

# VLT Legal Update

February 2024

## Changes to Discretionary Labor System for Professional Employees

The Ordinance for Enforcement of the Labor Standards Act in relation to the Discretionary Labor System was amended on March 30, 2023, with the amendments taking effect as of April 1, 2024.

### *Types of Discretionary Labor System*

The Discretionary Labor System is a system that allows employers to pay employees in accordance with a predetermined number of hours instead of their actual working hours. Under Japanese law, there are two types of Discretionary Labor Systems – (i) for Professional Employees and (ii) for Management-Related Employees. Type (i) is for designers, system engineers, securities analysts, lawyers, accountants, etc, and (ii) is for employees in a management position. The recent amendments affect both Type (i) and (ii); however, we will focus on the amendments in relation to Type (i), which is more often used in companies.

### *Company Obligations – Individual Consent is required.*

Currently, a labor management agreement in relation to the Discretionary Labor System for Professional Employees with the union or the employee representative needs to be entered into and then the agreement needs to be submitted to the Labor Standards Inspection Office.

However, starting April 1, 2024, obtaining individual consent from an employee who will be subject to the Discretionary Labor System will be required. Also, accordingly, under the labor management agreement, the following points need to be stated in the labor management agreement - (a) individual employee consent needs to be obtained, (b) an employee cannot be treated in a disadvantageous manner if he/she refuses to consent, (c) a process for withdrawing consent (where and how to submit a withdrawal, etc.) needs to be provided and (d) records related to (a) and (c) need to be maintained.

Also, under the guidance in relation to the amendments, it is recommended to take measures against (i) all employee in order to refrain them from working long and ensure that they can take days off such as encouraging employee to take consecutive annual leave days and (ii) each specific employee in order to improve their working conditions and health conditions depending on the employee – such as giving an opportunity for an employee who works more than the specific amount of hours to consult with the doctor.

The process for implementing the changes is to enter into a revised labor management agreement, submit it to the Labor Standards Inspection Office and then obtain individual consent. Consent needs to be obtained in writing (since the record of consent needs to be maintained). Before obtaining consent, details of the amended labor management agreement need to be explained to the employees in order for them to be able to fully understand the System and willing decide to give consent. In addition, providing a written handout with details and holding an explanation session with the employees which gives them opportunities to ask questions would be helpful.

### Additional Links

Note Only Available in Japanese

- [MHLW Overview](#)
- [MHWL Explanation of Discretionary Labor System for Professional Services](#)