The Small Amount Insolvency Payment Claim System

I. Introduction

Providing work not meant to be on a voluntary basis and not receiving wages is slave labor. Thus, delaying payment of wages is a serious offense and subject to imprisonment for up to three years or a fine of up to 30 million won.[1] Delayed payment of wages is punishable for each violation towards individual workers, so if the employer delays payment of wages to a large number of workers, that employer will face heavy penalties. Despite these strong penalties, it is not easy to settle problems related to unpaid wages. Even if a worker who was not paid complains to the local Employment Labor Office (hereinafter referred to as "Labor Office"), and the Labor Office confirms that the wages remain unpaid and the employer is punished, the worker still has to take separate legal action to receive the unpaid wages. If the employer does not have any property, the employer can receive a certain amount of money for the most preferential wages from the Wage Bond Guarantee Fund. Receiving unpaid wages through civil litigation and the Insolvency Payment Claim System is a complex process and takes a long time, which is not helpful in practical terms.

To resolve these problems, a new payment solution has been proposed in addition to legal preventive measures. A high rate of 20% interest is placed on employers to facilitate their payment of delayed wages. This is to preclude employers avoiding punishment if they do not pay the unpaid wages until they are prosecuted. In addition, the unpaid workers, regardless of their employer's ability to pay their wages, can receive up to 10 million won in unpaid wages from the Wage Claim Guarantee Fund, after the Labor Office confirms that wages were not paid and a court has determined they are owed wages (for which they can receive assistance from the Legal Aid Corporation if they are eligible). This is called the Small Amount Insolvency Claim System. The maximum payout was increased from 4 million won to 10 million won on July 1, 2019, which will assist greatly with resolving financial problems related to unpaid wages. Herein, I will examine the related legal preventive systems for unpaid wages and the Small Amount Insolvency Claim System in detail.

II. Preventive Measures for Delayed Payment of Wages

1. High interest levied

> The Labor Standards Act: Article 37 (Late Payment Interest on Unpaid Wages)
> (1) An employer who fails to pay all or part of the wages or benefits (only those paid in a lump sum) pursuant to Article 36 or subparagraph 5 of Article 2 of the Employee Retirement Benefit Security Act, respectively, within fourteen days from the day when the cause for payment occurs, shall pay late payment interest for the number of days from the date following expiry of the fourteen day period until the payment is made, at a rate up to 40/100 and as prescribed by Presidential Decree in consideration of financial conditions, including the late payment interest rate applicable among banks under the Banking Act.
> (2) If an employer delays payment of wages due to a natural disaster, armed conflicts or other reasons prescribed by Presidential Decree, the provisions of paragraph (1) shall not apply to the period during which such reasons continue to exist.

[1] The Labor Standards Act (LSA): Article 109 (paragraph 1).

In order to prevent delayed payment of wages and early liquidation of unpaid wages, the Labor Standards Act was amended in 2005 to create a "Late Payment Interest System for unpaid wages." If an employer fails to pay all or part of wages and retirement benefits owed within 14 days of the required date of payment, the employer shall pay the late payment interest rate prescribed by Presidential Decree (currently 20% per year) for the number of days payment was delayed, starting from the day following the required date of payment. This high interest rate helps to prevent an employer from intentionally paying back wages only when he/she is forced to, and without consequences. If an employer delays payment of wages due to a natural disaster, armed conflict or other reasons such as legal or actual bankruptcy, this provision shall not apply to the period during which such reasons continue to exist.

The late payment interest system levies a much higher rate of interest (20% annually) than the statutory interest of 6% a year, as a way to induce quick payment. However, if the employers do not have any money or assets to effect payment, there is no way to protect the affected workers' rights, no matter how high the interest rate.[2] The reasons why 20% annual interest payment is not used well on unpaid wages is as follows. First, there is no penalty for failing to pay the late payment interest, unless the worker takes the employer to civil court.[3] Second, workers tend to agree to withdraw their complaints if they simply receive their unpaid wages. Third, the Labor Inspector only considers whether the unpaid wages have been paid when determining punishment, and not the interest for delaying payment, since there are no items related to delayed payment interest in the "Official Document on Details of Unpaid Wages". Delayed payment interest is only considered in civil lawsuits for unpaid wages, meaning there is very limited effectiveness in preventing wage payment delays.

2. No-punishment offenses against one's intention

> The Labor Standards Act: Article 109 (Penal Provisions)
> ① Any person who violates the provisions of Article 36, 43 (Payment of Wages), 44 (Payment of Wages in Subcontract Businesses), 44-2 (Joint Responsibility for Paying Wages in the Construction Industry), 46 (Allowances during Business Suspension), or 56 (Extended Work, Night Work and Holiday Work) shall be punished by imprisonment of up to three years or by a fine not exceeding thirty million won
> ② Prosecution against a person who violates the provisions of Article 36, 43, 44, 44-2, 46 or 56 shall not take place against the clearly expressed wishes of the victim.

No-punishment offenses against one's intention is a system where imprisonment of up to three years or a fine of up to 30 million won is imposed on employers who have delayed payment of wages in principle, but the Ministry of Employment and Labor (MOEL) does not prosecute if it is against the clearly expressed wishes of the related worker(s). Employers were forced to solve voluntary liquidation of unpaid wages through agreement with workers by paying unpaid wages instead of suffering criminal penalties. However, if a large number of workers whose wages remain unpaid, the employer shall be deemed to have committed the same offense against each unpaid worker.[4] Accordingly, in order to avoid penalties according to the no-punishment offenses system, written consent from all unpaid workers must be

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2) Park, Keun-hoo et al., Ministry of Employment and Labor, "A Study on Expansion of the Wage Bond Guarantee System", December 23, 2016, p. 17.
3) Ha, Kap-rae, 「The Labor Standards Act」 32nd ed., 2019, p. 296.
4) Supreme Court ruling on April 14, 94da1724.

obtained.[5]

III. The Small Amount Insolvency Payment Claim (IPC)

1. Purpose for introduction

The existing insolvency payment claim system is limited to those who were employed by companies declared legally bankrupt, but does not apply to employees who have not received their wages from a company that is still operating. To better implement the basic purpose of the Wage Claim Guarantee System and improve the livelihoods of unpaid workers, the Small Amount Insolvency Payment Claim System (Small Amount IPC System) was introduced on January 20, 2015. For those unpaid workers whose employment ended with companies still in operation, a certain amount of the insolvency payment can be paid when the court order to secure the execution rights such as the final judgment and payment order was secured.[6] The Small Amount IPC System is simpler than the existing general IPC System, which helps to protect, in actual terms, the rights of unpaid workers. While the general IPC system requires that the company has gone bankrupt, compensation through the Small Amount IPC System only requires confirmation from the court that a worker's wages remain unpaid.

2. Requirements for Small Amount IPC payments

According to the Wage Claim Guarantee Act (WCGA), payment of compensation through the Small Amount IPC requires the following.

1) Requirement regarding the employer: The workplace where the unpaid worker was employed must have been in operation for at least six months at the time the worker's employment ended, and have employed at least one permanent worker.[7]
2) Requirement regarding the worker(s) whose wages remain unpaid: The unpaid worker must file a lawsuit or an order for payment within two years from the date his/her employment ended with the related employer.[8]
3) Requirement to obtain legal authority: Workers should receive a judgment, payment order, or recommendation for implementation through the Legal Aid Corporation or a separate civil lawsuit.

Unpaid workers who meet the above requirements may be enter a Small Amount IPC for up to 10 million won of the total unpaid amount of their last three months' wages or suspension allowances and retirement allowances for the last three years.

3. Process of making a Small Amount IPC

(1) Petition for unpaid wages to the Labor Office

When a worker complains to the Labor Office about failing to receive wages owed, an investigation begins. The labor inspector begins by requesting attendance of the relevant parties to a hearing. If a settlement agreement is concluded between the parties or the unpaid wages are paid, the case is closed. If the unpaid wages are not paid, despite an order to do so from the labor inspector, the criminal punishment process begins. The worker can also sue the employer for the unpaid wages and therefore obtain the authority to receive the claimed wages if he/she wins the lawsuit.

(2) Free legal service from the Legal Aid Corporation

Workers who intend to receive a Small Amount IPC may be eligible for free legal services from the

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5) Labor Inspector's practical guide, Ministry of Employment and Labor, "Handling of Unpaid Wages", 2016, p. 33.
6) Ji, Hee-jung, "The Protection of Workers Eligible to Make a Small Amount Insolvency Payment Claim", 「Legal Issues and Discussion」, May 2017, p. 43.
7) Enforcement Decree to the WCGA, Article 8 paragraph 2.
8) Enforcement Decree to the WCGA, Article 7 paragraph 2.

Legal Aid Corporation after receiving a Confirmation Certificate of Unpaid Wages, and can take a legal action along with the LAC to get the court's confirmation on unpaid wages. Workers who are not eligible for free legal aid (those who earn an average monthly wage of more than 4 million won in the last three months)[9] must make a Small Amount IPC upon obtaining a court's order to receive unpaid wages during a civil lawsuit. The employee shall submit the Small Amount IPC to the Korea Labor Welfare Corporation within one year from the date authority to receive was obtained.[10]

(3) Applying for an insolvency payment claim

If a worker applies for a Small Amount IPC with a Confirmation Certificate of Unpaid Wages attached, the authority to receive unpaid wages, and a Confirmation Certificate issued by the Court, the Labor Welfare Corporation shall decide whether to pay the Small Amount IPC within 14 days of receiving the claim.[11]

4. Differences from the existing Insolvency Payment Claim System

(1) Criterion for payment

The existing general IPC system allows payouts only after a bankruptcy decision or commencement of rehabilitation proceedings for the workplace involved, or if the Labor Office confirms the existence of *de facto* bankruptcy or rehabilitation, even though such bankruptcy or rehabilitation has not been legally determined by the court. However, the Small Amount IPC can be received regardless of insolvency.

A worker whose employment has ended must first obtain an order from the court to receive unpaid wages from the employer.

(2) Eligible workers

Workers eligible for the general IPC are those whose employment ended within three years from one year prior to the date of filing for bankruptcy or rehabilitation. However, workers eligible for the Small Amount IPC are those who filed a lawsuit within two years after their employment ended.

(3) Requirement for the employer

The general IPC requires that the company must be *de facto* or legally bankrupt after operating for at least six months before the worker's employment ended, while the Small Amount IPC requires that it was operating for more than six months before the worker's employment ended.

(4) Applicable period

The general IPC shall be submitted within two years of the date of a declaration of bankruptcy or of the determination of bankruptcy, while the Small Amount IPC shall be submitted within one year from the date of final judgment by the court.

(5) Scope of payment

Both general and Small Amount IPCs are paid on behalf of the employer for the final three months' wages (including suspension allowances) and the final three years' retirement allowances.[12] However,

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9) Legal Rescue Treatment Rule: Article 5 (Those eligible for aid)

10) WCGA Implementation Rule: Article 8, paragraph 1.

11) WCGA Implementation Rule: Article 5, paragraph 2.

12) <Limits for insolvency payment according to age>

Employee Age	-30 years	30-40 years	40-50 years	50-60 years	60+ years
Wages & severance pay	1.8 mil. won	2.6 mil. won	3 mil. won	2.8 mil. won	2.1 mil. won
Suspension allowance	1.26 mil. won	1.82 mil. won	2.1 mil. won	1.96 mil. won	1.47 mil. won

※ Note: Amounts in the table above are for each month's wage or suspension allowance, and severance pay for each year of service.

※ How much is the insolvency payment? Employee A's salary was 4 million won and he was 45 at the time of employment termination. Wages were not paid for his final five months, and neither was severance pay for his five service years. (the most preferential payments: **24 million won**

1.8 million won to 3 million won per month (up to 18 million won) can be paid out under the general IPC, depending on age. The Small Amount IPC is based on the criteria of the general IPC as well, but the maximum payout is 10 million won, while the maximum amount per wage item (including suspension allowance) and retirement benefits is separated and shall not exceed 7 million won each.

5. Evaluation

Claims under the existing Insolvency Payment Claim system are required to have *de facto* or actual bankruptcy legally recognized. Claims under the new Small Amount IPC are likely to be received even if the above requirements are not met, since the key requirement is whether or not the right to receive unpaid wages is given by the court. Administrative proceedings for the payment of a Small Amount IPC are easier than under the existing IPC. Nevertheless, the fact that workers have to go through two or three administrative agencies until they can receive money in this way, and having to submit separate documents for each agency, is an obstacle to effective utilization of the Small Amount IPC system. Therefore, a one-stop service for the new system is needed, and can be achieved through active linkage between the Labor Office, the Legal Aid Corporation, and the Korea Labor Welfare Corporation.[13)]

IV. Conclusion

As a way to rectifying the problem for some workers of their wages remaining unpaid, there is a delayed payment interest system and no-punishment offenses against workers' intention that can be used within the legal framework. The delayed payment interest system involves levying an additional 20% in annual interest to the amount of unpaid wages, which should be described with delayed payment interest at the Labor Office's issuance of an Unpaid Wage Confirmation Certificate. In cases of no-punishment offenses against workers' intention, criminal penalties are imposed on employers in the form of fines (rather than imprisonment), which can equal up to 20% of the total unpaid wages. Korea should introduce punitive fines as is done in the United States, charging fines several times higher than the actual unpaid wages, and promote the perception that work without wages is slave labor. In addition, the expanded Small Amount Insolvency Payment Claim system is groundbreaking in that it guarantees workers' right to wages up to the general Insolvency Payment Claim's payments . In the future, the maximum payout for the Small Amount IPC will need to be expanded again, and efforts made to improve its efficacy as a quick and convenient way for workers to receive wages they are owed.

Judgment of Employee Status, with a Checklist

à General Insolvency Payment Claim: **18 million won**
-Wages for final three months: 3 million won x 3 months = 9 million won
-Severance pay for final three years: 3 million won (one month's average wage) x 3 years = 9 million won
The total insolvency payment amount is 18 million won.
à Small Amount Insolvency Payment Claim: **10 million won** (adjusted to 7 million won for wages + 7 million won for severance pay = 14 million won à adjusted to 10 million won)
-Wages for final three months: 3 million won x 3 months = 9 million won à adjusted to 7 million won
-Severance pay for final three years: 3 million won (one month's average wage) x 3 years = 9 million won à adjusted to 7 million won

13) Park, Keun-hoo et al., Ministry of Employment and Labor research study, p. 131.

I. Introduction

With the arrival of the 4th industrial revolution, various new occupations have been created, and while a number of intermediate occupations for both workers and the self-employed have surfaced, the criteria for determining employee status have also expanded. There has been a tendency for companies to reduce direct employment by outsourcing marginalized tasks in order to reduce labor costs and generate more profit. These outsourced services include owner-operated truck drivers, onsite after-service technicians, delivery people, shop operators, call center employees, debt collectors, commissioned delivery contractors, car sales personnel, and freelancers. Companies are directly involved in the performance of their outsourced and subcontracted tasks in order to gradually expand their operating profit. The main characteristic of subcontracting or of individual business owners is that they accomplish their tasks independently. If the employer directly manages and supervises them, this can be considered a form of illegal contract or dispatch. In such cases, the company would immediately bear additional labor costs such as employment obligations, severance pay and social insurances premiums.

Judgment on the characteristics of employee status is based on a 2006 court ruling, although it can be difficult to judge employee status because issues have to be considered on a case-by-case basis and judgments vary depending on the intuition and inclination of the judges. Therefore, it could be said that it is necessary to establish a quantification standard that will take into consideration the characteristics of the work involved and the relevant issues for various individual situations, within the standard principles of the judgment. In the following paragraphs, a checklist for the determination of employee status is presented to assist in the understanding of employee status.

