

Japan Newsletter | Volume 1



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Is Japan Ready for a New Economic Boom? Navigating the Changing Business Laws in 2024

Japan's economy is on a path of recovery and growth, despite facing some short-term headwinds, such as an unexpected recession in the fourth quarter of 2023 and weak domestic demand. These challenges are temporary and do not negate the broader economic improvement that Japan has achieved after 30 years of stagnation. The country has overcome the difficulties of the pandemic and the geopolitical tensions in East Asia, emerging as a safe and stable destination for foreign investment. Japan offers a transparent and predictable business environment that respects the rule of law and intellectual property rights. Japan also benefits from a healthy level of inflation brought by worldwide inflationary pressure in 2022 and 2023, which signals a robust demand and a departure from 30 years of deflation. Stock prices and land values are rising, and wages are increasing. To capitalize on this favorable macroeconomic environment, market participants should understand the new laws and government initiatives impacting both Japanese companies and foreign investors.

This newsletter reviews the following:

- *Labor and Employment Law Reforms*: Revisions to labor and employment laws that will affect employers and the working conditions and rights of employees in Japan.
- *Regulatory Sandbox and Accommodating Innovation*: A “regulatory sandbox” designed to foster the introduction and development of innovative technologies and business models in Japan.

- *Osaka Future Society Project*: An innovative future-society project designed to demonstrate the vision and potential of Osaka, one of Japan’s largest and most vibrant cities.

Revisions to Labor and Employment Laws

Several important revisions to Japanese labor and employment laws take effect April 1, 2024. These revisions impact not only Japanese companies but also Japanese subsidiaries of foreign companies.

1. Revisions to system on making working conditions explicit

Under the Labor Standards Act, when entering into a labor contract with a worker, the employer must clearly indicate working conditions, including certain matters stipulated in the Labor Standards Act and the Ordinance for Enforcement of the Labor Standards Act.

In accordance with the amendment to the Ordinance for Enforcement of the Labor Standards Act, effective April 1, 2024, the following items must be stated in the notice of working conditions provided to new workers:

- Scope of work and change of workplace;
- Total contract length or the maximum number of times the fixed-term labor contract can be renewed;
- Reasons for setting the upper limit for renewal, etc.;
- Matters concerning application for conversion from fixed-term employment contract to indefinite-term employment contract and working conditions after conversion from fixed-term employment contract to indefinite-term employment contract; and
- Explanation of working conditions after conversion from fixed-term employment contract to indefinite-term employment contract.

Some Japanese companies and Japanese subsidiaries of foreign companies use their own template(s) for labor condition notices. Therefore, they must modify such template(s) in accordance with their situation.

2. Application of overtime work limits (the “2024 Problem”)

With the enactment of the Act on the Arrangement of Related Acts to Promote Work Style Reform (Work Style Reform Act), limits were placed on overtime work.

Prior to the commencement of these regulations, virtually no restrictions on overtime work existed. However, the Work Style Reform Act established maximum limits on overtime hours (overtime work) as follows:

Principle	The maximum limit on overtime hours that can be provided in an overtime agreement (so-called “Article 36 Agreement” ¹) is 45 hours per month and 360 hours per year in general.
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¹ If an employer has concluded a so-called “Article 36 Agreement” with the labor union, if any, or with an employee representing a majority of workers, or if there is no labor union, and an employer has submitted a notification of the Article 36 Agreement to the Labor Standards Office, then the working-hour restrictions and holiday requirement are relaxed to the extent agreed by the provisions of the Article 36 Agreement, subject to special payment. Most companies in Japan execute this Article 36 Agreement.

Exceptions	<p>If there is a temporary and special reason, the maximum limit on overtime work under an overtime agreement may be up to 720 hours per year. The following additional requirements also apply:</p> <ul style="list-style-type: none"> • The exception may be applied for up to six months per year; • Average overtime hours per month (including work on holidays) cannot exceed 80 hours in any two-month, three-month, four-month, five-month, or six-month period; and • Overtime hours in any month (including work on holidays) must be less than 100 hours.
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On the other hand, since a grace period has been granted to automobile driving operations (truck drivers, etc.), construction, and the medical industry, these operations have not been subject to the above regulation, and there have been virtually no restrictions on overtime work in these industries.

