, \_\_\_\_\_ days per year from the first day of the designated term, which is to be the first day of the pay period, pursuant to labor-management agreement with regard to the annual variable work schedule system. In such case, the employer shall notify each employee of such days off indicated on the annual days off calendar at least 30 days in advance counting from the first day of the designated term.

An employer shall notify each employee to whom the annual variable work schedule system does not apply, of the designated days off indicated as follows on the monthly days off calendar at least 30 days in advance counting from the first day of the designated term.

- ①Sundays (except for during the specified term under the paragraph number 3 in the preceding Article).
- ②National Holidays (if a national holiday falls on a Sunday, it would be observed on the following day)
- ③The end and the beginning of the year (from December \_\_\_\_\_ to January \_\_\_\_\_)
- ④Summer Break (from \_\_\_\_\_(month/day) to \_\_\_\_\_(month/day))
- ⑤Other days specified by the company

**[Article 19 Working hours and Rest Periods]**

**[Article 20 Days off]**

1. The annual variable work schedule system is a system that allows an employer to have employees work beyond 8 hours per day and 40 hours per week during the specified day and/or week within a maximum average of 40 hours per week over a specific period of time, beyond one month but within a year (paragraph 4 of Article 32 of the Labour Standards Act). This system is suitable for the case where an employer can predict that the business will have busy periods of time at specific times during the year.
  2. An employer must meet the following requirements in order to adopt the annual variable work schedule system.
    - (1) To provide the outline for adopting the annual variable work schedule system in the rules of employment. In addition, the start and end times of work for each work day, duration of a break, days off, etc. must be specified.
    - (2) An employer must conclude the written labor-management agreement with a representative of the workers with regard to the following matters and submit such agreement in the specified format to the director of the relevant local Labour Standards Inspection Office. In such event, the matters required to be set forth in labor-management agreement are as follows:
      - (a) The range of employees to whom the system applies.
      - (b) The designated term (which should be a fixed term longer than one month within one year) and the starting day of such term.
      - (c) The special term: can be established for the special busy period during the designated term.
      - (d) The work days and the working hours for each work day during the designated term: if the designated term is divided into months or longer terms, it is required to specify the work days and the scheduled working hours for each work day in the first term divided. However, only the total number of work days and of work hours are required to be set forth for the rest of the terms.
      - (e) The effective term: Approximately one year may be desirable.
- With regard to (d), if the designated term is longer than 3 months, on principle, the number of work days must be within 280 days per year and the number of consecutive work days must be 6 days or fewer. However, during the special term, at least one day off per week should be ensured. The scheduled working hours must be 10 hours or less per day and 52 hours or less per week. If the designated term is longer than 3 months, within a 3 month period, there may be only one block of 3 consecutive weeks where an employee works more than 48 hours per week, or if not consecutively there may be only a total of 3 weeks where an employee works more than 48 hours per week, that begin within that 3 month period.

3. In order to conform to the labour system of 40 working hours per week while adopting the annual variable work schedule system, an employer is required to ensure the annual days off as in the table shown below corresponding to the scheduled working hours per day. For example, if an annual variable schedule system with 8 scheduled working hours per day is adopted, the annual days off must be 105 days or more in order to keep the working hours per week within 40 hours.
4. Please refer to the guideline under Article 18 in this example of the rules for the method of selecting the representative of the workers for labor-management agreement.

[References]

The number of days off per year to ensure conformity to the labour system of 40 working per week is as in the following table:

calendar days in a year scheduled working hours per day	365 days	366 days (leap year)
Number of days off per year		
9 hours	134 days	134 days
8 hours	105 days	105 days
7 hours 50 minutes	99 days	100 days
7 hours 45 minutes	96 days	97 days
7 hours 30 minutes	87 days	88 days
7 hours 15 minutes	78 days	78 days
7 hours	68 days	68 days

The method of calculation:

$$\frac{(\text{scheduled hours of work per day} \times 7 \text{ days} - 40 \text{ hours}) \times 365 \text{ days (or 366 days)}}{\text{scheduled hours of work per day} \times 7 \text{ days}} \leq \text{the number of days off per year}$$

5. The annual variable work schedule is designed to eliminate overtime or working on days off. Therefore, in the case of unavoidable overtime, the employer must conclude labor-management agreement in respect to the matters concerning overtime pursuant to Article 36 of the Labour Standards Act, and such agreement must be submitted to the relevant local office. At the same time, the payment of the premium rate for the applicable employees is required (see Article 18 of this example of the rules).

[References]

The annual days off calendar below indicates the example of the days off for a year. In this example, the annual days off are 111 days to maintain the 40 working hours per week under the annual variable work schedule system. During the regular term in which business is relatively slow, in this case, April, May, July, August, November, December, January and March, the scheduled working hours per day are 8 hours. However, during the special term in which business activity is high, which is June, September, October and February, the scheduled working hours per day are 8 hours and 30 minutes. The first day of the designated term is set on April 1 and days off are those days whose numbers are circled.

(The week starts on Monday in this calendar.)

月	火	水	木	金	土	日	月	火	水	木	金	土	日	月	火	水	木	金	土	日
4	...	...	...	1	2	③ ④	8	...	...	...	...	...	①	12	...	...	1	2	3	④ ⑤
5	③ ④	⑤	6	7	⑧ ⑨	9	...	1	2	3	4	⑤	1	...	...	...	...	...	① ②	
6	...	1	2	3	4	⑤ ⑥	10	...	...	...	1	2	③	2	...	1	2	3	4	⑤ ⑥
7	...	...	...	1	2	③ ④	11	1	2	③	4	5	⑥ ⑦	3	...	...	1	2	3	④ ⑤

**(Overtime and working on Days Off)**

**Article 21** An employer may have an employee work beyond the working hours prescribed in Article 19 or on days off prescribed in Article 18 due to certain business circumstances.

2. In such case of the preceding paragraph, the employer shall conclude the written labor-management agreement ahead of time with a representative of a majority of the workers concerning working beyond the working hours or on days off stipulated in the law and submit such agreement to the director of the relevant local Labour Standards Inspection Office.

3. An employer shall not have a female employee who is pregnant or gave birth within one year (hereinafter referred to as “expectant or nursing mothers”) who requests not to work, and an employee who is under 18 years of age work overtime, days off which are in paragraph 2 or late night or early morning (from 10 pm to 5 am).

4. An employer may have an employee work overtime beyond the limits prescribed in paragraphs 1 to 3, the scheduled working hours or on days off in the case of an emergency, such as a certain unavoidable incident or a natural disaster. However, even in such case, an employer shall not have new and expectant or nursing mothers who request not to work, work overtime or on days off.

**[Article 21 Working overtime or on Days Off]**

1. In the case where an employer has an employee work beyond the legal working hours, which are 40 hours per week with the exception of businesses in the fields to which the special treatment applies, which are 44 hours per week, or on the legal days off, which are one day off per week or 4 days off per 4 weeks, an employer has the obligation to conclude labor-management agreement concerning Article 36 of the Labour Standards Act (so called Agreement 36) and submit such agreement to the relevant local office.
2. An employer is permitted to have employees work overtime and on days off within the scope of such labor-management agreement after concluding such agreement with a representative of employees and submitting such agreement to the director of the relevant local Labour Standards Inspection Office.

A “representative of employees” means a labour union if such a union organized by a majority of the employees at that business exists, or if such a union does not exist, a person who represents a majority of the employees.

Such a representative of the employees must be selected from those who meet both of the following criteria:

- ① A person who is not employed at a supervisory or management level as stipulated in Article 41 Agno.2 of the Labour Standards Act;
  - ② A person who is selected by way of voting which is conducted after being made known to the employees that its purpose is to select a person to conclude labor-management agreement.
3. Disadvantageous treatment against a representative of employees is prohibited. An employer must not treat a representative of the employees disadvantageously with regard to his/her terms and conditions of employment, such as dismissal from employment, wage reduction or demoting, on the basis of being or trying to be a representative or acting appropriately as a representative of employees.
  4. An employer must make known to the employees Agreement 36 as well as the rules of employment (paragraph 1 of Article 106 of the Labour Standards Act).
  5. Matters with regard to the limits on the extension of working hours, which should be set forth in Agreement 36, are stipulated in the “Standards concerning the limits on the extensions of working hours stipulated in paragraph 1 of Article 36 (1998, Notice by the Minister of Labour No.154. Here in after referred to as the “Standards for the limits on overtime”)”. An employer and a labour union or a representative of a majority of the employees must conclude Agreement 36 in accordance with the standards for the limits on the extension of overtime (paragraph 3 of Article 36 of the Labour Standards Act).
  6. The contents that must be agreed upon in Agreement 36 are as follows (Article 16 of the Ordinance for Enforcement of the Labour Standards Act):
    - ① Specific reasons why the employer requires employees to work overtime or on days off;
    - ② Type of duties
    - ③ Number of workers required
    - ④ Maximum number of hours that can be extended over the specific term of one day or longer
    - ⑤ Days off that an employer can have employees work on



[Limits on the overtime extension]

	for general workers	for workers who are designated for the annual variable work schedule system with designated term of 3 months or more
Terms	Maximum hours	Maximum hours
1 week	15 hours	14 hours
2 weeks	27 hours	25 hours
4 weeks	43 hours	40 hours
1 month	45 hours	42 hours
2 months	81 hours	75 hours
3 months	120 hours	110 hours
1 year	360 hours	320 hours

In the case where an employer foresees special circumstances that require employees to work overtime beyond the maximum hours as shown above, the employer has the authority to extend the overtime beyond the limit with the proviso that Agreement 36 with special clauses is concluded. Such agreement with the special clauses must meet the following requirements:

- ① to set forth the basic extended hours within the maximum hours;
- ② to set forth the specifics of such special circumstances that require employees to work overtime beyond the maximum hours. Such “special circumstances” must be limited to circumstances that are temporary, transient or incidental, which are expected to last no longer than a total of half a year;
- ③ to set forth the detailed procedures that an employer and employees must take in the case where the basic extended hours as set forth in ① are required to be extended when special circumstances arise during the designated term;
- ④ to set forth the limit on the number of occasions that the extension of the maximum hours is permitted;
- ⑤ to set forth the limits on the extension of basic maximum hours. Moreover, an employer must attempt to minimize such extension.
- ⑥ to set forth the premium pay rate for such overtime beyond the maximum extended hours. Such rate should be higher than the legal premium pay rate.

However, such standards for the limits on the extension of overtime do not apply to the businesses in the fields of construction and civil engineering, driving of vehicles, and research and development in new technologies or new products.

7. An employer is prohibited from having an employee under the age of 18 work overtime, on days off or under the variable work schedule system (Article 60 of the Labour Standards Act), with certain exceptions. Furthermore, an employer is also prohibited from having such employee work late night or early morning from 10 pm to 5 am on principle (Article 61 of the Labour Standards Act).
8. An employer, if requested by expectant or nursing mothers, is prohibited from having such employee work overtime, on days off or late night or early morning (Article 66 of the Labour Standards Act). An employer shall not dismiss or treat such employee disadvantageously on the grounds of making such request or not working upon such request (paragraph 3 of Article 9 of the Equality Act).

## Chapter 5 Leaves

Matters with regards to leave, including statutory leave, annual paid leave, and other leave established by a company, must be stipulated in the rules of employment.

### (Annual paid leave)

**Article 22** An employer shall provide an employee who has worked for 6 consecutive months since the first day of his/her employment and whose attendance exceeds 80 percent of the scheduled work days during such period of time with 10 days of annual paid leave. An employer shall provide an employee who continues his/her service beyond 6 months, with the specified number of days of annual paid leave for every year of service at a minimum of 80% of the attendance during the year. The annual paid leave corresponding to the length of service granted is as shown in the following table:

Length of service	6 months	1 year and 6 months	2 years and 6 months	3 years and 6 months	4 years and 6 months	5 years and 6 months	6 years and 6 months
Days given	10 days	11 days	12 days	14 days	16 days	18 days	20 days

2. An employer shall provide an employee, notwithstanding the preceding provision, whose scheduled working hours per week are less than 30 hours and whose scheduled work days are 4 days or fewer per week, and in the case where employees whose scheduled work days are based on other than weekly basis, if his/her annual scheduled work days are 216 days or fewer, with the specified number of days of annual paid leave corresponding to the length of service as shown in the table below:

Specified work days per week	Specified work days per year	The length of service						
		6 months	1 year and 6 months	2 years and 6 months	3 years and 6 months	4 years and 6 months	5 years and 6 months	6 years and 6 months
4 days	169 ~ 216 days	7 days	8 days	9 days	10 days	12 days	13 days	15 days
3 days	121 ~ 168 days	5 days	6 days	6 days	8 days	9 days	10 days	11 days
2 days	73 ~ 120 days	3 days	4 days	4 days	5 days	6 days	6 days	7 days
1 day	48 ~ 72 days	1 day	2 days	2 days	2 days	3 days	3 days	3 days

3. An employer shall allow an employee to take the annual paid leave established in the preceding paragraph 1 or 2, at the specified times requested in advance. However, in the case where having an employee take the annual paid leave at such times requested will impede the regular business operation, an employer may have the employee take the annual paid leave at other times than he/she requested.

4. An employer may assign the time in advance for an employee to take his/her annual paid leave for the portion beyond 5 days of his/her annual paid leave, notwithstanding the preceding paragraph, pursuant to the written labor-management agreement with a representative of the employees.

5. When calculating attendance rate set forth in the preceding paragraphs 1 and 2, the following periods shall be considered time worked:

- ① the period for the annual paid leave;
- ② the period for maternity leave;
- ③ the period for parental leave, child Care and Family Care Leave Act pursuant to the Act on the

welfare of workers who take care of children and other family members including child care and family care leave (tentative translation) (Act No.76 of 1991. hereinafter referred to as “Act on Care Leave for Children and Other Family Members”)

④the period for leave of absence for recovery from injury or illnesses caused in the ordinary course of duties.

6. An employee is entitled to carry over the unused portion of his/her annual paid leave from the preceding year up to 2 years from the day such paid leave was granted.

7. In the case of the preceding paragraph, an employer shall have an employee take the portion of annual paid leave which was carried over before taking the annual paid leave granted for the current year.

8. A company shall notify each employee of their leave balance of annual paid leave as of the last day of every pay period by stating it in their pay statement.

