

Foreign Workers & the Social Insurances

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I. Introduction

The term ‘foreign worker’ refers to “a person who is not a national of the Republic of Korea and works or intends to work in a business or workplace located in the ROK for the purpose of earning wages”.¹ All those who are not ROK nationals are considered foreign workers. Therefore, foreign workers include ① overseas Koreans² with foreign nationalities, ② non-professional foreign workers³, ③ foreign professionals,⁴ and ④ illegal foreign workers. The Labor Standards Act (Article 6) stipulates that an employer shall not discriminate against other nationalities in working conditions, and the Supreme Court also ruled, in both the Labor Standards Act and the Trade Union and Labor Relations Adjustment Act, that illegal foreign workers shall not be treated discriminated against because of their illegal status. However, the social security insurance laws are applied differently, based on the particulars of each individual insurance. There are four components to social security insurance: industrial accident compensation insurance, employment insurance, national medical insurance, and national pension. The Industrial Accident Compensation (IAC) Insurance Act mandatorily covers all workers, including foreign workers, but other insurances vary in their application. Employment insurance is optional for foreign workers, as their stay is temporary. Application of the Medical Insurance Act is mandatory for all workers, including foreigners, as is the National Pension Act, but the Pension Act is also affected by the principle of reciprocity according to the application to Koreans under foreign national pension systems. I will review the application of the social security insurances to foreign workers in the following pages.

II. Industrial Accident Compensation Insurance (IAC Insurance) Act

1. Summary

IAC Insurance is a social insurance system in which the government provides, under the Labor Standards Act, an employee (who has been injured or become ill at a workplace),

¹ The Act on Foreign Workers Employment etc. (Article 2) applies only to workers under the Employment Permit System (E-9) and the Working Visit (H-2), but not to foreign professional workers or illegal workers.

² H-2 (Work Visit), F-4 (Overseas Korean).

³ E-9 (Non-professional employment), E-10 (Crew employee), C-4 (Short-term employment).

⁴ Professional visas consist of E-1 (Professor), E-2 (Foreign language instructor), E-3 (Research), E-4 (Technology transfer), E-5 (Professional employment), and E-7 (Designated activities).

with compensation paid by his/her employer. This Act is applicable to all businesses or workplaces, with the exception of those prescribed by Presidential Decree, and varies according to the risk ratio, scale, and location, etc. of the business.⁵ The employer pays an insurance premium which is calculated by multiplying the company's total remuneration with the premium rates declared by the government, based upon the potential accident risk per the category of business.

When an employee covered by IACI suffers an occupational injury or illness which requires medical treatment of 4 days or longer, or dies from a work-related cause, the IACI benefit shall be paid upon request by the employee (or his/her surviving family member). IACI benefits include medical care benefits, suspension benefit, injury-disease compensation annuity, disability benefit, survivors' benefit, nursing benefit, funeral expense benefit, and vocational rehabilitation benefit.

2. Application to foreign workers

Foreign workers are covered under IAC insurance regardless of their status. IAC insurance covers occupational accidents regardless of nationality or working status. The Supreme Court ruled that even though illegal employment is clearly a punishable act, the work already provided is actual performance done, which is subject to protection under the labor laws. Accordingly, illegal foreign workers may apply for IAC Insurance.⁶

III. Employment Insurance

1. Summary

Employment insurance provides benefits to unemployed workers, and is a job security project which promotes re-employment through government vocational guidance and improvement of the employment structure, employee vocational skills development, etc. In principle, employment insurance applies to any business or workplace that ordinarily hires an employee, although some businesses have size restrictions.⁷ From the employee's perspective, employment insurance covers all employees, but in cases where some employees do not require unemployment benefits or

⁵ Businesses excluded from application: ① construction projects with total construction costs of less than KRW 20 million; ② projects involving construction of structures of 100m² or less in total floor size carried out by entities other than housing businesses or the constructor (as for repair projects, 200m² or less in total floor size); ③ the household affairs services industry; ④ businesses that ordinarily hire no more than 1 permanent worker; ⑤ businesses in agriculture, forestry, and fishing and/or hunting, that ordinarily hire fewer than 5 permanent workers.

