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Charles Weathers, Scott North

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By Scott North and Charles Weathers

Seeking a “21st-century way of working” that promotes increased labor productivity and “diverse work styles,” Japan's Ministry of Health, Labor and Welfare (MHLW) has issued a report recommending major changes to work hour regulations. The centerpiece of the proposal is an exemption from overtime pay for white-collar workers.

Opponents of the white-collar exemption say it is poorly suited to the realities of Japanese corporate culture. They see the establishment of an exemption from overtime pay as legalizing and expanding the already widespread practice of unpaid or “service” overtime. Opposition political parties, unions and labor lawyers say the proposed law will only intensify problems associated with the culture of long hours and overwork.

Already Japan and South Korea are the only countries where karoshi (death from overwork) is a formally recognized phenomenon. Long work hours are so pervasive that they are believed to be a major cause of Japan’s weak record on equal opportunity as well as its low birthrate. Company expectations of long hours for full-time workers prevent fathers from spending much time with children and force many women to choose between motherhood and careers. Moreover, long work hours are widely regarded as a common form of indirect discrimination against working women in Japan.

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Despite calls for both further debate and the withdrawal of the proposal, and although important details, in particular the salary level for determining workers who will be exempt from overtime guidelines, remain unannounced, some form of white-collar exemption legislation appears headed for submission to the Diet (parliament) in early 2007.

The present Labor Standards Law mandates an eight-hour day and 40-hour workweek, with overtime pay for each hour beyond that, but the MHLW report recommends scrapping work hour regulations for many workers. The proposal is part of a sweeping labor-law reform package that also includes contract rule changes that would make it easier for employers to axe full-time workers through buyouts and replace them with temporary staff.

Growing Influence of the American Model

These labor law reforms are manifestations of shifting priorities in Japanese management circles over the last 20 years. The shifts can be viewed as the result of a pincer action. On one side, Japanese firms are feeling pressure from Chinese and other low-cost producers in the global economy, whose management practices, lax regulatory schemes, and large pool of surplus laborers enable companies to keep labor docile and labor costs down.

The other side of the pincer is domestic, the result of changes in corporate culture. In place of the “wet,” emotion-laden, familial ties between managers and their subordinates characteristic of Japan until the late 1980s, the emerging style of management is “dry,” rational and contractual. Ronald Dore argues persuasively that proposals such as the white-collar exemption should be seen as part of a broad movement from Japan’s market share capitalism, with its concern for long-term planning and stability, to share holder capitalism, with its concern for rapid growth of share prices and quarterly bottom lines. According to Dore, the effects of this shift in corporate objectives and culture have become especially clear since 2001. Salaries, bonuses, and stock options for managers and directors, shareholder dividends, and the share of total corporate profits going to financial firms are all sharply up, while real wages have fallen by 6% (in large firms) and 10% (in small and mid-sized firms). Key agents of the shift are American-educated Japanese bureaucrats and financial services executives, who have recently begun reaching positions of influence within Japan’s power elite. [1]

That influence may explain why the proposal to exempt Japan’s white-collar workers from overtime premiums so strongly resembles the United States’ white-collar exemption, a law which has been in force for managerial, administrative and professional employees since

1938. To deal with a growing number of class-action challenges to the exemption by American workers, the US Department of Labor revised the duties tests and increased the salary minimums in 2004. Nevertheless, the minimum salary necessary to exempt workers from overtime compensation is still only \$23,660 per year.

The American Chamber of Commerce in Japan also strongly supports the Japanese white-collar exemption. As debate on the particulars of the proposal heated up in November 2006, ACCJ's Labor Mobility Task Force issued a report entitled "ACCJ Viewpoint: Modernize Work Hours Regulation and Establish a White-Collar Exemption System." [2] Arguing that paying workers for their output rather than their time would boost competitiveness and stimulate both economic growth and labor-market mobility, the report calls for broadening the definitions of "managerial and supervisory" positions to "harmonize" with the white-collar exemption system.

The ACCJ blueprint for Japan reflects Japanese employers' point of view and it is in step with another report, this one published by the American Chamber of Commerce in China. That report opposes labor law reforms that would strengthen legal protections for Chinese workers, who are often at the mercy of exploitative managers. [3]

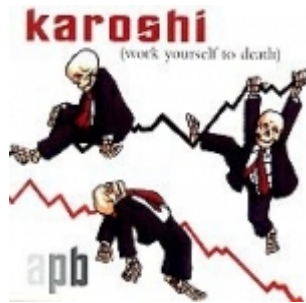
The Exemption Proposal and White-collar Work in Contemporary Japan

Employers and other supporters of the proposal criticize the current work hours statute as a relic of the manufacturing age and therefore not suitable for regulating white-collar work in the global economy. They say that unlike factory work, there is no logic in maintaining a link between white-collar workers' pay and their work hours. Rather they should be paid for what they produce.