II. Criteria for Determining Employee Status

1. Employee status in the Labor Standards Act

First of all, I would like to look at employee status as it relates to the standard court ruling on this issue, concentrating on the definition of 'employee' in the Labor Standards Act.

Article 2 (1) of the Labor Standards Act stipulates that the term "worker" refers to a person who offers work to a business or workplace to earn wages, regardless of the type(s) of job he/she is engaged in. The concept of "employee" includes the following factors: 1) it is not determined by the type(s) of job he/she is engaged in; 2) the person works at a business or workplace; 3) the person offers work to earn wages. Under this definition, wages are put at the center, while the key point to be considered is whether a subordinate relationship exists between the work provider and the party who authorizes the work. That is, "employee" means "a person who offers work to earn money through a subordinate relationship".[14)]

A subordinate relationship is one where a person hired by an employer provides work under the employer's direction and orders, and carries out tasks as required by the employer. In other words, an employee who offers work to earn wages can be considered as "a person offering work under a subordinate relationship with an employer".[15)]

"Whether a person is considered an employee under the Labor Standards Act shall be determined by whether, in actual practice, that person provides work as a subordinate of the employer in a business or workplace to earn wages, regardless of the contract type such as an employment contract or a service contract. Whether or not a subordinate relationship with an employer exists shall be determined by collectively considering:

Whether rules of employment or other service regulations apply to a person; ② whether that person's

14) Jongryul Lim, 「Labor Law」, 17th edition, 2019, Parkyoung sa, p. 32. (Change was made for consistency)
15) Kaprae Ha, 「Labor Standards Act」, 32nd ed., 2019, Joongang Economy, p. 102.

duties are decided by the employer; ③ whether the person is significantly supervised or directed by the employer during his/her work performance; ④ whether his/her working hours and workplaces are designated and restricted by the employer; ⑤ ownership of relative equipment, raw materials or working tools; ⑥ whether the person could be substituted by a third party hired by the person; ⑦ whether the person's service is directly related to business profit or loss, as is the case in the operation of one's own business; ⑧ whether payment is remuneration for work performed or if a basic or fixed wage is determined in advance; ⑨ whether income tax is deducted for withholding purposes; ⑩ whether work provision is continuous and exclusive to the employer; ⑪ whether the person is registered as an employee by the Social Security Insurance Act or other laws, and ⑫ the economic and social condition of both parties.

Provided, that as whether basic wage or fixed wage is determined, whether income tax is deducted for withholding, or whether the person is registered for social security insurances are all items that could be determined at the employer's discretion by virtue of his/her superior position, the characteristics of 'employee' cannot be denied because of the absence of these mentioned items."

2. Understanding subordinate relations

When judging worker status, the case is judged based on the above-mentioned 'Substantial criteria for determining employee status', and the method of judging is to evaluate the worker under the Labor Standards Act if a large number of these criteria are met, by reviewing each case individually and comprehensively. The criteria can be divided into human subordinate relations, economic subordinate relations, and the dual judgment factors.[16)]

(1) Human subordinate relations

Human subordinate relation factors are the degree to which an employer manages and supervises workers in the course of their work. In recent years, this situation has been judged by reducing the employer's work instructions from "specific and individual command and supervision" to "significant command supervision" in determining human subordinate relations in consideration of the occurrence of various jobs and the related independent contractors.[17)] Specifically, such items include 1) the type of contract; 2) the exercise of disciplinary authority such as hiring, firing, disciplinary action etc., 3) control over situations such as commutes or leave; 4) supervision and control during work performance; 5) whether working hours and place of work are controlled.

(2) Economic subordinate relations

Economic subordinate relations depend on whether workers can make a profit on their own. In the case of part-time instructors, a performance-based pay system was used to apportion tuition fees with an employer according to the number of students who attended an academy. In this case, part-time instructors were not considered workers.[18)] Specifically, consideration of such items includes 1) whether the company owns the necessary supplies, raw material work tools, etc.; 2) whether the company is responsible for expenses incurred in the work; 3) whether a third party can perform the work for the person on his behalf and whether it is possible to engage in other tasks simultaneously; 4) whether or not the intent is to generate profit and manage their own business; 5) whether it is possible to engage in other business during working hours; 6) whether business risks are compensated for; 7) whether remuneration is paid for the work; and 8) whether long-term work is possible and whether there is any reference to exclusiveness (whether work is prohibited from other companies while performing the business).

(3) The dual judgment factors

16) Kang, Sung-Tae, "Judgment Determination in Special Employment Relations and Labor Standards Act," Labor Law, No. 11, 2000, p. 35
17) Supreme Court ruling 2004da29736, on Dec. 7, 2006: Full-time instructors' employee status.
18) Supreme Court ruling on Jul. 30, 1996: 98do732

The dual judgment factors are whether a basic or fixed salary has been established: matters concerning remuneration, such as whether income tax is withheld, and whether the relationship is recognized as a worker in the social security system. If this is recognized, it can be a factor in affirming a judgment of employee status. If it is not recognized, the situation should not be denied employee status solely on this basis.[19]

Specifically, related items include 1) whether there is a fixed salary for the performer, and 2) the burden of earned income tax, and whether or not four social insurances are insured.

3. Judgment based upon the court's subordinate relations

<Checklist for evaluating employee status[20]>

Supreme Court Ruling (Items: details for judgment)		Factual Grounds for Employee Status	Weight	Judgment	
				Employee	Contractor
1) Human subordinate relations (rating weight: 2 points for each item = 10 points in total)	1) Type of contract	Type of contract (employment contract or service contract)	2		
	2) Application of Rules of Employment; Right to manage personnel	Whether rules of employment were applied; Right to hire, dismiss, and discipline employees	2		
	3) Arrival/departure from work, annual leave	No control over arrival/departure time, no annual leave granted	2		
	4) Supervision during work performance	Supervision and control during work performance	2		
	5) Working hours; Work place	Whether working hours are controlled; Whether the workplace is mandated	2		
2) Economic subordinate relations (rating weight: 1 point for each item = 8 points in total)	1) Ownership of equipment, working tools	Who owns the equipment, tools, etc.; Whether damage claims are possible or not	1		
	2) Expenses	Whether operating costs are subsidized, expenses reimbursed, corporate credit card usage, etc.	1		
	3) Substitution by a 3rd party	Whether work is exclusive or if another person can be substituted in the event of absence	1		
	4) Pursuit of profit; Independent business	Whether pursuit of profit through individual effort is possible; Whether the individual can generate his own profit	1		
	5) Independent business	Whether independent business is possible	1		
	6) Liability for damages	Whether the director is responsible for losses	1		
	7) Remuneration for labor	Whether wage is decided by evaluation of total sales, or paid at a fixed amount in return for work provided	1		
	8) Continuous work; Exclusive work	Work is continuous; Whether the work is exclusive	1		
3) Dual judgment factors (if positive, score 1 point for each item)	1) Whether basic pay is fixed	Majority of pay is based on basic wage or incentive pay	1/0		
	2) Income tax and social security insurances	Whether corporate tax or income tax is deducted; Whether premiums for social security insurances are deducted	1/0		
Evaluation (20 points in total)		<Only judged when related items are engaged.>		0	0

19) Supreme Court ruling on September 7, 2007

20) Bongsoo Jung, "A Study on the Employee Status of Native English Teachers", MA degree thesis paper of Korean University graduate school, 2013, p. 79.

* In the review, weighting is divided into two stages: employee status and employer status. The more checks that are calculated in the total sums, the stronger the considered status.

Judgment of employee status should be centered on subordinate relations, and each case should be analyzed individually and comprehensively. In other words, human subordinate relations (10 points), economic subordinate relations (8 points), and dual judgment factors (reflected only when positive - 2 points), are judged for a total of 20 points. If there is no relevant item to be determined, that part is not reflected.

Ⅲ. Application of Judgment of Employee Status

1. Labor Case: Supreme Court Recognizes Native English Instructors as Employees

(1) Summary of the case

This case began when 17 instructors submitted a petition to the Labor Office for unpaid severance pay, weekly holiday allowance and annual paid leave allowance against the Defendant on February 22, 2011. Upon receipt of the petition, the Labor Office did a thorough investigation over 18 months and concluded that the Language Institute's 17 instructors were freelancers, not employees (Labor Team 4 of GangNam Labor Office, September 28, 2012). Upon this conclusion, 24 instructors (the original 17 plus 7 new applicants), instituted a civil action. On October 17, 2013, the Seoul Central District Court determined that "C" Language Institute's native instructors were employees under the Labor Standards Act (2011gahap121413). After this, the Language Institute filed an appeal against the District Court's decision, but the Seoul High Court maintained the original ruling by the District Court (Seoul high court 2013na68704). On June 11, 2015, the Supreme Court ruled that native English instructors (hereinafter referred to as "the Plaintiff") working for "C" Language Institute (hereinafter referred to as "the Defendant") were employees rather than freelancers, and were entitled to severance pay, annual paid leave allowance, and weekly holiday allowance (Supreme Court ruling 2014da88161).

(2) Facts[21]

1) The Defendant signed an 'Agreement for Teaching Services' with native language instructors to provide foreign-language teaching services.
2) The Plaintiffs used textbooks as determined by the Defendant. As needed, the Plaintiffs participated in developing textbooks, for which they received additional compensation.
3) The instructors did other work in addition to teaching, such as meeting the parents of students, etc., for which they also received additional compensation.
4) There were no other rules of employment or personnel rules applying to the Plaintiffs, but they did have to observe the 'Instructor's Code of Conduct' by adhering to the teachers' service regulations.
5) The CCTV cameras installed in each classroom were designed to supplement and improve the instructors' lessons, to simplify dispute resolution with students, and to protect the Language Institute and its instructors.
6) The Defendant hired a Head Instructor to train the Plaintiffs in both teaching methods and techniques.
7) The teaching hours and teaching locations were basically determined by the students' requirements as they pertained to the Institute's characteristics, but the actual teaching times and places were decided after input from the Plaintiffs.
8) The Plaintiffs did not own the tools and materials necessary for teaching, but used those provided by the Defendant, and were not able to substitute a third party to cover classes.
9) The Plaintiffs were paid an hourly wage starting at KRW 30,000 per hour in proportion to the number of teaching hours, with no performance-based pay system related to the number of students.

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[21] Appellate Court's fact items: Seoul High Court ruling on November 24, 2014, 2013na68704.

(10) The 'Agreement for Teaching Services' between the Plaintiffs and the Defendant was signed annually.

11) The Plaintiffs could not work for or be employed by other language institutes or companies in accordance with the restrictions of the E-2 work visa that only allowed them to teach at a designated workplace.

12) The instructors paid business tax but not income tax, and were not registered for the four social security insurances.

2. Application of the Judgment Criteria of Employee Status

Supreme Court Ruling (Items: details for judgment)		Factual Grounds for Employee Status	Weight	Judgment	
				Employee	Contractor
1) Human subordinate relations (rating weight: 2 points for each item = 10 points in total)	1) Type of contract	An 'Agreement for Teaching Services' was made.	2		2
	2) Application of Rules of Employment; Right to manage personnel	There were no other rules of employment or personnel rules applying to the Plaintiffs, but they had to observe the 'Instructor's Code of Conduct' by adhering to the teachers' service regulations.	2	2	
	3) Arrival/departure from work, annual leave	Teaching schedule was distributed.	2	2	
	4) Supervision during work performance	They taught independently, but were monitored by CCTV and their teaching was evaluated.	2	1	
	5) Working hours; Work place	They taught at designated times and in assigned classrooms.	2	2	
2) Economic subordinate relations (rating weight: 1 point for each item = 8 points in total)	1) Ownership of equipment, working tools	They did not own the tools and materials necessary for teaching, but used those provided by the institute.	1	1	
	2) Expenses		1		
	3) Substitution by a 3rd party	They were not able to substitute a third party to cover classes.	1	1	
	4) Pursuit of profit; Independent business	The institute did not use a performance-based pay system related to the number of students.	1	1	
	5) Independent business	Impossible	1	1	
	6) Liability for damages	None	1	1	
	7) Remuneration for labor	They were paid an hourly wage starting at KRW 30,000 per hour in proportion to the number of teaching hours.	1	1	
	8) Continuous work; Exclusive work	The Agreement for Teaching Services was signed annually.	1	1	
3) Dual judgment factors (if positive, score 1 point for each item)	1) Whether basic pay is fixed	They were paid an hourly wage starting at KRW 30,000 per hour in proportion to the number of teaching hours.	1/0		
	2) Income tax and social security insurances	They paid business tax but not income tax, and were not registered for the four social security insurances.	1/0		
Evaluation (20 points in total)		Instructors are evaluated as having employee status.		14	2

The judgment table clearly states that the native language instructors have strong employee status in

terms of both human subordinate and economic subordinate relations.

V. Conclusion

Judgment criteria for workers should be characterized differently according to the type of job; such judgement also depends on the degree of involvement of the employer in evaluating the employee status. In evaluating employee status at each job, it is necessary to supplement economic subordinate relations with human subordinate relations. Therefore, it is necessary to analyze, concretely and comprehensively, each individual case in order to accurately determine whether we are dealing with an employee or an independent contractor.

Social Insurance and Insurances Exclusive to Foreign Workers

I. Introduction

There are four major insurances: Industrial Accident Compensation Insurance, Employment Insurance, National Health Insurance, and the National Pension Plan. (i) Industrial Accident Compensation Insurance applies to foreigners as well, but the remaining social insurances vary in application. (ii) Regarding Employment Insurance, most foreign workers stay in Korea temporarily, so it is often optional. (iii) National Health Insurance is naturally applicable if a foreign worker is employed at a workplace. (iv) National Pension is naturally applied in principle, but the principle of reciprocity means it varies in accordance with relations with each foreign country.

Employers are obliged to subscribe to Departure Maturity Insurance, Guaranty Insurance for unpaid wages, Foreign Workers' Care Insurance and Return-Expense Insurance.[22] When an employer re-employs a foreign worker, he/she shall extend the existing insurance coverage period of the Departure Maturity Insurance and Guaranty Insurance for unpaid wages (Article 13 of the FEA).[23]

The following describes in detail the application of social insurances with foreign workers.

II. Social Insurance for Foreign Workers

1. Industrial Accident Compensation Insurance (IACI) Act

Since the IACI Act stipulates in Article 1 (Purpose) that its purpose is to "compensate workers for work-related accidents promptly," foreign workers must be protected. Regardless of their eligibility for working visas, all are covered by the IACI Act. If a foreigner is injured while providing work, whether he or she is an industrial trainee or an illegal foreign worker, the accident will be compensated for as an industrial accident. This has been confirmed by a Supreme Court case.[24] Workers are subject to workers' compensation in the event of a work injury, regardless of whether they are Korean citizens or illegal workers. The Supreme Court has made it clear that illegal stays are subject to crackdowns, but that illegal residents should also be covered by industrial accident insurance in the sense that workers must be

22) If they do not subscribe, they will be fined up to 5 million won.
23) Ministry of Employment and Labor, "2016 Manual of the Employment Permit System", May 5, 2016, pp. 449-487
24) Supreme Court ruling Sep. 15, 1995: 94 noo 12067 (Withdrawal of decision on disapproval of medical treatment)

protected by labor law for labor already provided.