### **[Article 22 Annual paid leave]**

1. An employer must provide a minimum of 10 days of annual paid leave to an employee who has worked 6 consecutive months from the first day of his/her employment with higher than 80 percent attendance of all work days (paragraph 1 of Article 39 of the Labour Standards Act). In addition, an employer must provide the employee whose scheduled working hours are fewer than 30 hours per week and whose scheduled work days are 4 days per week or fewer, or whose scheduled annual work days are 216 days or fewer (hereinafter referred to as “an employee with fewer scheduled work days”), with the number of days of annual paid leave pursuant to Article 24-3 of the Ordinance for Enforcement of the Labour Standards Act (Article 24-2) referring to the ratio of scheduled work days to those of the regular employees (Article 24-3).
2. In the case where an employee has variable scheduled working hours or variable scheduled work days, whether paragraph 1 or 2 of this article will apply to such employee shall be determined based on the number of scheduled working hours, the scheduled work days per week or the scheduled work days per year which are calculated based on the “base date” established for the annual paid leave. Such “base date” means the day the right to take annual paid leave is given to an employee, which is the first day after 6 months have passed from the commencement of the employment, then the day following one year after that 6 months, for every consecutive year.
3. The base date for the annual paid leave can be established collectively regardless of the start dates of each employee. In such case, the period of service must always be rounded up and rounding down is not accepted. For example, in the case where such base date is established on April 1st, for those employees who started their employment on January 1st, the annual paid leave for the first fiscal year must be given front-loaded on April 1st as they would have worked for 3 months as of such date, 3 months earlier than legal (actual) case.
4. An employer must provide a regular employee with the specified number of days of annual paid leave added for each year of service (paragraph 2 of Article 39 of the Labour Standards Act).
5. The period of continuous employment means the period of the labour contract, which means the period while an employee is on record as an employee (of the company). The form of employment that should be considered “continuous employment” must be determined for all intents and purposes based on the actual state of employment. In the case, for example, where a retiree is rehired as an independent contractor, or the case where a part time employee becomes a regular employee, their employment is for all intents and purposes continuing and such employment period shall be counted as the period of continuous service.

6. When calculating the attendance of an employee to determine whether it is 80 percent or more, the following periods shall be considered work days attended:
  - ① the period for absence due to injury or illness caused in the course of duties;
  - ② the period while expectant or nursing mothers takes (maternity or parental) leave pursuant to Article 65 of the Labour Standards Act;
  - ③ The period for care leave for the child or other family members pursuant to the Act on the welfare of workers who take care of children and other family members including child care and family care leave (tentative translation) (Act No.76 of 1991. hereinafter referred to as the “Act on Care Leave for Children and Other Family Members”);
  - ④ The period for annual paid leave;In addition, menstrual leave which is set forth in paragraph 2 of Article 23 in this example of the rules, may be considered work days attended in calculating the attendance for annual paid leave.
7. In the case where an employee did not reach 80% attendance, the employer is not obligated to grant the annual paid leave for the following fiscal year. In such event, when such employee reaches 80% or more in attendance for that year in which he/she did not receive annual paid leave, the employer must grant the annual paid leave for the following fiscal year as stipulated in this article, corresponding to the length of his/her service
8. The annual paid leave should be taken generally as whole days. However, in the case where an employee requests and the employer agrees to such request, the paid leave may be taken by the half day. Furthermore, paying out the annual paid leave ahead of time and not granting such leave to employees is a violation of the law. The right to request annual paid leave expires in 2 years. Therefore, the unused leave must be held over from the previous year.
9. An employer must grant an employee his/her annual paid leave during the particular period requested by the employee conforming to the system of planned scheduling of annual paid leave. However, in the case where granting annual paid leave during such period requested by the employee will impede the regular business operation, the employer is entitled to change the period to be granted (paragraph 5 of Article 39 of the Labour Standards Act).
10. Under the system of planned scheduling of annual paid leave, a minimum of 5 days of annual paid leave, prescribed in paragraph 4 of this article, will be granted for the period requested by the employee, and the remaining annual paid leave will be granted according to the schedule determined by employees during the period allotted as stipulated in labor-management agreement, provided that such agreement is concluded with a representative of the employees in respect to the system of planned scheduling of annual paid leave(paragraph 6 of Article 39 of the Labour Standards Act).
11. An employer must not treat an employee who took annual paid leave disadvantageously, such as reducing his/her wages or counting his/her paid leave as an absence in order to manipulate the calculation of the sum of attendance allowance or other commendations (Supplementary Clauses Article 136 of the Labour Standards Act).

**(Granting Annual Paid Leave by the hour)**

**Article 23** Conforming to the written agreement with a representative of employees, an employer shall grant annual paid leave by the hour (hereinafter referred to as “annual leave by the hour”) to a maximum of 5 days out of the annual paid leave per year prescribed in the preceding article in accordance with the following stipulations:

- (1) The annual leave by the hour shall be applicable to all employees;
- (2) When taking the annual paid leave by the hour, the equivalent number of hours to one day of annual paid leave shall be as follows:
  - ①an employee whose scheduled working hours is between 5 and 6 hours: 6 hours;
  - ②an employee whose scheduled working hours is between 6 and 7 hours: 7 hours;
  - ③an employee whose scheduled working hours is between 7 and 8 hours: 8 hours;
- (3) The annual leave by the hour will be granted in one hour blocks;
- (4) The sum paid for the annual leave by the hour taken shall be calculated by multiplying the hourly regular wage which would be paid for the scheduled working hours by the number of hours of annual paid leave taken.
- (5) Other matters not set forth in this article shall be governed by the clauses concerning the annual paid leave prescribed in the preceding article.

**[Article 23 Granting Annual Paid Leave by the hour]**

1. An employer may grant annual paid leave by the hour up to a maximum of 5 days per year provided that the employer concludes labor-management agreement concerning such matters(paragraph 4 of Article 39 of the Labour Standards Act).
2. The hourly wage for annual leave by the hour shall be ①average wage, ②the regular wage which would be paid for the scheduled working hours, ③the amount derived from dividing the amount equivalent to the standard daily wage set forth in the Health Insurance Act, Article 99 paragraph 1 (Act No.70 of 1922) by the number of scheduled hours for the day. (However, ③ requires the written agreement with a representative of the workers.) An employer is required to choose one of the above options as a clause in the rules of employment (paragraph 7 of Article 39 of the Labour Standards Act).
3. The contents which must be stipulated in labor-management agreement are as follows:
  - ①The range of employees to whom the annual leave by the hour applies (establish the range of employees);
  - ②The number of days of annual paid leave allowed to be taken as annual leave by the hour (should be a maximum of 5 days, even with the days held over from the previous fiscal year).
  - ③The number of hours of annual leave by the hour equivalent to one day of annual paid leave (based on the number of scheduled working hours which correspond to one day of annual paid leave. The scheduled working hours with a part hour must be rounded up to a whole hour.)
  - ④The number of hours per block if more than one hour per block (however, such number of hours per block must not be more than the scheduled working hours per day).
4. An employer has the right to change the time when the annual paid leave by the hour to be taken disrupts normal business operation since the annual leave by the hour is the annual paid leave. However, to change the annual paid leave requested by the day to the one by the hour or vice versa is not permitted.

**(Maternity Leave)**

**Article 24** An employer shall grant maternity leave when a request is received from a female employee who is expecting to give birth within 6 weeks (or 14 weeks in the case of multiple births.)  
2. An employer shall not allow a female employee to work within 8 weeks of giving birth.  
3. If a female employee after 6 weeks of giving birth requests to return to work, an employer may allow such female employee to work on duties that a physician approves as safe for her to work, notwithstanding the preceding article.

**[Article 24 Maternity Leave]**

1. An employer must not have a female employee who is expecting to give birth within 6 weeks (or 14 weeks in the case of multiple births) work if she requests maternity leave (paragraph 1 of Article 65 of the Labour Standards Act).
2. Employer must not have a female employee work within 8 weeks of giving birth, except where a female employee after 6 months of giving birth requests work on duties that a physician approves as safe (paragraph 2 of Article 65 of the Labour Standards Act).
3. An employer must not treat an employee disadvantageously on grounds of requesting and taking maternity leave (paragraph 3 of Article 9 of the Equality Act).

**(Measures to maintain mothers' health)**

**Article 25** In the case where a female employee within one year of giving birth requests, an employer shall approve her visits to the hospital during the scheduled working hours for health guidance or medical examinations in compliance with the Maternal and Child Health Act (Act No.141 of 1965) with the following limits:

① Before giving birth:

up to 23 weeks-----once over 4 weeks  
from 24 weeks to 35 weeks-----once over 2 weeks  
from 36 weeks to birth-----once a week

In the case where a physician or midwife (hereinafter referred to as a “physician or other medical professional”) gives instructions otherwise, the required time shall be approved according to such instructions.

② After giving birth (within one year):

The time required according to physician's instructions

2. In the case where a female employee who is pregnant or within one year of giving birth requests adjustment in her work conditions or hours based on physician's instructions given at the health guidance or medical examinations, the employer shall take measures as follows:

① In the case where the employee who is instructed to avoid commuting in a crowded condition during their pregnancy as a measure to alleviate their commuting stress, the employer shall approve on principle to reduce their working hours by one hour or to shift her start and end times of work by up to a maximum of one hour.

② In the case where an employee who is so instructed with regard to rest periods during her pregnancy, an employer shall increase the frequency or extend the duration of her rest periods as required.

③ In the case where a female employee who is pregnant or has given birth is given an instruction to alleviate her symptoms, an employer shall take measures, such as to reduce their work load or her working hours or to grant leave of absence to comply with such physicians' instructions.

**[Article 25 Measures to maintain mothers' health]**

1. An employer shall secure the time off that a female employee requires to receive the health guidance and medical examinations (Article 12 of the Equality Act) pursuant to the clauses in the Maternal and Child Health Act (Act No.141 of 1965). In addition, an employer must take necessary measures, such as change of working hours and/or reduction of work load, in order to enable the female employee they employ to comply with the instructions she receives based on the health guidance and medical examinations (Article 13 of the Equality Act).
2. An employer must not dismiss or treat a female employee disadvantageously on grounds of requesting or receiving the benefits of the measures to maintain mothers' health (paragraph 3 of Article 9 of the Equality Act).

**(Hours for Child Care and Menstrual Leave)**

**Article 26** In the case where a female employee who is raising a child (or children) under the age of one, so requests, the employer shall provide such employee with the hours for child care 2 times per day, 30 minutes each time aside from their regular rest periods.

2. In the case an employer receives a request from a female employee who has significant difficulties managing her work during her menstrual period, the employer shall provide a leave of absence required.

**[Article 26 Hours for Child Care and Menstrual Leave]**

1. With regard to the child care leave, an employer must provide time for child care outside the general rest periods, in the case where a female employee who is raising a child (or children) under the age of one so requests (Article 67 of the Labour Standards Act). An employer must not dismiss or treat such employee disadvantageously on grounds of requesting or receiving such time (paragraph 3 of Article 9 of the Equality Act).
2. In the case where a female employee is having significant difficulties managing her work during her menstrual period and she requests leave, an employer shall not have such employee work during requested period (Article 68 of the Labour Standards Act). Moreover, such leave may be granted by the calendar day, the half day or by the hour.

**(Care Leave for Children and Other Family Members)**

**Article 27** An employee who requires it is eligible to receive benefits, such as parental leave, child care leave, care leave for other family members, exemption from overtime for child care, limits on overtime and limits on late night/early morning shifts for care for children and other family members and reduction of regular working hours (hereinafter referred to as “Child Care and Family Care Leave Act”) based on the Act on Child Care and Family Care Leave Act.

2. Policy for child Care and Family Care Leave Act are stipulated in the “rules concerning Child Care and Family Care Leave Act”.



**[Article 27 Care Leave for Children and Other Family Members]**

1. This example of the rules is designed to have a separate set of rules for the matters with regard to child Care and Family Care Leave Act. The example clauses of “the rules concerning Child Care and Family Care Leave Act” can be found here although only Japanese version.  
The URL of the example: <http://www.mhlw.go.jp/bunya/koyoukintou/pamphlet/02.html>
2. In the case where an employer establishes the matters concerning child Care and Family Care Leave Act separately from the main rules of employment, such a set of stipulations is a part of the rules of employment and required to be submitted to the director of the relevant local Labour Standards Inspection Office.

**(Congratulatory and Condolence Leave)**

**Article 28** An employer shall grant congratulatory or condolence leave to an employee if requested for any of the following events for the number of days as indicated:

- ①the employee's marriage: \_\_\_\_\_ days
- ②the employee's wife giving a birth: \_\_\_\_\_ days
- ③death of the employee's spouse, children or parents: \_\_\_\_\_ days
- ④death of the employee's siblings, grandparents, spouse's parents or siblings: \_\_\_\_\_ days

**(Sick Leave)**

**Article 29** In the case where an employee requires treatment for personal injury or illness and the employer finds such employee's absence is inevitable, the employer shall grant such employee sick leave of \_\_\_\_\_ days.

**[Article 28 Congratulatory and Condolence Leave]**

**[Article 29 Sick Leave]**

1. Congratulatory and condolence leave and sick leave are not required matters to be provided according to the Labour Standards Act. Each company may establish the necessary terms in details.

**(Leave for Jury Duty)**

**Article 30** An employer shall grant leave for an employee who is chosen to serve as a juror, a supplemental juror or a juror candidate as follows:

- ①In the case of a juror or a supplemental juror: the number of days required
- ②In the case of a juror candidate: the number of hours required

**[Article 30 Leave for Jury Duty]**

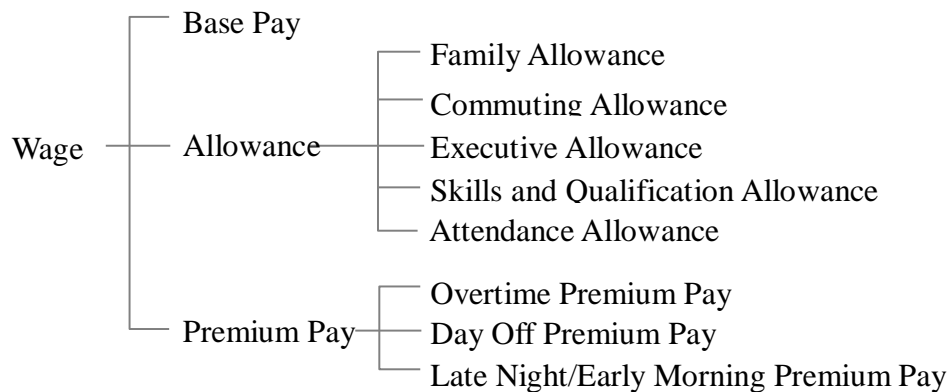
1. Conforming to the jury system which has been implemented since 2009, in the case where an employee is chosen to be a juror, a supplemental juror or a juror candidate, an employer must not reject the request received from such employee for leave for the time required to serve such duty. Therefore an employer is required to implement the system to grant leave for jury duty at each workplace.  
An employer must not dismiss or treat such employee disadvantageously on grounds of receiving such leave for serving jury duty, being or having been a juror, a supplemental juror or a juror candidate (Article 100 of the Act on Criminal Court with Participation of Jurors) (Act No. 63 of 2009).

