Checklist of Standard Working Conditions to Prepare for Labor Inspectors' Audit

Employers must comply with the following items and procedures to ensure they are in harmony with the Labor Standards Act. "Self-auditing guide" – the Ministry of Employment and Labor (2016): The contents described herein are checked frequently by labor inspectors and given for the companies to act accordingly. Employers are advised to comply with the guidelines. I hope the companies can prepare for their necessary documents in accordance with standard guidelines of the Labor Standards Act.

Ⅰ. Labor Standards Act

1. An employer shall make a labor contract with all employees hired directly by the company

※ An employer shall make a labor contract with all employees hired directly by the company, regardless of type of occupation, working period, etc.

※ Any labor contract that establishes conditions of labor that do not meet the standards provided by law shall be invalid to that extent. The law shall govern those conditions invalidated in accordance with the above.

※ In order to prevent disputes between the employer and the employed, a written labor contract is required so both parties can be sure of the details of employment.

2. An employer shall clearly state the terms of employment at the time the labor contract is made. (Article 17 of the LSA, Article 8 of the Enforcement Decree)

※ Punishable by a fine not to exceed five million won

※ Statement of Terms of Employment

i) An employer shall clearly state remuneration, contractual working hours, holidays, annual paid leave, and other terms of employment. For matters as to each constituent item of remuneration, the methods of calculation and payment, holidays, and annual paid leave shall be specified in writing.

ii) Terms of Employment to be specified：

(1) Remuneration (2) Contractual working hours (3) Holidays (4) Annual paid leave (5) Place of employment and work to be performed

3. A Registry of the workers shall be made and preserved.(Article 41, 42 of the LSA) ※ Punishable by a fine not to exceed five million WON

※ Employers shall maintain a registry of workers, and preserve this registry, along with other important documents regarding the labor contract, for three years.

a) Matters to Be Entered in the Registry of Workers

Name; Sex; Date of birth; Address; Personal history; Type of work to be performed; Date of employment or renewal of employment, a contractual period if any period has been determined, and other matters related to employment; Date of dismissal, retirement or death, and the reasons thereof; and Other necessary matters

b) Important Documents Regarding the Labor Contract
Labor contracts; Wage ledgers; Documents pertaining to the basis for the determination of, payment method used, and calculation of wages; Documents pertaining to employment, dismissal or retirement; Documents pertaining to promotion or demotion; Documents pertaining to leaves of absence; Documents pertaining to approval or authorization; Documents of written agreements; and Documents pertaining to certification of minors.

4. Contractual working hours for employees shall not exceed forty hours per week and eight hours per day, excluding recess hours.
※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON

5. An employer shall pay an additional fifty percent or more of the ordinary wages for extended work, night work, or holiday work. (Article 56 of the LSA)
※ Punishable by imprisonment of up to three years, or by a fine not to exceed twenty million WON
※ Night work means the work provided from 10 p.m. to 6 a.m., and holiday work means the work performed during times that are exempt from the "duty to provide labor" as stipulated by law, collective agreement, Rules of Employment (ROE) or labor contract.

6. If a worker quits or retires, an employer shall pay the forthcoming wages, compensation, and other money or valuables within 14 days after the cause for such payment has occurred; however, this period, under special circumstances, may be extended by mutual agreement between the parties concerned. (Article 36 of LSA)
※ Punishable by imprisonment of up to three years, or by a fine not to exceed twenty million WON

7. An employer shall allow, on average, one or more paid days off per week to workers who have fulfilled their contractual working days per week. (Article 55 of the LSA)
※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON
※ When employees work on paid holidays, the employer shall pay additional wages (fifty percent or more of the ordinary wages).

8. An employer shall grant 15 days' paid leave to workers who have worked more than 80 percent of their contractual working days over one year. After the employee's first year of service, the employer shall grant annual paid leave of one additional day for each two years of consecutive service. (Article 60, Article 62 of the LSA)
※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON
※ If the worker has already used part of his/her annual leave during the first year of service, the number of used leave days shall be deducted from the 15 days.
※ The total number of leave days, including the additional leave, shall not exceed 25.

9. Employers shall grant pregnant female workers 90 days of maternity leave, to be used before and after childbirth. In such cases, 45 days or more shall be allocated after childbirth. The first 60

days' leave shall be paid leave. (Article 74, Article 75 of the LSA)

※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON

※ The length of protective leave granted shall be determined according to the length of pregnancy:

(1) 16 weeks or more but less than 21 weeks: thirty days from the date of miscarriage or still birth; (2) 22 weeks or more but less than 27 weeks: sixty days from the date of miscarriage or still birth; (3) 28 weeks or more: ninety days from the date of miscarriage or stillbirth

10. No employer shall dismiss a worker without justifiable reason. If an employer intends to dismiss a worker, the employer shall notify the worker in writing of the reasons for dismissal and the date of such dismissal.

11. An employer shall give advance notice of at least thirty days before dismissing a worker. If notice is not given thirty days before dismissal, ordinary wages of more than thirty days shall be paid to the worker. (Article 26 of the LSA)

※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON

※ Exceptions for Advance Notice of Dismissal

(1) A worker who has been employed on a daily basis for less than three consecutive months;
(2) A worker who has been employed for a fixed period not exceeding two months;
(4) A seasonal worker who has been employed for a fixed period not exceeding six months; or
(5) A worker still in the employment probation period.

12. An employer ordinarily employing ten workers or more shall prepare the Rules of Employment (ROE) and file them with the Minister of Labor. (Article 93 of the LSA) ※ Punishable by a fine not to exceed five million WON

※ Contents of Rules of Employment (ROE)

Hours of operation, Breaks, Holidays, Leaves and Shifts, Determination of wages, Calculation of wages, Means of payment, Closing of payment, Pay days, Wage increases, Calculation of family allowances, Means of pension payment, Pensions prescribed in Article 8 of the Employee Retirement Benefit Security Act, Bonuses, Minimum wages, Meal allowance, Allocation of expenses for operational tools or, Educational facilities for workers, Protection of pregnant female workers, Work-home balance assistance, such as maternity leave, child-care leave, etc., Safety and health, Improvement of work environment according to employee sex, age, and physical characteristics, Support pertaining to occupational or non-occupational accidents, Awards and Disciplinary action, etc.

13. An employer shall keep workers informed of the main points of the Rules of Employment (ROE), by posting them at all times or keeping them in places where workers have free access. (Article 14 of the LSA)

※ Punishable by a fine not to exceed five million WON

Ⅱ. Employment Retirement Benefit Security Act

14. When an employee retires or resigns, the employer shall, within 14 days, pay a sum equal to 30 days or more of average wages for each year of consecutive service. (Article 4, Article 8, Article 9 of the ERBSA)

※ Punishable by a fine not to exceed five million WON

Ⅲ. Minimum Wage Act

15. Employers shall pay their workers wages not less than the minimum wage. (Article 6 of the Minimum Wage Act)

※ Punishable by imprisonment of up to three years, or by a fine not to exceed twenty million WON

※ Minimum Wage (as of 2017) : 6,471 won per hour / 51,760 won per day(8 hours)

16. An employer shall inform workers of the minimum wage by displaying it in areas easily visible to workers, or by other appropriate means. (Article 11 of the Minimum Wage Act)

※ Punishable by a fine not to exceed one million WON

Ⅵ. Equal Employment and Work-home balance assistance act

17. Employers shall conduct employee education one or more times per year to prevent sexual harassment at the work place. (Article12, Article 13)

※ Punishable by a fine not to exceed three million WON

※The sexual harassment prevention education under paragraph (a) may be conducted through employee training sessions, meetings, etc. depending on the size and circumstances of the business.

※ Providing sexual harassment prevention education simply by posting information, or other indirect dissemination of educational material, shall not be recognized as sexual harassment prevention education.

18. Employers shall allow an employee with a child aged 8 and under(or in the secondary year of elementary school or lower)to take childcare leave to care for that child, upon application by that employee. (Article 19)

※ Punishable by a fine not to exceed five million WON

19. Employers shall pay equal wages for the work of equal value in the same business. (Article 8)

※ Punishable by imprisonment of up to three years, or by a fine not to exceed twenty million WON

※ Criteria for work of equal value shall be the skills, effort, responsibility and working conditions, etc., required to perform the work. In setting the criteria, the employer shall listen to opinions of

the employee representative in the Labor-Management Council.
※ When an employer discriminates in wages based upon objective criteria such as education, job experience, seniority, position, etc., it shall not be regarded as discrimination.

20. Male employees who apply for leave because their wives gave birth shall be given 3 days of paternity leave. (Article 18-2)
※ Punishable by a fine not to exceed five million WON

Ⅴ. Act on the Promotion of Worker Participation and Cooperation

21. An employer shall establish bylaws for the Labor-Management Council and shall submit them to the Labor Office. (Article 4, Article 18 of the Act)
※ Penalty for not establishing a Labor-Management Council: fine of not less than 10 million WON
※ Penalty for not submitting the bylaws: fine of up to 2 million WON
※ All businesses that ordinarily hire more than 30 persons shall establish a Labor- Management Council, establish its bylaws, and submit them to the Minister of Labor within 15 days from the date the Council is established.
※ A Labor-Management Council shall be established at each business or workplace and will be vested with the right to decide working conditions.

22. The Labor-Management Council shall hold meetings at least once every three months. ※ Punishable by a fine not to exceed two million WON

23. The Grievance-Handling Team shall consist of a maximum of three people, representing labor and management. (Article 26, Article 27 of the Act)
※ Punishable by a fine not to exceed two million WON

Ⅵ. Protection for non-regular employees (Short-term, part-time, or dispatch employees)

24. Sending Employers and Using Employers shall implement any final judgment order for correction if they receive one from the Labor Relations Commission or the court. (Article 8 to Article 14 of the Short-term Employee Act and the Article 21 of the Dispatch Employee Act)
※ Punishable by a fine not to exceed one hundred five million WON

25. An employer shall not discriminate against non-regular employees (fixed-term employees, part-time employees, and dispatch employees) with regard to wages or other working conditions on the grounds of their employment status compared with other workers under a labor contract without a fixed term who are engaged in the same or similar jobs in the business or workplace concerned.

※ Applicable to both the Sending Employer and the Using Employer

26. An employer may hire fixed-term employees for a period not exceeding two years. If an employer hires fixed-term employees for more than two years, they shall be considered regular employees who have no fixed term. (Article 4 of the Short-term Employee Act)

27. Using Employer shall not receive labor service from a dispatch employee from an unauthorized dispatch company nor shall use a dispatch employee in a position where dispatch employees are not allowed. (Article 5 of the Dispatch Employee Act)
※ For Using Employer: Punishable by imprisonment of up to three years, or by a fine not to exceed twenty million WON

28. The length of dispatch shall not exceed one year. If there is agreement between the Sending Employer, the Using Employer, and the dispatch employee, the length of dispatch may be extended beyond one year. In any case, the total length of dispatch extension shall not exceed one year, and the total length of dispatch, including extensions, shall not exceed two years. If the Using Employer continues to use the dispatch employee beyond two years, he/she shall directly hire the dispatch employee as a regular employee without a fixed term of employment.
※ Violation by the Using Employer: imprisonment of up to three years, or a fine not exceeding twenty million WON
※ Failure to directly hire a dispatch employee beyond two years: Punishable by a fine not exceeding thirty million WON
※ With regard to older dispatch employees under subparagraph 1 of Article 2 of the Aged Employment Promotion Act, notwithstanding the latter part of the provision of paragraph 2, the length of dispatch may be extended for more than two years.
※ Times when dispatch employees are permitted under Article 5 (2) (exceptional reasons)
☞ The period of time required to resolve clear and objective causes of a shortage of manpower, such as childbirth, illness and injury; and
☞ For a maximum of three months when there is a need to secure manpower on a temporary and intermittent basis. If the cause is not resolved and there is agreement between the Sending Employer, the Using Employer, and the dispatch employee, this three-month period may be extended once, and is not to exceed an additional three months.

