Items to be Considered When Writing an Employment Contract

I. Introduction

Recently, an important court ruling was made on the validity of an employment contract. A certain company unfavorably changed its employment rules to reduce bonuses, although with the consent of a majority of workers. However, according to the principle of preferential conditions, it was judged that the company could not reduce the bonus of opposing workers unless their employment contracts were also changed.[1] Therefore, it is necessary to revise the written employment contract when working conditions are changed unfavorably.

When an employer hires someone, the first thing that must be done is to create an employment contract, which outlines the responsibilities of both parties to the contract—the worker provides work to the employer and the employer pays wages in return (Article 2 of the Labor Standards Act, or "LSA").[2] Preparing a written employment contract is to clarify working conditions between workers and employers, and to prevent disputes. The employer is obligated to prepare one, and failure to do so can result in a fine of not more than 5 million won for each worker who does not have a written contract. In labor disputes, the burden of proof is on the employer. I will outline the essential items in an employment contract, with these items examined through standard employment contracts for each employment type.

II. Required Information to be Stipulated in a Written Employment Contract

1. Items required to protect workers

Article 17 of the Labor Standards Act requires employers to specify certain items in employment contracts and hand them out to new hires to sign. It should be issued again when changes are made. Such items include (1) wages, (2) contractual working hours, (3) holidays under Article 55, (4) annual paid leave under Article 60, and (4) matters concerning the place of employment and the work expected. When entering into an employment contract with a worker under the age of 18, a parental consent form must be attached (Article 66 of the LSA).

When entering into an employment contract with a fixed-term or part-time worker, the following essential items must be specified in writing: (1) Matters concerning the period of the work contract, (2) Matters on working hours and breaks, (3) Matters on the composition of wages and methods of calculation and payment, (4) Matters on

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1) Supreme Court ruling on Apr. 9, 2020: 2019da297803.
2) Ha, Kaprae, 「The Labor Standards Act」 33rd Ed., Joongang Economy, 2020, p. 127.

holidays and leave, and (5) the place of employment and the work expected. In particular, (6) working days and working hours per working day are only required for part-time workers (Article 17 of the Fixed-Term and Part-time Employment Act).

2. Items to protect employers

Employment contracts should be drawn up based on mutual agreement between labor and management and on equal terms, but in reality, since the employer selects and hires the most desirable worker from a number of applicants, the employment contract is concluded with the working conditions dictated by the employer. Since the employer decides the details of the contract from a superior position, the Labor Standards Act places restrictions on contract details.

Despite these restrictions, employers can take steps to protect themselves and take actions, such as dismissal, with unqualified or poor workers. First, workers unsuitable for the job can be dismissed within the probation period, which is usually set at 3 months, but can be extended if necessary. Workers on probation may be dismissed without prior notice, unless the probationary period exceeds three months, then a notice of dismissal must be made 30 days before dismissal. Second, if it is difficult to evaluate whether a worker is eligible for work through the probation period, a one-year fixed-term working condition can be set together with the probation period. Third, it is necessary to obtain a pledge to comply with the service regulations (security), and prepare grounds for disciplinary action for workers who violate them. Fourth is related to employees' personal information, which, in general, employers can use in personnel management, but only upon gaining the employee's consent for areas not already permitted by law. Essentially, a letter of consent signed by the employee is necessary before using that employee's personal information.

III. Employment Contract Forms and Related Explanations

With the five standard employment contracts proposed by the Ministry of Employment and Labor, I would like to review each characteristic in detail.

1. Indefinite term employment contract

1. Work commencement date: _____Month / Day / Year 2. Working place: 3. Details of work:

4. Contractual working hours: from_____to ____ (break time: from_____to_____)
5. Working days/holidays: _____working days every week / weekly holidays: every___day
6. Wage
-Monthly (day, hour) wage: KRW_____
-Other benefits (subsidies, etc.): Yes (), No ()
· KRW _____, KRW _____
-Wage payment date: _____ day of every month (every week or every day) (if payment date falls on a holiday, payment will be made one day prior to the holiday)
-Payment method: Issued directly to the worker (), direct deposit to the employee's bank account ()
7. Annual paid leave
-Annual paid leave is granted in accordance with the Labor Standards Act.
8. Subscribed social insurances (check the relevant boxes)
☐ Employment insurance ☐ Industrial accident compensation insurance ☐ National pension ☐ Health insurance
9. Duty to faithfully perform employment contracts, employment rules, etc.
-Employers and workers must each observe and faithfully implement employment contracts, employment rules, and collective agreements.
10. Other: Matters not specified in this contract are subject to the rules of employment and labor laws.

<Related explanation>

(1) Work commencement date: The date on which the employment contract is concluded and the date of commencement of work may be different. The period between the date the employment contract is concluded and the date of commencement of work is called the successful candidate period. Once the employment contract has been concluded, the employer cannot terminate it without justifiable reason.[3] Therefore, it is advisable to set a probation period if at all possible to verify whether a new hire is indeed able to do the work. The probationary period can be from 1 to 6 months, and whether or not the worker is to be employed longer is determined within that period. When dismissing a worker on probation, an objective evaluation should be used, and there should be at least two evaluators. A probationary employee's competence should be assessed not through a one-time apprenticeship evaluation, but through additional intermediate apprenticeship evaluations.

(2) Work place and

(3) Job description: The head office, the workplace of the relevant worker, and the job description (such as personnel and general affairs) must be clarified. If needed,

[3] Lim, Jongryul, 「Labor Law」 18th Ed., Parkyoungsa, 2020, p. 405; Seoul Appellate Court ruling on April 28, 2000: 99na41468.

state that the workplace and job description may change if necessary.

(4) Contractual working hours refer to the hours set by an employer within the legal working hours. The limit is generally 40 hours per week and 8 hours per day, while overtime is limited to a maximum of 12 hours per week in excess of the legal working hours (Article 53 of the LSA). These limitations are intended to ensure workers have the right to pursue health and happiness.

(5) Working days and holidays: Working days are generally set from Monday to Friday, but can differ depending on the type of business. For weekly holidays, a paid holiday of at least one day a week must be given to each worker who has completed the contractual working days for one week (Article 54 of the LSA). Therefore, one or more paid holidays can be given on the day(s) specified by the employer.

(6) Wage: Wages must be at least equal to the minimum wage. The wage specified in the employment contract is ordinary wage, which is the basis for calculating various additional wages. Wages must be paid in full to workers directly in currency. Here, deposits to the worker's bank accounts are also considered direct payment in currency. In addition, wages must be paid at least once a month on a fixed date (Article 43 of the LSA). The inclusive wage system refers to a wage system that does not calculate basic wages in advance for a given working time, but rather stipulates that daily or monthly wages shall include the total amount of statutory working hours plus additional working hours.[4] Since the LSA stipulates that basic wages and contractual working hours shall be defined in the employment contract, the inclusive wage system is effectively in violation of that Act.

(7) Annual paid leave: It is stipulated that annual leave is used in accordance with the employment rules and the Labor Standards Act.

(8) Whether or not social insurances are subscribed to: In principle, the employed workers are automatically subscribed to the four social insurances. However, exceptions exist: those aged 60 or over do not need to subscribe to the national pension while those 65 or over do not need to subscribe to employment insurance. In addition, those under the age of 18 do not contribute to the national pension. For foreign workers, subscription to employment insurance is voluntary. Part-time workers with remarkably few working hours (those with an average of less than 15 hours in 4 weeks) are covered only by industrial accident insurance, but not the other three.

(9). Other items to be entered: It is desirable to stipulate that items not listed in the employment contract are subject to the rules of employment.

2. Fixed-term employment contract

1. Employment contract period: From ____ (year/month/day) to _____(year/month/day)

4) Lee, Seunggil, "A Study on Judicial Principles and Benefits of the Inclusive Wage System", 「Labor Law Studies Collection」 29th Ed., Korean Comparative Labor Law Study Association, Dec. 2012, p. 575.

This is the same as the general standard employment contract, but includes a contracted period of employment.

3. Employment contract for minors

8. Certificate of family relations and parental consent form
   - Whether a certificate of family relations has been submitted:_____
   - Whether parental or guardian consent is provided:_____

Under the Labor Standards Act, minors are those under the age of 18, while under the Civil Act, minors are those under the age of 19. Juristic acts of minors require parental consent. Therefore, employment contracts for minors must be accompanied by written parental consent. The parents/guardians retain the right to terminate the employment contract of the minor under their care (Articles 66 and 67 of the LSA). Except for these two differences, juristic acts under labor law are the same as those for workers who have reached the age of majority.

4. Employment contract for daily workers

1. Employment contract period: From_____(year/month/day) to_____(year/month/day)
   ※ If the employment contract period is not specified, only the "work commencement date" is entered.
6. Wage
   - Monthly (daily, hourly) wage: KRW_____ (circle the relevant time unit)
   - Other allowances (overtime, night, holiday work, etc.): KRW _____ (describe in detail)
   • Overtime allowance: KRW _____ (_____hours per month)
   • Night work allowance: KRW _____ (_____hours per month)
   • Holiday work allowance: KRW _____ (_____hours per month)
   - Wage payment date: _____(day) of every month/week or every day (if the payment date falls on a holiday, payment will be made one day prior to the holiday)
   - Payment method: Direct payment to the worker (), deposit to the worker's bank account ( )

Daily workers are employed on a daily basis or work for a remarkably short period. Therefore, the date of commencement of the employment contract or the duration of the employment contract must be specified.

In terms of wages, hourly wage, daily wage, monthly wage, etc. must be specified, as must additional allowances for overtime, night work, and holiday work.

5. Employment contract for part-time workers

4. Working days and working hours per working day

	Mon	Tues	Wed	Thurs	Fri	Sat
Working hours	___HRS	___HRS	___HRS	___HRS	___HRS	___HRS
Start	___H/M	___H/M	___H/M	___H/M	___H/M	___H/M
Finish	___H/M	___H/M	___H/M	___H/M	___H/M	___H/M
Break	__H/M ~ __H/M	__H/M ~ __H/M	__H/M ~ __H/M	__H/M ~ __H/M	__H/M ~ __H/M	__H/M ~ __H/M

○ Holiday: Every _____ (day of the week)

5. Wage

- Hourly (daily, monthly) wage: KRW _____ circle the relevant time unit)
- Additional wage rate for overtime:___%
- Wage payment date: _____(cardinal day) of every month (or every week/day) (if payment date falls on a holiday, payment will be made one day prior to the holiday)
- Payment method: Direct payment to the worker (), or deposit to the employee's bank account ()

(1) This contract type stipulates “working days and working hours per working day” to be included in the written description for part-time workers.

(2) The contractual working hours of part-time workers must be specified. This shall be within the limit of 12 hours, in addition to the one-week contractual working hours of part-time workers, even for overtime. That is, extended hours for part-time workers are judged based on contractual working hours rather than legal standard working hours (Article 6 of the Fixed-Term and Part-time Employment Act). If the worker works for more than the time specified in the contract, an additional wage of 50% or more of the ordinary wage will be paid even if the hours remain within the legal working hours.

IV. Details Not to Include in Employment Contracts

The Labor Standards Act specifies invalid details in employment contracts. These include: (1) Working conditions that do not meet the standards of the Labor Standards Act, with such invalid section(s) to be judged as in accordance with the Labor Standards Act (Article 15); (2) If any of the working conditions set forth in an employment contract is found to be inconsistent with actual conditions, the worker concerned shall be entitled to claim damages from the employer resulting from breach of the working conditions (Article 19); (3) Employers shall not prescribe penalties or

damages for failure to fulfill the employment contract (Article 20); (4) No employer shall offset wages against an advance or other credits given in advance on the condition of a worker's labor (Article 21); and (5) No employer shall enter into a contract with a worker, in addition to a labor contract, which stipulates compulsory savings or the management of savings (Article 22).

V. Conclusion

When an employer hires someone, an employment contract must be the first thing given. If the details of the employment contract do not match the rules of employment, the rules of employment shall apply (Article 97 of the LSA). If the employer changes the rules of employment unfavorably to workers, the details of the employment contract shall take precedence in accordance with the principle of preferential working conditions, unless the employment contract is also modified. Therefore, the employer must re-issue the contract with the new working conditions specified. It is important to keep in mind that changes to the rules of employment will not take effect until this is done.

Employment Contracts and the Principle of Priority on Favorable Conditions

I. Introduction

Recently, court rulings have emerged that have overturned existing practices, causing confusion in the workplace. Even if changing the rules of employment disadvantageously proceeds legally and with the consent of the majority of workers or consent of the union representing the majority, the labor contract with more favorable conditions continues to apply to workers who do not agree. In the past, when employers change rules of employment in a way that lowered working conditions to overcome internal and external difficulties, as long as they have gone through the procedures required to change the rules disadvantageously, the new rules apply to all workers in the entire company even if there are some opposed.[5] However, recent Supreme Court rulings have overturned this practice by ruling that a labor contract with more favorable terms for even a small number of workers who disagree with changes to the rules of employment continues to apply. The background to these

[5] Kim, Hyung-Bae, "Changing Employment Rules Disadvantageously and Advantageous Contents of Labor Contracts", 「Labor Law Forum」(29) Labor Law Theory Practical Society, Feb. 2020, P. 5; Park, Jong-hee, "Relationship between the Principle of Priority on Favorable Conditions between Employment Rules and Labor Contracts", 「Anam Law」 No. 56, Anam Law Society, 2018, p. 253.

precedents is the principle that workers and employers must decide working conditions freely and on equal terms (Article 4 of the Labor Standards Act, or LSA), and when there is disagreement regarding the new rules and labor contracts, the labor contract with the more favorable conditions takes priority (Article 97 of the LSA). These court rulings have caused some concerns on how to change rules of employment disadvantageously while conforming to the principles in these precedents. In this regard, I would like to review the relevant laws and recent court rulings on labor contracts and the principle of priority on favorable conditions, and look at ways to prepare desirable employment contracts.

