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LABOR AND EMPLOYMENT LAW BULLETIN (NO. 3) 36 Employee-Employer Agreement and Its "Special Provisions"

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The Employment Standards Act (*Roudou-Kijun-Hou*, "ESA") stipulates that "8 hours a day" and "40 hours a week" is the maximum regular working hours for employees. If a company desires to extend these statutory maximum hours, then the company has to enter into a 36 Agreement with a labor union/employee representative ("**36 Employee-Employer Agreement**") in advance, and to submit the same to the Employment Standards Inspection Office. A 1998 Ministry of Labor Notification ("**Ministry Notification**") allows a company that has a 36 Agreement to have its employees work overtime up to 15 hours a week, 45 hours a month, and 360 hours a year ("**Ministry Notification Maximum**").

Where a company can foresee that it sometime becomes necessary for the company to have its employees work more than the Ministry Notification Maximum, the company may be permitted to do so by inserting "Special Provisions" beforehand into the 36 Employee-Employer Agreement. "Special Provisions" comprise (i) the special reasons due to which the company has to have its employees work more than the Ministry Notification Maximum; (ii) the procedures to be followed when the company extends employees' working hours more than the Ministry Notification Maximum; and (iii) a certain maximum amount of time which exceeds the Ministry Notification Maximum.

Because of the amendment to the ESA, "Special Provisions" in a 36 Employee-Employer Agreement must abide by the following on and from April 1, 2004: (a) the special reasons (such temporary reasons as "for the settlement of the budget and/or accounts", "for bonus sales", "to avoid missing deadlines", "to react many complaints", "to deal with unexpected machinery trouble") have to be specifically indicated in advance; and (b) the frequency of the extension must also be explicitly indicated.

8 時間/日、40 時間/週の法定労働時間を超えて働かせたい場合には、36 協定を労使間で締結し、これが労働基準監督署に届け出られなければなりません。この 36 協定を使った場合、延長時間の最大限は、15 時間/週、45 時間/月、360 時間/年のように既に厚生労働省の告示で定められています。

ところが、特別な事情があつて告示の上限の時間を超える必要がある場合には、「特別条項」を 36 協定中に入れて、これを超えることが許されています。特別条項の中身としては、告示の上限を超えなければならない特別の事情、延長の際の手続、上限を超える一定の時間数の定め、等です。

2004 年 4 月 1 日より、この 36 協定の特別条項について新たな取扱がなされるようになります。特別の事情として記載できるのは、一時的・突発的な事情(予算・決算業務、賞与商戦に伴う業務の繁忙、納期の逼迫、大規模なコンプレインツへの対応、機械トラブルへの対応など)だけとなり、それを具体的に記載しなければならなくなりました。また告示上限を超える回数(1 年の半分以下となるよう)を定めなければなりません。

Should you wish to receive further information as to the above-mentioned, and/or how your company is in compliance with labor/employment law, contact your regular attorney or Hideki Thurgood Kano (tel: 81-3-6888-1061, e-mail: hidekithurgood.kano@andersonmori.com).