



How to Reform the Working Time Legislation in Japan

-Critical comments on the “Work Style Reform” of
the Abe-Government and new concept based on
“Living Time” approach

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Thesis of my Report

- ▶ **The working time reform of the Abe administration is not to the point,**
because
 - ▶ The issue of long hours work is mainly discussed in the context of health and safety (the death caused by overwork)
 - ▶ Enforcement of the working time regulation is mainly discussed in the context of strengthening penalties.
 - ▶ The flexibilization of working time is mainly discussed in the context of disconnecting wages from working hours.
- ▶ **The working time regulation should be pursued based on ensuring living time (time for life),**
because the core issue of long working hours in Japan lies in the poverty of living time.
⇒
 - The most important regulation is to ensure minimum living time per day.
 - There is no exemption of the living time regulation.
 - Overtime work is estimated as an infringement of time for life, so that time compensation principle should be taken as a rule.
 - Flexibilisation of working time regulation is not disconnecting wage and time, but an extension of sovereignty (autonomy) over living time.
 - The elimination of long hours work is our national task, so that the regulation should be enforced by monitoring of Stakeholders of enterprises.
 - The regulation ensuring living time is able to adapt to new environments caused by the development of information and communication technologies.



1 Current Regulation and Actual Situation of Working Time in Japan

4. March, 2019

Working Time Regulation in the Labour Standards Act

- ▶ Working hours and rest (Art.32,34,35)
 - ▶ 40 hours per week and 8 hours per day excluding rest breaks
 - ▶ Rest breaks: 45 minutes (one hour) when working hours exceed 6 hours (8 hours)
 - ▶ Rest days: 4 days for 4 weeks at least
- ▶ Overtime & Rest day work(Art.36)
 - ▶ possible with labour-management agreement under the administrative guideline
- ▶ Annual paid leave (Art.39)
 - ▶ 10 days for continuous service of 6 months and 80% attendance of working days
 - ▶ The days increase yearly (two days after 2 years) to maximum 20 days

Flexible Working Time System in Japan

▶ Variable (average) Working Hours System

Working hours per week and day can be distributed flexible, so far as the total working hours does not exceed statutory working hours within a certain period. However, it is necessary to specify the working hours of week or day in advance.

Monthly VWHS

Yearly VWHS

Deemed Working Hours System

Amount of working hours is calculated not by actual working hours, but by prescribed working hours.

Requirement

Employees decide the starting/closing time and determine how to carry out their duties.

Employees are not under control of their employer.

Discretionary Work

Work Outside Workplace

▶ Flextime

Employees are able to decide starting/closing time by themselves. As long as the total amount of working hours within the calculation period does not exceed the total statutory working hours, the employer is not required to pay overtime allowance.

Table 1

Variable Working Hours System

| | Size of enterprise | | | | |
|---|--------------------|--------------|--------------|--------------|--------------|
| | | 1000 | 300-999 | 100-299 | 30-99 |
| All Enterprises (applied employees) | 100.0(100.0) | 100.0(100.0) | 100.0(100.0) | 100.0(100.0) | 100.0(100.0) |
| Enterprise adopting a variable working hours system | 52.1(47.6) | 63.9(41.2) | 64.3(51.1) | 60.3(50.5) | 49.1(47.3) |
| VWHS on a yearly base | 33.8(22.6) | 20.6(8.1) | 27.3(20.5) | 32.6(28.6) | 30.6(30.7) |
| VWHS on a monthly base | 16.0(17.1) | 36.6(21.8) | 32.4(23.1) | 25.6(18.2) | 17.2(14.8) |
| Flex Time System | 4.9(7.8) | 21.7(11.2) | 13.2(7.5) | 6.9(3.6) | 2.2(1.8) |
| Enterprises having no WWHS | 47.9(52.4) | 36.1(58.8) | 35.7(48.9) | 39.7(49.5) | 50.9(52.7) |

The flex-time scheme is not so common.

The most common type of variable working time is the one year based scheme

Table 2

Deemed Working Hours System (DWHS)

| | 2015 | Size of enterprise (employees) | | | |
|---|------------|--------------------------------|---------|---------|-------|
| | | 1000 | 300-999 | 100-299 | 30-99 |
| All Enterprises | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Enterprise adopting DWHS | 15.0(8.8) | 24.5(10.3) | 18.5 | 16.9 | 11.0 |
| Work outside workplace | 13.1(7.5) | 17.0(7.8) | 14.3 | 14.9 | 9.7 |
| Professional work types of discretionary work | 2.5(1.0) | 9.6(2.0) | 4.9 | 2.5 | 1.7 |
| Planning work type of discretionary work | 0.7(0.3) | 5.9(0.5) | 2.0 | 0.9 | 0.2 |
| Enterprises having no DWHS | 85.0(91.2) | 75.5(89.7) | 81.5 | 83.1 | 89.0 |

The work outside workplace is main scheme of deemed working hours

The discretionary work scheme is used in large enterprises

Table 3

International Comparison of Annual Total Working Hours

| | 1990 | 2000 | 2005 | 2010 | 2013 | 2014 | 2015 | |
|-----------------------|-------|-------|-------|-------|-------|-------|-------|------|
| Japan ¹⁾ | – | 1,853 | 1,802 | 1,754 | 1,746 | 1,741 | 1,734 | |
| United States | 1,833 | 1,836 | 1,800 | 1,786 | 1,794 | 1,796 | 1,795 | +61 |
| France | 1,536 | 1,428 | 1,411 | 1,404 | 1,389 | 1,387 | 1,399 | |
| Germany ²⁾ | 1,490 | 1,360 | 1,324 | 1,310 | 1,291 | 1,298 | 1,304 | -430 |
| United Kingdom | 1,700 | 1,680 | 1,650 | 1,632 | 1,656 | 1,667 | 1,663 | |

