


International Computer Association

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Employee Rights in Japan

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- 
- Dismissal
 - How it works?
 - The procedure
 - What to do if dismissed?
 - Termination of other types of contracts
 - Foreign law/jurisdiction issues
 - A few figures
 - Discrimination issues: part-timers
 - Overtime

Dismissal



What the law says (1)

Labor Standards Law : one month notice

Article 20 In the event that an employer wishes to dismiss a worker, the employer shall provide at least 30 days advance notice. An employer who does not give 30 days advance notice shall pay the average wages for a period of not less than 30 days.

Labor Standards Law: prohibition of dismissal in certain cases

*Article 19 An employer shall not dismiss a worker **during a period of absence from work for medical treatment** with respect to injuries or illnesses suffered in the course of employment nor within 30 days thereafter, and shall not dismiss a woman during a period of absence from work **before and after childbirth** in accordance with the provisions of Article 65 nor within 30 days thereafter*



What the law says (2)

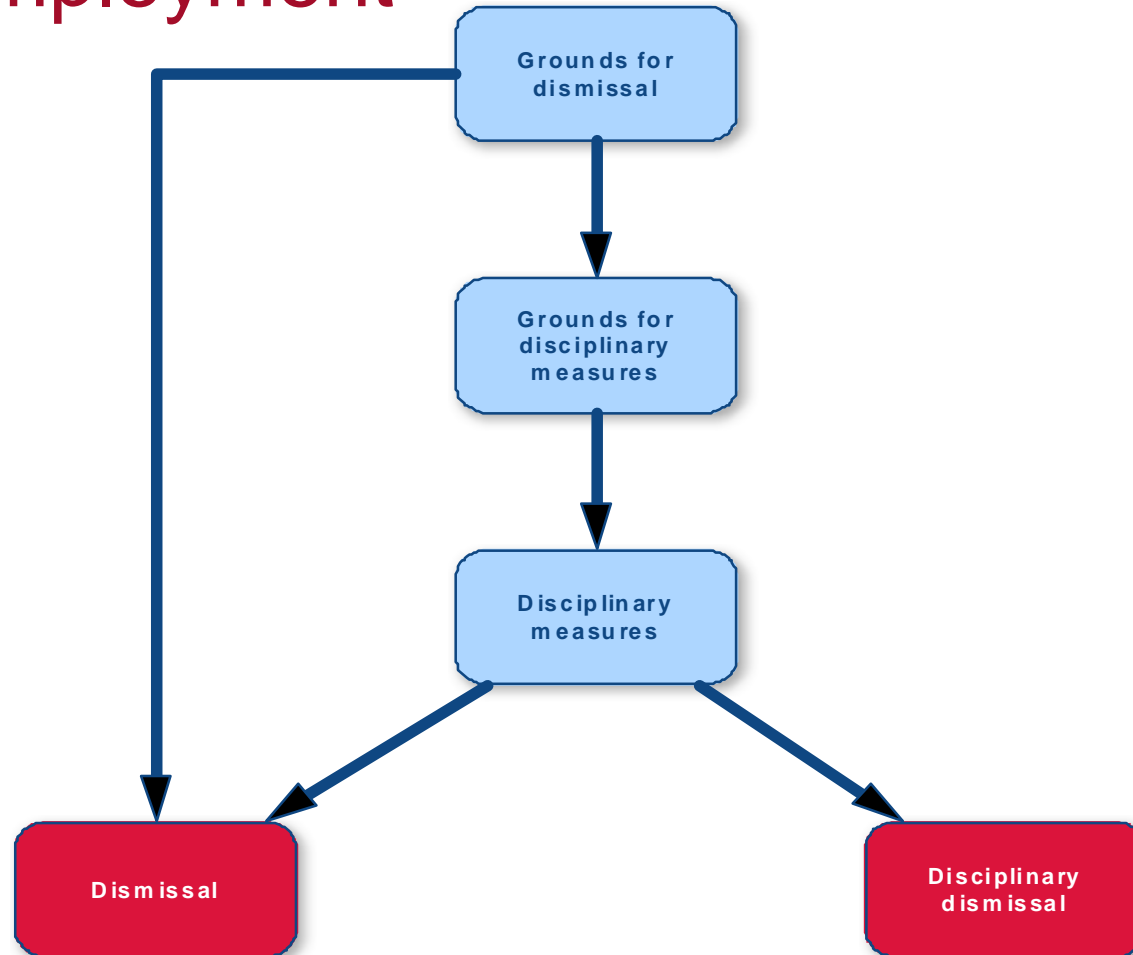
Employment Contracts Law: no abuse of right (2007)

Article 16 A dismissal shall, where the dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as a misuse of that right and invalid.