## Chapter 6 Wages

An employer may provide a separate set of rules for the matters with regard to wages contrary to this example of the rules of employment. In such case, such a separate set of rules is a part of the main rules of employment and is required to be submitted to the director of the relevant local Labour Standards Inspection Office.

### (Components of Wages)

**Article 31** The components of wages are as follows:



### [Article 31 Components of Wages]

1. Matters with regard to the methods of determination, calculation and payment of wages, the cut off dates, the pay period and wage increase are the mandatory matters for the rules of employment (Article 89 of the Labour Standards Act).

### (Base Pay)

**Article 32** An employer shall determine the base pay for each employee taking into consideration their regulations in service, skills and abilities, achievement, and age.

### [Article 32 Base Pay]

1. It is important that an employer establishes the base pay without favour for each workplace taking into consideration work related factors, such as regulations in service abilities to execute regulations in service, and personal factors, such as the period of service, age, qualifications, and education.
2. There are different types of base pay, such as: the monthly salary, which is a fixed wage for the scheduled working hours per month; the monthly salary on a daily wage basis, which is a type of fixed salary system with a fixed wage per month with a deduction of the daily wage multiplied by the number of day of absence if any; the daily wage, which is determined by the wage for scheduled working hours per day; the hourly wage, which is determined by the wage per hour corresponding to the number of hours engaged in work.
3. An employer must pay at least minimum wage which should be determined pursuant to the Minimum Wage Act (Act No. 137 of 1959).

Whether the wage an employer is going to pay or is currently paying is at least minimum wage can be assessed by comparing such hourly wage with the minimum wage in the case of wages determined by the hour (hereinafter referred to as “hourly wages”). In cases of wages determined by the day, week or month, it can be assessed by comparing each wage divided by the number of scheduled working hours over each specified period (which are a day, week or month), with the minimum wage (Article 4 of the Minimum Wage Act, Article 2 of the Act on Enforcement of the

Minimum Wage Act).

**(Family Allowance)**

**Article 33** Family Allowance shall be paid to an employee who supports his/her family members as follows:

- ① Children under the age of 18: \_\_\_\_\_ yen per child per month
- ② Parents who are 65 years of age or older: \_\_\_\_\_ yen per person per month

**(References)**

Matters to be considered when reviewing the role of spouse allowance

(The role of spouse allowance)

Along with the taxation and social security systems, spouse allowance has become a factor in work adjustment (restraining working hours).

While the population will decline in the coming years, in order for all people who are willing to work can fully demonstrate their abilities, it is desirable to promote the review of spouse allowance to make it a neutral system for the work style of spouses as the spouse allowance has an income requirement that leads to adjustments of working hours of spouses with part-time jobs.

(Points to be noted when reviewing spouse allowance)

When conducting a smooth review of wage system including spouse allowance, the following points must be noted in light of the Labour Contract Act, precedents as well as company cases.

- ① Effort to increase employees' satisfaction such as grasping needs
- ② Careful discussions and agreement between labor and management
- ③ Maintaining total wage fund
- ④ Necessary transitional measures to those whose wages will be reduced
- ⑤ Careful explanation on a new system after determination

For details, please refer to “The role of spouse allowance (配偶者手当の在り方の検討)” on the Ministry of Health, Labour and Welfare website

<http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/haigusha.html>

**(Commuting Allowance)**

**Article 34** Commuting Allowance shall be paid in the amount equivalent to the actual cost required for commuting to and from work up to the maximum amount of \_\_\_\_\_ yen per month.

**(Executive Allowance)**

**Article 35** Executive Allowance shall be paid to an employee who is in one of the following positions at the rate of:

- Director (Head of department): \_\_\_\_\_ yen per month
- Manager (Head of section): \_\_\_\_\_ yen per month
- Supervisor (Head of unit): \_\_\_\_\_ yen per month

- 2. In the case of promotion to a position to which the executive allowance applies, such payment shall start from the pay period (month) in which such promotion takes effect. In such event, the executive allowance for the previous position he/she was in shall not be paid in that pay period (month).
- 3. In the case of demotion to a position to which the executive allowance applies, such payment shall start from the pay period (month) following the pay period (month) in which such demotion takes effect.

**(Skills and Qualification Allowance)**

**Article 36** Skills or Qualification Allowance shall be paid to an employee who has qualifications and is in such position that requires such qualifications as follows, at the rate of:

Health and Safety Manager (include health and safety promoters):	_____ yen per month
Food Safety Manager:	_____ yen per month
Licensed Cook:	_____ yen per month
Nutritionist:	_____ yen per month

**(Attendance Allowance)**

**Article 37** Attendance Allowance shall be paid to an employee whose attendance meets the following criteria during that pay period at the rate of:

- ① No absences: \_\_\_\_\_ yen per month
  - ② One day of absence or less: \_\_\_\_\_ yen per month
2. With regard to the calculation of Attendance Allowance, the following cases are considered worked.
- ① When the annual paid leave was taken;
  - ② When the leave of absence was taken for injury or illness caused in the course of duties;
3. In calculating the Attendance Allowance in paragraph 1, \_\_\_\_ times of arriving late or leaving early are considered equivalent to one day of absence.

[Article 33 Family Allowance]

[Article 34 Commuting Allowance]

[Article 35 Executive Allowance]

[Article 36 Skills and Qualification Allowance]

[Article 37 Attendance Allowance]

1. There are different types of allowances other than those in this example of the rules of employment, such as housing allowance, special duty allowance, allowances for long distance dispatch without family, and sales allowance. An employer is entitled to establish matters with regard to allowances for each workplace at their discretion as to types of allowances to be established or the amount of such allowances established.

**(Premium Pay)**

**Article 38** The premium pay for overtime shall be paid based on the premium pay rate indicated below using the calculation method in the following paragraph.

(1) The premium pay rates for the total number of overtime hours over a period of one month are as follows. In this case, the starting day of the one month pay period is the \_\_\_\_\_ (day) of each month.

- |   |            |
|---|------------|
| 1. 45 hours or less of overtime:                          | <u>25%</u> |
| 2. more than 45 hours up to 60 hours of overtime:         | <u>35%</u> |
| 3. more than 60 hours of overtime:                        | <u>50%</u> |
| 4. the hours of 3. less time off in lieu of overtime pay: | <u>35%</u> |

(the rest of the premium rate of 15% shall be allotted to such time off in lieu of overtime pay).

(2) In the case where the total number of hours of overtime over a period of one year exceeds 360 hours, the premium pay rate for such portion beyond 360 hours shall be 40%. In such case, the starting day of the one year pay period is \_\_\_\_\_ (month/day) of each year.

(3) In calculating the premium pay for overtime, in the case where the number of hours of overtime meets both criteria (1) and (2), the higher rate shall apply.

**2.** The premium pay shall be calculated using the following equations.

**(1) In the case of monthly salary**

**① premium pay for overtime**

(for the portion of 45 hours or less overtime over a period of one month)

$$\frac{\text{Base Pay} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.25 \times \text{total number of hours of overtime worked}$$

(for the portion beyond 45 hours and up to 60 hours of overtime over a period of one month)

$$\frac{\text{Base Pay} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.35 \times \text{total number of hours of overtime worked}$$

(for the portion beyond 60 hours of overtime over a period of one month)

$$\frac{\text{Base Pay} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.50 \times \text{total number of hours of overtime worked}$$

(for the portion beyond 360 hours of overtime for a period of one year)

$$\frac{\text{Base Pay} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.40 \times \text{total number of hours of overtime worked}$$

**② premium pay for working on days off (in the case of working on legal days off)**

$$\frac{\text{Base Pay} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.35 \times \text{total number of hours of overtime worked}$$

**③ premium pay for working late night/early morning (in the case of working between 10 pm and 5 am)**

$$\frac{\text{Base Pay} + \text{Executive Allowance} + \text{Skills/Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 1.25 \times \text{total number of hours of overtime worked}$$

**(2) In the case of daily wage**

**① premium pay for overtime**

(for the portion of 45 hours or less overtime over a period of one month)

$$\left[ \frac{\text{Daily wage}}{\text{Scheduled number of working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.25 \times \text{total number of overtime worked hours}$$

(for the portion beyond 45 hours up to 60 hours of overtime over a period of one month)

$$\left[ \frac{\text{Daily wage}}{\text{Scheduled number of working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.35 \times \text{total number of overtime worked hours}$$

(for the portion beyond 60 hours of overtime over a period of one month)

$$\left[ \frac{\text{Daily wage}}{\text{Scheduled number of working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.50 \times \text{total number of overtime worked hours}$$

(for the portion beyond 360 hours of overtime over a period of one year)

$$\left[ \frac{\text{Daily wage}}{\text{Scheduled number of working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.40 \times \text{total number of overtime worked hours}$$

**② Premium pay for working on days off**

$$\left[ \frac{\text{Daily wage}}{\text{Scheduled number of working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.35 \times \text{total number of working hours on days off}$$

**③ Premium pay for working late night/early morning**

$$\frac{\text{Daily wage}}{\text{Scheduled number of working hours per day}} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \times 0.25 \times \text{number of hours of worked late night/early morning}$$

**(3) In the case of hourly wage**

**① Premium pay for overtime**

(for the portion of 45 hours or less overtime over a period of one month)

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.25 \times \text{total number of overtime worked}$$

(for the portion of beyond 45 hours up to 60 hours of overtime over a period of one month)

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.35 \times \text{total number of overtime worked}$$

(for the portion beyond 60 hours of overtime over a period of one month)

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.50 \times \text{total number of overtime worked}$$

(for the portion beyond 360 hours of overtime over a period of one year)

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.40 \times \text{total number of overtime worked}$$

**② Premium pay for working on days off**

$$\left[ \text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}} \right] \times 1.35 \times \text{total number of hours worked on days off}$$

**③ Premium pay for working late night/early morning**

$$\text{Hourly wage} + \frac{\text{Executive Allowance} + \text{Skills Qualification Allowance} + \text{Attendance Allowance}}{\text{Average number of scheduled working hours per month}}$$

Average number of scheduled working hours per month

$\times 0.25 \times$  total number of hours worked late night/early morning

3. The average number of scheduled working hours per month set out in the preceding paragraph shall be calculated using the following equation:

$$\frac{(365 - \text{the number of annual days off}) \times \text{scheduled working hours per day}}{12}$$

### [Article 38 Premium Pay]

1. An employer must pay the premium pay calculated with the additional rate of a minimum of 25% in the case where an employee is required to work overtime beyond the legal working hours, a minimum of 35% for working on legal days off (once a week or 4 days per 4 weeks), a minimum of 25% for working late night/early morning (between 10pm and 5am) (paragraph 1 and 4 of Article 37 of the Labour Standards Act).  
Furthermore, an employer must pay the premium pay calculated with the additional rate of a minimum of 50% in the case where overtime extends into late night, a minimum of 60% in the case where the working hours on days off extends into late night.
2. In the case where the scheduled working hours established by the company are shorter than the legal working hours, an employer is not required to pay a premium rate for the portion of hours beyond the company's scheduled working hours up to the legal working hours unless there is a stipulation in the contract that requires the employer to pay a premium rate for such a portion preceding the Labour Standards Act.
3. In the case of monthly salary, the hourly wage on which the premium rates are calculated based is calculated by dividing the sum of the base pay and applicable allowances by the number of scheduled working hours per month. (In this example of the rules of employment, such applicable allowances are the executive allowance, skills/qualification allowance and attendance allowance. Those allowances that can be excluded, such as family allowance or commuting allowance are excluded.) (In the case where scheduled working hours vary depending on the month, the average of scheduled working hours per month over a period of one year applies.) Moreover, in the case of hourly wage, such hourly wage is the wage per hour (Article 19 of the Act on Enforcement of the Labour Standards Act).
4. The types of wages which are excluded from the base number for the premium rate calculation other than the family allowance or commuting allowance, are separate living allowance, allowance for children's education overseas, housing allowance, special wages such as severance pay or bonus that may be paid in a cycle of a period longer than one month (paragraph 5 of Article 37 of the Labour Standards Act, Article 21 of the Act on Enforcement of the Labour Standards Act). However, whether the allowance should be excluded must be determined based on the contents of such allowance not on the titles.
5. While the stipulations concerning the working hours, rest periods and days off do not apply to "an employee who is in a supervisory or management position" (hereinafter referred to as "management staff") conforming to paragraph 2 of Article 41 of the Labour Standards Act, such person is not exempt from the stipulations concerning working late night/early morning. Therefore, while the premium pay for overtime and the hours worked on days off does not concern such person, the employer must pay the premium pay for working late night/early morning.
6. The premium rate for the portion beyond 60 hours of overtime over a period of one month is set at a minimum of 50%. However, the application of such premium rate is currently delayed for the small to medium sized companies until further notice. The premium rate of 25% for the portion beyond 60 hours of overtime shall apply to such companies.



The criteria for small to medium sized companies to whom aforementioned premium does not apply are based on the sum of their capital or contribution and the continuous number of employees. In case where there is no capital or contribution, such as an incorporated social welfare organization, the only relevant criteria is the number of employees.

[small to medium sized companies to whom the exemption from the premium rate applies]

Type of business	The sum of capital or contribution		The continuous number of employees
Retail	Up to 50 million yen	or	Maximum. 50
Service	Up to 50 million yen	or	Maximum 100
Wholesale	Up to 100 million yen	or	Maximum 100
Others	Up to 300 million yen	or	Maximum 300

However, the standards for the limits on overtime still apply to the small to medium sized companies. Therefore, in the event that such companies provide the premium rates for overtime beyond the limits on the maximum hours of overtime, in the case where having an employee work overtime beyond such limits for special circumstances, the provisions concerning such matters must be set out in the rules of employment when concluding Agreement 36 with special clauses. Furthermore, when calculating the number of hours of overtime beyond 60 hours, the hours worked on the legal days off shall not be included, but the overtime worked on other days off shall be included.

**(Calculation of Wages in the annual variable work schedule system)**

**Article 39** In the case where an employee who works under the annual variable work schedule system (Article 19 and 20) actually works for a part of the designated term, the average number of hours worked per week shall be calculated over the period of time actually worked to determine the number of hours worked beyond 40 hours per week. An employer must pay the premium rate of 0.25 as in the equations in the preceding article, for the portion of overtime beyond 40 hours per week, with an exception for the hours for which the premium rate is paid as stipulated in the preceding article.