Source: OECD Database

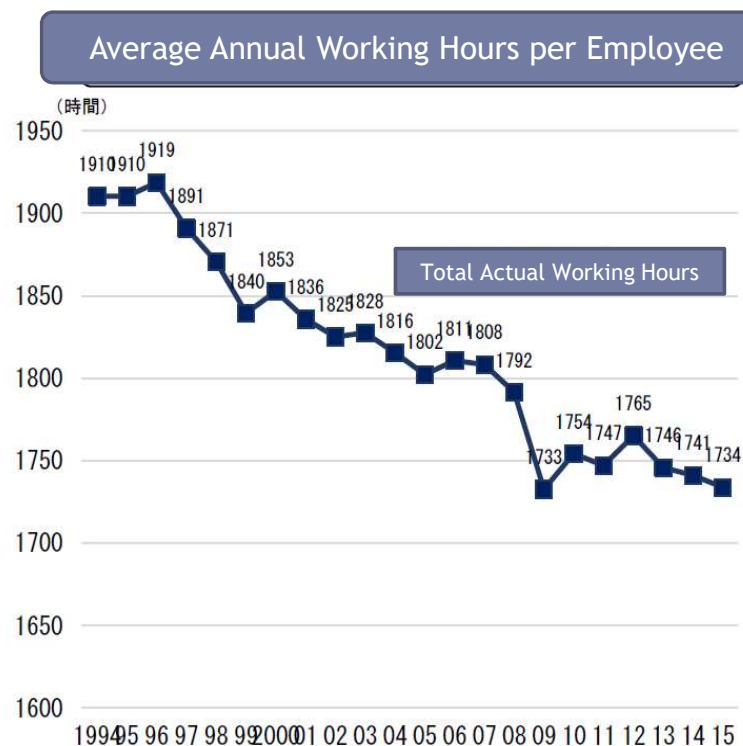
Notes: 1) Establishment size for Japan is 5 or more employees.

2) The figures for 1990 represent those for former West Germany.

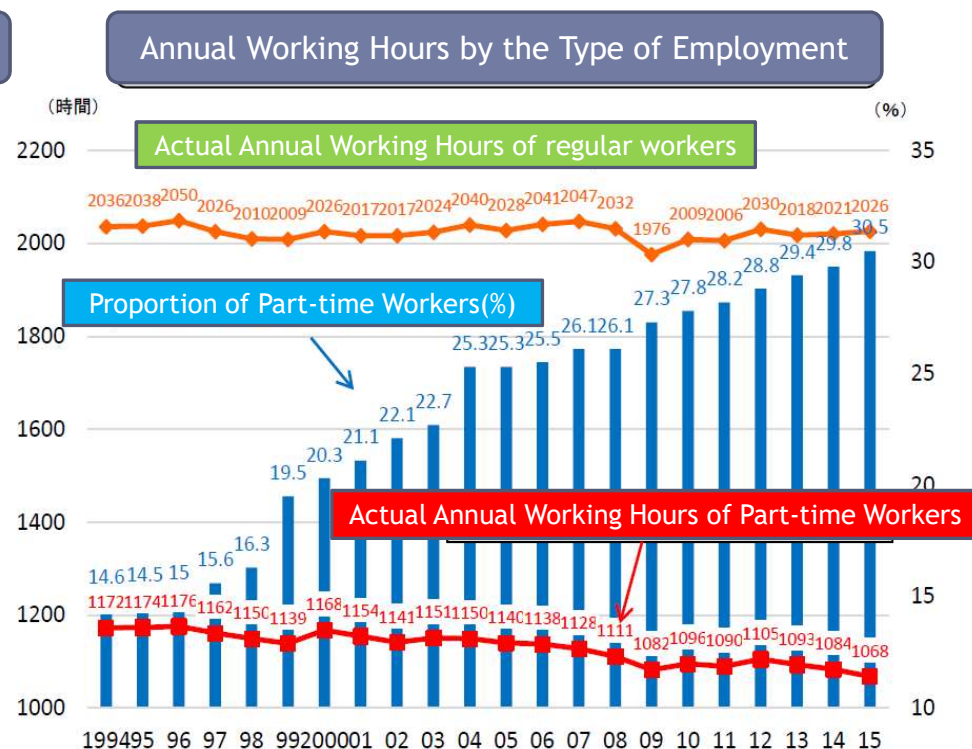
Japanese employees work 61 hours shorter than American worker, but 430 hours more than German employees in average.

