

**VII. Employee's Benefits**  
**(JAPAN)**

# 1. Holidays and Days Off

## Decision of Working Hours

- A law stipulates working hours in Japan.

The Labor Standards Law stipulates “legal working hours.” The law establishes a principle that a worker should not be made to work over 40 hours per week, excluding recesses, or eight hours per day, excluding recesses. (However, it also approves flexible treatment as follows.)

## Flexible Working Hour System

- Although there is a principle concerning working hours per day and per week, diversification of work style is also approved.

### - Variable working hour system

The concept is to balance operations during busy and slack periods. It sets an average of working hours over a certain period of time. As long as the average working hours per week do not exceed 40 hours, even if on a specific day or in a specific week they are exceeded, the exceeding limit set for legal working hours is not.

### - Discretionary working system

Concerning operations stipulated by law, when fixed working hours are set by an agreement between workers and an employer, regardless of the actual working hours by workers engaged in the concerned operations, a discretionary working system recognizes the fixed working hours stipulated in the agreement between those two parts. This discretionary working system has two types.

Special operation type	Project operation type
<ul style="list-style-type: none"><li>• Research and development of new products and new technology</li><li>• Analysis and design of information processing system</li><li>• Data collection and editing of articles</li><li>• Designing</li><li>• Producer and director</li><li>• Copy writer</li><li>• Certified public accountant</li><li>• Lawyer</li><li>• Registered architect</li><li>• Real estate appraiser</li><li>• Patent attorney</li></ul>	<p>Clerical workers engaged in planning, survey and analysis at a central department, such as the headquarters of a company, where important decisions are made for business management.</p>

### **- Flexi-time system**

A flexi-time system allows workers to start and finish working at times of the day that they choose, under the condition that they work a certain total hours within a period of time, such as a month. (Article 32-2, the Labor Standards Law) Requirements for introduction of a flexi-time system are allowing workers to decide work start and finish times according to work rules, and concluding a labor-management agreement with a labor union organized by a majority of workers or a representative of workers. Many companies divide working hours of a day into two segments: a core time when all workers should work and a flexible time when workers can freely start or finish working. However, setting a core time is not always necessary and it is possible to provide all working hours as flexible time.

### **- Upper limit regulation for overtime work: Agreement of 36**

In order to exceed legal working hours (overtime work), with 360 hours per year as a barometer, an agreement with a representative of majority of workers is required. (Article 36, the Labor Standards Law)

### **- Work on holidays**

Concerning work on holidays, an employer has to give workers more than one holiday per week, or four days or more per four weeks. An extra payment of 35% should be made for work on holidays.

#### **Acquisition of Paid Holidays**

- In Japan, the Labor Standards Law has regulations concerning paid holidays and also stipulates paid holidays for part-time workers.

An annual paid holiday system guarantees workers a certain number of paid holidays per year, plus days off. This applies to workers who have worked for six consecutive months, starting on the day of hiring, and have worked for more than 80% of the total working days. Workers get ten working days as paid holidays, consecutive or divided. Later, the number of paid holidays increases depending the years an employee has worked for a company. For part-time workers (whose designated working days are four days or less per week and working hours are less than 30 hours per week or whose working days are 216 days or less per year), a system is established to provide a number of annual paid holidays proportional to their designated working days. (Article 39, the Labor Standards Law)

In principle, workers can take annual paid holidays at any time they choose. However, a employer can exercise a right to change this time if granting the paid holidays at the time requested would hamper regular business operations.

The Labor Standards Law promotes acquisition of paid holidays by concluding a labor contract stipulating that a certain number of paid holidays can be taken at the workplace at the same time or by taking turns according to a plan. (e.g. summer vacation)

**[Points for consideration]**

**[Related laws and systems]**

When a woman who is expecting to deliver a baby within six weeks requests holidays, an employer should not obligate her to continue her work and an employer also should not force her to work within eight weeks after delivery. (Article 65, the Labor Standards Law) However, these holidays are not required to be paid holidays.

**Days Off**

- In Japan, a law stipulates that at least one day per week should be a day off.
- Days off more than once a week should be decided based on an agreement between workers and an employer.

Days off are stipulated as “days without duty to work” designated in advance by labor agreement or work rules. In Japan, law stipulates a “legal days off” per week system, which grants at least one day off every week. However, along with the shift to a 40-hour work per week system, in reality it is common companies that practice a two days off per week system. To give more holidays than the law designates, adding unique holidays to a company, including a company’s foundation day, or substituting holidays that fall on days during a company’s busy period for public holidays, all these decisions are made by an agreement between workers and a employer.