**[Article 39 Calculation of Wages in the annual variable work schedule system]**

In the case where an employee works only part of the designated term, for example, he/she is newly hired and starts his/her employment during the designated term under the annual variable work schedule system or where an employee ends his/her employment during the designated term due to retirement, an employer must pay the premium rate for the hours worked beyond 40 hours per week, if any, calculating the average working hours per week based on the actual hours worked during the designated term.

**(Time Off in lieu of Overtime Pay)**

**Article 40** An employer may grant time off in lieu of overtime pay to employees whose overtime per month exceeds 60 hours pursuant to labor-management agreement.

2. The period over which such employee can take time off in lieu of overtime pay is within 2 months following the day of the cut off date of the pay period in which the overtime was worked.

3. Time off in lieu of overtime pay shall be granted by the half day or by the day. In such case, the half day means between the following hours:

\_\_\_\_:\_\_\_\_(hh:mm) to \_\_\_\_:\_\_\_\_(hh:mm) am or \_\_\_\_:\_\_\_\_(hh:mm) to \_\_\_\_:\_\_\_\_(hh:mm) pm

4. The hours of time off in lieu of overtime pay is the portion of hours of overtime beyond 60 hours per month multiplied by the conversion rate. In such case, the conversion rate is 15% which derived from the premium rate of 50% which would be paid out in the case where an employee does not take time off in lieu of overtime pay less the premium rate of 35% which would be paid out in the case where an employee takes time off in lieu of overtime pay. In addition, in the case where an employee takes time off in lieu of overtime pay, the premium rate is not required to be paid out for the number of hours which derived from dividing the number of hours applied for the time off in lieu of overtime pay by the conversion rate of 15%.

5. In the case where the number of hours for a time off in lieu of overtime pay is a fraction of a half day or a day, an employer may provide a full half day or a whole day off considering such portion a paid leave. However, the portion beyond the actual hours of time off in lieu of overtime pay, which is considered paid leave shall not be included in calculating the number of hours that do not require the premium rate prescribed in the preceding paragraph.

6. An employee who wishes to take time off in lieu of overtime pay must make a request to the company within 5 days from the day following the last (cut off) day of the pay period in which he/she worked overtime beyond 60 hours per month. The days permitted to take such leave shall be determined taking into consideration the employee's request.

7. In the case where a company receives such request as prescribed in the preceding paragraph, the company shall pay, on the regular payday, the portion of the total premium pay to be paid out excluding/less the portion replaced with taking such time off in lieu of overtime pay. However, in the event that a time off in lieu of overtime pay was not taken within 2 months from the following pay period, the employer shall pay the remaining premium rate of 15% on the payday for the pay period of the month in which the cancellation of such request was confirmed.

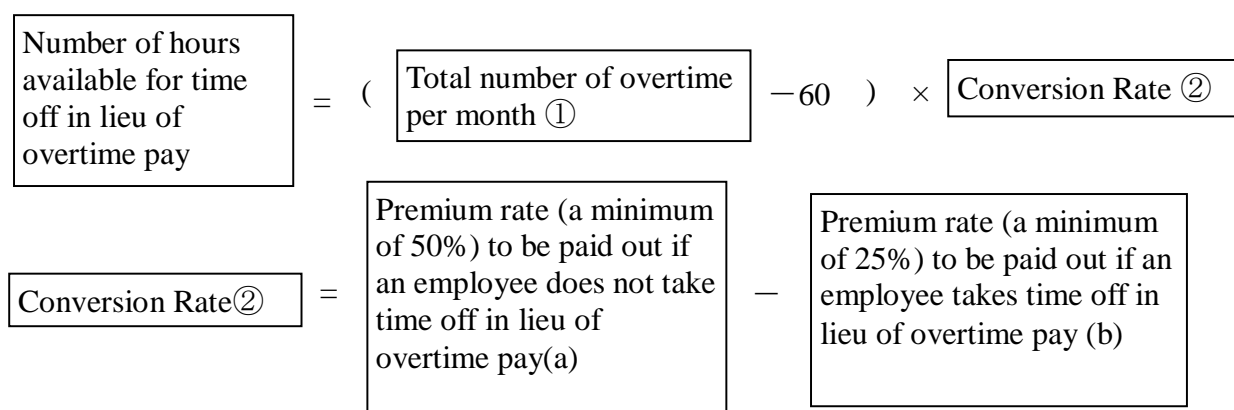
8. In the case where a company did not receive the request (time off in lieu of overtime pay) within the prescribed period in paragraph 6, the company shall pay the total premium pay for overtime worked for the pay period on the regular payday. However, in the case where an employee who did not request within the prescribed period in paragraph 6 did so after such period has passed, but during the period permitted to take such time off in lieu of overtime pay, the company may grant the time off in lieu of overtime pay upon the company's approval. In such event, the excess payment shall be settled on the payday of the pay period in which such time off was taken.

**[Article 40 Time Off in lieu of Overtime Pay]**

1. The legal premium rate for the portion of overtime beyond 60 hours per month is established at 50% with the intention to limit excessively long overtime. However, there may be a case where employees are required to work overtime beyond such limit under unavoidable circumstances. Since April 1, 2010, an employer now has an option to grant a paid leave to the employee who worked overtime beyond 60 hours per month to replace the portion of the raised premium rate, having so established in labor-management agreement in order to ensure employees' good health.

2. An employer is required to conclude labor-management agreement for each workplace in order to implement the leave prescribed in paragraph 3 of Article 37 of the Labour Standards Act (hereinafter referred to as “time off in lieu of overtime pay”). Such collective agreement does not compel each employee to take time off in lieu of overtime pay. At a workplace where the time off in lieu of overtime pay has been implemented, each employee is allowed to decide whether he/she takes time off in lieu of overtime pay.
3. In addition, matters with regard to time off in lieu of overtime pay are in the category of “leave” under Article 89 of the Labour Standards Act. Therefore, such matters must be set forth in the rules of employment in order to implement the system of time off in lieu of overtime pay. In order to provide time off in lieu of overtime pay, the following matters must be provided in labor-management agreement.
  - (1) The method of calculation for the number of hours that can be applied to time off in lieu of overtime pay.  
 The detailed method to calculate the number of hours that can be applied to time off in lieu of overtime pay is:
    - ① the number of hours of overtime worked beyond 60 hours per month;  
 multiplied by:
    - ② The rate (b) (hereinafter referred to as “conversion rate”) which is the difference between the rate of the premium pay which would be paid out if the time off in lieu of overtime pay is not taken (a) and the premium rate which would be paid out if the time off in lieu of overtime pay is taken (see diagram 1).

(diagram 1)



An employer must provide a stipulation of the details with regard to (the method of calculation) according to the above method of calculation under labor-management agreement.

The minimum of 50% is required for the premium rate which would be paid out if an employee does not take time off in lieu of overtime pay as prescribed in (a), and the minimum of 25% is required for the premium rate which would be paid out if an employee takes time off in lieu of overtime pay as prescribed in (b). These rates are the mandatory matters for the rules of employment, “the method for determination, computation and payment” and must be stipulated in the rules of employment.

(2) Unit of time off in lieu of overtime pay

Taking multiple units of time off in lieu of overtime pay at a time is considered more advantageous from the point of view of the employee's rest. Such unit is established by the half day or by the day (under Article 19-2 of the Ordinance for Enforcement of Labour Standards Act) and either or both, by the half day or one day, are required to be established as the unit for time off in lieu of overtime pay under labor-management agreement. "One day" means the number of scheduled working hours per day for that employee, and "a half day" means a half of one day, but it does not have to be precisely 50% of the number of hours for one day. Therefore, the definition of "a half day" is required to be set forth in labor-management agreement for each work place in such event.

(3) The period permitted to take time off in lieu of overtime pay

The period permitted to take time off in lieu of overtime pay is established as within 2 months from the day following the last (cut off) day of the pay period in which an employee worked overtime beyond 60 hours per month. The period permitted to take time off in lieu of overtime pay is required to be stipulated in labor-management agreement within the period established as above.

(4) Days for time off in lieu of overtime pay and payday for premium pay

The aforementioned items in paragraph (1) to (3) must be stipulated in labor-management agreement (Article 19-2 of the Ordinance for Enforcement of the Labour Standards Act).

Moreover, an employer may stipulate the following items under labor-management collective agreement:

① the method for determining the dates to take time off in lieu of overtime pay taking into consideration employees' request.

An employer should have an agreement on the method for determining the dates for the leave to be taken in advance. For example, an employer shall verify whether the employee will take time off in lieu of overtime pay within 5 days from the end of the preceding month. In the case where he/she wishes to take such time off, determine the dates for such time off. However, an employee can be allowed to decide whether to take time off in lieu of overtime pay of his/her free will. Therefore the employee's will shall be taken into account to determine the dates for such leave to be taken.

② Payday for the premium pay for overtime beyond 60 hours per month

The payday for the premium pay for overtime beyond 60 hours per month shall be as follows, taking into consideration the employee's will (see diagram 2).

(a) In the case where the employee wants to take time off in lieu of overtime pay, the employer is required to pay the portion of the premium pay for overtime which an employer has the obligation to pay (the premium pay calculated at a minimum of 25% premium rate pursuant to Article 37 of the Labour Standards Act) on the payday for the pay period in which such overtime occurred.

Furthermore, in the case where an employee wants to, but does not take such leave, the employer is required to pay the premium pay to be paid additionally for the portion beyond 60 hours per month as prescribed in Article 37 of the Labour Standards Act on the payday for the pay period in which the employer verified that such employee decides not to take the time off in lieu of overtime pay (see diagram 4).

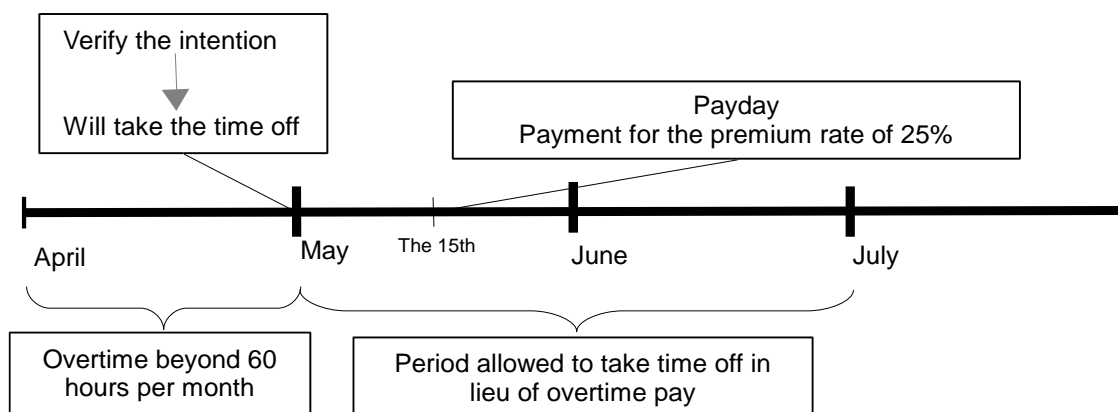
(b) In cases other than the cases described in paragraph (a), which means the cases where an employee has no intention to take time off in lieu of overtime pay or an employer cannot verify his/her intention concerning the leave, the employer is required to pay the premium pay including the raised premium rate as stipulated in the law (the premium pay calculated at a minimum of 50% premium rate pursuant to Article 37 of the Labour Standard Act) on the payday for the pay period in which the overtime for the premium rate occurred. Furthermore, an employer may establish the clause stipulating that, in the case where an employer receives a request to take time off in lieu of overtime pay from an employee after the premium pay has already been paid including the raised premium rate, even if requested within the term permitted to take such time off established in labor-management agreement, the employer is entitled to not allow the employee to take such time off. As stated above, with regard to the case where an employer receives a request to take time off in lieu of overtime pay from an employee after the premium pay has been paid including the legal raised rate, an employer is entitled to provide stipulations in labor-management agreement such as follows:

- An employee may take time off in lieu of overtime pay if he/she requests during the period permitted to take such time off;
- In the case where an employee takes such time off, the employer must arrange a settlement for the portion of the raised premium pay which has already been paid out.

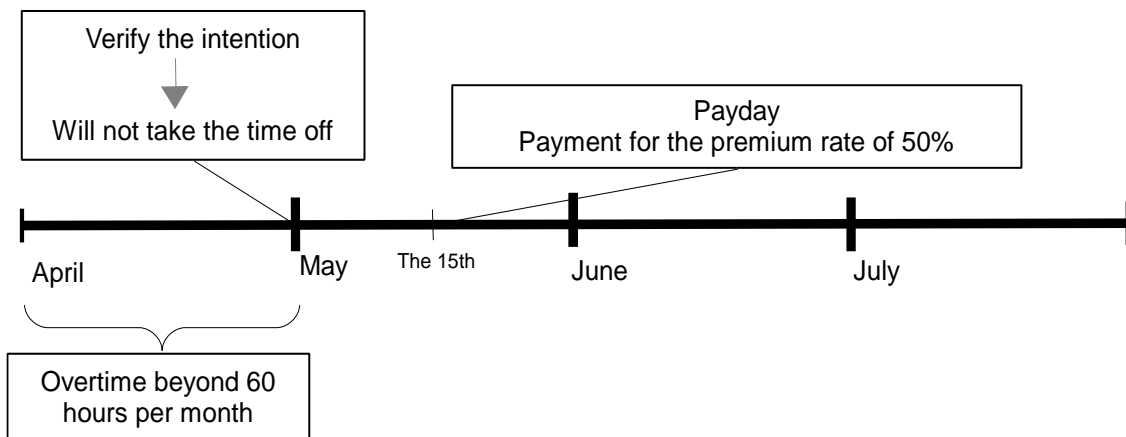
(diagram 2)

The following are examples of terms and conditions a company may establish:  
 The cut off date of a pay period is at the end of the month.  
 The payday is on the 15th of the following month.  
 Time off in lieu of overtime pay must be taken within 2 months.  
 The premium rate of 50% applies if time off in lieu of overtime pay is not taken.  
 The premium rate of 25% applies if time off in lieu of overtime pay is taken.

(a) The case where an employee has the intention of taking time off in lieu of overtime pay.



(b) Cases other than (a) (in the case where an employee does not have the intention to take time off in lieu of overtime pay or an employer cannot verify such intention, etc.)