Table 4

Trend in Annual Total Working Hours



(資料出所) 厚生労働省「毎月勤労統計調査」
(注) 事業所規模5人以上



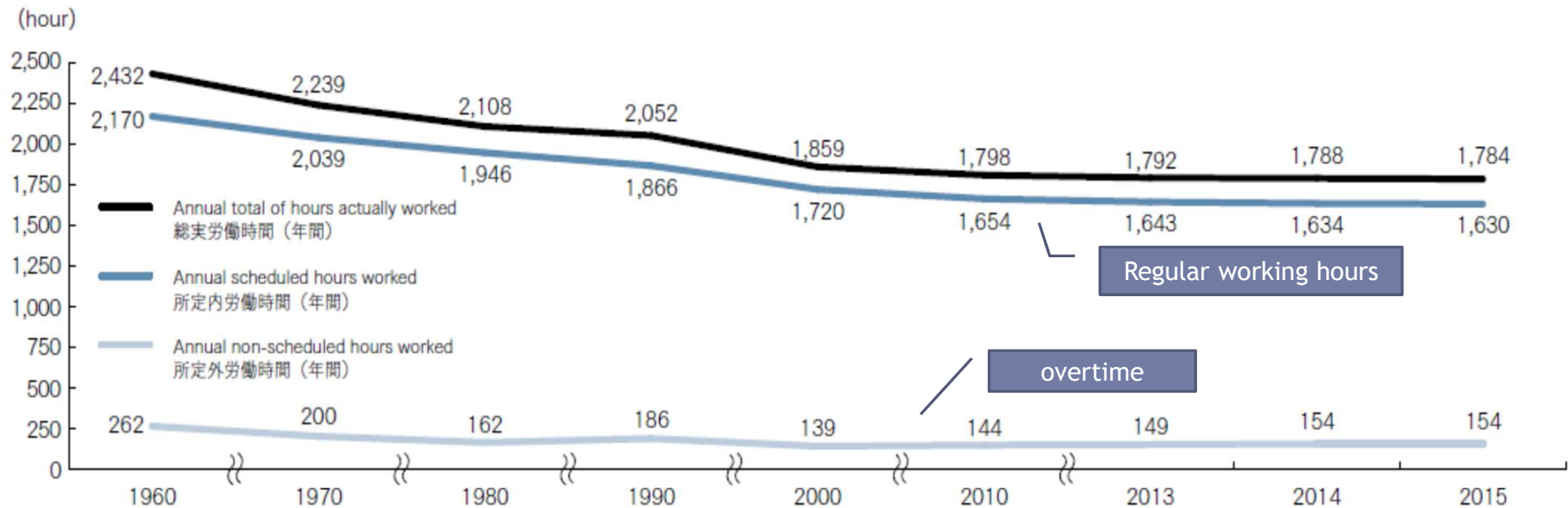
(資料出所) 厚生労働省「毎月勤労統計調査」
(注) 事業所規模5人以上

Average annual working hours of employees including part-time workers is definitely decreasing, but the working hours of regular employees has not changed at all for the last 20 years.

4. March, 2019

Table 5

Yearly Trend in Regular Working Hours and Overtime



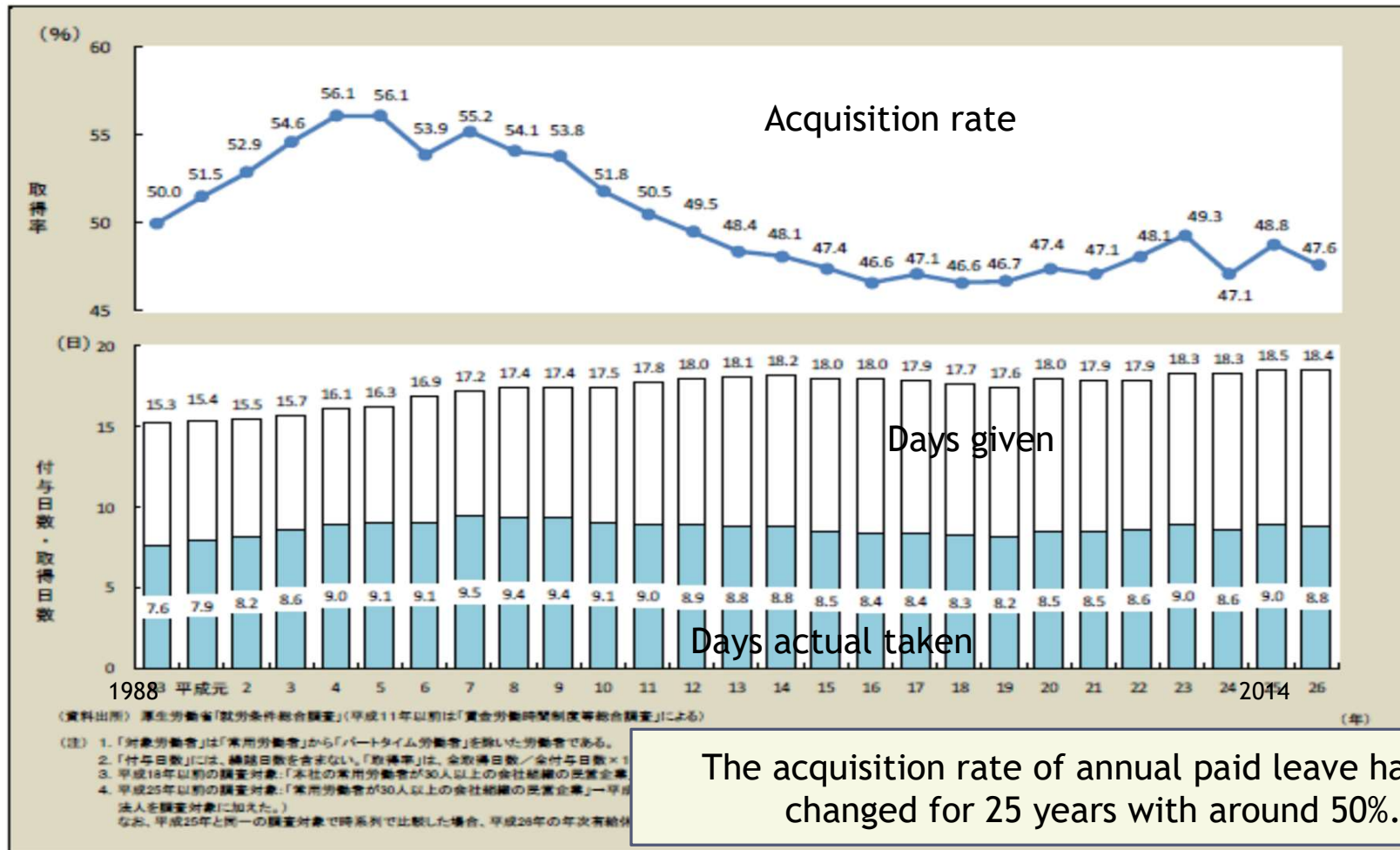
Source: Ministry of Health, Labour and Welfare, *Monthly Labour Survey*

- Notes:
- 1) The total of hours actually worked is the sum of scheduled hours worked and non-scheduled hours worked, including overtime, being called in for unscheduled work, working on holidays, etc.
 - 2) Annual hours worked were calculated by multiplying monthly hours worked by 12 and rounding off fractions below the decimal point.
 - 3) Establishments with 30 employees or more were surveyed.

