Minimum Wage and the Employer's Obligations

I. Introduction

On July 14, 2018, the Minimum Wage Council decided that the minimum wage, to be applied in 2019, would be KRW 8,350 per hour, which is equivalent to KRW 1,745,150 for a 40-hour week. This is an increase of 10.9% over the previous year, and it is expected that the impact on Korea's small and medium-sized companies will be severe. The increase in minimum wage is the most desirable way to reduce the difference in wages between regular and irregular employees, but a great change is expected in the case of SMEs and small-scale service companies that are unable to pay the minimum wage.

According to the current minimum wage system in Korea, one minimum wage is applied at all workplaces, without distinction as to the type of industry or region, and all employers are obligated to pay at least the minimum wage.

In the following, I will explain the employer's obligations, the criteria for determining violations of minimum wage, calculation of hourly wage for minimum wage, and the practical applications thereof.

II. Application of the Minimum Wage

1. The employer's obligations

The minimum wage system guarantees the minimum amount of hourly wage for employees. An employer can pay more than the minimum wage, and an employment contract stipulating a wage which is less than the minimum wage shall be invalid only for that part, and any wage that was paid at less than the minimum wage must be paid additionally. In cases of violation of this, the employer shall be punished by imprisonment for up to three years or a fine not exceeding KRW 20 million (Articles 6 and 28 of the Minimum Wage Act). In addition, when a minimum wage is announced, the employer shall inform employees of 1) the new minimum wage rate, 2) the scope of wages excluded from application of minimum wage, and 3) the effective date. This notice must be posted in places where it can be easily seen by all employees, or through other appropriate methods. In case of violation of this, the employer shall be punished by a fine up to KRW one million (Article 11 and Article 31 of the Act). Exceptions to the application of the minimum wage are: ① persons who are in a probationary period and who are within 3 months of the day of probation (except for employment contracts of less than one year) and ② surveillance or intermittent work approved by the Minister of Employment and Labor.[1]

[1] If workers engaged in surveillance and intermittent work have not obtained approval from the Minister of Employment and Labor under subparagraph 3 of Article 63 of the Labor Standards Act, the minimum wage in accordance with Article 5 (1) of the Minimum Wage Act will be applied (Supreme Court ruling on June 11, 2015 2003 da 38695).

2. Criteria for determining violation of minimum wage

To determine whether the wages paid by a workplace are less than the minimum wage, ① the total wages included in the minimum wage from the wages paid monthly, ② will be divided by the monthly contractual working hours, and then hourly minimum wage will be calculated, ③ and then the amount will be compared with the minimum wage.[2]

The scope of wages to be included in calculation of minimum wage according to the Minimum Wage Act includes 1) wages or allowances to be paid according to wage items stipulated in a collective agreement, the Rules of Employment, and/or an employment contract, or repeated regular payments; and 2) wages or allowances to be paid periodically or in a lump sum once or more every month for contractual labor according to previously agreed-upon payment conditions and payment rate (Article 2 of Enforcement Regulation of the Act (Table 2).

Wages excluded from minimum wage rules are as follows (Table 1 of the Act):

1) Wages, other than those paid regularly once or more every month

① Diligence allowances paid for superior attendance over periods exceeding one month;

② Long-service allowances paid for continuous work over periods exceeding one month;

③ Incentives, efficiency allowances, or bonuses presented for various reasons over periods exceeding one month; and

④ Other allowances paid temporarily or incidentally, such as marriage allowances, winter fuel allowances, kimchi allowances, exercise subsidies, etc., and which have no fixed payment date or are irregularly paid, even though payment conditions were determined in advance.

2) Wages, other than those paid for contractual working hours or contractual working days

① Annual or monthly paid allowances, work allowance on paid leave, work allowance on paid holidays;

② Wages and additional allowances for extended work or holiday work;

③ Additional allowances for night work;

④ Day & night-duty allowances; and

⑤ Wages not admitted to be paid for a contractual working day, regardless of how such payments are termed.

3) Other wages deemed inappropriate to be included in the minimum wage:

Actual or similar expenses to support employee welfare such as meals, dormitory accommodation or other housing, company shuttle buses, etc.

[2] Supreme Court ruling on June 29, 2007 2004 da 48836 (Calculation of minimum wage).

3. Hourly wage calculation for the minimum wage

The minimum wage shall be determined in units of hours, days, weeks, or months. When determining the minimum wage in units of days, weeks or months, the hourly wage should also be indicated. The hourly wage determined for a month shall be the monthly amount divided by the number of contractual working hours in one month. In order to calculate the hourly wage of the monthly wage, the amount of the wage divided by the number of working hours per month becomes the hourly minimum wage (Article 5 of the Act, Article 5 of the Enforcement Decree). The prescribed working time of one month includes paid weekly holiday allowances (Article 55 of the Labor Standards Act) and paid allowances on off-days according to a collective agreement. The related court ruling and administrative interpretations are as follows:

(1) Court ruling

The court ruling for the contractual working hours per month is that "Article 5 of the Enforcement Decree of the Minimum Wage Act stipulates that the wages paid on a weekly or monthly basis shall be wages divided by the number of contractual working hours per week or month. The so-called "weekly holiday allowance", which is a wage for a paid holiday, is a wage that is regularly paid at least once a month for given work. Therefore, this regularly paid weekly holiday allowance should be included in the wage calculation."[3] In a sample case of 40 hours per week, the contractual working hours for the month is 209, including the weekly holiday allowance.

(2) Labor Ministry guideline

According to Article 5-2 of the Minimum Wage Act and Article 5 of the Enforcement Decree of the same Act regarding wages for application of the minimum wage, the monthly wage prescribed for a monthly period shall be the wage divided by the number of contractual working hours per month. In a workplace that conducts a 40-hour workweek each month, 'if 8 hours of Saturday work are treated as paid working hours' even though there is no work duty provided on this Saturday, the number of hours worked in a month for the application of the minimum wage is calculated as 243 hours including paid weekly holiday allowance [{40 hours + 8 hours (Saturday paid work) + 8 hours (paid weekly holiday)} x 365/7 ÷ 12 ≒ 243 hours].[4]

III. Practical Applications of the Minimum Wage

1. Quarterly incentives, meal charge and vehicle maintenance expenses

(1) Quarterly incentives shall not be considered as part of the minimum wage.

(2) The "meal charge (food expenses)" is paid regularly and uniformly to all employees on a monthly basis in accordance with the collective agreement and the rules of employment, and so it is decided to include these in the ordinary wages in the Rules of Employment. So, the meal charge is included as wages for the application of the minimum wage. A "vehicle

[3] Supreme Court ruling on January 11, 2007, 2006 da 64245 (Case related to minimum wage)

[4] MOEL guideline on August 21, 2004, Wage Policy-3074; December 21, 2009, Labor Standards-5970

management fee" is paid to the driving worker at least once a month in accordance with predetermined payment conditions, and is understood as a duty or service allowance for the specific worker, and can therefore be included as wages for the application of the minimum wage.[5]

2. Bonuses and sales bonuses

(1) Bonuses calculated on a yearly basis and regular bonuses

In cases where a bonus is paid equally each month, after it is calculated and fixed for the yearly period, this monthly bonus is not included in the minimum wage, but in cases where a bonus is calculated based on a monthly period, it is included in the minimum wage. Bonuses that are calculated on a yearly basis based on a collective agreement and paid regularly and uniformly to all employees on a monthly basis are included in wages but not included in the minimum wage under Article 6 of the Minimum Wage Act. By stipulating that a "bonus calculated according to reason for a period of more than one month" is not included in the minimum wage, the "calculation period" of the bonus, not the "payment cycle" of the bonus, becomes the standard as to whether it is included in the minimum wage. In other words, even if the bonus is paid uniformly every month, if the bonus calculation period is longer than one month (i.e. the bonus is calculated on a yearly basis), the bonus is not added to the minimum wage prescribed in Table 1 of the Enforcement Ordinance of the same Act.[6]

If the bonus is determined for a period exceeding one month, such as 800% per annum), and it is paid equally each month, this bonus is not included in the minimum wage calculation.[7]

(2) Sales bonus (based on results)

The sales bonus, for which the monthly amount varies according to the sales results of the individual salesperson, is equivalent to a wage, in accordance with the sales incentive bonus set forth in Article 5 (2) of the Enforcement Decree of the Minimum Wage Act. Therefore, Article 5-2 of the Minimum Wage Act stipulates that the sum of the monthly sales bonus divided by the total number of working hours per month and the monthly salary divided by the number of working hours per month shall be included in the minimum wage.[8]

In cases where a health trainer carries out individual fitness training work for a member, if the trainer receives an additional tuition fee according to a predetermined payment condition and payment rate, such fee can be considered to be equivalent to a sales bonus and included in the minimum wage. Such sales bonus is calculated into hourly wage after it is divided by monthly contractual working hours; the wage determined in monthly units, such as the basic wage, is also divided by monthly contractual working hours. The sum of both wages should be evaluated to determine whether it exceeds the minimum wage.[9]

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[5] MOEL guideline on December 15, 2010 Wage welfare-2356

[6] MOEL guideline on September 30, 2015 Law department 15-0501

[7] MOEL guideline on December 14, 2015 Labor Standards-6817; June 4, 2012 Labor Improvement 2901

[8] MOEL guideline on February 14, 2004 Wage Policy-501; April 3, 1990 Wage 32240-4770; October 2, 2005 Wage Policy-801; June 20, 2003 Wage 68200-471

[9] MOEL guideline on October 2, 2015 Labor Standards-4782

3. Welfare benefits

(1) It is reasonable that a treatment improvement fee corresponding to money for welfare, such as an allowance which helps to improve the life of an employee is money which does not count in the minimum wage.[10]

(2) Even if a "welfare allowance" is included in regular wages, if it is explicitly stated in the collective agreement that it is a subsidy for living expenses or a benefit for welfare, according to Table 1 of Article 2 of the Enforcement Rule of the Minimum Wage Act, it shall be seen as a wage not included in the wage for the application of the minimum wage in terms of welfare benefits.[11]

4. Differences from ordinary wages [12]

Item	Ordinary wage	Minimum wage
Definition/ Purpose	Ordinary wages means hourly wages, daily wages, weekly wages, monthly wages, or contract wages which are determined to be paid periodically or in lump sum to a worker for his/her prescribed work or whole work (Article 6 of the Enforcement Decree of the Labor Standards Act Enforcement Decree).	The purpose of this Act is to stabilize workers' lives and improve the quality of the labor force by guaranteeing a minimum level of wages (Article 1 of the Minimum Wage Act).
Calculation method	Calculated into hourly wage rate (Monthly ordinary wage ÷ monthly contractual working hours).	Calculated into hourly wage rate (Monthly minimum wage ÷ monthly contractual working hours).
Legal enforcement	No legal enforcement.	Legal enforcement, with cases of violation being invalid.
Usage	Wages determined to be paid in advance; used for paid leave allowances.	Wages actually paid; used for guaranteeing employees' livelihood.
(i) Regular meal charge	Included in ordinary wage.	Included in the minimum wage.
(ii) Performance bonus	1) Fixed bonuses are included in ordinary wages. 2) Performance bonuses are recognized as ordinary wages to the extent that they are guaranteed to a minimum. 3) Sales bonuses are excluded.	1) Annual bonus payments are excluded. 2) Monthly bonuses are included in the minimum wage. 3) Monthly performance bonuses are included in the minimum wage. 4) Sales bonuses are included in the minimum wage.
(iii) Welfare allowance	Regular, uniform, and fixed welfare allowances are included.	Monthly regular, uniform, and fixed welfare allowances are included.

[10] MOEL guideline on February 7, 2014 Labor Improvement-659

[11] MOEL guideline on May 17, 1989 Wage 32240-7146

[12] Supreme Court ruling on January 11, 2007 2006 da 64245; MOEL guideline on June 29, 2006 Wage and working hours 1539; MOEL guideline on December 20, 2006 Wage and working hours 3848

VI. Conclusion

The 2018 and 2019 minimum wage increase, in addition to the court ruling[13] in December 2013 concerning the enlarged ordinary wage, has had a considerable impact on the wage structure of companies. In particular, production workers in the automobile industry have fixed working hours of 243 per month, which was designed to lower the ordinary wage through the bonus system. Such companies have maintained long working hours by lowering the overtime, nighttime and holiday work allowances. However, it would not be possible to maintain this trend with the increased minimum wage.

Three things are expected through the increase of the minimum wage. First, it will be an opportunity to simplify the current wage structure. There is a high possibility that the wage structure will be restructured with a base salary added to the minimum wage range, performance bonuses, and statutory allowances. Second, the steep increase in wages may lead to a reduction in hours of work and the creation of new employment. Third, it will be an opportunity to overcome polarization in the working conditions for regular and irregular workers. I expect the increase in minimum wage to have a positive effect on SMEs while it may be a burden to management.

