

## Related laws and ordinances

### (Labor hour)

Article 32. An employer must not have workers work more than 40 hours per week, excluding break period. An employer must not have workers work more than 8 hours per day for each day of the week, excluding break period.

### (Off hours work and work on days off)

Article 36. Notwithstanding the provision of working hours in Article 32 through 32-5 and Article 40 ( hereinafter in this article referred to as “working Hour” ) and the provision on days off in the preceding article (hereinafter in this Article referred to as “days off”), if an employer has concluded a written agreement with the labor union that has been organized by a majority of the workers at that workplace, if there is one, or with a person representing a majority of the workers at that workplace, if there is no such union, and has filed a notification of this agreement with the relevant government agency pursuant to the provisions of Order of ministry of Health, labor and welfare, the employer may extend the working hours or have a worker work on a day of, in accordance with the provision of that agreement. However, the number of hours per day which the employer has extended the working hours it has the worker work doing belowground labor or other operations particularly harmful to the health that Order of the Ministry of Health, Labor and Welfare prescribes: the requirement for this not to exceed two hours.

### (Premium wages for Off-hours work, work on days off, and night work)

Article 37. If an employer extends the working hours or has worker work on a day off pursuant to the provisions of Article 33 or paragraph (1) of the preceding Article, it must pay premium wages for work during those hours or on those days at a rate of at least the rate prescribed by Cabinet order within the range not less than 25 percent and not more than 50 percent over the normal wage per working hour or working day; provided, however, that if the number of hours by which employer has extended the working hours it has an employee work exceeds 60 hours in one month, the employer must pay premium wages for work during hours in excess of those 60 hours at a rate not less than 50 percent over the normal wage per working hour.

### (Wage Ledger)

Article 108. An employer must prepare a wage ledger for each workplace and must enter the facts upon which wage calculations are based, the amount of wages, and other matters as prescribed by Order of Ministry of Health, Labor and Welfare without delay each time wage payments are made.

### (Preservation of records)

Article 109. An employer must preserve the roster of workers, wage ledgers, and important documents concerning hiring, dismissal, compensation for injury or illness, wages, and other matters of labor relations for a period of 3 years. Cabinet Order to prescribe minimum limitation of percentage that affective on premium wage in the Labor Standard Law Article 37 paragraph (1) Premium wages for Off-hours work, work on days off, and night work

*Percentage prescribed by Cabinet Order on The Labor Standard Law Article 37 Paragraph (1), off-hours work extended according to the measure by The Labor Standard Law Article 37 Paragraph (1) is 25%, work on days off according to these regulations is 35%.*

For business owners

## Guidelines on measures to be taken by employers to ensure proper understanding of working hours

Settled new guidelines for employers to ascertain appropriate labor hour on January 21<sup>st</sup> 2017.

### The Main points on this guidelines

- It is the responsibility of the employer to properly understand the hours of work.

#### 【The concept of proper working hours】

- Working hours are the time spent under the command of an employer and the time a worker is engaged in work at the expressed or implied instruction of the employer.
- For example, the time spent on training and learning required for the job at the instruction of the employer is equivalent to working hours.

#### 【Measures to be taken by employers to ensure to proper understanding of working hours】

- Employers should check the **start and finish times of the each workers' work days and record them appropriately.**

#### (1) The principal way

- Employers' **on-the-spot** confirmation.
- Record appropriately **based on objective record** such as time card, IC card and PC usage record.

#### (2) When it is inevitable that the hours of work are known by self-enumeration system.

**To give full explanations to workers** who make self-enumeration and to those who manage their hours of work, including measures based on guidelines such as self-enumeration system operation.

If there is a significant difference between the hours of work as reported by the self-report and the hours of the company as known from the records of entry and exit records and the hours of use of the personal computer, **the actual situation survey should be conducted** to correct the required hour of work.

Employers **shall not establish measures to inhibit proper self-reporting**, such as setting a maximum number of hours that workers can declare themselves. In addition, it must be confirmed that not only workers but also employers are not customarily doing so in their records, even though they are working more than the number of hours that can be extended as set forth in the 36 Agreement.

- Proper preparation of wage ledgers

An employer shall, for each worker, provide the following information : Number of working days / hours worked / hours worked on holidays / number of overtime hours and the number of late-night hours. Such matters must be properly entered in the ledger.



