Key topic

The MHLW Study Group Proposes the Future Direction of Labor Standards-Related Laws

In January 2025, the Ministry of Health, Labour and Welfare (MHLW) published a Report compiled by the Study Group on Labor Standards-Related Laws (chaired by Professor ARAKI Takashi, The University of Tokyo (at the time; currentry Chairperson of the Central Labour Relations Commission); hereinafter referred to as the "Study Group")[1], in which the Study Group stated that it is high time to review the roles that labor standards-related laws should play in light of structural changes in society and the economy and thoroughly consider the future vision for the labor standards-related laws. Pointing out the importance of balancing the two perspectives of "protecting" and "supporting" workers, the Study Group discussed a broad range of topics, including how to understand the concepts of "worker" and "business" under the Labor Standards Act (hereinafter referred to as the "LSA") and how to solve issues involved in the majority representation system with a view to making labor-management communication more active.

I. Key Focus of Discussion

The Study Group roughly divided the key focus of discussion into two categories: "general issues common to all labor standards-related laws" and "issues specific to working hours-related laws." In the Report, the Study Group discussed the general issues separately in relation to the following three topics: (i) the concept of "worker" under the LSA; (ii) the concept of "business" under the LSA; and (iii) ideal form of labor-management communication. As specific issues, it focused on working hours-related laws and discussed issues in the following three areas: (1) regulations on the maximum working hours; (2) regulations on release from work; and (3) regulations on premium wages.

With regard to the specific issues, the Study Group considered the necessity to review the related systems, such as regulations on upper limits of overtime work, while taking into account the Supplementary Provisions of the Act on the Arrangement of Related Acts to Promote the Work Style Reform (Work Style Reform-Related Act) that was enacted in June 2018. In Japan, it has been customary legislative practice, not only in the area of labor and employment law, to ensure that a bill that has generally gained consensus will be enacted smoothly by including "supplementary provisions" in the bill to stipulate that necessary review will be conducted at a certain point after the enacted bill comes into effect, based on the discussion during the bill drafting process. The Work Style Reform-Related Act is a blanket law to amend the eight labor-related acts, including the LSA, and the amended laws have come into effect in succession, starting with April 1, 2019. In the Supplementary Provisions of the Work Style Reform-Related Act, it is stated that the government is to review the relevant provisions of the amended acts in consideration of such matters as the enforcement status of these provisions, and take required measures based on the results of its review if it finds it necessary to do so.

II. General Issues

(1) "Worker" under the LSA

As the first general issue common to all labor standards-related laws, the Study Group discussed the legal and practical challenges associated with the concept of "worker" in contemporary labor context. In Japan, in order to ensure consistent determinations nationwide under the administration inspection framework, the eligibility as a "worker" has been determined comprehensively in reference to the report published by the MHLW Study Group on the Labor Standards Act on December 19, 1985, titled "Criteria for 'Worker' under the Labor Standards Act" and based on the actual conditions of individual working arrangements. However, in view of the subsequent developments, such as changes in the industrial structure, the diversification of working arrangements, and the rapid advancement of digital technology, the Study Group in 2025 pointed out as follows: "In order to accommodate new ways of working and to ensure that the LSA is applied to those who are actually "workers," it is necessary to enhance the foreseeability of the determination on the worker status"; "it may be necessary to thoroughly analyze and study the cases and court precedents accumulated over approximately 40 years, taking into account academic theories, and consider the need for a review of the definition of "worker" under the LSA, including whether there are any points where the wording should be revised to make it more appropriate." With regard to platform workers, whose worker status has been an issue in recent years, the Study Group stated that, while keeping an eye on the trends in legislative measures taken in other countries, the expert study should be continued to comprehensively review the criteria for determination on this issue, including "how to consider not only the relationship of personal subordination but also the workers' economic dependence and the imbalance in bargaining power between these workers and their clients."

(2) "Business" under the LSA

The LSA once defined the scope of its application by enumerating applicable types of business in Article 8. It is understood that the LSA adopted the position to apply it to each "business" or establishment as a unit of location (the principle of applicability on the basis of business (or establishment)). The Study Group discussed this rule of applying the LSA on a establishment basis.