Employment of Foreign Worker: Domestic Workers

I. Introduction

Last month, the Chosun Ilbo, a daily newspaper in Korea, reported, "A babysitter becomes the superior of a working mother…Why not import babysitters from abroad?"[1] The news article goes on to say, "It is so expensive to give birth and raise a child in Korea […]Babysitters are difficult to find. When fortunate enough to find a Korean Chinese babysitter, her minimum salary is KRW 1.7 million per month, while a Korean babysitter costs KRW 2.5 million at least […] Even Japan has decided to import foreign domestic workers in particular areas, such as Osaka." The most noticeable point raised in the article is that most Singaporeans and citizens of Hong Kong have been using young foreign domestic workers in their homes costing the equivalent of as little as KRW 500,000 to KRW 800,000 per month for more than 40 years. However, the Korean government has not used this simple and easy way to help couples raising children, but instead has spent KRW 150 trillion over the past 10 years in other efforts to raise the nation's low birthrate.[2] Despite such efforts, this low birthrate has not risen, but has further decreased instead.

Singapore, Hong Kong, and Taiwan have engaged inexpensive foreign domestic workers to take care of their children, aging parents and housekeeping, which has made it possible to increase women's participation in employment and resolve their manpower deficits due to low birthrates and aging populations. Recently, public opinion has begun supporting the idea of bringing in foreign domestic workers, and the Ministry of Employment and Labor has recognized the need to do so in a report by an external research consulting firm in 2016.[3] It is therefore expected that sooner or later Korea will make the necessary policy changes to allow foreign domestic workers to be brought into the country.

Herein I will look at domestic legal protections for and international guidelines on domestic workers, the foreign domestic worker (FDW) scheme in Singapore, and considerations when deciding to import foreign domestic workers into Korea.

< Comparison of Status for Domestic Workers, by Country>

	Korea	Singapore	Hong Kong
Total population	**50,503,933**	**5,696,506**	7,317,227
Per capita GDP (USD)	27,195	**52,755**	**42,097**
Labor	52.1%	60.4%	54.8%
Foreign domestic workers (FDW)	201,973	237,100	340,000
(FDWs as percentage of total	0.4%	4.2%	4.7%
Monthly wages for FDWs[4] (KRW)	1.7~3 million	450,000~650,000	From 639,210

* Sources: Government statistics agency for each country, as of 2016

[1] Chosun Ilbo, "A babysitter becomes the superior of the working mother", February 4, 2017.
[2] Maeil Business News, "Birthrate remains at 1.12 to 1.19 despite investing KRW 150 trillion over the past 10 years", February 4, 2015.
[3] Korea Labor Institute, 『Foreign Manpower Policy toward Labor Market Environment 』, Ministry of Employment and Labor, November 2016.
[4] Monthly labor cost of a domestic worker is the salary of a resident domestic worker. Labor costs associated with domestic workers in Singapore and Hong Kong will actually be higher due to additional expenses such as round-trip air fare and medical insurance, etc. While Singapore has no compulsory minimum wage, Hong Kong does, which is equivalent to KRW 639,210/month (HKD 4,320).

II. Existing Legal Protections for Domestic Workers

1. Global standards

In 2011, the 100th General Assembly of the International Labour Organization (ILO) adopted the Convention Concerning Decent Work for Domestic Workers and a Recommendation. The major content of the Convention includes regulation of domestic workers under national labor law as would be the case for other workers, such as reasonable working hours, 24 consecutive hours off a week, restrictions against payment in kind rather than cash, clear statements of working conditions, and freedom of association.[5] As of May 20, 2014, the Convention has been ratified by 14 ILO member countries, most of whom are supplying domestic workers to other countries. Korea has not yet ratified the Convention, but legal enactment has been proposed by some lawmakers to conform to ILO standards, but no legislative action has been taken.[6]

2. Korean domestic workers and application of labor law

(1) Reasons why domestic workers are excluded from labor laws

Here, 'domestic worker' refers to persons employed for the purpose of assisting with housekeeping duties (cooking, cleaning, nursing, childcare, etc.).[7] Since the employer is not the business owner or workplace seeking business, but rather individuals or households, general labor laws do not apply to domestic workers. Article 11 of the Labor Standards Act explicitly excludes domestic workers from application: "This Labor Standards Act shall apply to all businesses or workplaces in which five or more workers are ordinarily employed. This Act, however, shall not apply to any business or workplace which employs only relatives living together, and to workers hired for domestic work."

Domestic workers are not covered by labor law for primarily two reasons. First, relations between an employer and a domestic worker are considered private relations that do not fall under governmental authority. [8] Caregivers are usually involved in care of a particular person and provide exclusive care, but if they work for a care-providing company and receive a wage in return for providing that care, they are considered someone to whom the labor law applies.[9] Second, a domestic employer is not considered a business or workplace, because he/she does not employ a domestic worker to seek profit or accomplish a business purpose, but simply for convenience.

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[5] Meeyoung Goo, "Legal Protections for Domestic Workers", 「Labor Law 」 No. 50, The Korean Labor Law Association, June 2014, p. 260.

[6] (1) "Public Hearing on Legalization of Domestic Workers – Representatives Choonjin Kim, Jungae Han", Korean National Assembly document, April 30, 2013.
(2) Legislative proposal by Inyoung Lee, lawmaker, on February 4, 2016: "Law regarding the improvement, etc. of employment for domestic workers".

[7] Jongyooul Lim, 「Labor Law」, 14th edition, Park Young Sa, 2016, p. 337.

[8] Kaprae Ha, "A Study on the Legal Status of Domestic Workers", 「Labor Law 」 No. 37, The Korean Labor Law Association, March 2011, p. 216.

[9] Labor Ministry Guidelines: Labor Standards team - 5557, Oct 10, 2006.

2) Necessity for protection

Domestic workers, as pointed out in the ILO report, do not receive protection against low salaries, abusively-long working hours, and the loss of rest hours, and sometimes suffer from mental, physical and sexual abuse, and have restrictions on their freedom of movement. Accordingly, considering the length of working hours while exclusively engaged with a particular family, it is necessary to protect their basic rights such as by mandating a minimum salary, maximum working hours, and guaranteed off-days.[10]

III. The Foreign Domestic Workers Scheme in Singapore

1. Summary

In order to assist couples who both work outside the home, the Singaporean government introduced the Foreign Domestic Workers Scheme in 1978. Since Singaporean couples could hire domestic workers from an abundant labor pool in the neighboring countries of the Philippines, Indonesia, Thailand, and Myanmar for much less than hiring locally, the labor force participation rate of married Singaporean women has increased from 14.7 percent in 1970 to 60.4 percent in 2016. There are about 237,000 foreign domestic workers in Singapore, or 4.2 percent out of the total population of 5.61 million, who are employed by the majority of households. The Singaporean government has adopted a very expensive employment levy in order to restrict the overuse of foreign domestic workers. However, families that need domestic workers for one or more of the following reasons receive a significant discount: ① the family has a child or grandchild living with them who is a maximum 16 years of age; ② the family has an elderly family member living with them who is at least 65 years old; ③ the family has a person with disabilities living with them. In particular, in cases where the couple works outside, any collected employment levy will be refunded.

The two key elements for the success of Singapore's foreign domestic worker scheme are its favorable external environment and thorough internal management. The external environment refers to the sufficient amount of manpower in the neighboring countries, who support their nationals going abroad to make money due to the low salaries and high unemployment rates in their own countries. Internally, the Singaporean government has a strict and thorough management system over foreign domestic workers. [11]

2. Hiring and employment within the foreign domestic worker scheme[12]

There are five stages in the procedures for employment.

(1) Stage 1: Getting ready & selection

[10] Kaprae Ha, 「Labor Law」, 27th edition, Joongang Economy, 2015, p. 98.
[11] Bongsoo Jung, Promoting Employment of Foreign Migrant Workers - Foreign Domestic Workers in Singapore, 「Social Law Studies 」Volume 29, August 2016, p. 99.
[12] E-services for Singaporean citizens, https://www.ecitizen.gov.sg , "Hiring a domestic worker"

① Employer attends orientation program

② Employer looks for a candidate at the licensed civilian employment agency. Employer should come to an agreement with domestic worker on employment terms (e.g. salary, rest days).

(2) Stage 2: Before the foreign domestic worker's arrival in Singapore

③ Employer shall apply for a Work Permit from MOM (Ministry of Manpower). When applying for a work permit for a foreign domestic worker, the employer shall submit a security bond and evidence of medical insurance and personal accident insurance. These three items can be purchased as one package. [13] If the application is approved, MOM will send employer a preliminary approval letter.

④ Employer shall mail the a preliminary approval letter and an air ticket note to the foreign domestic worker.

(3) Stage 3: Upon the foreign domestic worker's arrival in Singapore

⑤ Within 3 days of the foreign domestic worker's arrival, employer shall send her for the 1-day settling-in program (SIP) training course.

⑥ Within 14 days after arrival, employer shall send the foreign domestic worker for a medical examination.

⑦ Employer shall request online for MOM to issue the Work Permit.

(4) Stage 4: Employment relations with the foreign domestic worker

⑧ During the foreign domestic workerrelemployment, the employer must send her for a medical screening every six months, and report the result to MOM

⑨ Within 1 month of the foreign domestic worker's arrival in Singapore, employer shall make the 1st monthly levy payment, and continue to pay it monthly.

⑩ Employer shall pay the salary within 7 days of the end of the month, and pay it at least once a month. Employer shall transfer the salary directly to the foreign domestic workersalbank account in Singapore.

5) Stage 5: Termination of employment and repatriation

⑪ The employment contract shall be made for a 2 year period, and renewal is possible only once After a maximum of 4 years, the foreign domestic worker shall leave the country.

⑫The employer shall inform the foreign domestic worker of the expiration of her employment contract 2 weeks in advance, pay all outstanding wages, and cover costs of the flight and all others necessary for repatriation.

[13] A security bond is a binding pledge to pay the government up to SGD 5,000 if the employer breaks the law or the conditions governing the employment of a foreign domestic worker. The employer needs to buy medical insurance for inpatient care and day surgery during the foreign domestic worker's stay in Singapore. The employer also needs to buy personal accident insurance for disability or death.

IV. Considerations when Deciding to Bring Foreign Domestic Workers into Korea

1. Internal considerations (in the system)

(1) Preparation of relevant laws

The 'Act on Foreign Workers' Employment, etc.' deals with non-professional workers (E-9) and overseas Koreans (H-2) who are fully protected by Korean labor law. Since domestic workers are regarded as a special type of worker excluded from direct application of labor law, it is necessary to prepare special regulations or guidelines when considering the introduction of foreign domestic workers to Korea.

(2) Security bond

In reviewing Singapore's Foreign Domestic Worker Scheme, the most impressive item to be reflected on is the security bond. In Korea, the employer is not responsible if a foreign worker disappears from the workplace, but in Singapore, the employer's deposited security bond of SGD 5,000 (KRW 4.1 million) is forfeited in most cases. As this represents a serious financial hit for most household employers, they take extra care to ensure their foreign workers do not disappear.

(3) Protection programs for foreign domestic workers

Even though Korea has not yet ratified the ILO's Convention Concerning Decent Work for Domestic Workers, we need to thoroughly train and manage persons who will employ foreign domestic workers to ensure compliance with the related suggested measures such as reasonable working hours, provision of a weekly holiday, and written statements of actual working conditions. Just as in Singapore, Korea needs to introduce a systematic management system such as pre-employment and semi-annual medical examinations, secure accommodations, medical insurance, and provision of round-trip air tickets. In particular, it is necessary to create regulations against and procedures for remedy for sexual/physical violence by the employer, long working hours, and violations of other human rights, and otherwise establish a system to protect foreign domestic workers.[14]

2. External considerations (in the market environment)

(1) Balancing the supply of and demand for domestic workers

Singapore has used foreign domestic workers for the past 40 years and has been able to keep costs down as it does not use an Employment Permit system to control employment, but a Work Permit system that allows it to maintain a better balance between supply and demand. In Korea, only a limited number of foreign domestic workers are allowed to be hired and into the country and all must be overseas Koreans (H-2 visa holders) from China. As demand is greater than supply, the cost difference between hiring overseas Koreans and native Korean domestic workers is insignificant.[15] Here, the basic reason to bring domestic workers from more nations

[14] Meeyoung Goo, thesis quoted above, p. 289.