Overtime has been around 150 hours a year and there is no improvement over 20 years.

Table 6

Trend in the acquisition rate of annual paid leave



The acquisition rate of annual paid leave has not changed for 25 years with around 50%.

2. Characteristics and Problems of the Working Time Policy of Abe-Government

Can the Working Time Regulation of the Work Style Reform change the working life of Japanese workers?

“Work Style Reform” Law 2018

I. Correction of long working hours

Overtime: Introduction of upper limit with criminal penalties

Annual leave: Duty of employer to decide acquisition dates within 5 days

2. Intensifying of “flexible workstyle”

Flex-time scheme: Extension of the calculation period of one month to 3 months

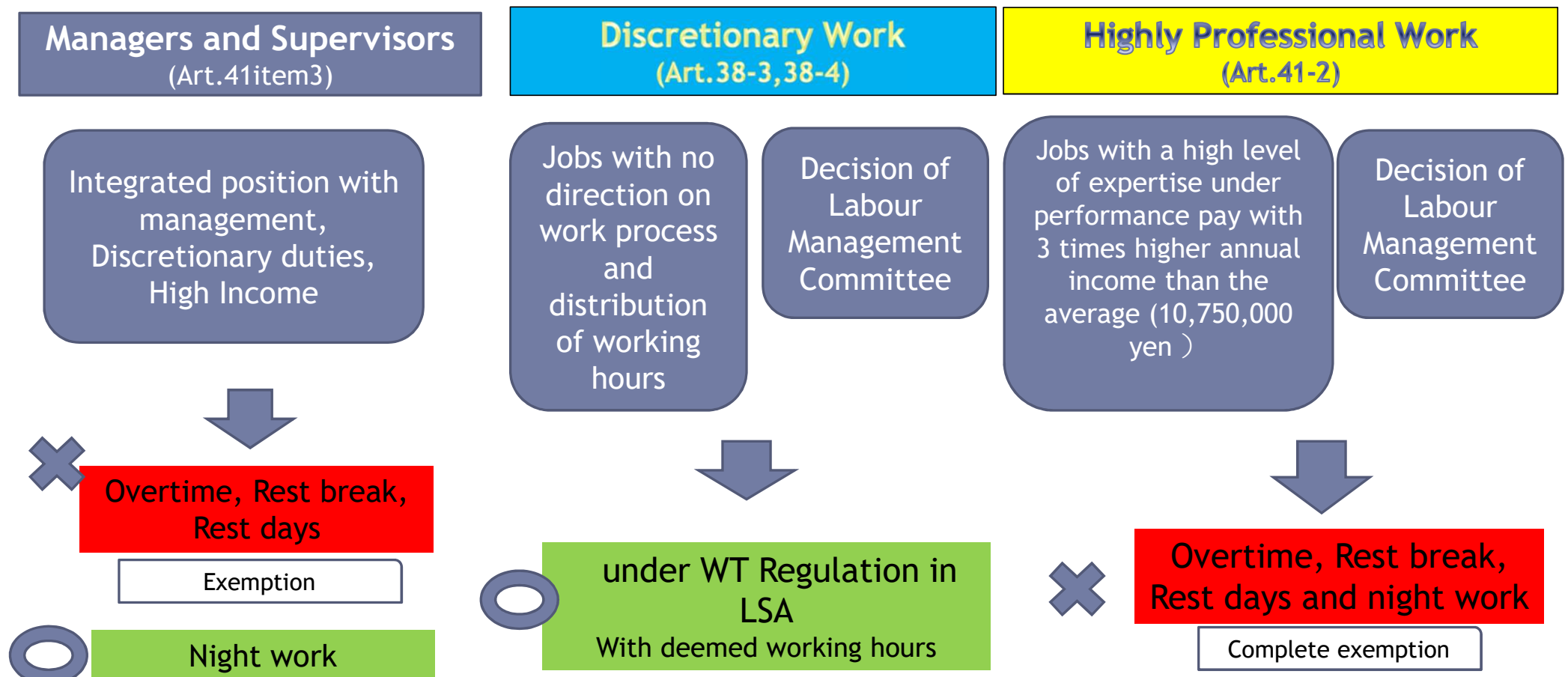
Exemptions: by annual income requirement

Problem of Monthly and Yearly Overtime Limit



- ▶ **Too loose upper limit**, which allows overtime of more than 80 hours per month, which is the criterion for death by overwork.
- ▶ **No effect on operating practice**. The companies whose overtime is over 45 hours per month are very rare.
- ▶ **Employee consciousness does not change**. Employee representatives conclude the overtime agreement, because they think that overtime is unavoidable in business and necessary to get more income.

Features of Highly Professional Work Scheme



Problem of Highly Professional Work System

- Exemptions only by the annual income cannot exclude the overtime by employer's order.

High annual income doesn't mean always
discretion of duties

- Insufficient Health Maintenance Measure

- 104 Rest days and
 - ▶ One of following 4 measures
 1. Work-interval (no concrete interval hours is required)
 2. Upper limit of “Health managing hours”(hours in office and working hours outside office) a month or 3 months
 3. Consecutive Holidays of 2 weeks at least once a year
 4. Performing a temporary medical examination

