

The new style of working in Japan – ‘Work Style Reform’ and teleworking



Noriko Higashizawa

Partner, City-Yuwa Partners
noriko.higashizawa@city-yuwa.com

Akira Nagasaki

Partner, City-Yuwa Partners
akira.nagasaki@city-yuwa.com

Kosuke Hasegawa

Partner, City-Yuwa Partners
kosuke.hasegawa@city-yuwa.com

In 2019, right before the coronavirus pandemic, the Japanese government introduced the so-called ‘Work Style Reform’ which aimed to (i) reduce the infamous long working hours of Japanese workers, (ii) introduce flexible and diverse work styles, and (iii) ensure that all workers receive equal treatment. This shift towards a new work style was accelerated by the coronavirus pandemic of 2020 through the widespread adoption of teleworking, as we shall explain below.

1. Work Style Reform

The ‘Act on the Arrangement of Related Acts to Promote Work Style Reform’ (the ‘Act’) covers the following reforms:

(a) Reducing long working hours – setting a limit on overtime

The Labour Standards Act (‘LSA’) provided maximum working hours of eight hours/day and 40 hours/week, and it allowed overtime work if a labour-management agreement was entered (so-called the ‘36 Agreement’ because it is based on article 36 of the LSA). However, the LSA did not limit the number of overtime work that could be set in the 36 Agreement. The Act introduced an amendment to the LSA to set the maximum overtime to be in principle 45 hours/month and 360 hours/year. This may be extended up to 80 hours/month and 720 hours/year under certain circumstances.

(b) Introduction of diverse and flexible work styles

The Act introduced the following new work styles:

i) Mandatory paid leave

To counter the issue of employees not taking annual paid leaves (‘APL’), the employer is now required to ensure that employees who are eligible to take 10 or more days of annual paid leave (‘APL’) in a year take at least five days of APL during the same year.

ii) Work intervals

The Act introduced a work-interval system that requires an employer to make efforts to provide its employee with intervals between the end time of a working day and the start time of the next working day.

iii) New exemptions

The exemptions for the overtime regulation were limited under the LSA and only applied to high-ranking managers. The Act introduced an additional exemption for highly skilled professionals earning ¥10.75m/year or more. This differs from other reforms in that it is deregulation rather than a stricter regulation.

(c) Ensure equal treatment of workers

Another issue that the Act attempted to tackle was the discrimination of non-regular/contract employees. The Act introduced a prohibition of unequal treatment among

Unlike working in the office, it will be difficult for managers to control the work hours of employees who are teleworking.

employees engaging in the same type of work.

2. The pandemic and teleworking

Although not specifically a target of the Work-Style Reform, the SARS-CoV-2 pandemic that landed in Japan in March 2020 and continues to this day, has caused many companies to adopt teleworking, which was rare before the pandemic.

(a) Management of work hours

Unlike working in the office, it will be difficult for managers to control the work hours of employees who are teleworking. Under the LSA, as noted, the maximum work hours per day is eight hours, and the employees must be granted at least 45 minutes of recess in between. Some expert or managerial employees are exempt from such work hour regulations, but the exemption will not apply to most employees. While some have advocated monitoring employees by using IT tools, there are risks to micro-managing, such as diminishing morale, and it is hard to deny such monitoring may be an intrusion of privacy given that teleworking is often done at the employee's homes.

However, fortunately, the LSA allows what is commonly called the 'deemed

work hour' system, where the employer may, for employees whose work hours are difficult to manage (typically, sales staff who spend most of their hours outside of the office), deem that the employees have worked predetermined hours of work (ie, the 'deemed work hours'). The deemed work hours are typically eight hours, which is the legal maximum, but the employer needs to be careful that the employees are not in fact working more.

Flexible working hours may also be an option, but the flexible working hours under the LSA still require the employer to monitor and manage the total working hours of its employees within a certain period of time (such as a month), so the issue of the need to monitor at least the employee's daily start time and the end time remains.

(b) Expenses

For office work, the issue of the expense required to manage the office was simple – the employer pays for the rent, equipment, electricity, etc. For teleworking, the issue becomes sophisticated because utility costs are commingled with regular household use. The law is unfortunately unclear on this issue other than that if the employer requires its employees to pay for the costs of equipment and other

materials needed to perform work, such must be clearly stated in the employment contract or be stated in the work rules. The government guideline provides that employers should not place too much burden on the employees for teleworking, but this is not the law, and employers are not legally refrained from making the employees pay for such costs.

However, many companies have introduced special benefits for teleworking that cover part, if not all, of the expenses for teleworking.

(c) Unsolved issues

Due to the shifting pandemic situation, it is not clear if employers may require their employees come to the office or engage in telework. In theory, this would depend on the severity of the community spread of the coronavirus, and when commuting or working in the office becomes a health risk, then perhaps employees should be allowed to telework as much as possible. However, even the experts are divided over the risks of the pandemic, and with court cases still limited, the legal situation is still murky. ■