Newsletter

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Agricultural, Forestry and Fisheries Law Practice Team Newsletter

Atsumi & Sakai's Agricultural, Forestry and Fisheries Law Practice Team (AFFL Team) consists of four lawyers and one advisor, each of whom has different strengths and provides a wide variety of high quality legal services in the areas of agriculture, forestry, and fisheries ("AFF") ranging from support for overseas transactions and overseas expansion (or closure), drafting and reviewing agreements for complex purchase and sale transactions, licensing and other intellectual property rights, communications with authorities (such as the Fair Trade Commission), and dispute resolution.

Agriculture and Work-style Reform

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Introduction

As Japan' s working population shrinks, labor shortages are becoming a reality in workplaces around the country and fueling competition to secure talent. To combat this, laws are being drafted to encourage women and older adults into the workforce.

With the exception of regulations pertaining to nighttime work, the provisions of the Labor Standards Act governing working hours, rest periods and days off do not apply to workers in the agricultural, fisheries, livestock and flower-growing industries[1]. The result is that formalized working arrangements where labor contracts are signed, and rules of employment drafted has lagged in these industries.

However, as the agricultural industry is modernized and expands into the secondary and tertiary sectors (distribution and manufacturing), it is anticipated that the Labor Standards Act will inevitably become applicable to the combined businesses. This is because the Labor Standards Act is mainly applied on a locational basis by "place of business" .
For example, in a case where there is a processing facility for agricultural produce, or a shop or an office adjacent to a farm, the Labor Standards Act could be applied to them on the grounds that these are mainly places of business for food manufacturing or retail, not purely agricultural businesses.

In a related development, general labor-law reforms have been gradually implemented from July 2018 with the passage of the Work-style Reform Law through the Diet[2], and workers are starting to take note of their rights as a result of government efforts to raise awareness of them. As agricultural operators must inevitably appeal to young adults and women through better working conditions to attract workers, the establishment of formal employment arrangements will become increasingly important[3].

This newsletter summarises the key points of the Work-style Reform Law from the perspective of agricultural business operators/employers.[4]

Obligation to give annual vacation days

The Labor Standards Act grants workers the rights to annual leave based on length of service[5]. Annual leave is granted at the request of the worker, and in the absence of a request an employer is under no obligation to make its workers take leave. However, workers tend not to request leave, thus leading to overwork. The Work-style Reform Law seeks to address this by requiring employers to ensure that workers who have a right to ten or more days of annual paid leave take at least five days leave within one year of the day on which vacation days are granted ("obligation to grant vacation"). However, employers are not required to take any additional action if a worker has requested and taken five or more days' vacation, for example through a structured holiday system. In such a case, if a worker plans to take leave but does not actually do so, the employer is deemed to have received the worker' s labor and thus to not have fulfilled its obligation to grant vacation. If this results in the worker taking less than five days leave for the year, the employer will have to cause the worker to take leave at a different time.

The employer is required to take the worker' s opinion into account when giving the worker annual vacation, and to create and keep a record of annual vacation days taken.

Employers which breach these obligations are liable to penalties so employers subject to the new regime should establish appropriate compliance and record-keeping systems.

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[1] Labor Standards Act Article 41, item 1. Employers of foreign technical interns must comply with the Labor Standards Act even if the interns are engaged in agricultural work.

[2] The Work-style Reform Law came into effect in April 2019.

[3] The Exploratory Committee on Work-Style Reform in Agriculture published the Manager' s Guide to Work-Style Reform in Agriculture (in Japanese) in March 2018: http://www.maff.go.jp/j/press/keiei/zinzai/attach/pdf/180330-2.pdf. The amendments introduced in the Work-style Reform Law also include a range of other measures, such as introducing an obligation to ensure sufficient intervals between two days of work.

[4] On labor management in general, refer to Points on Labor Management for Farmers and Agricultural Corporations (Revised in April 2019; in Japanese) by the Ministry of Agriculture, Forestry and Fisheries and the Ministry of Health, Labor and Welfare: http://www.maff.go.jp/j/pr/annual/attach/pdf/nougyou-8.pdf

[5] Applies to workers who have been employed continuously for six months and present on at least 80% of all working days in the period. The number of vacation days granted ranges from ten days after six months' continuous employmentand gradually increases to 20 days according to number of years of continuous service. The number of days granted is proportionately smaller for employees who work fewer days.