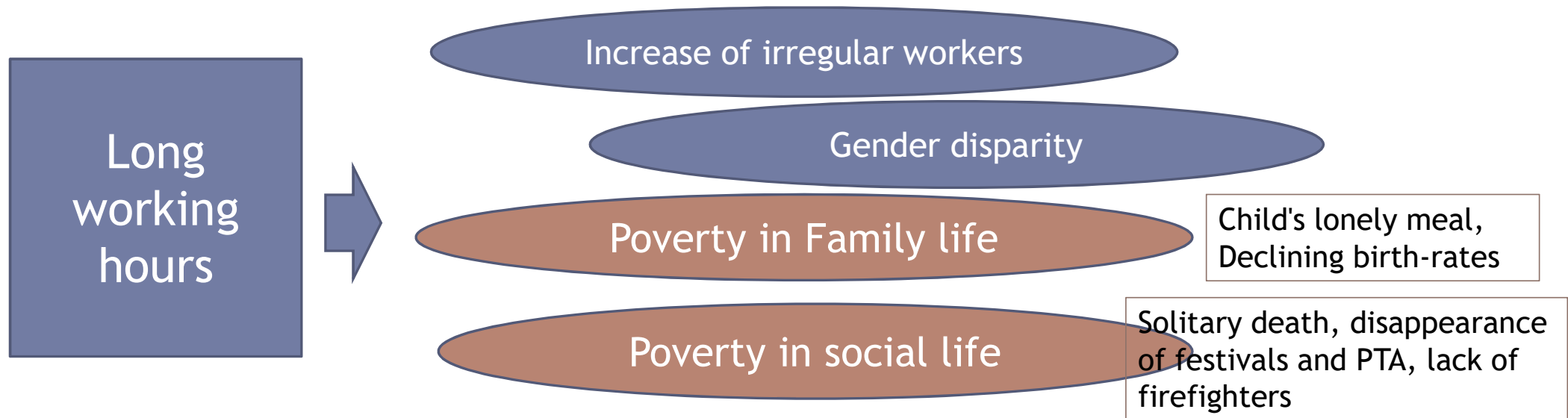
3. Structural Reform of Working Time Regulation based on “Living Time” Approach

Why do we need the “living time” for life approach?
How is it different from the WLB approach?

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Why is living time (time for life)?