The IACI Act is a social insurance system in which the State carries out compensation on behalf of the employer under the Labor Standards Act if a worker is injured or ill from work. Accident compensation is applied to all businesses or workplaces using workers, taking into account the risk, size and place of business. The following types of work are not covered by the IACI Act (Article 6): ① Business eligible for cover under an accident compensation scheme pursuant to the Public Officials Pension Act or the Military Pension Act; ② Business eligible for cover under an accident compensation scheme pursuant to the Seafarers' Act, the Act on Accident Compensation Insurance for Fishers and Fishing Vessels, or the Pension for Private School Teachers and Staff Act; ③ household service; ④ businesses with fewer than five workers in agriculture, forestry, fishing and hunting.[25] Therefore, in the event a business or workplace is not covered by the IACI Act and has an industrial accident requiring medical treatment for three days or less, the Labor Standards Act requires the employer to compensate for the work injury/illness.[26]

<Table 1> Social Insurances and their Application to Foreign Workers

		Non-professional foreign workers(E-9)	Oversea Koreans H-2, F-4	Professional foreign workers E-1～E-7	Illegal workers
Industrial Accident Compensation Insurance		Applied	Applied	Applied	Applied
Employment Insurance	Unemployment allowance	Optional	Optional	Optional	Not applied
	Vocational development, Job security	Applied	Applied	Applied	Not applied
National Health Insurance		Applied	Applied	Applied (exceptions allowed)	Not applied
Long-term Care Insurance		Excluded	Visiting &Working: excluded; Overseas Korea: Applied	Applied (exceptions allowed)	Not applied
National Pension		Applied	Applied	Applied (Reciprocal)	Not applied

2. Employment Insurance Act (EIA)

Employment insurance grants benefits to eligible people to prevent undue hardship from unemployment, promote employment, develop the vocational skills of workers, and promote job-seeking activities. It thereby contributes to the economic and social development of the nation (Article 1 of the EIA). Employment insurance applies to all businesses or workplaces in principle, with exceptions in consideration of the size of business. It applies to all workers because its main purpose is to provide stability for unemployed persons, so does not apply if those persons do not need help or are protected by other insurance. Those excluded from employment insurance are: ① 65 years of age or older, ② Those working fewer than 60 hours a month (15 hours a week), ③ Civil servants under the National Civil Service and Local Public Service Act, ④ Those to whom the Private School Teachers Pension Act applies, ⑤ Sailors under the Seafarers Act, ⑥ Foreign workers who are not eligible for residency. However, foreigners with

25) Enforcement Decree to the IACI Act, Article 2 (Exclusion of Application of Law), Paragraph 6.

26) Korea Labor Welfare Corporation, "Handbook of Workers' Compensation and Employment Insurance in 2019 and Employment," pp. 6-7.

status of residence may subscribe and benefit.

Unemployment benefits of course include unemployment benefits, but also maternity leave allowances and childcare leave benefits. Therefore, foreigners cannot receive maternity leave benefits and childcare leave benefits as well as unemployment benefits if they do not have employment insurance. If a foreign worker who is staying for employment in Korea does not intend to receive unemployment benefits, he or she may not subscribe.

<Table 2> Foreign Worker Eligibility for Employment Insurance (as of Dec. 2016)

Status of Sojourn	Application	Status of Sojourn	Application
A-1 (Diplomat)	×	E-1 (Professor)	○ (Optional)
A-2 (Government official)	×	E-2 (Foreign language instructor)	○ (Optional)
A-3 (Agreement)	×	E-3 (Research)	○ (Optional)
B-1 (Visa exemption)	×	E-4 (Technology transfer)	○ (Optional)
B-2 (Tourist/transit)	×	E-5 (Professional employment)	○ (Optional)
C-1 (Temporary news coverage)	×	E-6 (Artistic performer)	○ (Optional)
C-3 (Short-term visit)	×	E-7 (Designated activities)	○ (Optional)
C-4 (Short-term employee)	○ (Optional)	E-9 (Non-professional employment)	○ (Optional)
D-1 (Artist)	×	E-10 (Crew employee)	○ (Optional)
D-2 (Student)	×	F-1 (Visiting or joining family)	
×D-3 (Industrial trainee)	×	F-2 (Resident)	○ (Compulsory)
D-4 (General trainee)	×	F-3 (Accompanying spouse/child)	
×D-5 (Journalism)	×	F-4 (Overseas Korean)	○ (Optional)
D-6 (Religion)	×	F-5 (Permanent resident)	○ (Compulsory)
D-7 (Supervisor)	○ (Reciprocal)	F-6 (Marriage to Korean Citizen)	○ (Compulsory)
D-8 (Corporate investor)	○ (Reciprocal)	G-1 (Miscellaneous)	
×D-9 (International trade)	○ (Reciprocal)	H-1 (Working holiday)	
×D-10 (Job Seeking)		×H-2 (Working visit)	○ (Optional)

Source: Korea Labor Welfare Corporation, “Working Guide for Workers and Workers' Compensation and Employment Insurance 2019,” p. 17.

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

3. National Health Insurance Act (NHIA)

All business and local subscribers covered by National Health Insurance are required to pay premiums. However, foreign workers (E-9) and visiting Korean workers (H-2) under the employment permit system in the Foreign Employment Act and in Article 7 (4) of the Long-Term Care Insurance Act can be exempted

through a separate application process through a nursing care insurance subscriber. All other foreign workers who do not have a basis for exemption are automatically subscribed to long-term care insurance and pay the premium along with the health insurance premium.

4. National Pension Act (NPA)

Foreigners working in workplaces are subject to the National Pension Act (Article 126) and foreign nationals residing in Korea shall, of course, become business or regional subscribers. However, if the law equivalent to Korea's NPA in the foreigner's country of citizenship does not apply to Republic of Korea nationals living there, the national pension system in Korea corresponding to the national pension shall be taken as the principle of a reciprocity with foreign countries Those not covered by the National Pension Scheme are those here on temporary stay visas or without income.[27)]

National Pension applies to foreign nationals when they are employed at a workplace that must subscribe to it. To receive the pension benefit, the foreign national must have paid into the national pension for at least 10 years and reach the age of 60. This is not easy for most foreign workers to do. In this case, a lump-sum refund will be given, which will be handled in accordance with the social security agreement Korea has with that national's country of citizenship. In addition, the National Pension Act was amended in January 2015 in accordance with the decision of the Constitutional Court in recognition of the property value of national pensions (Article 126 of the NPA).[28)]

III. Insurances Exclusive to Foreign Workers

1. Departure Maturity Insurance

Departure Maturity Insurance replaces severance pay but accumulates at the same rate. It is payable when the foreign worker leaves the country(Article 13 of the Foreign Employment Act: FEA). The employer must pay a monthly premium of 8.3% of a worker's monthly ordinary wage stated in the employment permit system (EPS). This is to prevent late payment of severance pay and is limited to non-professional employment (E-9) and visiting overseas Korean workers (H-2) in the EPS.[29)] Departure Maturity Insurance is operated in lieu of the retirement allowance under the Retirement Benefit Security Act (RBSA), with the benefits paid to foreign workers when their employment relations end and only if they have worked for at least one year at the same workplace. This second stipulation means that the departure maturity insurance is paid on the premise that the foreign worker is leaving Korea. The Constitutional Court decided that payment of severance pay when leaving Korea would be in line with the purpose of the Foreign Employment Act, even if retirement benefits were paid on the basis of departure, rather than on the premise of terminated employment relations.[30)]

If a foreign worker has worked for less than one year after the Departure Maturity Insurance is purchased, the insurance will not be paid to the foreign worker but return to the employer instead.

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27) Excluded foreigners: (1) Those who have stayed without permission to extend their stay in accordance with Article 25 of the Immigration Control Act; (2) A person who has not registered as an alien under Article 31 of the Immigration Control Act or who has been issued an order of forced eviction under Article 59 (2) of the same Act; (3) Status of residence (D-1), Study abroad (D-2), Technical training (D-3), General training (D-4), Religion (D-6), Visiting living (F- 1) Person with companion (F-3) and others (G-1).

28) Constitutional Court of Korea decision Jun. 29, 2000: 99 Hunba 289; Constitutional Court of Korea decision on May 28, 2009: 2005 Hunba 20

29) Lee, Ha-Ryong, "Foreign Workers and Oversea Koreans", Park Moon Gak, 2014, pp. 475-476; Ha, Gae-Rae, "Labor Standards Act", pp. 1031-1032.

30) Constitutional Court of Korea ruling Mar. 31, 2016: 2014 Hunma 367 (Departure maturity insurance accepted as constitutional).

insurance benefit will be returned to the. Since the departure maturity insurance is paid in lieu of retirement allowance, it must be paid within 14 days after employment relations end in accordance with Article 36 of the Labor Standards Act.

<Table 4> Insurances Exclusive to Foreign Workers

	Departure Maturity Insurance	Guaranty Insurance for unpaid wages	Return-Expense Insurance	Accident Insurance
Purpose	Reduce the burden of severance pay	Preparation against non-payment of wages	Remove the burden of purchasing a return-home ticket before departure	Death, disability or disease not related to work
Sources	Article 13, Enforcement Decree 21	Article 23, Enforcement Decree 27	Article 15, Enforcement Decree 22	Article 23, Enforcement Decree 28
Insurer	Employer	Employer	Foreign worker	Foreign worker
Joining time	Within 15 days from the effective date of the labor contract	Within 15 days from the effective date of the labor contract	Within 3 months from the effective date of the labor contract	Within 15 days from the effective date of the labor contract
Premiums	Monthly deposit: 8.3% of monthly regular wages	For 1 year (15,000 won), 2 years (25,400 won)	Lump sum / 3 installments (400,000-600,000 won); varies by country	One-time payment: 3 years / 20,000 won (differs by age and gender)
Paying the premiums	Insured amount, but if the payment is insufficient, the employer pays the difference	.Unpaid wages are subsidized, up to a maximum 2 million won	.Deposit amount, (if the deposited amount is held for more than 30 months, interest will be paid).	-Death: 30 million won -Disability: 30 million won -Disease (death, disability): 15 million won
Benefits paid	When the foreign worker departs after working for at least one year.	When an employer delays payment of wages.	When the foreign worker leaves the country (except for temporary departures)	.Upon death of a foreign worker, or occurrence of disability or disease.

Source: MOEL, 2016 Manual of Employment Permit System, p. 452.

2. Guaranty Insurance for unpaid wages

The employer is obliged to purchase Guaranty Insurance against late payment of wages for their foreign workers (Article 23). Since this Guaranty Insurance is paid to the foreign workers in lieu of the unpaid wages, the insurance company pays the unpaid wages first, then charges the company for the amount equivalent to the paid arrears. Foreign workers whose wages have been unpaid must first report the fact to the Labor Office of the Ministry of Employment and Labor. However, there is a maximum payout of 2 million won. The amount of wages outstanding will be billed directly to the employer or processed in the same way as for Koreans who have not been paid their wages.

3. Return Expense Insurance

Return Expense Insurance is mandatory to reduce illegal stays by encouraging foreign workers to leave the country when their period of stay expires and to help them have the money necessary for returning home (Article 15 of the Foreign Employment Act). Payment of insurance premiums must be made within 3 months of the date of entry (E-9 Non-professional Foreigners) or the start of the labor contract (H-2 Visiting overseas Korean Workers). The benefit shall not be paid for temporary departures, but only if the foreign worker leaves the country due to expiration of the employment contract or expiration of the status of residence.

4. **Accident Insurance**

Foreign workers (E-9, H-2 status of residence) must be registered for Accident Insurance within 15 days of the effective date of the labor contract in preparation for death, disability or illness unrelated to work (Article 23). Accident insurance premiums vary depending on gender and age. As insurance premiums are low, insurance benefits are limited. A maximum of 30 million won is paid if a foreign worker dies or acquires a disability, and 15 million won for illness. In other words, if you are hospitalized for a personal illness and receive surgery or long-term care, the benefits from this insurance are not enough to cover such large medical expenses.

IV. Conclusion

The four main insurances for foreign workers are granted natural benefits. With Industrial Accident Compensation Insurance, there is insufficient compensation to workers injured/ill from industrial accidents at workplaces hiring fewer than five workers in rural areas. If Employment Insurance is voluntary and foreign workers become unemployed or find another job, most will be excluded from maternity leave or parental leave. Illegal residents are excluded from National Health Insurance coverage. Paying into the National Pension Scheme is mandatory for non-professional foreign workers (E-9), even though it is impossible, under the short-term visa system, for them to stay long enough to be eligible for the benefits. which is another burden that the employer should pay as the employer's burden in premiums. So, the National Pension should be excluded from the mandatory social insurances.

In terms of insurances exclusive to foreign workers, there are many things needing improvement. Although the Departure Maturity Insurance, which is paid in lieu of retirement allowance, is paid on the premise of the worker leaving Korea, even if the foreign worker stays for a long time, he/she may not receive that money. Guaranty Insurance is also limited in effectiveness because it is provided on the premise that the Labor Office confirms that wages have indeed not been paid. The amount of reserves are so small and the limitations so great with Accident Insurance that the benefits are largely inconsequential. Insurance premiums need to be raised to a level that reflects the need.

Working Environment and Changes to Korean Labor Law in 2020

I. Working environment

In terms of working hours, the 52-hour workweek has been introduced and settled. By introducing the concept of one week referring to 7 days (including weekly holiday), the maximum weekly working hours were reduced from 68 to 52. In annual leave regulations, the number of days for employees working less than two years was limited to 15 over that two-year period. The related law was amended to allow for additional 11 off-days in the first year, and 15 days in the second. In addition, national holidays (currently 15) were introduced as statutory holidays.

Other working conditions that have been improved: (i) accidents occurring during the commute between home and work are now recognized as occupational industrial accidents; (ii) a workplace harassment prevention law was also introduced, which requires employers to have self-correcting rules in place to deal with workplace harassment; (iii) the employer's ultimate responsibility for sexual harassment in the workplace has been strengthened to better protect victims; (iv) to protect workers with disabilities and promote their employment, mandatory education on raising awareness in the workplace of persons with disabilities was introduced to workplaces employing 50 or more people; a variety of allowances were increased, such as unemployment benefits and maternity allowance, while others were introduced.

II. Minimum Wage

According t the current minimum wage system in Korea, a single minimum wage is applied at all workplaces, without distinction as to the industry or region, and all employers are obligated to pay at least the minimum wage. Employers can pay more than the minimum wage, and parts of employment contracts that stipulate a wage lower than the minimum wage shall be invalid, with the difference to be paid additionally. Employers shall be punished for violations with imprisonment of up to three years or a fine not exceeding KRW 20 million (Articles 6 and 28 of the Minimum Wage Act).