II. The Principle of Favorable Conditions and Exceptions

1. Labor contracts that are disadvantageous when compared to the Labor Standards Act

Parts of labor contracts that set working conditions below the standards set by the Labor Standards Act are null and void. The invalidated sections are to comply with the Labor Standards Act (Article 15 of the LSA). The labor contract outlines working conditions freely determined by the worker and the employer, but if such working conditions do not meet the mandatory regulations set forth in the Labor Standards Act, they will be invalidated, and that section of the labor contract will be changed to comply with the Labor Standards Act. Therefore, the working conditions specified in a labor contract should be the same or better than those outlined in the Labor Standards Act.

2. Labor contracts that are disadvantageous when compared to the collective agreement

Any part of a labor contract that violates the working conditions and standards for treatment of workers stipulated in the collective agreement shall be invalid. The invalidated part(s) shall comply with the standards set by the collective agreement (Article 33 of the Trade Union Act: TUA). This regulation describes the normative effect of collective agreements, and explains that they have a compulsory and supplementary effect on the content of contracts. The compulsory effect is manifested by invalidating any part of a labor contract that violates the standards for working conditions and other treatment prescribed in the collective agreement. The supplementary effect is manifested by the fact that if there are no relevant provisions in the labor contract for handling a specific issue, the standards set in the collective agreement apply.[6] If a labor contract is more favorable than a collective agreement, the question arises as to whether the more favorable section(s) of the labor contract will apply in accordance with the principle of preferential conditions. This section has a normative effect because the working conditions specified in the collective agreement are the product of the determination of working conditions concluded on an equal

[6] Labor Law Practical Research Society, 「Annotation of the Labor Standards Act (1)」, Park Youngsa, 2020, p. 391.

basis by labor and management. Therefore, within the scope of the general binding force of collective bargaining, the favorable conditions specified in the labor contract are excluded and the contents of the collective agreement apply.[7]

3. Labor contracts that are more favorable than the rules of employment

Parts of labor contracts that set working conditions below the standards set by the rules of employment are invalid. Invalidated sections shall be changed so they comply with the rules of employment (Article 97 of the LSA). The labor contract should be maintained but with the same or more favorable conditions as the rules of employment. This also applies in the reverse situation. Therefore, if the rules of employment and the labor contract differ in terms of working conditions, the advantageous terms of the labor contract will apply first.[8] There are some related court rulings: (1) Even if the revised rules of employment no longer require that a full-time allowance be paid, which had been required under the labor contract, for individual workers who do not agree to the change, the advantageous parts of the labor contract take precedence over the revised rules of employment.[9] (2) In a case where a wage peak system was introduced as part of rules of employment that were revised with collective consent but after specifying the annual salary in an individual labor contract with a particular worker, the existing individual labor contract takes precedence over the rules of employment, despite the latter being revised with collective consent.[10] (3) Even if the rules of employment are changed through legitimate procedures, they do not take precedence over existing advantageous employment contracts unless special circumstances dictate otherwise, such as the employee agreeing to the relevant change in the rules of employment.[11]

III. Disadvantageous Changes in the Rules of Employment and Exceptions

1. Effect of disadvantageous changes to the rules of employment

When changing rules of employment in a way that is unfavorable to workers, consent from the labor union is required if there is a labor union organized by a majority of workers. If there is no such union, consent from the majority of workers is required (Article 94 of the LSA). If the employer unilaterally changes the rules of employment without obtaining such consent, the change(s) have no effect on workers

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7) Lim, Jong-ryul, 「Labor Law」, Parkyoungsa, 2020, p. 162; Labor Law Practical Research Society, 「Annotation of the Labor Standards Act (1)」, Parkyoungsa, 2020, p. 393; Supreme Court ruling on Dec. 27, 2002, 2002Du9063.
8) Lim, Jong-ryul, 「Labor Law」, Parkyoungsa, 2020, p. 17.
9) Ulsan District Court ruling on June 14, 2017, 2016 Gahap 23102; Appellate Court ruling on Aug. 30, 2017, 2017 Na 53715; Supreme Court ruling on Dec. 13, 2017.
10) Supreme Court ruling on Nov. 14, 2019, 2018 Da 200709.
11) Supreme Court ruling on Apr. 9, 2020, 2019 Da 297083.

who have been subject to the existing rules, and shall only apply to new workers hired after the rules were changed.[12] Even in court rulings, if the employer wishes to lower the existing working conditions for specific workers due to disadvantageous changes in the rules of employment, consent from the workers subject to the previous working conditions or rules is required. If such consent is not obtained, changes to the rules of employment are of no effect. If no such labor union exists, the consent of a majority of workers, according to meeting procedures for business or other units, is required. It is also acceptable to gather opinions of each worker in each department and then the workers discussing among themselves in a setting where there is no intervention or interference from the employer.[13]

In spite of previous court rulings changing the employment rules disadvantageously, recent court rulings have determined that the working conditions stated in the labor contract of a few workers who oppose the collective consent continue to apply in accordance with the principle of priority on favorable conditions.

2. Related cases

(1) Supreme Court ruling on Nov. 14, 2019 (2018 Da 200709)

A. Background

An employer and worker signed a contract with a basic annual salary of 70,900,000 won in March 2014. The monthly salary was 5,908,330 won. On June 25, 2014, the employer introduced and announced a wage peak system as part of the rules of employment, with the consent of the labor union organized by a majority of the employees. This wage peak system stipulated that the basic salary in an annual salary contract would be 60% of the 'standard wage peak' for workers with less than two years before reaching retirement age, and 40% for workers with less than one year remaining. From October 1, 2014 to June 30, 2015, the employee in this case received 3,545,000 won per month, which is 60% of his monthly basic wage, because less than two years remained for the employee before the employee reached retirement age, while 40% of the monthly basic wage or 2,363,330 won would be paid for the final year before reaching retirement age When the employer in this case notified the employee of the details due to the application of the wage peak system on September 23, 2014, the employee expressed his objection to application of the wage peak system.

3. Summary of the court ruling

Article 97 of the Labor Standards Act protects workers, who are in subordinate positions, preventing them from being subject to working conditions that do not meet the standards set in the employment rules. If Article 97 of the Labor Standards Act is

12) Supreme Court ruling on June 24, 2011, 2009 Da 58364.
13) Supreme Court ruling on May 14, 2004, 2002 Da 23185, 23192.

interpreted for opposite situations, taking into account the content of these regulations and their legislative purpose, individual labor contracts that stipulate working conditions more favorable than the standards stipulated in the rules of employment are valid and take priority over the standards stipulated in the rules, since the collective consent stipulated in Article 94 of the Labor Standards Act is only a requirement for effective change of the rules. Even if there is collective consent for unfavorable changes to the rules of employment, the principle of free determination of working conditions stipulated in Article 4 of the Labor Standards Act is still observed. Therefore, rules revised unfavorably cannot be regarded to take precedence over existing individual labor contracts that set more favorable working conditions even if collective consent is obtained. The labor contract details remain valid, and cannot be changed according to the revised rules of employment, without the worker's individual consent.

(1) Supreme Court ruling on Dec. 13, 2017 (2017 Da 26138)

1) Background

An employer and employee signed a labor contract for a full-attendance allowance of 600,000 won when actual working days numbered at least 20 days per month. As the company's financial situation deteriorated, the employer held a labor-management council meeting on April 26, 2016 to decide on a "self-reliance plan." That same day, 144 (69.9%) of the 206 employees agreed that all contract allowances besides basic wage would be rescinded, to be effective from May 1, 2016. The employee in question received the self-reliance plan, but did not agree to the plans to rescind allowances, so did not sign or place his seal on the labor contract with working conditions that followed the self-reliance plan. The employer determined that it was not necessary to pay the contracted allowance to the worker since the majority of workers agreed to the rescinding, and the employee did not receive the full-time allowance in his original labor contract.

2) Summary of the court ruling[14)]

The standards in rules of employment invalidate the part(s) of labor contracts with poorer working conditions. However, better working conditions in a labor contract take precedence over the rules of employment. As long as rules of employment only set the workplace's minimum standards, if they have been changed unfavorably for the employees, even through legitimate procedures, they are not more applicable than the

14) The original trial was in the Ulsan District Court, which ruled on June 14, 2017 (2016 Gahap 23102). The Appellate Court gave the same ruling, to which the employer appealed. The Supreme Court dismissed the employer's appeal without any additional review.

individually-signed employment contract.

IV. Considerations when Writing a Labor Contract

1. Application of the principle of priority on favorable conditions

In application of the legal source that determines working conditions, higher-level rules take precedence over lower ones. The principle of application means that the order of hierarchy of effectiveness begins with laws like the Labor Standards Act, then collective agreements, then rules of employment, then individual labor contracts. If a lower rule violates a higher rule, the lower rule is invalidated (Articles 15 and 97 of the LSA and Article 33 of the TUA). Nevertheless, the principle of priority on favorable conditions applies to rules of employment and labor contracts.

As stated in Article 97 of the Labor Standards Act, the principle of priority on favorable conditions applies to rules of employment and labor contracts. In order to legally change rules of employment disadvantageously pursuant to Article 94 of the Labor Standards Act, the consent of a labor union representing a majority of workers, or if there is no such union, the consent of a majority of the workers, must be obtained. However, the employment contract of any workers who oppose the unfavorable rules of employment changes remains in effect even if the disadvantageous change to the rules is legal. In all the court rulings mentioned above, 1) a fixed annual salary was stated in the labor contract, and 2) a service allowance was specified. Even if the favorable working conditions described in the employment contract are changed disadvantageously through legal procedures, individual working conditions continue to be applicable.

2. Points to remember when writing an employment contract

Article 17 of the Labor Standards Act requires that labor contracts be in paper form and include specific information. When changing a contract, it must be reissued. Required items include (1) wages, (2) contractual working hours, (3) holidays under Article 55 of the LSA (4) annual paid leave under Article 60 of the LSA, and (4) other working conditions related to the workplace and work to be done.

In general, it is desirable that only items particular to the relevant worker are stipulated, and that overall working conditions that apply to all workers are in accordance with the rules of employment.

V. Conclusion

Even though the conditions for changing rules of employment disadvantageously are met, the principle of priority on favorable conditions in labor contracts is applicable and the working conditions of workers opposed to the change continue in effect. This is justified by the purpose of labor law to prevent the unilateral reduction of working conditions by employers, emphasizing the principle of mutually determining the working conditions in accordance with Article 4 of the Labor Standards Act. Employers wishing to adapt to changes in the business environment and maintain flexible employment relations will find it desirable to state in the labor contract that special matters for the worker are written therein and all other conditions are in the rules of employment.

The Duties of Integrity and Protection as Secondary Obligations of the Employment Contract

I. Introduction

The employment contract is a legal agreement entered into for a worker to offer work and for an employer to pay wages for that work. Here, the main obligations of workers is to provide work, and employers to pay wages in return. Workers must faithfully provide the work specified in the employment contract at a fixed time and place. If the worker fails to do so for reasons attributable to the worker, the employer may claim compensation for damages or terminate the employment contract (Article 390 of the Civil Act). Even if the employer fails to receive the worker's work, the entire wage must be paid for work already performed (Article 538 of the Civil Act). The Civil Act governs relations between equal parties and places clear responsibilities in the event of a breach of obligations. However, the Labor Standards Act imposes separate restrictions against violation of the main obligations between parties to ensure workers' right to life and so that employers pay wages promptly.

In addition to the main obligations in these employment contracts, workers are obligated to be faithful and employers are obligated to protect, both on the “good faith” principle between contracting parties.[15] Workers are obligated to protect the interests of the employer without engaging in acts that violate that employer’s interests. Employers also have a duty to protect the workers with whom working relations have been established.[16]

In this regard, I would like to examine how the employee's duty of integrity and the employer’s duty to protect are applied in actual cases.

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15) Lim, Jongryul, 「Labor Law」 18th Ed., Parkyoungsa, 2020, p. 360; Supreme Court ruling on Nov. 28, 2013: 2011da60247.

16) Ha, Kaprae, 「The Labor Standards Act」 33rd Ed., Joongang Economy, 2020, pp. 149-165.

II. Duty of Integrity and Impact of Violations

Even if there are no such provisions in the employment contract, workers are obligated to be faithful in accordance with the principle of good faith in the Civil Act. Such integrity obligations include the duty to maintain trade secrets, to be faithful, to avoid engaging in concurrent business with the employer's competitors, and to comply with regulations.

1. Duty to maintain trade secrets

Regarding trade secrets, the Supreme Court stated in a ruling, "Not only in a contract obligating the maintenance of confidentiality during the existence of a contractual relationship or after its termination, but also in the absence of such provisions, it is believed that [employees] have agreed to such obligations by the good faith principle.[17] The Unfair Competition Prevention and Trade Secret Protection Act (hereinafter the "Unfair Competition Prevention Act") also regulates the maintenance of trade secrets and imposes liability for damages and criminal liability for violations thereof. However, the period for keeping such trade secrets after resignation is limited due to the great concern about limiting the freedom of occupation.[18]

Related Case (1): As the head of the research department of a writing instrument manufacturer, an employee who had acquired technical information corresponding to a trade secret quit and began working for a competitor company after that company offered a higher salary and a better position. He disclosed the company's entire technical information to that competitor and used it to produce ink. Such an act is a violation of the obligation to maintain trade secrets, as it is for the purpose of obtaining an unjust profit contrary to good manners or social order.[19]

Related Case (2): A company's membership information used to produce educational materials and sell educational services, has independent economic value, and is considered useful management information for business activities that are kept confidential only with considerable effort. Such information is considered a trade secret specified in the Unfair Competition Prevention Act. A particular defendant used such member information to personally conduct class business activities for some inactive members. Although the defendant was obligated to keep such member information a trade secret, the defendant violated this, gained profit from it, inflicted damage on the plaintiff as the holder of the trade secret, and is therefore obligated to compensate the plaintiff for damages resulting from this.[20]

2. Violation of the duty to be faithful

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17) Supreme Court ruling on Dec. 23, 1996: 96 da 16605.
18) Seoul High Court ruling on Nov. 12, 2002: 2002 ra 313.
19) Supreme Court ruling on Dec. 23, 1996: 96 da 16605, This is a violation of the regulation on trade secrets, in accordance with Article 2 (3) of the Unfair Competition Prevention Act.
20) Seoul High Court ruling on Sept. 19, 2012: 2012 na 1391.