As a result of the discussion, the Study Group pointed out that "the LSA is designed on the premise of the principle of applicability on the basis of business (establishment), and that 'business' or establishment remains effective as a concept of location in defining the regional scope of application of the LSA and ensuring the effectiveness of supervision and guidance." In light of these points, the Study Group recommended that, at present, the approach of determining the applicability of the LSA on an establishment basis should be maintained as a general rule. The Study Group also suggested that it may be possible to clarify that if equal working conditions are specified for workers in each company or each group of multiple establishments and appropriate labor-management communication is conducted at the company level or across the multiple establishments, it would be an option to conduct labor-related procedures at the company level or across the multiple establishments by agreement between labor and management.

On the other hand, with the spread of telework, location-independent work has become increasingly common. The Report noted that there may be cases where it is difficult or unreasonable to identify the entity to be regulated using the traditional concept of "business" based on physical space or location, which may affect the application of the LSA. From the perspective of ensuring the effective application of the legal system, the Report pointed out that "it is necessary to examine the concept of 'business' in labor standards-related laws, including how labor-management communication should be conducted in the future."

(3) Ideal form of labor-management communication

Regarding the ideal form of labor-management

communication, the Report first presented a view that it is desirable to revitalize labor unions and that it is necessary to work quickly to resolve the issues involved in the current majority representation system and to create a foundation for substantive and effective labor-management communication. It explained the significance and the challenges of labor-management communications as follows. Under the LSA, if there is a labor union that is organized by the majority of the workers at that establishment, that labor union, or if there is no such labor union, the representative of the majority of the workers at that establishment, is the party representing the workers to conclude a labor-management agreement. Therefore, it is desirable, first of all, that measures be taken to revitalize and organize labor unions. It is important that an environment be established in which labor and management can communicate on as equal footing as possible at all establishments, including those without a labor union organized by the majority of workers, so that the statutory standards can be adjusted to or replaced with appropriate ones. However, the estimated union membership rate has been declining over time. The representative of the majority of workers is "important not only for communication between workers and employers, but also for communication within a group of workers in the course of collecting and coordinating opinions of workers, with a view to ensuring that labor and management will make rules in the establishment through more effective communication between them." However, the representative of the majority of workers is not systematically stipulated or arranged in the LSA, but is only specified in certain clauses that provide for the procedures by which the representative of the majority becomes a party to the conclusion of an agreement with the employer. In addition, there are some business establishments where the representative of the majority of workers is not properly selected. "In many cases, since it would be a burden for workers to play the role of the representative of the majority, and not all workers have knowledge and experience in labor-management relations and communication, it is difficult to find a worker who is willing to be a candidate for the representative, or even if there is a candidate who is selected as the representative, they might not be able to fulfill the role of the representative appropriately." The Report mentioned that it may be necessary to clarify the particulars regarding the representative of the majority of workers, including the definition, the selection procedure, the provision of information and facilities by the employer, the availability of consultation support by government agencies and others, and the number of the representatives of the majority and their terms of office.

III. Specific Issues

(1) Regulations on upper limits of overtime work and work on days-off

The Work Style Reform-Related Act which introduces the following regulations on upper limits of working hours came into effect in April 2019: "in principle: 45 hours per month, 360 hours per year; under special clauses (based on labor-management agreement): less than 100 hours per month, average of 80 hours or less per month, and 720 hours per year." The Report stated that the overall hours of overtime work and work on days off have been gradually decreasing as a result of the enforcement of this Act, and that the effects of the regulations on upper limits in reducing working hours are becoming apparent to some extent. However, it also stated that because the impact of the COVID-19 pandemic cannot be ignored after 2020, "at this point, it is necessary to continue to monitor the implementation status of the regulations on upper limits and their impact in order to create social consensus to change the upper limits themselves." At the same time, the Report mentioned that "efforts should be made to bring the overtime work limit closer to 45 hours per month and 360 hours per year, which are the principles in a labor-management agreement under Article 36 of the LSA." With regard to automobile drivers and medical practitioners, the Report stated that, although the regulations on upper limits of overtime work and work on days off have been in effect since FY2024, "the upper limits actually

applied to these workers are still longer than those applicable to workers in general," and therefore that it is necessary to continue to examine the relevant issues on a mid to long-term basis, including appropriate measures to ensure good health and efforts to apply the general upper limits to these workers.

