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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.[1] 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.[2]

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.

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.[3]

[1] Lim, Jongryul, 「Labor Law」 18th Ed., Parkyoungsa, 2020, p. 360; Supreme Court ruling on Nov. 28, 2013: 2011da60247.
[2] Ha, Kaprae, 「The Labor Standards Act」 33rd Ed., Joongang Economy, 2020, pp. 149-165.
[3] Supreme Court ruling on Dec. 23, 1996: 96 da 16605.

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.[4]

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.[5]

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.[6]

2. Violation of the duty to be faithful

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.[7]

3. Violation of the prohibition against concurrent, interfering employment

[4] Seoul High Court ruling on Nov. 12, 2002: 2002 ra 313.
[5] 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.
[6] Seoul High Court ruling on Sept. 19, 2012: 2012 na 1391.
[7] Supreme Court ruling on Dec. 13, 1994: 93 nu 23275.

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.[8]

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.[9] 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;

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

[8] Supreme Court ruling on Dec. 13, 1994: 93 nu 23275.
[9] As prescribed in the Ministry of Employment and Labor Ordinance, related to Article 26 of the Labor Standards Act.

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.[10]

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%.[11]

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.[12]

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

[10] Supreme Court ruling on Feb. 23, 1999: 97 da 12082.
[11] Chuncheon District Court ruling on Aug. 10, 2016: 2014 gadan 11050.
[12] Daegu District Court ruling on Apr. 19, 2019: 2018 gadan 115280.

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.[13]

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 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) [14] of the Equal Employment Act and as an employer in violation of its duty to protect.[15]

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

[13] Supreme Court ruling on Nov. 28, 2013: 2011 da 60247.

[14] **Article 14 (Measures to Be Taken in case of Sexual Harassment at Work)** (2) Upon receiving a report as prescribed in paragraph (1) or discovering an occurrence of sexual harassment in the workplace, the employer shall immediately conduct an investigation to confirm the facts. In such cases, the employer must ensure that the worker who has reportedly suffered from sexual harassment on the job or who has claimed that sexual harassment occurred (hereinafter referred to as the "employee victim etc.") does not feel sexually humiliated during the investigation process.

[15] Seoul High Court ruling on Apr. 20, 2018: 2017 na 2076631.

out, employers shall be liable for damage and/or punishment for violating related labor laws.