~Long working hours not only damage health of workers but also

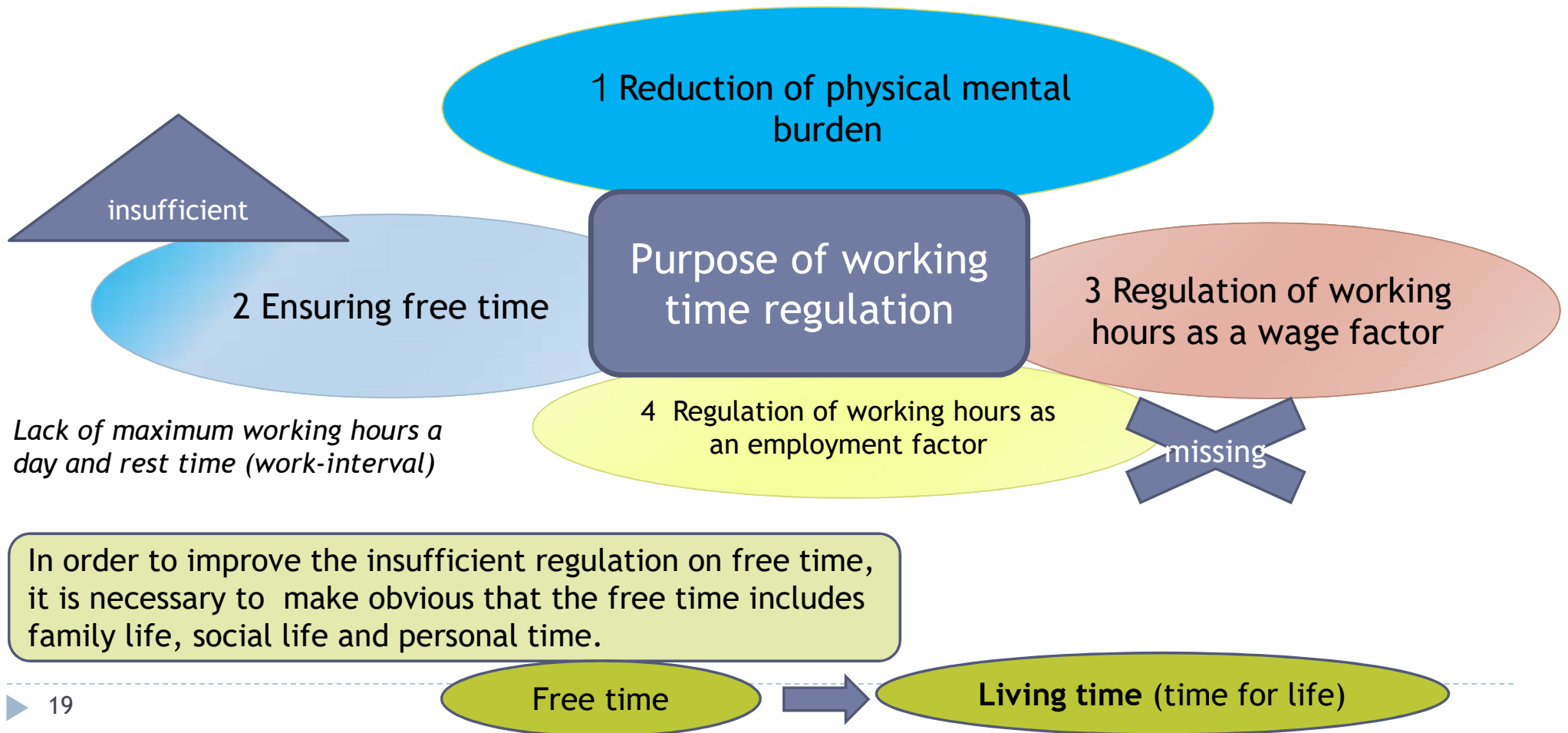


◎働き方改革が政治的課題になっている背景

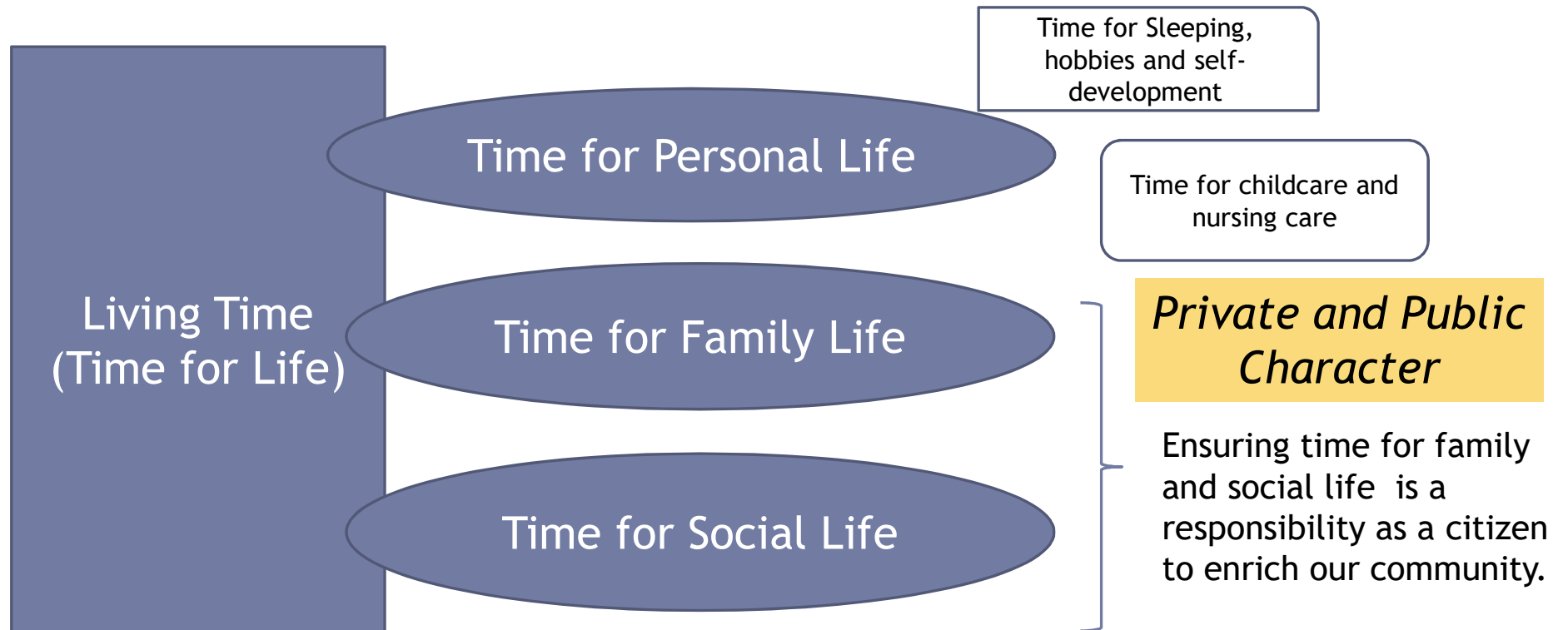
「我が国の経済成長の隘路の根本には、**少子高齢化、生産年齢人口減少**すなわち人口問題という構造的な問題に加え、イノベーションの欠如による生産性向上の低迷、革新的技術への投資不足がある。」

「長時間労働は、健康の確保だけでなく、仕事と家庭生活との両立を困難にし、**少子化の原因**や、女性のキャリア形成を阻む原因、男性の家庭参加を阻む原因になっている。これに対し、長時間労働を是正すれば、ワーク・ライフ・バランスが改善し、女性や高齢者も仕事に就きやすくなり、**労働参加率の向上**に結びつく。」（働き方改革実行計画 平成29年3月28日）

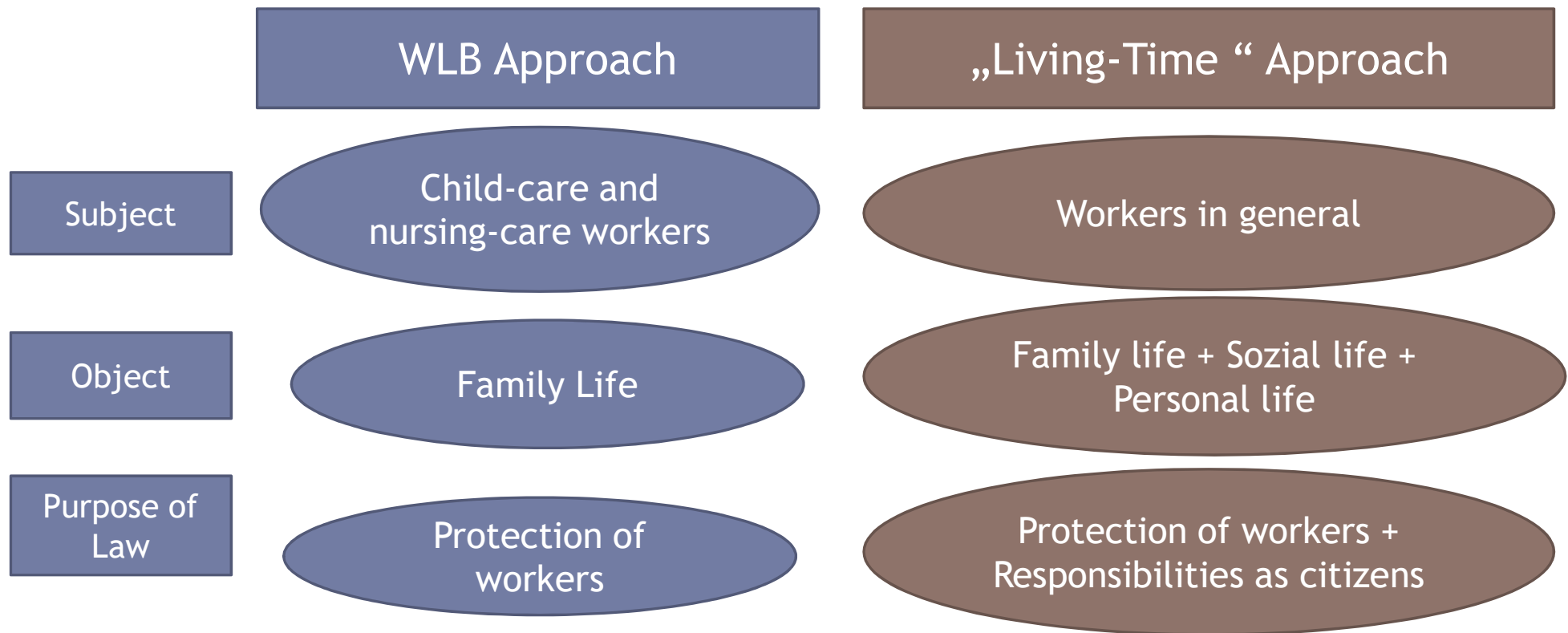
Specific Features of the Working Time Regulation in the LSA