4. The hours for which payment for the raised legal premium rate is not required

The time off in lieu of overtime pay is given to replace the payment for the raised premium rate. Therefore the hours for which payment for the raised premium rate is not required is the working hours equivalent to the time off in lieu of overtime pay taken by the employee out of the hours of overtime beyond 60 hours per month. That means, to explain further, the number of hours derived from dividing the number of hours taken for time off in lieu of overtime pay by the conversion rate. Therefore, in the case where an employee has the intention to take the time off in lieu of overtime pay, but does not take it, the payment of the raised premium rate is required for the working hours equivalent to the hours of time off in lieu of overtime pay which are not taken.

5. The relation between time off in lieu of overtime pay and the annual paid leave

The time off in lieu of overtime pay is a separate leave from the annual paid leave. In the case where an employee takes time off in lieu of overtime pay and does not work for the entire day, such a day is the day the employee is exempted from the obligation to work through the proper procedures, and shall not be included in the base number of the work day for calculating the annual paid leave.

**(Wages during leaves)**

**Article 41** An employer shall pay the regular wage which is paid for working the scheduled working hours for the period of annual paid leave if taken.

2. An employer shall (not pay / pay the regular wage) for the period of maternity/parental leave, hours for child care, menstrual leave, leave for mothers' health management, child care/parental leave and child Care and Family Care Leave Act based on the Act on Care Leave for Children and Other Family Members and leave for jury duty.

3. An employer shall not pay for the period of leave set forth in Article 9 on principle (\_\_\_% will be paid for \_\_\_\_\_ months).

**[Article 41 Wages during leaves]**

1. In the case where an employee takes annual paid leave, an employer must pay him/her using one of the following methods: ①average wage, ②the regular wage which would be paid for working the scheduled working hours, ③the amount equivalent to the standardized daily wage stipulated in paragraph 1 of Article 99 of the Health Insurance Act. However, in the case of ③, a written agreement is required with a representative of the workers. Moreover, an employer must establish clauses concerning the method chosen under the rule of employment (paragraph 7 of Article 39 of the Labour Standards Act).
2. An employer shall determine whether maternity/parental leave, hours for child care, menstrual leave, leave for mothers' health management, child care/parental leave and child Care and Family Care Leave Act based on the Act on Care Leave for Children and Other Family Members, leave for jury duty, congratulatory and condolence leave, sick leave and other leaves of absence are to be paid or unpaid leave and provide stipulations in the rules of employment. Furthermore, the employer should specify the details for each paid leave if so determined, for example, "pay the regular wage" or "pay \_\_\_% of base pay" and so on.

**(Wages during Involuntary Leave)**

**Article 42** In the case where an employer has an employee take leave on a scheduled work day due to business circumstances, an employer shall pay 60% of the average (daily) wage per day off pursuant to Article 12 of the Labour Standards Act. However, in the case where such leave is for a part day, the employer shall guarantee the equivalent of 60% of the average wage for that day pursuant to Article 26 of the Labour Standards Act.

**[Article 42 Wages during Involuntary Leave]**

1. In the case where an employer has an employee take leave on a scheduled work day due to business circumstances (for reasons attributed to the company), the employer must pay 60% of the average wage as allowance for involuntary leave (Article 26 of the Labour Standards Act). Moreover, in the case where an employer has an employee take leave for a part-day due to business circumstances, and the payment for the actual hours worked is less than 60% of the average daily wage, the employer must pay the difference.

**(Policy for different types of Absences)**

**Article 43** An employer shall deduct the wage equivalent to the days or hours of absence from the base pay in the case of full-day absence, arriving late, leaving early and part-day leave for personal reasons.

2. in the case of the preceding paragraph, the calculation for the wage equivalent to one hour of work is as follows:

(1) In the case of monthly salary

Base pay ÷ the number of average scheduled working hours over a period of one month

(calculate the average scheduled working hours over one month using the equation set out in the paragraph 3 of Article 36)

(2) In the case of hourly wage

Base pay ÷ the number of scheduled working hours per day

**[Article 43 Policy for different types of Absences]**

1. An employer is not required to pay wages for the days or hours which an employee did not work as a result of their full-day absence, arriving late or leaving early. In addition, the employer is entitled to deduct wages according to the number of days or hours for which such employee was absent.

**(Pay Period and Payday)**

**Article 44** Wages will be paid according to the pay period ending on the \_\_\_\_ (day) of each month, and the payday will be on the \_\_\_\_ (day) of the following month. However, in the case where the payday falls on a day off, wages would be paid on the preceding day.

2. In the case where an employee is hired or retires during the pay period described in the preceding paragraph, an employer shall pay for the days worked based on the daily wage calculated by monthly wage divided by the number of scheduled work days.

**[Article 44 Pay Period and Payday]**

1. Wages are required to be paid no less than once a month on a fixed payday (paragraph 2 of Article 24 of the Labour Standards Act).

**(Payment and Deductions of Wages)**

**Article 45** An employer shall pay wages directly to employees in currency in full.

2. With regard to the preceding paragraph, an employer may pay wages by transferring to the chequing, saving or consolidated trading account at a financial institution specified by the employee upon agreement.

3. The following items shall be deducted from wages:

① Withholding income tax

② Residents' tax

③ The employee's (the insured person's) portion of the premium payments for health Insurance, employee's welfare pension insurance and employment insurance

④ Other deductions set forth in the written agreement with a representative of workers, such as fees for the company's residential properties (if used), contributions for payroll saving plans and union dues.



**[Article 45 Payment and Deductions of Wages]**

1. Wages must be paid in currency, in full directly to an employee (paragraph 1 of Article 24 of the Labour Standards Act). However, an employer is entitled to deduct the employee's portion of payments based on the laws and regulations (statutory deductions), such as income tax or residents' tax. Moreover, an employer may deduct the deductions authorized in the written agreement with a representative of the workers (paragraph 1 of Article 24 of the Labour Standards Act). However, the deductions acceptable in accordance with the aforementioned agreement with a representative of the workers shall be limited to those deductions that are easily identifiable, such as payment for (employee's) purchase, fees for company's residential properties or dormitories and other welfare facilities, premiums for life or indemnity insurances and union dues.
2. An employer shall pay wages directly to employees on principle. However, the employer is permitted to transfer wages to accounts under the employee's name at a financial institution such as a bank specified by the employee upon agreement (authorization) (Article 7-2 of the Act for Enforcement of the Labour Standards Act).

**(Emergency Payment of Wages)**

**Article 46** An employer may pay for the hours which an employee has already worked prior to the regular payday, upon such employee's request, in the case where the employee or those who maintain their livelihood on the income of such employee, are experiencing one of the following situations.

- ① In the case where a person is required to go back to their hometown for one week or longer under unavoidable circumstances.
- ② In the case of marriage or death.
- ③ In the case of birth, infectious disease or disaster.
- ④ In the case where an employee leaves the company due to retirement or dismissal.

**[Article 46 Emergency Payment of Wages]**

1. This article stipulates that an employee is entitled to request wages for hours which the employee has already worked, even if prior to the regular payday, in the case where the employee or those who maintain their livelihood from the income of such employee, are experiencing situations that require emergency expenses, such as birth, infectious disease, disaster, etc. (Article 25 of the Labour Standards Act).

**(Wage Increase)**

**Article 47** An employer shall increase wages which takes effect as of \_\_\_\_\_(month/day) of each year for employees whose work performance was satisfactory. However, in the case where the employer experiences significant decline in their business performance or other unavoidable circumstances, the employer may not increase wages.

2. An employer may increase wages of the employee whose outstanding achievement was acknowledged by the employer notwithstanding the stipulation in the preceding paragraph.
3. An employer shall determine the amount of wage increase for each employee taking into account the achievement of each employee.

**[Article 47 Wage Increase]**

1. The matters with regard to wage increase are the mandatory matters for the rules of employment. The conditions on wage increase, such as the assessment period which applies to wage increase must be established.

**(Bonus)**

**Article 48** An employer shall award bonus on principle to those employees who are on record as employees during the applicable period taking into consideration the business performance of the company. Such bonus will be paid on the days specified below. However, in the case where the company experiences significant decline in their business performance or is under other unavoidable circumstances, the employer may postpone or cancel bonus.

Applicable Period	Days for payment
From _____(month/day) to _____(month/day)	_____(month/day)
From _____(month/day) to _____(month/day)	_____(month/day)

2. An employer shall determine the amount of bonus prescribed in the preceding paragraph for each employee taking into consideration the business performance of the company and the achievement of each employee's performance.

**[Article 48 Bonus]**

1. An employer does not have an obligation to award bonus under any laws, such as the Labour Standards Act. However, in the case where an employer establishes bonus, the employer is required to clearly stipulate matters concerning bonus, such as the applicable period, standards for calculating bonus, assessment period and method of payment under the rules of employment.
2. An employer is entitled to set forth a clause that limits the range of eligible employees by establishing the applicable period to a certain day, for example, on June 1st, December 1st or the day of the payment, as to which employees are employed by the company on such a given day so that the employees who are not employed by the company on such a given day are not eligible.

## Chapter 7 Fixed retirement age, Retirement and Dismissal

Matters with regard to retirement are the mandatory matters of the rules of employment. In addition, the matters pertaining to retirement prescribed in Article 89 of the Labour Standards Act mean matters concerning all forms of retirement in which an employee loses his/her status (as an employee), such as voluntary retirement, dismissal, retirement due to an expiration of the term of contract.

### [Example 1] The case where the fixed retirement age is established at age 65

**(Fixed Retirement Age)**

**Article 49** The fixed retirement age shall be 65 years of age and an employee shall retire on the last day of the month in which the employee reaches such age.

### [Example 2] The case where the fixed retirement age is established at age 60, and a company rehires a retiree who wishes to continue to work.

**(Fixed Retirement Age)**

**Article 49** The fixed retirement age shall be 60 years of age and an employee shall retire on the last day of the month in which the employee reaches such age.

2. An employer shall continue an employee's employment if he/she wishes to continue to work after his/her retirement until he/she reaches age 65, notwithstanding the preceding paragraph, if the causes or reasons for dismissal or retirement do not apply to the employee.

### [Article 49 Fixed Retirement Age]

1. Fixed age retirement is a system where reaching the fixed age is the grounds for retirement.
2. The fixed age for retirement cannot be younger than age 60 if establishing the fixed age for retirement (Article 8 of the Act on Stabilization of Employment of Elderly Persons Act No. 68 of 1971).
3. Article 9 of the Act on Stabilization of Employment of Elderly Persons stipulates that an employer has the obligation to take measures to secure the employment for an elderly employee until he/she reaches the age of 65. Therefore, an employer who adopts the fixed age retirement (only when such age is set under 65) must take one of the following measures: ①raising the fixed age for retirement, ②implementing the system of continued employment and ③abolishing the system of fixed age for retirement.

In addition, the employer who sets the standards to limit the eligibility (eligible persons) for the continued employment system in labor-management agreement until March 31 2013, are permitted to maintain the standards to limit the eligibility for the continued employment system until March 31 2025 as transition measures of the Amendments of the Act on Stabilization of Employment of Elderly Persons (Act No. 78 of 2012) applying to a person over the age at which the payment for employee's old age pension benefits commences.

(references) The age at which the payment for the employee's old age pension benefits commences for the benefit proportion of employee's old age pension.

From April 1, 2013 until March 31, 2016	Age 61
From April 1, 2016 until March 31, 2019	Age 62
From April 1, 2019 until March 31, 2022	Age 63
From April 1, 2022 until March 31, 2025	Age 64

4. An employer must not discriminate against employees on grounds of gender when retiring (Article 6 of the Equality Act).

**(Retirement)**

**Article 50** Additional to the preceding article, an employee under one of the following circumstances shall retire.

- ① In the case where an employee submits the request for retirement and the company approves, or 14 days after such submission;
- ② In the case where a fixed term employment contract expires;
- ③ In the case where the period of leave of absence stipulated in Article 9 expires but the cause of the leave has not been resolved;
- ④ In the case of death;

2. In the case where an employee retires or is dismissed, the employer must immediately issue the letter of verification which states the period of service, type of work, position, wages and the reasons for retirement.

**[Article 50 Retirement]**

1. An employee who is employed for an indefinite term, may request retirement at any time. paragraph 1 and 2 of Article 627 of the Civil Code (Act No.89 of 1896) stipulates that after 14 days from the day an employee submits such request, the retirement takes effect without approval of the company.  
Furthermore, in the case where an employee who receives a monthly salary wishes to retire at the end of the month, he/she is required to submit the request for retirement during the first half of that month. Those who wish to retire on the cut off date of the pay period, for example, on the 20th, are required to submit such request during the first half of one month prior to the 20th (paragraph 2 of Article 627 of the Civil Code).
2. In the case where a fixed term employment contract is considered not different from an indefinite term employment contract due to its repeated renewals, or where the renewal of a fixed term employment contract is considered likely, a company's decision to discontinue the fixed term employment contract (which means the contract expires but will not be renewed) is invalid unless there are reasonable grounds for such discontinuation from an objective point of view, or such discontinuation is considered appropriate according to general consensus. In such event, the contract shall be renewed under the same terms and conditions as in the preceding contract. In the case where an employee is employed under a fixed term contract which in reality is not considered different from an indefinite term contract due to repeated renewal, or in the case where the expectation of continued employment is justifiable, and if there is no reasonable grounds in discontinuing employment (the contract term is expired and not renewed) and is perceived to be inappropriate according to the social convention, such discontinuation of the employment is invalid. Such fixed term contract shall be renewed under the same conditions as in the previous contract (Article 19 of the Labour Contract Act).
3. In the case where an employee requests a letter of verification which states the length of service, type of work, position at the company, wages or the reasons for retirement (including grounds for dismissal if applicable), the employer has the obligation to issue such letter concerning the matter requested (paragraph 1 of Article 22 of the Labour Standards Act).

**(Dismissal)**

**Article 51** An employer may dismiss an employee if that employee falls under one of the following categories.

- ①an employee who cannot fulfil his/her regulations in service as a worker due to his/her significantly poor attendance/unacceptable behaviour towards work and where there is no prospect for improvement;
- ②an employee who is not able to perform their duties and cannot be transferred to a different position due to his/her significantly poor performance, productivity or efficiency and where there is no prospect for improvement;
- ③an employee, who after 3 years of treatment, does not recover from injury or illness caused in the course of duties, and where the employee is receiving or is going to receive the compensation pension for injury or illness, including the case where the company pays the discontinuance compensation;
- ④an employee who cannot endure the work due to his/her mental or physical disability;
- ⑤an employer ascertains that an employee is incompetent as an employee due to his/her poor efficiency or unacceptable behaviour during his/her probationary term;
- ⑥an employer confirms that an employee is under conditions for disciplinary dismissal in paragraph 2 of Article 64.
- ⑦an employer is required to curtail their business operation or to close down part of their business operations due to business circumstances, natural disasters or other unavoidable reasons, and transferring employees to different positions is difficult.
- ⑧other unavoidable reasons comparable to the above items.

