

# **Case of Unpaid Severance Pay to Foreign Teachers**

By Bongsoo Jung, Korean labor attorney at Kangnam Labor Law Firm

## **I. Summary**

International School A (hereafter refer to as 'school') established in 1999 according to the 'Elementary, Middle and High School Act' has regular curriculums of kindergarten, elementary and middle school. Every year, the school renews employment contracts with foreign teachers for 10 months which does not include the summer vacation period. When the foreign teachers stopped working at the school, the school did not pay them severance pay. As a result, 7 foreign teachers (hereinafter refer to as "teachers") who resigned in July 2018 visited our Kangnam Labor Law Firm to seek legal assistance in claiming for unpaid severance pay on grounds of that they had been providing their labor service continuously for more than a year to the school but the school had not paid them their deserving severance pay.

## **II. The School's claim**

**Every year**, the school begins a new academic year in August and finishes it in June of the following year. In order to be in line with such an educational schedule, employment period were therefore contracted for 10 months from August each year to June of the following year, where summer vacation period from July to August was not considered as employment period. Every year, the school discussed such employment contracts with the teacher, and the new employment contracts took effect only with the agreement of the teachers. In the two months following the end of each annual employment contract, no wages were being paid to the teachers. In the school's opinion, as their employment ended properly and as the employment terms were contracted based on their free will, severance pay was therefore not paid.

## **III. Teachers' Claim**

In the teachers' opinion, however, as they have been renewing their annual contracts in the capacity as an employee and as they have also been continuously working for more than a year, the school should be paying them a severance pay in accordance with the law.

Every year, they sign a 10 month contract with the school in their capacity as teachers, and except for the summer vacation period, they have continuously been providing their labor service

As the teachers are short-term contract employees, 'Private Teachers' Pension Act'

is not applicable to them. The awarding of severance pay to persons holding the position of teachers should duly be in accordance with any employees receiving due protection from the 'Employee Retirement Benefit Security Act'. The teachers' working hour starts from 7:45 in the morning and finished at 3:30 in the afternoon from Monday to Friday, and they receive a fixed wage, comprising of a basic pay and a performance incentive.

It appears that the objective for the school to make 10 months-long annual renewal employment contracts is to evade their obligation in paying severance pay. On average, each teacher who is participating in the appeal has worked for four years, and unless there is apparent drop in the ability of the teachers, the school would continue to renew the contracts. The contents of the contracts have been the same every year except for increased wages and the academic level which each teacher is in charge of .

#### **IV. Analysis of Related Administrative Interpretations**

##### **1. Standard governing length of continuous employment service of a short-term contract teacher (June 1, '01, Kungi 68207-1780)**

With the exception of vacation period where there is no class, if a short-term contract employee has repeated working periods, his/her previous employment period may be deemed as part of a continuous work. However, the vacation period when the teacher did not provide any labor service, shall be excluded in the calculation of continuous employment service.

##### **2. With the exclusion of vacation period, repeated employment period also may be deemed as continuous work but vacation period where no actual work is provided may not be included in the computation of severance pay**

**(June 7, 2004, Kungi-2811)**

A school has been hiring temporary teachers and has repeatedly been employing them except during vacation periods. With the exception of vacation period, previous employment period in repeated employment periods may be deemed as continuous work in the computation of severance pay.

#### **V. Conclusion**

In conclusion, the labor office, based on the above mentioned incidents of administration interpretations, instructed that the school would have to pay the teachers severance pay.