<Table 1> 「Minimum Wage」

(Unit: KRW)

Division \ Year	Jan 1 ~ Dec 31, 2017	Jan 1 ~ Dec 31, 2018	Jan 1 ~ Dec 31, 2019	**Jan 1 ~ Dec 31, 2020**
Hourly wage	KRW 6,470	KRW 7,530	KRW 8,350	KRW **8,590**
Daily wage (8 hours)	KRW 51,760	KRW 60,240	KRW 66,800	KRW **68,720**
Converted to monthly wage (209 hours)	KRW 1,352,230	KRW 1,573,770	KRW 1,745,150	KRW **1,795,310**
Probationary employee (max. 3 months)	KRW 5,823 (hourly) KRW 1,217,007 (monthly)	KRW 6,777 (hourly) KRW 1,416,393 (monthly)	KRW 7,515 (hourly) KRW 1,570,635 (monthly)	KRW **7,731** (hourly) KRW **1,615,779** (monthly)

☞ 10% decrease for probationary workers, max. 3 months <Only for workers who have entered into an employment contract of one year or more>

☞ 40 contractual working hours per week (209 hours per month including 8 hours of paid weekly leave)

III. Reduced Working Hours, Increased Number of Holidays & Leave Days

In 2019, Korean workers worked 1,993 hours[31] and were exposed to labor for long periods of time, resulting in low productivity and more industrial accidents. The industries where "special" working hours and recess time are allowed were defined so broadly that unlimited overtime was *de facto* permitted, and lower courts have rendered different judgments regarding additional overtime pay. Government policy on government holidays was discriminatory in that the right to rest applied to government workers and public institutions, but not to small businesses. Therefore, it was necessary to reduce working hours, resolve social disputes, and ensure workers' right to rest.[32]

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

There has been confusion as to what makes "one week". It used to be based on 5 or 6 days, with the weekly holiday excluded. Therefore, there were 40 working hours plus up to 12 hours overtime, and then 8 hours of holiday work or 16 hours over 2 holidays could be added, which could total 68 hours a week. However, on March 20, 2018, Article 2 of the Labor Standards Act was amended to include the definition that "one week refers to seven days including holidays." Due to this, the maximum working hours per week is now 52 hours including holidays. Employers shall be punished for violation with imprisonment of not more than 2 years or a fine of not more than KRW 20 million (Article 110 of the LSA, Penal Provisions)

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 * 68 hrs = 40 hrs + 12 hrs + 16 hrs (if there are 2 holiday days)	Max working hours per week: 52 * 52 hrs = 40 hrs + 12 hrs

Enforced in phases by size of business

① With regard to businesses that employ 300 people or more: Jul. 1, 2018
② With regard to businesses that employ 50 to fewer than 300 people: Jan. 1, 2020
③ With regard to businesses that employ 5 to fewer than 50 people: Jul. 1, 2021

2. Coordination of working hours for workers under 18 (from Jul. 1, 2018)

The term "minor" refers to a worker who is between 15 and 17 years of age. Working hours for minors cannot exceed 7 hours per day and 35 hours per week. However, if agreed between the parties, they may be extended 1 hour per day and 5 hours per week. That is, a minor can work up to 8 hours a day and 40 hours a week. Employers shall be punished for violations with imprisonment of not more than 2 years or a fine of not more than KRW 20 million (Article 110 of the LSA, Penal Provisions).

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31) OECD's average working hours per year: 1,734 hours: Data of Korea International Trade Association, 2019.
32) Ministry of Labor and Employment, 「Explanations of the Revised Labor Standards Act」, May 2018

Article 69 (Working Hours) Working hours of a person aged between 15 and 17 shall not exceed seven hours per day and thirty five hours per week. However, the working hours may be extended by up to one hour per day, or five hours per week, upon agreement between the parties concerned. [Enforcement Date Jul.1,2018]	
Before revision	After revision
Max working hours per week: 46 * 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.

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

150% of the ordinary wage shall be paid for up to eight hours of holiday work, and 200% shall be paid for hours of holiday work over eight hours. When overtime work and holiday work overlap, it was very confusing to calculate. However, it is meaningful that this amendment clarifies what to do with such overlap. Employers shall be punished for violations with imprisonment of not more than 3 years or a fine of not more than KRW 30 million (Article 109 of the LSA, Penal Provisions).

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.)

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

It was possible for workers in the 26 categories of "special" jobs to exceed the limits of working hours and miss out on their resting hours, but revision of the Labor Standards Act has reduced the industries categorized as "special" to five: 4 transportations and healthcare. Therefore, all other workers can only work a maximum of 12 hours overtime per week. Even for workers in these special jobs, the employer shall provide at least 11 consecutive hours of rest between a worker's shifts. Employers shall be punished for violations with imprisonment of not more than 2 years or a fine of not more than KRW 20 million (Article 110 of the LSA, Penal Provisions)

Article 59 (Special Provisions on Working and Recess Hours)

(1) With regards to businesses for 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 consecutive hours of rest for workers at the end of the day before the next work day begins.

Before revision	After revision
① Transportation, sale of goods and storage, finance and insurance; ② Movie production and entertainment, communications, educational study and research, advertisement; ③ Medical and sanitation, hotels and restaurants, incineration and cleaning, barber and beauty parlors: and ④ Social welfare businesses	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

Enforced in phases by size of business

① With regard to businesses that employ 300 people or more: Jul. 1, 2019

② With regard to businesses that employ 50 to fewer than 300 people: Jan. 1, 2020

③ With regard to businesses that employ 5 to fewer than 50 people: Jul. 1, 2021

5. Public holidays redefined as statutory holidays (enforced in phases by size of business from 2020)

Public holidays are contractual holidays. Current statutory holidays are the weekly holiday (Article 55 of the LSA) and Labor Day (May 1). In general, public holidays for government offices can be recognized as holidays only if the company accepts them as paid holidays through their rules of employment. For this reason, in some SMEs, 15 days of public holidays have been replaced with 15 days of annual paid leave, but it has been difficult to conclude that this constitutes violation of the Labor Standards Act. However, since public holidays have been redefined as statutory holidays, companies are required to recognize them as additional compulsory paid holidays.

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 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 persons with perfect attendance for the contractual working days during a period of one week.

☐ The mandatory use of public holidays and alternative holidays as paid holidays (±15 days)

Public holidays	·Sunday → Excluded from the Enforcement Decree to the Labor Standards Act	
	· March 1st Independence Movement Day, National Foundation Day, Hangeul Day, New Year's Day, Memorial Day · Lunar New Year's Day	15 days
	· Election day and other temporary holidays (temporary holidays) under the Public Official Election Act	
Replaced holidays	If the Lunar New Year's holidays and Children's Day include a Sunday or other holiday, the following non-operational holidays will be designated (including Saturdays for Children's Day).	

Enforcement date : 3 stages divided by size over 2 years
① Businesses that employ 300 people or more: Jan. 1, 2020
② Businesses that employ 30 to fewer than 300 people: Jan. 1, 2021
③ Businesses that employ 5 to fewer than 30 people: Jan. 1, 2022

6. Annual Paid Leave

Since the guaranteed paid leave for employees working less than two years is insufficient (15 days granted for the entire two-year period), Article 60 paragraph (3) of the Labor Standards Act was deleted in an amendment of the LSA to provide additional paid leave days. It now guarantees 11 annual paid leave days for the first year for employees working for less than two years. Thus, a total of 26 paid days are granted over that two-year period: 11 days in the first year and 15 days in the second. Therefore, in calculation of annual leave by fiscal year, an additional 11 days shall be added, to maintain the annual management system.

Periods of childcare leave used to be excluded from calculation of annual paid leave. However, to better protect employed mothers returning from childcare leave, this has changed.

Article 60 (Annual Paid Leave)
① Employers shall grant 15 days' paid leave to workers who have registered not less than 80 percent of attendance during one year.
② Employers shall grant one day's paid leave per month to workers whose consecutive service period is shorter than one year or whose attendance is less than 80 percent, if the worker has offered work without absence throughout a month.
③ Deleted.
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 injury or disease; 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 the Act on Gender Equality and Support for Work-Home Compatibility.
[Enforcement Date May 29, 2018] Article 60

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

Before revision	After revision
15 days' paid annual leave to cover a two-year period from the date of employment	A maximum of 26 days' paid annual leave shall be granted for a two-year period from the date of employment.

(2) **Periods of childcare leave shall be considered as attendance at work (enforced May 29, 2018)**

Before revision	After revision
Total annual leave was reduced in proportion to the childcare leave period and calculated on working days. For example, those taking 6 months of childcare leave between 1 July and 31 December 2017 were entitled to 8 annual leave days, as the 6 months were deducted from the number of working days.	Childcare leave periods are considered as continual work attendance, so workers taking such leave shall receive all annual leave days. For example, if a worker takes childcare leave from 1 July to 31 December 2018, she/he shall still receive 15 days in 2019.

IV. Equal Employment Act

1. Childcare Leave: Workers working for at least six months are entitled to childcare leave. (from May 29, 2018)

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

Enforcement Decree Article 10 (Exclusion from Childcare Leave) An employer, pursuant to the proviso to Article 19 (1) of the Act, may opt to 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 29 May 2018.

Before revision	After revision
Employers shall allow workers with at least one year of employment at the workplace to apply for childcare leave.	Employers shall allow workers with at least six months of employment at the workplace to apply for childcare leave.

2. Paternity Leave Extension (In effect from October 1, 2019)

○ Paternity leave under current law is three to five days (with the first three days paid), but the amended law extends this to ten days paid from the date of effect.

○ To reduce the burden on SMEs of this extended period of paid leave, the government will pay for 5 days of those paternity leave benefits (100% of normal wages, up to 2 million won per month) for SME workers.

○ The eligible time within which to claim this leave will be extended from the current 30 days to 90 days after the date of delivery. Paternity leave will also be usable on two separate periods if desired.

Division	Current	Revised
Period of use	3~5 days (3 days paid + 2 days unpaid)	10 paid days
Government subsidy	None	For SME workers, 5 days at 100% of ordinary wage (up to KRW 2 million/month)
Eligible period	Within 30 days from the date of birth	Within 90 days from the date of birth
Divided use	In principle, no, unless there is labor-management agreement to do so	Yes

3. Childcare Leave: Shortened Working Hours for Childcare Period (Enforcement: October 1, 2019)

Currently, parents of children 8 years or younger or up to the second grade of elementary school are eligible for up to one year of childcare leave in combination with shorter working hours. From October 1, 2019, however, workers who have already used one year of childcare leave are eligible to work reduced hours for an additional one year for childcare. If childcare leave has not been taken, the worker is eligible for up to two years of reduced working hours.

* (Example) ① 1 year of childcare leave + 1 year of reduced working hours, ② 6 months of childcare leave + 18 months of reduced working hours, ③ No childcare leave + 2 years reduced working hours

In addition, working days can currently be shortened to 2-5 hours a day (working hours after reduction: 15-30 hours a week), but from October 1, 2019, 1-5 hours a day will be possible (working hours after reduction: 15-35 hours a week). This represents one hour less per day that needs to be worked during the reduced working hours period.

* Increased government subsidy for the additional 1-hour-per-day reduction in working hours (reduced salary for childcare period) (In effect from October 1, 2019). This will increase from the current 80% to 100% of ordinary wage, with a limit of between 1.5 and 2 million won per month.

(Extension of childcare hours) Extends the allowed leave period from 1 year to 2 years, allows an additional one-hour-per-day reduction of working hours, and increases the number of times over which the childcare leave can be used (minimum period of 3 months).

* Increased subsidy for additional 1-hour-per-day reduction in working hours (from 80% to 100% of ordinary wage)

	Current	Revised
Reduced working hours	2 to 5 hours per day (10 to 25 hours per week)	1 to 5 hours per day (5 to 25 hours per week)
Government subsidy	80% of ordinary wage (up to KRW 1.5 million) x the rate of reduced working hours	- (Only additional 1 hour reduction) 100% of ordinary wage (up to KRW 2 million per month) x the rate of reduced working hours - (Other parts) same as current
Available period	Childcare leave + reduced working hours = maximum one year	Childcare leave + reduced working hours = maximum 2 years * Working hour reduction can be used for more than one year
Divided use	Childcare leave and reduced working hours can be used at one time, in combination.	- Childcare leave can be divided and used at two different times. - Working hour reduction can be used at separate times, with a minimum 3 months each time.

4. Family Care Leave of Absence and Family Care Leave Introduced (In effect from January 1, 2020)

○ Currently, it is necessary to use at least 30 days family care leave at a time * (up to 90 days per year), but from next year, 10 of those 90 days a year can be used as separate days.

* Workers can apply for childcare leave if they need to care for a family member due to illness, accident or old age.

- Due to the greater flexibility afforded for family care leave, it can soon be used for short-term family care or to attend school events.

○ In addition, the scope of persons whose care can be included has expanded to include grandparents and grandchildren, in addition to parents, parents-in-law, spouse, and children.

Current	Revised
Family Care Leave of Absence System	Family Care Leave of Absence Plus Holiday
Allowed only to care for illness in the family, accidents, and old age	Allowed for current family care + raising children
90 days over one year, to be used in 30-day units	10 of the 90 days can be used for 1-day needs

5. Reduced Working Hours for Family Care Introduced

Currently, reduced working hours are only allowed for pregnancy and childcare. With the amendment, working hours can be reduced for an additional 4 reasons: to care for family members, recover from an illness or accident, make retirement preparations (55 years old or over), and study.

	Details
Reasons for request	① Care of a family member, ② Recover from an illness or accident, ③ Make retirement preparations, ④ Take time out for study
Period	1 year (2 years for justifiable reasons), no extension for study
Reduced time	Reduced to 15-30 hours a week
Reasons for rejection	① It is impossible to hire a substitute, ② Leave will cause serious obstacles to business operations, ③ Other reasons prescribed by Presidential Decree
Protection of rights	① No disadvantageous treatment to be given to relevant workers, such as dismissal, ② Duty to return relevant worker to the same job at the end of reduced working hours, ③ No adverse working conditions, ④ Relevant worker cannot request to work overtime, ⑤ Excluded from period for calculation of average wage
Date of effect	- January 1, 2020: public institutions, businesses or workplaces with more than 300 workers at all times - January 1, 2021: businesses or workplaces with 30 to fewer than 300 workers. - January 1, 2022: Businesses or workplaces with fewer than 30 workers.

6. Sexual Harassment at Work:

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

(1) Stronger requirements for education against sexual harassment at work

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

(2) Stronger employer obligation to take action in the event of sexual harassment at work, etc.

Anyone is entitled to report sexual harassment at work to the employer, who shall take action to protect the alleged victim while investigating the facts. When sexual harassment is confirmed to have taken place, the employer shall take disciplinary action against or change the workplace of the person who committed the sexual harassment. The victim's statement and confidential information obtained during a sexual harassment investigation shall not be divulged to anyone. (Article 14 (7) provides a penalty of up to KRW 5 million for violation).

(3) Stronger employer obligation to take action when a customer sexually harasses an employee

When a customer is found to have sexually harassed an employee, the employer shall move the harassed employee or provide paid leave to him or her, with a penalty of up to KRW 3 million imposed for violations.

Article 13 (Education to Prevent Sexual Harassment at Work)

① Employers shall conduct education on preventing sexual harassment at work (hereinafter referred to as "education to prevent sexual harassment") and to create a safe working environment for workers.

② Employers 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 Minister 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 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, transferring, 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.

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.

Enforcement Decree 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 changing the place of work or transferring.

The Workplace Harassment Prevention Law and the Employer's Duty

I. Introduction

Recently workplace harassment within large corporations has become a social problem. Every day it seems that the executives of these companies are reported by the media on issues such as abusive language, assault, and inhumane treatment of their employees, but these acts which are revealed to the public are but the tip of the iceberg. According to a survey by the Korea Labor Institute,[33] 66.3% of

[33] Keunjoo Kim/Kyunghee Lee, 「A Survey of Workplace Harassment and The Countermeasures」, Korean Labor Institute, December 2017.

respondents said that they had experienced direct harassment at their workplace in the past five years. Also, according to the Human Rights Commission's survey,[34] 73.3% of respondents experienced workplace harassment over the past year.. The average number of harassment was 10.0 cases, the experience of personal harassment was 39.0%, and the experience of collective harassment was 5.6%. These workplace harassments have resulted in negative reactions such as consideration of resignation (66.9%), less confidence in the company and its senior officials (64.9%), a decline in work performance and concentration (64.9%), and a reluctance to relate with peers (33.3%).

The damage due to workplace harassment continues to grow and so the Workplace Harassment Prevention Law was enacted because of public demand for improvement. It is meaningful that it was introduced into the Labor Standards Act. The details are described below.

II. Content of the Workplace Harassment Prevention Law

1. Amendments to the Labor Standards Act

(1) The employer's obligation to prohibit workplace harassment

Article 76-2 (Prohibition of Workplace Harassment) The employer or an employee shall not cause physical or mental suffering or deteriorate the working environment, exceeding the appropriate level of bearable limits, by taking advantage of his or her position or relationship in the workplace (hereinafter referred to as " workplace harassment").

(2) Obligations of the employer in case of an occurrence of workplace harassment

Article 76-3 (Measures in case of bullying in the workplace) ① Any employee who has been informed of the occurrence of workplace harassment can report the fact to the employer.