[15] Leesoo Kang, "The Current Status and Employment Conditions of Domestic Workers", 「Society and History」Vol.

into Korea is to lower costs. In light of this, by maintaining a balance between supply and demand, Korea can also take advantage of the resulting cost-effectiveness over a long period of time just as Singapore has done through its Foreign Domestic Worker Scheme.

(2) Language and accommodation issues

In Singapore the official language is English, so there is no great difficulty in communicating with foreign domestic workers in English. Countries that send such workers, like the Philippines, Myanmar, Indonesia, and Sri Lanka can also communicate in English, and many applicants from those countries have college degrees as well. However, in Korea, as English is hardly used in ordinary homes, there will be communication issues due to language. Foreign domestic workers would need to be able to speak some Korean for basic communication. Therefore, significant incentives for those who pass Korean language proficiency tests will be needed to attract those who can speak Korean.

(3) Preparations to prevent illegal stays

The most important point when considering opening Korea to foreign domestic workers is to keep costs down. Prevalence of cases where foreign domestic workers run away from their place of employment and move to better-paying jobs will render any foreign domestic worker scheme ineffective in this regard. Accordingly, before introducing any foreign domestic worker scheme, prior system measures need to be in place to make it difficult for foreign domestic workers to stay illegally. As explained above, one method is to hold the employer responsible through the threat of losing a significant security bond.

V. Conclusion

In importing and employing foreign workers, it is necessary to keep relations mutually-beneficial by means of supplementing manpower needs and sufficient compensation for the foreign workers. Singapore has managed its foreign domestic worker scheme in a strict manner, and the program has been able to provide benefits to employers and foreign domestic workers alike for a long time. In the interest of addressing the present issues in Korea of a low birthrate and an aging population, Korea needs to introduce and develop an operating system of bringing in foreign domestic workers. Singapore's foreign domestic worker scheme would be an important program for Korea to benchmark.

82 (2009), Korean Sociological Association, p. 236.

Certified Public Labor Attorneys and their Power of Attorney at Appeals Commissions

I. Introduction

Since the Certified Public Labor Attorney (hereinafter referred to as "labor attorney") Act was implemented in 1985, 4,994 labor attorneys have obtained qualification as of December 2016 (3,867 persons passed the labor attorney qualification exams and 1,127 persons obtained this qualification automatically through their Labor Ministry experience). According to the 2016 Employment and Labor White Paper, 1,816 labor attorneys were registered with the Ministry of Employment and Labor and were practicing labor law as of December 2015. This new labor attorney system was introduced to promote the development of a healthy economy through the support of labor management in the workplace and the restoration of workers' rights through the efforts of qualified professionals in the personnel and labor fields.

One of the major functions of a labor attorney is to represent workers or employers at the Labor Relations Commission (hereinafter referred to as "labor commission) and to perform the duties of a labor attorney in cases of unfair dismissal or unfair labor practices. The Appeals Commissions for teachers and public servants permits lawyers to work only as their attorneys, even though the Appeals Commissions are operated under the administrative appeals system. There are many problems with this current system, so I would like to explain why labor attorneys should have power of attorney at Appeals Commissions.

II. Why a Labor Attorney needs to work as a legal agent at Appeals Commissions

1. Power of attorney for labor attorneys at the Labor Commission

If an employer dismisses, lays off, suspends or transfers a worker, reduces his or her wages, or takes other punitive action without justifiable cause, the worker may apply to the Labor Relations Commission for remedy. Any labor union whose rights have been infringed by unfair labor practices may also do so (Article 28 of the LSA (Labor Standards Act), Article 28 of the Union Act). As labor disputes are dynamic, continuous, and collective, administrative agencies or courts cannot be expected to always handle them fairly, promptly, and reasonably, due to the inflexibility of bureaucracy and the lack of experience of some agencies. The Labor Relations Commission is an independent administrative agency that has the authority and the ability to resolve labor disputes fairly, promptly, and in a way that is professionally appropriate to the situation at hand.[16]

[16] Kim Hyungbae and Park Jisoon, 「Labor Law Lecture」 5th edition, Shinchosa, 2016, p. 663.

Most labor cases, such as unfair dismissal and unfair labor practices, are resolved through the Labor Commission. In 2015, 14,229 labor cases were settled at 13 local Labor Commissions and the National Labor Commission. Also, of 1,388 cases handled at the National Labor Commission in 2015, 415 went on to the appeals stage at the Administrative Court, showing a 30% ratio for court appeals at the National Labor Commission and a 3% ratio for court appeals for local Labor Commissions.[17] Most labor cases at local Labor Commissions are settled through representation by a labor attorney. In particular, employees who were dismissed and whose average monthly salaries were less than KRW 2 million could receive their total legal procedures free of charge, from government-appointed labor attorneys at the Labor Commission.

[Status of Labor Cases Handled by Labor Commissions in 2015]

(Unit: Case)

Division	Cases Filed	Case Details						On-going Cases
		Total	Judgment				Settled or Withdrawn	
			Subtotal	Accepted	Rejected	Dismissed		
Total	14,229	12,488	4,428	1,590	1998	841	8,060	1,741
Unfair Labor Practices	1,276	1,024	645	116	482	47	379	252
Unfair Dismissal etc.	12,571	11,130	3,562	1,329	1,465	769	7,568	1,441
Other	382	334	221	145	51	25	113	48

2. Appeals Commissions

Individuals able to apply for remedy with the Labor Relations Commission are those working for a company with five or more employees. Provided, that government employees working for state or local governments, and teachers, are excluded. Those government employees and teachers to whom Korean labor laws do not apply can submit applications for remedy through an Appeals Commission. The State Administration has an Appeals Commission for public servants and the Teachers' Appeals Commission for teachers, while local administrations have an Appeals Commission for local public servants.

Teachers have rights of education, right to a guarantee of status, and the right to freedom of speech, while at the same time they often have the duties to educate and conduct research and maintain their professionalism as teachers, but are banned from political activities. Of particular interest, the system related to the guarantee of status is the Teachers' Appeals Commission, which deals with teachers' disciplinary dispositions (such as expulsions, dismissals,

[17] This date is referenced by the 2016 Employment and Labor White Book, the Ministry of Employment and Labor, pp 676-677.

suspensions from office, wage reductions, and written warnings), and disadvantageous dispositions (such as forced leaves, dismissals, and removals from position), and this system can involve a kind of administrative trial.[18]

Accordingly, civilian workers for the government, and employees engaged in a private school's administrative work, as well as fixed-term employees, (Article 32 of the Public Educational Officials Act, Article 54-4) do not fall within the scope of the Teachers' Appeals Commission. Instead, they may apply for remedy with the Labor Relations Commission.

3. Necessity for a labor attorney to have power of attorney at Appeals Commissions

The appeal procedure at Appeals Commissions are handled through the court system, but follows the administrative appeals procedures. An attorney can become a labor attorney for labor cases according to Article 2 of the Certified Public Labor Attorneys Act (hereinafter referred to as "CPLA Act"). Accordingly, the labor attorney is considered a person stipulated in Article 18(1) of the Administrative Appeals Act (Appointment of Agents)[19]: "4. Persons entitled to represent the appellant in an appeal under other Acts." Because of this Article, labor attorneys have represented clients at Administrative Appeals Commissions as well as various Labor Commissions. The Appeals Commissions' mother law is the Administrative Appeals Act. Despite being the mother law and the fact that it provides labor attorneys with full authorization to represent labor cases, the subsidiary law applying to Appeals Commissions has granted power of attorney to lawyers only.[20] This subsidiary law violates the mother law, which allows a labor attorney to legally represent clients in labor cases, because the subsidiary law excludes the labor attorney from Appeals Commissions. Furthermore, this subsidiary law has imposed a disadvantage on legal consumers such as civil servants and teachers, who cannot choose labor attorneys as their legal agents (and benefit from their lower fees), even though labor attorneys are better qualified, with more knowledge and experience in this area.

Currently, labor attorneys have mostly represented public employees in labor cases except for Appeals Commissions, and are the remedy for employment cases, collective labor cases, and industrial accident cases.

[18] Dongchan Lee, "A Study on the Teachers' Appeals Commissions", Hanyang Law Study, 22, February 2008, p. 370.

[19] Administrative Appeals Act: Article 18 (Appointment of Agents) (1) An appellant may appoint an agent, other than his/her legal agent, from among the following persons:
1. Spouse of the appellant or blood relative within three degrees of the appellant or his/her spouse;
2. Where the appellant is a juristic person, or where the appellant is an unincorporated association or foundation, with standing to appeal, the executive officers and employees thereof;
3. Attorneys-at-law;
4. Persons entitled to represent the appellant in an appeal under other Acts;
5. Other persons who have obtained permission from the commission.

[20] Special Act on the Improvement of Teachers' Status and the Protection of their Educational Activities: Article 9 (Request, etc. for Examination of Appeals) (1) ~ In such cases, the teacher requesting the examination of his/her appeal may assign a lawyer as his/her procurator.

[Scope of the Labor Attorney's Legal Agency for Public Employees][21]

O: included X: excluded

Division			Individual Employment Relations	Collective Labor Relations	Industrial Accident Compensation
Organization		Public servants	Appeals Commission: X Appeals to the Human	O	O
		Civilian	O	O	O
Schools	Public schools	Public servants	Appeals Commission: X Appeal to the Human	O	O
		Civilian	O	O	O
	Private schools	Teachers	Appeals Commission: X Appeals to the Human	O	X
		Staff	O	O	X
Public institutes			O	O	O

In view of the above explanation and table, it is natural that a labor attorney who is a specialized professional in labor law should act as an authorized legal agent for labor cases at Appeals Commissions.

III. Labor Attorney's Legislated Scope of Duties

1. Duties of a Labor Attorney according to 31 labor laws.

(1) Acting as a representative or an agent for notifications, applications, reports, statements, requests (including filing complaints, requests for examination and requests for trial), and remedy of rights etc., made to the authorities under labor-related Acts and subordinate statutes;
(2) Preparing and confirming all necessary documents under labor-related Acts and subordinate statutes;
(3) Consultation and guidance regarding labor-related Acts and subordinate statutes and labor management laws;
(4) Labor management diagnoses for businesses or workplaces to which the Labor Standards Act applies; and
(5) Private mediation or arbitration prescribed in Article 52 of the Labor Union and Labor Relations Adjustment Act.

[21] Korean Labor Law Society, "A study for Authorization as Legal Agent for Labor Attorneys at the Public Servants and Teachers Appeals Commission", CPLA Association, 2016, p. 32.

2. Concrete summary of the labor attorney's legal scope of duties[22]

(1) Labor Office-related tasks:

1) Composing, revising and reporting the Rules of Employment and formation of a Labor-Management Council; 2) Acting as a representative or an agent for filing petitions, complaints, or claims regarding unpaid wages or severance pay; and 3) Processing requests involved in insolvency payments (obtaining proof of a company's bankruptcy, submitting applications, etc.) according to the Wage Claim Guarantee Act.

(2) Employee Welfare Corporation-related tasks:

1) Acting as a representative or an agent in applications for medical care benefits, suspension benefits, disability benefits, survivors' benefits or funeral expenses; 2) Acting as an agent in the appeal after applications for any of the above benefits have been rejected; and 3) Managing the implementation of Employment Insurance and Industrial Accident Compensation Insurance affairs, and adjusting premium calculations (estimated and final insurance premiums).

(3) Industrial safety and accident compensation-related tasks:

1) Acting as an agent for the re-examination of industrial accidents; and 2) Providing advice regarding industrial accidents and occupational safety and health issues.

(4) In Labor Relations Commission-related cases:

1) Acting as an agent for the application of remedies for dismissal, discipline, transfer, demotion, etc. of individual employees and 2) Acting as an agent for remedy applications regarding unfair labor practices on behalf of a labor union.