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[13] Supreme Court ruling on December 18, 2013, 2012 da 8389

Death from Overwork and its Verifications

I. Introduction

An occupational fatality directly related to long working hours is death from overwork. Although it is not a medical or legal term, “death from overwork” is a term used to describe a fatality from cerebral vessel disease or a heart attack (hereinafter referred to as "cerebral vessel or heart disease") caused by physical exhaustion and mental stress.[14] According to data from the Labor Welfare Corporation on April 11, 2018, 1,809 applications were filed for cerebral vessel or heart disease to be determined as death from an occupational illness in 2017, with 589 (32.6%) of these applications approved and 1,220 (67.4%) rejected. In general, cerebral vessel or heart disease is attributed to an individual's personal health, but can be recognized as a work-related fatality if there is a significant causal relationship, in the fatality, between the condition and the work.[15]

According to judicial rulings, cerebral vessel disease can be recognized as an occupational illness if there are some affecting factors related to work performance that cause the disease, even if there already existed some common conditions such as hypertension or hardening of the arteries. The Labor Welfare Corporation Guidelines regulate that judging whether there is a "burden on the work" should consider workload at the time of the incident, accumulation of fatigue over a long period of time and working conditions. They define work hours as a key component, and comprehensively examine all situations related to work such as schedule, exposure to a harmful working environment, physical strength, and mental stress.[16]

In the following section, I will examine concrete examples of laws, guidelines, and judicial rulings related to the burden of proof for fatality from overwork.

II. Related Legal Regulations: Criteria for Determining Fatalities from Cerebral Vessel or Heart Disease as Occupational Accidents[17]

That a worker’s illness (leading to death) was caused by his work-related duties must be verified before determining it as an occupational illness. This burden of proof is divided into three categories:

A. “Sudden and unexpected tension, excitement, horror, surprise or changes in the work environment causing remarkable physiological changes to the employee” means that, within

[14] Heeja Lee,「Death from Overwork and Occupational Compensation」, Joongang Gyungjae, 2014, p. 162.
[15] Jongryul Lim, 「Labor Law」, 14th edition, Park Young Sa, 2016, p482.
[16] The Labor Welfare Corporation, 「Guidelines on Determining a Cerebral Vessel Disease or a Heart Attack as a Work-related Accident」, 2018-2, January 2018.
[17] The Enforcement Decree to the Industrial Accident Compensation Insurance Act, Article 34(3), Attachment 3; Labor Ministry Notice 2017-117 (December 2017).

24 hours before the fatality, the condition of the cerebral vessel or heart disease deteriorated unnaturally, rapidly and noticeably, due to the occurrence of sudden and unexpected incidents or rapid changes in the work environment.

B. "The work burden increases for a short period of time just before the occurrence of the fatality due to the volume of work, time involved, intensity, responsibilities, or changes to the work environment, and causes physical and mental fatigue that can noticeably affect the normal operation of blood vessels in the brain or heart" means that, within one week before the fatality, the volume of work or working hours increased by at least 30% over the average week of the previous twelve months (excluding the week before the fatality), or the intensity, work responsibilities or work environment changed so greatly that a normal person would not be able to adjust. Whether this applies to the employee is estimated by considering the volume of work, time involved, intensity, and responsibilities; rest time like holidays and leave; changes in the type of work and working environment; and other factors such as the employee's age, gender, etc.

C. "A chronic work burden due to volume of work, time involved, intensity, responsibilities, or changes to the work environment causes physical and mental fatigue that can noticeably affect the normal operation of blood vessels in the brain or heart" means that objective confirmation has been made that physical and mental stress continued more often than during general work duties at least three months before the fatality. In this case, whether "chronic work burden" applies to the employee's work is estimated by considering the volume of work, time involved, intensity, and responsibilities; rest time like holidays and leave; whether it is shift work or night work or the like; the degree of mental stress; time available for sleep; working environment; and other factors such as the employee's age, gender, etc. When evaluating the relationship between the working hours/working conditions and the fatality, the following items shall be considered collectively:

(1) If working hours exceeded the average of 60 a week for 12 weeks before the fatality, or 64 a week for 4 weeks before the fatality, the relationship between work and the fatality is considered to be strong.

(2) If the weekly average working hours exceed 52 during the 12 weeks before the fatality, the longer the working hours, the greater the relationship between work and fatality. In particular, when any of the following subparagraphs (factors of weighting workload) apply to the work, it is evaluated that the relationship between work and fatality is strong:

① Work hours not fixed, but change daily; ② Shift work; ③ Work with insufficient off-days; ④ Exposure to harmful working environment (cold, temperature changes, noise); ⑤ Physically-demanding work; ⑥ Frequent business trips with large time lags; ⑦ Work involving significant mental stress.

(3) Even if the working hours do not exceed 52 per week for 12 weeks before the fatality, the relationship between work and fatality increases for tasks where the worker is exposed to a combination of the workload weighting factors in (2) above.

III. Labor Welfare Corporation Guidelines: Substantial Criteria for Recognition of Fatality from Overwork Being Due to an Occupational Illness[18]

1. Sudden incidents or sudden changes in work environment

Sudden incidents and rapid changes in work environment should be of a degree that would reasonably cause tension, excitement, fear, or surprise that could have a significant impact on the normal functioning of the cerebral or heart vessel systems. Therefore, the occurrence of an unexpected accident should be clear in time and place, and should be related to the situation and the outbreak. In other words, when the unexpected situation itself causes a significant physical or mental burden, the fatality usually occurs within 24 hours from the occurrence of the incident. Most of the time, however, it takes time for the condition to deteriorate enough to result in a fatality, so even if it is more than 24 hours from the unexpected and unforeseeable occurrence to the fatality, if a causal relationship between the accident and the occurrence can be determined, the fatality can be determined as from an occupational illness. Examples are given below:

① If you are directly involved in a major personnel accident or other serious accident related to your business, or you are engaged in rescue or accident handling accompanied by an accident;

② In the event of excessive physical or mental stress such as a violent physical confrontation or assault from a supervisor, a colleague or a customer in relation to the work;

③ If you have been working continuously for a long time without sleeping.

2. Short-term business stress

In the event of cerebral vessel or heart disease, there is a high possibility that the workload and intensity of work increased rapidly within a short time (one week) before the occurrence of the illness led to a fatality.

(1) Whether or not the workload or work time has increased by more than 30% over the previous 12 weeks (excluding one week before the fatality) is evaluated as follows. ① Quantify the workload within one week before the onset and compare it with the weekly average workload between 2 and 12 weeks before the fatality. ② If the weekly average work time is less than 40 hours between 2 and 12 weeks before the fatality, compare with the change rate based on 40 hours. ③ For night work, 30% will be added to work hours between 10:00 pm and 6:00 am, excluding rest hours.

(2) Whether or not the work intensity, responsibilities, and work environment change to such a degree that it is difficult to adapt is evaluated by considering the following points: ①

[18] The Labor Welfare Corporation, 「Guidelines on Determining a Cerebral Vessel Disease or a Heart Attack as a Work-related Accident」, 2018-2, January 2018.

Changes in work responsibility or degree, increase in mental stress, changes to working environment including increased work hours or workload within one week before the fatality; ② Changes in the work burden--whether the worker was able to adapt to the work of the recent week compared to the work of 12 weeks (excluding one week before the fatality).

(3) The burden of work for one week before the fatality is based on, as outlined above, the evaluation of work hours or workload, work intensity and responsibilities, rest hours in terms of holidays or off-days, change of work type or work environment, and adaptation period. Also, the related worker's age, gender and personal characteristics are considered.

3. Chronic heavy work

"Work Hours" is a different term from "Working Hours" in an employment contract, and refers to the time that a worker is under the supervision of the employer, including time for preparation and clearance. "Meal time" means a time completely outside the supervision of the employer. Even if meal time is guaranteed by the Labor Standards Act or the employment contract, if it is impossible to stop working to eat or rest, it cannot be excluded from work hours.

Work hours are checked first for the associated physical and/or mental burden. Then, other factors such as the existence of shift work, the holidays, work schedule, work environment, work intensity, time zone differences, and mental stress are considered.

Work hours are calculated by the number of daily working hours from 12 weeks prior to the fatality to 4 weeks prior to the fatality. Then, the average working hours per week for the entire 12 weeks before the fatality is calculated and evaluated. "Daily working hours" refer to the time work starts to the time work ends minus the time completely outside the supervision of the employer. For work between 10:00 pm and 6:00 am the next day, 30% is added to total working hours. However, for surveillance work such as security guard or similar work, this 30% is not added. Any waiting time that occurs due to the nature of the work, such as intermittent work or driving, is included in the working hours if done under the supervision of the employer.

- If work hours exceed 64 per week for 4 weeks before the fatality, the relationship between work and fatality is evaluated as strong.
- If work hours exceed 60 a week during the 12 weeks before the fatality, the relationship between work and fatality is evaluated as strong.
- If the work hours exceed an average of 52 per week for 12 weeks before the fatality and factors exist that significantly increased the burden of work, the relationship between work and fatality is evaluated as strong.
- Even if the working hours do not exceed 52 per week during the 12 weeks before the fatality, in cases where the worker was exposed to factors that significantly increased the burden of work, a strong relationship is deemed to exist between work and fatality.

IV. Guidelines and Court Rulings on Causal Relationships

1. Labor Welfare Corporation Guidelines

The causal relationship between work and illness is not necessarily evident in the medical or natural sciences, but can be verified as the causal relationship from the perspective of legislation and guidelines. In other words, even if there is no direct evidence of the cause of the illness, a causal relationship can be established by considering factors such as worker health at the time of employment and the cause of the illness. [19]

2. Views of the court on death from overwork

The term "occupational illness" refers to an illness caused by the work of an employee, so a causal relationship between work and disease must be established – proven by the worker claiming it. However, even if the main cause of the illness is not directly related to the performance of the work, if the overwork or stress is a factor in the main cause of the illness – i.e. has caused or exacerbated it – a causal relationship can be determined. While not necessarily evident in the medical or natural sciences, consideration must be given that such a relationship can exist in view of all the circumstances. In cases where an existing illness can be deemed not problematic for normal work, if it can be proven that there was rapid deterioration beyond the natural progress due to the workload, this can also indicate a causal relationship. In all cases, whether there is a causal relationship or not shall be judged based on the health and physical condition of the worker, not simply of the average person.[20]

V. Conclusion

In determining whether proof exists for claims that a fatality was the result of overwork, the court generally looks at the work load and mental stress involved in a comprehensive manner. On the other hand, the Committee on Occupational Disease Judgment of the Labor Welfare Corporation has not recognized overwork as the cause of a fatality when 60 hours per week or less is the normal work load. Fortunately, the new Welfare Corporation Guidelines, revised in 2018. will strengthen consideration of various causes of such fatalities. That is, even if there are fewer than 60 working hours per week, additional factors that increase the workload, such as mental stress, shift work, and night work, will be factored into the determination of whether a fatality was caused by overwork or not. There is hope that, in the near future, such stronger consideration will result in greater recognition of this tragic aspect of long working hours.

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[19] The Labor Welfare Corporation, 「Guidelines on Determining Cerebral Vessel Disease and Heart Attack as a Work-related Accident」, 2018, p. 5.

[20] Supreme Court ruling on April 12, 2007, 2006doo4912; Supreme Court ruling on November 10, 2005, 2005doo8009.

Korean Labor Law Promoting Employment of Persons with Disabilities & Their Protection in the Workplace

I. Introduction

Persons with disabilities also have the right to pursue happiness with dignity and value as human beings, and are entitled to state protection of these rights (Articles 10 and 34 of the Constitution). In accordance with this principle, employers of at least a certain size are obliged to hire persons with disabilities, and laws prohibiting discrimination against them in employment are being, and have been, implemented. Accordingly, employers shall provide employment opportunities to such persons and shall not discriminate against any workers in personnel management, such as in hiring, promotion, transfer, education and training, etc., merely on the grounds that the workers have disabilities. When discrimination does exist, separate legal remedies are provided to ensure the effectiveness of their protection.

In spite of these strict legal systems, many employers choose to pay the employment levy instead of hiring persons with disabilities. In accordance with the urgent demand for greater awareness of the social acceptability of persons with disabilities, Education on Improving Workplace Awareness of Persons with Disabilities is a new statutory form of education established in 2018, with associated penalties for failures by employers to implement such education. If employers are unable to fulfill their obligation to hire persons with disabilities, companies know they only need to pay the employment levy instead. However, since related and legally-required education has been introduced, what follows is a detailed definition of persons with disabilities, the required employment promotion measures, prohibition against discrimination and remedy for infringed rights, and education on improving workplace awareness of persons with disabilities. We then comprehensively review the working standards for persons with disabilities. [21]

II. Definition of & Obligation to Employ Persons with Disabilities

1. Definitions & Related Laws

Korea labor law related to persons with disabilities includes the Act on the Employment Promotion and Vocational Rehabilitation of Persons with Disabilities (hereinafter referred to as the "Employment Act for Persons with Disabilities")[22] and the Act on the Prohibition of Discrimination against the Disabled (hereinafter referred to as the "Act Against Discrimination

[21] Ha, Kap-Rae, 「Labor Standards Act」, 28th edition, Joongang Economy, October 2016, pp. 616-624; Kim, El-Lim, Yun, Ae-Rim, 「Labor Standards Act」, KNOU PRESS, Nov. 2017, pp. 304-309.