What is the living time ?



How is „Living Time“ Approach different from WLB Approach?

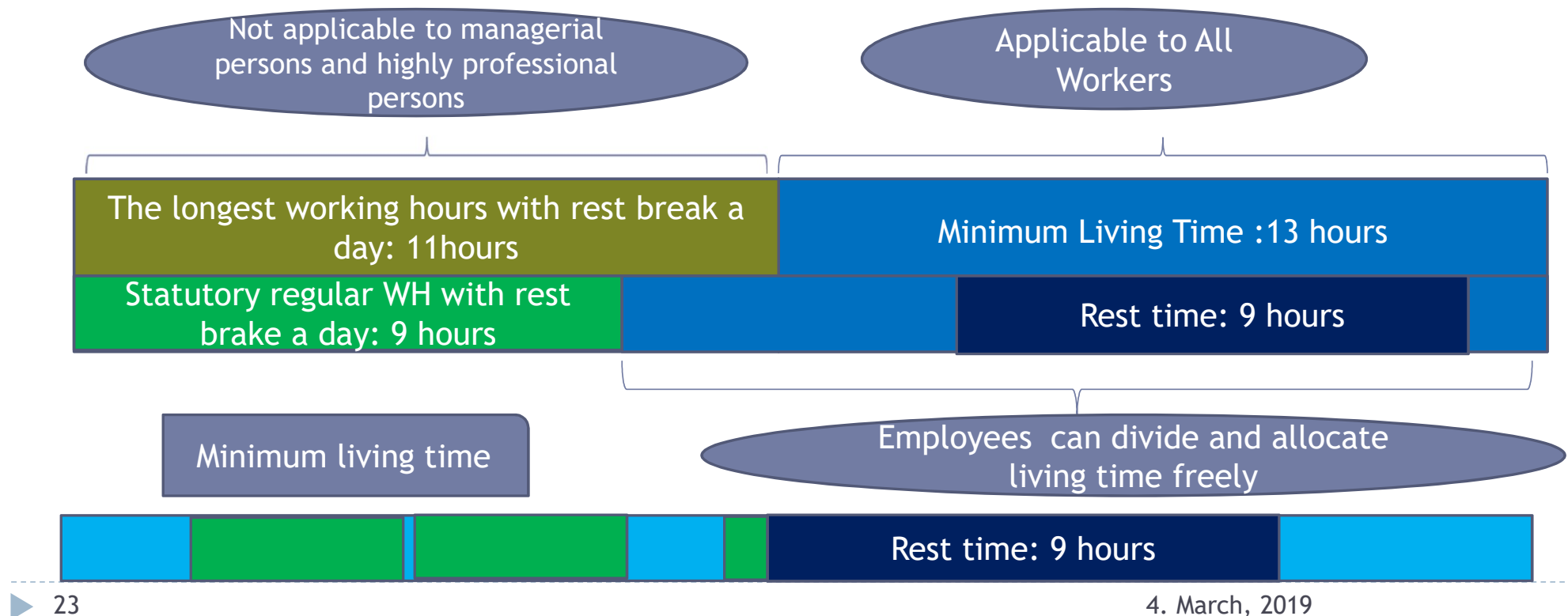


4. New concepts of the working time regulation based on the living time approach

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Regulation to Ensure Living Time

- ❑ Daily minimum living time (time for family, social and personal life) regulation



Regulation to intensify the Living-time autonomy

Obligation to consider living time

Right to decide allocation and placement
of working time

Right to select the working place

Right to reduce or extend working hours
by the life stage

Implied duty of cooperation to ensure living time

Right to exempt from labour obligation in
special circumstances

Implied duty to avoid the infringement of living time

Institutional scheme

Flex-time

Telework

Part/full time work
conversion system

Right not to connect to
communication tools

Time Settlement Principle of Overtime

I. Time settlement principle of Overtime Work

- ◆ In principle, the overtime work must be adjusted by time off (compensational vacation) in the following month and the employer designates the adjustment date by the payment date of wage.
- ◆ Extension of adjustment period is permitted by the labour-management agreement within a certain period (3 or 6 months).
- ◆ Renewal of overtime agreement is not allowed, unless the adjustment has finished.

II. Exception of Time Settlement Principle

- ◆ Up to a certain amount (i.e. 15 hours a month), wage settlement is permitted under the labour-management agreement.
- ◆ Overtime exceeding 30 hours a month must be settled by time.