(5) Individual employment-related tasks:

1) Consultation on justification of dismissal; 2) Consultation on wages; 3) Consultation on working hours, holidays, recesses, etc.; 4) Consultation on employment contracts, Rules of Employment, etc.

(6) Collective industrial relations-related tasks:

1) Consultation on labor disputes and labor relations; 2) Consultation regarding collective bargaining and collective agreements; 3) Consultation on unfair labor practices; and 4) Private mediation and arbitration for the adjustment of labor disputes.

(7) Act on the Promotion of Worker Participation and Cooperation; Act on the Protection, etc., of Dispatched Workers; Employment Insurance Act; and Act on Equal Employment and Support for Work-Family Reconciliation:

1) Consultation on operation of labor-management councils; 2) Consultation on working conditions, treatment, and operation of dispatched workers; 3) Consultation on labor disputes related to gender equality; and 4) Consultation on unemployment allowance, vocational skill development, and employment security.

(8) The Administrative Appeals Commission:

A labor attorney acts as an agent for administrative appeals against administrative measures issued by the Labor Office and other related agencies.

[22] "Research on the improvement of the Certified Public Labor Attorney system" (Aug 2004, Korea Labor Standards Association)

(9) The Industrial Accident Compensation Insurance Appeals Committee:
A labor attorney acts as an agent for the Industrial Accident Compensation Insurance Appeals Committee upon rejection by the Employee Welfare Corporation of an examination application.

3. Public Defense Labor Attorney

The Labor attorney's public defender system was introduced to protect the rights and interests of vulnerable social groups. The public defender works as an agent for low wage-earners and provides a labor-management diagnosis for vulnerable small businesses or workplaces receiving a minimum subsidy from the Ministry of Employment and Labor.

(1) Low-income workers (with a monthly average wage of KRW 2 million or less) who have received unfair disciplinary action can use a public defense labor attorney to seek remedy at the Labor Relations Commission.

(2) In cases where workers did not receive wages due to the bankruptcy of a small company with fewer than 10 workers, they may be able to receive an insolvency payment through the assistance of the public defense labor attorney.

VI. Conclusion

For the past 32 years, since the Certified Public Labor Attorney Act was implemented in 1985, labor attorneys have contributed to labor-management peace and a reliable improvement of labor-management relations, for which they have received a high degree of social recognition. In particular, as Appeals Commissions are a part of administrative appeals and are implemented in this procedure, it is logical that a labor attorney serve as a legal agent there as he/she is a labor case professional. Accordingly, Article 18 of the Administrative Appeals Act (Appointment of Agents) has provided just such authorization, making it necessary for a labor attorney to legally represent public servants and teachers at their Appeals Commissions, as they are subsidiary to Administrative Appeals Commissions. After all, this widened legal authorization will support public servants and teachers in their legal needs, allowing them to have more choices for legal protection or in the process for remedy.

Civil and Criminal Liability for Deleting Company Documents

I. Question

The employee concerned (hereinafter referred to as "the Employee") was hired by an Employee Dispatch Company ("Company A"), signed a dispatch employment contract, and started to work for Company B, the Using Company, as the company president's secretary. During the month the Employee was working for Company B, she was scolded by her superior. The Employee voluntarily resigned on February 21, 2011, and on the following day, February 22, she did not come to work. Company B replaced her with another employee in the afternoon of February 22. When the new secretary started working, she discovered that the Employee had deleted from her computer all the data and files which had been kept by her predecessors over the last four years.

The Employee had deleted important computer files related to company work processes. Is she civilly or criminally liable for this?

II. Criminal Liability

1. Related articles in the Criminal Code

(1) Property damage (Article 366 of the Criminal Code)

Anyone who harms utility by damaging or concealing another person's property, documents or special recordings, such as electronic recordings, etc., shall be imprisoned up to three years or fined up to 7 million won.

(2) Obstruction of business (Article 314 of the Criminal Code)

①Anyone who obstructs another person's business by the method detailed in Article 313 (damage of trust) or by force, shall be imprisoned up to five years or fined up to 15 million won.
②Anyone who obstructs another person's business by damaging information processing devices like computers or special media recordings, like electronic recordings, by inputting falsified information or illegal commands, by causing errors in information processing, or using other methods shall be punished the same as in ① above.

2. Opinion

Property damage and obstruction of business are crimes. If the company is certain that the Employee deleted all work-related documents accumulated over the last four years, this action by the Employee may be considered one of the above two crimes. In particular, as the Employee damaged useful company assets supporting business, proving her actions are crimes of property damage according to Article 366 should not be difficult. But this only applies if the company faced obstacles in its business or work performance due to the property damage.

The court may determine a sentence in consideration of qualitative aspects (the importance of the deleted documents or files), quantitative aspects (how much the Employee deleted), and the degree of the employee's self-reflection. Generally, the court does not give heavy penalty for either of these crimes, but determines the severity of the sentence by punishing the greater violation. As this labor law firm is not in a position to know how serious the damage or consequences were to the company, we are unable to give a concrete answer, but we have seen similar cases where employees were fined one million won.

On the other hand, there is also a possibility that the Employee will not be considered to have committed a crime. For example, in cases where the data that an employee deletes are preserved in original copy or in hard-copy, electronic recordings are indirect and subordinate means to preserving the documents. The deleted documents likely have an insignificant market value, so the employee wouldn't be considered to have inflicted property damage or obstructed business.

III. Civil Liability

1. Related articles in the Criminal Code

(1) Claims for illegal acts (Article 750 of the Civil Code)

Anyone who harms another person by an illegal act intentionally or by negligence shall be responsible for the damage and resulting compensation.

(2) Claims for default (Article 390 of the Civil Code)

In cases where the debtor cannot carry out repayment of the debt, the creditor can claim compensation for damage. However, in cases where the debtor unintentionally (and not due to negligence) does not carry out repayment, the creditor cannot claim compensation.

2. Opinion

In this case, the company can claim civil and criminal liability for damage, as well as compensation equivalent to the property value of the deleted documents. Civil liability would include claims against illegal acts and claims against default at the same time. That is, if an employee under employment contract neglects his/her responsibility to keep or preserve work-related electronic records in good faith and return those records to the employer, the employer can claim compensation for damage.

However, as the employer is responsible for measuring the property value of the deleted documents and estimating how much, in monetary terms, the deletions cost the company, if the employer cannot do so adequately, there is a possibility that the claim will be refused for inability to prove damage.

IV. Legal Procedures

1. Criminal complaint procedures

Generally, the company submits a letter of complaint to the police with jurisdiction over the place where the incident happened, or the address of the employee. When complaining to the police, it is advantageous to include all applicable crimes, including obstruction of business and property damage, so that the law enforcement agency does not miss any. In any case, as the investigator estimates items to be prosecuted after completing investigation, the company does not have to make a detailed list of violations in advance.

Furthermore, as the police are an investigative agency, statements and documents they submit are not open to either party unless both parties agree on disclosure of their statements and submitted documents. This inevitably makes it very hard for one party to understand directly what documents the other party has submitted and what statements have been made.

2. Procedures for compensation claims

The company shall file claims for compensation with the District Court that has jurisdiction over where the incident occurred or where the employee lives. The company can make legal claims of liability for illegal actions and defaults at the same time. The advantage of lawsuits is that each party can directly see, hear, and receive all statements or documents submitted by

the other party. Therefore, in cases where one party submits falsified documents or gives falsified statements in the court, the other party has procedural opportunity to refute in detail the other party's documents or statements.

However, since it is up to the employer to verify how much damage was done, and how compensation will be calculated, the employer first needs to review how much financial damage the deleted documents cost in terms of property value.

V. Overall Comments

The company may submit a criminal complaint to the police and file a civil lawsuit with the court at the same time. The general tendency these days is for one or the other. When both criminal and civil claims are made together, the police tend to view this as the company making a criminal complaint in order to take advantage of it for civil claim. Therefore, it is more effective to open one claim at a time, and if necessary, begin the second after seeing the results of the first. Common procedure is that criminal complaints are made first, and civil claims are filed after the results of the police investigation are known. However, the opposite order is also possible.

In conclusion, since in a case like this, it is hard to calculate damages after determining the property value of the deleted documents, there seems to be no benefit to making a civil claim. If the company is concerned about this point, it would do better to file a criminal complaint first and see the employee punished with a small fine. This conviction will then allow the employer to restore order to the company and return to pursuing profit with its business.

The Personal information Protection Act and Personnel Management

I. Introduction

Personal information is easily obtained in our internet-driven information society, and there have been many cases of abuse. Recently, financial companies, search engines, game companies, and others have been the victims of information hacking, resulting in a plethora of spam mail, illegal use of other people's names, voice phishing, and identity theft. Accordingly, in the endeavor to provide a consistent code to protect personal information, the "Personal information Protection Act" was signed into law on March 29, 2011, and enforced from September 20, 2011. This act is a general law that combines all laws related to protection of personal information and contains strong penal provisions. This law also covers all processes of gathering personal information, both on- and offline.

I would like to explain the main points of the Personal information Protection Act, and then guide in understanding what companies need to do to prepare for appropriate management of their labor force.

II. Major Details of the Personal information Protection Act

The Personal information Protection Act regulates matters concerning the use of personal information in order to protect and promote people's rights and interests by protecting them from unwanted collection, leakage, illegal use and abuse of their personal information. The law includes the following six major subjects.

1. Expansion of Scope

The Personal information Protection Act is a general law applying to the relationship between individuals and those collecting their personal information. Previously, personal information was protected in specifically designated ways through separate laws such as the Information & Communication Act and the Credit Information Act, but the protections offered there have been expanded and applied to all handlers of personal information working in either the public or private sector. Accordingly, this law also applies to companies that do not conduct any online business.

2. Expansion of Protection

The scope of protection of personal information covers not only information processed electronically, but also paper records such as those used in Civil Service Offices, etc. "Personal information" means data that distinguishes or reveals individual identity (including name, resident registration number, date of birth, address, etc.) and data that reveals an individual's past and current conditions and situations (including educational background, financial status, medical history and health, etc.).

3. Restrictions on use of unique identifying information

Unique identifying information provided to the individual by law, such as resident registration numbers, shall be prohibited, in principle, from processing. In cases where a specific law requires such information, or where it is deemed obviously necessary for the urgent benefit of

life, body or property of a subject of information or a third party, gathering such information is permitted. Individual resident registration numbers shall not be required on websites. Any person violating this shall be punished with imprisonment of up to five years or with a fine not exceeding fifty million won.

4. Restrictions against use of video recording devices

Installation and operation of video recording devices in open places is now restricted. A "video recording device" is any instrument, such as CCTV (closed-circuit television) or network cameras, which is installed and remains in a designated place and is meant to videotape objects and/or people, or transmit the video recordings through a wired or wireless network. The arbitrary use of such operations in a way that differs from its intended purpose, recording video in places other than the originally intended area, and recording of voices, are all prohibited. Any person violating this shall be punished with imprisonment of up to three years or with a fine not exceeding thirty million won.

5. Collection and use of personal information

The collection of personal information must satisfy certain criteria, and any information gathered shall only be used in the specified way. These criteria are: 1) The target person must have agreed to give such information; 2) an article of law exists which requires the collection of such information in order to observe the law; 3) it is needed by a public agency to carry out duties assigned by related law; 4) it is necessary for one party to enter into or implement a legal contract with the individuals concerned; 5) such information is urgently necessary to protect life, body, and interest of individuals and/or third parties; 6) it is necessary for the justifiable interests of the handler of such information, and is more important than the rights of individuals. In this last case, it shall be closely related to the justifiable interest of the handler of such information, and shall not exceed a reasonable scope. A person who violates this shall be punished with a fine for negligence up to fifty million won.

6. Duty to report leaks of personal information

When recognizing that personal information has been leaked, the handler of such information shall notify the individuals concerned of this fact without delay, and shall include: 1) the details of the leaked personal information; 2) the time the leak occurred, and any related details; 3) information about how the individual can minimize any damage caused by the leak; 4) any countermeasures the handler of such information has taken, and procedures for remedy for any damage; and 5) the contact information of the department individuals can contact to report any resulting damage.

