

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.¹ 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 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

¹ 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.

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.² 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 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.³

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.⁴ 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.⁵ (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.⁶ (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

² Labor Law Practical Research Society, 「Annotation of the Labor Standards Act (1)」, Park Youngsa, 2020, p. 391.

³ 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.

⁴ Lim, Jong-ryul, 「Labor Law」, Parkyoungsa, 2020, p. 17.

⁵ 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.

⁶ Supreme Court ruling on Nov. 14, 2019, 2018 Da 200709.

as the employee agreeing to the relevant change in the rules of employment.⁷

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 who have been subject to the existing rules, and shall only apply to new workers hired after the rules were changed.⁸ 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.⁹

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)

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

⁷ Supreme Court ruling on Apr. 9, 2020, 2019 Da 297083.

⁸ Supreme Court ruling on June 24, 2011, 2009 Da 58364.

⁹ Supreme Court ruling on May 14, 2004, 2002 Da 23185, 23192.

objection to application of the wage peak system.

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 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.

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

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.

Summary of the court ruling¹⁰

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

¹⁰ 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.

employees, even through legitimate procedures, they are not more applicable than the 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.