Issues for Regulating Working Hours in the Post-Work-Style-Reform Era

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I. Introduction

What is currently being discussed in Japanese labor studies regarding how working hours should be regulated? When considering this proposition, we need to discuss the following two issues: (1) what is the current state of quantitative regulations of working hours in Japan; and (2) how qualitative regulations of the quantity of work should be developed in order to realize flexible work styles. These issues were discussed as central issues in the process of enacting the amendment of the laws on working hours as part of the "work style reform law" (Act on the Arrangement of Related Acts to Promote Work Style Reform) enacted in 2018, and a number of studies have already been carried out regarding these issues.[1] The work style reform law can be evaluated as a milestone in the nearly 30 years of debate over the ideal form of regulations of working hours in Japan. On the other hand, there are issues that have not yet been resolved by this law and new issues that have arisen after its enactment. This paper first briefly summarizes, as a precondition, the discussions on working hours regulations up until the enactment of this law and issues involved in such discussions (II), and then attempts to sort out issues concerning working hours regulations after the work style reform (III, IV).[2]

II. Discussions on working hours regulations up until the work style reform[3] and future issues

In Japan in the 1980s, the problem of long working hours began to become a social issue, drawing international condemnation, and at the same time, there was a call for response to changes in industrial structure (the increase of white-collar workers along with the growth of tertiary industries) and diversification of forms of employment. Since then, for about 30 years until the enactment of the work style reform law, there had been ongoing discussions on the ideal form of working hours regulations to solve the problem of long working hours and that of working hours regulations (introduction of a flexible working hours system, or in Japanese "*flextime system*" in short) to

respond to changes in industrial structure and diversification of forms of employment.[4]

The work style reform law enacted in 2018 consists of amendments to a total of eight laws, including the Labor Standards Act and the Industrial Safety and Health Act. The amendment to the Labor Standards Act, as part of the work style reform law, introduced regulation that set upper limits on overtime work hours with penalties (LSA Art. 36), aiming to address the issue of long working hours. Additionally, it made the employer legally obligated to assess worker's working hours (Article 66-8-3 of the Industrial Safety and Health Act).[5] On the other hand, from the viewpoint of promoting flexible work styles, the flexible working hours system was revised (LSA Art. 32-3) and the "high-skilled professional system," as it is called, was established (LSA Article 41-2),[6] while the amendment to revise and expand the discretionary labor system (*sairyo rodo jikansei*) was postponed.[7]

Then, what are the issues concerning working hours that have remained or newly arisen after the work style reform? As will be explained later, the issues are so complicated that it is difficult to sort them out in a simple form. For the time being, an attempt is made to sort out these issues from the two perspectives mentioned at the beginning of this paper: (1) the status of qualitative regulations of working hours and (2) the realization of flexible work styles.

With regard to the status of qualitative regulations of working hours, the issues mentioned above can be divided into two categories: those that were left unaddressed in the work style reform (apart from the criticism that "the upper limits on working hours introduced by the reform are equivalent to the so-called *karōshi line* from overwork" may be insufficient regulations in the first place[8]), and those that have arisen after the reform. A typical example of the former category is issues concerning working hours in occupations for which the application of the upper limits on working hours was postponed under the work style reform law, such as construction workers, transportation drivers, and hospital doctors.[9] Typical of the latter category are issues that became apparent or attracted attention during the COVID-19 pandemic (although they had existed prior to that period). Specifically, these include concerns about telework and working hours that emerged with the widespread of adoption of remote work as well as separate issues related to working "on a shift basis."

Regarding the realization of flexible work styles, the legal framework for the discretionary labor system and how it should be operated can be cited as a typical issue. In fact, this issue was discussed at the Ministry of Health, Labor and Welfare (MHLW)'s expert panel, Study Group on Future of the Working Hours System (held from July 1991 to July 1992), where the desirable policy for regulating working hours after the enactment of the work style reform law was discussed. The results of this discussion subsequently led to amendments to the Ordinance for Enforcement of the Labor Standards Act, which revised the discretionary labor system. In addition, the issue of how to regulate working hours in light of diverse work styles, including the work styles of white-collar workers, remains unresolved and under ongoing discussion (although this topic had been discussed even before the work style reform).

III. Issues concerning *quantitative* regulations of working hours

1. Regulations of working hours in specific industries and occupations

(1) Postponement of the application of the upper limits on working hours to construction workers, transportation drivers, and hospital doctors, and its consequence

Under the work style reform law, the application of the upper limits on working hours to construction workers, transportation drivers, and hospital doctors was postponed for five years, during which a new form of regulations was supposed to be discussed.