Any person violating this duty to report leaks of personal information shall be punished with a fine for negligence of up to thirty million won. Any person responsible for failing to report to the appropriate government authority on the way the organization handled the leak shall be punished with a fine for negligence of up to thirty million won.

III. Management of Personnel and Personal information

Laws related to the protection of personal information are applied equally to most companies. Regarding the management of personnel, the main issues are the management of employees' personal information and the company use and management of video recording devices.

1. Details on management of employees' personal information

Collecting and using personal information is tightly restricted, but in cases where an employee enters into an employment contract to offer work in return for wages from the employer, the employer shall know the employee's name, resident registration number, address, wage information, and other necessary data, as this is an example of "it is necessary for one party to enter into or implement a legal contract with the individuals concerned." These items of personal information are essential to management of personnel regarding the four social insurances, year-end income tax adjustment, and issuance of various certificates. Accordingly, no individual agreement is necessary regarding the use of personal information in this way. However, it is still necessary for the employer to inform the employee of the collection and use of his/her personal information related to the making of an employment contract. This notification shall include the purpose for collecting the personal information, where to read and/or correct such information, the period it will be retained, and management after he/she leaves the company, etc.

Can personal information obtained through resumes, etc. at the time of hiring be exempt from the requirement for consent from employees to collect or use their information, as it can be considered "necessary for one party to enter into or implement a legal contract with the individuals concerned"?[23]

According to the Enforcement Decree (Article 27) of the Labor Standards Act, the employer shall record the employees' name, resident registration number, matters on the basis of wage calculation, and other working conditions in the wage ledger. In other cases such as the collection and use of job seekers' personal information, consent does not have to be given, according to Article 1 (subparagraph 4) of the Enforcement Decree of the Labor Standards Act (making and implementing a contract). The information about individual employees shall generally be used not only for employment contracts, but also other purposes such as welfare, labor union management, training, etc. Furthermore, as companies are likely to gather such sensitive information, it is greatly desirable to inform the employees concerned of the use of personal information from employment-related documents, and the period of use, etc.

In cases where the employer collects unique and sensitive identifying information such as resident registration number at the time of employment, excluding where there are concrete reasons to gather such information due to related law, it shall be necessary for the employer to receive separate agreement from the employees concerned.

[23] "Explanation of Laws and Decrees Concerning Protection of Personal information" (the Ministry of Public Administration & Security, Dec. 2011, pg. 90)

2. Company use and management of video recording devices

Video recording devices shall not be installed or operated in public places. Exceptions are as follows: 1) In cases where its use is concretely permitted by law and/or decree; 2) In cases where its use is necessary to prevent or investigate crime; 3) In cases where its use is necessary for facility security and prevention of fire; 4) In cases where its use is necessary to enforce traffic laws; and 5) In cases where its use is necessary to collect, analyze and distribute traffic information. While use of video recording devices is permitted in these cases, the company shall set up a board notifying employees of the presence of such recording devices.

'Public places' refers to places like roads, parks, plazas, and other places the public is free to use. The lobby of a company building can be used by many unspecified people, so it is included in the restrictions on installing a video recording device. However, the inner rooms and hallways of the company building, where access is strictly controlled and only to internal employees and those receiving permission, would be considered closed to the public, and so are excluded from restrictions on installation of video recording devices. Provided, in cases where the video recording device was installed and is in operation to collect individual imagery information, other protections of privacy still apply. That is, when a company obtains the employee's permission, and when the recording is necessary to accomplish the justifiable interests of the handler of such information, installing and operating a video recording device is allowed.

Case: Monitoring the Workplace[24]

Some companies install and operate video recording devices to monitor work activities. Such video recording devices installed in the workplace have been the cause of conflict between the employer's authority to supervise work and workers' right to privacy.

Workplaces off-limits to outsiders are in principle 'closed places', and Article 25 (Restrictions on use of video recording devices) does not apply, while the principle of general protection of privacy does. In relation to this, "the Act concerning the Promotion of Worker Participation and Cooperation" stipulates that management shall consult employees before installing video recording devices such as CCTVs, which can be done through labor-management discussions, where a balance between monitoring work and protecting privacy may be struck.

IV. Conclusion

The Personal information Protection Act regulates matters concerning use of personal information in order to protect and promote people's rights and interests by protecting people from unwanted collection, leaks, illegal use and abuse of their personal information. The Personal information Protection Act is a general law designed to protect people's privacy, and has very strong penal provisions. Accordingly, companies shall keep employees' private files only for personnel management, and shall require 'employee consent for the use of personal information' for other purposes, to prevent legal disputes. Also, in using CCTV at the workplace,companies should ensure that workers are not led to believe they are simply being 'watched', and labor union office entrances should be avoided when placing video recording devices.

[24] "Explanation of Laws and Decrees Concerning Protection of Personal information" (the Ministry of Public Administration and Security, December 2011, Page 166)

The Occupational Safety & Health Act, and Employer Duties

I. Introduction

On April 16, 2014, a ferry named Sewol ho, bound for Jeju island from Inchon, sank in the ocean near Jindo island, and about 300 passengers lost their lives. This is known as the Sewol ho accident, one of the worst tragedies in Korea, and one which could have been avoided if the employer had fulfilled his duty to observe safety regulations.

The current Occupational Safety & Health Act (hereinafter referred to as "the Act") requires the employer to establish a management system for occupational safety and health, to prepare preventative measures for harmful and dangerous equipment, facilities, materials, working environment, etc., and at the same time to periodically provide workers the necessary safety and health education to prevent industrial accidents from happening. Also, in cases where an employer is found to have violated the Act, the employer is punished immediately so that the occupational safety and health-related accident preventative activities can be habitualized. Workers can also be punished with a fine for negligence when they violate the Act.

Occupational safety cannot be emphasized enough, as it protects personnel, property, and investment by preventing accidents. This Act, which stipulates the observance of occupational safety and health regulations, is very complicated, and enumerated with many technical articles, and so here I have attempted to define the management structures of the Act clearly and divide the employer's duties according to their characteristics in order to make the Act more easily and clearly understood.

II. The Act's Scope of Application & Management Structure[25]

1. Scope of application

This Act shall apply to all businesses or workplaces: Provided that this Act may not apply wholly or partially to businesses taking into consideration the degree of harm and hazard, the type and scale of business, the location of business, etc. Generally, those excluded from application are 1) public administration work, education service, foreign agencies; 2) businesses that use only office employees; and any business that ordinarily employs fewer than 5 workers. (Article 3)

[25] Kim, Hyungbae『Labor Law』, 21st edition, Parkyoung Publishing Co. 2012, page 474-487,

2. Management structure

(1) Appointment duties

1) The general manager in charge of safety and health management: The general manager is responsible for general control of occupational safety and health and supervises safety and health managers. Accordingly, the general manager shall be capable of managing the company's business (e.g., plant manager) (Article 13). Companies that ordinarily employ 50 workers or more engaged in manufacturing etc., companies that ordinarily employ 100 workers or more engaged in wholesale and retail sales, etc., and companies that ordinarily employ 300 or more engaged in pure office administration, such as finance, etc., must appoint a general manager to be in charge of safety and health management.

2) Supervisor: An employer shall designate the head of a division within the management structure, who directly manages and supervises production work and employees involved therein or who takes charge of such a position, to carry out safety- and health-related duties such as safety and health inspections.

3) Safety manager and health manager: An employer shall assign a safety (health) manager at the workplace to assist the employer or the general manager in technical matters concerning safety among the matters regarding safety and health, and to instruct and advise the supervisor on such matters.
The business owner of a manufacturing company or etc., ordinarily hiring 50 workers or more shall generally appoint a safety (health) manager, but for companies with fewer than 300 employees, the business owner may assign the safety (health) manager an additional safety management job or refer to a professional institution to perform the necessary safety management measures. (Articles 15 and 16)

(2) Industrial safety and health committee
The business owner shall establish an industrial safety and health committee comprised of an equal number of worker and employer representatives for workplaces ordinarily hiring more than 100 employees, or which has between 50 to 100 employees engaged in dangerous work. The committee shall meet once per quarter and its decisions shall be posted, and shall be faithfully implemented. (Article 19)

(3) Safety and health management regulations
In order to maintain safety and health in the workplace, an employer shall prepare safety and health management regulations, post and/or keep them in the workplace, and notify workers thereof. The employer and workers shall observe the safety and health management regulations (Article 20). These rules shall apply to workplaces ordinarily hiring 100 workers or more; provided that for service businesses like finance, etc. these rules shall apply to workplaces ordinarily hiring 300 workers or more.

III. Employer's Duties

1. Report industrial accidents

In cases where a worker dies due to an occupational accident, or is injured or inflicted with a disease requiring medical treatment for three days or more, the employer shall submit to the Minister of Employment & Labor an accident investigation form regarding the occupational accident within one month from the occurrence date of the occupational accident. Provided, in cases where a 'serious accident' occurs, the employer shall report it without delay. (Article 10)

2. Measures to prevent harm & hazards

(1) Notice of substance of acts and subordinate statutes
The business owner shall inform workers of the major aspects of orders enacted under this Act by posting them at each workplace. (Article 11)
(2) Attachment of safety signs
The business owner shall install or attach safety and health signs to warn employees of dangerous facilities and places in the workplace and provide emergency drills to promote safety consciousness. (Article 12)
(3) Safety and health measures
The business owner shall take measures necessary to prevent the following hazards in operating the business: ① hazards caused by machines, tools or other equipment; ② hazards caused by explosive, combustible or inflammable substances; ③ hazards caused by electricity, heat or other forms of energy; ④ Hazards caused by improper work methods in excavating, quarrying, loading and unloading, timbering, transporting, operating, dismantling, handling of heavy objects, etc.; and ⑤ hazards in places where workers might easily trip and fall, sand, structures, etc., (Article 23).
The business owner shall take measures necessary to prevent the following from causing health problems commonly encountered in the course of business operations: gas, dust, high temperatures, low temperatures, remnants, precision work, poor ventilation or lighting, computer terminals, radiation, simple repetitive actions, etc. (Article 24).

(4) Suspension of operation due to a serious accident or possible risk

If there is imminent danger of an industrial accident, or if a serious accident has occurred, the business owner shall take necessary measures for safety and health, such as immediate suspension of operations, evacuation of workers from the workplace, etc., until work can be resumed after meeting safety requirements. (Article 26)

If any worker suspends work to evacuate as a result of possible risk of an industrial accident, he/she shall report it without delay to the immediate superior officer, who shall take appropriate measures to rectify the situation. (Article 26)

(5) Other measures to prevent harm and hazards

Article 33 (Protective Measures, etc. for Harmful or Dangerous Machines, Instruments, etc.)	Machines and instruments requiring harmful or hazardous work or operated by power, shall not be transferred, leased, installed or used, or displayed for the purpose of transfer or lease, without taking protective measures for the prevention of harm and hazards.
Article 34 (Safety Certification)	To assess the safety of harmful or dangerous machines, instruments, equipment, protective devices and personal protective equipment, the Minister of Employment & Labor may determine and announce safety certification criteria concerning safety performance, the manufacturer's technological capacity, production systems, etc.
Article 36 (Safety Inspection)	An employer who uses harmful or dangerous machines and equipment shall receive a safety inspection on whether the performance of the harmful or dangerous machines, etc. meets safety standards.
Article 38 (Permission to Manufacture, etc.)	A person who intends to manufacture or use “substances subject to permission” shall obtain, in advance, permission from the Minister of Employment & Labor. This provision shall also apply if the person intends to make a change to anything that has previously been permitted.
Article 38-2 (Asbestos Investigation) Article 38-4 (Asbestos Disposal or Removal by Asbestos Disposal or Removal Service Provider)	If structures or facilities are to be demolished or dismantled, the owner or lessee, etc., of the structures or facilities shall conduct a "general asbestos investigation" and record and keep the results thereof. The owner, etc., of structures or facilities subject to an institutional asbestos investigation shall have an “asbestos disposal or removal service provider” dispose of or remove the asbestos.
Article 41 (Preparation, Keeping, etc. of Material Safety Data Sheets)	A person who transfers or supplies a chemical and/or chemical-containing preparations meeting the classification standards pursuant to "target chemicals" shall make and provide a Material Safety Data Sheet (MSDS) to the person to whom they are transferred or supplied.
Article 41-2 (Risk Assessment)	An employer shall identify hazards and determine the potential for harm caused by structures, machines, instruments, equipment, raw materials, gas, vapor, dust, etc., work behavior or work, determine the level of risk, and take measures under this Act and any order issued under this Act according to the findings, and if necessary to prevent risks or health problems for workers, take additional measures as required.