2. In the case where an employer dismisses an employee in accordance with the clauses in the preceding paragraph, the employer must notify the employee a minimum of 30 days in advance. In the case where an employer does not notify the employee, the employer must pay a dismissal allowance equivalent to a minimum of 30 days average wage. However, the number of days required prior to such notice can be compensated for by the corresponding amount of dismissal allowance.

3. The stipulation in the preceding paragraph does not apply to the case where an employer dismisses an employee pursuant to stipulations concerning disciplinary dismissal in Article 60 with the authorization of the director of the Labour Standards Inspection Office or the case where such employee meets one of the following criteria.

- ①Workers who are hired by the day (excluding those who have been hired continuously for one month or longer.)
- ②Workers who are employed with a fixed term of 2 months or less (excluding those who have been employed beyond such term.)
- ③Workers who are under the probationary term (excluding those who have been employed for 14 days or longer.)

4. In the case where an employee is dismissed in the cases as prescribed in paragraph 1 and he/she requests a letter of verification which states reasons for such dismissal, an employer shall issue such letter.

**[Article 51 Dismissal]**

1. Matters pertaining to retirement which are stipulated in paragraph 3 of Article 89 of the Labour Standards Act are the mandatory matters for the rules of employment and must be provided in the rules of employment.

2. Article 89 of the Labour Standards Act does not set forth special restrictions with regard to grounds for dismissal which should be prescribed in the rules of employment. However, Article 16 of the Contract Act stipulates, “A dismissal shall, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of right and be invalid”.

Moreover, a various laws, such as the Labour Standards Act, stipulate grounds for dismissal that are prohibited. Therefore an employer must establish provisions in the rules of employment with regard to grounds for dismissal, which do not infringe upon stipulations under those laws.

✂The prohibited grounds for dismissal are:

- ① Dismissal on the grounds of nationality, beliefs, social status of employees (Article 3 of the Labour Standards Act).
- ② Dismissal on the grounds of gender of employees (Article 6 of the Equality Act).
- ③ Dismissal during leave of absence due to injury or illness caused in the course of duties, and 30 days after such leave, during pregnancy and parental (child care) leave prior to and after childbirth (within 6 weeks or 14 weeks in the case of multiple birth, prior to the birth and 8 weeks after the birth) and 30 days after such leave (Article 19 of the Labour Standards Act).
- ④ Dismissal on the grounds of reporting to the Labour Standards Inspection Office (Article 104 of the Labour Standards Act, Article 97 of the Industrial Safety and Health Act (Act No.57 of 1972)).
- ⑤ Dismissal on the grounds of marriage, pregnancy, childbirth for a female employee (paragraph 2 and 3 of Article 9 of the Equality Act). Furthermore, dismissal of a female employee during her pregnancy or within 1 year after childbirth shall be invalid unless the employer proves that such dismissal is not based on the pregnancy or childbirth (paragraph 4 of Article 9 of the Equality Act).
- ⑥ Dismissal on the grounds that the employee requests support from the director at the local prefectural Labour Standards Inspection Office in resolving an issue of an individual labour related dispute (Article 4 of the Act on Promoting the Resolution of Individual Labour related Dispute (Act No.112 of 2001)).
- ⑦ Dismissal on grounds that the employee requests support from the director at the local prefectural labour Standards Inspection Office or requests mediation to resolve an issue with a individual labour related dispute concerning the Equality Act, Act on Care Leave for Children and Other Family Members and the Part-Time Labour Act (paragraph 2 of Article 17, paragraph 2 of Article 18 of the Equality Act, paragraph 2 of Article 52-4, paragraph 2 of Article 52-5 of the Act on Care Leave for Children and Other Family Members, paragraph 2 of Article 21, paragraph 2 of Article 22 of the Part Time Labour Act).
- ⑧ Dismissal on the grounds of requesting or taking child Care and Family Care Leave Act (Article 10, 16, 16-4, 16-7, 16-9, 18-2, 20-2, 23-2 of the Act on Care Leave for Children and Other Family Members).
- ⑨ Dismissal on grounds that an employee is a union member, joins a union, attempts to organize a union or engages in appropriate union activities (Article 7 of the Labour Union Act (Act No. 174 of 1949)).
- ⑩ Dismissal on the grounds of the act of whistleblowing (Article 3 of the Whistleblower Protection Act (Act No. 122 of 2004)), etc.

With respect to ③, provided that an employer acquires the authorization of the director at the Labour Standards Inspection Office in advance, there is no restriction on dismissal on the grounds that, as of the first day after 3 years of the commencement of treatment or at some point later, an employee starts to receive the benefit of compensation pension for injury or illness caused in the course of duties, or that an employer is not able to continue the business for reasons such as natural disaster or other unavoidable circumstances.

3. An employer must notify an employee of the dismissal a minimum of 30 days in advance in principle, or pay the dismissal allowance equivalent to a minimum of 30 days average wage (paragraph 1 of Article 20 of the Labour Standards Act).

However, such advance notice is not required for the following employees:

- ① workers who are hired by the day (excluding those who were employed for one month or longer);
- ② workers who are employed under a fixed term contract of 2 months or less (excluding those who are employed beyond such term);
- ③ seasonal workers who are employed for a fixed term of 4 months or less (excluding those who are employed beyond such term);
- ④ workers who are under a probationary period (excluding those who are employed for longer than 14 days).

Furthermore, such advance notice is not required in the following cases (a) or (b), and with the approval of the director of the local Labour Standards Inspection Office:

- (a) In the case where continuation of the business operation is no longer possible due to natural disaster or other unavoidable circumstances:  
e.g.: business premises destroyed by fire or earthquakes
- (b) In the case where the grounds for dismissal are attributed to employee:  
e.g.: embezzlement, infliction of injury upon another or absence for 2 weeks or longer without notice/permission.

An employer can reduce the number of days required for advanced dismissal notice by paying the corresponding amount for the number of days of average wage (paragraph 2 of Article 20 of the Labour Standards Act).

4. An employer must issue a letter of verification which states the grounds for dismissal without delay if the employee who is dismissed requests such letter at the time of dismissal (paragraph 1 of Article 22 of the Labour Standards Act).

An employer must issue the letter of verification which states the grounds for dismissal without delay if the employee who receives the notice of dismissal requests such letter during the period from the day such notice is given to the employee to the day of the dismissal (paragraph 1 of Article 22 of the Labour Standards Act).

5. It is stipulated that an employer shall not dismiss an employee under a labour contract with a fixed term (a fixed term labour contract) during such term unless under unavoidable circumstances (paragraph 1 of Article 17 of the Labour Contract Act). The validity of such dismissal would be scrutinized more strictly than in the case of an employee with an indefinite term contract.

In addition, in the case where an employer does not renew the labour contract with an employee whose fixed term labour contract has been renewed more than 3 times, or an employee who has been employed under a fixed term labour contract continuously for one year or longer, the employer must notify the employee of the discontinuation of their employment contract not later than 30 days prior to the expiry date of such contract, excluding the case where the intention of discontinuation of the contract was clearly announced in advance. (Article 1 of the Standards for conclusion, renewal and discontinuation of fixed term labour contracts (the Ministry of Health, Labour and Welfare Notice No. 357 of 2003)).

Furthermore, the employer must issue a letter of verification which states the grounds for the discontinuation of the contract without delay if requested after the notice of discontinuation is given or after such discontinuation (Article 2 of the Standards for conclusion, renewal and discontinuation of fixed term labour contracts). “The grounds for discontinuation of the employment” should be clearly specified and must be more than the expiry of the contract term. Please refer to the following examples.

- The discontinuation of the contract was agreed upon between both parties at the time of renewal.
- The maximum number of renewals is established at the time of initial signing and such maximum number has been reached.
- The task which the employee is engaged in is completed/cancelled.
- Due to business contraction.
- An employer concludes that the employee is incompetent to perform the tasks
- The employee violates an order on duty, or has poor attendance such as absence without notice.



## Chapter 8 Severance Pay

### (Terms for Severance Pay)

**Article 52** An employer shall pay severance pay to an employee whose years of service is \_\_\_\_ years or longer when retiring or being dismissed pursuant to the clauses under this chapter. However, an employer shall not pay severance pay to an employee whose years of service is less than \_\_\_\_ years when retiring for his/her personal reasons. In addition, an employer may not pay all or part of the severance pay to an employee who is dismissed as a disciplinary action conforming to paragraph 2 of Article 63.

2. An employer shall pay severance pay to an employee who is eligible for the continued employment system at the time of retirement but shall not pay severance pay for the employment after such retirement.

### [Article 52 Terms of Severance Pay]

1. While severance pay is not mandatory, in the case where an employer implements severance pay, matters pertaining to severance pay, such as the range of employees covered, requirements for receiving severance pay, the methods for calculation and payment, the time for the payment, must be stipulated in the rules of employment.

### (The Amount of Severance Pay)

**Article 53** The amount of severance pay shall be calculated by multiplying the base pay at the time of retirement or dismissal by the pay rate which is established according to the number of years of service as follows:

Years of service	Pay rate
Less than 5 years	1.0
From 5 to 10 years	3.0
From 10 to 15 years	5.0
From 15 to 20 years	7.0
From 20 to 25 years	10.0
From 25 to 30 years	15.0
From 30 to 40 years	20.0
40 years or longer	25.0

2. The period of leave of absence taken pursuant to Article 9 shall not be included in the years of service established in the preceding paragraph except such leave occurred due to reasons attributed to the company.

**[Article 53 The Amount of Severance Pay]**

1. While the example calculation for severance pay indicated in this example of the rules of employment takes into account the base pay at the time of retirement or dismissal and the number of years of service, there are other factors to be considered, such as the level of achievement/contribution to the company by the employee. An employer is entitled to choose the method to determine the amount of severance pay taking into consideration the actual circumstances at each company.

**(Method and Time of Payment for Severance Pay)**

**Article 54** An employer shall pay severance pay to the employee who retires, or to the family of the employee in the case of retirement due to his/her death, within \_\_\_\_ month(s) from the day that the reason for paying (severance pay) occurred.

**[Article 54 Method and Time of Payment for Severance Pay]**

1. An employer shall determine the method and time of payment for severance pay taking into consideration the actual circumstances at each company.  
In the case where the payment for severance pay is due to the employee's death, unless there are special rules, payment to the heir of the deceased is considered appropriate.
2. An employer may pay severance pay by transferring funds to an account at a bank or other financial institution specified by the employee if there is an agreement with the employee. In such case, the payment can be made by a certified cheque issued by a bank or other financial institution or a postal money order.
3. In the case where an employer establishes the severance pay system, the employer must take security measures, such as concluding a guaranteed contract with a financial institution to cover the amount to be paid for severance pay (Article 5 of the Act on Security of Wage Payment (Act No. 34 of 1976)). However, in the case where a company participates in the Smaller Enterprise Retirement Allowance Mutual Aid scheme or the Specific Industry Retirement Allowance Mutual Aid scheme, aforementioned security measures are not required.

## Chapter 9 Safety, Health and Accident Compensation

Matters pertaining to safety, health and accident compensation are the conditional mandatory matters for the rules of employment and the clauses with regard to these matters must be set forth in the rules of employment.

### (Compliance Provisions)

**Article 55** A Company shall take necessary measures to secure and improve the safety and health of employees and to create comfortable and adequate workplaces.

2. Employees must comply with the laws pertaining to the safety and health and the directions given by the company, and endeavour to prevent occupational accidents by cooperating with the company.

3. Employees must comply with the following directions in order to ensure the safety and health (at a workplace):

- ① Thoroughly check machines, equipment and tools before commencement of work. In the case where an employee acknowledges any abnormality, report immediately to the company and follow the instructions.
- ② Do not remove safety equipment or impair their effectiveness.
- ③ Wear safety equipment or protective gear if required at work.
- ④ Do not smoke where prohibited.
- ⑤ Do not enter prohibited areas or paths.
- ⑥ Keep the work area organized and in order. Do not place objects in passageways, emergency exits or areas where there is a fire extinguisher.
- ⑦ In the case of fire, accidents or other emergency situations, take appropriate actions for the situation and report to \_\_\_\_\_ (place/person) and follow the instruction given.

### [Article 55 Compliance Provisions]

1. The Industrial Safety and Health Act (Act No. 57 of 1972, hereinafter referred to as the “Safety and Health Act”) provides stipulations with respect to detailed measures to be taken by an employer in order to prevent occupational accidents. An employer is expected to actively engage in the prevention of occupational accidents and to establish a comfortable and adequate work environment conforming to the Safety and Health Act. For such reasons, it is important to establish the safety and health management system at a workplace on a daily basis.
2. The Safety and Health Act stipulates that an employer is required to appoint a General Safety and Health Manager, a Safety Manager, a Health Manager, and an occupational physician at the workplace with a certain number of employees in a certain industries (Article 10 of the Safety and Health Act). In addition, an employer is required to appoint a Safety and Health Promoter or a Health Promoter at a workplace where the number of employees are continuously between 10 and 49 (Article 12-2 of the Safety and Health Act). A company must have those personnel manage the matters pertaining to the safety and health at a workplace.

**(Health Examinations)**

**Article 56** An employer shall provide regular medical examinations for employees at the time of hiring and once a year, or once every 6 months for those who engage in late night/early morning shifts.

2. An employer shall conduct medical examinations for special issues for employees who engage in hazardous duties specified by the laws in addition to those medical examinations set out in the preceding paragraph.

3. An employer shall arrange assessment interviews with a physician for employees who appear to be developing fatigue due to long working hours if requested.

4. As a result of the medical examinations set out in paragraph 1 and 2 and the meetings prescribed in paragraph 3, if required, an employer may order necessary measures, such as prohibition from work for a certain length of time, reduced working hours, transferring positions in order to maintain the health of an employee.