[22] The Employment Act for Persons with Disabilities was enacted on Jan 13, 1990, and recently revised on Nov. 28, 2017. The Ministry of Employment and Labor is in charge.

of Persons with Disabilities")[23]. The purpose of the Employment Act for Persons with Disabilities is to contribute to the employability of such persons so that they may live as regular members of society through work suited to their abilities (Article 1). Here, the term “person with disabilities” refers to someone who has had his/her long-term working life substantially restricted due to a physical or mental disability that corresponds to the standards prescribed by Presidential Decree. [24] There are 15 types of disability specified in Article 2 of the Enforcement Ordinance of the Act on Welfare for Persons with Disabilities: ① physical disabilities, ②hbrain lesions, ③ blindness, ④ deafness, ⑤ language disability, ⑥ mental retardation, ⑦ developmental disability, ⑧ mental disorder, ⑨ kidney disorder, ⑩ cardiac disorder, ⑪ respiratory disorder, ⑫ liver disorder, ⑬ facial disorder, ⑭ intestinal fistula ⑮ epilepsy with other disabilities.

The purpose of this Act Against Discrimination of Persons with Disabilities is to prohibit discrimination on the basis of disability in all aspects of life, and to effectively safeguard the rights and interests of individuals discriminated against on the grounds of the disability, thus enabling them to fully participate in society and establishing their right to equality which will ensure their human dignity and sense of value (Article 1). This law stipulates the concept and criteria for discrimination against persons with disabilities, and also provides a framework for judging discrimination based not only on employment but also access to and use of education, goods and services, judicial and administrative procedures, services and political rights, motherhood and fatherhood, family, home, welfare facilities, and right to health. It prohibits discrimination and stipulates the right to relief for victims of discrimination through the National Human Rights Commission Act (NHRCA). In Article 9, the Disability Discrimination Act provides that "the prohibition of discrimination on grounds of disability and the right to relief under the Act shall be in accordance with the provisions of the NHRCA, except as provided in this Act."

2. Obligation to Employ Those with Disabilities

An employer who employs 50 or more persons at any time shall be deemed to be obligated to employ persons with disabilities to the rate prescribed by the President (hereinafter referred to as "the mandatory employment rate") up to 5 percent of the total number of employees (Article 28 of the Employment Act for Persons with Disabilities). The mandatory employment rate from 2019 is 31/1000 (Article 25 of the Enforcement Decree). Here, "ordinary employment" refers to an employee who has 16 or more working days per month regardless of the type of labor contract. Specifically, the number of employees hired for 16 days or more per

[23] The Act Against Discrimination of Persons with Disabilities was enacted on Apr. 11, 2007, and revised on Dec. 19, 2017. The Ministry of Health and Welfare is in charge.

[24] The Enforcement Decree to the Act contains the following two items: 1. A person determined to have a disability as specified in Article 2 of the Enforcement Decree to the Act on Welfare for Persons with Disabilities; and 2. The holder of a Distinguished Service certificate as prescribed by the former part of Article 101 paragraph (1) of the Enforcement Decree to the Act on the Honorable Treatment of and Support for Persons, etc. of Distinguished Service to the State or other documents that certify that the person has carried out distinguished services as prescribed by paragraph (2) of the same Article.

month is calculated by dividing the number of months of operation (minus month(s) with less than 16 days of operation) for one year (Article 24 of the Enforcement Decree).

The Minister of Employment and Labor may pay an employment incentive calculated in proportion to the number of persons with disabilities who have been hired exceeding the standard employment rate, including employers who are not subject to employment obligations. The payment unit price shall be within the range of the minimum wage converted on a monthly basis, and shall be preferentially set for those with severe disabilities and women with disabilities (Article 30 of the Employment Act for Persons with Disabilities).

3. Employment Levy on Companies Failing to Employ Persons with Disabilities

Employers who do not hire persons with disabilities, or do not meet the mandatory employment rate, must pay an annual employment levy to the Minister of Employment and Labor. However, employers with fewer than 100 permanent employees are exempted from this obligation. Employers subject to the obligation to employ persons with disabilities shall declare in writing their number of permanent employees per month, their number of employees with disabilities and the amount of levy (if any) paid each year by January 31 of the following year, and shall pay the levy for that year. The Employment Levy for Persons with Disabilities is the annual sum of the total number of persons with disabilities to be hired under the mandatory employment rate minus the number of persons with disabilities regularly employed each month multiplied by the burden base amount (Article 33 of the Employment Act for Persons with Disabilities).

$$\text{Total Levy} = \left\{\left(\begin{array}{c}\text{Total number of persons}\\ \text{with disabilities to be hired}\end{array}\right) - \left(\begin{array}{c}\text{Total number of}\\ \text{persons with disabilities}\\ \text{hired annually}\end{array}\right)\right\} \times \text{Base burden}$$

III. Discrimination Against Those with Disabilities

1. Criteria for determining discrimination

Direct discrimination is where (1) those with disabilities are treated unfavorably, due to their disability, through restriction, exclusion, separation, or denial without justifiable reason (Article 4 (1) of the Act Against Discrimination of Persons with Disabilities).

Indirect discrimination refers to (2) when persons with disabilities who are not adversely affected by restrictions, exclusion, separation, or rejection in a formal way but still undergo adverse consequences for their disability by applying criteria to them, without justifiable cause, that do not consider their specific situation; (3) where reasonable accommodation is not provided to persons with disabilities without just cause. Here, "reasonable accommodation" refers to that which would enable the person with disability to participate in the same activities as those without disabilities, including facilities, tools, services, etc., taking into consideration the gender of the person with the disability; (4) behavior by a person in a way that directly advertises or promotes adverse treatment such as through restriction, exclusion, separation,

rejection, etc. without justifiable reason. In this case, the advertisement usually includes actions deemed to have an advertising effect that promotes adverse treatment; (5) In the from above (1) to (4), discrimination against a person who is dealing or accompanying a person with a disability for the purpose of helping a person with a disability In this case, acts by persons with disabilities against other persons with disabilities shall also be subject to determination as discrimination on the basis of that which is prohibited by this Act; (6) interfering with the legitimate use of assistance animals or devices for those with disabilities, or other acts prohibited by Article 4 against assistance animals and devices for those with disabilities (Article 4 of the Act Against Discrimination of Persons with Disabilities).

Actions that are taken in accordance with the following situations are not considered unjustifiable discrimination: (1) Excessive burden or considerable difficulty is incurred by avoiding prohibited discrimination, making it inevitable due to the nature of specific work or business performance; (2) Active measures taken by this Act or other laws and ordinances to realize the real equality of persons with disabilities and to correct discrimination against persons with disabilities shall not be regarded as discrimination under this Act (Article 4 of the Act Against Discrimination of Persons with Disabilities).

If there are two or more causes for discriminatory action but the main cause is recognized as due to a disability, the action shall be regarded as discrimination under this Act. When judging discrimination, the gender of the person with the disability, the type and degree of the disability, and other characteristics of the person with disability shall be fully considered (Article 5 of the Act Against Discrimination of Persons with Disabilities).

2. Discrimination correcting organization and remedies for infringed rights

In the event a person is discriminated against in a way prohibited by the Act Against Discrimination of Persons with Disabilities, that person or any person or organization who knows this fact may appeal to the National Human Rights Commission (NHRC). Even if there is no complaint, the NHRC may investigate in its own power when there is a reasonable cause to believe discrimination has occurred that is prohibited by the Act Against Discrimination of Persons with Disabilities (Article 38 and 39).

The NHRC shall notify the Minister of Justice of the details of any recommendation for the forbidden discrimination behaviors. The Minister of Justice gets involved in cases where a person who receives a recommendation from the NHRC does not carry out the recommendation without justifiable cause. This can include: (1) a failure to implement recommendations for discriminatory acts against multiple persons; (2) a failure to implement recommendations for repeated discriminatory acts; and (3) intentionally disregarding a recommendation to disadvantage the person being discriminated against. The Minister of Justice may also get involved if he/she deems a correction order is necessary and the degree of real or potential damage is severe and the effect on the public interest is recognized as serious (Article 43 of the Act Against Discrimination of Persons with Disabilities). Corrective orders can include ① suspension of the discriminatory acts, ② compensation for damage, ③ implementation of measures to prevent recurrence, and ④ other measures deemed necessary to correct the discrimination.

Any party contesting the order of correction by the Minister of Justice may file an administrative suit within thirty (30) days from the date of receipt of the order. The order of correction shall be finalized if no action has been filed within this period of time (Article 44 of the Act Against Discrimination of Persons with Disabilities). The Minister of Justice may impose a fine of up to KRW 30 million against persons failing to follow a correction order without just cause (Article 50 of the Act Against Discrimination of Persons with Disabilities).

IV. Compulsory Education on Protecting the Rights of Persons with Disabilities

1. Compulsory Education & Related Penalties

Employers shall work to eliminate bias in the workplace against those with disabilities, create stable working conditions for them, and educate their workforce to improve their awareness of persons with disabilities. Mandatory education covers all businesses or workplaces employing more than 50 workers and shall consist of one hour per year. Employers shall keep records related to the education for 3 years. (Articles 5-2, 5-3, 86 of the Employment Act for Persons with Disabilities, and (3) Article 5-2 of the Enforcement Decree).

2. Content of Mandatory Education

Education to improve workplace awareness of persons with disabilities shall include: ① the definition of disability and types of disability; ② human rights, prohibition of discrimination against, and provision of fair accommodations for persons in the workplace with disabilities; ③ laws and systems related to employment promotion and vocational rehabilitation of persons with disabilities; and ④ other contents deemed necessary to improve workplace awareness of persons with disabilities. This education can be done collectively, as an inquiry or a meeting, or through remote education using the Internet or other communication network, or experiential education in consideration of the size and characteristics of the business (Article 5-2 of the Employment Act for Persons with Disabilities).

V. Conclusion

All people need to have social consideration for people with disabilities as all live with the possibility of becoming disabled themselves. There is a societal need to better ensure the employment of persons with disabilities and prohibit discrimination against them. In addition, employers and workers need to learn how to protect the rights of their colleagues with disabilities and guard against discrimination. I hope businesses in Korea will take this new opportunity to improve the treatment of this sector of society in the workplace through legally-mandated education.

The System for Employing Foreign Workers

I. Introduction

Foreign workers are classified according to visa status: (i) non-professional foreign workers, (ii) overseas Korean workers (working-visit workers and overseas Koreans), and (iii) professional foreign workers. Only foreign workers with non-professional and working-visit status are subject to the Act on Employment Etc. of Foreign Workers (hereinafter "Foreign Employment Act"), while overseas Koreans and professional foreign workers are subject to the Immigration Control Act and general labor laws.

Non-professional foreign workers are employed as short-term circulating workers that stay for a certain period based on the Foreign Employment Act to supplement the workforce in Korea. However, overseas Korean workers voluntarily enter the country for economic reasons and are able to stay for a longer time. Companies invite professional foreign workers to work here to harness their professional knowledge, and so employment procedures are complicated but staying long-term is possible. Since foreign workers are introduced to address Korea's needs, it is desirable that they be introduced in a way that maximizes Korea's own interests. Recently, the proliferation of illegal immigrants has raised awareness of the need for more careful management of the foreign employment system. For this reason, I would like to examine specifically the system for employing foreign workers in Korea.

<Table 1> Status of Foreign Employment in Korea

Visa Type	Total Pers Percent	(i) Non-professional Workers		(ii) Overseas Koreans				(iii) Professional	(iv) Illegal Workers
		E-9 Non-professional	E-10 (Ship crewmen)	H-2 (Working visit)	F-4 (Overseas Korean	F-5 (Permanent resident)	(Visit/ residence (F-1, etc.)	Professor etc. (E-1/ E-7)	-
Persons		276,811	16,010	243,339	432,485	90,214	93,571		
Total Persons	**1,523,153**	**292,821**		**859,609**				**47,156**	**323,267**
% of all Foreign Workers	**100**	**19.2**		**56.4**				**3.1**	**21.2**

Source: Ministry of Justice, "Monthly Immigration Statistics", June 2018.

II. Non-professional Workers

1. Eligible Workers & Jobs

Non-professional foreign workers (E-9) are invited from 16 countries such as China, countries from the former Soviet Union, and Southeast Asian countries to supplement SME workforces in Korea's "3D" jobs (dirty, dangerous, difficult). To be eligible for employment, such workers must pass strict selection procedures such as a Korean Proficiency Test, a technical test, and a physical examination to facilitate their adaptation to a Korean workplace.