A new standard has applied starting with April 1, 2024. For construction workers, all upper limits on working hours introduced under the work style reform law has been applied, except for overtime work and work on days-

off related to recovery and reconstruction projects at the time of a disaster under Article 33 of the Labor Standards Act (LSA Art. 139). For transportation drivers whose work style is subject to restrictions based on trade practice in a relationship with shippers, etc.,[10] the annual maximum overtime work hours allowed under special clauses in a labor-management agreement, even where there are temporary special circumstances, are 960 hours (for regular workers, the annual maximum overtime work hours under special clauses are 720 hours). However, other regulations regarding overtime work under special clauses remain inapplicable, including the upper limits on average working hours over ranging from one to six months (80 hours on average per month; the average working hours must not exceed 160 hours for two months, 240 hours for three months, …and 480 hours for six months) (LSA Art. 140). On the other hand, the "notice of standards for improvement of working hours for transportation drivers" was revised for chauffeured cars or taxis, trucks, and buses, respectively.

As for hospital doctors,[11] following discussions at the panels (Study Group on Work Style Reform for Hospital Doctors and Study Group on Promotion of Work Style Reform for Hospital doctors), the upper limit on overtime work and work on days-off based on special clauses has been set at 960 hours per year in principle as the special maximum standard applicable to hospital doctors. On the other hand, separate standards have been established: one from the viewpoint of securing a system for providing community healthcare, and another from the viewpoint of enhancing the skills of hospital doctors. Under these special standards, the annual maximum overtime work hours allowed under special clauses are 1,860 hours. Whether these new regulations are appropriate and effective remains an issue for future discussion.

(2) Working hours of public school teachers

In recent years, the working hours of public school teachers have attracted significant attention, in addition to the issues mentioned in (1) above.[12] Under the Act on Special Measures concerning Salaries and Other Conditions for Education Personnel of Public Compulsory Education Schools, etc. (hereinafter referred to as the "Education Personnel Salaries Act"), work performed by teachers during off-duty hours had been excluded from the scope of work covered by payment of overtime compensation based on the premise that teachers engage in such work on their own initiative.[13] In other words, the issues concerning the Education Personnel Salaries Act can be directly interpreted as issues concerning the payment of premium wages. At the same time, however, the more important issue is that the problem of long working hours of public school teachers is rather serious as their work content diversifies.[14] To begin with, the Education Personnel Salaries Act and the related Cabinet Order[15] provide that educational personnel "shall be assigned regular working hours…in an appropriate manner and shall not be ordered to work overtime in principle," while limiting the cases in which they are ordered to work overtime as follows: "field trips and other practical training for students"; "school trips and other school events"; "staff meetings"; and "work necessary in the event of an emergency disaster…or under other unavoidable circumstances." Despite these provisions, it has become the norm that teachers engage in long working hours, while on the other hand, non-payment of overtime compensation is maintained under the abovementioned premise, which is a contradictory situation. To address this problem, the Central Council for Education published a report on "the work style reform at schools,"[16] and the Ministry of Education, Culture, Sports, Science and Technology (MEXT) has issued guidelines, and it amended the Education Personnel Salaries Act in 2019 to apply the one-year variable working hours system (*henkei rodo jikansei*) and to ensure compliance with the upper limits on working hours. However, there are many critical views on the one-year variable working hours system,[17] and many issues remain to be solved in order to eliminate the long working hours of teachers.

2. Issues associated with technological innovation and diversification of work styles

(1) Legal policy for securing time for rest

The work style reform law can be evaluated as having shown a certain achievement with regard to regulations

of quantitative limitation of working hours (although some issues remain). However, it is not necessarily only "working hours" (as defined in the Labor Standards Act) that burden workers.[18] In addition to reducing the workload (working hours), It is also important to ensure that workers can recover by taking days off and rest for workers' health. From this perspective, it is significant to consider the possibility of introducing the work interval system, but it is also necessary to consider ensuring the quality of rest.[19] In particular, with the development of ICT, it has become easier for workers to have contact with work during rest periods when they are off duty and away from their place of work. As a response to such situation, it is necessary to consider the possibility of what is called the "right to disconnect."[20]

(2) Prevalence of telework and issues raised

Naturally, the COVID-19 pandemic has had a major impact on the way of working in Japan following the enactment of the work style reform law. No one would deny that one of the major changes brought about by the pandemic was the prevalence of telework from home.[21] [22]

The issues concerning telework mainly concern the decision of the place and time of work. With regard to working hours, assessing and managing working hours becomes an issue. In other words, in the case of telework, since workers work away from the workplace under the management of the employer, the employer needs to devise ways to properly assess their working hours. At the same time, since workers tend to be away from direct management by the employer, there is a risk that their working hours would drag on. The Guidelines for the Promotion of Appropriate Introduction and Implementation of Telework issued by MHLW, in consideration of the unique characteristics of telework, allow the employer, with conditions, to rely on workers' self-reports of their working hours, in addition to assessing working hours objectively with the use of equipment, etc. However, these Guidelines cannot sufficiently indicate specific measures to properly assess working hours in the case of telework, thus, this should be further discussed in the future. Moreover, it seems that a number of workers who wish to telework aim to combine their work with their family life and seek flexible working hours to achieve this. It is an important and challenging issue how to balance the necessity to assess workers' working hours and ensure their health, and the necessity to allocate working hours flexibly, while taking into account the difficulties involved in properly assessing working hours in telework settings.