Labor Standards Law : justification in writing (2003)

Article 22(2) The employer shall, where a worker has, in the period between being given the advance notice in Article 20, paragraph (1) and the day of retirement, requested a certificate in relation to the reason for the said dismissal, issue the certificate without delay;

Rules of employment





Grounds for dismissal (example)

The Company may dismiss an Employee for any of the following grounds:

- (1) When an Employee is found to be unable to cope with work due to mental or physical impairments;*
- (2) When an Employee is found to be neglectful of work or poor in the attendance, and it is found that there is no expectation of improvement;*
- (3) When an Employee is found to be markedly incapable or markedly inefficient in carrying out the work, and it is found that there is no expectation of improvement;*
- (4) When a person during a probation period is found to be unqualified to become an Employee;*
- (5) When there are grounds for discipline and ordinary dismissal is proper;*
- (6) When necessary for unavoidable business reasons;*
- (7) When it becomes impossible to continue operations due to a natural catastrophe, an Act of God or other unavoidable circumstances;*
- (8) For other unavoidable grounds analogous to the foregoing grounds.*



Grounds for disciplinary measures (example)

Employees corresponding to any of the following will be subject to disciplinary punishment:

- (1) Material falsification of resume;
- (2) Failure to obey a reassignment, relocation, change of work type, or secondment order without just cause;
- (3) Frequent absences, being late for work without reasons;
- (4) Disturb discipline and the order of the workplace through misbehavior;
- (5) Damage, lose or abuse Company facilities, equipment, documents or the like;
- (6) Smoking in places other than designated areas;
- (7) Violating obligation of confidentiality;
- (8) Sexual harassment;
- (9) Damage to the honor, reputation or credibility of the Company;
- (10) Working for others without permission;
- (11) Damages for the Company due to neglect of duties, lax supervision, or intentional or material wrongdoing;
- (12) Intentionally inhibit the efficiency of, or hinder the execution of Company operations;
- (13) Seeking to exploit work position for personal gain;
- (14) Being subject to criminal punishment more serious than a fine (excluding administrative penalty fines);
- (15) Anything similar to the above



Disciplinary measures

- (1) Warning: + apology letter
- (2) Pay reduction: apology letter, maximum 1/10th of monthly wage
- (3) Suspension: apology letter, maximum 7 days
- (4) Demotion: apology letter
- (5) Disciplinary dismissal: articulation with ordinary dismissal, administrative approval



Procedure

- Was the employee given a chance to improve the situation?
 - Explanations
 - Sufficient time
- Written justification of reasons for dismissal



What to do?

1. Negotiate through a lawyer
2. Negotiate through a trade union
3. Lawsuit
4. Labor trial
5. Other administrative dispute resolution mechanisms



Negotiate through a lawyer

Merits

- Quicker results
- Possible larger payment for the employee

Demerits

- Difficulty in finding a good professional specialized in labor law
- Maybe expensive



Negotiate through a trade union

Merits

- Inexpensive
- Relatively quick

Demerits

- Strategy of trade union v. employee
- May take a long time depending on the defense strategy of the employer



Lawsuit

Merits

- Possibility to negotiate an out-of-court settlement throughout the procedure
- May result in larger payments through out-of-court settlement
- Only possibility of obtaining reinstatement
- Public

Demerits

- Slow (6 months until the end of the preliminary proceeding)
- Costly
- Cannot look for another job



Labor trial

Merits

- Possibility of obtaining payment as result of trial
- Quick (three hearings maximum)
- Possibility of early conciliation

Demerits

- Possibility of refusing conclusions by going to lawsuit



Other administrative dispute resolutions

Merits

- Quick
- Inexpensive (no lawyer required)