Opponents say the exemption constitutes the introduction of a white-collar piecework system. By replacing the link between working time and salary with a link between performance and salary, employers will maximize profit by upping workloads. Workers will have to do more, but will receive less per task, and the longer hours will take a toll on their health.

Although official tallies of average annual working hours show a decline from more than 2,400 hours in 1960 to roughly 1,834 in 2004, much of the decrease may be due to increased use of part-time workers, whose shorter hours are part of the annual averages. In addition, the working hours statistics do not show service overtime, which more than 50% of managers admit exists in their firms. Full-time workers, both male and female, average 55 hours of work per week. One in three men aged 30-40 puts in

more than 60 hours a week. Half of them are not being paid for any of their overtime.



Keidanren, the employers' federation, wants salaried office workers in "positions of authority and responsibility" and with incomes above 4 million yen (US\$34,500) per year to be exempt from rules that require overtime premiums of time and a quarter for labor beyond 40 hours per week. That figure would make roughly 70% of the 23 million white-collar office workers exempt.

According to census data, white-collar workers make up just over half of Japan's labor force. Those workers should receive annual overtime pay currently estimated at 1.14 million yen per person. But Professor Morioka Koji, economist at Kansai University, notes that 690,000 yen of that is not being paid now. This hints at the current degree to which overtime regulations are ignored.

A September 2006 survey of 900 full- and part-time workers by Rengo, a trade-union federation, found that 40% do not feel they can claim all the hours they work because supervisors and the

atmosphere in the workplace are hostile.

Opponents of the Japanese exemption are working to raise public consciousness of what is at stake. But as the recommendations were being hammered out in the Subcommittee on Working Conditions of MHLW's Labor Policy Deliberation Council, an Internet poll of 1,000 male and female full-time workers found that 73% had no knowledge of the "white-collar exemption." Only eighteen percent had heard the term and just 9% said they understood its implications. The poll illustrates the generally low state of public awareness about the issue and the opaque way in which the proposal has been discussed.

According to a 2004 report by Shimada Yoichi of Waseda University Business School, increasing numbers of workers are being classified as "managers" when it comes to overtime. [4] By paying a nominal "management allowance" or giving workers management titles, firms are already avoiding overtime premiums and legal regulations. Workers who feel they are not being properly compensated hesitate to complain for fear of dismissal or discrimination. However, there are suits currently challenging this practice in court. Directly at issue is whether these workers are actually *kanrishoku* (mid-level managers), the same point that is at the center of exemption-related class action lawsuits in the US.

Whether they hold management titles or not,

Japanese workers are well acquainted with unpaid work, regarding it as an unassailable fact of life. Because many firms set both high production quotas and ceilings on overtime hours and pay, managers must force their subordinates to work off the books to complete their assignments. Thus the white-collar exemption already exists de facto. Blue-collar workers, too, perform service overtime.

The Japan Labor Lawyers Association strongly condemns such practices and the proposed exemption, questioning the argument that eliminating the concept of overtime will lead to shorter working hours in reality. These lawyers note that few if any Japanese white-collar workers have discretion as to the amount of work they do or how they do it. In their view, the exemption will encourage heavier quotas for able workers. The less able will be targeted for dismissal, as will become easier if the MHLW's proposed contract rule amendment is passed by the Diet. A highly intensive work environment will increase work-related illnesses, already at high levels. Even now, some 70% of firms expect circulatory-disease and mental and emotional health problems to increase among white-collar workers aged 30-50.

The lawyers say the MHLW is lax in enforcing current laws. Recent suits to recover unpaid overtime suggest that the magnitude of the problem far exceeds the Ministry's ability to

investigate all claims. Waseda's Shimada writes that unpaid overtime complaints reaching the Labor Standards Inspection Bureaus doubled between 1992 and 2002, hitting 17,000 in 2002. Of those, only 49 were referred to the public prosecutor.

Since 2003 the MHLW has sought to crack down on companies that fail to pay overtime in full by issuing administrative guidance to negligent firms. Labor-standards inspectors know better than anyone the actual working conditions faced by Japanese workers. In an "emergency poll" of the 95% of the inspectors who are unionized (80% or 1,319 inspectors responded) conducted on December 13, 60% said they did not favor introducing an exemption as a way to promote "a way of work with a high degree of freedom." Instead, the vast majority said the best ways to limit excessive hours are to strengthen employers' obligations to keep track of working hours and stiffen penalties for violations.