Non-professional foreign workers were introduced through the General Employment Permit System in 2004, starting in manufacturing, construction and agriculture and expanding to fisheries in 2016. [25]

Manufacturing companies must have fewer than 300 regular workers or less than KRW 8 billion in capital as a prerequisite to employing foreign workers. The allowable number of foreign employees varies by the size of the company, but is usually about 10-20% of the total workforce. The allowable number of employees in a construction company is 5 persons if the average annual construction revenue is less than KRW 1.5 billion, and 0.4 per KRW 100 million over 1.5 KRW billion. An agricultural company with 10 or fewer employees can employ up to 5 people regardless of no Korean worker employed, up to 20% of the total workforce. In the fishery industry, foreign employees can be used only on fishing vessels of less than 20 tons, which are not subject to the Seamen' Act, and can make up to 40% of the total fishing workers per ship. [26]

2. Employment Procedures

The detailed procedures for employment within the Employment Permit System is as follows. [27]

(1) Efforts to hire Korean workers: Employers seeking to hire foreign workers first apply at the local employment center. In an effort to ensure Korean workers have enough jobs, employers seeking to hire foreign workers are obliged to seek Korean workers first: 14 days through the employment center, and 7 days through newspapers, broadcasts, daily information magazines, and other media.

(2) Application of employment permit for foreigners: If an employer is unable to hire suitable Korean workers despite his efforts to do so, the employer may apply for a foreign employment permit at the employment center, within 3 months after completion of the local employment effort.

(3) Issuance of employment permits: When an employer asks the employment center to issue

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[25] Bongsoo Jung, 「A Study on the Employment System for Foreign Workers and Available Remedies for Violation of their Legal Rights 」, Ajou University Doctorate Thesis Paper, 2018, pp. 73-108; Hongyup Choi, 「A Study on the Labor Law Status of Foreign Workers」, Seoul University Doctorate Thesis, 1997, p. 93; Kaprae Ha, 「A Study on the Theory of Legislation for the Use of Foreign Workers」, Donggook University Doctorate Thesis, 2003, p. 157.

[26] Ministry of Employment and Labor, 「Employment Permit System in 2016」; MOEL, 「Easy to Understand Employment Permit System in 2016 」, 2016.

[27] MOEL website: Employment Permit System (https://www.eps.go.kr/). Date accessed: December 20, 2017.

a work permit, the center will introduce some foreign workers (three times the number requested), from whom the employer will select those most eligible for the employment. Employment permits are then issued.

(4) Making an employment contract: Upon issuance of an employment permit, the employer shall send a standard employment contract to the KHR(Korea Human Resources) Corporation, who shall then send it to the dispatching agency of the sending country. When the sending agency of the sending country contacts the foreign workers selected by the employer and confirms their intention to enter into an employment contract, the standard employment contract sent by the employer is finalized and sent back to KHR, after which the employment contract is concluded.

(5) Application and issuance of visa issuance certificate: When an employment contract is concluded, the employer can obtain a certificate of visa issuance from the immigration office. Once a certificate of visa issuance is issued, the employer sends its certificate of a temporary visa to the relevant workers by means of the sending agency of the sending country.

(6) Orientation training for foreign workers: When foreign workers enter Korea with a non-professional employment visa (E-9), escorted by the sending agency, they are taken to the KHR Corporation representative at Incheon International Airport. They are then taken to the employment institutions allocated for training of persons from each country and industry, and will receive job orientation for 2-3 days (16 hours). If health checkups reveal no interfering health concerns and the foreign workers are able to complete their orientation, the corresponding employers will pick up the ones assigned to them in their notification from the employment training institution.

(7) Reporting any changes to employment of foreign workers: If a foreign worker is no longer employed, has been injured, has died, or has had the employment contract renewed, the employer should report such changes to the employment center.

(8) Change of workplace for a foreign worker: In principle, foreign workers should continue to work for three years at the workplace through which they first gained their employment visa. However, where it is recognized normal working relations are unreasonably difficult to maintain due to a temporary suspension or shutdown of the workplace, unlawful delay in payment of wages etc., foreign workers are allowed to change jobs a maximum of 3 times in such cases as a way to better protect their basic human rights. Employment contracts are allowed to be extended twice, for a total of two years with each extension.

(9) Cancellation of the employment permit and suspension of access: The employment permit will be canceled if the employer breaches the wage obligations or other employment conditions contracted with the employee before the employee entered the country. In addition, any company that employs foreign workers without obtaining an employment permit shall have their access to foreign workers suspended for three years.

(10) Korea’s four social insurances and specific insurances for foreign workers:

① Four social insurances: Of the four major insurances for non-professional foreign workers, registration for the national pension, national health insurance, and industrial accident insurance are mandatory. Unemployment insurance is optional, and only those who subscribe are eligible for unemployment benefits and a variety of employment insurance subsidies.

② Specific insurances: The employer shall subscribe to departure-guarantee insurance and insurance to guarantee on-time payment of wages within 15 days after hiring the foreign worker. Foreign workers are required to have insurance covering their return expenses within 80 days of becoming employed and have their own injury insurance within 15 days.

III. Overseas Korean Workers

1. Eligible Workers & Jobs

Overseas Korean workers are divided into working-visit workers (H-2) that perform non-professional functions and resident workers (F-4) that provide professional services. All overseas Korean workers can work freely inside Korea, but those in the non-professional working-visit category are limited to a maximum of five years and are subject to restrictions under the Foreign Employment Act.

The number of industries allowed to hire workers in the H-2 group has increased from construction and some service industries (6 services) in 2004, to manufacturing, agriculture, fisheries and 29 services (food, housekeeping etc.). As of 2016, the scope has expanded to 41 manufacturing, construction and service industries.

The Foreign Workforce Policy Committee has set and managed the total number of working-visit overseas Korean workers every year because of the potential for conflict with domestic workers, such as those in construction and food and lodging, and determined the total number of people, 300,000, allowed to be in Korea at any given time.[28] F-4 visas are issued to overseas Korean workers who have graduated from university or a higher education institution and are less likely to engage in simple and manual work, and those who are 60 years of age or older. The Ministry of Justice did not issue F-4 visas to overseas Koreans from China and the nations making up the former Soviet Union until 2010, but has gradually been extending such issuance to those meeting certain conditions since then. These F-4 holders are required to renew their visas every three years if they wish to stay longer.

2. Employment Procedures

Working-visit overseas Korean workers with H-2 visas are: ① foreign nationals aged 25 or older, or their descendants, living in China and the former Soviet Union and who were Korean nationals at the time of birth, who are Korean citizens with an address in Korea, or who have been invited by blood relatives within 8 degrees of kinship or by relatives through marriage within 4 degrees of kinship; or ② those who have no domestic relatives or domestic family members but are selected by a certain procedure such as a Korean language test or a random lottery, etc.

Foreign nationals[29] are issued an H-2 working-visit visa from a diplomatic mission abroad,

[28] MOEL, 「2017 Employment and Labor White Book」, p. 422.

[29] Immigration Office of the Ministry of Justice, 「Operational Manual for Overseas Korean Workers」, 2016, pp. 1-40;

complete their orientation training by the KHR Corporation after entering Korea, and register themselves with the Korean government through the KHR Corporation or an employment center. Employment is then possible through introduction to an available job registered with the employment center or independent job search activities.

An employer who wishes to hire a working-visit overseas Korean has to follow a certain procedure. This includes (1) making efforts to hire a Korean national first. However, the employer can hire a working-visit overseas Korean at his or her discretion. (2) The employer can also receive from the employment center three times as many job seekers as needed, and makes a standard employment contract after selecting the personnel desired. The employer shall then report such employment to the employment center nearest the location of the workplace within 10 days from the date of employment of the overseas Korean. (3) The term of the employment contract shall be determined by agreement between the parties but shall not exceed three years of employment. It can be extended for one year and ten months after the first three years' stay. Overseas Korean workers on visiting-work visas are allowed to change jobs freely, unlike other foreign workers.

IV. Overseas Professionals

1. Eligible Workers & Jobs

To achieve global competitiveness, companies must provide world-class, high-tech products or services of the highest quality and at competitive prices. Most of Korea's top domestic talent has been directed at achieving these goals so far, but with the world being integrated into one huge market, domestic talent alone cannot maintain national competitiveness anymore. There is an increasing need to hire excellent personnel that cannot be found locally. [30]

Eligibility of professional foreign workers is determined by the qualifications for certain status of residence: academic background, experience, qualified certificates and expected wage level. There are seven visa types: E-1 for professors, E-2 for native language teachers, E-3 for R&D researchers, E-4 for technicians involved in technical transfers, E-5 for persons professionally qualified, E-6 for entertainers and E-7 for professional workers. Korea has also introduced various systems to support employment of foreign experts: 1) the IT Card visa system for the Ministry of Information and Communication; 2) the Gold Card visa system for the Ministry of Industry and Commerce; 3) the Science Card visa system for the Ministry of Science; and 4) the visa system to support the introduction of foreign professionals for SMEs.

Gilsang Yu et al, 「A Study on Improvement of the Management System for Foreign Workers 」, MOEL, 2012, pp. 8-12.

[30] Joonmo Jo /Kyuyoung Lee/Sangdon Lee/Sungjae Park, "National Policies on Attracting Foreign Professionals", Immigration Office of the Ministry of Justice, 2009, pp. 97-120.

2. Employment Procedures

Companies hiring professional foreign workers are exempt from the normal requirement to hire Korean workers first, and various regulations such as labor market tests do not apply. However, in the interest of promoting the employment of Korean workers, opinion letters of relevant government ministries are inquired to submit to the immigration office in the course of obtaining the related visa. In general, the procedures for recruiting professional foreign personnel are as follows: ① Once the employer has found the necessary personnel and created an employment contract, ② the employer obtains a visa issuance recommendation from the related government ministries. ③ The employer sends the visa issuance confirmation to the Ministry of Justice. ④ If a visa issuance certificate is sent for the relevant worker, the foreign worker is issued a visa at a Korean embassy or foreign mission, and ⑤ the employee is allowed to enter Korea to work.

V. Conclusion

Non-professional foreign workers face a variety of potential human rights violations because they are managed under employer-friendly policies. It is difficult for such personnel to change jobs, and may do so only if the reason for the change can reasonably be attributed to their employer. They can stay for three to ten years, but cannot invite their family members or live together with them. There are limitations to their protection under labor law because they are forcibly sent to their home countries when the employment is terminated.

For overseas Korean workers, there is a lack of systematic education on social integration. The exclusive focus on employment results in a lack of support for their own development. Compared to working conditions for overseas Korean workers from developed countries, those from China and the former Soviet Union are being discriminated against. Workers from advanced countries are allowed to enter and exit freely with the F-4 visa they receive upon entering Korea. On the other hand, overseas Korean workers from China and the former Soviet Union who do not have relatives in Korea must go through H-2 visa issuing procedures, which involves a selection process requiring an official Korean test or a lottery.

Hiring overseas professional personnel is not a simple process due to the vague classification of foreign professionals and rigorous employment procedures. Towards more systematic management of the introduction of a specialized foreign workforce, a dedicated government department is needed that consolidates the existing responsibilities presently spread among a variety of government departments into one, along with a more organized system of qualification standards.

Employment Relations by VISA Type

I. Introduction

As of the end of June 2018, the number of foreigners residing in Korea stood at 2,291,653. This includes 1,198,900 registered as non-Korean foreign nationals, 423,393 people as Korean foreign nationals, and 664,360 people as foreign nationals on short-term stays. Four percent of the people living in Korea are foreign nationals, who are forecast to increase to 3 million in 5 years, or 6% of the total number of people in Korea. There are concerns about whether Koreans will suffer from a high unemployment rate due to the rapidly-increasing number of foreign nationals and whether foreigners will commit more violent crimes, thereby making Korea a more dangerous place. However, as we attract more high-quality human resources and continue to use greater numbers of cheap, skilled workers in work involving the “three Ds” (difficult, dirty, dangerous), there are many advantages.

Unfortunately, it is difficult to know where all the foreign nationals are placed and how many of them are working, what qualifications they have, what kinds of work they are engaged in, and what kinds of foreign workers are allowed to be employed. This is because there are so many types of visa under a very complicated immigration law. Herein, I would like to look at the classification of 36 visa types under different categories, and then look at the types of visa granted for employment and what relationship exists between the Immigration Control Act and labor laws.

II. Visa Types & Categories

1. Visa types & current status of stay for each visa type[31]

In order to understand more about the foreign nationals staying in Korea, it is necessary to know the types of visa available to them and the purpose and status of stay. A visa determines the economic activities (if any) that foreign nationals can conduct in their host country, and their status. The visa type makes it easy to recognize the purpose of their visit, whether or not they are allowed to engage in money-making activities, whether they have family relations in Korea, and whether they are overseas Koreans. The current Immigration Control Act places foreign nationals in one of eight categories (A to H) which are comprised of 36 visa types in total. Group A is related to official duties and includes those working in diplomacy and those conducting official government duties and the accompanying family of foreign nationals in this category. Group B refers to visitors for short-term stays such as tourists and those exempt from visa requirements due to bilateral conventions between countries. Group C includes those visiting for short-term activities such as broadcasting, short-term tourism, and short-term employment. Group D covers those staying long-term and professional personnel engaged in culture and the arts, those engaged in technical training, corporate investment, international

[31] Lee Hee-Jeong, “Stay of Foreigners”, 「Immigration Control Act 」, Parkyoung Sa, 2016, pp. 127-188; Ministry of Justice, “Guide Manual of VISA Issuance”, 2016; Ministry of Justice, “Translation of the Immigration Control Act” 2011.

trade, job-seekers, those studying abroad (including language studies), and media correspondents. Group E covers employment activities for professors, native language instructors/teachers, researchers, technology guidance supervisors, professionals (specific jobs with high salaries such as IT engineers, translators and lawyers etc.), non-professionals (such as simple factory jobs), and ship crewmen. Group F covers those staying long-term due to family relations. Group G does not cover any specific type of traveler, but is rather a temporary stay visa issued for emergency situations and others. Last, Group H includes those on working holidays and employment of Korean foreign nationals.