From the perspective of "protecting" workers, the Report mentioned that "it may be possible to take some measures at an early stage," among measures to encourage companies to reduce the working hours of their employees by requiring them to disclose information on working hours, and to introduce regulations on release from work, such as days off. With regard to the public disclosure of information on working hours, the Report emphasized that, in addition to reducing working hours through the mandatory regulations under the LSA , in order to improve the working environment of individual companies through the adjustment function of the labor market, "it is necessary to enable workers to obtain sufficient information on the length of working hours and ease of taking leave at each company when finding a job or changing employment, so that they can choose the company where they wish to work." In particular, the Report stated that it is desirable that companies disclose accurate information on the actual situation of overtime work and work on days off of their employees. The Report pointed out that in this respect, various frameworks for information disclosure have been set in place under the current legislation, including the Act on the Promotion of Women's Active Engagement in Professional Life and the Act on Advancement of Measures to Support Raising Next-Generation Children, but it is desirable to enable workers and job seekers to view the relevant information at a glance.

The Study Group examined two issues regarding flexible ways of working, such as telework, i.e., improvement of flexible work arrangements and the possibility of introducing a new version of the "deemed working hours system" for telework. With regard to improving flexible work arrangements, teleworkers tend to mix their working hours with non-working hours, such as housework and childcare, in one working day. Under the current system, flexible work arrangements cannot be partially applied. Therefore, the Report suggested that flexible work arrangements should be reviewed in accordance with actual conditions so that workers can easily use these arrangements when telework days and regular workdays are mixed during the prescribed period.

In connection with the applicability of the existing deemed working hours system to telework, first, the Report pointed out that this system cannot be applied under the system of deemed working hours outside the establishment, discretionary work system for professional work (*senmon gyomu gata sairyo rodo sei*), or discretionary work system for corporate planning (*kikaku gyomu gata sairyo rodo sei*) unless the requirements under the respective systems are satisfied. The Report also expressed concern about the management of working hours during telework. Specifically, since employers are required to manage actual working hours even when flexible work arrangements are applied, there may be cases where the employer justifies excessive monitoring of work at home, or a dispute arises between the worker and the employer over the number of hours worked (e.g., how to deal with time off from work to do housework or childcare). For these reasons, the Report suggested the possibility of establishing a new version of the deemed working hours system applicable specifically to work from home, with measures to ensure workers' good health set in place, as an optional system that workers can choose. The Report added that such a system could be introduced "on condition of individual workers' consent in addition to collective agreement between the workers and the employer, and based on the requirement that workers be allowed to withdraw their consent even after the system has been applied to them." Furthermore, from the viewpoint of preventing long working hours during telework, some concerns and opinions were expressed, such as "it may be necessary to take measures to monitor working hours and check health conditions to ensure workers' good health," and "even if the right to withdraw consent is established, if the system is designed in a manner that, for example, a worker

would no longer be able to telework after withdrawing their consent, the right to withdraw could not be exercised in effect." Therefore, the Report stated that, after understanding the actual situation, "it is considered necessary to continue to study this issue, including how to ensure workers' good health effectively."

With regard to workers, such as those in a position of management or supervision (managers and supervisors), to whom the regulations on actual working hours do not apply, the Industrial Safety and Health Act requires that their working hours be monitored, and they are subject to face-to-face guidance by a physician in terms of their long working hours. However, up until now since the LSA came into effect, no special measures have been taken to ensure good health and welfare of these workers. The Report argued that measures to ensure good health and welfare should be considered for managers and supervisors. Under the LSA, workers categorized as managers and supervisors are fully exempt from the regulations on working hours—except for the rules on night work—without requiring their consent. The legal framework governing this system differs from that of both the discretionary work system and the Highly Professional System (a special exemption system), which may not be introduced unless measures to ensure good health and welfare of workers are taken. The Report highlighted these distinctions and suggested that the content of such protective measures for managers and supervisors should be carefully considered, including the possibility of codifying them in legislation outside of the scope of the LSA. Furthermore, the Report stated that "there are cases in which workers who originally do not fall within the category of managers and supervisors are treated as such," and indicated the necessity to clarify the requirements for managers and supervisors based on the purpose of the current system for these workers.

(2) Regulations on release from work

There are arguments on "time off from work" regarding how much time should be set aside as time for recovery from work, time for private life, etc. The Report summarized issues concerning breaks, days off, and the work interval system (rest between work) as follows.

