

# Explanations of Labor- Related Laws

Employment Consultation Center

## **VI. Discretionary Work System**

A discretionary work system is a system under which a worker works without receiving concrete instructions from the employer because the means of executing work or the allocation of time needs to be left to the discretion of the worker due to the nature of the work, and the worker is deemed to have worked for the working hours as agreed to in advance between labor and management.

There are two types of discretionary work system as follows.

- [i] Discretionary work system for professional work such as research and development
- [ii] Discretionary work system for management-related work such as planning, researching and analyzing matters regarding business operation

# 1. Discretionary Work System for Professional Work

For such work as development of new products or technologies, the means of executing work or the allocation of time need to be left to the discretion of workers due to the nature of the work. As types of work for which it is difficult for employers to give concrete instructions on how to execute work or allocate time, the following 19 types of work are specified.

- [i] Research and development of new products or technologies or research in cultural or natural sciences
- [ii] Analysis or design of information processing systems
- [iii] News gathering or editing in the newspaper, publication or broadcasting business
- [iv] Development of new designs for apparel, interior decoration, industrial products, advertisements, etc. (work of designers)
- [v] Work of producers or directors in the business of making broadcast programs, films, etc.
- [vi] Drafting of copies concerning the details and characteristics of products for the purpose of advertisement (work of copywriters)
- [vii] Consultation and advice concerning problems in utilizing information processing systems in business and methods of applying systems (work of system consultants)
- [viii] Coordination and advice concerning layouts of lighting equipment and furniture within buildings (work of interior coordinators)
- [ix] Creation of game software
- [x] Analysis and evaluation of security market trends or value of securities or advice on investments based thereon (work of financial analysts)
- [xi] Development of financial products based on knowledge of financial engineering
- [xii] Teaching and research at universities
- [xiii] Work of certified public accountants
- [xiv] Work of attorneys
- [xv] Work of architects
- [xvi] Work of real estate appraisers
- [xvii] Work of patent attorneys
- [xviii] Work of tax accountants
- [xix] Work of small and medium enterprise management consultants

Regarding workers who engage in duties stipulated in a labor-management agreement out of the types of work listed above, they are deemed to have worked for the working hours as stipulated in the agreement, irrespective of their actual working hours.

## (1) Matters to be decided in a labor-management agreement

- [i] Scope of work and workers covered under the discretionary work system
- [ii] Provision to the effect that the employer would not give workers concrete instructions concerning the means of executing work or the allocation of time
- [iii] Daily hours necessary for the relevant work during which workers are deemed to have worked
- [iv] The effective term of the agreement (preferably no longer than three years)

- [v] Measures to secure the health and welfare of workers depending on their working hours
- [vi] Measures to handle complaints from workers
- [vii] Retention of records on the measures mentioned in [v] and [vi] for each worker during the effective term of the agreement and for three years after the expiration of the term

**(2) Obligation of notification**

A labor-management agreement mentioned in (1) above must be documented in the prescribed form (see p.62) and be submitted to the Director-General of the competent Labour Standards Inspection Office.

**2. Discretionary Work System for Management-related Work**

Apart from the discretionary work system mentioned in 1. above, another type of discretionary work system may be adopted for work of planning, researching and analyzing matters regarding business operation for which an employer does not give concrete instructions concerning the means of executing work or the allocation of time (covered types of work), on the following conditions: a labor-management committee that satisfies certain requirements has been established for the purpose of examining matters concerning working conditions and giving workers opportunities to present opinions; and the following matters have been decided by a majority of no less than four-fifths of committee members, have been documented in the prescribed form (see p.63) and have been submitted to the Director-General of the competent Labour Standards Inspection Office.

(Note) A discretionary work system for management-related work may naturally be adopted only at a workplace where any of the covered types of work is conducted.

**(1) Matters to be decided at a labor-management committee**

- [i] Concrete scope of covered types of work

Covered types of work refer to work such as planning, researching and analyzing matters that affect operation of the business (matters affecting business operation of the company to which the workplace belongs, and influential original business plans and operational plans, etc.) for which the employer does not give concrete instructions concerning the means of executing work or the allocation of time, which need to be left to the discretion of workers due to the nature of the work.

