which is delinquent.

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3. Labor Law

An Act to Amend the Labor Standard Law and the Temporary Act for Promotion of a Reduction in Working Hours.
Promulgated on June 2, 1993. Ch.79. Effective as of April 1, 1994.

[Outline of the Act]

Amendments to the Labor Standards Law are as follows.

1. Maximum Working Hours

In 1987, the 40-hour working-week system was declared for the first time by the Labor Standards Law. But a distinctive feature of this 40-hour system is that for the time being the 40-hour-per-week standard is not set forth as maximum working hours enforced by criminal sanctions. Rather, it is established as a goal for reducing maximum working hours. Therefore, the original Article 131 of the ordinances supplementing the Law provided that for the time being "'40-hours" may mean "hours in excess of 40 and less than 48 as established by a Cabinet Order" and that hours established by a Cabinet Order will "take into consideration the welfare of the workers, the trend in working hours, and other circumstances" and "be set and revised so as to reduce them in stages." In a Cabinet Order, the weekly maximum working hours were established as 46 in the first stage.

Now Article 131 of the ordiances supplementing the Labor Standards Law is amended in two points.

First, the transitonal measures, which were hitherto applied to all enterprises, are restricted to enterprises as follows: (1) mining enterprises, transportation and communication enterprises, and cleaning

enterprises, regardless of their size; (2) construction enterprises, hotel, restaurant and recreation enterprises, and manufacturing and mercantile enterprises that do not normally employ more than 300 workers; (3) film and theatrical enterprises, and sanitation enterprises that do not normally employ more than 100 workers. Therefore, all other enterprises shall be under the plain 40-hour working-week system.

Second, while the old Law provided that the transitional measures should continue "for the time being," the revised provision fixs a definite term to the measures and they shall last until 31 March 1997. The maximum working hours in enterprises to which the transitional measures are applied are now 44 hours. But mining enterprises, transportation and communication enterprises, cleaning enterprises, construction enterprises, and manufacturing enterprises that do not normally employ more than 9 workers are under a 46-hour working-week system until 31 March 1995.

Aside from the transitional measures mentioned above, there is a separate special maximum weekly working-week standard for shops, movie and theater enterprises (other than those that produce movies), sanitation enterprises, and entertainment and recreation enterprises that normally employ fewer than ten workers. Under the revised Law this special standard maximum working hours is reduced from 48 hours to 46 hours.

2. Increased Wages for Overtime, Rest-Day and Night Work

In the event that an employer extends working hours or has a worker work on rest days pursuant to the provisions on overtime and rest-day work, or during the period between 10:00 p.m. and 5:00 a.m., the employer is required to pay increased wages for work during such hours or such days. While the old Law provided that the rate of increased wages should be "at least 25 percent over the normal wages", the revised Law provides that it should be "not less than 25 percent and not exceeding 50 percent as established by a Cabinet Order." Now, the mininum rate of increased wages for overtime work is fixed at 25 percent as under old Law and the minimum rate for rest-day work is increased from 25 to 35 percent.

3. Averaging Working Hours Over a One Year Period

The revised Law creates the system of averaging working hours over a one year period. In this system, where an employer has stipulated in a labor-management agreement that the average weekly working hours over the course of a fixed period of no more than one year will not exceed 40 hours, the employer may have a worker work in excess of the weekly maximum working hours in a specified week or weeks or on a specified day or days, respectively. This system is an extended version of the system of averaging working hours over three months under the old Law.

When using an averaging system over a one year period, an employer must conclude a labor-management agreement and file it with the chief of the Labor Standards Inspection Office. The major issues that should be dealt with in the agreement are: (1) the scope of the workers who can be required to work under the system; (2) a unit period that does not exceed one year; (3) the working days of the unit period and the prescribed working hours of each working day; (4) the term of the agreement and the starting day of the unit period of the averaging system over a one year period.

Under the system of averaging working hours over a one year period, workers will be compelled to spend a more irregular life time than under the averaging system over three months. Therefore, it is prescribed that the maximum weekly working hours, maximum daily working hours and the number of continuous working days must be fixed by an order or ordinance.

4. Conclusively Presumed Working-Hours Systems for Discretionary Work

With respect to workers engaged in highly specialized and discretionary work, the Labor Standards Law provides that the working hours of such workers shall be regarded as the number of hours set forth in a labor-management agreement.

Under the old Law, the activities that were covered by the system shall be specified by an order or ordinance of assumed hours were those specified in a labor-management agreement, such as "research and development activities," on which "no concrete directives have been given regarding matters such as means for accomplishment, allocation of time, and the like, because, due to the nature

of the duties, the methods for accomplishment must be largely left to the discretion of the workers engaged in such duties."

Under the revised Law, the activities covered by the system shall be specified by an order or ordinance and the exemplification of the activities as "research and development activities" is removed. The activities specified by the ordinance are generally the same as those mentioned by administrative interpretations. But by virtue of this ordinance "the activities that will be specified by the Minister of Labor after fhe discussion of the Central Labor Standards Council" can be also covered by the presumed working hours system.

5. Annual Paid-Leave

Under the old Law, the right to annual paid-leave occurs when a worker has been employed continuously for one year and has reported for work on at least 80% of the total working days.

The revision this time reduces the period of "continuous employment" to 6 months.

[Comment]

We can find two characteristic points in this revision of the Labor Standards Law. One is the tightening of standards concerning working conditions or the extension of the rights of workers. The other is the increase of the flexibility of the legal regulation of working conditions, especially working hours. Since the revision in 1987 this trend towards increased flexibility of legal regulation of working conditions has been noticeable.

The reinforcement of the 40-hour work-week system, the augmentation of the increasing rate of wages for rest-day work and the relaxation of one of the conditions to be satisfied for acquiring a right to annual leave can be regard as the tightening of standards of working conditions or the extension of the rights of workers. But these amendments are still insufficient in comparison with world labor standards. That is, many enterprises are still under the transitional measures or the special standard and only 5.4 percent of the enterprises (22.1% of workers) are thought to be under the plain 40-hour working-week system. Many critics find it problematic that the rate of wages for overtime work has not been increased since the estab-

lishment of the system. Maximum working hours and the rate of wages for overtime work were questions about which the workers' side and the employers' side were sharply divided. In this sense, the revisions to the Law, are a reflection of strong pressure from the employers' associations.

The creation of the system of averaging working hours over a one year period and the extension of the scope of the activities covered by the conclusively presumed working-hours systems for discretionary work are regarded as flexibilization of the legal regulation of working conditions. The system of averaging working hours over one year period is said to be modeled on the French system. But in the French system it is a legal duty for the employers to take compensating measures, for example, reduction of working hours when they apply the system, whereas in the Japanese system there are no considerations for such measures. Finally, as for the conclusively presumed working-hours systems for discretionary work, it is problematic that "the activities that will be specified by the Minister of Labor after the discussion of the Central Labor Standards Council" can be covered by the presumed working hours system. There are no provisions to prevent extending the scope of the activities to be covered by the system.

Accordingly, in general, the present revision of the Labor Standards Law can be regarded as a clear inclination toward the policy of flexibilizing the legal regulation of working conditions.

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4. International Law

Treaties and Agreements

[Multilateral]

Convention for the Conservation of Anadromous Stocks in the