Demerits

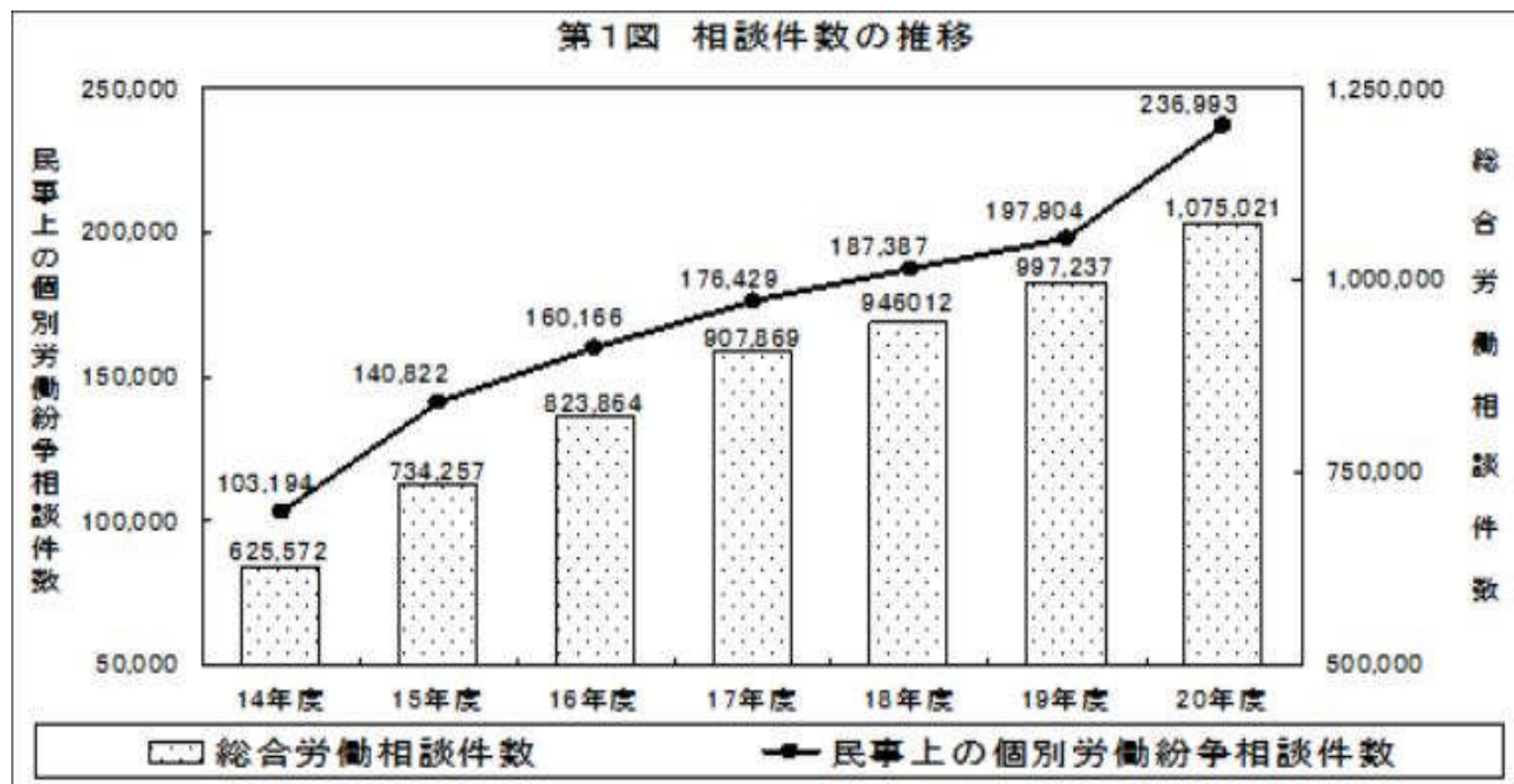
- No real binding powers on the parties
- No real effectiveness in many cases



Number of cases (2008)

- Total number of consultations.....1,075,021 (+7.8%)
Of which:
 - Consultation on civil disputes.....263,993 (+19.8%)
 - Guidance.....7,592 (+14.1%)
 - Mediation.....8,457 (+18.3%)
- New district court lawsuits.....2,441 (+8.6%)
- New labor trials.....2,052 (+ 37.3%)

Evolution of the total number of consultations





Settlement

- No fixed rules
- Depends on:
 - Respective bargaining power
 - Seniority (i.e., amount of retirement allowance)

Unemployment insurance

	< 1 yr	1 to 5 yrs	5 to 10 yrs	10 to 20 yrs	> 20yrs
Under 30	90 days	90 days	120 days	180 days	-
30 to 35			180 days	210 days	240 days
35 to 45		240 days		270 days	
45 to 60		180 days		240 days	270 days
60 to 65		150 days	180 days	210 days	240 days