(3) Issues concerning multiple job-holding

The problem concerning working hours in the case of multiple job-holding has been discussed after the enactment of the work style reform law, as one of the topics related with diverse work styles and working hours although it has not emerged due to the COVID-19 pandemic.

To begin with, in Japan, there were many cases in which employers prohibited or restricted workers from holding multiple jobs. Therefore, in the discussion on the work style reform, the promotion of multiple job-holding has been discussed with the aim of promoting diverse work styles.[23] A typical issue is how to calculate working hours under the Labor Standards Act in the case of multiple job-holding.[24] Specifically, Article 38, paragraph (1) of the Labor Standards Act provides that, "to apply the provisions on working hours, hours worked are aggregated even if the hours worked were at different workplaces." The administrative interpretation[25] holds that hours worked for each different employers are aggregated.[26] Then, how to overcome the practical difficulties in managing working hours in the case of multiple job-holding becomes an issue.

This issue is more complicated in that it is not merely an issue of the interpretation of Article 38, paragraph (1) of the Labor Standards Act. First, even if the issue concerning the aggregation of working hours under the Labor Standards Act is settled to some extent, whether by interpretation or by legislation, another issue is raised: how to consider the employer's obligation to assess and manage working hours from the perspective of the employer's obligation to consider the safety (LCA Art. 5) of workers (obligation to consider workers' health)

under a labor contract.[27] Second, when a worker has multiple jobs, their work for secondary job is not necessarily based on employment. This does not matter if the worker's secondary job is, for example, an online investment activity where the physical workload is not so great. However, in recent years, so-called employment-like work styles have been expanding (in Japan, it is still unclear whether labor laws such as the Labor Standards Act are applicable to platform work such as UBER EATS). Under such circumstances, if the treatment of the worker could differ depending on whether their secondary job is based on employment (the worker falls within the scope of "workers" under the Labor Standards Act in terms of their work style) or whether it is an employment-like work style, then, why is such difference in treatment permissible? If the treatment could differ in some cases and not in other cases, where is the boundary between them? [28] Third, in terms of the relationship with the party to which the worker provides labor for their main job, their secondary job activities can be evaluated as a matter that belongs to their private sphere, which is not covered by the labor contract for their main job. In this case, it is necessary to theoretically clarify to what extent the employer for the worker's main job is allowed to enter into the worker's secondary job activities in relation to the employer's obligation to consider the safety of the worker, and whether the employer is justified in doing so.

IV. Discussion on flexible work styles

One of the major discussions on flexible work styles after the enactment of the work style reform law is the discussion on the discretionary labor system.[29] The high-skilled professional system introduced under the work style reform law is also an important issue, but considering that the actual operation of this system is not necessarily clear yet, this paper will consider this issue, focusing on the discussion on the discretionary labor system.

The discretionary labor system is a work arrangement in Japan that grants workers autonomy over their work procedures and hours. The expansion of the scope of application of the discretionary labor system was discussed in the process of enactment of the work style reform law but was postponed. MHLW's Study Group on Future of the Working Hours System discussed the revision of the discretionary labor system in the course of various discussions on the working hours system in the future. As a result, as the basic ideas for the revision, the study group indicated the viewpoints of "achieving both goals of ensuring workers' health and realizing proactive work styles" and of "realizing work styles that meet the diverse needs of both labor and management."

Following this, the amendment to the Ordinance for Enforcement of the Labor Standards Act in 2023 indicated that the discretionary labor system for planning work[30] does not cover work for which the employer designates either the start or end time, and that workers may be considered to have lost their discretion in determining the allocation of working hours in cases where the workload is excessive, etc. At the same time, the ordinance also encourages the appropriate operation of the system in accordance with its purpose and the establishment of a mechanism through the use of a labor-management committee, etc. for the appropriate operation of the system.[31]

The first question concerning the discretionary labor system is how to understand its position as a system (the purpose of the system). In light of its position under the provisions of the Labor Standards Act, this system can be understood as a special regulations for assessing working hours.[32] On the other hand, based on the discussions that took place when the system was introduced, it is also a dominant view that this system is understood as a system designed to "realize compensation based on quality and performance (rather than time)".[33] In addition, (and this is not an argument limited to the discretionary labor system), there is a question as to whether the current flexible working hours arrangement centering on the discretionary labor system is appropriate as a working hour system compatible with the work styles of white-collar workers. The mechanism for making the working hours system more flexible has been created and developed separately for the flextime system, variable

working hours system, high-skilled professional system, and system for exempting managers from the application of the working hours regulations. It seems necessary to consider redesigning the working hours system in line with current diverse work styles.[34]