**[Points for consideration]**

**[Related laws and systems]: Legal days off**

An employer must grant at least one day off every week to workers. (Article 35-1, the Labor Standards Law)

However, it is not necessary to give this day off to all the workers at a workplace at the same time, because an irregular holiday system of four days off per four weeks is approved. It can be given to each individual worker by turns, but one day off per week should be given to each worker without fail. (Article 35-2, the Labor Standards Law)

~~Coffee Break~~

**TOPIC 7: Penalties for violation of working conditions**

The Labor Standards Law stipulates the minimum standards for working conditions, including wages, working hours and holidays. Articles 121 to 177 of this Law stipulate penal regulations that force an employer to observe working conditions. These articles provide fines, or in some cases imprisonment, if duties of the Labor Standards Law are violated by the employer. That is, violation of this law is not a subject of administrative control but a criminal offense.

**[Penal regulations and violation examples]**

Penalty examples	Violation examples
Imprisonment of one year or less or a fine of ¥500,000 or less	<ul style="list-style-type: none"><li>• Employment of children under 15</li><li>• Midnight work of workers under 18</li></ul>
Imprisonment of six months or less or a fine of ¥300,000 or less	<ul style="list-style-type: none"><li>• Sudden dismissal without paying an allowance prior to dismissal</li></ul>

**-Additional payment**

The Labor Standards Law stipulates additional payment and imposes a penalty on an employer to assure payment especially important for workers, such as wages. In the following cases, a court can order a employer to make an additional payment of an amount equal to the unpaid fee owed by the employer.

- When an employer fails to pay an extra wage for overtime, work on days off and midnight work
- When an employer fails to pay a wage for a holiday period, which is stipulated by work rules, to a worker taking annual paid holidays
- When an employer fails to pay an allowance for leaves.

**-Double penalty regulation**

As a system for making an employer to observe the Labor Standards Law, besides additional payments, there is a double penalty regulation. If a shop manager or a supervisor at the workplace violates it, in addition to the supervisor concerned, a fine is also imposed on the employers (president or manager).

**[Trends during recent years]**

**<Nursing-care leave>**

The Childrearing and Nursing-Care Leave Law was revised in November 2001, establishing a nursing-care leave system for parents whose children are under elementary school age, as a duty for companies to make an effort to adopt it. Regarding a flexi-time system or a shorter working hour system which companies are obliged to prepare to support employees' childrearing, the age of children will be raised to "under three" from "under one." The revised law also enables men and women alike to request for an exemption from overtime work of more than 150 hours per year and 24 hours per month. Because about three quarters of troubles concerning dismissals and retirements derive from a childbirth or pregnancy, the law modified the definition of "disadvantageous treatment" resulting from application for or taking childrearing leave to include unfair rotation or promotion discrimination, along with conventional dismissal. The revised law will enter into effect in April 2002.

## 2. Welfare

- At Japanese companies, the ratio of welfare expenses to wages is high and the welfare expenses are not reflected in total pay amount.

Although superficial pay amount is small at a Japanese company, the economic standard of living is not necessarily low. That is because welfare is well supported. When a company employs someone, besides salary and bonuses, it pays about 30% of them as additional personnel expenses. (Japan Federation of Employers' Association: Results of welfare expense survey in 1999.)

### **Types of Welfare**

- Non-legal welfare is a means to distribute a company's profits. Large companies tend to have more favorable welfare systems.

A company's welfare expenses consist of "legal welfare expenses" funded by a company's contributions of labor social insurance premiums, and "non-legal welfare expenses" funded by expenses for a company's voluntary welfare projects. Non-legal welfare expenses include support for housing, medical insurance, living, gifts of family celebration and condolence, mutual aid, insurance, culture and recreation, and asset formation. In addition to a system of social insurance premium shouldered by an employer, there are significant benefits, including company dormitories, funds for house loans at low interest rates, dormitories for single workers, resort houses, gymnasiums, sport fields and other welfare facilities. Other programs include co-purchase of goods and employee discounts for company products. These are generous at a large company and are a means of distributing benefits.

Fringe benefits offer a big flexibility in a good economy and a small one during a recession. They are convenient means for a company to make payments. An employee share-holding system enhances an employee's awareness of belonging to a company. Because company development translates into an individual's asset formation, the system also helps raise an employee's morale. In this way, the Japanese welfare system aims to promote employee's total welfare by providing a reward system beyond compensation for work and serves as a source to supply flexible work.