② The employer shall conduct an investigation to confirm the facts without delay if the employer acknowledges the occurrence of harassment in the workplace or accepts a notification under Paragraph 1 above.

③ The employer shall, when necessary for the protection of workers who have suffered damage related to workplace harassment within the period of investigation pursuant to paragraph 2 (hereinafter referred to as "victims"), implement appropriate measures such as a change of place of work, paid leave order, etc. In this case, the employer shall not take such measures against the will of the victim.

④ The employer shall take appropriate measures such as changing the place of work, job transfer, order of paid leave etc. when the victim requests it, if the fact of workplace harassment is confirmed as a result of the investigation pursuant to Paragraph 2 above.

⑤ The employer shall take all necessary measures such as disciplinary punishment, change of work place, etc. without delay when it is confirmed that workplace harassment has occurred. In this case, the employer shall consider the opinion of the victim about the proposed measures prior to taking any action, such as disciplinary action.

⑥ The employer shall not dismiss or take any other unfavorable steps against the employee who reported the occurrence of harassment in the workplace or the victim.

(3) Addition of required items listed in the Rules of Employment

Article 93 (Preparation and Filing of Rules of Employment) 11. Matters concerning prevention of and measures to handle an occurrence of workplace harassment

(4) Prohibition of disadvantaged treatment of complainant or victim

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34) Sungsoo Hong et al, 「A Survey of Workplace Harassment」, The National Human Rights Commission of Korea, November 2017.

Article 109 (Penalty) The employer shall be punished by imprisonment for not more than three years or a fine of not more than KRW 30 million if found in violation of Paragraph 6 of Articles 76-3 of this Act.

2. Amendment to the Industrial Accident Compensation Insurance Act

Article 37 (1) of the IACI Act, which lists reasons for acceptance as occupational diseases, has added "illness caused by work-related mental stress, such as workplace harassment and abuse of the worker pursuant to Article 76-2 of the Labor Standards Act".

3. Amendments to the Industrial Safety and Health Act

Article 4 of the ISH Act (Government obligations) added a new item: “10. Establishment, guidance and support of measures to prevent workplace harassment pursuant to Article 76-2 of the Labor Standards Act”.

III. Explanation of Workplace Harassment

1. Definition of workplace harassment

It is meaningful that the definition of workplace harassment clearly defines the obligations of the related employer and the standard of related harassment incidents. Until this concept was established, the labor law had no legal obligation or liability for workplace harassment. Therefore, under the existing legal system, the measures that a victim who had been harassed in the workplace could take to the employer included (1) a claim for damages based on the liability of the victim for illegal acts (Article 750 of the Civil Act); 2) a suit for damages (violation of the obligation of safety considerations by labor contract) (Article 390 of the Civil Act), and (3) a complaint under Article 30 (Human Rights Violation) of the National Human Rights Commission Act. In general, it is very meaningful that the Labor Standards Act has stipulated a definition of workplace harassment in order to strengthen the obligations of employers and to protect the workers with measures to receive remedy for workplace harassment.

2. Establishment of the employer's duty for action in case of workplace harassment

In case of workplace harassment, the victim or a third party can notify the employer. An employer who has been informed of the occurrence of workplace harassment must conduct an investigation to confirm the fact. In the course of this investigation, measures should be taken to protect the victim and, if the investigation confirms the workplace harassment, disciplinary action should be taken without delay.

In the event of such workplace harassment, the rules for reporting and the processing procedures in the workplace apply equally to the sexual harassment remedy procedures under Article 14 of the Equal Employment Act. Nevertheless, the Equal Employment Act enforces a fine of up to KRW 10 million if a company does not investigate and take appropriate measures when sexual harassment occurs in the workplace, but there is no similar penalty clause in the Workplace Harassment Prohibition Law. In addition, even if the employer has sexual harassment in the workplace, there is a penalty in the Equal Employment Act, but there is no fine in the amendment bill of the Labor Standards Law prohibiting workplace harassment if the employer becomes a perpetrator. Provided, in the same way as the Equal Employment Act, if the employer gives unfavorable treatment to employees and victims who have reported workplace harassment, the employer can be punished by imprisonment for up to three years or a fine of up to KRW 30 million.

3. The addition of 'workplace harassment' in the required items of the Rules of Employment

An employer who routinely employs 10 or more workers must fill out the 12 required items in the Rules of Employment and report them to the Minister of Employment and Labor (Article 93 of the Local Law). Here is the required item added in relation to workplace harassment: "11. Matters concerning prevention and measures in case of occurrence of workplace harassment." In other words, it is stipulated in the Rules of Employment that the company has implemented measures related to workplace harassment.[35)]

4. Penalties applicable for unfavorable treatment by an employer

It is regulated as the employer's duty, in the self-governing rules, that the employer should explore preventive measures against workplace harassment and take appropriate measures. However, if disadvantageous treatment of victims is taken, the employer should and can be severely punished, similar to the Equal Employment Act. In other words, Article 110 of the Labor Standards Act stipulates "imprisonment for up to three years or a fine of not more than KRW 30 million in violation of Article 76-3 (Paragraph 6) of this Act".

5. Amendment to the Industrial Accident Compensation Insurance Act

The current Article 37 (1) of the IACI Act did not recognize occupational accidents caused by workplace harassment, but the revised law does recognize an occupational accident due to "illness caused by work-related mental stress such as workplace harassment", and so this article will provide a legal basis to occupational accidents. Diseases caused by workplace harassment were difficult to have recognized as a work-related injury by the Korea Workers' Welfare Corporation, and were accepted exceptionally only after complicated legal disputes. However, with the revised law, the Welfare Corporation has opened the way for victims to be recognized more quickly in the first work-related accident assessment stage.

6. Amendments to the Industrial Safety and Health Act

Workplace harassment has an adverse effect on the mental and physical health of the workers, undermining their opportunity to work in a healthy environment. Therefore, the amendment to Article 4 of the ISH Act, to prevent illness caused by workplace harassment, imposes upon the government an obligation to act. In this regard, the Ministry of Employment and Labor has prepared 'A Practical Manual for the Prevention of Workplace Harassment and Countermeasures Against It', which will be distributed to all companies. Unfortunately, this obligation to prevent workplace harassment is defined as an obligation of the state rather than a direct obligation of the employer, so that the employer is not responsible for violations of the ISH Act.

IV. The Effect and Limitations of the Workplace Harassment Prevention Law

1. Effect of the Workplace Harassment Prevention Law

It is not easy for ordinary workers to take legal action for harassment against a workplace because such matters take a considerable amount of time and money. However, the amendment to the Labor Standards

35) Labor Ministry Guideline: "Operational Guides for the Rules of Employment", LSA Dept-1119, April 24, 2009.

Act clarifies the concept of workplace harassment, and in particular the obligation of prohibition of workplace harassment by an employer, along with the obligation to implement relief procedures that will enable victims to receive protection and relief from workplace harassment more quickly.

2. Limitations of the Workplace Harassment Prevention Law

Although this law will contribute greatly to the improvement of the human rights of workers, there are some shortcomings.

First, there is no provision for legal sanction against an employer's workplace harassment. New amendments to the workplace harassment law do not specify penalties against the company or penalties for the offender him/herself'. In general, as workplace harassment is often the result of a high-ranking official becoming the perpetrator in a power relationship, this revision of the Labor Standards Law is insufficient.

Second, there is no legal sanction if an employer does not to take reasonable action when a complaint of workplace harassment occurs in the workplace. The revised bill stipulates that in the event of harassment within the workplace, the Act on the Equal Employment between Men and Women is the same as the obligation to implement measures related to the occurrence of sexual harassment in the workplace. However, in the case of sexual harassment in the workplace, the employer will be punished if the employer does not take reasonable measures. As the amendment to the Labor Standards Act does not require the employer to assume legal responsibility for undertaking any necessary investigation or other reasonable action in case of an occurrence of workplace harassment, it is limited in its protection of workers.

V. Conclusion

Even if there are many deficiencies, it is meaningful that the introduction of the Workplace Harassment Prevention Law stipulates the duty of the employer to prevent workplace harassment, whether within the company or between workers. Although there are no direct penalties for the employer, we expect that this new law will contribute to creating a fair and desirable workplace culture.

Explanation of the Guidelines on How to Handle Commuting Accidents

I. Background to Recognizing a Commuting Accident as Work-related

Although Industrial Accident Compensation Insurance (IACI) has not applied to accidents that occur while commuting in principle, accidents which occur during a commute using transportation provided by the employer or equivalent have been acknowledged as industrial accidents. Even if two similar accidents occur while commuting, the accident that occurred while using transportation provided by the employer was recognized as a work-related accident, while an accident which occurred while commuting on foot or using personal or public transportation was not so recognized. The Constitutional Court ruled that this application was unconstitutional and violated the principle of equality. The Court made a decision as

non-constitutional for the related legal provision, stating that a legislative amendment was to be made by the end of 2017.[36] Accordingly, the related provision was revised on September 28, 2017, and beginning January 1, 2018, accident insurance has been applied to accidents occurring during normal commutes.

II. Revisions of the IACI Act and Guidelines for Accidents Occurring during Commutes[37]

1. Related legal provisions

A. Industrial Accident Compensation Insurance Act: Article 37 (Standards for Recognition of Occupational Accidents)

① If a worker suffers any injury, disease, or disability or dies due to any of the following causes, it shall be deemed an occupational accident: Provided, that this shall not apply where there is no proximate causal relation between his/her duties and the accident:

1. Accident on duty: (Contents omitted)
2. Occupational disease: (Contents omitted)
3. Accident occurring during a commute:
   (A) Accidents that occur while commuting to work under the control of the employer, such as using transportation provided by the employer or equivalent transportation;
   (B) Accidents that occur while commuting to work in common routes and manners.

② No injury, disease, disability or death of a worker due to his/her intentional action, self-harm or other criminal act, or caused by such act shall be deemed an occupational accident. (The following omitted).

③ If there is a deviation or interruption of the commuting route as per Subparagraph 3 (B) of Paragraph (1), the accident during the deviation or interruption and subsequent movement during the commute shall not be regarded as a work-related accident. However, if the deviation or interruption of the commuting route is an act necessary for daily life and there is a reason prescribed by Presidential Decree, it shall be deemed to be a work-related commuting accident.

B. Enforcement Decree of IACI Act: Article 35 (Accident during commuting)

①) If an accident that occurred while a worker was commuting to work falls under all of the requirements of the following subparagraphs, it shall be deemed to be a commuting accident according to Article 37 (1) 3 of the Act.

1. An accident will have occurred while using the means of transportation provided by the employer for commuting or the means provided by the employer.
2. The management or use of the means of transportation used for commuting should not belong to exclusive workers.

② In the proviso of Article 37 (3) of the IACI Act, the term "the reason prescribed by Presidential Decree as an act necessary for daily life" means any of the following

36) The Constitutional Court ruling on Sep. 29, 2016, 2014 Hunba 254 (Article 37 (1)-C of IACI Act)
37) The Employee Welfare Corporation, 「Guidelines of How to Handle Accidents Occurring during a Commute」, 2017-48, Dec. 28, 2017

instances:
1. Buying necessary supplies for daily life;
2. Receiving education or training in accordance with Article 2 of the Higher Education Act or at vocational education and training institutions under Article 2 of the Vocational Education and Training Promotion Ac」 which can contribute to vocational ability development;
3. Exercising the right to vote;
4. Taking or bringing a child or disabled person under the care of an employee to a child care or educational institution;
5. Receiving medical treatment at a medical institution or public health center for the purpose of treating or preventing a disease;
6. Caring for a family member at a medical institution in a family that needs the worker's care;
7. Acts in accordance with the provisions of Items 1 to 6 which the Minister of Employment and Labor considers to be necessary for daily life, such as buying supplies necessary for daily life.

2. Guidelines for handling accidents which occur while commuting

(1) Basic concept of commuting: The term "commuting" refers to the movement between a residence and a place of employment or movement from one place of employment to another place of employment (Article 5 (8) of the IACI). An “accident occurring while commuting” is accepted as work-related if it occurs while traveling in relation to employment. That is, an accident occurring during the commute movement process is applicable, but not an accident which occurs while staying in a specific place on the route.

(2) Principles for recognizing work-related accidents for regular commuting: Accidents during commute are those that meet all of the following requirements, since the risks associated with normal commuting are specified:

① It must be a moving act that makes the "place of employment" such as a company, factory etc. and the "home" such as personal residence, etc. as a start or end point;

② It is assumed that the commuting activity is to be carried out before work begins or after the work is done;

③ It is assumed that commuting acts will be carried out according to "conventional routes and methods" in a social sense, and that there will be no "deviation or interruption".

III. Specific Criteria for Determining Commuting Accidents as Work-related[38)]

1. Residence

"Residence" refers to a base for providing labor or housing in which a worker practically resides. Therefore, all of the following instances are accepted as a residence:

① Sheltered residence: A place where a worker, alone or with a spouse, child, parent, or grandparent has lived or is expected to live for a considerable period of time.

② Non-lodging residence: When it is difficult to move daily considering the distance, time, and transportation difficulties between a residence and place of work, it becomes necessary to arrange for separate accommodation nearer the place of work and to commute to and from this place.

38) Korea Labor Welfare Corporation, 「A Guide for Compensation of Accidents caused while Commuting」, Compensation 2018-da-2, January 2018.

③ Temporary housing: Temporary accommodation for unavoidable reasons such as work, traffic disruption, natural disasters, etc.

2. Employment Relevance and Place of Employment

(1) Employment Relevance: In Article 5 (8) of the Act, the term "in relation to employment" refers to any act in which commuting is related to going to or coming home from work. In the event of an accident occurring beyond the normal commute time, it is necessary to check the facts such as the specific schedule before or after the work time and the distance between the residence and the workplace to judge whether the work is relevant or not. If a worker stops working after a considerable amount of time in the workplace (within approximately two hours) due to non-work reasons after the work day has finished, this is interpreted as having no employment relevance.

(2) Concept of place of employment: "Place of employment" is a place where workers provide labor, and it is a place where ordinary work is performed in accordance with labor contracts and employment rules, such as company and factory offices.

3. Usual commuting routes and methods

A "usual commuting route" means a route between residential and employment locations, or places of employment and places of employment, that can be utilized by ordinary people. Therefore, if an accident occurs outside the normal commuting route, it is not recognized as a commuting accident. "Usual commuting method" means the use of transportation in a rational way as recognized by socially-accepted rationale.

4. Deviation and suspension from route

(1) "Deviation from route" refers to an act that differs from the ordinary commuting route, while "suspension from route" refers to an act that does not relate to commuting while on the commuting route. The deviation or stopping on the commute route must be caused by private activity not related to the purpose of the commute. However, minor acts (such as picking up a newspaper, getting gas, having a cup of coffee, washroom breaks, or having a shower) that normally occur during commute time are not regarded as deviations or interruptions from the route.

(2) Exceptions to application of deviations and suspension from route (① ~ ⑦ below): Exceptions to deviation and suspension from route due to activities necessary for daily life that may occur during normal commuting are recognized as exceptions. In the case of a recognized deviation or suspension from route, only an accident on the move is protected; not the whole process.

① Purchasing goods necessary for everyday life: Purchase of daily necessities is judged based on comprehensive consideration of the location and distance of the place of sale, necessity of action, urgency, time required, etc.

② Education or training that can contribute to vocational ability development in the vocational education and training institutions pursuant to Article 2 of the Higher Education Act or Article 2 of the Vocational Education and Training Promotion Act: Deviations and suspensions from route in order to participate in some hobby club or exercise are excluded. However, even if it is a flower arrangement or a sports dance, deviations and suspensions from route for the development of vocational abilities, such as acquisition of qualifications other than hobbies, are recognized.