[Visa Types, Status of Sojourn & Maximum Length of Stay per Visit][32]

No	Category	Status of Sojourn	Currently	Length	No	Category	Status of Sojourn	Currently	Length
1	A: Official Duties	A-1 (Diplomacy)		Work period	19	E: Long-term Employment	E-1 (Professor)	2,414	5 years
2		A-2 (Official business)			20		E-2 (Language teaching)	13,539	2 years
3		A-3 (Conventions)			21		E-3 (Research)	3,164	5 years
4	B: Short-term Stays	B-1 (Visa-exempt)	218,884	Agreed period	22		E-4 (Technology instruction)	165	
5		B-2 (Tour & transit)	143,900		23		E-5 (Professionals)	606	
6	C: Short-term Stays	C-1 (Temporary broadcasting)		90 days	24		E-6 (Artistic work)	3,307	2 years
7		C-3 (Short-term visit)	215,218		25		E-7 (Particular activities)	20,338	3 years
8		C-4 (Short-term employment)	2,588		26		E-9 (Non-professional)	268,208	
9	D: Non-professional	D-1 (Culture & art)	62	2 years	27		E-10 (Ship crewmen)	15,281	1 year
10		D-2 (Studying abroad)	91,816		28	F: Long-term Stays & Family Relations	F-1 (Family visitation)	110,784	2 years
11		D-3 (Technical training)			29		F-2 (Residence)	40,870	5 years
12		D-4 (General training)	50,221		30		F-3 (Dependent family)	21,814	Same as spouse
13		D-5 (News gathering)	97		31		F-4 (Overseas Korean)	432,485	3 years
14		D-6 (Religious activities)	1,658		32		F-5 (Permanent resident)	138,143	No
15		D-7 (Overseas [illegible])	1,312		33		F-6 (Marriage immigrant)	119,455	3 years
16		D-8 (Investment)	5,893		34	G: Others	G-1 (Miscellaneous)	31,877	1 year
17		D-9 (Trade)	2,576		35	H: Working Holiday/Working Visit	H-1 (Working holiday)		Agreed period
18		D-10 (Job-seeking)		6 months	36		H-2 (Working visit)	243,339	3 years

[32] Monthly Report by the Immigration Office (June 2018); Number inside parentheses '( )' refers to those who stay for temporary periods; Underlined italics refer to permitted to engage in money-making activities.

2. Visa Categories[33]

(1) Group A: Official work related to relations with other countries

1) Diplomacy (A-1): Diplomats and consular post members, and their families.

2) Official business (A-2): Civil servants working for other countries or international organizations, and their families.

3) Conventions (A-3): People without alien registration according to various Conventions, and their families. A typical example is those staying in Korea under the SOFA (the US-ROK Status of Forces Agreement).

(2) Group B: Short-term stays without visa

1) Visa-exempted (B-1): Activities related to bilateral visa-exempt agreements between countries. Korea has entered into such agreements with 102 countries as of June 2015.

2) Tour & transit (B-2): Entering for the purpose of travel or transit.

(3) Group C: Short-term stays (90 days or less)

1) Temporary broadcasting (C-1): Temporary news gathering and broadcasting activities

2) Short-term visit (C-3): Business activities like market surveys, business networking, consultation, and contract-making, as well as travelling, transit, medical treatment, visiting relatives, goodwill sports matches, and participating in event or conferences, etc.

3) Short-term employment (C-4): Earning money by means of circus shows, advertisements or fashion shows, lectures, research, technical instruction, etc. for a short period of time.

(**4) Group D: Non-employment professional and long-term stays**

1) Culture & art (D-1): Activities related to academic and artistic studies without pursuing profit.

2) Study abroad (D-2): Studying as part of a regular curriculum at a junior college or higher education institute.

3) Technical training (D-3): Training at Korean companies.

4) General training (D-4): Studying the Korean language at a language institute; technology or skill training in a public research center; and interns with foreign companies.

5) News gathering (D-5): Journalist activities assigned or contracted by a newspaper or other broadcasting company.

6) Religious activities (D-6): Missionary activities at branch offices or related religious organizations in Korea after assignment from a foreign religious or welfare group.

7) Overseas assignment (D-7): Assigned to associated or subsidiary companies after working at the head office of a foreign company for at least one year.

8) Investment (D-8): Foreign managers or engineers engaged in management and operation

[33] Enforcement Decree of the Immigration Control Act, Attached Table #1 of Article 12

of foreign-invested companies according to the Foreign Investment Promotion Act; foreign entrepreneurs holding intellectual rights.

9) Trade (D-9): Foreign entrepreneurs involved in a trade business established in Korea.

10) Job-seeking (D-10): Those looking for jobs and holding qualifications sufficient for E-1 to E-7 visas.

(5) Group E: Long-term employment engaged in economic activities

1) Professor (E-1): Those engaged in education or research and instruction activities in technical colleges or higher, or equivalent institutions.

2) Language teaching (E-2): Those engaged in teaching foreign languages at foreign language institutes, elementary level or higher schools, etc.

3) Research (E-3): Those engaged in research and development of the natural sciences or industrial cutting-edge technology at various laboratories.

4) Technology instruction (E-4): Those engaged in providing professional knowledge regarding the natural sciences or technologies.

5) Professionals (E-5): Those with certification and engaged in fields recognized as professional by Korean law.

6) Artistic work (E-6): Those engaged in art activities such as music, painting, and literature, or in entertainment, performances, plays, sports, advertising or fashion modeling, etc., for the purpose of earning money.

7) Particular activities (E-7): Those engaged in professional activities specifically designated by the Minister of Justice.

8) Non-professional (E-9): Those eligible for employment in Korea according to the Act on Foreign Workers' Employment, with non-professional skills.

9) Ship crewmen (E-10): Those with crew employment contracts on the condition of providing labor for 6 months or longer in companies that do business in accordance with the Maritime Transport Act or the Fishing Industry Act.

(6) Group F: Long-term stays due to family relations; investment immigrant

1) Family visitation (F-1): Those visiting relatives, family living together, dependent(s), or others; domestic workers hired by foreigners.

2) Resident (F-2): ① A foreign national spouse of a Korean national or their underage child, or the underage child of a foreign national with a permanent resident visa (F-5); ② Child born after marriage to a Korean national; ③ A recognized refugee; ④ A resident who has stayed for three years or longer with a D-8 visa.

3) Dependent family (F-3): Spouse or underage child of a D-1 to E-7 visa holder.

4) Overseas Koreans (F-4): 'Overseas Koreans' and 'Koreans with foreign nationalities'. Overseas Koreans are Korean nationals with foreign resident rights, while Koreans with foreign nationalities are those who once had Korean nationality, or their children or grandchildren.

5) Permanent resident (F-5): ① Those with D-7 to E-7 visas or F-2 visas who have lived in

Korea for more than five years; ② Spouses of Koreans or the permanent residents with F-5 visas who have lived in Korea for more than two years; 12 other cases as recognized by the Minister of Justice.

6) Marriage immigrant (F-6): ① Spouses of Korean nationals; ② Parents-in-law of a Korean who are raising a child of their daughter; ③ In cases where a foreign spouse has lost their Korean spouse through death, disappearance, or was divorced due to other reason not attributable to the foreign spouse.

(7) Group G: Miscellaneous (G-1). Unrelated to any of the above groups, this visa is generally used to deal with emergency situations.

(8) Group H: Working holidays & working visits

1) Working holiday (H-1): Visitors can travel and work in accordance with agreements or memoranda of understanding between Korea and other countries regarding 'working holidays'.

2) Working visit (H-2): Overseas Koreans of at least 25 years of age engaged in permitted jobs.

III. Relationship between the Immigration Control Act & Labor Laws

The types of visa which allow employment are C-4 (Short-term employment), all visa types in Group E, F-2 (Resident), F-4 (Overseas Koreans, F-5 (Permanent resident), H-1 (Working holiday) and H-2 (Working visit). Foreigners are treated as equal to Korean nationals according to Article 6 (Equal Treatment), which works to prevent discrimination, but here it is difficult to judge whether illegal foreign workers are protected by Korean labor law. There are three types of illegal foreign worker: ① a foreign national working without the proper visa; ② a foreign national whose visa has expired; and ③ a foreign national engaged in a job besides those allowed by his or her visa. Illegal workers are subject to punishment and are deported for violating the Immigration Control Act, but labor laws permit all rights given due to labor services provided by illegal workers, contrary to the Immigration Control Act. For example, even though an illegal worker had a work-related accident, he/she is protected by Industrial Accident Compensation Insurance, and entitled to severance pay and has the right to claim annual paid leave for work provided in advance.

In relation to this, the Supreme Court ruled the relationship between the Immigration Control Act and labor laws as follows: "The Immigration Control Act regulates that a foreign national intending to be employed in Korea shall attain a status of sojourn required for employment activities, and also regulates that no foreign national having the relevant status of sojourn shall work at any place other than the designated working place. Therefore, the purpose of this legislation was not simply to prohibit illegal stays by foreign nationals, but also to regulate the qualifications of eligibility for employment and block foreign nationals ineligible

for employment to protect the domestic employment market from competition from ineligible foreign workers, manage the foreign workforce effectively, and protect domestic workers. This means that this law was enacted to directly prohibit employment of ineligible foreign workers in fact. The regulation restricting employment of foreigners is a control act to prohibit foreign nationals who are ineligible for employment from being employed. This is not a regulation to restrict the legal effect of labor rights that an illegal foreign worker without eligibility for employment has obtained by providing labor service, and the legal effect of labor laws concerning employment status."[34]

IV. Conclusion

Korea has grouped its 36 visa types into 8 categories (A to H). This classification is quite unwieldy for the average employer to understand. So, for the sake of employers who use foreign workers, it is necessary to reorganize these visa types according to new criteria such as the purpose for entry, whether or not the foreign nationals are engaged in economic activities, have family relations in Korea, and whether they are overseas Koreans or not. In particular, groups D and E, which include so many types, need to be simplified, so as to better manage so many similar jobs more easily. In addition, in the process of employing foreign nationals, the Immigration Office has too much discretionary authority while the procedures for hiring are very complicated. Accordingly, I would like to suggest a method for managing foreign nationals where foreign professionals are classified according to their salary level, and that their employment should not be managed by the Immigration Office, but rather by the free market by means of levying a tax against Korean employers hiring foreign professionals.

[34] Supreme Court ruling of September 15, 1995, 94nu12067: Occupational accident case.

Unemployment Benefits

I. Employees Eligible for Unemployment Benefits

1. Who is eligible for employment benefits?

Employment benefits are paid to unemployed persons who are satisfying the following two criteria: the employee had to leave a job involuntary for reasons such as dismissal for managerial reasons, expiration of contract period, etc. after having worked more than 180 days during the last 18–month period, and the unemployed person is actively making efforts to become reemployed. However, unemployment benefits shall not be given in cases where the employee has left his/her job to transfer to another job or become self-employed or in cases where the employee is separated from employment following the advice of the employer or dismissed due to reasons attributable to him/herself.

※ Cases dismissed due to critical reasons attributable to employee

1. In cases where he/she is sentenced to imprisonment (without being assigned prison labor or more severe punishment) for violating the Criminal Act or laws relating to employment;
2. In case he/she has, on purpose, caused a considerable hindrance to the business or inflicted any damage to property due to embezzlement, disclosure of corporate secret, damage to property, etc. and
3. In case he/she has been absent from work for a long time without due notice and justifiable reasons.

* Though the employee who falls under one of the above items resigned voluntarily by the employer's advice, he/she shall not be eligible for recipient of unemployment benefit.

2. Can the employee receive unemployment benefit if he/she was hired while receiving unemployment benefit?

Unemployment benefit is paid to an unemployed person when he/she reports unemployment and was recognized as an eligible recipient, and when he/she made efforts for reemployment. Therefore, this beneficiary process requires the recognition of unemployment and evidence to prove efforts for reemployment for a unit period of three to four weeks. Therefore, in principle, the reemployed employee cannot be eligible for unemployment benefit. Provided that in case an eligible recipient is employed in a job that is deemed certain to keep him/her employed for more than six months, or in cases where an eligible recipient is deemed certain to run his/her own business for six months or more, then the reemployed person can get a certain portion (1/3 ~ 2/3 of the benefit still left) as an early reemployment incentive.

