



Heads up, Small Firm Managers: Your Exemption from Paying Extra Overtime Is About to End

January 10, 2023

Yugo Kobayashi, Attorney

[E-mail/kobayashi_y@clo.gr.jp](mailto:kobayashi_y@clo.gr.jp)

I. Introduction

Under the Labor Standards Act, the minimum rate by which wages must be increased for overtime work beyond 60 hours a month (“**60+ Overtime**”) is set at 50% (Lab. Stands. Act, art. 37, para. 1). This relatively new requirement was introduced through a series of revisions recently made to the Labor Standards Act, along with a temporary exemption for small and medium-sized enterprises (“**SMEs**”)¹. However, SMEs too will be subject to this new requirement in the not-too-distant future, namely, starting from April 1, 2023.

If you are running an SME, you may need to take some steps to comply with the above-mentioned requirement, for example, by amending the rules of employment (*shūgyō-kisoku*). This article comments on selected matters concerning the requirement to pay increased overtime rate for 60+ Overtime (“**Premium Rate**”) by SMEs.

II. Premium Rate

As described above, the exemption of employers who run an SME (“**SME Employers**”) from introducing the Premium Rate will soon end as a result of the Labor Standards Act’s revision aiming to enhance the health of workers by controlling excessively long working hours².

Once the exemption is lifted, if combined with night work (from 10:00 p.m. to 5:00 a.m.), the actual overtime rate for work in excess of 60 hours a month at night could be 75% or more, calculated as the sum of the night work increase of 25% or more, plus the overtime increase of 50% or more.

In the case of working on days off, the working hours on statutory days off (as specified in Article

¹ Whether a firm is classified as an SME is determined in accordance with the firm’s “amount of stated capital or the total amount of investment” and the “number of workers regularly employed,” by using a set of criteria applicable to its type of business (e.g., service provider, retailer, etc.). Further details are available in the notification issued by the Director-General of Labor Standards Bureau on May 29, 2009 (Notification No. 0529001, hereinafter, the “**Notification**”).

² *Outline of the So-called Working Style Renovation Laws (focused especially on the amended Labor Standards Act)* (co-issued by the Ministry of Labour, Health and Welfare (“MLHW”), prefectural labor offices and labor standards inspection offices), page 26.

35 of the Labor Standards Act)³ are excluded from the calculation of 60+ Overtime, while the working hours on any other days off are included. For the reader's information, the increased overtime rate for working on statutory days off is 35% at a minimum. (Lab. Stands. Act, art. 37 para. 1)

The payment of 60+ Overtime can be substituted by giving employees eligible for 60+ Overtime paid leave, if so agreed in a labor-employer agreement (*rōshi-kyōtei*) between the employer and the labor union organized by a majority of workers at the workplace (or, if there is no such union, a person representing a majority of workers) (Lab. Stands. Act, art. 37, para. 3). That said, a labor-employment agreement only enables the establishment of a system designed for such leave. Furthermore, workers cannot be forced to take such leave in lieu of receiving the 60+ Overtime wages (“**Leave in Lieu Of**”), even if so stipulating in the labor-employer agreement. In each case whether to take such Leave in Lieu Of must be left to the unfettered discretion of the worker and cannot be determined or made compulsory by the employer.

III. SME Employers' Preparation

SME Employers who do not comply with the Premium Rate requirements by April 1, 2023 may find themselves in violation of the Labor Standards Act, by not properly paying Premium Rates. Here is some advice:

First, make sure that the Premium Rate for 60+ Overtime is specified as 50% or more in your firm's rules of employment. It is likely that most SMEs have been specifying a premium rate for all overtime (i.e., even in cases of overtime in excess of 60 hours) at 25% or more in the rules of employment because 25% has been the minimum premium rate required to be applied by SMEs. If that is the case in your firm, the rules of employment should be modified in accordance with the Premium Rate requirements.

The “Model Rules of Employment” available on the website of the MHLW might also provide a helpful reference for some readers. Below is a sample of how the provisions in the rules of employment with respect to the Premium Rate could be drafted⁴.

Section [. . .] (Overtime Wages)

Increased wages for overtime work shall be paid at the following rates, based on the calculation described in the following paragraph:

³ Employers are required to grant days off one day a week or four days within four weeks (Lab. Stands. Act, Art. 35). Such days off are referred to as “statutory days off.”

⁴ A leaflet entitled “The minimum premium rate for overtime exceeding 60 hours a month will be increased from April 1, 2023,” co-issued by MLHW and the Small and Medium Enterprise Agency.

1. Increased rates for overtime work during each month starting from the first day of the month shall be as follows:

(i) For up to 60 hours: 25%.

(ii) For over 60 hours: 50%

...

In addition to the foregoing, SMEs may want to consider in advance whether to introduce a system for the above-described Leave in Lieu Of. Although introducing such a system is not mandatory, it may be worth considering, for example, to give employees an opportunity to get sufficient rest. Remember that, to introduce such a system, matters concerning Leave in Lieu Of must be specified in the rules of employment⁵.

IV. Takeaways

- The increased minimum Premium Rate for overtime exceeding 60 hours a month will soon be applicable to small and medium-sized enterprises, effective April 1, 2023.
- Employers who run a small to medium-sized business are advised to prepare for such change of the minimum Premium Rate by becoming familiar with the details of the applicable requirements.

End

⁵ As described in the Notification.