If the worker uses the company's trade secrets for personal gain, it is a violation of the obligation to protect trade secrets. Violations of this duty justifies the company taking actions for disciplinary dismissal.

Related Cases: Although real estate speculation is activity that falls within the realm of the private life, a certain company was established for the purpose of stabilizing public residential life and improving welfare through the development and supply of housing sites and construction of housing. When considering the purpose for an urban development corporation to be established and the duties of workers responsible for real estate compensation, an employee of an urban development corporation engaging in real estate speculation resulted in a profoundly negative impact on social evaluation of the corporation.[21)]

3. Violation of the prohibition against concurrent, interfering employment

Related Case: As the concurrent employment of a worker at another workplace is a private matter, it is unfair to prohibit entirely and comprehensively any second job that does not hinder corporate order or that employee's provision of labor. However, it is reasonable to prohibit full-time employment with another company that serves to hinder such provision of labor, or serving as a director of a competitor company, with disciplinary dismissal a justifiable consequence of violating this prohibition.[22)]

4. Noncompliance with regulations

Workers must work honestly and are subject to disciplinary action if they commit any of the following actions that go against the good faith principle.[23)] In particular, if a worker violates his/her duty to keep following integrity, he or she can be dismissed immediately without notice.

※ The following cases may constitute "reasons prescribed in the Ministry of Employment and Labor Ordinance":

① An employee accepts a bribe to allow the inflow of flawed products from a supplier, which disturbs the company's production process;

② An employee has another person drive a business vehicle without authorization, which results in a car accident;

③ An employee provides confidential business information to another competitor company, which adversely affects the business;

④ An employee disseminates made-up or ungrounded facts or masterminds unlawful collective actions that cause a considerable disturbance to the business;

⑤ An employee takes advantage of his/her job position or breaches trust by misappropriating, embezzling, or otherwise using company money for private purposes over a long period of time (e.g., embezzling the proceeds from company vehicle operations);

⑥ An employee steals or carries products or product materials off company premises without authorization;

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21) Supreme Court ruling on Dec. 13, 1994: 93 nu 23275.

22) Supreme Court ruling on Dec. 13, 1994: 93 nu 23275.

23) As prescribed in the Ministry of Employment and Labor Ordinance, related to Article 26 of the Labor Standards Act.

⑦ An employee, being engaged in personnel management, treasury or accounting, manipulates the records or produces fraudulent statements that result in damage to the business;

⑧ An employee deliberately destroys company equipment or property, causing a considerable disturbance to the business;

⑨ An employee deliberately commits such acts, and disturbs the business seriously or causes considerable financial damage to the company.

III. Employer's Obligation to Protect and Impact of Violations

Employers are obligated to protect workers in accordance with the principle of good faith inherent in the employment contract. Typical examples are the duty to consider safety, the using employer's duty to dispatched workers, and the duty to prevent sexual harassment in the workplace.

1. Obligation to consider safety

Employers are obligated to take the necessary measures to prevent harm to life, body, and health while workers are providing labor in good faith in accordance with the employment contract. If the employer fails in these obligations, resulting in a worker being injured in some way, the employer shall be liable for neglect resulting in injury.[24)]

1) Case: A worker fell from a ladder while working and was injured. While the worker was working on the ladder, the employer had a safety obligation to take measures so that other workers would secure the ladder to the ground so that the worker would not slip off the ladder. The employer neglected to do so. Therefore, the employer must compensate the worker for injury. Since the worker neglected to take action him or herself to prevent an accident, the company's responsibility is limited to 70%.[25)]

2) Case: An accident occurred in which a worker was hit in the left eye by some bent rebar (resulting in blindness in that eye) during rebar removal work. The employer was obligated to conduct safety training and provide and require the wearing of safety equipment, but neglected to do so. Therefore, the company's liability is limited to 80% in calculating the amount of compensation that the company should pay.[26)]

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24) Supreme Court ruling on Feb. 23, 1999: 97 da 12082.
25) Chuncheon District Court ruling on Aug. 10, 2016: 2014 gadan 11050.
26) Daegu District Court ruling on Apr. 19, 2019: 2018 gadan 115280.

2. Using employer obligations to dispatched workers

A using employer is responsible for the dispatch employees it uses as if the using employer was the original employer in the event of an accident.

Related Case: An industrial accident occurred that involved a worker who had signed an employment contract with a dispatching company but was working at the using employer's workplace. On November 15, 2005 at 3:35 am, while removing debris from a plastic injection machine, the worker's right arm and hand were crushed and lacerated. The worker demanded additional civil injury compensation from the using employer in 2010 after having received the treatment and disability compensation in lump sum form through the dispatch company's industrial accident insurance. The using employer claimed that there was no relationship between it and the dispatched worker, and the extinctive prescription for illegal activities had expired since 3 years had passed since the incident. In response, the Supreme Court stated in its ruling, "Although the using employer did not have any direct employment contract with the plaintiff, the using employer was able to control and manage the plaintiff's labor through a worker dispatch contract. This is regarded as an employer-worker relationship. Therefore, it is fair to say that the using employer is obligated to consider safety as if it were a using employer." The employer's duty to protect was recognized as grounds for injury compensation (Article 390 of the Civil Act), with the extinctive prescription determined to be 5 years instead of 3 years.[27)]

3. Obligation to prevent sexual harassment in the workplace

Employers must ensure a work life free from sexual harassment in the workplace. In the event sexual harassment occurs in the workplace, the employer shall take action to prevent recurrence, as well as suitable disciplinary action towards the instigator of the sexual harassment. The employer shall endeavor to make relief efforts and prevent secondary damage to the victim. If the employer fails in this obligation, the employer shall be liable for damages due to illegal acts as well as criminal punishment for violating the Equal Treatment Act.

Related case: A worker (the plaintiff) complained about sexual harassment in the workplace and asked for prompt and appropriate remedy. However, not only did the defendant (company) ignore the complaint, it also took disciplinary and other unfavorable action, such as a suspension from work, against the plaintiff. The company also took discriminatory and unfair disciplinary action against fellow workers who helped the plaintiff, thereby preventing the plaintiff from receiving any help from friendly colleagues in the workplace and isolating her from other colleagues. As a

27) Supreme Court ruling on Nov. 28, 2013: 2011 da 60247.

result of the company's actions, the plaintiff received “secondary damage” in which he was exposed to negative reactions, negative public opinion, disadvantageous treatment, and mental anguish for complaining about sexual harassment in the workplace and “causing a problem.” The mental stress suffered by the plaintiff is believed to be considerable. Accordingly, as the employer, in accordance with Article 756 of the Civil Act, the company shall compensate the plaintiff for mental injury incurred by its violation of Article 14 (2) of the Equal Employment Act and as an employer in violation of its duty to protect.[28)]

V. Conclusion

Workers are obligated to provide labor and employers are obligated to pay wages. These are the main obligations of parties to employment contracts. In addition, there are also secondary obligations according to the good-faith principle: workers are to protect confidentiality, be faithful, and comply with company rules. If any of these are violated, workers may be subject to dismissal or other forms of discipline. For their part, employers are obligated to provide safety for their workers and prevent sexual harassment. If these obligations are not carried out, employers shall be liable for damage and/or punishment for violating related labor laws.

Selection of Employee Representatives & Effects[29)]

I. Purpose

The Labor Standards Act requires written agreement from or consultation with the employee representative for matters such as changes in working hours, managerial dismissals, etc. “This employee representative refers to the labor union, where there is an organized labor union representing more than half the employees at a business or workplace; or this shall refer to a person who represents more than half the employees, where there is no such organized labor union.” (Article 24 (3) of the LSA) However, this article does not explain the entire scope of “employee” covered by employee representation, the selected unit or method used in selecting the employee representative, manner of representation, effect of the written agreement, etc. Here, I

28) Seoul High Court ruling on Apr. 20, 2018: 2017 na 2076631.

29) This article is based upon the Administrative Guide: Kungi 68207-735 (97.6.5) including related administrative guidance and

would like to bring attention to clear administrative guidance and judicial rulings concerning these matters to better understand related laws and operations.

<Items requiring written agreement of or consultations with employee representative>

LSA	Written Agreement or Consent Required
Article 51	Three-month flexible working hour system
Article 52	Selective working hour system
Article 57	System of using leave as compensation
Article 58 (2)	Hours deemed working hours for "those ordinarily required to carry out duty"
Article 58 (3)	Discretionary working hours
Article 59	Exceptions in applying working and recess hours for such particulars as transportation
Article 62	Substitution of paid leave
	Consultation Required
Article 24 (3)	Managerial dismissals
Article 70 (3)	Night and holiday work for minors and pregnant employees, or female employees with children under one year of age

II. The Scope of "Employee" and the Unit Selected for Employee Representation

1. The Scope of "Employee"

The following criterion is used to evaluate whether or not there is an organized labor union representing more than half the employees. The scope of employees participating in voting for the employee representative is calculated as follows:

> The scope of employees covered by employee representation
> = Employees under LSA Guidelines (Article 2 (1)) – Employers under LSA Guidelines (Article 2 (2))

The term "employer" under the LSA means 1) a business owner, or 2) a person responsible for management of a business or 3) a person who works on behalf of a business owner with respect to matters relating to employees. Here, 'a person who works on behalf of a business owner with respect to matters relating to employees' is an employee who has the dual position of employee and employer, and so shall be excluded from employees covered by employee representation. Although he/she is

considered an employee to whom agreements apply, he/she acts specifically in the interest of the employer in the course of making written agreements.

2. Unit Selected for Employee Representation

The employee representative shall be selected from a unit of a business or workplace. Accordingly, in cases where one business is composed of several workplaces, if the company wants to introduce new working hour systems to the business unit, the employee representative shall be selected from that business unit, or if the company wants to introduce items to some designated workplace, the employee representative shall be selected from employees at those workplaces.

Concerning managerial dismissals, "in cases where target employees are defined by particular occupations or positions, the employee representative shall be one who represents these targeted employees. Accordingly, if these particular targeted employees are not entitled to union membership, it would be pointless to consult with the labor union concerning the managerial reduction of these targeted employees. In a hospital where the employer intends to reduce employees of 4th rank or higher, consulting with the labor union as an employee representative of 5th rank and lower would be unacceptable as the employer has not consulted in good faith with an appropriate employee representative."(Appellate Court 2004nu4613, Mar 25, 2005)

III. Method of Employee Representative Selection

1. Where there is an organized labor union representing more than half the employees

Whether the labor union represents more than half the employees shall be estimated in the unit of the business where the employer wants to select an employee representative; and shall be estimated in a unit of the workplace for the unit of the workplace. If the labor union represents more than half the employees, it is taken for granted that the labor union becomes the union representative of the labor union or the person (e.g. the chairman of the union branch) who has been authorized to represent the labor union.

2. Where there is no organized labor union representing more than half the employees

Where there is no organized labor union representing more than half the employees, an employee representative shall be selected. In this case, there are no particular restrictions to the method of selection, but in situations where the employees are informed that an employee representative would be authorized to represent them in introduction of a working hour system, it is acceptable to receive employee opinions. Accordingly, direct voting is not always necessary; it is also possible to choose multiple representatives. In cases where a Labor-Management Council has been established by the Act Concerning the Promotion of Worker Participation and Cooperation (the Labor-Management Council Act) in a business or workplace to introduce a new working hour system, the employee members can be regarded as employee representatives.

For dismissals for managerial reasons, "the employee representative for the purpose of consulting with the employer shall be selected by independent and voluntary

decision-making by the employees after they are informed of the reason for choosing employee representation. It is also acceptable to choose the employee representative through employees' general meeting or individual signatures on circulating representative lists. If an employer asks the employees to choose an employee representative, the employees autonomously determine procedures and methods of selection without intervention by the employer, and select someone (even though some employees could not participate) that represents more than half of the employees, the person shall be regarded as the employee representative. (Administrative Guide 68207-1472, Nov 13, 2003)

3. Invalid employee representatives

Agreement from or consultation with an employee who does not justifiably represent the employees is not legally valid.

(1) Even though an employer had explained the deterioration of business to the team leaders in manager-level plenary meetings and asked them for their opinions in selection of target employees for managerial dismissal, this is not company consultations with an acceptable employee representative. (Seoul Administrative Court, 2006guhap25285, Sep 6, 2009)

(2) Consultation with an employee not legally justified to be a representative according to the Labor-Management Council Act, is unacceptable as consultation in good faith. Therefore, managerial dismissal of this employee is unfair. (NLC 2009buhae487, Aug 6, 2009)

(3) In cases where a company does not receive written agreement from the employee representative in introducing a three month or less flexible working hour schedule, but instead receives individual written agreements from more than half the employees, this is a violation of related labor laws. (Administrative Guide 1167, Apr 29, 2008)

(4) Because the company did not comply with substantial conditions in the course of managerial dismissal, and furthermore, consulted with an arbitrary organization and not an employee representative, this dismissal for managerial reasons is unfair. (Administrative Court, 99gu12679, Dec 24, 1999)

(5) Article 3 of the rules for implementation of the Labor-Management Council Act stipulates that the employee representative shall be selected by direct and secret vote, but this does not include the method of voting. Vote counting is frequently computerized according to laws related to elections, but electronic voting has not yet been stipulated and related technical matters were not yet officially verified, and so it is difficult to accept its official use in reality. (Administrative Guide 68107-335, Nov 12, 1998)

IV. Method of Representation by the Employee Representative

1. In cases where the labor union performs Representation

The union chairman or the person commissioned for the purpose is authorized to represent employees. The union representative can conclude a supplementary agreement related to the collective agreement, or other written agreements separate from the collective agreement.