## 1 Application Range

### The target business site

The workplace covered are : all the workplaces covered by the provisions of the Labor Standard Law concerning hours of work. (Labor standard law article 4).

### Subject worker

The workers concerned are those who prescribed in the Labor Standards Act article 41 and subject to the time-of-recognition system except for those who perform off-site labor, only those hours for which the time-of-work recognition system applies.

1. A Person prescribed in Article 41 of the Labor Standard Act is, for example, a supervisor. Management supervisors are generally the intentions of managers, plant managers, etc., persons who are in an integrated position with management regarding the determination of working conditions and other labor management, regardless of their position, judged according to the actual situation based on the content of the job.
2. Workers who are subject to deemed working hours system
  - A person who works outside the place of business and is difficult to calculate the hours of work. (Labor Standard Act Article 38-2)
  - A person who is subject to the Professional Service discretionary labor system. (Labor Standard Act Article 38-3)
  - A person who is subject to the discretionary labor system of the Planning and Work type. (Labor Standard Act Article 38-4)
3. Workers who do not apply these guidelines must also be well-maintained, therefore, it is the responsibility of an employer to ensure adequate time management, such as to avoid excessive labor hours.

## 4. Proper preparation of wage ledger

An employer must enter sufficiently the matters such as each laborers working days, labor hour, labor hour of working on days off and late night labor hour according to the Labor standard law Article 108 as well as under the same law enforcement regulation Article 54. Likewise, In case of blank wage ledger or intentionally entered false labor hour on the wage ledger, up to 300,000 yen of fine will be charged.

## 5. Retention of documents relating to the records of working hours

An employer must preserve the roster of workers, wage ledger and the attendance book or timecard etc., and others matters of labor relations for a period of 3 years according to The labor standard law article 109.

Under The labor standard law article 109, inflicting the obligation of preservation of "Other matters of labor relations", documents related to such as records of labor hour(Start/End period) is corresponding to this and must preserve for a period of 3 years. Concretely, the records such as Start/end period recorded by employer itself, Time card record, orders and reports of overtime work and labor hour record reported by employee itself are to correspond to this matters. Furthermore, the starting point of 3 years of preservation period is, the last date of each document that entered.

## 6. The duty of manager of labor hour

The person in charge of the section that in charge of labor management on the business place, manage the matters of improve the labor management such as ascertain the appropriate labor hour within the said business place etc., and plan to ascertain and improve problems of management of labor hour.

The person in charge of the section that manages the labor management such as human resource and labor management executive or supervisor, must ascertain and consider about what measures to be conducted if there is labor hour management problem such as if the labor hour is ascertained properly or whether conducted heavy long hour labor or not.

## 7. Effective utilization of labor hour etc., setting and improvement committee

An employer must provide of consideration of problems and its solution on management of labor hour ascertain the actual situation of labor hour management, utilize the labor management council organization of labor hour establishment and improvement committee etc., based on the situation of labor hour management situation within the business place

In case where working hours are managed by self-reporting, it is advisable t utilize labor-management consultation organizations such as the Working Hours Improvement Committee, as necessary, to discuss the current problems in working hours management and measures to resolve them.



## About (A)

Matters to be explained to workers are way of think of labor hour that shown in this guideline, concrete contents of self-assessment system and prevent disadvantage treat from following appropriate self-assessment.

## About (B)

To secure appropriate self-assessment of labor hour, the actual person in charge needs to understand the content of this guideline. Matters to be explained are, same contents as for employer, such as way of think about labor hour shown on this guideline and operation of appropriate self-assessment.

## About (C)

Employer is desirably asked to conduct investigation of actual situation frequently if the self-assessment system is sufficiently operating. Especially, when there is considerable difference between hours that employee stayed at business place and the hours that reported by self-assessment, provide an investigation of actual situation of labor hour. Also, when indicated matters that ascertaining of labor hour is not conducted appropriately by its labor union or laborers that are eligible of self-assessment, provide an investigation of actual situation.

## About (D)

When employer commanding to the explanation of the reason in case of there is considerable difference between the hours that self-assessed and the hours recorded on time card etc., when using both methods, there would be possibility of not reporting precisely, confirmation is needed whether the report contents are sufficient or insufficient.

## About (E)

On the assumption that an employer must not provide measures to obstruct sufficient self-assessment by employees, ascertain the fact if conducted of habitual reporting underestimated labor hour by employees etc., or measures to obstruct appropriate report of labor hour of laborers.