### **-Diversity of allowances**

Regardless of working hours and work volume, a wage (allowance) aiming to assist livelihood is not small. Allowances are paid for various reasons, including allowances for family, housing and commuting. It is a unique feature of Japanese companies to pay a wage to an employee's family members who are not engaged in work at the company.

These allowances are usually excluded from calculation standards for bonuses and retirement allowance and will not have an impact on the share of payments in the future.

**[Trends during recent years]**

As a company's burden of legal welfare expenses and retirement allowance is expected to increase, companies are making an effort to curtail the non-legal welfare expenses as much as possible.

**<Abolition of personal allowances>**

In a shift to a "performance-based system," there is a growing trend of abolishing personal allowances that are not related to job, such as an allowance for family and an allowance for housing, including these as part of bonus funds and distributing these funds based on performance in order to secure fairness.

**<Cafeteria plan>**

As a corporate welfare system, cafeteria plan is getting popular. The system allows employees to select welfare benefits according to their needs among choices in a certain welfare usage framework. The system cuts wasting related to provision of uniform benefits and contributes to a reduction in total personnel costs. Meanwhile, it is attracting attention as a system that makes it possible to consider each employee's conditions.



### **3. Social Insurance Procedures**

#### **Workers Accident Compensation Insurance**

- The entire workplace is covered and reporting to labor standards inspection offices is required.

Workers accident compensation insurance is a system to provide insurance necessary for workers' injury, sickness, disability and death due to business operations or commutation. In principle, compulsory coverage applies to the entire workplace where workers are employed. An employer must submit an insurance relation establishment report to a labor standards inspection office with jurisdiction within ten days after establishing an insurance relation. Compensation is provided to a worker's accident even if an employer fails to report and neglects to pay insurance premiums. In this case, the government makes an additional collection of them. If the employer fails to report intentionally or as a result of serious negligence, the government collects the full or partial expenses required for the insurance payments from the employer.

Insurance premiums are solely shouldered by an employer. The premium is calculated by multiplying the total wage by the workers accident insurance rate (rate is set at 144/1000 to 6/1000 and designated by each business type). Payments of workers accident insurance include recuperation compensation, leave compensation, pension for the sick and injured persons, disability compensation, and compensation for the family of the deceased. Requirements for receiving payments, provision contents and procedures for each are stipulated.

#### **Unemployment Insurance**

- The entire workplace is covered and reporting to a public employment security office is required.

Unemployment insurance is a system to provide insurance required when a worker loses their job or when a reason for difficulty of continuation of employment arises. In principle, compulsory coverage applies to the entire workplace where workers are employed. When an employer employs a worker, he or she meets requirements for insurance coverage (or an employee's coverage is terminated due to leaving a job). Then, the employer must report to a public employment security office with jurisdiction within the first ten days of the following month after the employee has been covered by the insurance (or the employee's coverage is terminated). When an employee loses entitlement because he/she leaves a job, in principle, a certificate for job leave of the insured for unemployment insurance should be attached. However, newly employed persons who are 65 years or older and temporary workers (an employee who has worked less than 30 hours per week or less than one year) are excluded from the unemployment insurance coverage.

The insurance premium rate is 15.5/1000 of the total wage, 12/1000 of which is allotted to expenses required for insurance payment shouldered equally by the insured and an employer. The remaining 3.5/1000 is allotted to expenses required by the government's employment security operations and shouldered solely by the employer. A general insured employee (who has been covered by the unemployment insurance for more than six consecutive months during the year before leaving a job) visits a public employment security office and applies to find a new job in order to get unemployment approval. In this case, in principle, a base allowance will be paid for up to a specific number of days without a job (which is stipulated based on the duration of insurance coverage, age and the reason of leaving the job) for one year after the day following the leaving (receiving period).

#### **Medical Insurance (health insurance)**

- A social insurance office or a health insurance society operates a medical insurance.

A medical (health) insurance system provides insurance payments necessary for injury, sickness, death or delivery, which takes place outside business operation of the insured. Operators of health insurance are the Social Insurance Agency and health insurance societies. (Government-managed or union-managed health insurances)

In principle, at corporations, everybody has to join a health insurance plan. An employer has to submit a "report on acquisition of qualification for the insured" to a social insurance office or a health insurance society within five days after the starting day of employment (within five days after the day following retirement). The employer has to submit a "report on forfeiture of qualification for the insured" along with a health insurance certificate," which was returned by the insured to a social insurance office or a health insurance society within 5 days after the day following retirement. When the report is accepted, a "confirmation notice of qualification acquisition" and "health insurance certificate for the insured" (to be handed to the employee) is issued at the office. In the case of a government-managed health insurance, a monthly insurance premium is calculated by multiplying standard monthly wage by 8.5% and is shouldered equally by an employer and the insured. In the case of a union-managed health insurance by a general company, the union decides a monthly insurance premium. Payments of health insurance include a sick and injury payment, a childbirth payment and a death payment. Requirements for receiving payments, provision contents and procedures for each are stipulated.