3. If the employee signed a letter of resignation, can he/she receive unemployment benefits?

In cases where the employee resigned from the company voluntarily due to reasons such as submitting a resignation letter because of a change of occupation, becoming self-employed or going back to school, unemployment benefit shall not be given in principle.

However, the employee can receive unemployment benefits under the following special circumstances:

Reasons for unemployment acceptable for eligible beneficiary

(Employment Insurance – Decree (Article 101 (2) – Table 2)

1. In cases where one of the following occurred for longer than two months within a one-year period prior to his/her resignation:
   A. Where his/her current working conditions decreased lower than those suggested at the time of employment or those generally applied during employment, or in cases where his/her payment of wages was delayed;
   B. Where his/her wages paid for contractual working hours was lower than the minimum wage under the Minimum Wage Act;
   C. Where the employer violated the restriction on extended work under Article 53 of the Labor Standards Act; or
   D. In cases where the allowance for business suspension was less than 70 percent of his/her average wage.
2. In cases where the company surely faces bankruptcy or cessation of business, or in cases where a massive personnel reduction is planned.
3. Under one of the following reasons, the employee was advised by the employer to voluntarily resign, or in cases where the employee resigned through the employer's promotion campaign for voluntary resignation in accordance with personnel reduction plan.
   A. Transfer, acquisition and merger of business, or partial cessation of business or change of business;
   B. Change of working environment due to closing or downsizing of the organization or the introduction of new technology/technical innovation; and
   C. Business deterioration, personnel redundancy or an equivalent reason.
4. In cases where it is hard to commute due to one of the following reasons:
   A. When the company relocates or the employee is transferred to a far-away workplace;
   B. When the employee moved to support his/her spouse or family; and
   C. When it is hard to commute to the company due to unavoidable reasons.
5. In cases where the employee had to nurse his/her parents or family member who is ill for more than 30 days.
6. In cases where the employee cannot fulfill his/her duties due to deteriorating health, mental and/or physical disorder, disease, injury, loss of eyesight, hearing or sense of touch.
7. In cases where the employee cannot fulfill his/her duties continuously due to pregnancy, childbirth, or military service under 'the Military Service Act'.
8. In cases where there is an assumption that ordinary employees might also resign from the company if they were under such similar circumstances.

II. Amount of Unemployment Benefit

1. How much can an unemployed person receive from unemployment benefits?

The unemployment benefit is 50% of the average wage prior to separation within the range of 90 to 240 days in accordance with the age and insured period as of separation time.

→ Maximum amount: 60,000won per day(As of 2018)

→ Minimum amount: daily contractual working hours x 90% of daily minimum wage

※ **Beneficiary days of unemployment benefit**

Insured period / Age	Less than 1 year	Over 1 year ~ less than 3	More than 3 ~ less than 5	More than 5 ~ less than 10	More than 10
Less than 30	90 days	90 days	120 days	150 days	180 days
30 ~ 50		120 days	150 days	180 days	210 days
Over 50 or the disabled		150 days	180 days	210 days	240 days

2. Until when can the unemployed person apply for unemployment benefits?

Even though an unemployed person is eligible for unemployment benefits, he/she cannot receive unemployment benefits if 12 months has passed from the day of separation. These 12 months are called 'period of benefit payment'. As unemployment benefits cannot be paid if the period of benefit payment expires, the unemployed person shall apply for the eligibility of benefit payment to the Employment Support Center without delay right after separation.

※ Reasons for extension of payment period (maximum extension is 4 years)

1) Injuries or diseases of the recipient (excluding injuries or diseases for which injury and disease benefits are being paid);
2) Injuries or diseases of the recipient's spouse or lineal ascendants or descendants;
3) Mandatory military service under the Military Service Act;
4) Detention or execution of sentence on criminal charges; and
5) Pregnancy, childbirth, and childcare (limited to within 3 years after birth of a child).

III. Payment Procedure of Unemployment Benefit

1. What do you do to receive unemployment benefits?

To receive unemployment benefits, the unemployed person shall visit the Employment Support Center in his/her location with identification documents, such as a Residence Certificate or Driver's License, immediately separation and report unemployment. The report of unemployment shall include an application for work and an application for the recognition of eligibility for benefit, and then the head of an Employment Security Office shall notify the applicant of the results of the decision within 14 days.

2. What is the recognition of unemployment?

The recognition of unemployment means that the head of an Employment Security Office recognizes that the unemployed person has actively engaged to become reemployed during a certain recognition period of unemployment, after unemployed person received the recognition of beneficiary eligible for unemployment benefits. An eligible recipient shall present him/herself on a date of recognition of unemployment designated by the head of an Employment Security Office over the course of an one to four week period counted from the date of reporting unemployment and report the efforts made to be reemployed, and the head of the Employment Security Office shall recognize his/her unemployment based upon reported contents. An eligible recipient cannot receive unemployed benefit if he/she could not get the recognition of unemployment because of failure to attend the Employment Security Office.

3. What are active efforts to become reemployed?

An eligible recipient shall make active efforts to become reemployed (i.e., get a job) in accordance with the reemployment action plan completed on the first recognition day of unemployment so that he/she can get the recognition of unemployment. Here, reemployment action means the unemployed person's reemployment activities such as submission of job applications or participations in job interviews, and/or efforts to become self-employed. Job-seeking activities also include submission of job applications by mail, fax or email, participation in job interviews with recruiters in the job fair, or attending occupation guidance programs conducted by the Employment Security Office.

IV. Illegal Receiving of Unemployment Benefit

1. What is the illegal receiving of unemployment benefits?

Unemployment benefits are payable when the unemployed person is recognized as an eligible recipient by the head of an Employment Security Office and makes efforts to be reemployed during the recognition period of unemployment. It is illegal to receive unemployment benefits through false or other fraudulent methods.

※ The most common cases of illegally receiving benefits involve a person not reporting reemployment during the recognition period of unemployment or reporting it using fraudulent information, or that he/she made a false report regarding the reason for separation or his/her wages while employed.

2. What are the penalties for illegally receiving unemployment benefits?

If it is found that a person received unemployment benefits through illegal methods, he/she shall refund the benefit received and additionally pay the same amount equivalent to the illegally received benefit as a penalty. Further, his/her unemployment benefits will stop, and the person concerned could face criminal prosecution. If a company manager was involved in perpetuating the illegality, the employer shall also share joint responsibility with the person.

A. A small illegal benefit can be forgiven only once.
B. Criminal punishment can be pursued where a person violates the law twice, where two people or more collaborate and receive benefits illegally, and in cases where a person rejects the requests to repay the illegally received benefits despite repeated demands from the Employment Security Office.
C. In cases where illegal benefits were paid due to a falsified description on the company's confirmation of severance, an additional fine (2 ~ 3 million Won) will be charged to the company.

Major revisions of the Labor Laws in 2018

Edited by JiHyun Ahn

Ⅰ. Background

☐ The annual working hours of Korean workers were 2,052 hours as of 2016, and they were exposed to labor for long periods of time, making them vulnerable to low productivity and industrial accidents.

☐ The special industries for working hours and recess time have been defined so widely that unlimited overtime was allowed, and lower court courts have made different judgments regarding the additional rate of overtime pay.

☐ There was discriminatory among workers in the guarantee of parental right to rest of the people because the policy on government holidays applied to government workers and public institutions, it was not for the small businesses.

☐ Therefore, it is necessary to reduce working hours, resolve social disputes, and ensure workers' right to rest.

Ⅱ. Major revisions of the LSA

1. Up to 52 hours per week including overtime and holiday work

【 LSA 】

Article 2 (Definition)
(1) Terms used in this Act are defined as follows：
7. The term "one week" refers to seven consecutive days including holidays.

Before revision	After revision
Max working hours per week : **68 hrs** * 68 hrs = 40 hrs + 12 hrs + 16 hrs (if the holidays are 2 days)	Max working hours per week : **52 hrs** * 52 hrs = 40 hrs + 12 hrs

☐ **Enforced in phases by size of business**

- With regard to businesses that employ 300 people or more: July 1, 2018
- With regard to businesses that employ 50 to fewer than 300 people: Jan. 1, 2020
  * 21 industries excluded from the special case category : July 1, 2019
- With regard to businesses that employ 5 to fewer than 50 people: July 1, 2021

2. Permission for special extended work (July 1, 2021 ~ Dec. 31, 2022)

【 LSA 】

Article 53 (Restrictions on Extended Work) (3) With regard to businesses which employ fewer than 30 people, the employer can extend the weekly work hours by up to 8 hours on top of the extended time as determined in paragraph (1) or paragraph (2), if he or she has a made written contract with the representative of workers on the following sub-paragraphs:

1. Grounds for the excess extended work hours as prescribed in paragraph (1) or paragraph (2) and its period ;
2. The scope of workers to which the extension applies.

(6) Paragraph (3) is not applicable to workers between the ages of fifteen and eighteen.

[According to the addendum of Act No. 15513 (Mar. 20, 2018) paragraph (3) and paragraph

☐ **Criteria for allowing special overtime**

○ Target : businesses with less than 30 full-time workers
○ Range : Max. 8 hours per week (from July 1, 2021 to Dec. 31, 2022)
○ Requirements : written agreement between the representative of the workers and management

3. Coordination of working hours of workers under 18 (from July 1, 2018)

【 LSA 】

Article 69 (Working Hours) Working hours of a person aged between 15 and 18 shall not exceed seven hours per day and thirty five hours per week. However, the working hours may be extended up to an hour per day, or five hours per week, by an agreement between the parties concerned.

☐ **Maximum working hours per week for workers under 18**

○ 7 hours a day, 35 hours a week, and 5 hours of overtime a week.

Before revision	After revision
Max working hours per week : 46 hrs * 46 hrs = 40 hrs + 6 hrs	Max working hours per week : 40 hrs * 40 hrs = 35 hrs + 5 hrs
(example) If a worker works 5 hrs on Saturday, after working 7 hrs a day from Monday to Friday(35 hrs), then 5 hrs is not equivalent to extended work. (* Saturday : unpaid holiday)	(example) If a worker works 5 hrs on Saturday, after working 7 hrs a day from Monday to Friday(35 hrs), the employer must pay 50 % more for extended work.

4. Holiday work allowance (Mar. 20, 2018)

【 LSA 】

Article 56 (Extended Work, Night Work and Holiday Work)

(1) Employers shall pay an additional 50 percent or more of the ordinary wages for extended work (work during the hours as extended pursuant to the provisions of Articles 53 and 59, and the proviso of Article 69).

(2) Notwithstanding paragraph (1), with regards to holiday work employers shall pay additionally according to the following subparagraphs:

1. Holiday work of 8 hours or less: 50 percent of the ordinary wage
2. Holiday work beyond 8 hours: one hundred percent of the ordinary wage

(3) Employers shall pay an additional 50 percent of the ordinary wage for night work (work between 10 P.M. and 6 A.M.)

☐ **Application of additional holiday work**

○ 50 % of the ordinary wage shall be paid for holiday work within eight hours of holiday work, and 100 % shall be paid over eight hours of holiday work.

- If extended work and holiday work overlap, the worker shall be applied for both additional rate 50% of extended work and holiday work.

5. Reduced number of businesses classified as special cases from 26 to 5(July 1, 2018), at least 11 hours of guaranteed as consecutive rest for special cases (Sep. 1, 2018)

☐ **Criteria for Determining Special Business Hours**

- Ground transportation, water transportation, air transportation, all other transportation services and health services. Transportation services, buses on regular routes are excluded from classification as special cases.

【 LSA 】

Article 59 (Special Provisions on Working and Recess Hours)

(1) With regards to businesses to whom at least one of the following subparagraphs apply, employers may extend work hours beyond twelve hours or change recess hours which are respectively set by Article 53 paragraph (1) and Article 54. The following subparagraphs come from the divisions and sections of the Standard Classifications of Industry declared by the Minister of Statistics according to Article 22 paragraph (1) of the Statistics Act.

1. Land transport and pipeline transport: Provided, That route passage transport businesses as determined in Article 3 paragraph (1) subparagraph 1 of the Passenger Transport Service Act are excluded.
2. Maritime transport
3. Air transport
4. Other transport-related businesses
5. Healthcare

(2) With regards to Article 1, employers shall provide at least 11 hours of rest to the workers at the end of the day before the next work day begins.

☐ **Enforced in phases by size of business from July 1, 2019**

- With regard to businesses that employ 300 people or more: July 1, 2019
- With regard to businesses that employ 50 to fewer than 300 people: Jan. 1, 2020
- With regard to businesses that employ 5 to fewer than 50 people: July 1, 2021

< Working hours of industries in excluded from the special provision(300 workers ↑)>

Before July 1, 2018	July 1, 2018 ~ June 30, 2019	After July 1, 2019
Virtually unlimited	Up to 68 hours	Up to 52 hours

☐ **At least 11 hours shall be guaranteed as consecutive rest hours for the 5 remaining businesses stated above.**

○ If the company doesn't adapt the special case exemption, the Article 59 shall not be applied.