## 2 The concept of working hours

### What is working hour?

Working hours is the time spent under the command of the user. (Supreme court first Sub-court ruling, The incident at Mitsubishi Heavy Industries Nagasaki Shipyard, March 9<sup>th</sup>, 2002)

1. The time a worker works with explicit and implicit instructions by the employer is the hour of work.
2. Whether or not a worker is eligible for work hours is not determined by the provisions of labor regulations, etc., but is judged objectively by whether or not the action of the worker are required by the employer.
3. The following hours are equivalent to working hours

The time at which the operator instructed to perform preparatory actions necessary for the job ordered to work (such as changing to a prescribed dress required to wear), and after-work (cleaning, etc.) related to the work after the end of the job were carried out in the place of business.

When instructed to do so by the employer, it is required to immediately engage in work and the amount of time spent waiting (So-called Standby). Such time could not be treated as a "break" since the workers were not free to use the time in any way they pleased.

The amount of time that the employee is require to participate in training, education training, and learning required for the job at the instruction of the employer.

### 3 Measures to be taken by employers to ensure proper understanding of working hours

#### 1. Review and record the open and close times

The employer must confirm and understand the open and close times of the workers' work days in order to properly understand the hours of work

An employer is qualified to properly understand the hours of work. In order to obtain a proper understanding of working hours, the employer reviews and records the start and finish times for each working day, rather than simply knowing how many hours worked each day. Based on this, employer need to understand and confirm the proper hours of work.

#### 2. Principle method to record and confirm the start and finish time

As a general rule, the use should use one of the methods to verify and record the start and finish times.

- (A) An employer must confirm it by himself or herself and record it appropriately.
- (B) Objective records such as time cards, IC card, and PC usage time are reviewed as a basis to record and confirm the start and finish time

This shows the basic method for checking start and finish times

About (A)

"On-the-spot check" means that the employer, or the person who manages the hours of work checks the start and finish time directly. It is also desirable to confirm the start and finish times by the concerned workers.

About (B)

Objective recording of working hours checked on time cards, IC cards and computer usage hours is the basic method, and if necessary, confirm the record, for example, the employer's overtime order and the report against it, by matching the records the employer has to calculate the hours of work for the worker. In the event that work hours are known using a self-declaration system together with the principle of based on objective records such as time cards, measures should be taken in accordance with that No. 3

### 3 Measures should be taken when not following the method on No.2, in case of using self-declaration system.

- (A) Provide sufficient explanation to whom eligible to self-enumeration system about recording its labor hour legitimately and self-assess properly based on this guideline.
- (B) For whom actually be in charge of manage the labor hour, provide sufficient explanation about measures that must be taken according to this guideline included appropriate operation of self-enumeration
- (C) If needed enforce the investigation of actual situation about labor hour ascertained by self-assessment matches to actual labor hour and correct required labor hour. Especially, when can see sever difference between labor hour ascertained by employees self-assessment and the data that can grasp hours stayed in business place such as enter/exit record, PC usage data.
- (D) In case of make employee to report the reason of over stayed at the business place than the labor hour that self-assessed, confirm if the said report is appropriately reported. On this occasion, reported as non-working hour such as on break or voluntary study and training etc., in reality, hours considered as labor hour such as being on duty by employers commands must treated as labor hour.
- (E) The self-assessment system is dependent on assumption of appropriate report by employees. For this purpose, employer must not contribute measures to obstruct appropriate report such as deciding the upper limit of reportable labor hour and not accept the hours that over the limit. Also, measures at the business place related to labor hour such as the in-house official notice purposed to reduce over time work and fixed overtime allowance etc., if these are obstructing of ascertaining of appropriate labor hour and in case being the said cause, enforce measures to improve these cause. Furthermore, it is the discipline to obey the hours such as legal labor hours enforced by labor standard law and hours that can extent according to labor and management agreement (as known as 36 agreement), however, confirm the fact when that in reality employee is working overtime more than the possible extent of agreement hour, but make the record seems like legally obeying the measures are conducting by the actual person managing the labor hour and laborers as a habit.

Since the understanding of working hours by self-reporting tends to result in ambiguous working hour management, this regulation clarifies the measures that should be taken to understand the starting and ending times of work by self-reporting.