- [ii] Concrete scope of covered workers

Covered workers are those who have knowledge and experience for properly executing the relevant work and must regularly engage in the relevant work. The scope of covered workers may differ depending on types of work. Therefore, it is necessary to concretely clarify workers' years of experience and qualifications in order to specify the coverage. For example, the scope of workers needs to be concretely specified, in such manner as "workers who are university graduates and have around 5-year work experience" or "workers ranked as a chief or with a higher status (Grade ○ or above)."

- [iii] Hours during which workers are deemed to have worked

Deemed working hours need to be concretely specified as daily working hours of covered workers.

Provisions concerning rest periods, days off and night work are also applied as they are under a discretionary work system for management-related work.

[iv] Means to ascertain working hours and details of the measures to secure the health and welfare of workers

The employer must determine concrete means to ascertain the working hours of covered workers. Such means should be based on records of workers' times of coming to and leaving the workplace or the office, etc., which clearly indicate how long and during what period of time each worker stayed at the workplace and was ready to provide labor. Additionally, the employer needs to clarify what measures to take to secure the health and welfare of covered workers depending on their statuses of engagement in work, which the employer has thus ascertained.

[v] Details of the measures to handle complaints from workers

It is necessary to clarify the details of a service office to accept complaints, responsible personnel, scope of complaints to be accepted, and procedures and methods of handling complaints, etc.

[vi] The need to obtain consent of workers and prohibition of disadvantageous treatment of workers who do not give consent

It is necessary to obtain consent from each worker for the effective term of each resolution.

[vii] Effective term of the committee resolution

An effective term should preferably be no longer than three years.

[viii] Retention of records on the following matters concerning the implementation status of the discretionary work system

Records on the following matters for each worker should be preserved during the effective term of a labor-management committee resolution and for three years after the expiration of the effective term.

- The status of working hours of the relevant worker
- Measures taken by the employer in relation to [iv] above
- Measures taken by the employer in relation to [v] above
- The worker's consent obtained as mentioned in [vi] above

## **(2) Requirements for a labor-management committee**

[i] Half of the committee members must be appointed from among members of a labor union, or from among persons representing the majority of the workers (excluding managers and supervisors) in the absence of a labor union, while designating their terms of office.

[ii] Meeting minutes must be prepared after each time a meeting is held and be preserved for three years. Efforts must be made to disseminate the content of those minutes among workers of the workplace.

[iii] Rules must be established regarding convening of committee meetings, quorum, proceedings and other matters necessary for the operation of the committee.

### **(3) Reporting**

Regarding the following matters, it is necessary to prepare a document in the prescribed form (see p.64) and submit it to the Director-General of the competent Labour Standards Inspection Office once within six months from the day of a labor-management committee resolution and then once a year thereafter.

- [i] Status of working hours of covered workers
- [ii] Implementation status of the measures to secure the health and welfare of covered workers

### Notice of Agreement on Discretionary Work System for Professional Work

Type of Business		Name of Business		Place of Business (Tel.)			
Type of Work	Details of Work	Number of Workers	Regular Daily Working Hours	Working Hours Stipulated in the Agreement	Measures to Ensure Workers' Health and Welfare (means to ascertain working hours)	Measures Concerning the Handling of Complaints from Workers	Effective Term of the Agreement
Date of Submission of the Notice of Agreement on Overtime Work							

Effective date of the agreement:

Name of the labor union (labor union consisting of a majority of the workers of the workplace) or name and title of a person representing a majority of the workers, who is the party to the agreement Title:  
Name:

Method of selecting the party to the agreement (in the case of a person representing a majority of the workers) ( )  
 The labor union, which is the party to the agreement as stated above, is a labor union consisting of a majority of the workers in the workplace, or the person representing a majority of the workers, who is the party to the agreement as stated above, represents a majority of the workers.  (Check the box.)  
 The person representing a majority of the workers is not in a supervisory or management position prescribed in Article 41, item (ii) of the Labor Standards Act and has been chosen not based on the intention of the employer but in accordance with the procedures, such as vote or a show of hands, after being clearly informed that a person who concludes agreements as prescribed in the same Act is to be chosen.  (Check the box.)

