OVERTIME WORK SALARY FOR ANNUAL SALARY SCHEME EMPLOYEES

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Employees in Japan are generally paid a fixed monthly salary and may be eligible for overtime payments when working outside of ordinary business hours or on public holidays. Overtime is usually calculated on an hourly basis.

Those employees who hold managerial positions and who are paid under an annualized salary scheme are typically not entitled to receive overtime payments[1]. However, it is important to consider case law and government interpretation when paying an employee an annual salary, as a person will only be considered to be a manager or supervisor if: they carry out high-level management tasks together with company management; have a discretionary right to determine their own working hours; and are adequately compensated in light of their responsibilities.

Accordingly, employers must be careful not to provide employees with managerial type titles if they are not in fact carrying out the role of a true manager or supervisor as provided for under the Labor Standard Law (which defines these employees as 'Not Real Managers' or NRMs). If an employee who holds a title of manager is in fact an NRM, they may still be entitled to receive overtime payments in addition to their salary, with such overtime payments being potentially very costly for the employer [2]

If an employer is found to inadvertently misclassify its employees, it may seek to argue that the annual salary for the NRM has adequately compensated that NRM, so as to compensate for their reasonable overtime work. Unfortunately, such an argument will not be well supported by Japanese Courts.

This is largely because it may not be sufficiently easy to determine whether the NRM's annual salary has in fact been compensated for the number of overtime hours worked. In light of this and to successfully apply this reasoning, employers must firstly distinguish the annual salary for a NRM between (a) a base salary and (b) the amount of overtime compensation for a pre determined number of overtime hours per month (ie 40 hours). Secondly, employers should make sure that if NRM's overtime work exceeds such prefixed number of the over time hours per month, overtime is paid [3]

In order to implement such changes, an employer will need to amend the Rules of Employment (including Salary regulations) in accordance with processes required under the Labor Standard Law and the respective NRM's employment contract. Such process must be well designed and conducted so as to avoid unfavorable claims from NRMs. If your business has found this to be an issue in the past, we are happy to talk with you further.

Notes:

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[1] The Labor Standard Law stipulates that these requirements (including payment of overtime salary) shall not apply to "workers in positions of supervision or

[2] Overtime work salary for NRM with annual salary will be inevitably calculated by the amount of hourly salary (annual salary amount divided by total working hours per year) multiplied with additional rates.

[3] In this case, the overtime salary will be calculated based on the revised basic salary which is lower than the annual salary as in [2].

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