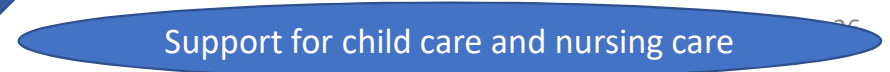
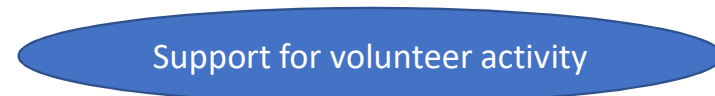
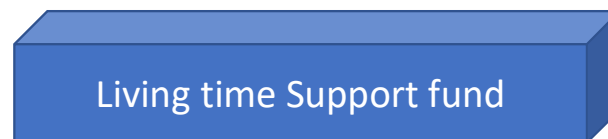
III. Character of premium wage must be changed to compensation to infringement of Living time

- ◆ Part of compensation for overtime exceeding 15 hours is paid to the employee's life-time activity support fund
 - ◆ Life-time activity support fund is managed by labour and management at the workshop.
 - ◆ LTSF supports workers who take part in care work and volunteer activity.

Legal Character of Overtime Premium



| | | Up to 15 hours | | From 15 hours to 30 hours per month | | Over 30 hours |
|---|----------|-----------------|-----------------|--|-----------------|-----------------|
| Time Settlement (compensatory leave) | | principle | | principle | | obligation |
| Choice by employees | | Time Settlement | Wage Settlement | Time Settlement | Wage Settlement | Time Settlement |
| Compensation | | 0. 25 | | 0. 30 | | 0. 50 |
| Receiver | ArbN | 0. 25 | 1. 25 | 0. 25 | 1. 15 | 0. 25 |
| | LTS Fund | — | — | 0. 05 | 0. 15 | 0. 25 |



5. From the Working Time Regulation in the LSA to the Working Time Act

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New Working Time
Legislation (4)

Regulation of Multi-Factors of Working Time

1. 4 Factors of working time regulation must be considered

Ensuring Health
(regulation to protect from
physical and mental burden)

Labour Protection Law

Ensuring Living Time
(regulation to enrich human
life)

Securing Wage income
(regulation to guarantee
adequate income)

Labour Contract Law

4 Securing employment
(regulation to secure labour
market)

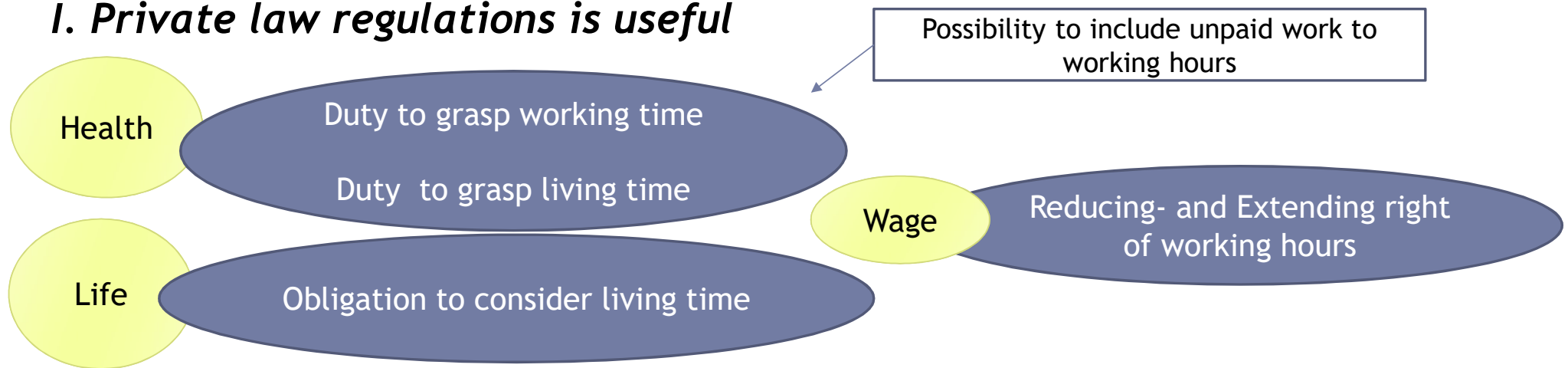
Labour market Law

2. Ensuring Living Time must be the pillar of the WTR

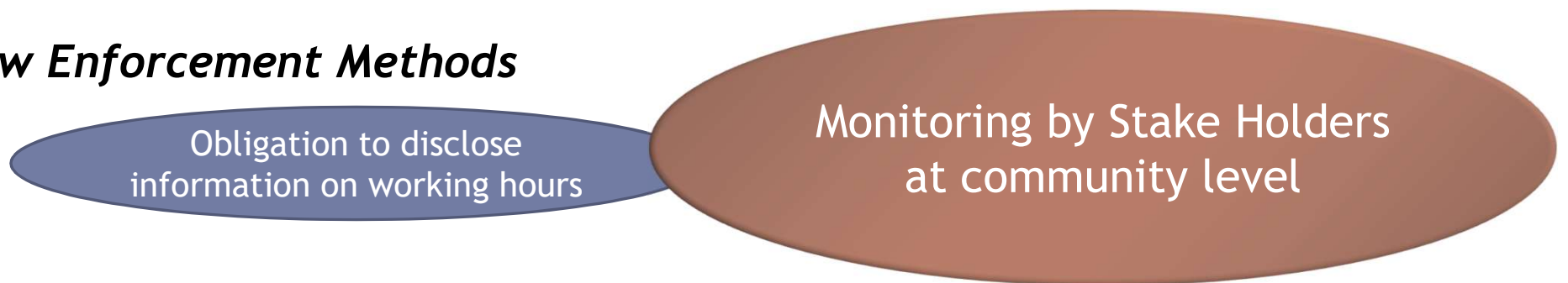
3. The WTR should be a standalone legislation with public and private character

Enhancement of Private Law Character and Development of New Enforcement Method

I. Private law regulations is useful



II New Enforcement Methods



Conclusion

- The working Time Legislation based on Living Time Approach is future-orientated .
- because

Flexible Workstyle caused by
ICT

Increase of Mini-job and
Multi-jobholders

Increase of independent
contractors

Right to decide allocation of
working hours
Right to decide the working
place

Right to reduce or extend
working hours

Applicability of
Duty to consider living time to
independent contractors