2. In cases where the employee representative of the Labor-Management Council performs representation

The procedures for obtaining written agreement can follow the representation method stipulated by the Labor-Management Council's Rules of Operation. It is possible to 1) select one representative, 2) commission a specific employee to represent employees for one particular matter, 3) establish a separate decision-making method (e.g. a majority of all members present and the affirmative vote of two-thirds of members present), 4) have all employee representatives participate in the written agreement. Accordingly, an employer unilaterally making a written agreement with some employees is not acceptable.

3. In cases where a new employee representative is selected

In cases where a new employee representative is selected, the representative is authorized to represent the employees. In cases where multiple employee representatives are selected, they shall have the same authority to represent employees as have the employee representatives of the Labor-Management Council.

V. Effect of Written Agreements

When a written agreement is concluded between the employer and the employee representative, the company does not need individual employee agreement. The effects of signing the written agreement differ as follows:

1. In cases where a written agreement is made as a supplement to the collective agreement

In cases where the employer makes a supplementary agreement to the collective agreement with the union chairman or the person commissioned to be the employee representative, the agreement can affect the collective agreement.

2. In cases here a written agreement is made with an employee representative of the Labor-Management Council

Since a written agreement cannot change the existing collective agreement, if such agreement is incompatible with the current collective agreement, separate procedures to revise the collective agreement shall be taken so as to apply to the employees under the collective agreement. Employees to whom the collective agreement does not apply can be included in the written agreement. This written agreement can be applicable without revising the existing Rules of Employment. However, it is very desirable to revise the existing Rules of Employment in order to maintain consistency in working conditions. When revising the Rules of Employment in accordance with the written agreement, the employer does not have to again hear the opinion of or obtain agreement from the employee representative or other employees.

3. In cases where a written agreement is made with a new employee representative

The effectiveness is considered to be the same as a written agreement with the employee representative of the Labor-Management Council.

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

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

Ⅰ. Labor Standards Act

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

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

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

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

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

※ Punishable by a fine not to exceed five million won

※ Statement of Terms of Employment

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

ii) Terms of Employment to be specified :

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

3. A Registry of the workers shall be made and preserved.(Article 41, 42 of the LSA)

※ Punishable by a fine not to exceed five million WON

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

a) Matters to Be Entered in the Registry of Workers

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

b) Important Documents Regarding the Labor Contract

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

Documents pertaining to certification of minors.

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

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

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

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

8. **An employer shall grant 15 days' paid leave to workers who have worked more than 80 percent of their contractual working days over one year. After the employee's first year of service, the employer shall grant annual paid leave of one additional day for each two years of consecutive service.** (Article 60, Article 62 of the LSA)
※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON
※ An employer shall grant one day’s paid leave per month to a worker whose consecutive service period is shorter than one year.
※ The total number of leave days, including the additional leave, shall not exceed 25.

9. **Employers shall grant pregnant female workers 90 days of maternity leave, to be used before and after childbirth. In such cases, 45 days or more shall be allocated after childbirth. The first 60 days' leave shall be paid leave.** (Article 74, Article 75 of the LSA)
※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON
※ The length of protective leave granted shall be determined according to the length of pregnancy:
1. Where the pregnancy period of the worker who has a miscarriage or stillbirth (hereinafter referred to as “pregnancy period”) is less than 11 weeks : up to 5 days from the date of miscarriage or stillbirth ;

2. Where the pregnancy period is 12 weeks or more but less than 15 weeks : up to 10 days from the date of miscarriage or stillbirth ;
3. Where the pregnancy period is 16 weeks or more but less than 21 weeks : up to 30 days from the date of miscarriage or stillbirth
4. Where the pregnancy period is 22 weeks or more but less than 27 weeks : up to 60 days from the date of miscarriage or stillbirth ; and
5. Where the pregnancy period is 28 weeks or more : up to 90 days from the date of miscarriage or stillbirth.

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

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

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

※ Exceptions for Advance Notice of Dismissal

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

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

※ Contents of Rules of Employment (ROE)

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

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

※ Punishable by a fine not to exceed five million WON

Ⅱ. Employment Retirement Benefit Security Act

14. When an employee retires or resigns, the employer shall, within 14 days, pay a sum

equal to 30 days or more of average wages for each year of consecutive service. (Article 4, Article 8, Article 9 of the ERBSA)

※ Punishable by a fine not to exceed five million WON

Ⅲ. Employment Retirement Benefit Security Act

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

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

※ Minimum Wage (as of 2021) : 8,720 won per hour / 69,760 won per day(8 hours) / 1,822,480 won per month

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

※ Punishable by a fine not to exceed one million WON

Ⅵ. Equal Employment and Work-home balance assistance act

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

※ Punishable by a fine not to exceed three million WON

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

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

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

※ Punishable by a fine not to exceed five million WON

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

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

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

Labor-Management Council.

※ When an employer discriminates in wages based upon objective criteria such as education, job experience, seniority, position, etc., it shall not be regarded as discrimination.

20. Male employees who apply for leave because their wives gave birth shall be given 3 days of paternity leave. (Article 18-2)

※ Punishable by a fine not to exceed five million WON

Ⅴ. Act on the Promotion of Worker Participation and Cooperation

21. An employer shall establish bylaws for the Labor-Management Council and shall submit them to the Labor Office. (Article 4, Article 18 of the Act)

※ Penalty for not establishing a Labor-Management Council: fine of not less than 10 million WON

※ Penalty for not submitting the bylaws: fine of up to 2 million WON

※ All businesses that ordinarily hire more than 30 persons shall establish a Labor-Management Council, establish its bylaws, and submit them to the Minister of Labor within 15 days from the date the Council is established.

※ A Labor-Management Council shall be established at each business or workplace and will be vested with the right to decide working conditions.

22. The Labor-Management Council shall hold meetings at least once every three months.

※ Punishable by a fine not to exceed two million WON

23. The Grievance-Handling Team shall consist of a maximum of three people, representing labor and management. (Article 26, Article 27 of the Act)

※ Punishable by a fine not to exceed two million WON

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

24. Sending Employers and Using Employers shall implement any final judgment order for correction if they receive one from the Labor Relations Commission or the court. (Article 8 to Article 14 of the Short-term Employee Act and the Article 21 of the Dispatch Employee Act)

※ Punishable by a fine not to exceed one hundred five million WON

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

※ Applicable to both the Sending Employer and the Using Employer

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

27. Using Employer shall not receive labor service from a dispatch employee from an unauthorized dispatch company nor shall use a dispatch employee in a position where dispatch employees are not allowed. (Article 5 of the Dispatch Employee Act)

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

28. The length of dispatch shall not exceed one year. If there is agreement between the Sending Employer, the Using Employer, and the dispatch employee, the length of dispatch may be extended beyond one year. In any case, the total length of dispatch extension shall not exceed one year, and the total length of dispatch, including extensions, shall not exceed two years. If the Using Employer continues to use the dispatch employee beyond two years, he/she shall directly hire the dispatch employee as a regular employee without a fixed term of employment.

※ Violation by the Using Employer: imprisonment of up to three years, or a fine not exceeding twenty million WON

※ Failure to directly hire a dispatch employee beyond two years: Punishable by a fine not exceeding thirty million WON

※ With regard to older dispatch employees under subparagraph 1 of Article 2 of the Aged Employment Promotion Act, notwithstanding the latter part of the provision of paragraph 2, the length of dispatch may be extended for more than two years.

※ Times when dispatch employees are permitted under Article 5 (2) (exceptional reasons)

☞ The period of time required to resolve clear and objective causes of a shortage of manpower, such as childbirth, illness and injury; and

☞ For a maximum of three months when there is a need to secure manpower on a temporary and intermittent basis. If the cause is not resolved and there is agreement between the Sending Employer, the Using Employer, and the dispatch employee, this three-month period may be extended once, and is not to exceed an additional three months.

29. In accordance with the introduction of the workplace harassment prevention law, it must be reflected in essential items in the employment rules (by July 1, 2019)

Case Study: Labor Inspection and Company Follow-up Measures[30]

I. Summary

To ensure standards for working conditions, a labor inspector can visit any workplace, inspect it, and request to see books and documents, as well as interview both employer and employees. Employers or employees shall, without delay, report on the matters required, or shall present themselves to the Labor Office if the labor inspector requests it in relation to enforcement of the Labor Standards Act.[31]

A labor inspector informed a company (hereinafter called "Company T") located in Seoul on October 17, 2019 of his plans to audit the company. He visited the workplace 3 days later on October 20 to learn whether the company was following appropriate labor standards. While inspecting the company Rules of Employment and payroll documents, the labor inspector noticed many problems: unpaid overtime allowance and compensation for unused annual leave, incorrect calculation of average wages for severance pay, some violations of the Rules of Employment, no Labor-Management Council, and no education on sexual harassment prevention. On November 17, the labor inspector sent a correction order to Company T regarding the above Labor Standards violations.

The company hired a labor attorney to implement the correction order. This labor attorney recalculated overtime allowance, etc., considering the company's characteristics as an IT business and the working situations of the dispatch employees. He also assisted the company in meeting the correction deadline by adding supplements to the Rules of Employment, establishing a Labor-Management Council, and correcting the average wage calculations for employees who had left the company to make up for the inadequate severance payments. As use of annual leave and overtime was too ambiguous to calculate, employees' written explanations on actual use were considered in recalculation. When the company calculated unpaid wages in accordance with the correction order, the total amount to be paid came out to about ₩60 million, but this was adjusted by confirming with the employees (through written statements) whether the leave had actually not been used, and whether the recorded overtime had been done. After all this, the company and the labor inspector agreed that the total amount not paid was about ₩2 million. Company T finished carrying out its correction order by paying the confirmed unpaid wages to the appropriate employees. What follows is a detailed explanation of how the company was able to avoid unnecessary costs and meet the labor inspector's requirements.

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30) This case was represented by Labor Attorney Bongsoo Jung at KangNam Labor Law Firm. (November 2019)

31) **Article 101 (Supervisory Authorities)** ① The Ministry of Employment and Labor and its subordinate offices shall have a labor inspector to ensure the standards of the conditions of labor.
Article 102 (Authority of Labor Inspectors) ① A labor inspector has the authority to inspect a workplace, dormitory and other annexed buildings, to request presentation of books and documents, and to question both employer and workers.
Article 13 (Duty to Report and Attend) An employer or worker shall, without delay, report on matters required, or shall present himself, if the Minister of Labor, the Labor Relations Commission under the Labor Relations Commission under the Labor Relations Commission Act or a Labor Inspector requests him or her to do so in relation to the enforcement of this Act.

II. Violations of the Labor Standard

When visiting Company T and inspecting the working conditions on October 20, 2019, the labor inspector noticed the violations listed above (unpaid allowance for unused annual leave, incorrect calculation of overtime allowance and average wages, etc.). The company received a correction order for the following items on November 17, 2019.

Related Labor Standards Act Articles	Correction Order
1. Article 17 of the Labor Standards Act	The company shall stipulate details regarding annual leave (according to Article 60 of the LSA) additionally in the employment contract, and then submit a copy to the Labor Office.
2. Article 56 of the LSA	The company shall pay the additional amount by recalculating overtime allowances for 30 employees including Kim 00, and then submit evidence of its payment.
3. Article 36 of the LSA	The company shall pay the additional amount of severance pay for 9 resigned employees including Lee 00, by correcting average wage calculations, and then submit evidence of its payment.
4. Article 60 of the LSA	The company shall pay compensation for annual leave unused in 2018 to 28 employees including Park 00, and then submit evidence of its payment.
5. Article 94 of the LSA	The company shall revise its Rules of Employment by updating the details on maternity leave so that they are in accordance with Article 74 of the Labor Standards Act, and report to the Labor Office.
6. Article 4 of the LMC Act	The company shall establish a Labor Management Council and report its operational rules to the Labor Office.
7. Article 13 of the Equal Employment Act	The company shall set up training on preventing sexual harassment at work during 2019, and then submit evidence that this has been done.
The labor inspector audited [Company T's] working conditions on Oct 20, 2019, confirmed the existence of labor standard violations and issues the correction orders above. The company shall post this correction order on the notice board where employees can see easily, and then give to the Labor Office, **by November 25, 2019**, documents verifying that these corrections have been carried out.	

III. Correction of the Violations

1. Categorization of Company T's business

Company T is a software developer (Business Rules Engine: BRE) composed of

project teams. When a client requests development of its system, Company T sends the project team members to the client's office and sets up the system there. The company has a total of 48 employees: 15 engaged in management and administration at the company office, and 33 software engineers assigned to client projects. These 33 engineers were not required to attend company meetings or to otherwise report, except as specifically requested, such as at year-end meetings etc. Although annual salaries are relatively higher than that of its competitors, the company paid a fixed allowance of ₩60,000 for any overtime claim for work done during the weekend and not under the employer's supervision and control. This was recorded in the payroll files, and was the particular cause of most of the violations.

2. Details on Company T's correction of each violation

(1) Article 17 of the LSA (Absence of an article in the employment contract related to annual leave)

The company included details regarding the use of annual leave in the employment contract, and then submitted one copy of the revised employment contract.

(2) Article 56 of the LSA (Recalculation of annual leave allowance and holiday work allowance)

The contractual working hours are 8 hours per day, 40 hours per week, with the fixed overtime allowance paid for two hours each working day. The important point was that the company paid a fixed amount of ₩60,000 per day for overtime on Saturdays and Sundays, upon receiving email from the employees that they had worked those days. This was done as the work was outside of Company T premises, and verification was difficult any other way. The labor inspector requested that the company pay an additional allowance for actual working hours, calculated according to the standard found in the Labor Standards Act.

The company received written statements from the engineers to confirm and recalculate actual overtime and holiday working hours, as it could not independently confirm their actual working hours on Saturdays and Sundays. The company paid an additional amount to those who worked more overtime hours than what was covered by the fixed overtime allowance of ₩60,000 per day.