○ Even if it is a special business, it does not apply unless it introduces a special case in site.

○ Enforcement date : Sep. 1, 2018

6. Complete introduction of rules on Holidays of public agencies (enforced in phases by size of business from 2020)

【 LSA 】

Article 55 (Holidays)

(2) Employers shall provide paid holidays for holidays declared by Presidential Decree: Provided, That the holidays can be shifted to other working days upon a written agreement with the workers' representative.

Enforcement Ordinance Article 30 (Weekly Holiday)

The paid holiday prescribed in Article 55 of the Act shall be granted to a persons with perfect attendance for the contractual working days during a period of one week.

☐ **Public holidays pursuant to Rules on Holidays of Public Agencies also apply to workers of private-sector companies.**

○ The mandatory use of public holidays and alternative holidays such as holidays(Lunar New Year's Day, Chuseok) as paid holidays(±15 days)

<table>
<tr><td>Public holiday</td><td>·Sunday → Excluded from the Enforcement Decree of the LSA
<table><tr><td>· March 1st Independence Movement Day, National Foundation Day, Hangeul Day, New Year's Day, Memorial Day
· Lunar New Year's Day, Chuseok, Buddha's Birthday, X-mas, Children's Day</td><td>15 days</td></tr><tr><td colspan="2">· Election day and other temporary holidays (temporary holidays) under the Public Official Election Act · Temporary holiday</td></tr></table></td></tr>
<tr><td>Replaced holidays</td><td>If the Lunar New Year's holidays and Children's Day overlap Sunday or other holidays, the following non-operational holidays will be designated (including Saturdays on Children's Day).</td></tr>
</table>

☐ **Enforcement date :** 3 stages divided by size over 2 years

- Businesses that employ 300 people or more: Jan. 1, 2020
- Businesses that employ 30 to fewer than 300 people: Jan. 1, 2021
- Businesses that employ 5 to fewer than 30 people: July 1, 2022

□ **Holiday substitute**

○ Upon the written agreement with the representative of the workers, the employer may grant workers paid leave on a particular working day, in substitution of a public holiday. (Individual Consents is not required)

Ⅲ. Annual leave revision

1. Expansion of two-year annual paid leave guarantee from the date of employment (enforcement of May 29, 2018)

【 LSA 】

Article 60 (Annual Paid Leave)

(1) An employer shall grant 15 days' paid leave to a worker who has registered not less than 80 percent of attendance during one year.

(2) An employer shall grant one day's paid leave per month to a worker whose consecutive service period is shorter than one year or whose attendance is less than 80 percent, if the worker has offered work without an absence throughout a month.

(3) Deleted.

(4) After the first year of service, an employer shall grant one day's paid leave for each two years of consecutive service in addition to the leave prescribed in paragraph (1) to a worker who has worked consecutively for 3 years or more. In this case, the total number of leave days including the additional leave shall not exceed 25.

(5) An employer shall grant paid leave pursuant to paragraphs (1) through (4) upon request of a worker, and shall pay ordinary wages or average wages prescribed in employment rules or other regulations during the period of leave. However, the leave period concerned may be changed, in case granting the leave as requested by the worker might cause a serious impediment to the ooperation of the business.

(6) In applying paragraphs (1) through (3), a period falling under any of the following subparagraphs shall be considered a period of attendance：

1. A period during which a worker is unable to work due to occupational injuries or diseases；and

2. A period during which a pregnant woman does not work on leave taken pursuant to paragraphs (1) through (3) of Article 74.

3. A period during which a worker does not work on childcare leave due to article 19 paragraph (1) of Act on Gender Equality and Support for Work-Home Compatibility.

(7) The leave referred to in paragraphs (1) through (4) shall be forfeited if not used within one year. However, this shall not apply in case where the worker concerned has been prevented from using the leave due to any cause attributable to the employer.

[Enforcement Date May 29, 2018] Article 60

☐ **Subject : the worker who joined after May 29, 2017**

☐ **Article 60 (3) was deleted.**

Before revision	After revision
15 days' of paid annual leave for two years from the date of employment	A maximum of 26 days' paid annual leave shall be granted for two years from the date of employment

☐ **Valid date and payment date for unused leave days in the first year of employment**

○ The worker whose consecutive service period is shorter than one year, shall be granted one day's paid leave per month on the first day of following month. Those leaves can be used within one year. If vaild date of usage of leaves ends, the employer shall compensate unused leaves on the next day after one year.

☐ **How to calculate annual paid leave when applying the fiscal year standard**

○ Both of annual leave (15 days) given according to the present calculation method, and leave given monthly during first year shall be granted to new recruits.

⇨ Total annual paid leave for 2 years after joining the company**(①+②)**

= ① The number of annual leaves that occur next fiscal year(15 days × total working day/365) + ② The number of annual leaves that took place during first fiscal year

<Example. Annual paid leave for the worker joined in July 1, 2017>

date / Article	**17.8**	17.9	17.10	17.11	17.12	**18.1**	18.2	18.3	18.4	18.5	18.6	**18.7**
60-(1)						7.5day						
60-(2)	1day	1day	1 day	1 day	1 day	1 day	1day	1day	1day	1day	1day	
Total	1day	2day	3 day	4 day	5 day	**13.5** day						18.5 day

○ Payment of unused leave days on the basis of fiscal year

⇨ If the agreement between labor and management (as employment rules, collective agreement) allows workers to use annual leaves within a fiscal year, the annual paid leave, which granted by one month's attendance for less than 1 year serviced, will be available for one year from the next fiscal year.

2. The period of childcare leave shall be considered as a period of work attendance (from May 29, 2018)

☐ **The establishment of Article 60 (6), subparagraph 3.**

Before revision	After revision
Total annual leaves were reduced in proportion to the period of childcare leave and calculated on working days. If a worker take childcare leave for one year, he/she shall not be granded any annual leaves returning to work.	The period is considered as continuing work time, therefore they will be granted all annual leave days without any deduction. Annual leave can be granted at least 15 or 25 days depending on the number of service year.

☐ **Subiect**

○ According to the current law, when calculating the number of annual leave days, the period of childcare leave is excluded and calculated as a proportion of the whole period, while maternity leave is regarded as a period of attendance. Because of the Act, some workers were not granted annual paid leave in the following year after returning from childcare leave.

○ Normally the application date for childcare leave shall not be identified clearly, therefore the worker starts childcare leave after May 29, 2018, the amendment of the regulations shall be applied.

☐ **How to apply in two installments for childcare leave for 1 child**

○ If the worker use childcare leave divided into 2 parts, and the starting date of the second period is after May 29, 2018, the second period of childcare leave is considered as working days when calculating annual paid leaves.

☐ **Whether the revised regulations shall be applied to the additional childcare leave days under the "collective agreement" or "employment rules"**

○ If more than one year has been spent on childcare leave and is not specified in the employment rules or collective bargaining, only the number of days paid according to the Article 70 of the Employment Insurance Act. However, the agreement between labor and management gives an advantage to the worker, follow it.

Ⅳ. Act on Equal Employment and Support for Work-family Reconciliation and the improvement system for the Disabled

1. Establishment of 3 days annual leave for subfertility(from May 29, 2018)

【Act on Equal Employment and Support for Work-family】

Article 18-3 (Subfertility Leave)

(1) Employers shall grant a worker who requests leaves for artificial or external fertilization, three days annual leave for subfertility or less (hereinafter, referred to as "subfertility leave") , with the first day being paid and the remaining 2 days not paid : Provided, the leave period concerned may be changed in consultation with the concerned worker, in cases where granting the leave as requested might cause a serious impediment to the operation of the business.

(2) No employer shall dismiss, penalize, or take any other disadvantageous measure against a worker for taking subfertility leave.

(3) Application methods and procedures for subfertility leave shall be determined by Presidential Decree.

Article 9 (Application for subfertility treatment Leave)

(1) An employee who intends to apply for Subfertility Treatment Leave(hereinafter refered as 'Subfertility Treatment Leave') in accordance with Article 18 paragraph 3 of the Act shall apply to the employer up to three days before the day on which he or she starts the subfertility treatment.

(2) The employer may request that the employee applying for the subfertility treatment leave to submit documentation verifying that she will receive such medical treatment.

***[Attachment]** This will take effect on May 29, 2018*

☐ **An annual leave of 3 days for subfertility has been newly established, with the first day being paid, and the remaining 2 days not paid.**

☐ **Application procedures**

○ Workers who want use the leave shall apply for the permission of the employer three days before.

*The worker shall submit the documentary evidence when the employer requests.

☐ Details

○ Available on a daily basis within 3 days of the year

○ The scope of "annual" shall be granted three days from the date of employment within one year. However, by the fiscal year, for those who are less than one year service, the employer shall grant sufficient leave for the period of before starting 2nd fiscal year on 1 Jan., so as to prevent any violation of the law.

○ The "documentary evidence" shall be proved the fact that she received the treatment and the date in written by a doctor and medical institution.

2. If you continue working for more than six months, you are allowed to take childcare leave. (from May 29, 2018)

【Act on Equal Employment and Support for Work-family】

Article 19 (Violation of Working Conditions) (1) If any of the working conditions set forth in accordance with Article 17 is found to be inconsistent with the actual conditions, the worker concerned shall be entitled to claim damages resulting from the breach of the working conditions or may terminate the labor contract forthwith.

Enforcement Decree Article 10 (Exclusion from Childcare Leave) An employer may, pursuant to the proviso to Article 19 (1) of the Act, may not grant childcare leave in any of the following cases：

1. A worker has offered continuous services in the business concerned for less than six months prior to the scheduled date of childcare leave (hereinafter referred to as "scheduled start date of leave")；
2. A worker's spouse is on childcare leave for the same infant (including childcare leave provided under other Acts and subordinate statutes).

[Attachment] This will take effect on May 29, 2018.

☐ **Revised contents**

Before revision	After revision
The employer shall allow the worker with more than **one year of employment** at the workplace to apply for childcare leave.	The employer shall allow workers with more than **six months of employment** at the workplace to apply for childcare leave.

3. Enhancement of the employer's responsibilities and protective measures for victims of sexual harassment at work (from May 29, 2018)

【Act on Equal Employment and Support for Work-family】

Article 13 (Education to Prevent Sexual Harassment at Work)

(1) An employer shall conduct education in order to prevent sexual harassment at work (hereinafter referred to as the "education to prevent sexual harassment") and to create a safe working environment for workers.

(2) An employer and workers shall be required to take education to prevent sexual harassment.

(3) Employers shall post or keep materials on preventing sexual harassment in easily accessible areas at the workplace.

(4) Employers shall take measures to prevent and prohibit sexual harassment in the workplace in accordance with the standard as determined by Ordinance of the Ministry of Employment and Labor.

(5) All necessary matters regarding the content, methods and frequency of education on preventing sexual harassment as prescribed in paragraphs (1) and (2) shall be determined by Presidential Decree.

Article 13-2 (Entrustment of Education to Prevent Sexual Harassment at Work)

(2) In cases where an employer wants to entrust an appropriate institution to conduct education on preventing sexual harassment, he/she shall notify the institution of what is determined by Presidential Decree as prescribed by Article 13 paragraph (5) and ensure that it is included.

Article 14 (Actions in the Event of Sexual Harassment on the Job)

(1) Workers can report to their employer any discovery of sexual harassment.

(2) Upon receiving a report as prescribed in paragraph (1) or discovering an occurrence of sexual harassment in the workplace, the employer shall immediately conduct an investigation to confirm the facts. In such cases, the employer must ensure that the worker who has reportedly suffered from sexual harassment on the job or who has claimed that sexual harassment occurred (hereinafter referred to as the "employee victim etc.") does not feel sexually humiliated during the investigation process.

(3) In protecting an employee victim etc. during the investigation period as prescribed in paragraph (2), the employer shall take appropriate measures such as changing the place of work or providing paid leave if they are necessary. In any case, the employer shall not take action that goes against the will of the employee victim, etc.

(4) If the investigation conducted as prescribed in paragraph (2) confirms that sexual harassment has occurred on the job against the employee victim, the employer shall take appropriate measures as necessary and as requested by the employee victim, such as changing the employee victim's place of work, transfer, or providing paid leave.

(5) If the investigation conducted as prescribed in paragraph (2) identifies the perpetrator of sexual harassment on the job, the employer shall immediately change the perpetrator's place of work or take other disciplinary actions. In such cases, the employer shall listen to the view of the employee victim on the disciplinary action before carrying it out.

【Act on Equal Employment and Support for Work-family】

(6) Employers shall not take any of the disadvantageous actions listed in the following sub paragraphs against an employee who reports sexual harassment or against an employee victim etc.:

1. Expulsion, dismissal or any disadvantageous measures corresponding to rejection of the worker's status;
2. Unfair personnel actions such as penalties, suspension, reduction of wages, demotion, or limitations on promotion;
3. Unfair personnel actions such as relieving of all duties or reassigning duties against the worker's will;
4. Discriminative evaluations of achievement, peer evaluations or unfair payment of wages or bonuses based on such unfair evaluations;
5. Limiting educational or training opportunities to develop and/or improve vocational abilities;
6. Perpetration of actions such as bullying, physical or verbal abuse which inflict emotional or physical damage, and neglecting to stop the occurrence of such actions;
7. Any other disadvantageous measures against the will of the worker who reported the sexual harassment or against the employee victim etc.