3. Safety and health measures for contractor businesses

(1) Safety measures: The business owner of a contractor business shall institute safety measures to prevent industrial accidents which can occur when those employed by the business owner and the contractor work simultaneously at the same place. (Article 29)

(2) Prohibition of contract for harmful and dangerous work: Sectors of work recognized as harmful or dangerous to safety and health shall not apply under a separate contract without the approval of the Minister of Labor. (Article 28)

(3) Prohibition of adding dangerous conditions: No persons offering a contract to undertake construction work, etc., for another entity shall add any condition to the method of work, term of work, etc. that risks the safety and sanitary performance of the work. (Article 29)

(4) Setting aside of funds for safety management: Upon entering into a subcontract or independently executing construction, shipbuilding or repair work, or other projects, funds for industrial safety and health management shall be set aside for activities to prevent occupational accidents when planning subcontract or project costs. (Article 30)

4. Safety & health education (Article 31)

In order to prevent possible safety-related accidents while working, the employer shall provide education for new workers, regular education for existing workers, education for workers changing jobs within the company, and special education as necessary.

(1) Regular education: The employer shall periodically conduct employee education on safety and health issues (three hours every quarter(one hour or longer each month) for office/sales workers, six hours every quarter(two hours or longer per month) for production workers, and 16 hours per year for supervisors).

(2) New workers' education: When hiring workers, the employer shall provide safety and health education regarding their respective jobs for 8 hours or longer (one hour for daily workers).

(3) Education when changing jobs within the company: The employer shall provide safety and health education for 16 hours or longer to workers working in harmful and/or hazardous workplaces (two hours for daily workers).

5. Management of Worker Health

(1) Evaluating the working environment

An employer of a business dealing with dangerous or harmful chemical substances or producing a high level of noise shall evaluate the working environment within 20 days from the date when a new workplace or work process is added or when there is any change in the existing workplace or work processes. An additional evaluation shall be made every 3 months for 1 year. The evaluation results shall be reported to the local labor office within 30 days from the completion date of the evaluation. (Article 42)

(2) Health examinations

The business owner shall periodically conduct health examinations of the workers. Health examinations must also be given upon the hiring of new workers. (Article 45)

1) Employees who are required to take a special medical checkup (as they are engaged in work dealing with harmful substances or materials) should have a medical checkup before they are assigned to the work. In addition, medical checkups should be conducted for them whenever necessary.

2) All employers shall ensure that a general medical checkup is conducted at least once every two years for employees engaged in office work and at least once every year for other employees.

3) When an employer receives the results of a special medical checkup from the medical service provider, he/she should take any measures necessary to protect the employee's health and then report to the jurisdictional local labor office.

(3) Prohibition or restriction of work for sick persons

For persons diagnosed with infectious disease or mental illness, or any other condition that can be aggravated by work, the business owner shall prohibit or restrict work according to the medical diagnosis. However, upon recovery, the business owner shall, without delay, permit the employee to resume their original work. (Article 45)

(4) Extending working hours prohibited

The business owner shall not have an employee who is engaged in harmful or dangerous work working more than six hours per day or thirty-four hours per week. (Article 46)

(5) Restriction of employment by qualification

The business owner shall not allow any persons other than those who have the qualifications, license, experience, and/or required skills, to perform harmful or dangerous work. (Article47)

6. Documenting & keeping records

Documented records concerning appointment of safety and health personnel and the examinations on harmfulness and toxicity of new substances, records on working environment evaluations and employee medical examinations shall be kept for 3 years (internal inspection records shall be kept for 2 years). (Article 64)

IV. Conclusion

Almost all accidents occurring on construction sites and in industrial workplaces, including the tragic Sewol ho accident, can be connected to the absence of a safety and health attitude. We need to remember that happiness and safety at work does not occur without the proper planning, and can only be guaranteed when the employers and workers strictly observe this Act.

The Kim Young-Ran Act(Anti-Corruption Act) and Joint Penal Provisions Related to the Employer's Legal Liabilities

I. Introduction

Even though Korea has reached the status of a developed country, many indices still show that the morality of public officials is perceived as being relatively low. According to a survey by the Anti-Corruption and Civil Rights Commission (ACRC), on the corruption perception index, 57% of the people who participated in the survey responded that civil servants are corrupt. Even in an international evaluation in 2015, Korea's Corruption Perceptions Index ranked 56; in 27th place out of 37 OECD countries.[26] Accordingly, it became necessary to legislate a comprehensive anti-corruption act in order to overcome the limitations of the existing anti-corruption laws (the Criminal Act, the Public Service Ethics Act, etc.) in preventing corruption, get rid of the corruption within the public services, and reach a transparent society. Thus, the "Improper Solicitation and Graft Act (hereinafter referred to as the "Kim Young-Ran Act" or the "Anti-corruption Act" was enacted on March 27, 2015 at the suggestion of Kim Young-Ran, the chief of the ACRC, and was implemented on September 28, 2016. This Kim Young-Ran Act includes in its scope of application employees engaged in media companies, private schools, and even the spouses of employees, and so affects the lives of ordinary people.[27] In particular, this Act contains joint penal provisions that can be used to punish a company when an employee violates this law regarding improper solicitation or provision of financial or other advantages, and so all companies should implement thorough precautions for the purpose of ensuring the avoidance of any joint punishment.

Hereunder, I will review the Kim Young-Ran Act in terms of its principals and the exceptions to what is considered improper solicitation and prohibited financial or other advantages, after which I will also carefully examine its joint penal provisions, their application, and the necessary efforts required of a company.

II. The Anti-corruption Act

1. Concept and scope of application

(1) Concept: The purpose of this Act is to ensure that civil servants and relevant persons fulfill their duties in an upright manner and to secure the public's confidence in public institutions by forbidding improper solicitation of civil servants or other relevant persons and by prohibiting them from accepting financial or other advantages. This Act is composed of two major parts: anti-solicitation measures and prohibited financial and other advantages.

[26] Document issued by the Anti-Corruption and Civil Rights Commission in 2016.

[27] The scope of application is much wider, and so several petitions to the Constitution Court were submitted, but all were rejected. The Constitution Court ruling on July 28, 2016 (2015 Hunma 236, 412, 662, 273 combined cases)

(2) Scope of application

1) "Civil servants and relevant persons" refers to ① civil servants and employees working in ② public service-related organizations,[28] ③public institutions, ④ schools of various levels and educational corporations, and ⑤media companies.
2) Spouses of civil servants and relevant persons
3) Private persons performing public duties: ① members of various committees, ② persons who have authority delegated by a public institution, ③ persons on assignment from the private sector to a public institution, ④ professionals who engage in deliberation or assessment in relation to public duties.
4) General people: persons who improperly solicit civil servants or who offer them financial or other advantages

2. Prohibition of improper solicitation[29]

(1) Details (14 types): ① Authorization, permission, and any other actions, ② mitigating or remitting various administrative dispositions or punishments, ③ intervening or exerting influence in the appointment, promotion, or any other personnel management of civil servants, ④ using influence so that a person is appointed to or rejected from a position which is involved in the decision-making of a public institution, ⑤ using influence so that a specific individual is chosen or rejected by a public institution, ⑥ using influence so that duty-related confidential information on tenders, auctions, etc., is disclosed, ⑦ using influence so that a specific person is selected or rejected as a party to a contract, ⑧ intervening or exerting influence so that subsidies, etc., are assigned to, provided to, invested in, or deposited with a specific person, ⑨ using influence so that a specific person buys, exchanges and/or uses goods and services that are produced, provided or managed by public institutions beyond the normal monetary value, ⑩ using influence so that admissions, grades, performance tests or other matters related to schools of various levels are handled and/or manipulated, ⑪ using influence so that physical examination for conscripts, assignment to a military unit, appointments or any other matters related to military service are handled in a specific way, ⑫ using influence so that, in various assessments and judgments performed by public institutions, specific assessments or judgments are made, ⑬ using influence so that a certain person is selected or rejected as the subject of administrative guidance, control, inspection or examination, or where the outcome thereof is manipulated or discovered violations are ignored, and ⑭ using influence so that the

[28] Public service-related organizations: The Bank of Korea, public companies (Korea Electric Power Corporation, etc.); local corporations (Seoul Metro, etc.); government-invested corporations/subsidiary organizations (Korean Red Cross, etc.); work assignment organizations (National Agricultural Cooperative Federation, etc.); institutes appointing directors (Korea Workers' Compensation and Welfare Service, etc.).

[29] Punishment for improper solicitation (Articles 22, 23 of the Act)

Violation	Punishment
A stakeholder improperly solicits a civil servant directly	**None**
A stakeholder improperly solicits a civil servant through a third party	**Fine for negligence not exceeding KRW 10 million**
A person improperly solicits a civil servant on behalf of a third party (private person)	**Fine for negligence not exceeding KRW 20 million**
A civil servant improperly solicits another civil servant on behalf of a third party	**Fine for negligence not exceeding KRW 30 million**
A civil servant or relevant person who performs functions as directed by an improper solicitation	**Imprisonment for not more than two years or a fine not exceeding KRW 20 million**

investigation, judgment, adjudication, decision, conciliation, arbitration, or settlement of a case or any other equivalent function is handled in a specific manner.

(2) Exceptions: In order not to discourage claiming legitimate rights, claiming, or demanding, the following 7 items are permitted under the Anti-corruption Act:
① Requesting certain actions, such as asking for remedy against or resolution of infringement of a right; suggesting or recommending the establishment, amendment or rescission of related Acts and/or subordinate statutes and standards; ② Publicly soliciting a civil servant or relevant person to take a certain action; ③ Where an elected public official, political party, civil society organization, etc., conveys a third party's complaints and grievances the public interest; ④ Requesting or demanding that a public institution complete a certain duty within a statutory deadline, or inquiring or asking verification about progress; ⑤ Applying or making a request for verification or certification of a certain duty or juristic obligation; ⑥ Requesting an explanation or interpretation of systems, procedures or Acts and/or subordinate statutes related to a certain duty in the form of an inquiry or consultation; and ⑦ Any other conduct not deemed as contravening social norms.

3. Acceptance of financial or other advantages[30]

(1) Details: The previous Anti-Corruption Act required both a "work-related connection" and clear "benefits given in return for favors" in order for an action to be subject to punishment, but this new Act does not require directly-related "bribery in return for favors", and any civil servant who receives more than KRW 1 million will be punished without the need for any work-related connection. In cases where a civil servant or relevant person accepts, requests, or promises to receive any financial or other advantage with a value in excess of KRW 1 million at one time or a total of KRW 3 million within the same fiscal year from the same person, regardless of the relationship between such offer and his or her duties, he/she is subject to criminal punishment. However, in instances where less than KRW 1 million is accepted at one time, or less than a total of KRW 3 million within the same fiscal year, the civil servant is subject to criminal punishment only if there is a connection with his/her duty.

Financial and other advantage refers to money, goods, and other financial gain, as well as tangible or intangible gains which provide convenience or satisfy the person's needs or desires.

[30] Punishment for Graft (Articles 22, 23 of the Act)

Violation	Punishment
· A civil servant receives a financial or other advantage in excess of KRW 1 million at one time or a total of KRW 3 million within the same fiscal year from the same person, regardless of a connection to his or her duties · A civil servant does not report the fact that his or her spouse received a financial or other advantage · A person provides a financial or other advantage	Imprisonment for not more than three years or a fine not exceeding KRW 30 million
· A civil servant receives a financial or other advantage not exceeding KRW 1 million in connection with his or her duties, regardless of whether such offer is given in exchange for favors · A civil servant does not report such financial or other advantage received by his or her spouse · A person provides a financial or other advantage to a civil servant or his or her spouse.	Fine for negligence of two to five times the received amount
· A civil servant receives an honorarium exceeding the allowable limit for an outside lecture	Fine for negligence not exceeding KRW 5 million

Examples are 1) money, property, hotel vouchers, memberships, admission tickets, etc., 2) meal, alcohol or golf, provision of transportation, etc., 3) providing economic benefits such as relief of debt, provision of employment, offering of favors, etc.