(3) Article 36 of the LSA (Inadequate severance pay due to incorrect calculation of average wages)

When calculating average wages for severance pay, the company included only basic pay and bonuses, excluding overtime and other allowances. The company recalculated average wages and paid the amounts owed (approximately ₩600,000).

(4) Article 60 of the LSA (Inadequate compensation for unused annual leave)

Each project team manager scheduled team members' leave at his/her own discretion, and provided 10 days or more leave in the middle of a project or at the end as necessary, after obtaining verbal approval from the company to do so. As the leave application form was not used, it was impossible to track and record the number of leave days used.

Compensation was not paid for unused annual leave because no record was kept of used leave. Company T confirmed the number of used leave days through written statements of all dispatched engineers and paid an allowance for only the number of days of unused leave confirmed by their statements. The company submitted to the Labor Office verification that it paid allowance and that recorded leaves were confirmed with employee statements.

(5) Article 94 of the LSA (Absence of articles in company Rules of Employment protecting pregnant employees)

The company added missing items on premature or stillborn birth into the maternity leave section in the Rules of Employment, and submitted it to the Labor Office with evidence of the fact that the company received majority agreement from the employees on the revised rules. A copy of its report was included in its submission.

(6) Article 4 of the Act on the Promotion of Worker Participation and Cooperation (No Operational Rules for a Labor-Management Council)

Employers who ordinarily employ 30 workers or more shall establish a Labor-Management Council and report its operational rules to the Labor Office, something the company had not done. A Labor-Management Council was accordingly established, and its rules of operation were submitted to the Labor Office.

(7) Article 13 of the Equal Employment Act (no training on prevention of sexual harassment at work)

Training to prevent sexual harassment at work shall be done once a year in workplaces where ten employees or more are working. Company T carried out some training with audiovisual material (CD) distributed by the Labor Office, and submitted a document with attendee signatures.

IV. Reference: Audit of Workplaces by a Labor Inspector[32)]

> **Article 13** (Inspection of workplaces, etc.)
> ① To enhance working conditions, the labor inspector shall inspect in advance (preventive inspection) whether labor laws are being violated, and shall carry out an inspection of the workplace (regular or investigative).

32) Reference "Job Manual for the Labor Inspector"

② The "preventive inspection" stipulated in paragraph ① means that the head of the regional Labor Office confirms observance of labor laws at particular businesses and certain sizes of companies according to plans made at the beginning of the year by the main branch of the Labor Office. In this case items to be inspected shall be limited to things taking place during the one-year period previous to the date of inspection.

③ The "regular inspection" of a workplace as stipulated in paragraph ① means that, in cases where the head of the regional Labor Office inspects the workplaces expected to be the worst, and finds violations, it is the inspection used to correct violations, or investigate violators according to head office plans decided at the beginning of the year.

④ The "investigative inspection" of the workplace stipulated in paragraph ① means that, in cases where the head of the regional Labor Office synthetically checks for observance of labor laws at workplaces in the following situations and finds violations, it is the inspection used to correct violations, or investigate violators.

1) Workplaces where labor disputes have taken place or can be expected due to a failure to conform to working conditions regulated in labor law, collective bargaining, the Rules of Employment, or the employment contract;
2) Workplaces where civil complaints or other social complaints have taken place due to a failure to pay wages or other legal allowances for many employees;
3) Workplaces where labor disputes have taken place in relation to sexual harassment at work or where labor disputes such as petitions or civil complaints can be expected due to sexual harassment at work; or
4) Workplaces where the company did not follow the correction orders for violations found during a preventive inspection, according to paragraph ② above.

Article 18 (Inspection Method)

① When intending to inspect a workplace, the labor inspector shall make every effort to prepare in advance, by reviewing and analyzing the company's register, Collective Agreement, Rules of Employment, etc., confirming whether labor laws are observed, and understanding conditions and problems by gathering related information from the labor union, etc.

② The labor inspection shall be carried out by visiting the workplace in principle. Before initiating the inspection, the labor inspector shall explain its purpose and intent to the employer.

Article 20 (Inspection Follow-Up)

① The labor inspector shall dispose of matters according to "criteria for handling violations" when violations are found during the labor inspection.

② When violations are "subjects to be corrected" according to paragraph ①, the labor inspector shall issue a "correction order" by indicating substantially the violations, methods for correction, reporting on corrections made, reporting deadline, etc., immediately after his/her own report of the inspection results. The labor inspector shall also carry out an immediate investigation if a labor issue requiring investigation is discovered.

The Judgment Function of the Labor Relations Commission[33]

1. Introduction

If an employer dismisses, lays off, suspends, or transfers a worker, or reduces wages, or takes other punitive actions against a worker without justifiable reason, the worker may apply to the Labor Relations Commission for remedy. In addition, any labor union whose rights have been infringed by unfair labor practices may also do so (Article 28 of the LSA, Article 28 of the Union Act).

As these labor disputes are dynamic, continuous, and collective, administrative agencies or courts cannot always be expected to handle them fairly, promptly, and reasonably, due to the inflexibility of bureaucracy and lack of experience of some agencies. The Labor Relations Commission is an independent administrative agency that has the authority and the ability to resolve labor disputes fairly, promptly, and in a way that is appropriate to the professional situation at hand.[34] Here, I would like to review the quasi-judicial functions within the Labor Relations Commission, their procedures and operations, and the outcome of its decisions.

2. Organizational structure of the Labor Relations Commission and its judicial functions

The Labor Relations Commission has an organizational structure in response to local administration. The National Labor Relations Commission covers the entire country, while 13 district Labor Relations Commissions cover the capital, the metropolitan cities and the provinces. The National Labor Relations Commission can approve, cancel, or change the decisions of the district Labor Relations Commissions. The judicial arm of the Labor Relations Commission is composed of three public interest committee members (including a chairperson or one standing commissioner) and one worker and one employer committee member.

3. Procedures of the judicial arm[35]

The Labor Relations Commission reviews applications and admits, rejects or cancels labor cases, determines the eligibility of the parties involved, investigates, conducts interviews and holds judgment hearings within 60 days after the initial application date.

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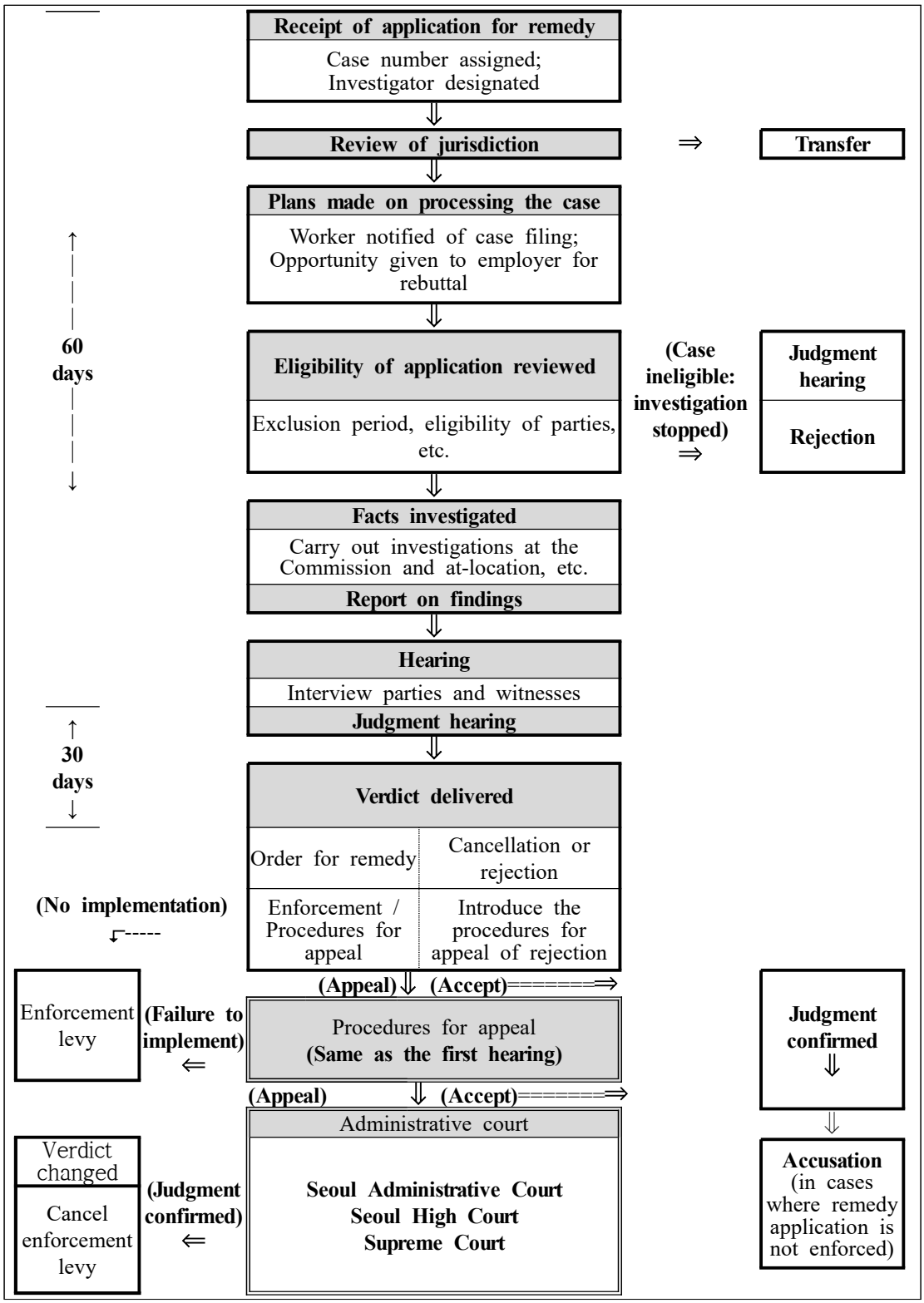
33) National Labor Relations Commission, a manual for judgment function
34) Lee, Byungtae, Labor Law (7th edition), pp487
35) Kim, Hingyoung, A study on improvement of disputes-solving system, Korea Labor Institute, 2009 pp 90~110

《Process for Applications for Remedy with the Labor Relations Commission》



(1) Applications for Remedy

If an employer dismisses or treats a worker unfairly, the worker may apply to the Labor Relations Commission for remedy. This application for remedy shall be made within three months from the date on which the unfair dismissal and/or related actions took place (or from the date of termination in cases where such activities continue). The worker must apply for remedy with the Labor Relations Commission nearest his/her workplace regarding unfair dismissal or unfair labor practice.

(2) Investigation

The Labor Relations Commission shall, without delay, conduct necessary investigations and inquiry of the parties concerned, upon receipt of an application for remedy. The Labor Relations Commission shall ① designate an investigator responsible for the process of investigation, ② demand the applicant submit evidence of the reason(s) for the application, ③ deliver a copy of the application for remedy or statement of reasons to the employer, and give opportunity for rebuttal and associated evidence to explain the employer's actions, and, ④ if necessary, order the parties, witnesses or other related persons to attend a hearing and give their testimonies. Further investigation will then be carried out as deemed necessary (Article 45 and 46 of the Implementation Rules of the LRC Act).

(3) Hearing

The Labor Relations Commission shall hold a hearing within 60 days from the date the application was received. This hearing is to review documented evidence both parties have submitted, and information gathered during investigation, and then decide whether unfair dismissal or unfair labor practice actually took place. The committee members (public-interest, worker and employer representative members) assigned to the case shall attend the hearing, have both parties verify their claims, and interview witnesses and other related persons. At the judgment hearing right after the hearing, the public interest committee members shall decide whether unfair dismissal or unfair labor practice took place. The worker and employer committee members may also interview the parties to the case and witnesses, and give their opinions before the public interest committee members give their decision during the judgment hearing.

<Burden of Proof>

1) Regarding decisions disadvantageous to certain personnel such as dismissal, the first burden of proof is on the employer to verify whether the worker committed a particular action, whether such action violated the Rules of Employment, and whether the disciplinary action, severity and suitability of punishment is justified. Regarding unfair labor practice, the first burden of proof is on the worker and the labor union to verify the employer's intention to commit the unfair labor practice, unfair treatment, and/or the existence of

domination and interference. (Supreme Court ruling on Aug 14, 1992, 91da29811)

2) However, regarding an employer's statements of reasons for decisions disadvantageous to certain personnel such as dismissal, the burden of proof then falls on the worker to verify that he/she did not commit a particular action, that he/she did not violate the Rules of Employment, and/or that the punishment was too severe or unsuitable to the violation. Regarding unfair labor practices, the employer also has a burden of proof to verify that he/she did not intend to commit an unfair labor practice, or give disadvantageous treatment to the company personnel due to their union activities, or obstruct those union activities, or cause deterioration to the union organization. (Supreme Court ruling on Sep 10, 1996, 95nu16738)

(4) Settlement

Labor cases filed for remedy at the Labor Relations Commission are often resolved between the two parties peacefully before going to the judgment stage of the Commission's activities. Such settlement not only helps to restore labor-management stability, but also aids implementation of the employer's agreement more effectively than a remedy order from the Labor Relations Commission. The Labor Relations Commission can always recommend or arrange a draft of settlement for both parties in the process of investigation and interview. Once settlement is established, the statement of settlement is composed, which has the same effect as settlement decided by a court (Article 16-3 of the Labor Relations Commission Act).

(5) Judgment

The judgment hearing is for the purpose of determining whether unfair dismissal or unfair labor practice has occurred, and takes place after the hearing. The judgment hearing is held with all three public interest committee members, and resolutions pass with approval from at least two of the three committee members. The Labor Relations Commission issues an order for remedy to the employer when it is deemed that unfair dismissal or unfair labor practice has occurred, or cancels the application for remedy if it is deemed that they have not. The Labor Relations Commission shall deliver a letter of the verdict to the employer and workers concerned within 30 days of the date of judgment.