V. Issues for the future direction

1. Ideal form of working hours (regulations) for specific work styles

The first issue that remained after the enactment of the work style reform law was how to regulate working hours regarding the types of business for which the application of the upper limits on working hours was postponed under this law, especially transportation drivers and hospital doctors to whom the exceptions were allowed to be applied from April 1, 2024, onwards, as well as working hours of public school teachers (based on the Education Personnel Salaries Act which also provides for exceptions). One of the reasons for allowing exceptions to the upper limits on working hours under the Labor Standards Act for these occupations is the special nature of the occupations, i.e., their public nature or public interest as infrastructure.[35]

A broader discussion of this issue would allow for two questions: first, what is the justification for allowing exceptions to the upper limits on working hours under the Labor Standards Act for certain types of occupations and work styles; and second, what is the method to establish effective working hours regulations for such special work styles. At first glance, the public interest and public nature of an occupation may seem to be a justification. However, there are many occupations around the world that have a public interest or public nature, and it goes without saying that a more concrete justification is required to answer the question of why exceptions to the upper limits on working hours are allowed to be applied to certain occupations (and only certain occupations). Even if exceptions based on a public nature or public interest are allowed, the working hours regulations also have a high degree of public policy of ensuring the safety and health of workers, and therefore, an argument as to how to define the limits of exceptions will inevitably arise.

Next, regarding the issue of how to establish effective working hours regulations, exceptions to the working hours regulations for transportation drivers and hospital doctors have been set by law based on discussions between labor-management representatives and experts. A possible approach is to utilize the (collective) agreement between labor and management, in addition to the justification for exceptions to the upper limits on working hours. In fact, the report published by MHLW's Study Group on Future of the Working Hours System (submitted to the Labor Policy Council), which studied the flexibility of the working hours system, also proposes the use of a labor-management agreement. However, if the justification for allowing exceptions to the upper limit on working hours is based (even partially) on public interest or public nature, the question arises as to whether it is theoretically consistent to determine such exceptions by labor-management agreement. In the first place, we cannot ignore the aspect that the regulations of working hours in Japan were originally intended to be controlled by a labor-management agreement under Article 36, but the failure of such control led to the introduction of absolute upper limits of working hours by law. If exceptions to the upper limits on working hours are to be permitted by a labor-management agreement, a new institutional guarantee will be needed to justify such exceptions and make them function effectively.

2. Multi-layered regulations of working hours

Another issue is that, with increasing diversification of work styles, the challenges surrounding working hours regulations are becoming more diverse and complex. Under these circumstances, it is difficult to control working hours appropriately by relying solely on working hours regulations under the Labor Standards Act.

In terms of legal regulations, the basic approach should be to establish the minimum standards for the regulations of working hours under the Labor Standards Act, and in order to control the work-related burden on

workers (including hours that do not necessarily fall within the scope of "working hours" under the Labor Standards Act), it is necessary to consider introducing regulations from the perspective of ensuring health under the Industrial Safety and Health Act and, in some cases, consider developing the interpretation and legislation to require employers to assess "working hours" in a broad sense and ensure (quality of) rest (as an extension of the obligation to consider safety), as contractual obligations under the Labor Contract Act.

On the other hand, considering flexibility in working hours regulations within a certain range, based on the characteristics of work styles and occupations, is also an issue to be addressed in view of the diversity of work styles. In this case, it may be possible to use approach through collective labor-management agreements or individual labor-management agreements. However, it will be essential to consider a mechanism to ensure the proper management of working hours, with the understanding that there is a risk of evading working hours regulations by setting exceptions based on such labor-management agreements.

