

Explanation for Terms of Korean Labor Law

Authors: Bongsoo Jung / Kumsung Ryu / Gerald Staruiala

I. Introduction

I have been working as a Korean Certified Public Labor Attorney advising foreign companies and foreigners by using my second language of English. If I try to explain and educate foreigners about Korean Labor Law well, it is necessary that I understand Korean Labor Law first and then consider the labor law system of their countries at the same time. Also, it is natural that the expression of the labor law in English should be precise, but it is impossible to communicate correctly with foreigners if I use Korean Legal Definitions or Legal Definitions in general, simple words for complex ideas are the key to success. When I worked as a military liaison officer in the American army, I showed an American soldier a newspaper article that a Korean university professor had contributed to the Korea Herald. At this time, the Korean professor explained the subject by using technical definitions and intentionally wrote long complex sentences. The American soldier did not understand the English words as well as the sentence contents. He passed the newspaper article to his colleagues but doubted the article because he did not understand what the article was trying to communicate. This was a good lesson that I always remember whenever I speak English and I try to use terms and sentences that ordinary foreigners can understand. English is a means of communication and cannot be more than that. In other words, English is a means to communicate with foreigners. With this idea, I explain Korean Labor Law in English, and sometimes I can translate it.

I am always worried about appropriate terms to use when I select English terms related to labor law. I want to summarize some terms of expression in order to help my readers understand them.

II. Terms of Labor Law

1. 근로자 : Employee or Worker

In Korea, the term “근로자” in Labor Standards Act (LSA) means a person who offers work to a business or workplace to earn wages, regardless of kinds of job he/she is engaged (Article 2 (1) 1.). Meanwhile, the term “근로자” in Labor Union and Labor Relations Adjustment Act (LULRAA) means a person who lives on wages, salary, or other equivalent form of income earned in pursuit of any type of job ; (Article 2 1.)

The most different thing between the two concepts is whether it requires “근로자” to be in a specific direct employment relationship with the Employer. Whereas “근로자” under LRC requires the specific direct employment relationship, “근로자” under LULRAA does not require a specific direct employment relationship and even includes a job seeker or temporary unemployed person according to court’s ruling. This is attributable to differences in the purposes of establishing each Act.

In English speaking countries, in general, the term “Employee” is a defined legal relationship between the Employer and the individual, whereas the term “Worker” is used as a person who does a particular job to earn money not requiring working for certain Employer. “Worker” is a group noun and everyone who is employed is a worker, while “Employee” is a noun that only applies to workers employed by the certain Employer (company). There may be 100 “workers” at the factory but only 90 “employees” because the other 10 “workers” are “employees” of another company.

2. 근로계약 : Labor Contract, Employment Contract, Labor Agreement or Employment Agreement

In Korea, the term “근로계약” means a contract which is entered into in order for a worker to offer work and for an Employer to pay wages for that work (Article 2 (1) 4. of LSA).

In English speaking countries, the term “Contract” and “Agreement” are interchangeable because two parties must have an agreement on the terms of the contract. “Labor contract”, “Employment contract” or “Employment agreement” tend to set forth individual legal relationship between an Employee and an Employer, whereas the term “Labor agreement” tends to be used when announcing collective bargaining outcomes or other contracts which involve groups.

3. 취업규칙: Rules of Employment or Company Handbook

In Korea “취업규칙”(Rules of Employment) refer to the company’s regulations that an Employer stipulates unilaterally regarding working conditions and service rules. LSA stipulates the Employer’s obligations for preparing and filing their rules (Article 93) and ways to compose and change the rules (Article 94). In particular, if an employment contract includes employment conditions which are below the standards stipulated in the Rules of Employment, the nonconforming part of the employment contract is null and void (Article 97).

In English speaking countries, usually, foreigners will understand the “Rules of Employment” as being a guideline or a Company Handbook for work place behavior and will not know that the Rules of Employment are an extension of the conditions of Employment which must abide by the LSA. Therefore, further explanation regarding legal effects of “Rules of Employment” under LSA should be provided.

4. 고용노동청 : Labor Office, Labor Board, Labor Administration Office

In Korea, according to LSA, the Ministry of Employment and Labor and its subordinate offices shall have a Labor Inspector to ensure the standards of the conditions of labor (Article 101 (1)). The Labor Inspector has the authority to inspect a workplace, dormitory and other annexed buildings, to request presentation of books and documents, and to question both an Employer and employees (Article 102 (1)) and the Labor Inspector shall have the authority to perform the official duties as the judicial police officer with regard to the crimes in violation of LSA or other laws or decrees pertaining to labor affairs (Article 102 (5)). “고용노동청” is the place where the Labor Inspector performs his duties.