MM/DD/YY

Employer Title:  
Name:

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 To the Director-General of the Labour Standards Inspection Office

**Notes**

1. In the "Details of Work" section, concretely state the necessity to leave the means of executing work or the allocation of time to the discretion of workers due to the nature of the work.
2. In the "Measures to Ensure Workers' Health and Welfare (means to ascertain working hours)" section, concretely state the measures prescribed in Article 38-3, paragraph (1), item (iv) of the Labor Standards Act and also the means to ascertain working hours set forth in the same item in the parentheses.
3. In the "Measures Concerning the Handling of Complaints from Workers" section, concretely state the measures prescribed in Article 38-3, paragraph (1), item (v) of the Labor Standards Act.
4. In the "Date of Submission of the Notice of the Agreement on Overtime Work" section, state the date on which the Notice was submitted (if the Notice has not been submitted, the scheduled date of submission). However, if agreed working hours do not exceed the working hours prescribed in Article 32 or Article 40 of the Labor Standards Act, this section may be left blank.
5. The agreement must be concluded with the labor union if there is one consisting of a majority of the workers, or with the person representing a majority of the workers if there is no labor union consisting of a majority of the workers. Pursuant to the provisions of Article 6-2, paragraph (1) of the Regulation for Enforcement of the Labor Standards Act, the person representing a majority of the workers must not be in a supervisory or management position prescribed in Article 41, item (ii) of the Labor Standards Act and must be one who has been chosen not based on the intention of the employer but in accordance with the procedures, such as vote or a show of hands, after being clearly informed that a person who concludes agreements as prescribed in the same Act is to be chosen. It should be noted that the agreement is not valid if these requirements are not satisfied. It should also be noted that even if these requirements are satisfied, if the relevant checkboxes are not checked, the document fails to conform to the requirements for formality as a notice.
6. When making the agreement with this form, it should be noted that the agreement should be concluded by a method to clarify the fact that the labor and management, the parties, both reached a deal.

Form 13-2 (Re. Article 24-2-3, paragraph (1))

**Notice of Resolution on Discretionary Work System for Management-related Work**

Type of Business	Name of Business	Place of Business (Tel.)	Number of Regular Employees

Type of Work	Scope of Workers (years of experience, qualifications, etc.)	Number of Workers	Working hours in resolution
Measures to Ensure Workers' Health and Welfare (means to ascertain working hours)			
Measures Concerning the Handling of Complaints from Workers			
Existence or Non-existence of a Resolution on the Need to Obtain Consent of Workers and Prohibition of Dismissal or Other Disadvantageous Treatment of Workers who do not Give Consent			Exist • Not exist
Existence or Non-existence of a Resolution on Measures Taken for Ascertaining Working Hours and Ensuring Workers' Health and Welfare, Measures Taken Concerning the Handling of Complaints from Workers, and Retention of Records on Workers' Consent			Exist • Not exist

Resolution Established on MM/DD/YY

Effective Term of the Resolution: From MM/DD/YY to MM/DD/YY

Number of Members	Rules	Rules	Consent of the Committee	Matters Included in the Operational Rules
		Exist • Not exist	Exist • Not exist	Convening of meetings / Selection of the chairman / Methods of making resolutions / Quorum / Information disclosure to the committee
Members Appointed for Designated Terms of Office			Other Members	
Name		Term of Office	Name	

The Resolution was made by a majority of no less than four-fifths of the committee members.