However, from April 1, 2024, the overtime work limit restrictions under the Work Style Reform Act *will apply to these previously exempted industries.*

According to a major newspaper in Japan and the “[Study Group for Realization of Sustainable Logistics](#)” (“the Study” (link in Japanese)), in Japan there is a relatively small number of truck drivers, with the drivers themselves maintaining the logistics for the long hours they work. However, starting April 1, 2024, truck drivers may no longer work unlimited hours, which is expected to have a negative impact on Japan’s logistics system; according to the Study, there could be a 14.2% shortfall in commercial truck transportation capacity in 2024 and a 34.1% shortfall in 2030 if no measures are taken to address this. This is known as the “2024 problem” in Japan.

Companies in these industries will need to take measures such as signing a new Article 36 Agreement, checking annual overtime hours, implementing appropriate labor management, and reconsidering employment terms and conditions.

3. Revisions to discretionary labor system

Japan has a discretionary labor system under which workers are deemed to have worked a pre-determined number of hours (deemed working hours) when they engage in certain work stipulated by law, regardless of their actual working hours. There are two types of discretionary labor systems: (1) for professional work and (2) for management-related work.

The discretionary labor system for professional work refers to a type of work assigned to an employee, as defined by the Ministry of Health, Labor and Welfare, characterized by the difficulty for employers to provide concrete directions regarding its execution and time allocation, due to its nature. Essentially, the execution of such work is largely left to employee discretion (Article 38-3 of the Labor Standards Act). Examples of professional work include (i) analysis or design of information-processing systems, meaning any architecture that combines multiple elements for information processing using computers and forms the basis for program design, (ii) development of new designs for items including apparel, interior decoration, industrial products, and advertisements, (iii) system consultancy, and (iv) securities analysis (Article 24-2-2, Paragraph 2 of the Ordinance for Enforcement of the Labor Standards Act).

The discretionary labor system for management-related work refers to tasks involved in planning, drafting, researching, and analyzing aspects of business operations. Due to the nature of these tasks, employers do not provide concrete direction on how the work should be carried out or how time should be allocated. Instead, the execution of such tasks is largely left to worker discretion (Article 38-4 of the Labor Standards Act). Examples of management-related work include (i) research and analysis of the company’s business condition and business environment, and formulation of management plans, (ii) research and analysis of problems in the company’s current personnel system and development of a new personnel system, and (iii) research and analysis of problems in sales activities, and formulation of sales policies and product sales plans company-wide.

These systems have been revised, with new procedures required to introduce and continue such systems.

New Requirement	Where New Requirement Must Be Added	
	Discretionary Labor System for Professional Work	Discretionary Labor System for Management-Related Work
(a) Obtain individual employee consent when introducing system and stipulate procedures for withdrawing consent.	Labor-management agreement on the discretionary work system for professional work.	Labor-management committee’s resolution, and the committee must submit notification of the agreement and resolution to the Labor Standards Inspection Office before a new discretionary work system is introduced.
(b) Explain wage and evaluation system to labor-management committee.	-	<ul style="list-style-type: none"> • Labor-management committee’s operating rules on the discretionary work system for management-related work. • Labor-management committee’s resolution, and the committee must submit notification of the agreement and resolution to the Labor Standards Inspection Office before a new discretionary work system is introduced.
(c) Labor-management committee must monitor system implementation system and improve operation.	-	Labor-management committee’s operating rules on the discretionary work system for management-related work.
(d) Labor-management committee shall meet at least once every six months.	-	Labor-management committee’s operating rules on the discretionary work system for management-related work.

Several Japanese companies/Japanese subsidiaries of foreign companies have already introduced a discretionary labor system. If they intend to continue the system in the future, they need to respond as described above by the end of March 2024.

4. Conclusion

Companies should respond to the labor and employment law changes, which take effect in April 2024, by establishing internal systems and revising internal regulations, etc.

Unlike changes to the law in other areas, amendments to labor and employment law generally not only affect companies in specific industries or regions but also apply to all companies in Japan, including Japanese subsidiaries of foreign companies.