⁶ Supreme Court ruling: September 15, 1995. 94nu12067 (Rejection of application for injury to be deemed occupational)

⁷ Businesses excluded from application are the same as for IAC insurance (refer to footnote 5).

are covered by other similar insurances, such employees are excluded.⁸ Premiums are charged according to the unemployment benefits premium rate and the employment security & vocational ability development premium rate. The unemployment benefits premium is shared equally between the employee and employer, whereas the employment security & vocational skills development premiums are charged only to the employer.⁹

2. Application to foreign workers

Foreign workers are excluded from employment insurance unemployment benefits. However, permanent residents [Resident (F-2), Permanent resident (F-5), Marriage to Korean Citizen (F-6)] are subject to compulsory enrollment, but those qualified for employment [Professor (E-1), Crew employee (E-10), Short-term employee (C-4), Working visit (H-2), Overseas Korean (F-4)] are eligible if they apply.¹⁰

【Foreign Worker Eligibility for Employment Insurance (as of Dec. 31, 2023)】

Status of Sojourn	Application	Status of Sojourn	Application
A-1 (Diplomat)	×	E-1 (Professor)	○ (Arbitrary)
A-2 (Government official)	×	E-2 (Foreign language instructor)	○ (Arbitrary)
A-3 (Agreement)	×	E-3 (Research)	○ (Arbitrary)
B-1 (Visa exemption)	×	E-4 (Technology transfer)	○ (Arbitrary)
B-2 (Tourist/transit)	×	E-5 (Professional employment)	○ (Arbitrary)
C-1 (Temporary news)	×	E-6 (Artistic performer)	○ (Arbitrary)

⁸ The following employees shall be excluded from Employment Insurance:

- ② Those who are 65 years of age or older;
- ② Daily workers whose contractual working hours are fewer than 60 hours per month (15 hours per week);
- ③ Government officials under the State Public Officials Act and the Local Public Officials Act;
- ④ Those who are subject to the Private School Teachers Pension Act;
- ⑤ Special post office staff who are referred to in the Special Post Office Act;
- ⑥ Seamen under the Seamen Act; and
- ⑦ Foreign workers without residence permits (foreign workers who have residence permits may be insured independently).

⁹ Premium rate for unemployment benefits in 2016 and 2017 is 1.3% of the employee's total annual income, or 0.65% respectively for the employee and the employer; the premium rate for the employment security project & the vocational skill development project is 0.25%~0.85% of the total annual income, which is paid by the employer only .

¹⁰ 「Employment Insurance Implementation Rule (Article 3) – Paragraph 2

coverage)			
C-3 (Short-term visit)	×	E-7 (Designated activities)	○ (Arbitrary)
C-4 (Short-term employee)	○ (Arbitrary)	E-9 (Non-professional employment)	○ (Arbitrary)
D-1 (Artist)	×	E-10 (Crew employee)	○ (Arbitrary)
D-2 (Student)	×	F-1 (Visiting or joining family)	×
D-3 (Industrial trainee)	×	F-2 (Resident)	○ (Compulsory)
D-4 (General trainee)	×	F-3 (Accompanying spouse/child)	×
D-5 (Journalism)	×	F-4 (Overseas Korean)	○ (Arbitrary)
D-6 (Religion)	×	F-5 (Permanent resident)	○ (Compulsory)
D-7 (Supervisor)	○ (Reciprocal)	F-6 (Marriage to Korean Citizen)	○ (Compulsory)
D-8 (Corporate investor)	○ (Reciprocal)	G-1 (Miscellaneous)	×
D-9 (International trade)	○ (Reciprocal)	H-1 (Working holiday)	×
D-10 (Job Seeking)	×	H-2 (Working visit)	○ (Arbitrary)

※ ‘×’ denotes those foreigners ineligible for employment insurance.

IV. National Health Insurance Program

1. Summary

The National Health Insurance Program is designed to improve national health and promote social security by implementing insurance benefits for the prevention, diagnosis, and treatment of, and rehabilitation from, disease or injury, childbirth and death, and the promotion of health. Health insurance is a mandatory insurance combining both corporate and local membership, with 97% of the entire population enrolled, while others are covered by the Medical Care Assistance Act, which supports recipients of medical benefits under the National Basic Living Security Act.¹¹ Those excluded from corporate insurance coverage are ① those who are self-employed and do not employ any workers; ② daily workers employed for less than one month; ③ workers or employees working at seasonal or temporary work; and

¹¹ Lee, Chulwoo and others, 「Immigration Law」, “Foreigners’ social security”, Parkyoung-sa, 2016, page 468.

④ irregular workers or part-timers (who work less than 60 hours per month) who do not attend a work place regularly. The premium is calculated by multiplying the premium rate by the standard monthly wage. The premium calculated is shared equally by the employee and the employer.¹²

2. Application to foreign workers

It is mandatory for foreigners and overseas Koreans to subscribe to the health insurance program when they obtain Resident status. However, exception is allowed if they have medical coverage under their country's laws, or other insurance, or by a special contract with their employers.

Long-term care insurance is automatically granted upon subscription to the National Health Insurance Program. Long-term care insurance is designed to ease the burden on families of caring for the elderly with chronic conditions such as dementia or stroke. It encompasses a broad range of assistance needed for a prolonged period of time by older people with chronic disabilities, such as bathing, dressing, eating, etc. Short-stay foreigners [limited to D-3 (Industrial trainee), E-9 (Non-professional employment), and H-2 (Working visit)] are expected to leave Korea immediately after finishing their stay, and so they can be excused from the obligation to pay long-term care insurance premiums if they submit a Report Form of Exclusion from this insurance.