<Example judgment statements>

#1: Application for remedy regarding unfair dismissal (Order for Remedy)

1. The employer in this case shall agree that dismissal of the applicant on

Month/Day/Year was an "unfair dismissal".

2. The employer in this case shall reinstate the employee within 30 days from the day this adjudication statement is received and shall pay an amount not less than the amount of wages he/she would have received if he/she had worked during the period after he/she was dismissed.

#2: Application for remedy regarding unfair dismissal (Dismissal / Rejection)

The application by the employee has been dismissed or rejected.

#3: Application for remedy regarding unfair dismissal (Order for monetary compensation)

1. The employer in this case shall agree that dismissal of the applicant on Month/Day /Year was an "unfair dismissal".
2. The employer in this case shall pay an amount not less than the wages the applicant would have received if he/she had worked during the period after he/she was dismissed, in lieu of ordering his/her reinstatement within 00 days from the date this remedy order is received.

#4: Application for remedy regarding unfair labor practice (Order for Remedy)

1. The employer removing labor union notices on the bulletin board of the labor union office on Month/Day/Year is determined as an unfair labor practice: domination of or interference with labor union activities.
2. The employer in this case shall post a notice apologizing for the removal of the union notices without permission and shall post a notice on company bulletin boards that such actions will not be repeated.

#5: Application for remedy regarding unfair dismissal & unfair labor practice (Orders for Remedy)

1. The employee's dismissal by the employer in this case on Month/Day/Year is determined as an "unfair dismissal" and the related discrimination as an "unfair labor practice".
2. The employer in this case shall reinstate the employee immediately and shall pay an amount not less than the wages he/she would have received if he/she had worked during the period after he/she was dismissed.
3. The employer shall post a notice on company bulletin boards declaring that such dismissals will not happen again.

#6: Application for remedy regarding unfair dismissal & unfair labor practice (Orders for Remedy for Dismissal, but Rejection of Unfair Labor Practice application)

1. The employee's dismissal by the employer in this case decided on Month/Day/Year is determined as an "unfair dismissal".
2. The employer in this case shall reinstate the employee immediately and shall pay an amount not less than the wages he/she would have received if he/she had worked during the period after he/she was dismissed.
3. Other applications have been rejected.

#7: Application for remedy regarding unfair dismissal & unfair labor practice (All applications rejected)

All applications that the employee and labor union submitted have been rejected.

(6) Monetary compensation system

The monetary compensation system was introduced so that workers not wishing to be reinstated can still receive remedy. Under the monetary compensation system, the Labor Relations Commission may order the employer to pay the worker an amount not less than the wages he/she would have received if he/she had worked during the period after he/she was dismissed, in lieu of ordering that the worker be reinstated. The amount equivalent to wages (or more) includes some additional compensation as well, which shall be determined by the Labor Relations Commission after considering such things as any worker fault, and degree of unfairness of the dismissal, etc. This monetary compensation system has contributed to worker rights by providing alternative methods for receiving remedy for unfair dismissals. However, in actual practice this monetary compensation system has been used on a limited basis because this system permits the minimum compensation equal only to the wages the worker would have received during the period after dismissal. Accordingly, in order to promote the monetary compensation system, it would be reasonable to require compensation equal to the total salary during the period after dismissal, a certain amount of compensation for the trouble and inconvenience of taking action, and the costs related to the application for remedy.

4. Failure to comply with orders for remedy and procedures for appeal

(1) Failure to comply with an order for remedy (Enforcement levy)

Employers are required to obey orders for remedy, and penalties are applied if they fail to do so (Article 111 of the LSA, Article 89 of the Labor Union Act). **However, this criminal punishment is valid after the remedy order is confirmed finally.** If an employer, after receiving the remedy order from the Labor Relations Commission and a decision on reexamination concerning a remedy order from the National Labor Relations Commission, fails to comply with a remedy order by the compliance deadline, an enforcement levy in the amount not exceeding 20 million won shall be imposed on the employer. The Labor Relations Commission may impose an enforcement levy twice a year for two years from the date the initial order for remedy was issued, or until the order is complied with. If an order for remedy issued by the Labor Relations Commission is canceled in accordance with a decision rendered by the National Labor Relations Commission after reexamination or a confirmed court ruling, the Labor Relations Commission shall immediately stop imposing the enforcement levy and return any monies already paid, by virtue of its authority or at the request of the employer. Controversy may arise when deciding "fulfillment" of the employer's remedy order if there are no criteria to determine "fulfillment" of the orders from the Labor Relations Commission. There will be disputes among parties and the Labor Relations Commission in understanding the conditions related to complete fulfillment. So, the purpose of pursuing complete fulfillment is to prevent these disputes, ensure the effectiveness of an order for remedy, and resolve labor disputes in the early stages (Article 79 of the Rules on the LRC).

1. Fulfillment of an order to reinstate the worker to his/her previous job is when the employee has been assigned the same position the employee had when he/she was dismissed, with the same kind of work duties, or when the employee has been assigned other work duties with his/her prior consent. However, if the same position or work is no longer available for unavoidable reasons, assigning a similar position or work duties to the employee can be regarded as fulfillment of the order for remedy.
2. Fulfillment of the duty to pay the amount equivalent to wages is when the total amount of wages that the worker would have received, up to the time of complete payment, is paid to the worker.
3. Fulfillment of an order for monetary compensation is when the amount stipulated in the written judgment is paid.
4. Fulfillment of other orders for remedy occurs when the items stated in the written judgment are implemented.
5. In cases where the parties agree to a settlement other than an order for remedy for unfair dismissal, fulfillment occurs when that settlement is implemented.

(2) Procedures for appeal

If an employer or worker is aggrieved by an order for remedy or decision to dismiss rendered by a Regional Labor Relations Commission, he/she may apply to the National Labor Relations Commission for reexamination within ten days of the date on which he/she received the notice of the order for remedy or decision to dismiss the application. The procedures for application to the National Labor Relations Commission are the same as the procedures for application to the Labor Relations Commission. An employer or worker may file a lawsuit in accordance with the Administrative Litigation Act against the decision made by the National Labor Relations Commission after the reexamination within fifteen days from the date on which he/she received the notice of decision on the reexamination. If an employer or worker is aggrieved by the decision of the National Labor Relations Commission and appeals to the Administrative Court, the National Labor Relations Commission becomes a defendant and the worker (the employer) becomes a defendant assistant participant. If no application for reexamination is made and no administrative lawsuit is filed within the periods listed above, the order for remedy, decision to dismiss or decision on reexamination shall be considered confirmed.

Comparison between the Labor Relations Commission and the Teachers' Appeals Commission

I. Introduction

A foreign professor of a private university visited this Labor Law Firm for a consultation regarding his unfortunate employment case. This professor had had his employment contract renewed every year for the past 5 years, but this had not been done this past February. The university stated that his employment contract had

expired, as he was a fixed-term employee. The professor thought that his employment contract would be renewed according to the university regulations, as he had better-than-average scores in the teacher evaluation. He took legal action by submitting to the Labor Relations Commission an application for remedy for unfair dismissal, but his claim was rejected. He visited me to apply for an appeal.

Reviewing the details of his case, it was determined that, as he had been an assistant professor, he should have taken his original application for remedy to the Teachers' Appeals Commission instead of the Labor Relations Commission. This individual could have been protected from the unfair rejection if he had known of the procedures of the Teachers' Appeals Commission. This was a very unfortunate situation. [36)]

In cases where an employee receives an unfair personnel disposition, he or she can find resolution by applying for remedy with the Labor Relations Commission. In 2015, the Labor Relations Commission handled 13,000 unfair dismissal cases, whereas in comparison, the Teachers' Appeals Commission only disposed of 588, a relatively small number of cases, although the number is gradually increasing.[37)] Foreign professors, in particular, can be confused as to whether a claim should be made with the Teachers' Appeals Commission, as they are fixed-term employees, but at the same time have the status of a teacher. The information below will enable the reader to understand the procedures of the Teachers' Appeal Commission as they compare to the procedures for remedy with the Labor Relations Commission.

II. Comparison of Functions between the Labor Relations Commission & the Teachers' Appeals Commission

1. Division of Scope

Individuals subject to applications for remedy with the Labor Relations Commission are employees working for a company that employs five or more employees. Provided, that government servants working for state or local governments, and teachers, are excluded. Those government servants and teachers to whom Korean labor laws do not apply can submit applications for remedy through the Appeals Commission. The State Administration has an Appeals Commission for public servants and the Teachers' Appeals Commission for teachers, while local administrations have an Appeals Commission for local public servants. The legislative branch and judicial branch of the national government, the Constitutional Court, and the Central Election Management Commission all have their respective appeals commissions.

Teachers have rights of education, guarantee of status, and guarantee of freedom of speech, while at the same time they often have the duties of educating and conducting research and maintaining their professionalism as teachers, but are banned from political activities. Of particular interest, the system related to the guarantee of status is

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Similar case: NLRC 99 Buno 165, Buhae 610, Jan 31, 2000. Railroad employees, to whom the Government Servant Law applies, submitted a claim of unfair dismissal to the Labor Relations Commission, rather than to the Appeals Commission. Due to this, the case was rejected.

37) Teachers' Appeal Commission, "Collection of Decision Cases", 2014

with the Teachers' Appeals Commission, which deals with teachers' disciplinary dispositions (such as expulsions, dismissals, suspensions from office, wage reductions, and written warnings), and disadvantageous dispositions (such as forced leaves, dismissals, and removal from one's position), and this system can involve a kind of administrative trial.[38)]

Specifically, teachers are classified as kindergarten "directors and assistant directors" (Article 20 of the Early Childhood Education Act), teachers at elementary schools, middle schools, high schools, advanced technical high schools, and "principals and vice-principals" at special schools (Article 19 of the Elementary and Secondary Education Act), as well as those at universities, colleges, colleges of education, and "presidents, deans, professors, vice-professors, associate professors, assistant professors, and full-time instructors" at open schools (Article 14 of the Higher Education Act). Accordingly, employees engaged in a private school's administrative work, and fixed-term employees, (Article 32 of the Public Educational Officials Act, Article 54-4) do not fall within the scope of the Teachers' Appeals Act. Instead, they may apply for remedy with the Labor Relations Commission.

2. Legal Procedures of the Labor Relations Commission & the Teachers' Appeals Commission

Item	**Labor Relations Commission**	**Teachers' Appeals Commission[39)]**
Composition	○ Related law: Labor Relations Commission Act. ○ Organization: Under the Ministry of Employment & Labor, National Labor Relations Commission (1) and regional Labor Relations Commissions (12). The National Labor Relations Commission (NLRC) is located in Sejong City, while regional Labor Relations Commissions (LRC) are located in their respective regions. ○ Purpose: To provide judgments for rapid and equitable resolution of unfair dismissal claims, unfair labor practices, etc. ○ Applicable to: All employees to whom the Labor Standards Act (LSA) applies. ○ Composition of judgment panel: 3 members representing the public interest, 1 member representing employee interests, and 1 member representing government interests. ○ Target: Claims of unfair dismissal	○ Related law: Special Act on the Improvement of Teachers' Status. (Related Enforcement Decree: Regulation Regarding the Teachers' Appeals Commission). ○ Organization: Under the Ministry of Education. There is one Teachers' Appeals Commission in Sejong City. ○ Purpose: As a collegiate administrative agency, to provide a review and judgment equitably based upon related laws and judicial rulings for disciplinary actions and disadvantageous dispositions related to teachers. ○ Applicable to: Teachers working in national, public and private kindergartens, elementary schools, and universities. ○ Composition of judgment panel: 8 committee members, with a majority attending. ○ Target: - Disciplinary actions handled:

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

	under Article 23 of the LSA; Claims of unfair labor practice: Article 81 of the Trade Union & Labor Relations Adjustment Act. Correction of discriminative treatment: Article 9 of the Fixed-term Employee Act.	expulsion, dismissal, suspension from office, and warning letters. - Other disadvantageous actions handled: rejection of contract renewal, dismissal, removal of job title, and forced leave.
Application for remedy	- The employee shall apply for remedy for unfair dismissal or unfair labor practices, etc. within three months from the date on which such action took place (Article 28 of the LSA, Article 82 of the Trade Union and Labor Relations Adjustment Act). - Jurisdiction: The Labor Relations Commission that is located in the district where such actions have occurred (Article 29 of the LRC Regulation).	The employee shall apply for remedy within 30 days from the date on which the action took place. - If the employee has applied for remedy to the Teachers' Appeals Commission regarding expulsion or dismissal, the school shall not appoint a successor until the Commission makes its final decision. Provided, appointment of a successor can be done after the applicable period for remedy claims has expired.
Receipt of applications	The adjudication committee is assembled when a remedy application is received. - Composed of three representatives of the public interest to be in charge of adjudication. - Appointment of an investigator. - Request correction of any missing required items for remedy application. - Add or change the purpose for applying.	When a remedy claim is received, the Commission official shall immediately appoint an investigator to be in charge. - When it is determined that the remedy application is missing required information, a request for correction should be made within 7 days from the date on which the case was filed. If such required correction is minor, the Commission will correct it directly.
Providing and demanding written responses.	- The Commission sends the parties in charge of the presentation information to advise on preparing a statement of reason, response documents, and the judging procedures. - The Commission will forward a copy of the remedy application and statement of reason, and request submission of response documents.	The Commission will, within 3 days, send a copy of the remedy application and request the written responses. - The Commission will forward a copy of the remedy application and may request the submission of written responses.
Investigation & submission of evidence	The Commission requests the documents needed for the case, and if necessary, may request attendance of the parties concerned or witnesses. If necessary, the investigator may visit the workplace for investigation purposes.	Receives the statement of reasons and forwards copies of such documents within 20 days. - Upon receipt of the written response from the school, one copy will be sent to the applicant. If necessary, the investigator may visit the workplace for investigation purposes.
Providing	A hearing date is announced 7 days in	A hearing date is announced 7 days in

information on hearing dates	advance. - The hearing may be delayed for justifiable reason.	advance. - The hearing may be delayed for justifiable reason.
Hearings	The hearing panel will consist of three representatives of the public interest, one member representing the employee, and one member representing the employer. - Meeting procedure: Confirm the case → Confirm the parties → Questions and statements → Decision. - Persons wishing to attend the meeting must receive permission in advance. - The chairperson can designate a witness and question him or her. In such cases, both parties will have equal opportunity to ask questions.	○ Hearing of the appeal. - Participants: the chairperson, commission members, commission official, investigator in charge, both parties and witnesses. - Meeting procedure: Confirm the case → Confirm the parties → Questions and statements → Decision. - Range of review: The commission cannot explore issues other than the remedy claim.
Decisions	A judgment hearing is held. Presentations are made to the three representatives of the public interest, who make decisions by majority vote. - Results: Admission, rejection, cancellation, or settlement. - Monetary compensation: Admission of unfair dismissal, and monetary compensation instead of reinstatement	- Method: The hearing requires attendance of two-thirds of the registered members, and is decided by the majority vote of the registered members in attendance. - Deadline: The decision should be made within 60 days, with an additional 30 days allowed when necessary. - Decisions: cancellation, dismissal, reduction of disciplinary action, Order of implementation, etc.
Sending of decisions	Sending the decision: For remedy applications, the verdict shall require implementation of the order within 30 days.	The decision will be sent within 15 days. -When the decision document is complete, it is sent to both parties.
Follow-up measures and appeals	- Enforcement levy: If the employer has not complied with the decision of the Commission, an enforcement levy of up to 20 million won per person will be charged. Such levy may be charged twice per year, for up to two years. If the employer wins the case in the appeal commission or court, all levies previously paid will be refunded. - An appeal may be entered within 10 days from the date on which the party received the decision.	- If the Commission's decision cannot be admitted, the teacher or the private school can file an administrative litigation. - Teachers working for a public school may file administrative litigation against the public school concerned. However, the public school cannot file a lawsuit but must comply with the decision. - Administrative litigation should be filed within 90 days from the date of the decision.