In English speaking countries, there are not terms which correspond 100% to “고용노동청” because each country, understandably, has different legal systems and procedures. Foreigners will often utilize the term “Labor Board”, the term is a historical term and most States/Provinces no longer utilize the term but the term is the most common. Foreigners will be familiar with the process of lodging complaint, having the “Labor Board”(노동청) review the complaint with the Labor Board issuing a decision.

5. 노동위원회 : Labor Relations Commission or Labor Court

“노동위원회” is a quasi-judicial government agency composed of three parties, each representing workers, Employers and public interests. The business of “노동위원회” includes work concerning adjudication (e.g. unfair disciplinary action case), decision, resolution, approval, recognition, redress for discrimination or the mediation and arbitration of labor disputes or support for the autonomous settlement of labor disputes by the parties concerned.

Foreigners will not likely to be familiar with the term “The Labor Relations Commission”(노동위원회) and will confuse it with the Labor Administration Bureau. Foreigners will have to be educated in the significant differences from what they know and understand and the Korean System.

6. 임금 : Salary or Wage

Under Korea Labor Standards Act, The term “임금” means wages, salaries and any other money and valuable goods an Employer pays to a worker for his/her work, regardless of how such payments are termed(Article 2 (1) 5.).

In English speaking countries, if someone is paid a “Salary”, they will not usually get overtime. Most Foreigners will understand the “Salary” to be the same as the Inclusive Wage system (Blanket wage system) in Korea. Foreigners should be made aware that the blanket wage system is the system to pay fixed amount of wages, including additional pay for overtime, night and holiday work. It doesn't have legal definition and also it doesn't have any ground rule under Labor Laws in Korea. However, its legal validity has been accepted exceptionally by a court or the Ministry of Employment and Labor in special circumstances, for example, when it's hard to calculate actual working hours for employees who work outside the office most of time. Whether and how to acknowledge its validity surrounding the blanket wage system is still hot potato in Korea.

Meanwhile, the term “Wage” is a very common payment system and is the equivalent of the Ordinary Hourly Wage under the Korean LSA.

7. 퇴직금 : Retirement Pay or Severance Pay

In Korea, under of Employee Retirement Benefit Security Act, an Employer shall set up at least one retirement payment system in order to pay benefits to workers who retire : Provided that this shall not apply to workers whose consecutive service period is less than one year and workers whose average weekly working hours over a four-week period is less than 15 hours (Article 4 (1)). The Retirement payment system refers to a defined benefit retirement pension plan, a defined contribution retirement pension plan and severance payment system (Article 2 6.).

In English speaking countries, “Retirement Pay” is what occurs when a worker is too old to legally work and only on occasion will there be a “Retirement Payment” (as a “bonus”); and the severance pay system is not mandatory unlike Korea. The first time Foreign Workers encounter the term “Severance Pay” will be when they read an employment agreement from a Korean Company so they should be clearly understood that “Severance Pay” is paid according to Labor Laws. Many times foreign employees are told that “Severance Pay” is a “Bonus” that the Korean Employer will pay them after completion of their contract. It may lead significant

miscommunication which has the Employee and the Employer embroiled in legal dispute regarding “퇴직금”.

8. 상여금 또는 성과급 : Bonus or Incentive

In Korea, “상여금” (Bonus) is remuneration, in practice despite its title, paid regularly (paid yearly, quarterly, or on Lunar New Years Day and Chuseok, etc.) with fixed amount in addition to monthly payment, whereas “성과급” (Incentive) is paid conditionally based on performance of individual or business, etc.

Most Foreigners will understand that a “Bonus” is an “Incentive” because there is no noticeable distinction between the two terms. Both are, in general, variable and conditional payment depending on successful performance, or etc.

9. 부당 해고 : Unfair Dismissal or Wrongful Dismissal

According to Article 23 (1) of LSA, no Employer shall dismiss, lay off, suspend, transfer a worker, reduce wages, or take other punitive measures (hereinafter referred to as 부당 해고, etc.) against an Employee without justifiable reasons. In principal, dismissal is justifiable only when the Employee has committed such a serious violation that the company could not continue the employment relationship any longer and if the company has followed any statutory or contractual proper procedures. That is, “부당 해고” under LSA is very a inclusive term covering unfair reasons, unfair procedures and unfair severity punishment which is the act of dismissal.

In English speaking countries, there is no equivalent of “부당 해고” and the closest English term may be “Unfair Dismissal” or “Wrongful Dismissal”. Usually, “Wrongful Dismissal” is understood “...to terminate an Employee with less than the requirement minimum notice..” or to terminate due to discrimination, retaliation, or for not following an unfair order to commit an illegal act. Meanwhile, foreign employees will tend to understand the term “Unfair Dismissal” as dismissal for unfair reasons but they will not tend to think that it also includes dismissal without following proper or mandatory procedures.