③ The right to participate in voting or the right to vote: The right to participate in voting means the right to vote by participating in an election (the presidential election and the parliamentary election are typical), and the term "referendum" means an act in which a citizen of a certain age exercises the right to vote on important matters of national policy.

④ The act of bringing a child or disabled person virtually protected by an employee to a child care institution or an educational institution or bringing him/her from an institution: "Child" means a person who is in the age range of childcare, kindergarten, elementary, middle and high school. "Persons with disabilities" means a person with disabilities covered under the Welfare of Persons with Disabilities Act.

⑤ An act to receive medical care for treatment or prevention of disease at a medical institution or public health center: It is permitted to detour for medical treatment or preventive purposes during a commute, but not for everyday life items such as consultation for cosmetic purposes.

⑥ Caring for a family member at a medical institution: To take care of a family member etc. who is hospitalized at a medical institution.

⑦ Acts that are in conformity with the provisions of Items 1 to 6 and which the Minister of Employment and Labor deems necessary for daily life:

Acts that comply with the provisions of No. 1: Activities that occur repeatedly for the purpose of daily living (going to a laundry, repairing shoes). Acts of daily living, such as eating, drinking, ablutions, etc.; an act performed through business necessity (eating a meal at work on the grounds that there is no restaurant in the workplace; bathing outside the workplace because the business does not have shower facilities)

Acts in conformity with the provisions of No. 2: Participate in training for improvement of vocational skills at academies. To be educated or trained for improvement of vocational ability, such as a foreign language academy, computer academy (Hangul, Excel etc.), driver's license school.

Acts in accordance with the provisions of No. 3: Exercising the right to vote as prescribed by law, such as the election of labor union officers or the election of apartment tenants' officers.

Acts in conformity with No. 4: The act of bringing a child or a disabled person to a nursing home, not a childcare institution, or bringing him/her to a consignment agency such as a welfare center for the disabled or a daycare facility.

Acts in accordance with the provisions of No. 5: attending a health center or smoking cessation clinic.

Acts in accordance with Regulation 6: Caring for a family member in a nursing home or similar place where the address is different from that of the worker.

5. Judging whether or not a criminal act applies:

According to Article 37 (2) of the IACI Act, commuting accidents caused by criminal activities (drunk driving, unlicensed driving, intruding on the main line, etc.) are not accepted as commuting accidents in principle.

IV. Note: General information related to commuting accidents

1. Comparison between IAC insurance and automobile insurance

	IAC Insurance	Automobile Insurance
Benefits	① Medical care benefits, ② Suspension benefits, ③Nursing benefits, ④Rehabilitation benefits, ⑤ Disability benefits, ⑥Injury-disease compensation annuity, ⑦Survivors' benefits, ⑧Funeral expenses	①Medical care benefits, ②Injury insurance, ③Disability insurance, ④Death insurance, ⑤Funeral expenses, ⑥ Consolation money
Fault rate	Take no responsibility	Take responsibility
Alimony	No alimony	Alimony (consolation money)
Payments	Pension or lump payment (Pension is available for disability grade 7 or higher)	Lump sum payment (no pension)
Details	Survivors' pension (monthly pension calculation) 100% pension = daily average wage x 365 x 47/100/12 * Each pension subject person will be added 5 from 47.	Insurance benefit = actual income x number of available working months x labor loss rate x Leibnitz coefficient * Only 2/3 of the actual income at the time of death is recognized (living expenses deduction).

★ Application: Comparison of industrial accident insurance and automobile insurance in case of death[39] (Assumption: 35-year-old employee with a monthly average wage of KRW 3 million, dependents: wife and one child, 50% responsibility).

Division	IAC Insurance	Automobile Insurance
Pension /Insurance	100% pension (month): KRW 1,896,058 = KRW 97,826 x 365 x 57/100/12 (Receiving monthly allowance until the spouse dies.)	Death insurance (lump sum payment): KRW 3,000,000 x 2/3 x 171.06 x 50% (responsibility) = KRW 171,060,000
Funeral expenses	KRW 97,826 x 120 days = KRW 11,739,120	KRW 5,000,000 x 50% = KRW 2,500,000
Damage compensation	No damage compensation	KRW 80,000,000 x 50% = KRW 40,000,000
Details	* Over 10 years: KRW 155,266,113 = KRW 203,526,993 + 11,739,120 * Over 20 years: KRW 418,793,106 = 407,053,986 + 11,739,120	Total amount: KRW 213,560,000 (Lump sum payment, no pension).

If a commuting accident is related to an automobile accident, the worker can choose which type of insurance to apply; either industrial accident compensation insurance or automobile insurance, depending on the degree of compensation. As a general criterion for this choice: 1) industrial accidents are more favorable for those with a disability grade 7 or higher; 2) automobile insurance is advantageous for those younger in age or with less responsibility for the accident. The industrial accident compensation insurance is compensated at a fixed amount irrespective of fault.

2. Whether the premium rate increases or not due to IACI applications

For industrial accident compensation insurance treatment due to a commuting accident, it is not an accident occurring under the control of the employer because commuting accidents occur outside the workplace. Therefore, it does not affect the insurance premium.

[39] Ilwoo Lee, "Major issues on revision of law on commuting accidents", Monthly Labor Law, February 2018.

The Employer's Obligations in the Recruitment Process

I. Introduction

Recruitment of workers is in principle the employer's prerogative, and for years there was no law to regulate it. While the employment documents and recruitment review costs required by employers when hiring employees are a great burden to job seekers, there have been rare instances where the employer has returned the employment documents voluntarily or has returned them when requested by the job seeker. In addition, there have been irregularities in the recruitment process, such as retaining business suggestions of job seekers, and posting false recruitment advertisements for the purpose of promoting companies.[40] As a result, the Act on the Fairness of the Recruitment Procedures (hereinafter referred to as the "Recruitment Procedure Act" or "the RPA") was enacted in 2014, and employers who ordinarily employ more than 30 workers fall under this Act, which limits their rights in the recruitment process (Article 3).

Numerous recruiting scandals have occurred recently in both public and private companies, and so a need was perceived for systematic supplementation in order to guarantee the fairness of the recruitment process.[41] On July 17, 2019, the Recruitment Procedure Act was partially amended and implemented. The RPA prohibits anyone from illegally asking, pressuring, or forcing hiring practices in violation of the law (Article 4-2, Paragraph 1), and also prohibits the act of giving or receiving goods, entertainment, or property regarding recruitment (Article 402, Paragraph 2). In addition, a penal clause (Article 17) has been newly-established in case of violation, which implements effective sanctions measures.

In this article, I will look closely at how strictly unfair employment practices can be sanctioned and the employers' obligations in the process of hiring. This should help you understand the employer's obligations in the recruitment process.

II. Sanctions on Unfair Practices in Hiring Procedures

1. Prohibition of false advertising (Article 4 of the Act)

Employers shall not put out a false recruitment advertisement for purposes such as collecting ideas or publicizing the workplace under the pretense of recruitment. Any employer who puts out a false recruitment advertisement in violation of this Act shall be punished by imprisonment of up to five years or a fine not exceeding KRW 20 million (Article 16 of the Act). This Article was designed to protect the interests of job applicants and to prevent the occurrence of social costs and damages.[42]

In addition, the employer shall not change the recruitment advertisement adversely to the job seeker without justifiable reason, or adversely change the working conditions presented in the recruitment advertisement without justifiable reason after employing the job seeker. The employer shall not force the applicant to assign his ownership of intellectual property rights such as employment documents and related papers. In violation of this, the employer will be charged a fine of up to KRW 5 million (Article 17).

This implies that a change in the type of job, type of employment and/or working conditions proposed in the recruitment advertisement by the employer violates the principle of good faith, and shall not be

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40) Seunggil Lee/Jooho Lee, "Employment Freedom and Restrictions on Labor Laws: focused on the Recruitment Procedure Act," 「Social Law Research」, Volume 26, Aug. 2015, Korean Social Law Association, p 112.

41) Kwonchul Shin, "Fairness in recruiting – focused on employment irregularities" 「Labor Law Studies」(67), August 2018, Korea Labor Law Society, pp. 95-96.

42) Ministry of Employment and Labor, "Practical Manual for Fair Recruitment Procedures", 2015, pages 23-25.

allowed in consideration of the need to protect the trust of jobseekers in the job announcement. The prohibition against changing the working conditions as presented in the recruitment advertisement is intended to protect the interests of the job seeker by prohibiting an unfavorable change of working conditions, considering the fact that the job seeker is inferior to the employer. In addition, the copyright and intellectual property rights of the jobseekers are protected by related laws such as the "Copyright Act" and "Intellectual Property Basic Law", but because of the lack of substantive protection, the introduction of such restrictions in the Recruitment Procedure Act will enlarge the scope of direct protection.[43)]

2. Prohibition of unfair recruiting (Article 4-2 of the Act)

Whether or not an employer hires a particular individual is the employer's own prerogative, and needs to be respected. However, if employees are being hired through open competition rather than individual recruitment, they should be given fair competition opportunities based on the job announcement. The revised Law on Recruitment Procedures enacted in July 2019 is intended to prevent unfair employment practices and to prevent actions such as unfair requests, oppression and force that hinder sound employment and the social order; this Act also prohibits the offering or receiving of money or goods. In case of violation, it imposes a fine of up to KRW 30 million.

Although the existing penalties for unfair employment apply to business obstruction of the Criminal Law, there are limits to the application for criminal offenses. Therefore, the Recruitment Procedure Act introduced this new content and can now punish unfair recruitment practices as a labor law. In order to establish a business obstruction in Article 314[44)] of the Criminal Act in the case of unfair recruitment, it is necessary to have an illegal act in the form of hierarchy or power information-processing, and the action must interfere with human affairs; that is, the work of others. However, there is a legal limit applying this Criminal Act because the person who engages in illegal recruitment is usually the decision-maker of the company, and the recruitment work corresponds to his original work and does not correspond to the 'other person's work'.[45)] Therefore, it is meaningful that we can now partially supplement the vacancy in the punishment of unfair recruitment practices in the Criminal Act by introducing the prohibition of unfair recruitment practices in the Recruitment Procedure Act.[46)]

3. Prohibition of requesting personal information that is not relevant to the job (Article 4-3 of the Act)

The employer is not allowed to require that the applicant include personal information in the Basic Recruitment Form that is not required for the performance of his/her job, or to collect it as evidence material. Such restricted personal information shall be collected and processed only in accordance with the following conditions: (i) the physical condition of the applicant's appearance, height, weight, etc., (ii) the area of origin of the applicant, marital status and property; (iii) education, occupation, and property. In case of violation, a penalty of up to KRW 5 million will be imposed. However, in the legislative process, the attachment of an identification photo to the employment documents was excluded from the collection restrictions. The reason for this is that ID photos are considered a necessary part of the applicant's identity verification in both the recruitment review and the interview.[47)]

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43) Ministry of Employment and Labor, above manual, page 37.

44) Article 314 (Interference with Business)

(1) A person who interferes with the business of another by the method of Article 313 or by the threat of force, shall be punished by imprisonment for not more than five years or by a fine not exceeding fifteen million won.

(2) Any person who interferes with another person's business by damaging or destroying any data processor, such as a computer, or special media records, such as electromagnetic records, or inputting false information or improper order into a data processor, or making any impediment in processing any data by other way, shall also be subject to the same punishment as referred to in paragraph (1).

45) Jongchul Jung, "Illegal Recruitment and Related Legal Responsibility", 「Labor Law」, June 2018, Jungangkyungjae.

46) Kwonchul Shin, "Fairness of Recruitment – focused on Falsified Recruitment, 「Labor Law Study」(67th), Sep. 2018. Korean Labor Law Society, pages 95-96.

4. Prohibition of jobseekers paying for recruitment review (Article 9 of the Act)

The employer shall not incur any monetary cost (recruitment review fee) for the job seeker other than the cost of submitting the job application document to the applicant. However, if there is an unavoidable circumstance due to the specific nature of the workplace or occupation, it may be approved by the Minister of Employment and Labor to have a job seeker pay a portion of the recruitment review fee. In case of violation of this, a penalty of up to KRW 3 million is imposed.

Here, the recruitment review costs are directly related to the recruitment, such as the cost of planning and preparing the recruitment, the cost of the recruitment ad, etc., and the cost of recruiting applicants, which refers to any indirect costs. The employer shall be fully liable for this cost in accordance with the principle of beneficiary burden.[48)]

III. The Employer's Obligation in the Recruitment Process

1. Notification obligations

The employer has a total of four notice obligations to job seekers. They should be notified that the recruitment documents have been properly received, that the recruitment schedule and procedures are on-going, the recruitment status, and the right of failed applicants to have their documents returned. Notification methods include posting on a homepage, text transmission by mobile phone, e-mail, fax, and telephone, without delay for the relevant matters in the recruitment procedure.

①Notice at the stage of receiving application documents: The acceptance of application documents (Article 7, Clause 2 of the Act);

②Notice of the stage of the recruitment process: recruitment schedule and recruitment process (Article 8);

③Notice of the stage of recruiting: whether to be hired or not (Article 10);

④Notice after employment status is confirmed: return of employment documents, etc. (Article 11, Paragraph 6).[49)]

2. Obligation to return documents (Articles 11 and 17, Paragraph 3)

Since the employer requires various types of qualifications and proofs when recruiting workers, to identify a job seeker's ability , job seekers are required to pay an average of KRW 150,000 per application, and so the average cost for a job seeker to get a job is KRW 449,500 (when applying 29 times).[50)] If a job seeker receives a return of the employment documents, the cost of finding a job can be reduced.

If a job seeker whose final recruitment is refused requests the company to return recruitment documents, the employer shall send or deliver the recruitment documents to the jobseeker within 14 days from the date on which the jobseeker requested the return, after confirming the job seeker's identification. However, the company shall not be obliged to return any documents submitted through the homepage or e-mail or documents which were voluntarily submitted by the applicant without the employer's request. To be prepared for the request for return by a job seeker, the employer shall keep the employment documents for a period determined by the company within 180 days after 14 days from the date of failed employment of the job seeker, and notify the job seeker of the period of retention. In principle, the cost of returning the employment documents is borne by the employer. However, the job seeker may be liable

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47) Reporter Younghee Kwak, "Although the recruitment procedure law has been passed, it is still possible to request an 'ID photo'", monthly magazine 「Labor Law」, May 2019, Jongankyungjae

48) Ministry of Employment and Labor, above manual, pages 64-65.

49) Specific items employers need to tell job seekers (I) the fact that the job seeker may claim the return of the hiring document; (ii) the type and scope of the hiring document to be returned; Implementation period, (v) return method and cost burden, (vi) retention period and destruction of employment documents.

50) Kyeryun Shin, a lawmaker who got the search result after asking the recruiting company, 'Human', Feb 3, 2013.

to pay expenses to receive the documents according to the individual application. If the company does not fulfill its obligation to retain the employment documents, or if the company does not notify the job seeker, the employer will be subject to a penalty of up to KRW 3 million.

3. Storing and deleting documents

The employer shall keep the employment documents for the period prescribed by Presidential Decree. However, the employer shall be deemed to have fulfilled the obligation to return the employment documents if the employment documents are lost due to natural disaster or other reasons not caused by the employer (Article 11 (3)). The retention period is from the date of recruitment application to the date of request for the return of documents, or when requested for return of the documents, the employer must send the documents by the special delivery service of the postal office (Article 3 of the Enforcement Decree of the Act).

The employment documents contain the personal information of the job seeker, and as the need for privacy is paramount, the documents should be destroyed after a certain period of time. If the requesting period of return expires or if the employment documents are not returned, the employment documents must be destroyed in accordance with the "Personal Information Protection Act" (Article 11, Paragraph 4).[51] In this case, the destruction of the employment documents should be made without delay (within 5 days) as stated in the Personal Information Protection Act.[52] The method of destroying personal information is as follows: ① For electronic files: permanent deletion in a way that cannot be restored; ② For recorded, printed, written or other recording mediums: crushed or incinerated (Article 16 of the Enforcement Decree of the Personal Information Protection Act).