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Notes

1. Below are the major literatures discussing the reform of working hours regulations under the work style reform law (including the enactment process).
   Takashi Araki, "Hatarakikata kaikaku ni tsuite" [Concerning the work style reform], *NBL* no.1141 (2019): 12–35.
   Yoichi Shimada, "Hatarakikata kaikaku to rōdō jikan hōsei no kadai" [Work style reform and issues on the working hours regulation], *Monthly Jurist* no. 1517 (April 2018): 56–61.
   Yuichiro Mizumachi, " 'Hatarakikata kaikaku' no tōtatsu-ten to kadai" [Achievement and issues of the work style reform], *Horitsu Jiho* 91, no. 2 (February 2019): 54–60.
   Yuichiro Mizumachi, " 'Hatarakikata kaikaku' no sōkatsu to kongo ni nokosareta kadai" [Overview of the work style reform and remaining issues], *Quarterly Labor Law* no. 265 (Summer 2019): 104–112.
   Susumu Noda, "Rōdō jikan kisei kaikaku ni okeru rippō to hanrei no sōkan" [Correlation between legislation and Judicial precedents in the reform of working hours regulations], *Rodo Horitsu Jumpo* no. 1927–1928 (January 2019): 6–13.
   Hajime Wada, "Rōdō jikan kisei kaikaku no hōteki bunseki" [Legal analysis of the working time regulations reform of 2018], *Japanese Journal of Labour Studies* 61, no.1 (January 2019): 6–16.
   Shinobu Nogawa, "Hatarakikata kaikaku: Kanren hōan no kiketsu to sono hyōka" [Work style reform: Consequence of related bills and its evaluation], *Horitsu Jiho* 91, no. 2: 7–13 (February 2019).
   Sumiko Ebisuno, "Hatarakikata kaikaku kanrenhō no shingi to rōshi kankei: Rōdō jikan hōsei ni tsuite" [Deliberation of the work style reform law and labor-management relations: The legal system for working hours], *Japanese Journal of Labour Studies* 61, no. 1 (January 2019): 63–74.
   Takashi Muranaka, "Hatarakikata kaikaku to rōdōhō no yakuwari" [Work style reform and the role of labor and employment laws], *Minshoho Zasshi* vol. 156, no. 2 (June 2020): 285–317.
   Hiroaki Konya, "Hatarakikata kaikaku ni okeru rōdō jikan kisei: Rōdō jikan no jōgen kisei to kōdo purofesshonaru seido o chūshin ni" [Working hours regulations in the work style reform: Focusing on the upper limits on working hours regulation and high-skilled professional system], *Japan Labor Law Association Journal* no. 132 (2019): 239–247.
   Hideo Kunitake, "Hatarakikata kaikaku kanrenhō: 'Rōdō jikan no jōgen kisei' to 'kōdo purofesshonaru seido' o chūshin ni" [Work style reform law: Focusing on the "upper limits on working hours" and "high-skilled professional system"], *Hogaku Kyoshitsu* no. 459 (2018): 50–55.
   Michitaka Nako, " 'Hatarakikata kaikaku' to shōrai no koyō shakai" ["Work style reform" and the employment society in the future], *Kanazawa Hogaku* 61, no. 1 (July 2018): 33–58.
   Ikuko Mizushima, "Hatarakikata kaikaku to rōdō jikan kisei" [The work-style reform and working time regulation], *Handai Hogaku* 67, no. 3 and 4 (November 2017): 529–553.
2. Due to space limitations, a detailed discussion on each issue is omitted here. See the numerous literatures listed in the text and notes in this paper.
3. For the development of working hours regulations in Japan, see the following.
   Yuichiro Mizumachi, *Shokai: Rodo ho* [Detailed Understanding: Labor and Employment Law], 2nd ed. (Tokyo: University of Tokyo Press, 2021), 658–738.
4. During the 1980s, the following measures were implemented to reduce overtime work, e.g. the formulation of the guidelines on appropriate overtime work agreements; the increased premium wage rate for overtime work in excess of 60 hours per month; and strengthened supervision and guidance on workplaces where long hours of overtime work are performed. With regard to enhancing the

flexibility of working hours regulations, there were measures implemented such as the development of the variable working hours system and the establishment of a discretionary labor system for planning work and other revisions in the system.