Dismissal for economic reasons

“4 conditions”:

- Business reasons justifying dismissals
- Efforts made to avoid dismissals
- Objective criteria for selecting personnel dismissed
- Proper consultation

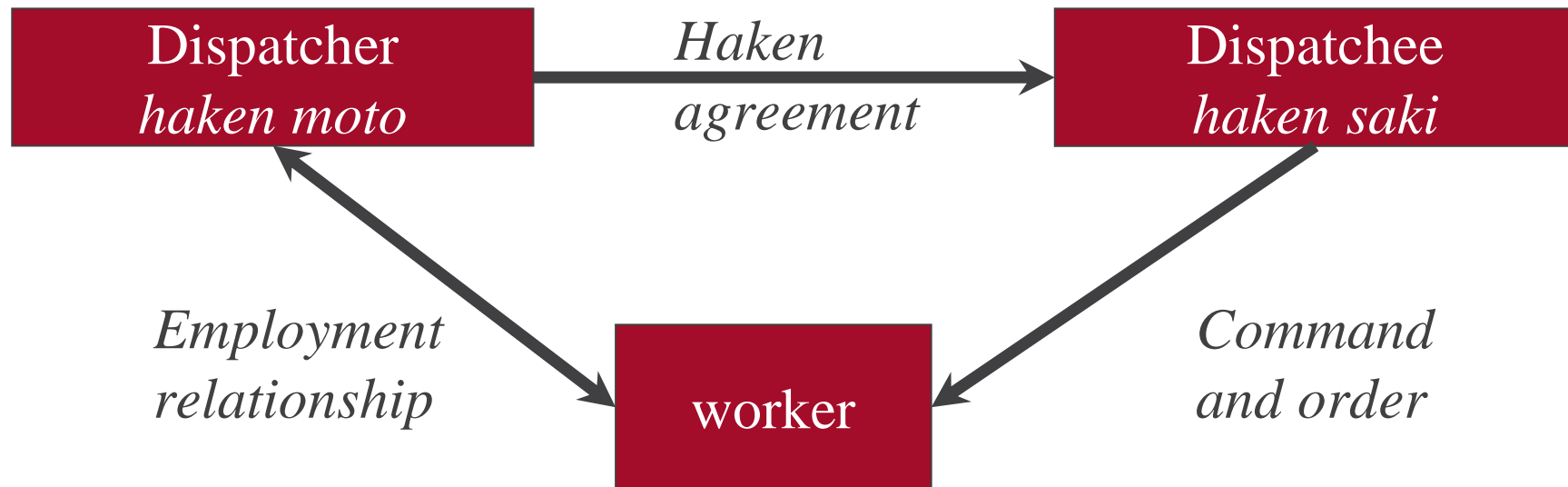
Termination of
other type of
contracts



Termination of contract employees

- Standard term: 3 years
- Renewal possible but renewal criteria should be explicit (guidelines)
- Early termination not possible if not explicit
- Multiple renewals, implicit renewals ?
- Agreement without term, reasonable expectation of renewal

Haken relation





Termination of *haken* employees

- Simple termination of *haken* agreement
- Term of *haken*:
 - If 26 activities: no term
 - General activity: 1 year or 3 years if consultation with employee representatives
- 3-month cooling period



haken – 26 activities

- (i) Development of information systems
- (ii) Design of machinery
- (iii) Operation of broadcasting equipment
- (iv) Production of broadcasting programs
- (v) Operation of machines
- (vi) Translation
- (vii) Secretary
- (viii) Filing
- (ix) Research
- (x) Finance
- (xi) Trade
- (xii) Demonstration
- (xiii) Tour escort
- (xiv) Building cleaning
- (xv) Driving of construction equipment
- (xvi) Front desk, information desk, parking management
- (xvii) Research & development
- (xviii) Planning and design of operations
- (xix) Production and editing of documents
- (xx) Advertising design
- (xxi) Interior coordinator
- (xxii) Announcer
- (xxiii) OA instruction
- (xxiv) Telemarketing sales
- (xxv) Sales engineers, sales of financial products
- (xxvi) Small and large props for broadcasting programs

haken – termination – general activity

For general activity:

- At the end of the term
- If the dispatchee wishes to continue using the worker
- If the *haken* worker desires to continue working for the dispatchee



obligation to propose a direct
employment contract
(may be for a definite term)

haken – termination – 26 activities

For 26 activities:

- *Haken* worker for the same activity during 3 years, in the same work place
- If planning to hire someone at the end of the 3-year period for the same activity



obligation to propose direct employment contract (not necessarily permanent) to the *haken* worker



Termination of secondment

- Base agreement / secondment agreement
- Termination of secondment = restoration of base agreement
- For expatriates: termination of the base agreement is often easier

Jurisdiction



Jurisdiction issues

Application of a foreign law to an employment contract

Depends on:

- Place of work
- Presence in Japan of the employer
- Level of the employee

Application of a foreign jurisdiction

Depends on:

- which law applies?
- capacity of the employee to face a foreign jurisdiction

A few figures

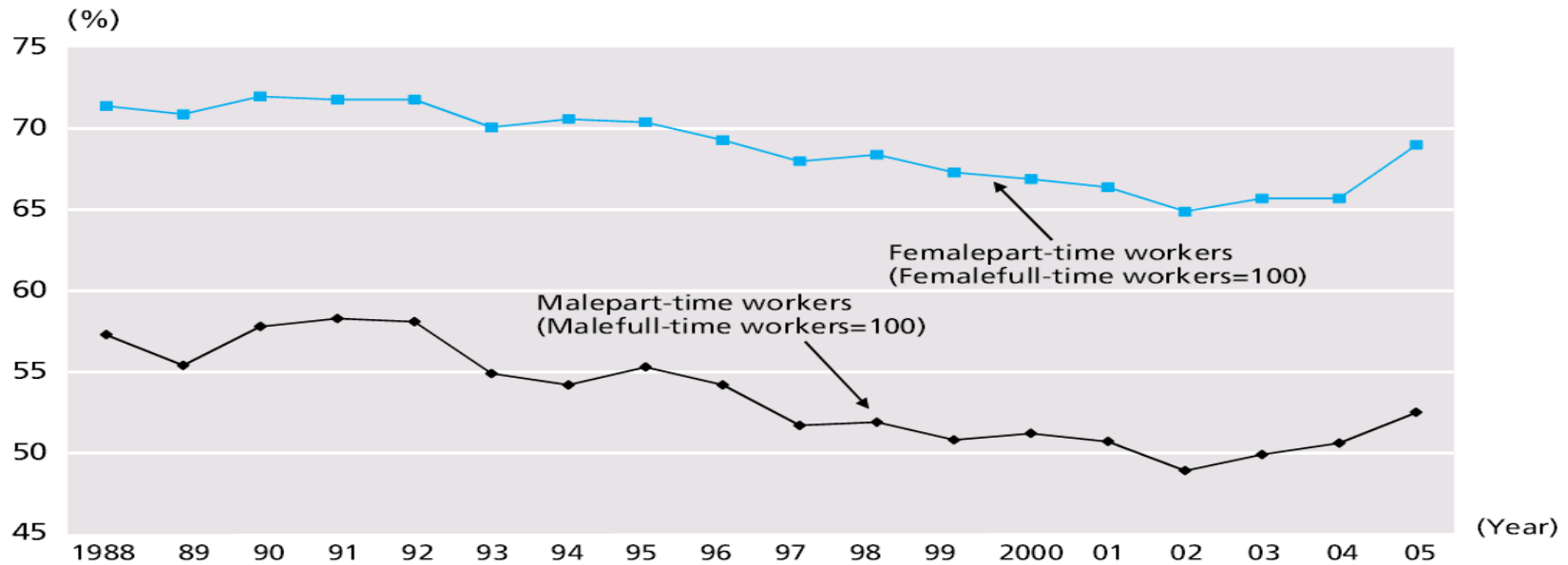
Wage differences by company size

	5~29	30~99	100~499	500~999	1000~
Japan	52.8	63.4	76.0	88.6	100.0
USA	59.5	70.7	78.7	86.5	100.0
UK	95.5	104.0	108.0	107.1	100.0
Germany	73.0	81.0	88.0	90.9	100.0
France	81.6	85.7	92.2	96.0	100.0

Sources: MHWL 2003, EU Structure of Earnings 2002, US Census Bureau

Differences full time/part time

Figure 3-7 Wage disparity between part-time workers and full-time workers (Wage per hour)



Source: Ministry of Health, Labour and Welfare "Basic statistic survey on wages" (Prepared based on published values)

Male part-time workers (The wage of male full-time workers is assumed to be 100.)