## **Employees' Pension Insurance**

- In Japan, there are roughly two types of public pensions: basic pension and employees' pension which is a part of an additional pension proportionate to wages.

In Japan, there are roughly two types of public pensions: basic pension (the National Pension Fund) and employees' pension which is a part of an additional pension proportionate to wages. Meanwhile, in addition to the public pension, there is a corporate pension plan. In Japan there are around three types of corporate pension plan: employees' pension fund provided by a company on behalf of the government or with a company's own corporate pension added to the employees' pension, in some cases; tax-qualified pension operated based on the Corporation Tax Law; and a 401K-style fixed contribution pension which has recently been introduced. An employees' pension plan makes insurance payments necessary for aging, injury and death of the insured.

The insurers of employees' pension are the Social Insurance Agency and the Employees' Pension Fund. The employees' insurance is a mandatory insurance that obligates each company and all the employees to join it. In principle, the insured of employees' pension loses the qualification on the day he/she reaches 65 years old. One of the typical payments is an employees' pension for the elderly.

Insurance premiums for an employees' pension are shouldered equally by the insured of the employees' pension and an employer. In principle, an employee insured by an employees' pension plan starts receiving an old-age employees' pension payment at the age of 65, along with an old-age basic pension payment from the National Pension Fund. A employer must submit a "report on acquisition of qualification for the insured" to a social insurance office within five days after the day an employee acquires the qualification (the day he/she is employed) by the company. When this report is accepted, an "acquisition confirmation of qualification for the insured and a standard wage decision notice" is issued to the company. When an employee joins the employees' pension plans for the first time, his/her name is registered in a list of the insured at a social insurance office and a pension ledger is issued. Since an employee uses the same ledger after changing employment, he or she keeps the ledger.

Payments of an employees' pension include a payment for the elderly, a payment for the disabled, and a payment for the bereaved. Requirements, contents of payments, and procedures are stipulated for each payment.

### **[Trends during recent years]**

#### **<401K-style fixed contribution pension>**

In 2001, a 401K-style Defined Contribution Pension has been introduced in Japan as a new form of corporate pension. A conventional Defined Benefit Pension scheme is a system where a company manages the whole installment premiums paid every month and receives a fixed benefit. Meanwhile, in the case of 401K-style Defined Contribution Pension recently introduced in Japan, an employee chooses a favorable operation method and takes operation risk by keeping pensions in his/her deposit account. In the taxation system, contributions are treated as loss or pay exemptions and while the pension is managed, it is treated as taxation deferment. When an employee changes employment, an account can be transferred to a new company's Defined Contribution Pension account.

### **[Points for consideration]**

In Japan, medical insurance (health insurance) and pension plans are operated based on the principle that all people are eligible for insurance and can receive medical service and pension payments when they become sick or elderly (national insurance and pension for all people).

Income compensation for the unemployed or employees injured by workplace accidents is covered by unemployment insurance. Besides unemployment benefits, three operations are characteristic of the Japanese unemployment insurance program. For example, to prevent unemployment, the unemployment insurance provides wage subsidies called employment adjustment subsidies to companies to restrain dismissal when a necessity is recognized. The insurance also provides benefits for continuous employment of the elderly or benefits for reemployment of the elderly to promote continuous employment of the elderly.

To join each social insurance, it is necessary to report to a labor standards inspection office, a public employment security office, a social insurance office and other offices with jurisdiction over the location of a company in question.

~~ Coffee Break ~~

**TOPIC 8: Retirement allowance systems**

Retirement allowance is a payment made by an employer to a worker based on regulations such as the work rules at the time of termination of an employment contract concluded between an employer and a worker.

A retirement allowance means a deferred payment of wages, rewards and benefits for long-term labor. For employers, the payment encourages employees to stay with the company, while for workers the payment is a guarantee for living after retirement. A retirement allowance is usually calculated by multiplying an estimated basic wage by a payment rate based on the number of years of service. Because a retirement allowance has a nature of rewards for seniority, for calculating the amount, regulations stipulate the reduction or confiscation of a retirement allowance based on the reason for retirement: a voluntary retirement, a retirement due to a company's circumstance, or a retirement due to a reason unfavorable to a employer (e.g. disciplinary dismissal).