IV. Conclusion

Since in the past there were no restrictions on the employer's right to employ workers, employers have sometimes abused their right in the course of hiring workers, which has caused high costs of recruitment for job seekers and even led to frequent recruitment irregularities. In this regard, the Recruitment Procedure Act will contribute to the restriction of the abuse by the employer in the recruitment process, reduce the job seeking expenses of the job seeker, and establish fair recruitment procedures. However, since there is a lack of social awareness or publicity regarding the Recruitment Procedure Act, it is generally accepted and recognized that job seekers cannot always be protected in reality. Therefore, it is desired that strict enforcement of the Recruitment Procedure Act is very much necessary in order to restrict some of the previously-unlimited rights of the employer and ensure the rights of job seekers.

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

I. Introduction

51) Article 21 (Destruction of Personal Information) (1) A personal information controller shall destroy personal information without delay when the personal information becomes unnecessary owing to the expiry of the retention period, attainment of the purpose of processing the personal information, etc.: Provided, that this shall not apply where the retention of such personal information is mandatory under other statutes.

52) Ministry of Public Administration and Security, Ministry of Employment and Labor, "Guidelines for Personal Information Protection - Personnel and Labor Fields", 2012. Page 23.

Even though Korea has reached the status of a developed country, many indices still show that the morality of public officials is perceived as being relatively low. According to a survey by the Anti-Corruption and Civil Rights Commission (ACRC), on the corruption perception index, 53.4% of the people who participated in the survey responded that civil servants are corrupt. Even in an international evaluation in 2018, Korea's Corruption Perceptions Index ranked 57; in 30th place out of 37 OECD countries.[53] Accordingly, it became necessary to legislate a comprehensive anti-corruption act in order to overcome the limitations of the existing anti-corruption laws (the Criminal Act, the Public Service Ethics Act, etc.) in preventing corruption, get rid of the corruption within the public services, and reach a transparent society. Thus, the "Improper Solicitation and Graft Act (hereinafter referred to as the "Kim Young-Ran Act" or the "Anti-corruption Act" was enacted on March 27, 2015 at the suggestion of Kim Young-Ran, the chief of the ACRC, and was implemented on September 28, 2016. This Kim Young-Ran Act includes in its scope of application employees engaged in media companies, private schools, and even the spouses of employees, and so affects the lives of ordinary people.[54] In particular, this Act contains joint penal provisions that can be used to punish a company when an employee violates this law regarding improper solicitation or provision of financial or other advantages, and so all companies should implement thorough precautions for the purpose of ensuring the avoidance of any joint punishment.

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

II. The Anti-corruption Act

1. Concept and scope of application

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

(2) Scope of application

1) "Civil servants and relevant persons" refers to ① civil servants and employees working in ② public service-related organizations,[55] ③ public institutions, ④ schools of various levels and educational corporations, and ⑤ media companies.

2) Spouses of civil servants and relevant persons

3) Private persons performing public duties: ① members of various committees, ② persons who have authority delegated by a public institution, ③ persons on assignment from the private sector to a public institution, ④ professionals who engage in deliberation or assessment in relation to public duties.

4) General people: persons who improperly solicit civil servants or who offer them financial or other advantages

2. Prohibition of improper solicitation[56]

53) Document issued by the Anti-Corruption and Civil Rights Commission in 2019.

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

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

Violation	Punishment
A stakeholder improperly solicits a civil servant directly	None

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

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

3. Acceptance of financial or other advantages[57]

A stakeholder improperly solicits a civil servant through a third party	Fine for negligence not exceeding KRW 10 million
A person improperly solicits a civil servant on behalf of a third party (private person)	Fine for negligence not exceeding KRW 20 million
A civil servant improperly solicits another civil servant on behalf of a third party	Fine for negligence not exceeding KRW 30 million
A civil servant or relevant person who performs functions as directed by an improper solicitation	Imprisonment for not more than two years or a fine not exceeding KRW 20 million

56) Punishment for improper solicitation (Articles 22, 23 of the Act)

57) Punishment for Graft (Articles 22, 23 of the Act)

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

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

Financial and other advantage refers to money, goods, and other financial gain, as well as tangible or intangible gains which provide convenience or satisfy the person's needs or desires. Examples are 1) money, property, hotel vouchers, memberships, admission tickets, etc., 2) meal, alcohol or golf, provision of transportation, etc., 3) providing economic benefits such as relief of debt, provision of employment, offering of favors, etc.

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

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

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

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

- Meals are allowed to a value of not exceeding KRW 30,000;
- Gifts are allowed to a value of not exceeding KRW 50,000 (however, up to 100,000 won for agricultural and fishing gifts);
- Congratulatory and condolence payments are allowed to a value of not exceeding KRW 50,000 (However, up to 100,000 won for congratulatory and condolence floor;

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

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

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

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

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

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

her spouse.	
· A civil servant receives an honorarium exceeding the allowable limit for an outside lecture	Fine for negligence not exceeding KRW 5 million

III. Joint Penal Provisions and the Employer's Obligations

1. Concept

The joint penal provisions refer to a system of punishing the employee and the employer together for violations of the law by the employee in the course of his/her work. Article 24 of the Anti-corruption Act (Joint Penal Provisions) stipulates that "Where an employee commits a violation: improper solicitation and/or provision of financial or other advantage, the violator and his/her employer are punished together. Provided, that this shall not apply where the employer has not been negligent in giving due attention and supervision concerning the relevant duties so as to prevent such violation."

The Supreme Court ruled, concerning the reasons for the employer to be exempted from liability, that whether the employer has been negligent in giving due attention and supervision shall be determined by considering the following items collectively: ① the violation and its relevant situation, such as the purpose for enacting that law, the severity of damages coming from infringing rights due to violation of the relevant law, and the purpose for introducing the joint penal provisions in that law; ② the concrete details of the violation and actual damage caused by the violation of this law; and ③ the size of the business, along with the degree of command and supervision by the employer; and ④ the company's efforts to prevent violations.[58)]

2. Related cases[59)]

1) Improper solicitation

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

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

2) Accepting financial or other advantages

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

Case 2: In a situation where employees X and Y of a construction company invited newspaper reporters A, B, C, D to a work-related dinner and spent KRW 120,000 for the dinner, and paid KRW 240,000 at the bar in a second location: As entertainment of the civil servants by employees X and Y is evaluated as one behavior, in applying the joint penal provision, one fine will be levied, which will be between KRW 120,000 and KRW 300,000 won: A fine for negligence of two to five times the received amount → (120,000/6 persons) + (240,000/6 persons) = KRW 60,000.

3. Cases in other countries

1) The United States' Anti-corruption Compliance: Whether the company established and normally

58) Supreme Court ruling on February 25, 2010 (2009do5824), on September 9, 2010 (2008do7834), etc.
59) Document issued by the Anti-Corruption and Civil Rights Commission in 2016.

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

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

IV. Conclusion

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

Procedures for Employers Handling Instances of Sexual Harassment[60)]

I. Summary (Introduction)

Incidents of sexual harassment occurred in a Korean branch office (hereinafter referred to as "the Company") of a foreign company. The female employee victimized by the sexual harassment (hereinafter, "the victim-employee") submitted a petition to the National Human Rights Commission over the incidents. The victim-employee then informed the company of the petition she had submitted, and details within her statement to the Human Rights Commission. From this, the Company investigated the senior sales manager concerned (hereinafter, "Offender A"), estimated that his actions were sexual harassment, and then took appropriate disciplinary action against him. Shortly after, the Human Rights Commission transferred this case to the Gangnam Labor Office of the Ministry of Employment and Labor. On June 16, 2011, the Company received a written notice from the Labor Inspector in charge of sexual harassment cases, that there would be an investigative hearing. The Labor Inspector also informed the Company that there were two more alleged offenders that the victim-employee had not mentioned to the Company. After being informed of the additional alleged sexual harassment, the Company investigated the sales director (hereinafter, "Offender B") and the country manager (hereinafter, "Offender C"), and after evaluation, determined their behaviors were also sexual harassment, based upon their statements and the victim's, and

60) A sexual harassment petition case at GangNam Labor Office from Apr to Jun 2011

took appropriate disciplinary actions against Offenders B and C. On June 28, 2011, the Company attended the investigative hearing at the Labor Office and explained the measures that it had taken appropriately according to related law. The Labor Inspector in charge agreed that the Company had taken the proper actions and closed the petition. However, the Labor Inspector discovered that the Company had not given any education to its employees to prevent sexual harassment at work in 2008 and 2009, but had started only in 2010. For this non-fulfillment of the Company's legal duty to provide education on sexual harassment prevention, the Company was fined 2 million won.

According to the 'Equal Employment and Work-Home Balance Assistance Act,' sexual harassment at work refers to "a situation where a person's superior or colleague harasses him/her with sexually-charged behavior or language," and it is the employer who is responsible to prevent sexual harassment at work and take appropriate measures if such harassment occurs. I would like to review the appropriate measures taken by the Company.

II. Details of the Sexual Harassment Case at Work

1. Sexual Harassment by Offender A

On April 27, 2011, during a team-building event at a company workshop with all employees (about 30), the victim-employee had to do something as a penalty in a game. The penalty was that she had to write her name with her backside. Before doing so, she told everybody that they couldn't take any video with their cameras or cell phones. The sales manager (Offender A) took a video of her with his cell phone secretly, saved it and forgot about it. On May 19, 2011, at a company dinner, Offender A remembered the video he had secretly recorded, and showed the video to his colleagues in turn. The conversation among those employees was sexually humiliating for the victim-employee, and included such expressions as "It would be fun to show this as a highlight at a Sales Kick-Off event," and "Since we can't see her face, send her ID picture to me with the video." The victim-employee demanded Offender A to delete the video, but Offender A did not do so. At this, the victim-employee informed the personnel team of her displeasure and requested a formal apology from him. Offender A would not offer a formal apology, and simply showed his displeasure at her informing the personnel team.

2. Sexual Harassment by Offender B

On May 19, 2011, at the same company dinner, Offender B wandered around, pouring traditional wine for his colleagues. When he came to the victim-employee's seat, he said to her, "Ms. Lee, you sat in my seat. You must like me" and sat beside her. He then said, "Shall we have a love shot?" The victim-employee was humiliated as he was suggesting that she was a "bar hostess" (a position which sometimes involves sexual behavior). The victim-employee very obviously did not like his suggestion, saying "That is a very dangerous thing to say." To which Offender B replied, "I'm not dangerous."

On March 29, 2011, at a company dinner, all the employees went to a Singing Room after dinner. There, while the victim-employee was singing a song by Sym Subong at someone's request, Offender B approached the victim-employee with a gesture in blue dancing, but the victim-employee avoided looking at him. After the song was finished, she sang another song by Ju Hyunme, which talked about a 'confession of love' many times. When she returned to her seat, Offender B said to her, "You were talking to me. That story was about me, right?"

On February 11, 2011, at a company dinner, Offender B approached the victim-employee and said, "Let's hug each other!" It was hard for the victim-employee to refuse in front of all her colleagues, so she patted his shoulder from a distance. The victim-employee began to wonder seriously how she could continue working with her manager (Offender B) who, without hesitation, had shown sexually-charged behavior and caused this humiliation to a married employee at a company dinner with their colleagues.

3. Sexual Harassment by Offender C

On March 29, 2011, the victim-employee was trying to get out of the company dinner because she was humiliated by Offender B's sexual behavior, but after giving it more thought, she went to the country manager (Offender C) to say 'good-bye'. When she said to him, "I have to go home early," Offender C offered his hand to shake hers. Shortly after they shook, Offender C said goodbye again, wanted to shake hands again, and attempted to kiss her hand. Surprised, the victim-employee took her hand back quickly, but some of her fingers touched Offender C's lips. The victim-employee was very embarrassed, shocked, and humiliated.

III. Company Recognition of Sexual Harassment and Handling Procedures

1. Employer procedures in dealing with sexual harassment complaints

Upon receiving a complaint of sexual harassment, the employer will conduct interviews, investigate the facts, implement appropriate measures such as disciplinary punishment, etc. and then inform the victim-employee.

- 1st Stage: Receipt of the sexual harassment complaint (HR or Labor Department)
- 2nd Stage: Interview and investigation
  Upon receiving the complaint, the person-in-charge is to quickly set up an interview and begin a thorough investigation. If necessary, the investigator can hear the defendant's testimony instead by organizing a face-to-face meeting between him/her and the victim.
  The person-in-charge shall weigh the collected information obtained during the investigation. As soon as the person-in-charge reaches a final conclusion, it shall be reported to the employer.
- 3rd Stage: Confirmation and disciplinary measures
  If it is confirmed that sexual harassment has occurred, the employer shall take appropriate action against the offender, such as a transfer to another department or position, warning, reprimand, work suspension, or dismissal, etc.
- 4th Stage: Report of the results
  Upon closing the investigation, the company shall notify the victim and the offender of the results.
- 5th Stage: Preventative action
  The employer shall pay special attention to the victim-employee after the closure of the sexual harassment case to prevent further sexual harassment of that employee.

2. The Company's handling of the above cases of sexual harassment

When it recognized the victim-employee's accusations regarding sexual harassment, the Company immediately requested statements from the victim-employee and the alleged offenders. As the country manager (Offender C) was involved in this case, the Company used a labor attorney to interview the victim-employee and the alleged offenders and receive their statements, to ensure fair conclusions. After receiving their statements and witness accounts, the Company determined the related behaviors were sexual harassment according to the criteria for evaluating whether certain behavior is sexual harassment at work. In this process, the Company handled the investigations quickly and confidentially, in order to protect the alleged offenders and the victim-employee at the same time. The alleged offenders resisted this investigation, saying they did not intend to harass her sexually. However, the Company explained to them seriously of the criteria for determining the existence of sexual harassment, "In evaluating whether certain behavior is sexual harassment or not, the victim's subjective conditions must be considered. As a socially

accepted idea, how a reasonable person evaluates or copes with a situation against the particular controversial behaviors involved must also be considered in the victim's case." The Company concluded that the three men's behaviors were sexual harassment and they were disciplined in accordance with the level of their violations. After this, the Company invited an external expert, (a labor attorney), and implemented training for all employees towards preventing sexual harassment at work. The Company also strove to prevent the reoccurrence of any sexual harassment by posting a notification on the bulletin board, detailing ways to prevent any further sexual harassment in the work environment.

The Company held a Disciplinary Action Committee composed of three members designated by the Company in accordance with the disciplinary regulations in the Rules of Employment, and took disciplinary action after reviewing the disciplinary details. There are five types of discipline: 1) written warning, 2) wage reduction, 3) suspension from work, 4) recommended resignation, and 5) dismissal. The Company decided the level of discipline according to the level of violation as follows.

A. Offender A: ① 10% wage reduction from one month's salary; ② Suspension of promotion for six months; ③ Official apology to the victim in front of company directors
B. Offender B: ① Written warning; ② 2.5% wage reduction from one month's salary (July)
C. Offender C: Written warning

IV. Conclusion

These cases of sexual harassment at work were related to environmental sexual harassment, and the employees recognized that their behavior at company dinners could be interpreted as sexual harassment even if they didn't think much about it. These cases brought some educational benefit to the Company as well as the employees realized that their unintentional behavior could be interpreted as sexual harassment because the criteria for determining sexual harassment is partly judged from the victim's perspective, rather than the offender's intention. In addition, this case contributes to the building of healthy relationships between employees. The Company was able to protect the victim from being further humiliated, through appropriate measures against sexual harassment. The Company also took appropriate action to prevent a repeat of sexual harassment by determining acceptable discipline for the offenders, carrying that discipline out, and providing education to prevent sexual harassment of other employees.