Female part-time workers (The wage of female full-time workers is assumed to be 100.)

Note: Part-time workers refer to workers whose daily scheduled working hours are shorter than those of full-time workers, or workers whose weekly scheduled working days are shorter than full-time workers even if their daily scheduled working hours are equal to those of full-time workers.

Wage differences by sex and employment type

	1999	2003
Regular employees	1 944	1811
	1 418	1 258
Contract employees	1 888	1 545
	1 370	1 134
Transferred employees	2 496	2 196
	1 440	1 515
Haken (full time)	1 709	1 369
	1 192	1 045
Haken (non-regular)	1 461	1 228
	1 346	1 168
Temporary workers	1 091	980
	922	888
Part-time workers	1 071	1 054
	956	881

Theoretical
hourly wage

Discrimination issues



Law against discrimination against part time workers (April 2008)

- Written notification of working conditions
 - Including the existence of salary increases, bonus and/or retirement allowance
 - Unchanged obligation of having specific rules of employment
- Obligation of explanations on benefits
 - No obligation to obtain consent or understanding but just obligation to explain the issues taken into account when applying a benefit
 - Applies to seven matters: (i) written notification of working conditions, (ii) opinion of part timers representative when setting up/amending rules of employment, (iii) prohibition of discrimination, (iv) decision on wages, (v) training, (vi) access to benefit facilities, (vi) transfer to permanent positions
- Setting up of measures to allow change to a permanent position
 - Ensure that part timers are aware that a permanent position is opened
 - Allow part times the opportunity to apply for a position
 - Set up examination procedures to allow part timers with specific qualifications to transfer to a permanent position
- Setting up a claim handling procedure (best efforts)

Four categories of part-timers

	Work Work contents and responsibilities	Management Existence and scope of personnel transfer	Term of agreement
Category 1	Same as permanent employees	Same during the whole term	No term or repeated renewals
Category 2		Same only during a limited period	Not relevant
Category 3		Different	
Category 4	Different		

Part-timers: anti-discrimination obligations

	Wages		Training		Benefits	
	Base salary Bonus Position related indemnities	Others, incl. -Retirement allowance -Family allowance -Commuting allowance	Related to performances necessary for work	Others	Uses of facilities related to the maintenance of health or the smooth performance of work	Others (inc. company housing, break space)
Cat 1	⊙	⊙	⊙	⊙	⊙	⊙
Cat 2	□	—	○	△	○	—
Cat 3	△	—	○	△	○	—
Cat 4	△	—	△	△	○	—

⊙ Interdiction of discrimination

○ Obligation of implementation

□ Best efforts to decide in a similar manner as for permanent employees

△ Best efforts taking into account contents, performance, wishes, competences and experience

Overtime issues



Main principles

- Employer has an obligation to manage working time
- Overtime is not possible without an Article 36 convention (+ notification)
- Overtime cannot be compensated by additional paid leave (except when agreed in advance or choice given to employee)
- Overtime limits (guidelines): 15 hours per week, 45 hours per month, 360 hours per year



Overtime allowance

Basic overtime allowance (over 8 hours per day).....	125
Night time (10pm to 5am).....	125
Statutory weekly holiday (one day).....	135
Overtime + night time.....	150
Statutory weekly holiday + overtime.....	135
Statutory weekly holiday + overtime + night time.....	160

Overtime - April 2010

Above 60 hours overtime per month

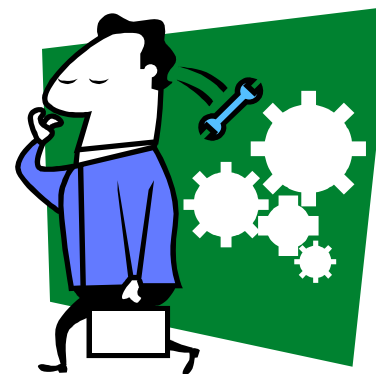
Basic overtime allowance.....	150
Night time allowance.....	175

Mandatory for large companies:

	Capital	Employees
Retail	+¥ 50 mil	+50
Wholesale	+¥ 100 mil	+100
Services	+¥ 50 mil	+100
Others	+¥ 300 mil	+300

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