Obligation to maintain accurate awareness of working hours

Employers are now required to maintain an awareness of the working hours of their workers (including those considered to be managers or supervisors). This is for two reasons; firstly, for the purpose of calculating increased overtime wages, and secondly to manage the health of workers. Since employers in the agricultural, fisheries, livestock and flower-growing industries are exempted from paying more than usual basic pay for overtime work, there has been little need to track working hours based on the first perspective. However, the obligation to maintain awareness of workers' hours to manage the health of workers does apply to agriculture and the other previously mentioned industries.

In principle, working hours must be tracked using an objective method, such as a time clock. If self-reporting is used, the employer needs to provide a sufficient explanation to its workers regarding accurate time reporting and to take other appropriate measures, such as verifying the accuracy and revising the reported times as necessary. Use of smartphones and tablets is becoming increasingly common in the agricultural sector, and such devices are likely to become commonplace for tracking working hours.

If a worker' s overtime (hours in excess of 40 hours per week) and/or holiday working hours exceeds 80 hours per month[6], and if it is judged that the worker is fatigued, the employer must provide the worker with an opportunity to consult with, and receive guidance from a doctor at the worker' s request. Although working hours in the agricultural industry are affected by the seasons, weather and crop growth, it is still likely that employers will need stay aware of workers' working monthly hours and of their health from the perspective of their working hours.

As failure by an employer to meet its obligations to be aware of the working hours of its workers will leave it liable to sanctions, it will be necessary for it to implement time clocks or take other measures to track employees' working hours daily if they have not already done so.

Cap on permitted working hours

As mentioned above, although agricultural work is exempted from the regulations on working hours and work performed on holidays, the regulations do apply to places of business where work consists mainly of processing or sales, even if there is an ancillary agricultural business. Where the regulations apply, a so-called "Article 36 Agreement" [7] must be concluded and filed with the Labor Standards Inspection Office in order for workers to perform work in excess of eight hours per day or 40 hours per week, or on one or more statutory holidays in a week.

Article 36 Agreements generally stipulate limits on overtime work and work on holidays, but to date the maximum limits have been based on non-binding administrative guidance; the Work-style Reform Law introduced legally binding limits and sanctions for violations of imprisonment for up to six months or a fine of no more than 300,000 yen; the sanctions apply to the business operator (the individual owner in the case of a sole proprietorship, or the legal person in the case of a legal entity) and any responsible person (e.g. an HR manager).

Whilst the new upper limits are complex, the main result is that, in principle, the maximum permitted number of overtime hours is 45 hours in a single month or 360 hours in a year. However, exceptions can be made under temporary or special circumstances and with the agreement of both employer and worker to increase the limit to 720 hours per year, though the increase can be applied on no more than six months per year, with overtime in any single month not exceeding 100 hours and the average overtime hours for the immediately preceding 2-6 month periods not exceeding 80 hours (including work performed on statutory holidays).

These caps on working hours are applied to large companies from April 2019 and small- and medium-sized enterprises from April 2020; whether a company is large or medium/small is determined based on its capital, number of employees and the industry it operates in. A large company is one with more than 300 million yen in capital and more than 300 employees for the agricultural, forestry, fisheries and manufacturing industries, or more than 50 million yen in capital and more than 50 employees in the processing, sales, etc. industries.

In places of business where the Labor Standards Act can be expected to apply, it will be necessary to maintain an accurate awareness of whether or not workers are working overtime or on statutory holidays and take appropriate compliance measures, including the execution of an Article 36 Agreement and establishing an HR framework for the payment of overtime wages.

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[6] The number of hours remains unchanged even if an irregular working hours system is in place.

[7] An agreement that must be executed between employer and workers for overtime or holiday work to be performed. The name is derived from Article 36 of the Labor Standards Act, which stipulates the requirement.

Conclusion

The reforms introduced by the Work-style Reform Law represent an opportunity to take steps towards making workplaces both more accommodating and more rewarding, and so encourage people who might not have thought of entering the workforce to do so.

Please feel free to contact our team if you have any questions, thoughts or concerns on these matters you would like to discuss.

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