**[Article 56 Health Examinations]**

1. An employer must provide general medical examinations on a regular basis, once a year, or once every 6 months for those who engage in the types of work stipulated in paragraph 1 section 1 of Article 13( of the Ordinance on Industrial Safety and Health for work in the late night/early morning (the Ministry of Labour Ordinance No. 32 of 1972)). In such event, the employer is required to notify each employee of the results of the general medical examinations (Article 6-6 of the Safety and Health Act). In addition, the employer must bear the cost for such medical examinations since such medical examinations are mandated by law.
2. In the case where employees engage in hazardous work where they are exposed to dust or organic solvent, such employees are required to take special medical examinations in addition to the general medical examinations (paragraph 2 of Article 66 of the Safety and Health Act). The types of hazardous work which require the special medical examinations are stipulated in occupational safety and health related regulations, such as the Ordinance on prevention of organic solvent poisoning (the Ministry of Labour Ordinance No.36 of 1972).
3. In the case where an employee submits the results of the medical examination he/she took within 3 months prior to the time of hiring, the medical examination to be taken at the time of hiring may be omitted for those items covered by the medical examination taken.
4. An employer must provide medical examinations to regular full-time employees as well as part-time employees whose working hours are shorter than those of the regular employees, provided that such part-time employees have been employed for one year or longer and their scheduled working hours per week are 3/4 or more of those regular employees.
5. In the case where an employer has an employee work more than 40 hours per week excluding rest periods, and the number of working hours beyond such 40 hours is more than 100 hours per month, and the employer acknowledges that such an employee has developed fatigue and where such employee requests, the employer must provide assessment interviews by a physician to such employee (paragraph 1 of Article 66-8). In addition, in the case where an employee whom the employer recognizes as having developed fatigue or whose health condition is uncertain, even without he/she having exceeded a certain number of hours of overtime, the employer must provide assessment interviews by a physician to such employee upon his/her request, or proactively take equivalent measures (Article 66-9 of the Safety and Health Act). Furthermore, (it is stipulated that) the employer must keep a record of the results of such medial examinations for 5 years.

6. An employer must take measures, such as transferring to a different position, reducing the working hours or reducing the number of late night shifts if required, based on the results of the medical examination or the assessment interviews (Article 66-5 of the Safety and Health Act).

**(Stress Check)**

**Article 57** An employer shall provide a regular medical examination by a doctor or public health nurse, etc., to each one of the employees once a year to assess the extent of the mental stress he/she suffers (stress check).

2. In the case that a doctor or public health nurse, etc., recognizes through the results of the stress check set out in paragraph 1 that the stress level of an employee is high and that it is necessary for the employee to have an assessment interview, the doctor shall provide an assessment interview upon the employee's request.

3. As the result of an assessment interview set out in the paragraph 2, an order to implement necessary measures such as a change of work place, a transfer of position, shortened working hours or a reduced number of late night shifts may be issued.

**【Article 57 Stress Check】**

1. An employer must provide a regular medical examination to assess employees' mental stress (a stress check) once a year (paragraph 1 of Article 66-10 of the Safety and Health Act). The responsibility of the payment of the cost of the stress check and the resulting assessment interview naturally falls on the employer, because the law imposes obligation of conducting stress checks and assessment interviews on employers.
2. A stress check must be conducted by a doctor, public health nurse or nurse/psychiatric social worker who has undergone the necessary training (paragraph 1 of Article 66-10 of the Safety and Health Act). And the result of the stress check must be notified directly from the doctor, etc., who conducted it to the employee who went through it, and the employer must not know about the result if the employee doesn't give his/her consent (paragraph 2 of the Article 66-10 of the Safety and Health Act).
3. In the case that a doctor or public health nurse, etc., recognizes that an employee's stress level is high enough to necessitate an assessment interview, an assessment interview with the doctor must be conducted upon the employee's request (paragraph 3 of Article 66-10 of the Safety and Health Act).
4. An employer must listen to and consider a doctor's opinion on the necessary measures based on an assessment interview and implement responding measures to it such as a transfer of position, shortened working hours or a reduced number of late night shifts (paragraph 5 and 6 of the Article 66-10 of the Safety and Health Act).
5. The result of a stress check and an assessment interview offered to an employer with an employee's consent must be recorded and stored for five years (Article 52-13 and Article 52-18 of the Ordinance on Industrial Safety and Health).

**(Policy for Personal Information concerning Health Management)**

**Article 58** A company shall utilize the personal information of employees including submitted documents, information concerning employees' families, certificates from physicians and other information with regard to the health conditions of employees for the following purposes:

- ① Management of personnel, wages and health of employees;
- ② Management of personnel for loaning and transferring;

2. An employer shall utilize the information concerning the health management of employees, such as the results of regular medical examinations, certificates of physicians submitted by employees, certificates and the results of assessment interviews by the occupational physicians as guidance to prevent overwork, for the purpose of management of employees' health as well as of provision for diagnosis and evaluations by the occupational physicians, if necessary.

**[Article 58 Policy for Personal Information concerning Health Management]**

1. Article 18 of the Act on the Protection of Personal Information stipulates “when having acquired personal information, a business operator handling such personal information shall, except in cases in which the purpose of utilization has already been publicly announced, promptly notify the person of the purpose of utilization or publicly announce the purpose of utilization”.

**(Education on Safety and Health)**

**Article 59** In the case where an employer hires a new employee or transfers an employee resulting in changes to his/her duties, an employer shall provide training with respect to the safety and health necessary for the work which the employee is to be engaged in.

2. Employees must comply with the knowledge gained through the training on safety and health.

**[Article 59 Education on Safety and Health]**

1. In the case where an employer hires a new employee or changes the regulations in service of an employee, the employer must provide training in safety and health necessary for regulations in service which the employee will be engaged in (Article 59 of the Safety and Health Act). In such event, the hours required for such training in safety and health are considered working hours. In the case where such training is provided outside the legal working hours, the premium pay is required.

**(Accident Compensation)**

**Article 60** In the case where an employee injures himself/herself, becomes ill or deceased in the course of duties or while commuting, an employer must provide compensation pursuant to the Labour Standards Act and the Industrial Accident Compensation Insurance Act (Act No.50 of 1947).

**[Article 60 Accident Compensation]**

1. The Industrial Accident Compensation Insurance (hereinafter referred to as the “Industrial Accident Insurance”) System is a public system for accident compensation which is designed to provide insurance benefits necessary in cases of worker injuries, illnesses, disabilities caused in the course of duties or while commuting as well as to promote social rehabilitation of the workers who have accidents and to support the family members of deceased employees.  
However, in the case where an employee requires a leave of absence due to an occupational accident, the Industrial Accident Insurance does not provide compensation benefit for absence for the first 3 days of such leave. Therefore, an employer is required to provide compensation for the absence for the first 3 days at 60% of average wage conforming to the Labour Standards Act.
2. Every company who employs workers must enroll in the Industrial Accident Insurance with the exception of enterprises managed by the government or government offices (excluding businesses set out in the appended table 1 in the Labour Standards Act). However, such enrollment is optional for those private companies in the fields of agriculture, forestry and fishery with less than 5 employees (excluding the companies specified by the Minister of Health, Labour and Welfare due to the high occurrence of industrial accidents).
3. All employees employed by a company who is enrolled in the Industrial Accident Insurance may be covered by the Industrial Accident Insurance regardless of the type of employment or titles, including part-time workers and temporary employees.

## Chapter 10 Vocational Training

Matters pertaining to vocational training are the conditional mandatory matters in the rules of employment. In the case where an employer establishes such matters, the employer must set forth the stipulations concerning such matters in the rules of employment.

### **(Educational Training)**

**Article 61** A company shall provide educational training necessary for the employees to gain the necessary knowledge, improve their skills, abilities and endowments.

2. Employees must take the educational training provided by the company if so instructed, unless they have justifiable reasons to be excluded from such training.

3. An employer shall provide a written notice of such instruction specified in the preceding paragraph to the applicable employees a minimum of \_\_\_\_ week(s) prior to the day of the educational training.

### **[Article 61 Educational Training]**

1. An employer is prohibited from discriminating against employees on the grounds of gender during the educational training (Article 6 of the Equality Act).



## Chapter 11 Commendations and Sanctions

Matters pertaining to commendations and sanctions and their types and levels are the conditional mandatory matters. In the case where an employer provides such matters, they must be set out in the rules of employment.

### **(Presentation of Commendations)**

**Article 62** A company may present commendations to employees who meet one of the following criteria:

- ①an employee who makes profitable inventions or designs for the business operation;
- ②an employee who works faithfully for a long period of time and whose achievement serves as an excellent model for other employees;
- ③an employee who works for a long period of time continuously without accident;
- ④an employee who has a social achievement that honours the company or other employees;
- ⑤an employee who practices good deeds or renders distinguished service that is comparable to the above;

2. The presentations of the commendations shall be held on the anniversary of the foundation of the company on principle. The monetary awards shall be presented with commendations.

### **[Article 62 Presentation of Commendations]**

The presentation of commendations is established for the purpose of raising the morale among employees and to improve the business performance and productivity of the company.

### **(Types of Disciplinary Actions)**

**Article 63** A company shall take disciplinary actions, classified as follows, against employees corresponding to the actual circumstances in the case where an employee falls under the categories in the following article. :

①Reprimand

Have the employee submit a letter of apology and reprimand the employee for his/her future conduct.

②Wage reduction

Have the employee submit a letter of apology and reduce his/her wage. However, the amount of wage reduction at a time shall not exceed 50% the daily average wage, and the total reduction shall not exceed 10% of the total wage for a single pay period.

③Suspension

Have the employee submit a letter of apology and suspend him/her from working for a maximum of \_\_\_\_\_ work day(s) without pay.

④Disciplinary Dismissal

Dismiss the employee immediately without providing the notification period. In such event, the employer shall not provide a dismissal allowance (equivalent to the average daily wage for 30 days) provided that the employer obtains the authorization from the director of the relevant local Labour Standards Inspection Office.

### [Article 63 Types of Disciplinary Actions]

1. The types of disciplinary actions are not limited to those set out in this article. An employer may establish the types of disciplinary actions to take within the public order and for the common good for each workplace. However, the amount of wage reduction at a time must not exceed 50% of the daily average wage, and the total amount of wage reduction must not exceed 10% of the wage for a single pay period (Article 91 of the Labour Standards Act).
2. An employer does not have the obligation to pay for the hours of absence of an employee who arrives late or leaves early, therefore the restrictions in Article 91 of the Labour Standards Act shall not apply to the wage deductions for such hours. However, the wage reduction beyond the amount for the hours of absence due to arriving late or leaving early is considered sanction, therefore the clauses pertaining to sanction in Article 91 of the Labour Standards Act shall apply.
3. An employer is required to apply for the exemption of the dismissal notification and obtain the approval of such exemption from the director of the relevant Labour Standards Inspection Office ahead of time, in the case where the employer has an intention to immediately dismiss an employee as a disciplinary measure without paying a dismissal allowance for 30 days at the daily average wage (Article 20 of the Labour Standards Act). In the case where an employer dismisses an employee immediately without such approval by the director of the Labour Standards Inspection Office, the employer must pay the dismissal allowance.

#### (Grounds for Disciplinary Actions)

**Article 64** In the case where an employee falls under one of the following categories, the employer shall take disciplinary actions according to the circumstances, such as reprimand, wage reduction or suspension.

- ① an employee who is absent for \_\_\_\_ days or longer without notice or justifiable reasons.
  - ② an employee who is absent, arriving late or leaving early frequently without justifiable reasons.
  - ③ an employee who causes loss to the company by his/her error or negligence.
  - ④ an employee who causes damage to the order or public morale within the company by his/her unacceptable behaviours.
  - ⑤ an employee who violates Article 11, 12, 13, 14, 15.
  - ⑥ an employee who contravenes the rules of employment or engages in activities comparable to the above paragraphs.
2. In the case where an employee falls under one of the following categories, the employer shall render disciplinary dismissal against such employee. However, the employer may render regular dismissal set out in Article 51, wage reduction or suspension prescribed in the preceding article taking into consideration his/her usual behaviour at work and other circumstances.
- ① an employee who is hired by presenting a false career history which is essential.
  - ② an employee who is absent for \_\_\_\_ day(s) or longer without notice or justifiable reasons and does not respond to the demand to attend work.
  - ③ an employee who arrives late, leaves early or is absent repeatedly without notice or justifiable reasons, and still does not improve after receiving admonishment \_\_\_\_ times.
  - ④ an employee who frequently does not follow directions or orders concerning business operations without justifiable reasons.
  - ⑤ an employee who causes significant loss to the company intentionally or by crucial error/negligence.
  - ⑥ an employee who engages in an activity which is a violation of the Penal Code or other punitive laws within the company and such violation becomes known (excluding the case where such violation is insignificant).
  - ⑦ an employee who causes significant damage to the order or public morale within the company by his/her unacceptable behaviours.

- ⑧an employee who shows no sign of improvement in his/her behaviour or other issues despite the multiple disciplinary actions taken.
- ⑨an employee who violates Article 12, 13, 14, 15 and his/her intention is acknowledged as malicious.
- ⑩an employee who uses facilities or articles which belong to the company without permission for purposes outside the course of business.
- ⑪an employee who seeks personal profit taking advantage of his/her position in the company or receives illicit money or goods from clients or others, or demands money or goods, or receives any gifts.
- ⑫an employee who engages in activities, such as personal illegal activities or expresses slanderous defamation against the company without justifiable reasons, that cause serious damage to the business due to the loss of integrity and trust in the company.
- ⑬an employee who causes damage to the company or disrupts regular business operation by disclosing classified information critical to business operations of the company to the outside without justifiable reason.
- ⑭An employee who engages in any other inappropriate activities comparable to the above items.

#### **[Article 64 Grounds for Disciplinary Actions]**

1. This article stipulates the grounds for “reprimand, wage reduction, suspension” under paragraph 1, and for “disciplinary dismissal” under paragraph 2.
2. According to the Supreme Court judgement (for the Japanese National Railways Sapporo Train Sector case/ Supreme Court 3rd Petty Bench judgement October 30, 1979), provided that the stipulations are established pertaining to disciplinary actions, an employer may take disciplinary actions against employees who violate rules, directions or orders. Therefore, disciplinary actions taken on grounds that are not set out in the rules of employment would be considered an abuse of rights.

There is no restriction on the grounds for disciplinary actions under the Labour Standards Act. However, Article 15 of the Labour Contract Act stipulates, “in the case where a disciplinary action lacks reasonable grounds from an objective point of view, considering the act by the worker in question, and the characteristics and attitude of that worker and other circumstances and is found inappropriate according to common consensus, such disciplinary action shall be invalid on the grounds of an abuse of the right to administer disciplinary actions.”

A disciplinary action without reasonable grounds, may be judged an abuse of the right to administer disciplinary actions.

3. An employer is required to administer fair disciplinary action proportionate to the level of violation of rules, taking into consideration the details of past disciplinary action in comparable cases. There have been some cases where a disciplinary action taken by an employer was found unjust and such case was judged invalid on the grounds of an abuse of the right to administer disciplinary action.