Name of the labor union (labor union consisting of a majority of the workers of the workplace) or name and title of a person representing a majority of the workers that appointed half of the committee members by designating their terms of office      Title: \_\_\_\_\_  
Name: \_\_\_\_\_

Method of selecting the person that appointed half of the committee members by designating their terms of office (in the case of a person representing the majority of the workers): ( \_\_\_\_\_ )

The labor union, which is the party to the agreement as stated above, is a labor union consisting of a majority of the workers in the workplace, or the person representing a majority of the workers, who is the party to the agreement as stated above, represents a majority of the workers.  (Check the box.)

The person representing a majority of the workers is not in a supervisory or management position prescribed in Article 41, item (ii) of the Labor Standards Act and has been chosen not based on the intention of the employer but in accordance with the procedures, such as vote or a show of hands, after being clearly informed that a person who concludes agreements as prescribed in the same Act is to be chosen.  (Check the box.)

MM/DD/YY

Employer      Title: \_\_\_\_\_  
Name: \_\_\_\_\_

To the Director-General of the Labour Standards Inspection Office

Notes

- In the "Details of Work" section, concretely state the necessity to leave the means of executing work or the allocation of time to the discretion of workers due to the nature of the work.
- In the "Measures to Ensure Workers' Health and Welfare (means to ascertain working hours)" section, concretely state the measures prescribed in Article 38-3, paragraph (1), item (iv) of the Labor Standards Act and also the means to ascertain working hours set forth in the same item in the parentheses.
- In the "Measures Concerning the Handling of Complaints from Workers" section, concretely state the measures prescribed in Article 38-3, paragraph (1), item (v) of the Labor Standards Act.
- In the "Date of Submission of the Notice of the Agreement on Overtime Work" section, state the date on which the Notice was submitted (if the Notice has not been submitted, the scheduled date of submission). However, if agreed working hours do not exceed the working hours prescribed in Article 32 or Article 40 of the Labor Standards Act, this section may be left blank.
- The agreement must be concluded with the labor union if there is one consisting of a majority of the workers, or with the person representing a majority of the workers if there is no labor union consisting of a majority of the workers. Pursuant to the provisions of Article 6-2, paragraph (1) of the Regulation for Enforcement of the Labor Standards Act, the person representing a majority of the workers must not be in a supervisory or management position prescribed in Article 41, item (ii) of the Labor Standards Act and must be one who has been chosen not based on the intention of the employer but in accordance with the procedures, such as vote or a show of hands, after being clearly informed that a person who concludes agreements as prescribed in the same Act is to be chosen. It should be noted that the agreement is not valid if these requirements are not satisfied. It should also be noted that even if these requirements are satisfied, if the relevant checkboxes are not checked, the document fails to conform to the requirements for formality as a notice.
- When making the agreement with this form, it should be noted that the agreement should be concluded by a method to clarify the fact that the labor and management, the parties, both reached a deal.



**Report on Discretionary Work System for Management-related Work**

Reporting Period	From MM/DD/YY to MM/DD/YY
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Type of Business		Name of Business		Place of Business (Tel.)	
Type of Work	Scope of Workers	Number of Workers	Workers' Working Hours (means to ascertain working hours)	Implementation Status of Measures to Ensure Workers' Health and Welfare	
			( )		
			( )		
			( )		
			( )		

MM/DD/YY

Employer Title:  
Name:

To the Director-General of the Labour Standards Inspection Office

Notes

1. In the "Type of Work" section, concretely state the work decided in the resolution as the work prescribed in Article 38-4, paragraph (1), item (i) of the Labor Standards Act.
2. In the "Scope of Workers" and "Number of Workers" sections, state the scope of the workers decided in the resolution as the workers prescribed in Article 38-4, paragraph (1), item (ii) of the Labor Standards Act, and the number of such workers.
3. In the "Workers' Working Hours" section, concretely state the average and the longest working hours out of the workers' working hours ascertained as the working hours prescribed in Article 38-4, paragraph (1), item (iv) of the Labor Standards Act. Additionally, concretely state the means used for ascertaining working hours in the parentheses.
4. In the "Implementation Status of Measures to Ensure Workers' Health and Welfare" section, concretely state the status of measures taken as the measures prescribed in Article 38-4, paragraph (1), item (iv) of the Labor Standards Act.