A characteristic of a retirement allowance is that as the retirement age approaches, a coefficient to estimate retirement allowance significantly rises, serving to restrain retirement in the middle. This suppresses the number of early retirements. Currently, in an early retirement system the coefficient has been revised to estimate a retirement allowance.

**[Points for consideration]**

In principle, a retirement allowance is not a legally enforced system but represents an issue agreed between employer and workers under a labor agreement. However, if the payment and payment standards of the retirement allowance are stipulated by work rules, it is deemed as a wage and the employer has an obligation to make payments.

## [Trends during recent years]

### <Retirement allowance and corporate pension>

While almost all major companies have a retirement allowance system, 90% of small companies with 30 to 99 employees also adopt this system. An employee who reaches retirement age commonly receives about 40-months of monthly salaries.

The patterns for payments are “only retirement allowance,” “only corporate pension,” and “a combination of a retirement allowance and corporate pension.” Recently, there has been an increasing trend to adopt the combination pattern. The bigger companies become, the more they adopt a combination pattern. Generally, many corporate pension systems adopt a qualified retirement pension plan (Article 83 and the following articles, the Corporate Tax Law) and the employees’ pension fund system (Article 160 and the following articles, the Employees’ Pension Law), which set up tax preferential treatment remedies for installments of funds as described before. An employer pays the installments to a trust bank, a life insurance company or an employees’ pension fund, and these institutions pay a retirement pension or a retirement allowance to retired workers.

### <Point system for retirement allowance>

It has been common for companies to estimate a retirement allowance uniformly by multiplying an estimated base wage (base pay) by the number of years of service. However, some companies have started to adopt a system of retirement points calculated by job and appraisals during employment as a standard for estimating a retirement allowance.

### <Public nursing care insurance>

In April 2000, the public nursing care insurance system was set up and applications for the elderly eligible for that have started. There are two types of members of public nursing care insurance: type 1 - people aged 65 or older and type 2 - people aged 40 to 64.

For an employee of type 2 an insurance premium is collected from the wage of the employee, and the employee and the employer equally pay the premium. (The premium payment of the insured of type 1 is deducted from pension.)

A public nursing care insurance premium is included in conventional health insurance and is deducted as a health insurance premium. That is to say, the health insurance premium (rate) is a dual system: a general insurance premium (rate) (conventional health insurance premium (rate)) and a nursing care insurance premium (rate).

**[Points for consideration]**

**<Businesses subject to health insurance and employees’ pension>**

Businesses subject to a health insurance and an employees’ pension are obliged to join them by law. There are two kinds: businesses that compulsorily join the plans and businesses that voluntarily join the plans.

**[For reference]**

<p><b>Compulsorily applied businesses</b></p> <ul style="list-style-type: none"> <li>• Regardless of the will of a employer and its employees, a law stipulates that it is compulsory for them to join health insurance and employees’ pension.</li> </ul>	<p>Businesses (including offices) fall under category or .</p> <p>Businesses constantly employing five or more employees and engaged in the following operations.</p> <ol style="list-style-type: none"> <li>Manufacturing</li> <li>Civil engineering and construction</li> <li>Mining</li> <li>Electricity and gas</li> <li>Shipping</li> <li>Cleaning</li> <li>Goods Sales</li> <li>Finance and insurance</li> <li>Storage and leasing</li> <li>Mediation</li> <li>Fee collection and advertisement</li> <li>Education, research, and survey</li> <li>Medical and health</li> <li>Telecommunication and press</li> </ol> <p>National and regional public organizations or corporations constantly employing workers.</p>
<p><b>Voluntarily applied businesses</b></p> <ul style="list-style-type: none"> <li>• Joining a plan is possible when agreed to and approved by employees</li> <li>• With an agreement of employees, a withdrawal is possible.</li> </ul>	<p>Among businesses for which membership is not compulsory, businesses that can join health insurance and employees’ pension insurance with an approval of a head of a local social insurance office. If a business voluntarily becomes a member of plans, payment of insurance and premiums will be same as for those businesses with compulsory membership.</p> <p><b>&lt;Application&gt;</b></p> <p>A business can voluntarily join plans when a majority of workers at the workplace agree to join and a head of a local social insurance office approves the employer’s application. All the employees (except for those excluded from among the insured) join the plans.</p> <p>When more than 3/4 of the insured agree to withdraw from being a voluntary member, a voluntary comprehensive withdrawal is possible after a head of a local social insurance office approves the employer’s application for withdrawal.</p>