The LSA provides in Article 34, paragraph (1) that an employer must provide a worker with at least 45 minutes of break time during working hours if working hours exceed 6 hours, and at least one hour of break time during working hours if working hours exceed 8 hours (the "obligation to provide break time"). Paragraph (2) of that Article provides that an employer must provide all workers with the break time at the same time except where the employer has concluded an agreement to the contrary with the representative of the majority of workers (the "principle of simultaneous break time"). The Study Group focused on the following issues to be discussed regarding the obligation to provide break time: (i) break time that is required to be provided under the LSA is only one hour even in cases where workers work longer hours well in excess of 8 hours per day; and even if the actual working hours are the same, the length of break time differs depending on whether these working hours are treated as hours worked on one working day or on two working days (as in the case of working for two shifts consecutively under the three-shift rotation system, for example).[2] The Study Group stated that a possible measure for improvement would be to amend the LSA by stipulating that "an employer must provide a worker with at least 45 minutes of break time for overtime work exceeding 6 hours, or at least one hour of break time for overtime work exceeding 8 hours," but it concluded that such amendment may not be necessary because: (i) "the length of overtime work that would occur on a working day often cannot be ascertained in advance, and if it is not ascertained in advance, it is impossible to provide a combined amount of break time effectively, and therefore, when overtime work occurs, workers often work while taking breaks as needed"; and (ii) "as overtime work is work beyond a worker's prescribed working hours, some workers would prefer to finish their work earlier and go home rather than take a break." The Study Group also discussed whether the principle of simultaneous break time under paragraph (2) of Article 34 should

be revised and whether there are any procedures that would be required for revision, because this principle is based on the assumption of factory work. The Report stated that "taking into account the perspective of ensuring the effectiveness of breaks, the Study Group did not reach the conclusion that the principle under Article 34, paragraph (2) of the LSA should be reviewed immediately."

With regard to days off, the Study Group discussed "ensuring regular days off" and "specifying statutory days off." Under the current system, employers are required to provide workers with at least one day off each week as a statutory day off in principle, while they are allowed to adopt a variable day off system that provides 4 or more days off over a four-week period (4 days off per four-week period). However, depending on how busy the work is and the characteristics of the type of business or occupation, there have been cases where workers have been forced to work many consecutive days. The Report pointed out that, under the current statutory day off system, employers are permitted to provide workers with 4 or more days off over a four-week period instead of providing at least one day off per week. Consequently, "even if the employer provides statutory days off unevenly and thereby causes the workers to work many consecutive days, this does not constitute a violation of the LSA." In theory, this means that an employer could require workers to work up to 48 consecutive days without treating them as having worked on days off. The Report stated that "it may be necessary to consider measures to minimize the maximum number of consecutive working days." The Report also mentioned that, under the LSA, employers may require workers to work on statutory days off on if a labor-management agreement under Article 36 includes a clause permitting such work and premium wages are paid. Since the LSA does not impose a limit on the number of days that workers can work on their days off, it is theoretically possible for employers to require an unlimited number of consecutive days, as long as the arrangement falls within the scope of the agreement and premium wages are paid. The Report presented a view that "such manner of working consecutive days is not good for workers' health even if it is arranged in a labor-management agreement, and therefore certain limits should be imposed on work on days off, as in the case of the upper limits on overtime work." Then, the Report stated that, "taking these points into consideration comprehensively, and in order to cover cases in which a clause on work on days off is included in a labor-management agreement under Article 36 of the LSA, it should be provided in the LSA that 'an employer must not have workers work consecutively for a period exceeding 13 days,' in order to prevent workers from working consecutively for 2 weeks or more, with reference to the criteria for recognizing mental disorders as industrial injuries."

For workers who are entitled to 10 days or more of annual paid leave per year, employers must designate the timing for taking leave for 5 days each year (the "obligation to designate the timing for taking leave"). The Study Group discussed matters including the number of days for which the timing must be designated and the number of days for which workers can take leave on an hourly basis (currently 5 days), but concluded that it does not seem necessary to immediately change these matters because the percentage of days of leave actually taken has not reached the government's target.

Under the current system, companies are required to endeavor to introduce the "work interval system," as stipulated in Article 2 of the Act on Special Measures for Improvement of Working Hours Arrangements. There are no provisions in laws or regulations that specify the number of hours of work intervals, the workers who are eligible for this system, or other points to be considered when introducing the system. In Japan, the percentage of companies that have introduced this system is not very high, whereas other countries operate it while stipulating various exemptions. The Report stated that, "The Study Group sees the need to consider strengthening the relevant regulations with a view to accelerating its initiative to introduce the system and making it mandatory."

In addition, with regard to the issue of the right to disconnect, the Report stated that, in considering the

introduction of this right in Japan, "it is necessary for labor and management to consider comprehensive internal rules, covering work methods and business development, as to what types of contact are acceptable outside working hours and what types can be refused," pointing out the necessity to consider proactive measures to promote discussion between labor and management on this issue (e.g., formulation of guidelines).