39) Teachers' Appeals Commission in the Ministry of Education,「Renewal of Teachers' Employment Contracts」,

3. Characteristics of the Teachers' Appeals Commission

The Teachers' Appeals Commission has many positive characteristics, as the system was designed to fit the needs of teachers as follows: ① The Commission cannot implement the worst of the original dispositions on the applicant (Article 16 of the Teachers' Appeals Regulation). ② When the applicant receives a disposition of expulsion or dismissal, the school cannot assign a replacement until a decision is made (Article 9 of the Special Law for Teachers' Status). ③ There is no fee for filing an appeal, and the decision on an appeal can be made much quicker than in civil litigation: within 60 days with a possible additional 30 days (Article 10 of the Special Act on Enhancement of Teachers' Status). Accordingly, the Teachers' Appeals Commission is the best system for practical remedies by considering the teachers' guarantee of status, as in the aforementioned items.

III. Conclusion

The foreign professor recognized that the rejection by the Labor Relations Commission was not due to the particulars of his case, but due to the wrong commission being asked to handle the case. He also understood that any appeal to the National Labor Relations Commission would not be valid due to the different legal procedure. In his case, there were two options that he could pursue: file a civil litigation, or look for a new job after acquiring a D-10 (job-seeking) visa. In this instance, I suggested that he look for another job instead of filing a civil litigation due to the fact that it could be almost impossible for a foreigner to pursue such civil action due to the expenses and time required. It was disappointing to realize that this was the result simply because he did not know the proper legal protection procedures. Obviously, employees need to become familiar with their applicable legal protection in order to avoid losing their legal rights.

Compromise as a Means of Settling Labor Disputes

I. Introduction

Publishing Company, Intelligence Space, 2016

Of the total labor cases brought to the Labor Relations Commission (hereinafter referred to as "the Labor Commission"), the percentage of cases resolved through compromise has gradually increased: 25% in 2010, 32% in 2011, 34% in 2012 and 34 % in 2013.[40] This reflects the Labor Commission's view that compromise is one of the most important methods to resolving labor disputes, a view it has held since the provision 'Compromise' was introduced into the Labor Commission Act in April 2007.[41] Labor Commission judgments result in one party winning all the benefits, while the other loses all, which may result in an appeal that extends the labor dispute beyond what was expected.

Compromise plays a role in preventing resolution of labor cases from such delays, and aims for amicable conclusion between the company and employee concerned. Despite this important role, the compromise system is regarded as a method of "anything goes" to solve disputes in actual practice. Accordingly, it is necessary to understand the use of compromise through actual labor cases resolved reasonably in such a way, and seek how to make more frequent use of it.

II. The Legal Status of Compromise and its Use

1. The legal status of compromise

The Civil Law stipulates (in Articles 731 and 732) that a compromise shall become effective when the parties have agreed to terminate a dispute between them by mutual concessions. A contract of a compromise shall have the effect that the rights conceded by one of the parties are thereby extinguished and the other party will, in turn, acquire the pertinent rights by virtue of the compromise. Judicial rulings have agreed that when reaching a compromise, the previous agreement is extinguished by virtue of the newly established effects of the compromise, and the compromise becomes legally binding regardless of any contradicting content in the previous agreement.[42]

According to Article 16-3 of the Labor Commission Act, a Labor Commission may recommend conciliation or present a proposal for such at the request of the parties concerned or by virtue of its authority before a judgment, order or decision is rendered pursuant to Article 84 of the Labor Union & Labor Relations Adjustment Act or Article 28 of the Labor Standards Act. The conciliation statement shall have the same effect as a compromise imposed by the courts in accordance with the Civil Procedure Act.

2. Use of compromise

(1) Designing the compromise

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40) Ministry of Employment & Labor, "White Paper on Labor and Employment, 2014"

41) Lee, Sungil/Cho, Sungkwan, "A Study on the Improvement of Operations of the Labor Relations Commission", 「Thesis Papers on Labor Laws」 No. 27, Comparative Labor Law Society, 2013.

42) Supreme Court ruling on Sep 22 1992: 92da25335

The compromise process in an unfair dismissal case brought to the Labor Commission begins with the necessary time to consider the compromise, when a judge in the judgment hearing has suggested a compromise and one of the parties has accepted it. In general, the party requesting a compromise in the course of an unfair dismissal case is regarded as having a weaker claim, and so a compromise is seldom requested before the judgment hearing starts.

If the employer feels likely to lose the case, a compromise is quite acceptable. This is the case also if the employer feels he has the potential to win the case, if the cost of settlement is much lower, as the compromise will prevent the employee from appealing. From the employee's viewpoint, a compromise is desirable if he/she does not wish to continue working for the employer, has gotten a new job, or feels he/she cannot win the case.

(2) Settlement money

Settlement money is normally calculated based upon the employee's wage. In cases where the employee has a favorable position in the dismissal case, he/she requests monetary compensation up to one year's wages, considering the wages that should have been received during the dismissed period and the ability to earn more upon reinstatement at the workplace. However, if the employee has an unfavorable position in the dismissal case, he/she usually accepts a compromise with the settlement money covering only the period of dismissal. Accordingly, after the Labor Commission has investigated the facts related to the justification of dismissal in the judgment hearing, it will suggest a compromise including a cash settlement.

Should a considerable gap exist between what each party feels is acceptable, the Labor Commission will endeavor to narrow the gap through mediation to encourage settlement. Nevertheless, if there is no compromise reached, the Labor Commission tends to avoid a quick judgment and instead opts to give both parties time to consider ways to reach a compromise.

(3) Compromise form

In actual practice, compromises require filling out a 'Settlement Agreement' form similar to the one below.

Seoul Labor Relations Commission – Letter of Compromise

Case number: Seoul2014buhae2689 000 Korea, Application for Remedy for Unfair Dismissal

Employee: 000

Company: 000 Korea

Conditions for Settlement

1. The employee and the company in this case agree that employment is terminated as of September 15, 2014.
2. By Wednesday, November 26, 2014, the company will transfer 00.0

million won (in actual payment) to the employee's bank account as settlement money that includes severance pay.

3. When the above conditions are fulfilled, both parties in this case will not take further civil, criminal or other administrative actions regarding the termination of this employment.

We, the undersigned, agree on the above conditions regarding this labor case of application for remedy for unfair dismissal, and hereby confirm that this conciliation statement shall have the same effect as a compromise imposed by the courts in accordance with the Civil Procedure Act in accordance with Article 16-3 (5) of the Labor Relations Commission Act.

November 19, 2014.

Employee's labor attorney: O O O (Signature)

Employer's labor attorney: O O O (Signature)

Seoul Labor Relations Commission – Commissioner, 0000 (Signature)

3. Difference between a compromise and monetary compensation

Monetary compensation is a system where the company shall provide the employee with monetary compensation if the employee does not desire reinstatement upon such a verdict in an unfair dismissal case (Article 30 of the Labor Standards Act). Any requirement for monetary compensation shall begin when an employee receives notification of the judgment hearing date, with the calculation period for compensation calculated from dismissal date to judgment date (Articles 64 and 65 of the Labor Relations Regulation). Accordingly, monetary compensation can be claimed for wages missed during the period after dismissal, and as this amount cannot include compensation for emotional damage, the compensation is relatively low and limited.[43] On the other hand, since a compromise is not related to the level of monetary compensation, the greater the possibility for unfair dismissal to be determined, the higher the compensation request will be, while the lower the possibility for unfair dismissal to be determined, the lower the compensation request will be: for example, one month's wage, equivalent to the one month compensation requirement for a failure to give advance notice of dismissal.

III. Labor Cases Resolved through Compromise

1. A case brought against "Company A"

"Company A", a Taiwanese semiconductor company with five Korean employees at its Korean branch is selling semiconductor components to Korean electronics companies. For the past few years, this company has been in deficit, and determined

[43] Cho, Sunghye, "Critical Review on the Monetary Compensation System for Unfair Dismissal", 「Labor Strategy Studies」, 2009, volume 9, page 154.

that the branch manager's poor sales skills were to blame. The company dismissed the branch manager without notice, and paid him the required one month compensation in August 2014. The branch manager then applied to the Labor Commission for remedy for unfair dismissal.

The Labor Commission held a judgment hearing on November 19, 2014 where the branch manager claimed that the poor sales performance that the company claimed was partly due to the high prices of the company's semiconductors, his legal status was not as an employer since he only worked as a sales manager, and the Korean branch was a sales office and not an autonomous organization. These claims greatly weakened the company's chances to win the case.

The Labor Commission estimated that as the branch manager had lost the company's confidence, he would be unable to work effectively upon reinstatement, and suggested a compromise be reached, which both parties accepted. In the judgment hearing, the employee demanded 12 months' wages as a condition for settlement, while the company responded with an offer for 3 months' wages in consideration of the already-paid compensation for no advance notice of dismissal, and the labor attorney's service fees. The Labor Commission judge then proposed compensation equal to 8 months' wages to both parties, but the company rejected it. The Labor Commission then explained that the parties would have one week to consider methods for settlement, and that a judgment would be made if the two parties were unable to reach agreement by that time.

When the company's labor attorney explained to the company that the Labor Commission was more in favor of the employee's claims and additional costs would result if they appealed a verdict of unfair dismissal, the company agreed to increase the settlement to 5 months' wages. The company's labor attorney then persuaded the employee's labor attorney (whose client had already accepted the judge's proposal for 8 months' wages) that the employee's severance pay would be reduced by two months considering that there had been fewer than 5 employees for some years previously. The employee then reduced his claim by an additional two months and accepted 6 months' wages as a settlement. In the end, the company's labor attorney successfully persuaded the company for this small difference, and also accepted the employee's compromise. Ultimately, 5 1/2 months' wages in compensation was accepted by both parties.

2. A case brought against "Company B"

"Company B" is a Korean branch office of a multinational company with head offices in Switzerland. The employee was assigned to the Korean branch office as a senior director on December 1, 2012, signing a two year contract. He had adjusted to Company B very well and worked faithfully, but suddenly received a letter of dismissal from Company B on August 30, 2013. The reason given for dismissal was suspicion that the employee had been involved in unfair price transactions with a customer while working at the head office in 2012. However, Company B did not investigate the incident thoroughly, and simply dismissed the employee immediately pursuant to a request from the head office. The judgment hearing at the Labor Commission was held for this case on December 17, 2013.

As the company had dismissed the employee pursuant to a request from the head office without observing the disciplinary process stipulated in the Rules of Employment, it was very clear that unfair dismissal would be the verdict. The Labor Commission Chairman suggested the parties settle the case, to which both parties agreed.

However, settlement was difficult due to significant difference of opinion on adequate compensation. The employee was unwilling to return to work, while the company could not win the case. When he considered that there were only 11 months left in his contract and he was unsure about continuing to work at the head office after completing the contract, the employee decided to accept 9 months' average wage as compensation. The company agreed, and the settlement was finalized as 9 months' average wage.

VI. Conclusion

The compromise system in the Labor Commission is advantageous to a verdict in terms of preventing one party from losing entirely, maintaining an amicable relationship afterwards, and terminating a dispute. However, each party's objective circumstances and subjective emotions can determine whether a compromise is acceptable or not, making it an at-times difficult solution to labor disputes. In order to reduce uncertainties regarding compromise, it is necessary to improve the monetary compensation system so that it grants additional compensation for an employee's number of service years plus compensation for the period after dismissal. Combining compromise with this improved monetary compensation system will greatly increase its use.