Due to the victim-employee's complaint of sexual harassment to the Labor Office, the Company was investigated to determine whether or not it had followed the employer procedures for handling sexual harassment complaints. The Labor Office found that the Company had carried out its duties as employer very well according to the Equal Employment Act, except for one, which was skipping its obligation for two years before setting up sexual harassment education last year. As already mentioned, the Company was fined 2 million won for two occurrences of failing to provide education to prevent sexual harassment. Beyond this, the victim-employee's petition to the Labor Office was concluded without any further penalty or demand.

The Personal information Protection Act and Personnel Management

I. Introduction

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

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

II. Major Details of the Personal information Protection Act

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

1. Expansion of Scope

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

2. Expansion of Protection

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

3. Restrictions on use of unique identifying information

Unique identifying information provided to the individual by law, such as resident registration numbers, shall be prohibited, in principle, from processing. In cases where a specific law requires such information, or where it is deemed obviously necessary for the urgent benefit of life, body or property of a subject of information or a third party, gathering such information is permitted. Individual resident registration numbers shall not be required on websites. Any person violating this shall be punished with imprisonment of up to five years or with a fine not exceeding fifty million won.

4. Restrictions against use of video recording devices

Installation and operation of video recording devices in open places is now restricted. A "video recording device" is any instrument, such as CCTV (closed-circuit television) or network cameras, which is

installed and remains in a designated place and is meant to videotape objects and/or people, or transmit the video recordings through a wired or wireless network. The arbitrary use of such operations in a way that differs from its intended purpose, recording video in places other than the originally intended area, and recording of voices, are all prohibited. Any person violating this shall be punished with imprisonment of up to three years or with a fine not exceeding thirty million won.

5. Collection and use of personal information

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

6. Duty to report leaks of personal information

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

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

III. Management of Personnel and Personal information

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

1. Details on management of employees' personal information

Collecting and using personal information is tightly restricted, but in cases where an employee enters into an employment contract to offer work in return for wages from the employer, the employer shall know the employee's name, resident registration number, address, wage information, and other necessary data, as this is an example of "it is necessary for one party to enter into or implement a legal contract with the individuals concerned." These items of personal information are essential to management of personnel regarding the four social insurances, year-end income tax adjustment, and issuance of various certificates. Accordingly, no individual agreement is necessary regarding the use of personal information in this way. However, it is still necessary for the employer to inform the employee of the collection and

use of his/her personal information related to the making of an employment contract. This notification shall include the purpose for collecting the personal information, where to read and/or correct such information, the period it will be retained, and management after he/she leaves the company, etc.

Can personal information obtained through resumes, etc. at the time of hiring be exempt from the requirement for consent from employees to collect or use their information, as it can be considered "necessary for one party to enter into or implement a legal contract with the individuals concerned"? [61]

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

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

2. Company use and management of video recording devices

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

Case: Monitoring the Workplace[62]

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

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

'Public places' refers to places like roads, parks, plazas, and other places the public is free to use.

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

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

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

IV. Conclusion

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

The Occupational Safety & Health Act, and Employer Duties[63)]

I. Introduction

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

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

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

In particular, major changes to the Act, which was enforced from January 16, 2020, included: (i) expanding coverage and expanding from workers to labor providers; (ii) introducing such shutdowns for serious disasters; and (iii) strengthening penalties for accidents.

63) MOEL, "Explanations for the entirely revised Occupational Safety and Health Act", January 2019: This Act is enforced as of January 16, 2020.

II. The Act's Scope of Application & Management Structure[64]

1. Extended purpose and scope of application

(1) Purpose

The purpose of this Act is to maintain and promote the safety and health of those who provide work by preventing industrial accidents by establishing standards on industrial safety and health and clarifying where the responsibility lies, and by creating a comfortable working environment (Article 1). As the Industrial Accident Compensation Insurance Act recognizes the occupational accidents for persons in special types of employment, the Industrial Safety and Health Act extends the scope of industrial accidents from workers to those who provide work, which include not only workers but also special types of workers and delivery workers for safety and health measures (Articles 77 and 78 of the Act). [65]

(2) Scope of application

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

2. Management structure

(1) Appointment duties

1) The general manager in charge of safety and health management: The general manager is responsible for general control of occupational safety and health and supervises safety and health managers. Accordingly, the general manager shall be capable of managing the company's business (e.g., plant manager). (Article 15) Companies that ordinarily employ 50 workers or more engaged in manufacturing etc., companies that ordinarily employ 100 workers or more engaged in wholesale and retail sales, etc., and companies that ordinarily employ 300 or more engaged in pure office administration, such as finance, etc., must appoint a general manager to be in charge of safety and health management.
2) **Supervisor**: An employer shall designate the head of a division within the management structure, who directly manages and supervises production work and employees involved therein or who takes charge of such a position, to carry out safety- and health-related duties such as safety and health inspections. (Article 16)
3) **Safety manager and health manager**: An employer shall assign a safety (health) manager at the workplace to assist the employer or the general manager in technical matters concerning safety among the matters regarding safety and health, and to instruct and advise the supervisor on such matters.
The business owner of a manufacturing company or etc., ordinarily hiring 50 workers or more shall generally appoint a safety (health) manager, but for companies with fewer than 300 employees, the business owner may assign the safety (health) manager an additional safety management job or refer to a professional institution to perform the necessary safety management measures. (Articles 17 and 18)

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64) Kim, Hyungbae『Labor Law』, 26th, ed., Parkyoung Publishing Co. 2018, page 474-487; Kim, Hyungbae/Park Ji-soon, 『Lectures on Labor Law 』8th ed. Shinjosa, 2019, pp. 341-348.

65) The Industrial Accident Compensation Insurance Act: **Article 125 (Special Case concerning Persons in Special Types of Employment)**(1) Notwithstanding Article 6, the business which receives labor service, from persons who engage in jobs prescribed by Presidential Decree, among the persons who are not subject to the Labor Standards Act, etc., even though they offer labor service similar to that of employees regardless of the type of contract, and therefore need protection from occupational accidents, and who also meet all the following requirements (hereafter in this Article referred to as "persons in special types of employment"), shall be deemed business subject to this Act: <Amended on January 27, 2010>

1. They mainly provide one line of business with labor service necessary for the operation thereof on a routine basis, and receive payment for such service and live on such pay;
2. They do not use other persons to provide such labor service.

(2) Industrial safety and health committee

The business owner shall establish an industrial safety and health committee comprised of an equal number of worker and employer representatives for workplaces ordinarily hiring more than 100 employees, or which has between 50 to 100 employees engaged in dangerous work. The committee shall meet once per quarter and its decisions shall be posted, and shall be faithfully implemented. (Article 24)

(3) Safety and health management regulations

In order to maintain safety and health in the workplace, an employer shall prepare safety and health management regulations, post and/or keep them in the workplace, and notify workers thereof. The employer and workers shall observe the safety and health management regulations (Article 25). These rules shall apply to workplaces ordinarily hiring 100 workers or more; provided that for service businesses like finance, etc. these rules shall apply to workplaces ordinarily hiring 300 workers or more.

III. Employer's Duties

1. Report industrial accidents

In cases where a worker dies due to an occupational accident, or is injured or inflicted with a disease requiring medical treatment for three days or more, the employer shall submit to the Minister of Employment & Labor an accident investigation form regarding the occupational accident within one month from the occurrence date of the occupational accident. Provided, in cases where a 'serious accident' occurs, the employer shall report it without delay. (Article 57)

2. Measures to prevent harm & hazards

(1) Notice of substance of acts and subordinate statutes

The business owner shall inform workers of the major aspects of orders enacted under this Act by posting them at each workplace. (Article 34)

(2) Attachment of safety signs

The business owner shall install or attach safety and health signs to warn employees of dangerous facilities and places in the workplace and provide emergency drills to promote safety consciousness. (Article 37)

(3) Safety and health measures

The business owner shall take measures necessary to prevent the following hazards in operating the business: ① hazards caused by machines, tools or other equipment; ② hazards caused by explosive, combustible or inflammable substances; ③ hazards caused by electricity, heat or other forms of energy; ④ Hazards caused by improper work methods in excavating, quarrying, loading and unloading, timbering, transporting, operating, dismantling, handling of heavy objects, etc.; and ⑤ hazards in places where workers might easily trip and fall, sand, structures, etc., (Article 38).

The business owner shall take measures necessary to prevent the following from causing health problems commonly encountered in the course of business operations: gas, dust, high temperatures, low temperatures, remnants, precision work, poor ventilation or lighting, computer terminals, radiation, simple repetitive actions, etc. (Article 39).

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

If there is imminent danger of an industrial accident, or if a serious accident has occurred, the business owner shall take necessary measures for safety and health, such as immediate suspension of operations, evacuation of workers from the workplace, etc., until work can be resumed after meeting safety requirements. (Article 51)

If there is a possible risk of an industrial accident, any worker can suspend work and evacuate. In this case, he/she shall report it without delay to the immediate superior officer, who shall take appropriate

measures to rectify the situation. (Article 52)

(5) Measures in case of serious accident

1) Employer's measures: The employer shall immediately take necessary measures concerning safety and health, such as stopping work immediately and evacuating workers from the workplace when a serious accident occurs. In addition, the employer should report to the Minister of Employment and Labor without delay if he finds out that a serious disaster has occurred (Article 54).

2) Labor Minister's measures: The Minister of Employment and Labor shall, when a serious accident occurs, (i) in case of the work in which the serious accident occurred, and (ii) the works equivalent to the work in which the serious accident occurred, if it is determined that there is an immediate danger of reoccurring, give an order to cease the work. In addition, the Minister of Employment and Labor shall stop the work in case of unavoidable circumstances such as the occurrence of a serious accident due to the collapse of earth and sand, fire, explosion, leakage of harmful or dangerous materials, and the spread of industrial accidents around the place where such serious accident occurred.

The Minister of Employment and Labor shall release the suspension of work after the deliberation of a review committee composed of experts on the work environment, if the employer requests the cancellation of the above cases (Article 55).

(6) Other measures to prevent harm and hazards

Article 80 (Protective Measures, etc. for Harmful or Dangerous Machines, Instruments, etc.)	Machines and instruments requiring harmful or hazardous work or operated by power, shall not be transferred, leased, installed or used, or displayed for the purpose of transfer or lease, without taking protective measures for the prevention of harm and hazards.
Article 83 (Safety Certification)	To assess the safety of harmful or dangerous machines, instruments, equipment, protective devices and personal protective equipment, the Minister of Employment & Labor may determine and announce safety certification criteria concerning safety performance, the manufacturer's technological capacity, production systems, etc.
Article 93 (Safety Inspection)	An employer who uses harmful or dangerous machines and equipment shall receive a safety inspection on whether the performance of the harmful or dangerous machines, etc. meets safety standards.
Article 118 (Permission to Manufacture, etc.)	A person who intends to manufacture or use "substances subject to permission" shall obtain, in advance, permission from the Minister of Employment & Labor. This provision shall also apply if the person intends to make a change to anything that has previously been permitted.
Article 119 (Asbestos Investigation) Article 122 (Asbestos Disposal or Removal by Asbestos Disposal or Removal Service Provider)	If structures or facilities are to be demolished or dismantled, the owner or lessee, etc., of the structures or facilities shall conduct a "general asbestos investigation" and record and keep the results thereof. The owner, etc., of structures or facilities subject to an institutional asbestos investigation shall have an "asbestos disposal or removal service provider" dispose of or remove the asbestos.
Article 114 (Preparation, Keeping, etc. of Material Safety Data Sheets)	A person who transfers or supplies a chemical and/or chemical-containing preparations meeting the classification standards pursuant to "target chemicals" shall make and provide a Material Safety Data Sheet (MSDS) to the person to whom they are transferred or supplied.
Article 36 (Risk Assessment)	An employer shall identify hazards and determine the potential for harm caused by structures, machines, instruments, equipment, raw materials, gas, vapor, dust, etc., work behavior or work, determine the level of risk, and take measures under this Act and any order issued under this Act according to the findings, and if necessary to prevent risks or health problems for workers, take additional measures as required.

3. Safety and health measures for contractor businesses

(1) Safety measures: The business owner of a contractor business shall institute safety measures to prevent industrial accidents which can occur when those employed by the business owner and the contractor work simultaneously at the same place. (Article 63)

(2) Prohibition of contract for harmful and dangerous work: Sectors of work recognized as harmful or dangerous to safety and health shall not apply under a separate contract without the approval of the Minister of Labor. (Article 58)

(3) Setting aside of funds for safety management: Upon entering into a subcontract or independently executing construction, shipbuilding or repair work, or other projects, funds for industrial safety and health management shall be set aside for activities to prevent occupational accidents when planning subcontract or project costs. (Article 72)

4. Safety & health education (Chapter 3)

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

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

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

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

5. Management of Worker Health

(1) Evaluating the working environment

An employer of a business dealing with dangerous or harmful chemical substances or producing a high level of noise shall evaluate the working environment within 20 days from the date when a new workplace or work process is added or when there is any change in the existing workplace or work processes. An additional evaluation shall be made every 3 months for 1 year. The evaluation results shall be reported to the local labor office within 30 days from the completion date of the evaluation. (Article 129)

(2) Health examinations

The business owner shall periodically conduct health examinations of the workers. Health examinations must also be given upon the hiring of new workers. (Article 125)

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

2) All employers shall ensure that a general medical checkup is conducted at least once every two

years for employees engaged in office work and at least once every year for other employees.

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

(3) Prohibition or restriction of work for sick persons

For persons diagnosed with infectious disease or mental illness, or any other condition that can be aggravated by work, the business owner shall prohibit or restrict work according to the medical diagnosis. However, upon recovery, the business owner shall, without delay, permit the employee to resume their original work. (Article 138)

(4) Extending working hours prohibited

The business owner shall not have an employee who is engaged in harmful or dangerous work working more than six hours per day or thirty-four hours per week. (Article 139)

(5) Restriction of employment by qualification

The business owner shall not allow any persons other than those who have the qualifications, license, experience, and/or required skills, to perform harmful or dangerous work. (Article 140)

6. Documenting & keeping records

Documented records concerning appointment of safety and health personnel and the examinations on harmfulness and toxicity of new substances shall be kept for 3 years (internal inspection records shall be kept for 2 years). Records on working environment evaluations and employee medical examinations shall be kept for 5 years. (Article 164)

7. Employers' enhanced penalties for occupational accidents

(1) Employers, contractees, and contractors who fail to comply with their safety or health care obligations and cause the death of any worker shall be punished by imprisonment for not more than seven years, or a fine not exceeding 100 million won. The offense is aggravated up to one-half of the sentence if the identical offense is repeated within 5 years (Article 167).

(2) In case a worker dies due to a representative's or other worker's violation of safety or health care obligations, not only shall such offender be punished accordingly, but the corporation or contractor shall also be punished by a fine of up to 1 billion won (Joint penalty provision: Article 128)

(3) If the court convicts a person for dying a worker due to a violation of health and safety measures, he or she may have a 200-hour study-attendance order necessary to prevent industrial accidents in addition to the punishment (Article 174).

IV. Conclusion

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

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.[66]

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")[67] and the Act on the Prohibition of Discrimination against the Disabled (hereinafter referred to as the "Act Against Discrimination of Persons with Disabilities")[68]. 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.[69] There are 15 types of disability specified in Article 2 of the Enforcement

66) 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.

67) 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.

68) 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.

69) 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

Ordinance of the Act on Welfare for Persons with Disabilities: ① physical disabilities, ② brain 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 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).

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

Article.

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.

노동법 앱 개발

App Development Project

2019.12.9.

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