Regulatory Sandbox

1. Overview

Companies are looking to capitalize on technological advancements such as artificial intelligence, IoT, and blockchain. However, government authorities often lack a full understanding of these emerging technologies, and existing legal frameworks do not adequately consider them. To address these issues, Japan's regulatory sandbox was introduced to provide creative and flexible solutions for regulatory approvals for a broad spectrum of new economy and emergent technology businesses. The regulatory sandbox allows businesses to "play" in the sandbox without regulations to see if innovative ideas and products can get traction and enter the market. The sandbox permits the swift implementation of experimental tests on-site with cutting-edge technologies within set conditions. Results from these demonstrations can be used to further commercialization and regulatory reform. If there are no regulatory issues post-demonstration, commercialization can proceed directly. If regulatory hurdles exist, the data collected can aid in regulatory reform. The ministries in charge are responsible for considering such reforms.

The Japanese regulatory sandbox was established in 2018, followed by a three-year trial period. Over 20 demonstration projects were approved during this time, leading to the decision to make it permanent legislation in 2021. To date, 30 demonstration projects across various sectors have been approved. It is anticipated 2024 will see accelerated use and promotion of the regulatory sandbox.

2. Features

While many governments have a system known as "regulatory sandbox," the scope and functions of these vary widely. A prominent feature of the Japanese regulatory sandbox is its wide-ranging coverage, not limited to financial services but also encompassing other sectors. It can apply to any sector, field, or industry.

For those wanting to utilize the regulatory sandbox or other regulatory reform tools, there's a single point of contact within the Cabinet Secretariat. This entity not only reviews applications but also provides consultation prior to the formal application process. They provide direction on which laws and regulations apply to a particular business model and coordinate discussions with relevant ministries and agencies to address regulatory issues and support the design of a demonstration project.

3. Success stories

Notable successes of the regulatory sandbox include mobility-related demonstration projects conducted by "mobby ride" and "Luup," both e-scooter sharing businesses. Previously, the regulatory framework did not permit e-scooters on public roads without helmets and driver's licenses. However, these startups

conducted experimental projects on university campuses, where these regulations did not apply, allowing them to collect necessary data and information.

Based on the data obtained from these demonstrations, regulations were gradually relaxed, culminating in the revision of the Road Traffic Act. This revision permits e-scooters to be driven not only on roadways but also in bicycle lanes without the need for a helmet or driver's license for those 16 or older. This regulatory change has led to the creation of a new mobility service market and significantly impacted the Japanese economy.

Future Society Project

Osaka, Japan's third-most populous city, is preparing for a future society project that will showcase its vision for the next era. As detailed below, the plan includes hosting the Expo 2025, building the Linear Chuo Shinkansen (magnetic levitation, or "maglev," train line), and promoting the sustainable development goals (SDGs), among other initiatives. The project is motivated by several factors, such as the aspiration for global leadership, collaboration with the Kansai region, adaptation to the changing society and economy, and the pursuit of diversity and inclusion.

- *Expo 2025*: The world exposition will be held in Osaka, Kansai, Japan from April 13 to Oct. 13, 2025. The theme is "Designing Future Society for Our Lives." The expo will invite global entities to collaborate on current challenges and develop solutions and will also emphasize carbon neutrality and the advent of virtual expos.
- *Linear Chuo Shinkansen*: The maglev line under construction between Tokyo and Nagoya, with plans for extension to Osaka, will be the fastest bullet train in the world with a speed of 505 km/h. The line is expected to connect Tokyo and Nagoya in 40 minutes, and eventually Tokyo and Osaka in 67 minutes. The line will also contribute to regional development, disaster prevention, and environmental protection.
- *SDGs*: The sustainable development goals adopted by the United Nations in 2015 are a set of 17 goals and 169 targets to achieve a better and more sustainable future for all. Osaka is committed to advancing the SDGs through various actions, such as reducing greenhouse gas emissions, enhancing social welfare, supporting local industries, and fostering cultural diversity.

Osaka's future society project presents a unique opportunity for investors, developers, businesses, and residents to participate in the shaping of their commercial landscape, community, and infrastructure and shows foreign investors that there are attractive investment opportunities beyond the greater Tokyo area.

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