"Work-related connection" refers to the "duties handled by one's position." Examples are: 1) duties authorized generally and abstractly under the law, 2) duties performed actually or habitually, 3) duties to support or influence decision makers, and 4) duties closely related to the job.

(2) Exceptions: There are 8 valid situations for accepting financial or other advantages:

① Financial or other advantages that a public institution offers to civil servants or relevant persons who belong to the institution or are on assignment thereto, or which a senior civil servant or relevant person offers to his or her subordinates to either raise their morale or console, encourage, or reward them;

② Food and drink, congratulatory or condolence money, gifts, or other items that are offered to facilitate performance of duties or for social relationships, rituals, or assistance to festivities and funerals, the value of which is within the limit provided by Presidential Decree:

- Meals are allowed to a value of not exceeding KRW 30,000;
- Gifts are allowed to a value of not exceeding KRW 50,000;
- Congratulatory and condolence payments are allowed to a value of not exceedingKRW 100,000;

③ Financial or other advantages that are offered from a legitimate source due to a private transaction;

④ Financial or other advantages that relatives (under Article 777 of the Civil Act) of a civil servant or relevant person offer;

⑤ Financial or other advantages that employees' mutual aid societies, clubs, alumni associations, ethnic societies, friendship clubs, religious groups, social organizations, etc. related to a civil servant or relevant person offer to their members in accordance with the rules prescribed by the respective organizations, and financial or other advantages from those who have long-term and continuous relationships with a civil servant or relevant person;

⑥ Financial or other advantages that are uniformly provided by an organizer of an official event related to the duties of a civil servant or relevant person to all participants thereof, including transportation, accommodation, and food and drink;

⑦ Souvenirs or promotional goods distributed to many and unspecified persons, or awards or prizes that are given by a contest or lottery; and

⑧ Financial or other advantages that are permitted by any other Acts and/or subordinate statutes, standards or social norms.

III. Joint Penal Provisions and the Employer's Obligations

1. Concept

The joint penal provisions refer to a system of punishing the employee and the employer together for violations of the law by the employee in the course of his/her work. Article 24 of the Anti-corruption Act (Joint Penal Provisions) stipulates that "Where an employee commits a

violation: improper solicitation and/or provision of financial or other advantage, the violator and his/her employer are punished together. Provided, that this shall not apply where the employer has not been negligent in giving due attention and supervision concerning the relevant duties so as to prevent such violation."

The Supreme Court ruled, concerning the reasons for the employer to be exempted from liability, that whether the employer has been negligent in giving due attention and supervision shall be determined by considering the following items collectively: ① the violation and its relevant situation, such as the purpose for enacting that law, the severity of damages coming from infringing rights due to violation of the relevant law, and the purpose for introducing the joint penal provisions in that law; ② the concrete details of the violation and actual damage caused by the violation of this law; and ③ the size of the business, along with the degree of command and supervision by the employer; and ④ the company's efforts to prevent violations.[31]

2. Related cases[32]

1) Improper solicitation

Case 1: In a case where employee X of a construction company solicited civil servant A of 00 District Administration Office for permission for a building project in violation of construction laws: In applying the joint penal provisions, the construction company will receive a fine not exceeding KRW 20 million.

Case 2: In a case where employee X of a construction company solicited civil servant A of 00 District Administration Office for permission for a building project, providing whiskey worth KRW 700,000: If "bribery" as defined in the Criminal Act, is applied, the construction company will not be punished by the joint penal provisions, but if the case is not admitted as "bribery" under the Criminal Act, the joint penal provision is applied and a fine will be given, not exceeding KRW 20 million.

2) Accepting financial or other advantages

Case 1: While a construction company was waiting to receive a construction permit from the District Administration Office, in a case where employee X provided whiskey worth KRW 700,000 to the civil servant in charge of construction permits, employee Y provided gift tickets worth KRW 500,000 to the same person, and employee Z provided a meal equivalent to KRW 200,000 to the same person, all in different work-related meetings: In applying the joint penal provisions, the construction company shall bear a fine of between KRW 2.8 million and KRW 7 million won.

Case 2: In a situation where employees X and Y of a construction company invited newspaper reporters A, B, C, D to a work-related dinner and spent KRW 120,000 for the dinner, and paid KRW 240,000 at the bar in a second location: As entertainment of the civil servants by

[31] **Supreme Court ruling on February 25, 2010 (2009do5824), on September 9, 2010 (2008do7834), etc.**

[32] Document issued by the Anti-Corruption and Civil Rights Commission in 2016.

employees X and Y is evaluated as one behavior, in applying the joint penal provision, one fine will be levied, which will be between KRW 120,000 and KRW 300,000 won: A fine for negligence of two to five times the received amount → (120,000/6 persons) + (240,000/6 persons) = KRW 60,000.

3. Cases in other countries

1) The United States' Anti-corruption Compliance: Whether the company established and normally operated effective anti-corruption compliance plays an important part in cases where the court decides to prosecute the company or determine a level of corporate punishment. A company simply preparing the compliance documents is not sufficient, but whether in actuality their preparations were effective or not. The US provides guidelines in its anti-corruption law and stipulates substantial obligations that the employer must strictly adhere to.

2) The United Kingdom's Anti-corruption Act: In cases where an employee of a company or other related person in its agency and/or subordinate company provides bribes to other people in order to acquire more business or expect favors, the company itself will be charged for criminal violation. Provided, the company will not be liable if the company can verify its efforts to implement appropriate measures to prevent persons from giving bribes.

IV. Conclusion

In relation to the Kim Young-Ran Act, a company's main concern is how it can avoid activities that may be punishable by the joint penal provisions. In order to avoid such liability, the company must prepare both preventative and disciplinary measures as well as rules for compliance, conduct ethics education, and actually take disciplinary action for offenders. In particular, with the introduction of the Kim Young-Ran Act, it is necessary to recognize that a company's existing entertainment practices could be detrimental not only to the employee him or herself, but to the company as well. The Anti-corruption Compliance program in the United States or its equivalent in the United Kingdom can be good reference points for adequate procedures to prevent corruption. The best way for a company to avoid this joint punishment is to exert real effort in terms of implementing considerable attention and supervision.

Protection of Motherhood

I. Understanding Motherhood Protection

The Korean government is taking steps to protect motherhood through specific provisions stipulated by the Constitution of the Republic of Korea[33] as well as other practical provisions stipulated by various labor laws. Despite these protection laws, the birthrate has decreased to an average of just 1.17 persons per couple as of 2016, and the government has strengthened its efforts in response towards revising labor laws designed to promote workforce participation by women and also increase the birthrate. I present here a summary of the most recent laws and revisions concerning protection of and support for motherhood.

II. Protection of Maternal Employees

A “maternal employee” refers to a woman who is pregnant or is within her first year after childbirth, and is therefore provided special protection under the various laws so designed.

1. Employment in hazardous/dangerous work prohibited

Employers shall not assign maternal employees to mentally and physically hazardous work. In addition, they shall not assign women aged 18 or older who are not pregnant to work that is hazardous to their possible future pregnancy and/or childbirth. Occupations that are prohibited are described in the attached Table 4 of the Presidential Decree (Article 65 of the LSA (Labor Standards Act)).

2. Restrictions on extended work, night work and holiday work

(1) Extended work

Employers shall not place pregnant female employees on overtime duty or flexible work, and, in the event of such a request from the employee, she shall be assigned light duties. Employers shall not permit women who have had less than one year since childbirth to work more than 2 hours in overtime per 8-hour work day, and 6 hours per work week of 40 hours, even if so agreed in a collective agreement (Article 51, 71, 74 of the LSA).

(2) Night work and holiday work (Article 70 of the LSA)

Employers shall not assign maternal employees to work at night (from 10 P.M to 6 A.M.) or on holidays. However, exception to such restrictions on night work and holiday work are possible in cases where the employer obtains permission in advance from the Minister of Employment & Labor and 1) there is consent from the employee with less than one year since childbirth; or

[33] Constitution of the Republic of Korea (Article 36, Subparagraph 2): The State shall endeavor to protect mothers.

2) a pregnant woman makes such a request.

3. Protection leave for maternal employees

(1) Maternity leave

Employers shall grant pregnant female employees 90 days of maternity leave (120 days if a woman is pregnant with two or more babies), to be used before and after childbirth. In such cases, a minimum of 45 days (60 days for multiple babies) shall be allocated after childbirth. At the end of the maternity leave, the employer shall allow the female employee to return to the same work, or other work at the same rate of pay, as before the leave. The first 60 days (75 days for multiple babies) of leave shall be paid leave. The remaining 30 days (or 45 days for multiple babies) qualify for reimbursement of up to 1.5 million won (2.025 million won for multiple babies) through employment insurance, provided, that for companies[34] eligible for preferential support, the employee concerned will receive the first 60 days' maternity leave allowance (up to 1.5 million won per month) from employment insurance. In this case, the employer will pay the amount of the ordinary wage exceeding the government subsidy (Article 74 of the LSA).

* Amount of Maternity Leave Benefits for Companies Eligible for Priority Support 1. Maximum amount: 4.05 million won (1.35 million won per month) in cases where the amount of ordinary wage corresponding to 90 days of maternity leave or miscarriage/stillbirth leave exceeds 4.05 million won, provided that in cases where the period of payment of maternity leave benefits, etc., is less than 90 days, the amount shall be calculated based on the number of actual leave days; and 2. Minimum amount: an amount equivalent to ordinary wage for the period of payment of the maternity leave benefits, etc., calculated using the hourly minimum wage as the hourly ordinary wage of the employee in cases where the hourly ordinary wages of the employee are lower than the hourly minimum wage applied on the beginning date of maternity leave or miscarriage/stillbirth leave in accordance with the Minimum Wage Act.

Employers shall not dismiss any female employee during a period of temporary interruption of work before or after childbirth as provided herein and within 30 days thereafter. For the purpose of calculating annual paid leave, the maternity leave shall be regarded as attended days. Also, in calculating the average wage for purposes of severance payment, the period of maternity leave and the wage paid during the maternity period shall be deducted from the calculation of average wage required to be included in the period and wage.

[34] Preferentially Supported Companies (Article 12 of the LSA Presidential Decree)

Type of Industry (Classification code)	Number of Employees
1. Manufacturing (C);	500 persons or less
2. Mining (B); 3. Construction (F); 4. Transportation (H); 5. Publishing, filming, broadcasting, and IT services (J); 6. Facility management and company support services (N); 7. Professional, science and technology services (M); 8. Health and social security insurance services (Q).	300 persons or less
9. Wholesale and retail services (G); 10. Hotel and restaurant services (I); 11. Finance and insurance (K); 12. Art, sports, and other leisure-related services (R);	200 persons or less
13. Other businesses.	100 persons or less

(2) Advance maternity leave

In cases where an employee who is or was recently pregnant requests leave due to a miscarriage or other pregnancy-related reason, the employer shall allow her to take leave at any time prior to the expected due date. In any case, 45 or more continuous days (60 days for multiple babies) shall be provided after childbirth or miscarriage. Reasons for advance maternity leave are as follows (Article 74 of the LSA):

1) *In cases where a pregnant employee went through a miscarriage or stillbirth in the past;*
2) *In cases where a pregnant employee is over 40 years of age at the time of the request for a maternity leave; and*
3) *In cases where a pregnant employee submits a medical document issued by a hospital that describes the danger of miscarriage or stillbirth.*

(3) Maternity leave for miscarriage or stillbirth

At the request of a maternal employee who has suffered a miscarriage or stillbirth, the employer shall grant her leave for miscarriage or stillbirth, except where the miscarriage is the result of an artificially-induced abortion. If a maternal employee who has had a miscarriage or stillbirth asks for maternity leave, she must submit to the employer an application for miscarriage or stillbirth leave, providing the reason for the request for leave, the date of the miscarriage or stillbirth and the pregnancy period, along with a medical certificate issued by a medical organization. In cases of miscarriage or stillbirth, the employer shall pay the ordinary wage for the period given for maternity leave, just as with a normal maternity leave, as follows:

1) A pregnancy period of 11 weeks or less: five days from the date of miscarriage or stillbirth;
2) A pregnancy period of 12 weeks or more but less than 15 weeks: ten days from the date of miscarriage or stillbirth;
3) A pregnancy period of 16 weeks or more but less than 21 weeks: thirty days from the date of miscarriage or stillbirth;
4) A pregnancy period of 22 weeks or more but less than 27 weeks: sixty days from the date of miscarriage or stillbirth; and
5) A pregnancy period of 28 weeks or more: ninety days from the date of miscarriage or stillbirth.