5. In addition, measures have been introduced to partially oblige an employer to grant annual leave to an employee (LSA Art. 39, Para 7).
6. For the discussions on the high-skilled professional system, see the followings.
   Akira Hamamura, "Kōdo purofesshonaru seido wa hatarakikata kaikaku nanoka: Jikan ni kōsoku sarenai hatarakikata to wa" [Is the high-skilled professional system part of a work style reform? What is a work style not bounded by time], *Hogaku Seminar* no. 762 (July 2018): 17–22.
   Shinpei Ishida, "Sairyōrōdōssei no igi to kadai: Jikan keisan no shikumi to tekiyō jogai seido no aida" [Significance and issues of the discretionary labor system: Between time calculation mechanism and exemption system], *Horitsu Jiho* 91, no. 2 (February 2019): 26–32.
7. For the discussions on the discretionary labor system in the process of enactment of the work style reform law, see the followings.
   Ishida, *supra* note 6, 26–32.
   Takuya Shiomi, "Sairyōrōdōsei no teian wa naze shippai shitanoka" [Why did the proposal of the discretionary labor system fail?], *Hogaku Seminar* no. 762: 38–43.
8. For the discussion on this issue, refer to the publications concerning the work style reform law mentioned above, *supra* note 1.
9. In addition to these occupations, the application of the maximum working hour regulations had been postponed to workers in the sugar manufacturing businesses in Kagoshima and Okinawa Prefectures, but the normal maximum working hour regulations will be applied to them from April 1, 2024, onward (LSA Art. 142).
10. For details of the long working hours of transportation drivers, see the followings.
    Hiromitsu Takihara, "Torakku unyugyō ni okeru rōdōjikansei to karōu-unten no jitsujō to kadai: Jissai no jian o fumaetsutsu" [The Actual Situation and Issues regarding the Working Hours System and Overwork Driving in the Trucking Transport Business: In Keeping with the Actual Cases], *Okinawa University Journal of Law and Economics* no. 17 (March 2012): 35–52.
    Minoru Saito, "Butsuryū ni okeru doraibā chōjikan rōdō no kadai: Jittai to kaizen e no torikumi" [Issues of long working hours of truck drivers in logistics: Actual situation and efforts for improvement], *Kanagawa University Shokei Ronso* 54, no. 2 and 3 (February 2019): 19–41.
    Shoshin Yonaga, "Torakku doraibā no chōjikan rōdō taisaku" [Measures to address long working hours of truck drivers], *Quarterly Labor Law* no. 261 (2018): 52–61.
    Kunishige Asai, "Torakku unyu no chōjikan rōdō kaizen no torikumi" [Toward remedying long working hours in trucking industry], *Japanese Journal of Labour Studies* 61, no. 1 (January 2019): 51–62.
    In addition to the above, see the discussions contained in *Rodo Horitsu Jumpo* no. 1924 (Special feature: Long working hours of transportation drivers).
11. For the upper limits on overtime work of hospital doctors and discussions on this topic, see the followings.
    Yoichi Shimada, "Ishi no hatarakikata kaikaku to kongo no rōdō jikan kisei" [Work style reform for hospital doctors and future of the working hours regulations], *Quarterly Labor Law* no. 266 (2019): 2–18.
    Yoko Murakami, "Ishi mo ningen rashiku hatarakeru shakai ni mukete chakujitsu na torikumi o: 'Ishi no hatarakikata kaikaku', rōdōkumiai no tachiba kara" [Steady efforts toward a society where hospital doctors can work with dignity: "Work style reform for hospital doctors" from the viewpoint of labor unions], *Quarterly Labor Law* no. 266 (2019): 19–28.
    Satoshi Imamura, "Ishi no tachiba kara mita hatarakikata kaikaku" [Work style reform from the viewpoint of hospital doctor], *Quarterly Labor Law* no. 266 (2019): 29–41.
    Kanako Asato, "Ishi no hatarakikata kaikaku: Iryō o mirai ni tsunagu torikumi" [Work style reform for hospital doctors: Efforts for leading medical care to the future], *Quarterly Labor Law* no. 266 (2019): 42–53.
12. A recent court case is the *Saitama Prefecture (Elementary School Teacher's Claim for Overtime Premium Wages)* case, Tokyo High Court (August 25, 2022) (not published in the casebook issued by the courts or in other law reports.
13. The issues and its problematic interpretation concerning the Education Personnel Salaries Act are discussed in the followings.
    Hirotaka Hayatsu, "Kōritsu gakkō kyōin no rōdō jikan kisei ni kansuru kentō" [Consideration of regulations on working hours for public school teachers], *Quarterly Labor Law* no. 266 (2018): 54–69.
    Takanori Yoroi, "Kōritsu gakkō kyōin no rōdō jikan-sei to `rōdō' no igi: Kyōin no 'hataraki-kata kaikaku' rongi no arikata hihan o kanete" [The working hours system and the meaning of "labor" for public school teachers: A critique of the work style reform discussion for teachers], *Ryukoku Hogaku* 52, no. 1: 105–141.
14. For the recent discussions on long working hours of teachers, see the followings.
    Hirokazu Ouchi, "Kyōin no kajōrōdō no genjō to kongo no kadai" [The current situation of overwork by teachers and future challenges], *Japanese Journal of Labour Studies* 63, no. 5: 4–13.
    Goro Horiguchi, "Kyōin no tabōka to iu sabetsu mondai" [Discriminatory issue of school teachers' heavy workload], *Hogaku Seminar* no. 818: 12–17.
    Akira Hamamura, "Kyōin no chōjikan rōdō taisaku" [Measures to address long working hours of school teachers], *Quarterly Labor Law* no. 261: 2–11.
15. The Cabinet Order Specifying Standards for Cases Such as Those When Having Education Personnel of Public Compulsory Education Schools Work in Excess of Regular Work Hours (2003 Cabinet Order No. 484).