(3) Regulations on premium wages

Based on the purpose and objective of premium wages for overtime and work on days off, i.e., "(i) to compensate workers for overtime work, work on days off, and night work outside of regular working hours, and (ii) to reduce these kinds of work by creating financial disincentives for employers," the Study Group discussed how premium wages are functioning and what issues they are posing, in light of the current economic situation and the diversification of working arrangements. The Report introduced various opinions expressed by the participants in the Study Group, including the following: "while premium wages are expected to function in encouraging companies to reduce overtime work, they might serve as incentives for workers to work longer hours for the purpose of gaining more wages"; "premium wages for night work have the nature of compensation for jobs with high work intensity, but, from the viewpoint of health management, they are paid as a kind of danger allowance"; "premium wage rates in Japan are lower than those in other countries and may not be sufficiently effective in reducing long working hours"; and "if workers who have discretion in deciding their working hours (e.g., managers and supervisors, and workers under the discretionary work system) choose to work late at night themselves, rather than being ordered by their employer, they might not be able to claim premium wages." The Report pointed out that whatever measures are taken, they must be examined based on sufficient evidence, and that it is necessary to collect information, including assessment of actual conditions, and to study the issue over the medium to long term.

Under the current system, when workers engage in multiple jobs, they are entitled to premium wages based on their aggregated working hours across all employers, pursuant to Article 38 of the LSA. Therefore, in accordance with the MHLW guidelines, premium wages must be calculated either by (i) aggregating the prescribed working hours in the order in which the labor contracts were concluded and then calculating overtime hours in the order in which they occurred, or (ii) by applying a management model to have workers work within the pre-determined working hours at each workplace. As a result, it is necessary to manage the hours worked respectively for the multiple jobs on a daily basis, and in the process, the workers themselves also need to report their working hours in detail.

The Report pointed out the following issues involved in the current system. The complicated day-to-day operations described above may make it difficult for companies to permit their workers to engage in an employment-based multiple jobs or to hire workers from other companies who wish to engage in multiple jobs, or may be one of the factors that cause workers to engage in multiple jobs without reporting it to their company. In addition, the Report also noted that the attitude of companies of not allowing their workers to engage in an employment-based multiple jobs may lead to workers giving up having multiple jobs. The Report further presented a view that, as workers engage in multiple jobs not under the order of their employer but based on their own voluntary choice or decision, "it is possible to understand that the original purposes of premium wages, such as compensating workers when the employer makes them work overtime and reducing overtime work, do not apply to both the employer of the primary job and the employer of the secondary job through the aggregation of working hours." The Report also indicated that the necessity to aggregate the hours worked for multiple jobs may make it difficult for companies to permit their workers to have multiple jobs, or to hire workers from other companies who wish to engage in multiple jobs. The Report further stated: workers are people who work under the directions and orders of their employers,

and ensuring good health of workers is a prerequisite even when workers have different employers, and therefore, when workers have multiple jobs, the management of working hours for calculating their wages and the management of working hours for ensuring their good health should be differentiated.

In light of the current situation as described above, the Report recommended that the current system be reviewed, stating that "efforts should be made to revise the system so that the aggregation of working hours will not be required for the payment of premium wages, while maintaining the rule of aggregating working hours for the purpose of ensuring workers' good health." For that to happen, there would be cases in which the aggregation of working hours is necessary and cases in which it is not necessary for the application of the law, and the Report therefore stated that "the development of a legal system would be required, instead of changing the interpretation of Article 38 of the LSA." As matters to keep in mind when reviewing the system, the Report pointed out as follows: "at the same time, if the employers would no longer be required to aggregate working hours for calculating the premium wages under the revised system, they should make even greater efforts to ensure the good health of workers who engage in multiple jobs"; and "the system should be designed in a manner that the employers would not act to avoid the regulations on premium wages in the case where workers work for multiple businesses under the order of the same employer."

Notes

1. The participants in the MHLW Study Group on Labor Standards-Related Laws are as follows.
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2. For example, in the case of working for 8 hours as prescribed working hours and 8 hours as overtime work on the same working day, statutory break time is one hour; in the case of working for 8 hours as prescribed working hours on the first day and another 8 hours as prescribed working hours on the second day under the three-shift rotation system, statutory break time is 2 hours.