V. National Pension

1. Summary

The National Pension System is designed to provide a pension to employees who reach a certain age, and to provide a pension to help support surviving family members after the sudden death or injury of an employee. All persons residing in the country who are between the ages of 18 and 60 are subject to subscription to the National Pension. However, civil servants, soldiers, employees of private schools, and other employees described in the Presidential Decree are ineligible for the pension under the Civil Servants' Pension Act, the Veteran's Pension Act, or the Private School Teachers Pension Act. The scope of application is divided between the company and the individual. For companies ordinarily hiring one or more workers, enrollment in the national pension plan is mandatory. Those excluded from

¹² The premium rate for 2018 is 6.24% of the employee's total monthly income, which is paid by the employee and the employer, both responsible for 50%. As for the effective period from July 2017 to June 2018, the lowest applicable total monthly income is KRW 280,000 while the highest is KRW 78,100,000.

corporate insurance coverage are ① the self-employed who do not hire any workers; ② daily workers employed for less than one month; ③ workers or employees working at seasonal or temporary work; and ④ irregular workers or part-timers (who work less than 60 hours per month) who do not attend the work place regularly. The National Pension premium is shared equally by the employee and the employer, in proportion to the employee's income.¹³ The types of National Pension benefits are old age pension, survivor's pension, disability pension, and lump-sum refund.

2. Application to foreign workers

A foreigner employed in a workplace governed by the National Pension Act or who resides in the Republic of Korea shall be a workplace-based insured person or an individually-insured person as a matter of course: provided, that this shall not apply if any relevant law of such foreigner's home country does not apply to citizens of the Republic of Korea with respect to a pension equivalent to the National Pension Scheme under the National Pension Act. This means that the principle of reciprocity applies. Foreigners excluded from becoming workplace-based insured persons or individually-insured persons as a matter of course shall be as follows: ① those who stay without obtaining a permit for an extended period of stay under Article 25 of the Immigration Control Act; ② those who fail to register as a foreigner under Article 31 of the Immigration Control Act or to whom a forced deportation order has been issued under Article 59 (2) of the same Act; ③ those with D-1 (Artist), D-2 (Student), D-3 (Industrial trainee), D-4 (General trainee), F-1 (Visiting or joining family), F-3 (Accompanying spouse/child), or G-1 (Miscellaneous) visas.

Since recipients of the National Pension should satisfy 10 years membership and be aged 60 years or older, it is very difficult for foreign workers to receive national pension benefits, and so foreign workers can receive a lump-sum refund when they leave Korea.¹⁴

<Countries with Reciprocal National Pensions >

¹³ The premium rate in 2018 is 9% of the monthly standard income, which should be paid by the employee and the employer, both responsible for 50%. The monthly standard income applicable from July 2017 to June 2018 is a minimum of KRW 290,000 to a maximum of KRW 4,490,000.

¹⁴ According to Article 126 (paragraph 4) of the National Pension Act, the lump-sum refund is not applicable to foreign workers in principle, but only to those to whom it specifically applies: 1) in cases where foreign countries have a regulation for lump-sum refunds in their national pension law; and 2) in cases where the applicable foreigner has an E-9 (Non-professional employment) or H-2 (Working visit) visa.

As of July 31, 2016

Applicable countries (73)	Including the USA, Canada, Russia, Japan, and China
Workplace-based-only applicable countries (36)	Ghana, Gabon, Grenada, Taiwan, Laos, Lebanon, Mexico, Mongolia, Vanuatu, Venezuela, Belize, Bolivia, Bhutan, Sri Lanka, Sierra Leone, Haiti, Algeria, Ecuador, El Salvador, Yemen, Jordan, Uganda, India, Indonesia, Zimbabwe, Cameroon, Kazakhstan, Kenya, Costa Rica, Ivory Coast, Congo, Columbia, Kyrgyzstan, Thailand, Paraguay, Peru
Non-applicable countries (22)	Nigeria, South Africa, Nepal, East Timor, Malaysia, Myanmar, Bangladesh, Vietnam, Saudi Arabia, Singapore, Iran, Egypt, Cambodia, Pakistan, Georgia, Maldives, Belarus, Swaziland, Armenia, Ethiopia, Tonga, Fiji

VI. Conclusion

The four social insurances apply differently to foreign workers according to their visa type (status of residence). As this application is not decided by employee status, but by visa type, it can be very inefficient in protecting workers. In cases where an occupational accident happens, regardless of the visa type, foreign workers are covered by IAC insurance. Similarly, as long as foreign workers reside in Korea and provide work, they should be equally covered by Korea's Employment Insurance, National Health Insurance, and the National Pension programs, as a matter of course.