16. Central Council for Education, “Comprehensive measures for work style reform in schools to build a sustainable school education and management structure for education for a new era” (January 25, 2019).
17. Below are the major views.
    Satoshi Takahashi, “Kōritsu gakkō kyōin no rōdō jikan gainen: Rōdōkijunhō o sendatsu suru kaisei kyūtoku hō no mondai” [Legal issues regarding the working hours of public school teachers: Focusing on the unlawful exemption from the Labor Standards Act], *Japanese Journal of Labour Studies* 63, no. 5 (May 2020): 14–25 (especially 21–25).
    Masafumi Kaneko, “Kyōshi no chōjikan rōdō to hatarakikata kaikaku: 1 nen henkei rōdō jikan sei no dōnyū o keikini” [Long working hours and work style reform of school teachers: Upon introduction of the one-year variable working hours system], *Quarterly Education Law* no. 205 (June 2020): 20–31.
    Chikara Shimasaki, “Ichinen tan’i no henkei rōdō jikan sei ga motarasu kikensei” [Risk posed by the variable working hours system in units of one year], in *Meisō suru kyōin no hatarakikata kaikaku* [Work style reform for teachers without consistency and integrity] (Iwanami Shoten, 2020): 33–47.
18. See also the following for the discussion.
    Yuichiro Mizumachi, “Nō, shinzō shikkan tō no rōsai nintei kijun to ‘rōdō jikan’ gainen” [Standards for recognizing brain or heart diseases as industrial accidents and concept of ‘working hours’], *Quarterly Labor Law* no. 280 (2023): 121–133.
    Whether the hours spent by a doctor for self-improvement can be regarded as working hours became an issue in relation to the doctor’s death from heart disease in the *Nagasaki City Hospital Organization* case (Nagasaki District Court, May 27, 2019, 1235 *Rohan* 67). See also the following commentaries as critiques on this case.
    Takahiro Asano, “Ishi no tōchoku gyōmu, benkyōkai sanka jikan tō no rōdōjikansei to rōdō jikan haaku ketai no shiyōsha no sekinin” [Whether hours spent by a doctor for night duty and for participating study sessions can be regarded as working hours, and employer’s responsibility for the negligence to assess working hours], *Quarterly Labor Law* no. 269 (2020): 180–192.
    Takeharu Matsui, “Ishi no benkyōkai sanka jikan tō no rōdō jikan gaitōsei” [Whether hours spent by a doctor for study sessions can be regarded as working hours], 1235 *Rohan* 96.
    Fumiko Obata, “Jishuteki kensan no rōdōjikansei to shinzoshi ni kansuru songai baishō sekinin” [Whether hours spent for self-directed improvement can be regarded as working hours, and liability for damages relating to cardiac death], *Minshoho Zasshi* 157, no. 1: 131–142.
    Gen Oishi, “Ishi no jishuteki na kensan no rōdōjikansei” [Whether hours spent by a doctor for self-directed improvement can be regarded as working hours], *Quarterly Labor Law* no. 269 (2020): 206– et seq.
19. Securing leave, mainly by promoting the use of paid leave, is also an important issue but left for another time due to space limitations.
20. See the following for the “right to disconnect.”
    Ryo Hosokawa, “ICT ga 'rodo jikan' ni tsukitsukeru kadai: ‘Tsunagaranai kenri’ wa kaiketsu no shohosen to naru ka?” [Challenge to the notion of ‘working time’ with development of ICT: Can the ‘Right to disconnect’ be the key to a solution?]. *Japanese Journal of Labour Studies* 61, no. 8 (August 2019): 41–51.
21. Telework from home refers to remote work (telework outside the office or default place of work) and satellite work (telework at satellite offices). It can also be classified into telework of workers under an employment contract and telework of self-employed workers. In this paper, when simply referring to “telework,” it refers to telework from home of workers under an employment contract as a general rule.
22. For the major discussions on the recent legal issues concerning telework, see the followings.
    Yukiko Ishizaki, “Koyō-gata terewāku ni kakaru rōdōhōjō no kadai” [Issues under labor law concerning telework of workers under employment contract], *Quarterly Labor Law* no. 274 (2021): 14–27.
    Natsuki Kohno, “Terewāku to rōdōsha no shiseikatsu no hogo” [Telework and protection of workers’ private life], *Horitsu Jiho* 92, no. 12 (November 2020): 80–84.
    Kazuyoshi Yamakawa, “Kinkyūji terewāku no hōteki kadai” [Legal issues of telework at the time of emergency], *Quarterly Labor Law* no. 271 (2020): 47–56.
    Shinya Ouchi, “Terewāku o ronjiru: Gijutsu kakushin to shakaiteki kachi” [Discussing telework: Technological innovation and social value], *Quarterly Labor Law* no. 274 (2021) : 2–13.
    Maiko Okamoto, “Zaitaku kinmu dekirunoni shussha shinakutewa naranainoka: Kinmu basho no kettei, henkō no hōri o toinaosu” [Why do persons have to go to the office when they can work from home?: Questioning the legal theory for deciding and changing the place of work], *Horitsu Jiho* 95, no. 12 (November 2023): 107–113.
    Ryo Hosokawa, “Terewāku no kakudai to hataraku ‘basho’ / ‘jikan’ “ [Expansion of telework and the “place” and “time” of work], *Hogaku Kyoshitsu* no. 486 (March 2021): 33–37.
    Ryo Hosokawa, “Zaitaku terewāku o meguru hōteki kadai” [Legal issues concerning telework from home], 1288 *Rohan* 6.
    Kazuya Takemura, “Zaitaku kinmu no jitsumuteki kadai to arubeki kaishaku: Rōdōsha gawa no shiten” [Practical challenges of work from home and ideal interpretation: Viewpoint of workers], 1288 *Rohan* 10.
    Ayako Oura, “Seisansei no takai zaitaku kinmu no suishin o: Shiyōsha gawa no shiten” [Promoting productive work from home: Viewpoint of employer], 1288 *Rohan* 14.
23. For example, the Growth Strategy 2017 and 2018 (adopted by the Cabinet on June 9, 2017, and June 15, 2018), and the Action Plan of the Growth Strategy (June 21, 2019).
24. Issues concerning multiple job-holding and management of working hours are discussed in detail in Yukiko Ishizaki, “Fukugyō, kengō

sha no rōdō jikan kanri to kenkō kakuho" [Management of working hours of workers with multiple jobs and ensuring their health], *Quarterly Labor Law* no. 269 (2020): 2–15.

