

Korean labor law: Guidelines for calculating working hours

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I. Concept of Working Hours

Working hours refer to the actual working hours which the employee provides labor service prescribed by the employment contract under the employer's direction and supervision. Article 50 of the Labor Standards Act regulates that working hours shall not exceed 8 hours per day and 40 hours per week, excluding recess hours. The employer shall additionally pay fifty percent (50%) of the ordinary wages for extended working hours exceeding the legal standard working hours. Working hours are usually implemented within contractual working hours that the employer and the employee have agreed upon, but there have been some disputes in recognizing working hours in cases where the employee conducted work before or after contractual working hours, or in cases of waiting time for work, training hours, traveling hours, company events, etc. So, I would like to clarify the criteria for judging working hours and review concrete examples regarding working hours.

II. Criteria for Judging Working Hours

1. Whether working hours are stipulated in the labor contract, rules of employment or collective agreement

The working hours shall be calculated by the total working hours from when the employee starts to provide contractual work to the employer to when the employee finishes his/her work, excluding recess hours. The Labor Standards Act regulates that the employment contract shall consist of the starting and finishing time of work, and the rules of employment shall contain statutory items to be surely included. (Article 17 and 93 of the Labor Standards Act)

2. Whether the employee is under the employer's direction and supervision

Working hours mean the time at which the employee provides labor service described by the employment contract under the employer's direction and supervision. Even though waiting time or recess and sleeping time are times that the employee is not engaged in actual work in the middle of working hours, if those times are not allowed to be used freely by employees, but are, in practice, under the employer's direction and supervision, those times surely belong to working hours. (Supreme court Mar 9, 93 92da22770)

Whether the subsidiary time required in actual working hours belongs to working hours or not shall be judged by whether those times are implemented under the employer's direction and supervision. Such subsidiary times include the time needed to change into the work uniform and gather necessary tools, waiting time, conferences prior to work, shift-changes, wash-up time after finishing the work day, organizing things for the next day's work after finishing the work day, travel time during business trips, etc. (Supreme Court Mar 9, 93, 92da22770)

3. Whether work characteristics under the employment contract are acceptable or not

The type of work described under the employment contract is not limited to the work tasks themselves, but actual working hours shall include those times essentially required to prepare for work and to arrange things after finishing the work day in relation to actual work performance. It is regarded as working hours in cases where those activities besides actual working hours are stipulated as the employee's mandatory duties according to related laws, collective agreements, rules of employment, labor practices, and employment contracts, or in cases where non-implementation charges disadvantage the employees concerned.

III. Concrete Judgment for Working Hours

1. Time worked before the work starts

(1) In cases where the employee arrives at the workplace earlier than the official starting hour

Whether the company shall pay wages for working hours when the employee comes earlier to the company to ensure normal operations shall be dependent upon the following: 1) If the employee did not come to work earlier than the official starting hour, his wages could be reduced or he might be punished for a violation of service regulations. If this situation does not exist, then the time before the official starting hour does not belong to working hours. (Aug 30, 1988, kungi 01254-13305)

(2) Conferences held before working hours

Conferences held before working hours deal with safety training for underground mine workers, work directions and organization of working groups. These meetings shall be held essentially for the purpose of underground shift work and be implemented under the employer's direction and supervision. So, these meetings shall be included in

actual working hours. (Supreme Court, Sep 28, 93, 93da3363)

2. Time worked after the work day finishes

The end of the work day is the time for the employee to be free from the employer's direction and supervision. When the employee continues to be under the employer's direction and supervision after he finishes his regular work time, actual working hours end when the employee is actually free from the employer's direction and supervision. Such examples of the end of the workday not being the end of actual working hours are workplace repairs, examinations, organization and cleaning, conducted after completing work under the employer's direction and supervision. (Supreme Court Mar 9, 93, 92da2270)

3. Waiting time

Recess hours under the Labor Standards Act mean the time that employees can use freely, away from the employer's direction and supervision, regardless of the name given for such times, such as recess hours, waiting time, etc. In this case, unlike the working structure stipulated by the rules of employment, under the employer's implied agreement, the employees work every two hours in repeated practices and off-time employees take recess hours, playing chess or baduk, or watching TV. There is a clear division of waiting time and working hours. The employees cannot go out of the workplace during this waiting time, but they can use it freely, away from the employer's direction and supervision. In this case, the waiting time shall be recognized as recess hours. (Oct 25, 00, kungi 68207-3298)

In cases where an employee drives a company car as necessary from time to time, just like a regular driver of a company car, if the employee cannot use the waiting time freely, this shall be regarded as working hours, but if such time is free for the employee to use as he/she wishes, it is considered part of recess hours and cannot be included in working hours. (Supreme Court July 28, 92, 92da14007)

4. Education and training time

It is working hours when the employer implements job training during working hours in relation to work, concerning work safety and work efficiency to improve productivity, and it is also working hours when the employer gives compulsory training after working hours or during a holiday. However, it is not working hours when the employee shall attend compulsory individual training like driver's education, regardless of the company's business, or when moral or safety training etc., is recommended to

employees, and provided by the nation due to major national policies after working hours or during a holiday. (Sep 29, 88, gungi 01254-14835)

5. Company picnics or events

In cases where the company hosts a picnic party, athletic event, etc., if the employee shall attend the picnic party, athletic event, etc., the participating time shall be deemed as working hours. Conversely, if the employer hosts a picnic party, athletic event, etc. for the purpose of welfare, and if employees are free to participate in the event at their own discretion, it shall not be deemed as working hours even though employees attend such an event. (Jan 10, 89, gungi 01254-554)

If the company hosts a picnic party on a working day according to the company's operation rules, the wages for that day shall be paid accordingly. If the picnic party was held on a holiday, the wages payable on that holiday and ordinary wages to compensate for holiday work (the picnic party) shall be paid. (Jul 12, 79, gungi 1455-7105)

6. Business travel

(1) Travel time between employee accommodations and the appointed workplace

In calculating working hours for business travel, travel time to the workplace shall be included in working hours in principle, but when the workplace is on the way to the regular office, such travel time can be excluded from working hours. However, for long-distance business travel, travel time from the company's location to the workplace on business travel shall be included into working hours. (Jun 14, '01, gungi 68207-1909)

(2) When the employee shall engage in business travel at night or during a holiday by order of the employer, such time shall be regarded as night time and holiday work.

In cases where the employee carries out his duty in whole or in part outside the workplace for business travel or for other reasons, the calculation of working hours shall follow Paragraphs 1 and 2, Article 58 of the Labor Standards Act. In consideration of the concept of the same Article, if it is evident that the employee conducts business travel at night or during holidays by order of the employer, the night work and holiday work shall be considered as working hours. However, if the employee only travels to the workplace during the night or holiday, and does not engage in any business, it is hard to deem such travel time as night time work or holiday work. (Aug 5, 02, gungi 68207-2650)