(4) Reduced working hours during the pregnancy period

In cases where a maternal employee who is pregnant for 12 weeks or less or 36 weeks or more applies for reduced working hours, the employer shall allow it. Provided that the pregnant employee's current working hours are less than 8 per day, the employer may reduce her working hours to 6 hours per day. The employer cannot reduce the wage of the employee due to the reduced working hours.(Article 74 of the LSA)

(5) Allowing paid time off for prenatal examinations

If a pregnant female employee makes a request to take time off from work to receive a regular pregnancy health checkup, the employer shall allow her to do so. An employer shall not reduce an employee's wages on the grounds that she took time off for the relevant health checkup. The paid time off allowance for prenatal examinations is as follows: 1) one time per every 4 weeks up to the 28th week of pregnancy; 2) one time per every 2 weeks from 29th to 36th week; 3) one time every week during the 37th week or later (Article 74-2 of the LSA, Article 10 of the Protection of Motherhood Act).

4. Paternity leave

If an employee requests leave on the grounds of his spouse giving birth, the employer shall grant him leave of three days or more within five days. In this instance, the first three days' leave shall be paid. The leave may not be requested after a lapse of thirty days from the date when the employee's spouse gave birth. (Article 18-2 of the Act on Equal Employment & Support for Work-Family Balance Assistance: hereafter referred to as the 'Equal Employment Act').

5. Nursing Hours

A female employee who has an infant under twelve months of age shall be allowed to take paid nursing recesses, twice per day for at least 30 minutes each (Article 75 of the LSA).

III. Childcare Leave & Reduction of Working Hours for the Childcare Period

1. Childcare Leave (Article 19 of the Equal Employment Act, Article 10 and 11 of its Presidential Decree, Article 70 of the Employment Insurance Act):

Employers shall grant childcare leave if an employee asks for it to take care of his/her child (including an adopted child) aged 8 or under who is attending up to the 2nd grade of elementary school. This shall not apply in such cases where 1) an employee has offered continuous services in the business concerned for less than a year prior to the scheduled date of childcare leave, or 2) an employee's spouse is on childcare leave for the same infant. An employee who intends to apply for childcare leave shall submit to his/her employer an application with documentation verifying the birth date of the infant to be cared for, not less than 30 days prior to the scheduled start date of leave. The childcare leave benefits from Employment Insurance shall be paid at a rate of up to 40/100 of the monthly ordinary wage, from a minimum of 500,000 won per month to a maximum of 1 million won per month.

The period of childcare leave shall be one year or less. The childcare leave can be used all at once or at two different times, up to a total period of one year. The period of childcare leave shall be included in the employee's continuous service period. Employers shall not dismiss or give any other unfavorable treatment to a employee on account of taking childcare leave, nor dismiss the employee concerned during the childcare-leave period; provided that this shall not

apply if the employer is not able to continue operating his/her business. After the end of the childcare leave, the employer shall restore the employee to the same work as before the leave, or any other work paying the same level of wages. In calculating the attendance rate for the annual paid leave, the period of childcare leave shall be exempted for the contractual working hours, which means that the annual paid leave is only granted for the period of actual work, excluding the period of childcare leave.[36] The period of childcare leave for a fixed-term employee or a dispatched employee shall not be included in the employment period or the dispatched period.

2. Reduction of working hours for the childcare period

(Article 19 of the Equal Employment Act, Article 73-2 of the Employment Insurance Act):

If an employee eligible to ask for childcare leave requests a reduction of working hours instead of childcare leave, the employer shall grant it. However, the employer is not required to grant it in cases where it is not possible to hire replacement personnel, and where it causes a considerable difficulty for the normal operation of business If the employer does not grant the reduction of working hours for the childcare period, the employer shall notify the employee in writing of the reason for such decision, and have the employee take normal childcare leave or else consult with the employee as to whether to support him/her through other measures. Employers shall not apply unfavorable working conditions to an employee who works reduced working hours for the childcare period on grounds of the working hour reduction, except when applying them in proportion to the usual working hours.

The period of working hour reduction for the childcare period shall be one year or less. If the employer grants a reduction of working hours for the childcare period to the relevant employee, the working hours after reduction shall be a minimum of 15 hours per week but shall not exceed 30 hours per week. Employers shall not dismiss or give any other disadvantageous treatment to the employee on account of the working hour reduction. After the period of working hour reduction is over, the employer shall restore the employee to the original work or to other work paying the same level of wages as before the reduction of working hours.

[36] Government guideline: Labor Standards-4336, August 18, 2004.

Criteria for Evaluating Sexual Harassment and the Employer's Duty

I. Concept of sexual harassment

EQUAL EMPLOYMENT ACT, Article 2 (Definition)

(2) "Sexual harassment at work" in this Act refers to a situation where an employer, a senior, or an employee makes another employee feel sexually humiliated or offended by using sexually charged behavior or language using their high status at work or in relation to work, or provides a disadvantage in employment on account of a rejection of the sexual gesture or other requests.

1. Using their high status at work or in relation to work
   (1) It means, no matter whether the situation takes place inside the workplace orin a public area, employer or employee use their status at work or in connection to work.
   (2) Although it occurs beyond working hours and outside the workplace, it is sexual harassment if it is connected to work performance.
   (3) The concept of workplace includes the customer' office, dinner with a business partner, business partner's or customer's etc., if there is a connection to work.
   (4) Although there is no connection in regards to rank in the workplace, its a connection with the counterpart of a customer company that the employee has to contact in connection with work.

2. Environmental and conditional sexual harassment
   (1) Environmental sexual harassment
   Environmental sexual harassment is where an employer, a senior, or an employee sexually humiliates or offends another employee with sexually charged behavior or language using a higher status at work or in connection to work, or creates a disadvantage in their employment.
   (2) Conditional sexual harassment
   Conditional sexual harassment is where an employer, a senior, or an employee disadvantages another employee by using their higher status at work or in connection to work on account of rejection to sexual advances or demands.

II. Types and criteria of evaluating sexual harassment

1. Types of sexual harassment

[Implementation rule of the EEA (Attachment) - related to the Article 2 of the ACT]

A. Physical behaviors

(1) Behaviors such as physical contact like kissing, hugging, or hugging behind

(2) Behaviors such as touching the physical parts like breast, hip, etc.

(3) Behaviors such as forcing massage and caressing

B. Linguistic behaviors

(1) Behaviors such as saying a filthy joke or telling lustful and indecent words, including in telephone conversations)

(2) Behaviors such as likening appearance to sexual things or evaluating

(3) Behaviors such as asking about sexual relationships or facts, or intentionally distributing information of a sexual nature

(4) Behaviors such as forcing sexual relations or requesting sexual relations

(5) Behaviors such as forcing a female to sit close and fill glasses at a dinner meeting, etc.

C. Visual behaviors

(1) Behaviors such as putting up or showing lustful photos, pictures, drawings, etc., including distribution by email or fax

(2) Behaviors such as intentionally exposing or touching one's own physical parts in a sexual manner

D. Other language or behavior which makes other workers feel sexually humiliated or offended as a socially accepted notion

2. Criteria of evaluating sexual harassment

(1) Concept of criteria for evaluating sexual harassment

[Implementation rules of the EEA (Attachment)]

Whether or not evaluating sexual harassment, you should consider the victim's subjective conditions. As a socially accepted idea, you should also consider together how a reasonable person evaluates or copes with the situation against the particular controversial behaviors involved in the victim's case. Accordingly, you should review whether the situation created a threatening and hostile employment environment as a result and hindered work efficiency.

(2) Concrete contents of evaluating sexual harassment

A. Undesired behaviors

Whether a certain behavior belongs to sexual harassment shall be determined for each case after totally considering all situations and a record of the characteristics of the sexual language or behavior involved and the incident-occurring background. Of

course, it is not sexual harassment when two parties want or agree to have a sexual relationship.

However, it is sexual harassment when one party does not want such behavior. An undesired act shall not require repeating or recurring. A one time sexual act can be regarded as a sexual harassment.

B. Victim's perspective

Criteria of evaluating sexual harassment at work are situations where the victim felt sexually humiliated or offended. It can be sexual harassment if the victim felt sexually humiliated or offended. In this case, whether or not the offender intended to sexually harass cannot affect the evaluation criteria. That is, sexual harassment at work provides important criteria, which is how the victim was affected by the sexual language or behavior.

C. No clear expression of intention required

Recognition of sexual harassment does not require that the victim prove that the offender intented to sexually harass. The undesired behavior in practice shall be estimated objectively in consideration of the victim's language and behavior or surrounding circumstances.

D. Whole circumstances considered during the incident

Whether sexual harassment was or was not committed shall be reviewed by considering totally the record events and all surrounding circumstances. All facts and circumstances related to the work environment causing sexual harassment shall be organized and recorded totally and synthetically. Also, the review of the records shall be implemented from all points of view and considering all circumstances.

III. Employer's duties to prevent sexual harassment

Article 12 (Prohibition of Sexual Harassment at Work)
Employers, senior workers or workers shall not engage in sexual harassment at work.
Article 39 (Fine for Negligence)
(1) An employer who commits an action in violation of Article 12 shall be punished by a fine for negligence of ten million won or less.

Article 13 (Education To Prevent Sexual Harassment at Work)
(1) An employer shall implement an educational program to prevent sexual harassment at work and create a safe work environment for workers. The methods, content, and frequency of the program and other necessary requirements shall be determined by Presidential Decree.
Article 39 (Fine for Negligence)
(3) One who falls under any of the following subparagraphs shall be punished by

a fine for negligence of 3 million won or less. 1. One who fails to implement the measures prescribed in Article 13(1).

*** Implementation Decree, Article 3 of the EEA

(1) The employer shall implement an educational program to prevent sexual harassment at work once or more per year.

(2) The preventive program shall include the following items.

1) Laws concerning sexual harassment

2) Procedures or criteria for remedy in the event of sexual harassment at work

3) Consultation for grievance and procedure for remedy to the victim of sexual harassment at work

4) Other necessary items to prevent sexual harassment at work

(3) A preventive program can be implemented through employee seminars, morning meetings, conferences in consideration of the size of the business and the situation. Provided, that simply distributing or putting up educational materials cannot be deemed as the implementing preventive training.

Article 14 (Measures to be taken in case of Sexual Harassment at Work)

(1) An employer shall take disciplinary actions and other equivalent measures without delay upon the finding of sexual harassment at work.

Article 39 (Fine for Negligence) (2) An employer who commits an action in violation of Article 14(1) shall be punished by a fine for negligence of five million won or less.

(3) An employer shall not take unfavorable measures such as dismissal, or other disadvantageous measures against a worker who was sexually harassed at work.

Article 37 (Penal Provisions) (2) An employer who commits an act in violation of Article 14(3) shall be punished by imprisonment of three years or less or a penalty of 20 million won or less.

Article 34 (Application to Dispatched Workers)

When the provision of Article 13(1) is applied to the workplace where dispatched workers are used pursuant to the Act relating to Protection, etc. for Dispatched Workers, the using employer prescribed in Article 2(4) of the Act relating to Protection, etc. for Dispatched Workers shall be regarded as the employer prescribed in this Act.