An employer shall not administer a disciplinary action retroactively against an activity in which an employee engaged prior to the time when the stipulations pertaining to disciplinary actions in the rules of employment are provided, or shall not administer multiple disciplinary actions for an activity which is proportionate to a single disciplinary action.

## Chapter 12 Switching to Indefinite Term Employment Contract

※An employer should append the following clauses in the rules of employment, in the case where the separate set of rules of employment are drawn up for employees under a fixed term employment contract.

### (Switching to Indefinite Term Employment Contract)

**Article 65** An employee who is employed under a fixed term employment contract where the total duration of term contracts is more than 5 years, is entitled to switch his/her contract term to an indefinite term contract by applying using a separately specified form. In such event, such switch shall take effect from the day following the last day of the current fixed term contract.

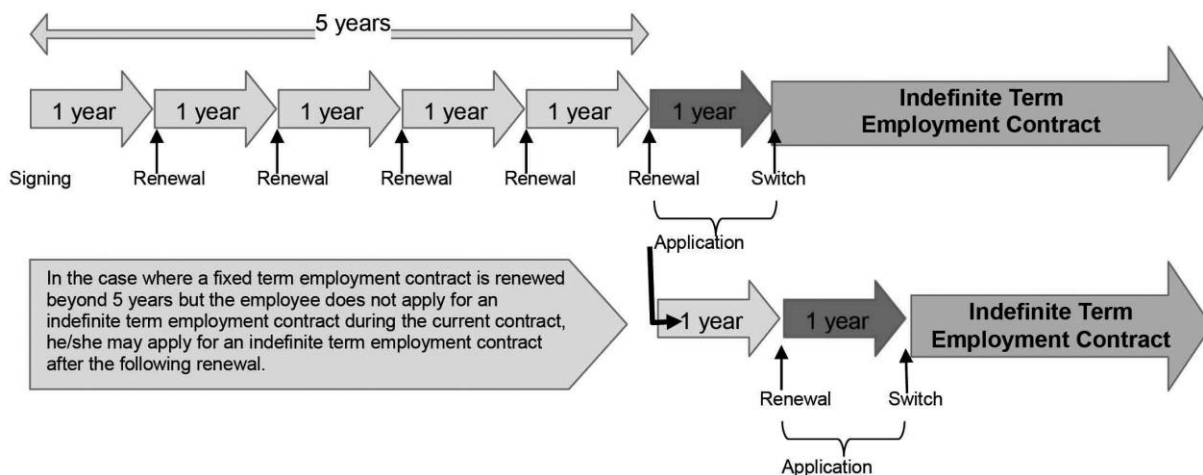
2. The total duration of term contracts described in the preceding paragraph means the total duration of fixed term employment contracts of an employee which starts after April 1, 2013. If the contract starts prior to the date, it means the period from the date until the last day of the contract. However, in the case where an employee goes without a contract for 6 consecutive months or longer, the term with contract prior to such interval shall not be included in the total duration of term contracts.

3. The terms and conditions of employment stipulated in these rules of employment remain in effect after such switch to an indefinite term employment contract pursuant to the provision in paragraph 1. However, the fixed age for retirement that applies to an employee who switches his/her employment contract to an indefinite term employment contract is established at age \_\_\_\_\_, and his/her retirement shall begin the last day of the month in which he/she reaches such fixed age for retirement (Article 45).

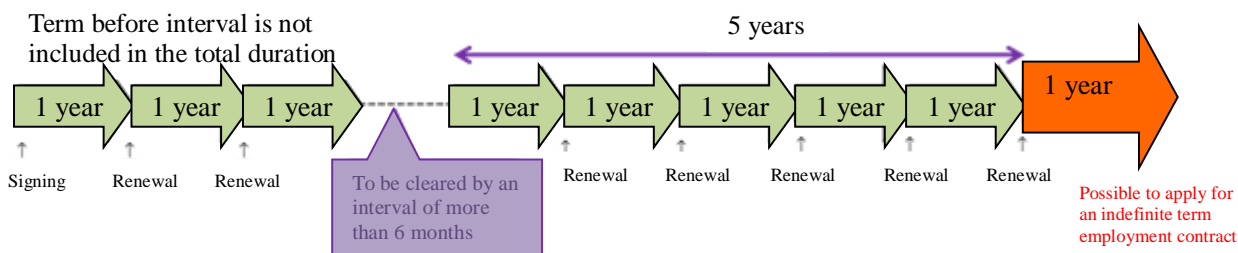
### [Article 65 Switching to Indefinite Term Employment Contract]

1. In the case where an employee whose fixed term employment contract starts after April 1, 2013 and is renewed for 5 years or more in total with the same employer, an employee may apply to have his/her employment contract switch to an indefinite term employment contract (Article 18 of the Labour Contract Act). It is recommended that an employer establishes a specified application form and an application for such switch is to be made in writing using the form to avoid dispute as to whether the employee's application is valid.

**[Case where the term of contract is one year]**



2. In the case where an employee goes without a contract for more than 6 months (interval) between two fixed term employment contracts, the term prior to such interval shall not be included in the total duration.



However, when the total duration of term contracts before an interval is less than 1 year and when there is an interval corresponding to the one in the right column of the table below, according to the classification of the total duration of term contracts in the left column, the contract term before the relevant interval shall not be included in the total duration.

Fixed term employment contract term to be included in the total duration	Interval
2 months or shorter	1 month or longer
Over 2 months and 4 months or shorter	2 months or longer
Over 4 months and 6 months or shorter	3 months or longer
Over 6 months and 8 months or shorter	4 months or longer
Over 8 months and 10 months or shorter	5 months or longer
Over 10 months	6 months or longer

3. The terms and conditions of employment for an indefinite term employment contract, such as regulations in service, the location of workplace, wages and working hours, shall be identical to those of the fixed term employment contract that came immediately before such switch unless there are stipulations set out in different regulations, such as the collective agreement, the rules of employment or an individual employment contract. In the case where an employer is required to establish terms and conditions of employment which normally do not apply to an employee under a fixed term employment contract, such as a fixed age for retirement, but apply to an employee under an indefinite term employment contract, the employer should clearly define the detailed

terms and conditions under the rules of employment or the collective agreement with a union, or individual employment contract. However, setting the retirement age for the purpose of ignoring the intention of the switching to indefinite term employment contract rule, such as setting the retirement age at 66 years old of a person who switched to an indefinite term employment contract at the age of 65 is not desirable in light of the purpose of the law.

Please see pages 4 to 7 of the booklet the “Outline of amendments of the Labour Contract (労働契約法改正のあらまし)”.

([http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou\\_roudou/roudoukijun/keiyaku/kaisei/index.html](http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/roudoukijun/keiyaku/kaisei/index.html))

## Chapter 13 Protection of Whistleblowers

### **(Protection of Whistleblowers)**

**Article 66** A company shall follow the procedures stipulated separately in the case where an employee submits a report or consultation to a public office with respect to organizational or personal activity which violates laws.

### **[Article 66 Protection of Whistleblowers]**

Recently, multiple incidents of corporate scandals were exposed by reports from inside personnel (so called whistleblowers). These incidents have upset the trust and safety of the public. As a result of such incidents, the Whistleblower Protection Act took effect in April 2004 in order to protect employees from disadvantageous treatment by employers and to reinforce the employers' compliance with laws during their business operations.

Please see the following information for more detailed examples of the rules (source: The Consumer Affairs Agency Whistleblower Protection System

(<http://www.caa.go.jp/planning/koueki/>).

The example of internal rules:

[http://www.caa.go.jp/planning/koueki/chosa-kenkyu/files/150824\\_sanko2.pdf](http://www.caa.go.jp/planning/koueki/chosa-kenkyu/files/150824_sanko2.pdf)

### **Appendix**

#### **(date of enforcement)**

**Article 1** These rules of employment shall be enforced from\_\_\_\_(month/day/year).

## Chapter 14 Side Job and Subsidiary Business

### Article 67 (Side Job and Subsidiary Business)

1. Workers may engage in business of other companies etc. in their off-hours.
2. Before engaging in business in the preceding paragraph, a worker shall submit a prescribed notification to the company in advance.
3. If engaging in the business in paragraph 1 falls under any of the case set forth in the following items, the company may prohibit or restrict the other job opportunity of the worker.
  - ① When there is a problem in providing labor
  - ② When a trade secret is disclosed
  - ③ When there is an act of damaging the reputation or credibility of the company or an act of destroying the trust relationship
  - ④ When competitive employment damages the interests of the company

### [Article 67 Side Job and Subsidiary Business]

1. These articles are model provisions concerning side jobs and subsidiary businesses and since the contents of the rules of employment must be appropriate for the actual situation of the workplace, when introducing the provisions of side jobs and subsidiary businesses, please discuss the matter carefully between labor and management.
2. With regard to side jobs and subsidiary businesses of workers, since court decisions indicated that how to use off-hours is basically up to workers, therefore, in the paragraph 1, it is clearly stipulated that workers can have side jobs and subsidiary businesses.
3. When approving side jobs and subsidiary businesses of workers, in order to confirm the matters such as whether there is a problem in providing labor, disclosure of a trade secret, or a possibility of long working hours, submission of a notification is stipulated in paragraph 2. Especially when a worker is employed by both the employer and other company providing a side job or subsidiary business, based on the Article 38 of the Labour Standards Act, it is preferable to make the worker submit the contents of the side job or the subsidiary business concerned so that the company can understand the contents of the side job or the subsidiary business.

#### (References)

Article 38 As far as application of the provisions on working hours is concerned, total hours worked shall be aggregated, even if the hours are worked in different workplaces.

Labor Standards Bureau Notification No. 769 issued on May 14, 1948

“The hours are worked in different workplaces” includes hours worked for a different employer.

4. According to court decisions, it is considered that when a case falls under any of the items listed in paragraph 3, restrictions by companies on side jobs and subsidiary businesses of workers are allowed. Although it is up to each company to decide whether a case falls under each of the items, it is important not to stretch the provisions of the rules of employment and try to operate them properly so as not to limit the side jobs and subsidiary businesses of the worker more than necessary. Also in the item 1 (When there is a problem in providing labor), it is considered that cases where business of the company cannot be sufficiently performed due to side jobs or subsidiary businesses or cases where there is a health concern for a worker due to long working hours are included. Please note that there was this court decision with regard to driving of a vehicle; in the case where a taxi driver who worked for every other day did part-time jobs of transporting cars for export and loading cars on a ship on his off days without obtaining permission from the taxi company, the court decision was “Given the circumstances such as the



requirement for taking rest before driving a taxi due to the nature of the taxi driver job, it is reasonable to interpret that these part-time jobs correspond to the subsidiary business forbidden by the rules of employment” (Miyako Taxi Case, Hiroshima District Court Decision on December 18, 1984).

Other court decisions related to side jobs or subsidiary businesses are shown for your reference, please study them when you consider introducing the provisions of side jobs and subsidiary businesses.

(Court decisions related to side jobs and subsidiary businesses)

- Manna Transport Case (Kyoto District Court Decision on July 13, 2012)

In the case where the transport company declined part-time job applications by a semi-regular employee for 4 times, of which, the court found that there were no reason to decline for the last 2 applications, and a claim for damages for a tort is partially accepted (only for consolation money).

- A Professor of a Private University in Tokyo Case (Tokyo District Court Decision on December 5, 2008)

In the case where a disciplinary dismissal was given to a professor as he was engaged in jobs such as a language school lecturer without receiving permission and cancelled his university lectures, the court found that the side jobs were performed at night or on days off and there was no interference to the primary job, therefore, the dismissal was repealed.

- Towada Transport Case (Tokyo District Court Decision on June 5, 2001)

In the case where a driver of a transport company was dismissed because he was engaged in part-time cargo transportation job once or twice a year, the court found that it did not quite as violation of the duty of devotion to service or destruction of trust relationship, therefore, the dismissal was repealed.

- Ogawa Construction Case (Tokyo District Court Decision on November 19, 1982)

In the case where an employee was dismissed because this employee worked in a cabaret for 6 hours every day without receiving permission, the court found that this person worked deep into the night which was outside of a scope of a part-time job utilizing fee time, and that from the conventional wisdom, there is a high probability of somewhat interfering the good-faith provision of labor to the company, therefore, the dismissal was valid.

- Hashimoto Transport Case (Nagoya District Court Decision on April 28, 1973)

In the case where a management level employee was given disciplinary dismissal because although this employee was not directly involved in the management, this person assumed a post of director of a competitor, the court found that the case corresponded to a ground for disciplinary dismissal, therefore, the dismissal was valid.

(Reference: Court decision related to confidentiality obligation while in office)

- Furukawa Mining Case (Tokyo High Court Decision on February 18, 1980)

In the case where a worker was given disciplinary dismissal because this worker made copies by mimeograph and distributed the copies of basic proposal of a plan which was a basic policy of a long-term management plan, for which, the company had been paying special attention to preventing leakage of confidential information, the court found that in addition to providing labor to the company based on a labor contract, workers have an obligation to keep the employer's business secrets according to good faith principles, therefore, the dismissal was valid.

(Reference: Court decision related to the duty not to compete while in office)

- Kyoritsu Bussan Case (Tokyo District Court Decision on May 28, 1999)

In the case where an employee of a company, which had signed an agency contract to import

food raw materials from foreign companies, established a competing company while in office, the court found that workers had an incidental obligation that they should not unjustly infringe legitimate interests of the employer based on the good faith principles under employment contract with the employer and that the duty of loyalty in the plaintiff's rules of employment could also be interpreted to stipulate such obligation of workers, therefore, the act was a violation of the duty not to compete under the labor contract.

**Appendix**  
**(date of enforcement)**

**Article 1** These rules of employment shall be enforced from \_\_\_\_ (month/day/year).

These materials contain samples of documents regarding registration, visa, taxation, personnel and labor matters that are necessary when a foreign company establishes a corporation or other entity in Japan as well as descriptive examples of how to fill them out. A portion of the English content has been updated through a provisional translation. These documents are not published by competent authorities and therefore are not official. For those who are going through the official procedures, please download the latest official documents from the competent authorities and related bodies or consult a person who specializes in advising on such information and procedures.

The information contained in this documents should be used at the reader's independent discretion. While JETRO makes every effort to ensure the accuracy of the information it provides, no responsibility is accepted by JETRO for any loss or damage incurred as a result of actions based on the information provided in these documents or provided by the external links listed on these pages.

The competent authorities relating to these documents: Ministry of Health, Labour and Welfare  
URL: <http://www.mhlw.go.jp/file/06-Seisakujouhou-11200000-Roudoukijunkyouku/0000102523.pdf>