25. Kihatsu (Notification in the name of the chief of the Labor Standards Bureau) No. 769 (May 14, 1948),
26. There has been a longstanding theoretical debate between the view that hours worked should be aggregated and the view that they should not if the hours worked were for different employers.
    Naoko Kono, "Kengyō fukugyō" [Portfolio career], *Quarterly Labor Law* no. 258 (Autumn 2017): 129–142.
27. This issue was raised in the *Daiki Career Casting and another company* case (Osaka High Court, (Oct. 14, 2022) 1283 *Rohan* 44). See also the following commentary.
    Chikako Kanki, "Kengyō ni yoru renzoku chōjikan rōdō to kaku shiyōsha no hōteki sekinin: Daiki Kyaria Kyasutingu hoka 1 sha jiken" [Consecutive long working hours due to holding multiple jobs and legal responsivity of each employer: The *Daiki Career Casting and Another Company* case], *Monthly Jurist* no. 1591 (December 2023): 142–145.
28. However, from the viewpoint of fulfillment of the obligation to consider the safety of workers, this obligation is not necessarily based on an employment relationship. Thus, it can be theoretically assumed that even if the party to which the worker provides labor as their secondary job is not the party to an employment contract, the said party may have an obligation to assess and manage the worker's working hours based on the obligation to consider safety.
29. For the major recent discussions concerning the discretionary labor system, see the followings.
    Takashi Araki, "Rōdō jikan kisei no tenkai to kadai: Sairyō rōdō-sei o chūshin ni" [Development and issues of working hour regulations: Focusing on discretionary work schemes], *Japanese Journal of Labour Studies* 65, no. 752. Special Issue (March 2023): 10–19.
    Shinpei Ishida, "Sairyō rōdō-sei no igi to kadai: Jikan keisan no shikumi to tekiyō jogai seido no aida" [Significance and issues of discretionary labor system: Between time calculation mechanism and exemption system], *Horitsu Jiho* 91, no. 2 (February 2019): 26–32.
30. Under the discretionary labor system, workers are allowed to determine their starting and ending times or the working hours required for their duties. They are legally deemed to have worked a predetermined number of hours, regardless of the actual hours worked. This system applies to specific professional categories including researchers, designers, and analysts, as well as workers engaged in corporate planning and management. Its implementation is subject to various procedures and conditions.
31. For the amendment to the Ordinance for Enforcement of the Labor Standards Act in 2023, see the followings.
    Takahiro Asano, "Sairyō rōdōsei no minaoshi dōkō no kentō" [Study on the trends in the review of the discretionary labor system], *Quarterly Labor Law*, no. 282 (Autumn 2023): 54–67.
    Daisuke Masuhara, "Rōdōkijunhō shikōkisoku tō kaisei (sairyōrōdōsei no seido kaisei) ni kansuru kaisetsu" [Commentary on the amendment to the Ordinance for Enforcement of the Labor Standards Act, etc. (Reform of the discretionary labor system)], *NBL* no. 1250 (September 2023): 45–52.
32. From this perspective, a problem could arise when there is a discrepancy between deemed working hours and actual working hours.
33. There are many issues regarding such understanding: it may not be consistent with the fact that the discretionary labor system is positioned in the chapter on "working hours" rather than "wages"; such a wage system is not necessarily required to be realized through the discretionary labor system; if the purpose of the discretionary labor system is to separate "wages" and "working hours," it is more theoretically consistent to position the system as part of the provisions for the exemption from working hours regulations (Art. 41); and in such a case, the relationship with the "high-skilled professional system."
34. For the recent discussions on the premium wage regulations under the existing law and the ideal form of regulations of working hours of white-collar workers, see the following.
    Yoko Hashimoto, "Rōdō jikan hōsei ni okeru 'jikan' to 'chingin' o meguru kōsatsu" [Study on "time" and "wage" under the working hours system], in *Seikatsu jikan no kakuho (seikatsu shuken) o kijiku ni shita rōdō-jikan hōsei kaikaku no mosaku: Kongo no rōdō jikan hōsei no arikata o kangaeru chōsa kenkyū iinkai hōkokusho* [Exploring a reform of the working hours system based on securing time for one's life (life sovereignty): A Report of study committee on future working hours regulation]. edited by JTUC Rengo Research Institute for Advancement of Living Standards]: 96–106.
35. See Shimada, *supra* note 11, 7.

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