(7) Persons who investigate the report of sexual harassment on the job as prescribed in paragraph (2), who receive such a report, or who participate in the investigation process shall not divulge the confidential information they learn during the investigation against the will of the employee victim etc.: Provided, That this shall not apply to cases where they are reporting information relevant to the investigation to the employer or providing necessary information upon request from relevant institutions.

Article 14-2 (Prevention of Sexual Harassment by Clients, etc.)

(1) Where any person closely related to the duties, such as a client, causes a worker to feel sexual humiliation or repulsion by sexual words, actions, etc. during the performance of his/her duties and such worker requests resolution of the grievance thereby, his/her employer shall endeavor to take all possible measures, such as the change of place of work and transfer. ,<Amended Nov. 28,2017>

□ **Revised contents**

① Strengthen sexual harassment prevention training at work

- The duty of the employer to provide sexual harassment prevention education are specified in the law, in stead of the Presidential Decree (Article 13-(1)).
- Sexual harassment prevention education shall be conducted every year and the details of such shall be posted.

② The employer's obligation to take action in case of sexual harassment at work, etc.

- Anyone is entitled to report on sexual harassment at work to the employer and the employer shall take measures to protect the worker at the same time when investigating the facts.
- When occurrence of sexual harassment is confirmed, the employer shall take countermeasures such as disciplinary action or change of workplace of a person who

has committed sexual harassment, after listening to the victim's statement and confidential information obtained during an investigation of sexual harassment shall not be divulged to anyone.

③ The employer's obligation to take actions when sexual harassment occurs by customers

- When sexual harassment occurs from a customer, the employer shall also rearrange a position or provide paid leave to victims, with a penalty of up to KRW 3 million imposed for violation.

4. Increase 'Dad's childcare leave bonus up to 2 MW (from July 1, 2018)

【 Employment Insurance Act 】

Enforcement ordinance Article 95-2 (Consideration of the Special Regulation for Childcare Leave Pay) If two parents of the same child take childcare leave sequentially, the first three months of childcare leave paid to the parent who took a second childcare leave will be equivalent to the ordinary monthly wage despite Article 95. In this case, the monthly cap will be 2 million won.

[Addenda] Article 4 (Cases concerning special cases of childcare leave pay) The amendment to Article 95-2 shall be applied to the parent who took a second childcare leave, when two parents of the same child sequentially. Therefore, the childcare leave pay shall be in accordance with the revised regulations, as of July 1, 2018

☐ **Revised contents**

○ 'Dad's childcare leave bonus is a special regulation when both of parents take childcare leave for the same child. As the maximum monthly childcare allowance was raised by 1.5 MW for the first three months, the bonus shall be raised to enhance effectiveness.

Before revision	After revision
Max. monthly childcare allowances for the first three months of childcare leave for the eldest child is 1.5 MW, for the second child or younger is 2 MW.	Max. monthly childcare allowances is 2 MW for the first three months of childcare leave, whether the child is eldest or not.

○ If the worker who have started sequentially second childcare leave for the same child before July 1, 2018, the childcare allowance, for the period of the first three months of childcare leave which is spreaded out after July 1, 2018, should be applied to the increased salary standard.

5. Relaxation of requirements for support to hire new worker to replace the worker during childbirth and childcare (from July 1, 2018)

【 Employment Insurance Act 】

Enforcement ordinance Article 29 (Employment Security Incentives for childbirth and childcare)

(1) The Minister of Employment and Labor shall provide employment and safety incentives for childbirth to employers of one of the following clauses pursuant to Article 23 of the Act. a, b. omitted.

c. When an employer gives or allows the worker more than 30 days of maternity leave or child care leave, the leave of miscarriage and still birth under Article 74 paragraph 3 of the Labor Standards Act. and employ substitute new worker to replace him/her on leave with all the follwing requirements ;

1. An employer shall employ new worker more than 30 days after 60 days from the day when the worker takes on maternity leave or child care leave, leave of miscarriage and still birth ;
2. An employer shall employ the worker who returns from maternity leave, childcare leave, leave of miscarriage and still birth, more than 30 days. Provided, this shall not apply to the employer is not able to hire the employee, who returns from maternity leave, leave for miscarriage and stillbirth, due to the voluntary resignation.

Addenda Article 1 (Enforcement date) The amendment of Article 29, paragraph 1 shall go into force from July 1, 2018.

Article 2 (Application of the Employment Security Incentives for childbirth and childcare) The Amendment to Article 29 (1) shall be effective beginning from the first case where an employer who grants the worker with maternity leave, leave of miscarriage and still birth, childcare leave and employs new worker to replace him/her after enforcement of the amended regulation.

☐ **Revision contents**

Before revision	After revision
The employer shall continue to employ the worker who returns from maternity leave, leave of miscarriage and still birth, childcare leave, for 30 days or more. If the worker voluntarily regined, the employer could not receive employment security incentives.	When the worker retires voluntary after come back from paternity leave, etc., employment security incentives shall be supported after checking voluntary retirement through employment insurance network. (The Article 29-(1)-c is established.)

○ The Amendment shall be effective beginning from the first case where a employer who grants the worker with maternity leave, leave of miscarriage and still birth, childcare leave and hires new worker to replace him/her for 30 days or more, after enforcement of the amendment as of July 1, 2018

6. Education for the improvement for disabilities awareness at least once a year (from May 29, 2018)

【 Act on Employment Promotion and Vocational Rehabilitation for Disabled Person 】

Article 5-2 (Education to Improve Awareness of Persons with Disabilities in the Workplace)

(1) The employer must create a stable working environment for workers with disabilities by educating against prejudice in the workplace against those with disabilities.

(2) The employer and workers shall receive education to improve awareness of those with disabilities pursuant to paragraph 1.

(3) The Minister of Employment and Labor may inspect whether education has taken place according to paragraphs 1 and 2.

(4) The Minister of Employment and Labor shall develop and distribute educational materials to ensure that workplace education on improving awareness of persons with disabilities is carried out pursuant to paragraph 1.

(5) The content, methods, and number of educational sessions pursuant to paragraphs 1 and 2 shall be set by Presidential Decree. [Inserted November 28, 2017]

Article 5-3 (Education to Improve Awareness of Persons with Disabilities) (1) The employer shall refer education to an institution designated by the Minister of Employment and Labor (hereinafter an "educational institution to improve awareness of persons with disabilities").

(2) The head of the educational institution to improve awareness of persons with disabilities shall provide education as defined by the Ministry of Employment and Labor, and shall keep educational data for three years.

(3) Educational institutions to improve awareness of persons with disabilities shall have at least one instructor designated by the Ministry of Employment and Labor.

(4) The Minister of Employment and Labor may cancel the designation if any of the following clauses apply to the educational institution to improve awareness of persons with disabilities: Provided, if clause 1 applies, the designation shall certainly be cancelled.

1. If the designation was gained by false or other unjust means
2. If the instructor in paragraph 3 is not kept for more than 6 months without good reason

(5) If the Minister of Employment and Labor seeks to cancel the designation of an educational institution to improve awareness of persons with disabilities in accordance with paragraph 4, the Minister must call a hearing to do so.

Article 86. (2) Persons engaging in any of the following actions, despite their responsibility otherwise, shall be punished with an administrative fine not exceeding 3MW:

1. Failure to implement the required education to improve awareness of persons with disabilities, in violation of Article 5-2 paragraph (1);
2. Failure to keep educational materials on improving awareness of persons with disabilities, in violation of Article 5-3 paragraph (2).

【 Act on Employment Promotion and Vocational Rehabilitation for Disabled Person 】

Enforcement Decree Article 5-2 (Education to improve awareness of persons with disabilities in the workplace) (1) Employers shall conduct education on improving awareness of persons with disabilities at work at least once a year, in accordance with Article 5.

(2) The education in paragraph 1 shall include the following;

1. Definition of disabilities and understanding the types;
2. Human rights of persons with disabilities in the workplace, illegality of discrimination against those with disabilities and requirement to provide reasonable convenience;
3. Laws and systems related to promotion of employment and rehabilitation of those with disabilities;
4. Other things as required to improve awareness of persons with disabilities in the workplace.

(3) Employers can conduct education pursuant to paragraph 1 collectively, such as through morning meetings, formal meetings, or distance education using information and communication networks, considering the size or characteristics of the company.

(4) Employers may use the instructor pursuant to Article 5, Article 3 of the Act to conduct education in accordance with paragraph 1.

(5) Employers who have no obligation to hire those with disabilities pursuant to Article 28 of the Act can distribute, publish, or send electronic mail to the Minister of Employment and Labor in spite of paragraph 1.

□ **Revision contents**

- For businesses with less than 50 workers, the implementation of the education can be replaced with distribution and publication of materials.
- Maximum penalty of 3 MW will be imposed.

Ⅴ. Employee Retirement Benefit Security Act (ERBSA)

□ **Background**

○ According to the severance pay system and DB system, severance pay shall be determined based on average wages on retirement date.

○ When working hours being reduced, monthly wage may decrease, and if the worker retire the company during the period when the wage are reduced, severance pay will decrease.

○ Accordingly, the amendment of the ERBSA is adjusted to prevent the worker from reducing his/her retirement benefits.

☐ **Revision contents**

○ Added reason for interim settlement of severance pay (enforcement d, Article 3 (1), 6-3).

- "According to enforcement of the LSA No. 15513, when the worker's retirement pay is decreased due to the reduction of working hours." The reason was added as the reason for the interim settlement of severance pay.
- Effective date : Under the revised LSA, the worker shall apply for interim settlement of severance pay by the time enforced for each company.

< Enforced date in phases by size of businesses >

Index	Business establishment size industry	Implementation time
working hours per week (68 → 52 hrs)	more than 300 employees	July 1, 2018 (business excluded from special business hour, July 1, 2019)
	50~299 employees	Jan. 1, 2020
	5~49 employees	July 1, 2021
Special biz hrs (26→5 categories)	deleted (21 categories)	July 1, 2018
	maintenance (5 categories), secure rest of 11 hrs	Sep. 1, 2018

【 Employee Retirement Benefit Security Act 】

Enforcement Decree Article 3 (Reasons for Interim Severance Payment)

(1) "Reasons prescribed by Presidential Decree, such as housing purchases, etc." in the former part of Article 8(2) of the Act refers to any of the following cases:

6-3. According to enforcement Decree to the Labor Standards Act (No. 15513), when the employee's retirement pay is decreased due to the reduction of working hours;

Article 31 (Duties of Employers for Stable Operation of Retirement Pension Plans) "Matters prescribed by Presidential Decree" in Article 32 (1) of the Act refers to the following matters:

1. An employer who has set up or operates a retirement pay system or a Defined Benefit retirement pension plan shall inform the pension holders that the amount of retirement benefits to be received may be reduced, and consult with the workers' representative under Article 4 (3) of the Act (hereinafter referred to as "workers' representative") about necessary measures, such as introduction of a Defined Contribution retirement pension plan and the establishment of separate standards for calculation of benefits, if the amount of benefits to be paid to workers may be affected by implementation of the wage peak system, pay cuts, decreases in contractual working hours or reduction of working hours (limited to the reduction of working hours pursuant to the revision of the Labor Standards Act [No. 15513]), etc.;

○ Establishment of the employer's obligation to prevent retirement benefits decrease (Article 32 (4), 46 3. of the ERBSA)

- The employer who establish the severance pay and the DB plans, shall notice to workers of the possibility of retirement benefits decrease. The employer shall converse to DC plans or improve the criteria for calculating retirement benefits through the discussion with representatives of workers.

【 Employee Retirement Benefit Security Act 】

Article 32 (Duties of Employers) (4) An employer who establishes a Defined Benefit retirement pension plan or retirement pay plan shall notify the worker(s) of the possibility that retirement benefits will be reduced, and provide a reason for such reduction.

1. When the employer intends to adjust worker wages according to their ages, time of service, and extend or guarantee the retirement age of workers through collective bargaining and employment rules;
2. When the employer and worker(s) agree to continue working for at least three months at reduced working hours per day, or reduce working hours by at least 5 hours a week.
3. When worker wages are reduced due to reduced working hours, under enforcement of the Labor Standards Act (No. 15513);
4. In the event wages are reduced, as defined by the Employment and Labor Administration Ordinance, Article 46 paragraph 3 shall be re-established as follows.

Article 46 (Penal Provisions) If any of the following subparagraphs apply to a person, that person shall be punished with a fine not exceeding five million won:

3. Failing to notify workers of a possible reduction of their retirement benefits or taking necessary measures to prevent such a reduction, in violation of Article 32 paragraph 4.

<Act No. 15664, June 12, 2018.> The Act shall take effect on July 1, 2018.