Relationship between the Civil Act and the Labor Standards Act regarding Termination of Employment

I. Introduction

The Civil Act and the Labor Standards Act are often regarded as equivalent to each other when it comes to employment. However, strictly speaking, there are many areas where the Labor Standards Act does not apply and/or has limited application. The Labor Standards Act applies to a limited number of legal provisions for a workplace with less than five persons, but does not apply to workplaces with only relatives and housekeepers living together. Issues that are not stipulated in the Labor Standards Act are subject to the principle of good faith and prohibition of abuse of rights in Article 2 of the Civil Act, as well as some other provisions of the Civil Act. The employment section of the Civil Act has only 9 provisions in total, but is considered the general law in labor law. As there are some differences in the details and application when it comes to termination of employment, it is necessary to distinguish between the Civil Act and the Labor Standards Act. Five of the nine provisions of the Civil Act on employment are related to the termination of employment contracts.[44)]

In our capitalist economic system, as the Civil Act is based on the principle of freedom of contract, one party of the contract can freely terminate the contract on the premise of certain requirements or damages. However, if employment contracts allow employers, who are in a socially and economically superior position to employees in the labor contract relationship, to unilaterally dismiss employees, those employees whose ability to maintain their livelihoods is based upon earnings from employment are threatened with unemployment at any time, which places them in an unequal and oppressive relationship[45] For this reason, the Labor Standards Act was enacted under the Constitution in order to improve such unequal relationships and to guarantee human dignity and the right to pursue happiness as a basic right of workers.[46]

II. The need to distinguish the different types of termination of employment

1. Divisions in the Laws

There are three types of termination of employment under the Civil Act. First, if employment is terminated when the contract period expires, it is recognized that renewal of the contract is granted under certain circumstances (Article 662 of the Civil Act). Second, if the contract term is for more than three years or there has been no contract for a period of time, the right of notice of termination shall be granted to each party, and at this time, termination will take effect after a specific period of time (Civil Act Articles 659 and 660). Third, there is recognition of the right of termination under certain circumstances (Articles 657, 658, 661, and 663). A contract under the Civil Act is a contract between the parties, so it is presumed that it can be cancelled if necessary.

However, in the Labor Standards Act, unilateral termination of a labor contract by an employer becomes an unfair dismissal and becomes subject to remedy application for unfair dismissal. Provided, however, that this shall not be the case if the contract period is fixed, the period required for the completion of the work is specified and attained, or if the employee reaches retirement age. In the case of an employment contract with a definite period of time, if the contract is longer than two years, the contract type is changed to a non-fixed contract (Article 4 of the Fixed-term Employment Act).

2. Just cause for termination

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44) The five provisions of the Civil Act on the termination of employment contracts: ① Article 658 (Content of Service and Right of Rescission for Future); ② Article 659 (Lapse of Three Years or More and Right to Give Notice of Rescission of Contract for Future); ③ Article 660 (Notice of Rescission for Future of Contract of Employment in which No Period has been Fixed); ④ Article 661 (Unavoidable Cause and Right to Rescind Contract for Future); and ⑤ Article 663 (Employer's Bankruptcy and Notice of Rescission of Contract for Future).

45) Lim, Jongyul, 「Labor Law 」, 14th edition, Parkyoungsa, 2016, page 528; Kim, Allim, 「The Labor Protection Law」, KNOU Press, 2013, page 213.

46) Article 32 of the Constitution of Korea: (3) Standards of working conditions shall be determined by Act in such a way as to guarantee human dignity.

The Civil Act allows either party to freely and unilaterally terminate the employment contract as the contract is freely concluded between the parties in accordance with the principle of freedom of contract.

However, the Labor Standards Act stipulates that employers cannot dismiss, suspend, or discipline a worker without justifiable reason (Article 23 of the LSA). According to the Labor Standards Act regarding employment contracts, it is impossible to notify termination of an employment contract unilaterally in a manner that would be acceptable under the Civil Act. This is because The LSA's aim is to protect employees. However, it is possible to terminate an employment contract for justifiable reason. Justifiable grounds are situations where an employee is liable to such an extent that the employment relationship cannot be continued under social norms, or there is inevitable management necessity.[47] Whether or not the employment relationship can in fact not be continued depends on various factors such as the purpose and nature of the business, the conditions of the workplace, the status of the worker, the motivation behind the employee's violations and/or actions affecting the company, and previous behavior. The situation must be reviewed and judged comprehensively based upon the above.[48]

III. Termination of an employment contract in the Civil Act

If the parties set a term of employment, the employment shall terminate at the expiration of that period. However, it may be renewed by agreement of the parties before or after the expiration of the term of employment. If, however, after the expiration of the employment period, the employee continues to provide labor without an agreement of renewal and the employer does not take action within a reasonable period of time, the Civil Act interprets that the employee has been rehired under the same conditions (Article 662 of the Civil Act). However, termination of the contract may then be given at any time by the parties, and termination shall take effect one month from receipt of the notice (Articles 662 and 660 of the Civil Act). It is considered by the Civil Act that the shorter-term contract is a more favorable contract between the two parties in terms of the principle of freedom of contract.[49]

2. Notice of dismissal

(1) In cases of long-term employment

The period of employment can be determined by agreement between the parties, but when employment has continued for a very long period of time, there is a problem of restricting the freedom of the parties on the nature of the employment relationship. Therefore, the Civil Act stipulates that when a contract term of employment exceeds 3 years or until the end-of-life of one party or a third party of the parties, each party may give notice of termination at any time after three years

47) Supreme Court ruling on July 8, 2003, 2001doo8018.
48) Supreme Court ruling on May 28, 2009, 2007doo579.
49) Yang, Jaehyun, "A Study on the Employment Contract in the Civil Act", Soongshil University's Doctor's thesis paper, 2010, page 66.

(Article 659 of the Civil Act). In that case, termination will take effect three months from the date on which the other party receives notice of termination (Article 659 of the Civil Act). In the case of employment contracts, the maximum term of employment contracts with fixed term is limited to three years. This is to avoid disadvantage to the employee by lengthening the period of employment. In other words, it is a characteristic of the employment contract made between comparably equal parties in the Civil Act that the employment period must be short enough to protect employees.

(2) In cases where there is no agreement on the contract period

In the absence of an agreement on terms of employment, each party may at any time notify termination of the contract (Article 660 of the Civil Act). In this case, termination shall take effect one month from the date on which the other party receives notice of termination (Article 60 of the Civil Act). However, when remuneration is determined by a period of time, the termination will become effective upon the passing of the first period after the notice was received (Article 660 of the Civil Act).[50)]

3. Termination of employment

Notice of termination of an employment contract can be made at any time in the following instances. From the time the notification reaches the other party, the termination becomes effective with no notice period: 1) When an employer assigns the employer's right to a third party without consent of the employee (Article 657 of the Civil Act: Exclusivity of Rights and Duties); 2) When the employer requests the provision of labor not agreed to in the employment contract (Article 658 of the Civil Act: Content of Service and Right of Rescission for Future); 3) In case of unavoidable circumstances, the parties may terminate the contract despite the employment period (Article 661 of the Civil Act: Unavoidable Cause and Right to Rescind Contract for Future); and 4) If the employer receives a bankruptcy determination; even when there is an agreement on the term of employment, the employee or bankruptcy trustee may terminate the contract (Article 663 of the Civil Act: Employer's Bankruptcy and Notice of Rescission of Contract for Future).

IV. Termination of employment contracts under the Labor Standards Act

Under the Labor Standards Act, the termination of an employer's unilateral labor relations is strictly restricted. It is not easy to break the employment relationship with employees unless there is a fixed term contract. There must be legitimate reasons, limited by the time of termination, and termination must be carried out adhering to strict dismissal procedures. Unilateral notice of termination of an employment contract by the employer becomes unfair dismissal and is subject to unfair dismissal relief

50) For example, if you give a notice of cancellation in April, your contract will be cancelled the first period after 1 June.

application through the labor committee.

1. Expiration of and exceptions to employment terms

According to Article 4 of the Fixed-term Employment Act, "the employer may utilize the services of a fixed-term employee to the extent that employment does not exceed two years, or to the extent that repeated renewal of the fixed-term employment contract does not exceed two years. However, in exceptional cases, where the period required for the completion of the project is set, the age of the employee is 55 or more, the person is engaged in a professional position and has 25 national qualifications, if his/her earned income per year is higher than top 25%, even if it exceeds 2 years, the termination contract can be canceled by the expiration of the term with the fixed-term worker.

2. Limitations of termination for just cause

Article 23 of the Labor Standards Act stipulates that employers cannot dismiss employees without justifiable grounds. According to the Labor Standards Act, in employment contracts, it is impossible to provide a Civil Act-related unilateral notice of contract cancellation. This is because it (LSA) aims to protect workers. However, if there is justifiable cause, it is possible to terminate a labor contract. The Labor Standards Act provides justifiable grounds for dismissal as specified below. The following cases may constitute “the reasons prescribed in the Labor Ministry Ordinance (Article 14)”:

① The employee took a bribe for allowing an inflow of flawed products from a supplier that has upset the production process of the company;
② The employee forcedmade another person to drive a business vehicle without authorization, which resulted in an accident;
③ The employee provided confidential information on the business to a competitor, which adversely affected the business;
④ The employee made up or disseminated ungrounded facts or masterminded unlawful collective actions that caused a considerable disturbance to the business;
⑤ The employee took advantage of his/her job position or committed breach of trust to misappropriate, embezzle, or use company money for private purpose for a long time (e.g., embezzling the proceeds from operation of a company vehicle);
⑥ The employee stole or carried products or material out of the company without authorization;
⑦ The employee, being engaged in personnel management, treasury or accounting, manipulated the records or produced fraudulent statements that caused damage to the business;
⑧ The employee deliberately destroyed company equipment or property, causing considerable disturbance to the business; or
⑨ The employee deliberately committed acts which seriously disturbed the business or caused considerable financial damage to the company.

3. Restrictions on layoffs

According to Article 24 of the Labor Standards Act, if an employer dismisses an employee for managerial reasons, the employer must: ① have a need for urgent management changes; ② make efforts to avoid dismissal; ③ select employees to be dismissed by establishing rational and fair criteria for dismissal, and ④ notify the representative of the employees 50 days in advance to discuss these efforts to avoid dismissal and the selection of the dismissal target. If the above four criteria are met, it will be a legitimate dismissal under Article 23 of the Labor Standards Act. Therefore, there are strict restraints when trying to terminate an employment contract with an employee for reasons attributable to an employer without cause by the employee.

4. Restrictions on dismissal time

The employer shall not dismiss any employee during a period of temporary interruption of work for medical treatment of an occupational injury or disease or within 30 days thereafter, or any female employee during a period of temporary interruption of work before and after childbirth as provided herein or within 30 days thereafter (Article 23 of the LSA). This provision is designed to protect employees from the risk of unemployment during periods when employees lose their ability to work or when they cannot perform effective job searches.[51] If an employee is dismissed in violation of this, the penalty clause is applied and the action is invalidated by law. However, if the employer cannot continue the business or pays an adequate lump sum compensation for the injury or illness on the job, the period of dismissal is not exceptionally limited (Article 23 of the LSA).

5. Restrictions on dismissal procedures

(1) Notice of dismissal

According to Article 26 of the Labor Standards Act, the employer shall give notice at least 30 days before dismissing an employee. If the notice is not given 30 days before the dismissal, ordinary wages of more than thirty days shall be paid to the worker. This provision stipulates that employees should be given 30 days' advance notice even in cases where there is legitimate reason, and if there is no justifiable reason, the notice of the dismissal cannot be just cause for dismissal.

(2) Written notice of dismissal

Under Article 27 of the Labor Standards Act, if an employer intends to dismiss an employee, the employer shall notify the employee of the reasons for dismissal and the date of such dismissal, in writing. In the absence of this written notice, the dismissal shall have no effect. This regulation mandates that the employer be careful when dismissing employees. This notice is designed to clarify the reason for dismissal and date of dismissal so that any dispute surrounding the dismissal can be easily resolved and the employee can take appropriate action against the dismissal.[52]

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51) Lim, Jongyul, 「Labor Law 」, 14th edition, Parkyoungsa, 2016, page 543; Supreme Court ruling on August 27, 1991, 91nu3321.

Ⅴ. Conclusion

There are few benefits to be gained by making comparisons between the Civil Act and the Labor Standards Act. The Civil Act establishes rights and obligations based on the contractual relationship between equal parties at the level of general law, while the Labor Standards Act stipulates enforcement regulations in a special law that the employer must comply with. Therefore, as the Civil Act is more comprehensive and there are limitations on the application of the Labor Standards Act, the Civil Act can be interpreted additionally or applied in a supplementary fashion for cases not covered under the Labor Standards Act.

Unemployment Benefits

I. Employees Eligible for Unemployment Benefits

1. Who is eligible for employment benefits?

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

※ Cases dismissed due to critical reasons attributable to employee

① In cases where he/she is sentenced to imprisonment (without being assigned prison labor or more severe punishment) for violating the Criminal Act or laws relating to employment;

② In case he/she has, on purpose, caused a considerable hindrance to the business or inflicted any damage to property due to embezzlement, disclosure of corporate secret, damage to property, etc. and

③ In case he/she has been absent from work for a long time without due notice and justifiable reasons.

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

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

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

52) Supreme Court ruling on October 27, 2011, 2001da42324.

business for six months or more, then the reemployed person can get a certain portion (1/3 ~ 2/3 of the benefit still left) as an early reemployment incentive.

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

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

Reasons for unemployment acceptable for eligible beneficiary
(Employment Insurance – Decree (Article 101 (2) – Table 2)

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

8. In cases where there is an assumption that ordinary employees might also resign from the company if they were under such similar circumstances.

II. Amount of Unemployment Benefit

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

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

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

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

※ Beneficiary days of unemployment benefit

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

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

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

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

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

III. Payment Procedure of Unemployment Benefit

1. What do you do to receive unemployment benefits?

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

2. What is the recognition of unemployment?

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

3. What are active efforts to become reemployed?

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

IV. Illegal Receiving of Unemployment Benefit

1. What is the illegal receiving of unemployment benefits?

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

※ The most common cases of illegally receiving benefits involve a person not

reporting reemployment during the recognition period of unemployment or reporting it using fraudulent information, or that he/she made a false report regarding the reason for separation or his/her wages while employed.

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

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

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

노동법 앱 개발
App Development Project

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● "___" underlined parts are being prepared, and other parts are completed and posted.
● "___" 표시는 준비 중임. 나머지는 완료 되었음.