Nearing the Exemption Endgame?

As the Labor Lawyers Association sees it, employers are not just seeking to reduce costs, for they are already doing that by not paying in full for overtime work. The broader aim of the exemption should be understood as the legalization of unlimited service overtime, that is, destroying grounds for contesting the increasingly blurry boundary between work and

non-work hours. As the boundary blurs, a key aspect of the MHLW's supervisory authority over working time and labor-management relations will fade, making it harder for the ministry to pursue its stated goal of reducing working hours.

Even some employers say that the three criteria proposed for exemptions, “workers in important positions of responsibility or authority,” “those who exercise self-discretion in the performance of their duties,” and “considerably high income” are vague and likely to be abused. Salary levels for white-collar workers vary widely across industries and among companies with organizational hierarchies of large and small companies varying so much that one law cannot cover all cases fairly.

Although the current proposal also contains provisions for protecting workers' health, such as guaranteed rest days and consultation with a doctor upon a worker's request, there are no penalties for failing to keep hours down. As before, the firms will only be bound to a “duty to make effort.”

The ostensible rationale for the white-collar exemption is that workers who are paid for what they actually produce will produce more and do it more efficiently. But the reality is that by making more and more workers “honorary management” employers will be even less constrained in what they can demand. The

exemption will drive a white-collar wedge deeper into firms, allowing the spread of the management culture of long, unpaid hours. Opponents fear that if even a small group of white-collar workers become legally exempt from overtime, it could mark the tipping point in a slide toward a “blue-collar exemption.”

Prime Minister Abe recently remarked that he believes the exemption is necessary to help overworked Japanese families spend more time together and address the birthrate problem, too. [5] Nevertheless, as currently planned, white-collar exemption is not likely to help address the work/family balance issues that are at the heart of population decline. It is far more likely to aggravate occupational health problems, including depression and suicide due to crushing workloads, yet make forced overwork more difficult to prove. That would reverse 20 years of union efforts to liberalize the criteria for recognizing *karoshi* and other conditions caused by overwork and making affected workers eligible for workers' compensation insurance payments.

As the endgame begins, there are reports that a compromise will emerge in which the exemption will apply only to workers who are “one step short of management,” with an annual-salary level of 8 million to 9 million yen (about \$67,000-\$75,400). Representatives of the ruling Liberal Democratic Party's junior coalition partner,

Komeito, are worried that quick passage of the exemption and other changes to the Labor Standards Law will create a backlash in this year's House of Counselors election. Some members of the ruling party have voiced similar concerns.

The white-collar exemption has been discussed in Japan since the late 1980s, when the first discretionary work schemes were incorporated into the Labor Standards Law. Those schemes have always been intended as steppingstones toward a full exemption from regulation. [6] In recent comments, the Secretary General of the Liberal Democratic Party expressed his firm determination to overcome opposition to the exemption and realize passage of the reform package, saying, "Before we can submit the bill, the people must be made to realize that it will be good for the salarymen. Employers and the government have not yet fulfilled their responsibility to explain." [7]

Based on the response to the Subcommittee report so far, the more Japan's voters learn about the plan, the more likely they are to feel poorly served by representatives who claim to "help" overworked families by abolishing the eight-hour day and overtime pay for white-collar workers.

Scott North is associate professor of sociology in the Graduate School of Human Sciences at Osaka University.

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Charles Weathers is professor of economics at Osaka City University.

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Notes

[1] Ronald Dore. 2006. "Japan's New Miracle Economy" (<http://japanfocus.org/products/topdf/2267>): Neoliberalism and the Poverty of Wealth."

[2] Available as a bilingual PDF (http://www.accj.or.jp/document_library/Viewpoints/VP_WhiteCollar.pdf).

[3] Earl Brown. 2006. "Chinese Labor Law Reform" (<http://japanfocus.org/products/topdf/2280>): Guaranteeing Worker Rights in the Age of Globalism."

[4] Shimada Yoichi. 2004. "Working Hour Schemes for White-Collar Employees in Japan." Available as a PDF (http://www.jil.go.jp/english/documents/JLR04_shimada.pdf).

(<http://www.asahi.com/job/news/TKY200701050259.html>) Jan. 7, 2005.

[6] Araki Takashi. 1996. "Regulation of Working Hours for White-collar Workers Engaging in "Discretionary Activities." Japan Institute of

Labor Bulletin, v. 35 no. 7 (July).

[7] "Zangyou dai zosei, houan teishutsu wa shousou.

(http://www.jiji.com/jc/c?g=pol_30&k=2007010700049)Kokumin he no setsumei fujiyubun."