

# The Form Labor Agreement that's Making Headlines in Japan

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Last week, Japanese newspapers reported that a national medical research center in the suburbs of Osaka had entered into a so-called “36 agreement” with its doctors and nurses in 2012, allowing these employees to work up to 300 hours of overtime per month and up to 2,070 hours of overtime per year. (To be clear, these hours are *in addition to* the employees’ ordinary working hours.)

Japan has earned a reputation for long working hours, but 300 hours a month is shocking even by Japanese standards. By law, most workers are limited to 45 hours of overtime per month and 360 hours per year, unless extenuating short-term circumstances require them to work longer. The government has recently designated 100 hours per month as the “death by overwork line,” which employers should not cross for the sake of their employees’ health.

So what is going on at this research center? Why are all these medical professionals apparently required to work non-stop for months at a time?

The “36 agreement” is a document that takes its name from Article 36 of the Labor Standards Act. This provision states that any work in excess of 8 hours a day or 40 hours a week, or on holidays, requires an advance written agreement between the employer and the relevant labor union. The “36 agreement” is usually in the form of a standard one-page contract that is stamped by the company and its workers’ representative and filed with the local labor office.

In this case, the research center took an aggressive approach to preparing the form. The center, as quoted in a Kyodo News report, stated that even its hardest-working employees did not put in more than 60 to 70 hours of overtime per month.\* Nonetheless, it drafted its 36 agreement to take advantage of relaxed overtime restrictions applicable to medical professionals (the legal rationale being that these professionals cannot turn away patients without good reason).

That could have been the end of the story, but a labor lawyer in Osaka was able to get a copy of the filed agreement through an information request process, and so the story eventually made headlines.

The moral of the story for employers? Even if they are technically compliant, make sure your mundane HR filings won’t cause a reputational crisis if they somehow end up in the paper.

\* “*Tsuki 300 jikan no zangyo kyotei*,” *Nihon Keizai Shimbun* evening edition, September 7, 2017, p. 13.

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