

Procedures for Wage Adjustments (Increases, Reductions, Freezes, Returns) and Related Cases

I. Introduction

Labor and management together can freely determine and adjust wages through labor contracts, employment rules, and collective agreements. So far, wage adjustment has been used to mean “wage increase” as wages have been increased every year due to inflation. However, as the coronavirus epidemic over the past year has caused enormous damage to all industries, many companies have overcome difficulties through other forms of wage adjustment, such as wage cuts, freezes, and returns. An employer unilaterally cutting wages has no effect. Reductions, freezes, or wage returns are unfavorable changes to working conditions, so legal procedures must be adhered to by the labor and management before taking such steps.

Wage cuts refer to reducing wages lower than existing levels for the same job and require collective consent of the affected workers. Wage freezes have the same effect as wage reductions when annual wage increases or service allowances are currently in place, and therefore require collective consent. However, deciding to keep the same wage as before without increasing wages does not require collective consent. Regarding wage returns, since wages are accrued in return for work already performed, those wages belong to individual workers, so the employer must obtain the consent of that individual worker. If the company deducts wages based only on collective consent, not individual consent, those deducted wages will be considered unpaid wages. The table below provides a brief summary of wage reductions, freezes and returns. In the next sections, I will review the related principles and related labor cases in detail.¹

<Comparison of Wage Reductions, Freezes and Returns>

	Wage Reductions/Freezes	Wage returns
Target wage	Future wage	Wages already accrued
Method of implementation	Collective consent	Individual worker consent
Scope of effectiveness	All workers in same category	Individual workers with consent
Base wages for calculation of average wages	Wages paid after reduction or freeze	Wages paid before return

II. Wage Increases and Wage Reductions

Wage increases are decided through collective bargaining if there is a labor union. Wages have generally been raised every year through collective bargaining between labor and management, and if negotiations do not result

¹ Ha, Gap-Rae, 「Labor Law」, 33rd ed., Joongang Economy, 2020, pp. 311-316; Labor Ministry Guidelines: Labor Standards Division-797, Mar. 26, 2009.

in wage increases, the labor union increases the pressure through strikes. Employers generally increase their workers' wages to the minimum extent acceptable to the labor union. Wages can also be reduced through collective bargaining if the economy is bad or the company is in trouble. In this case, if the union consists of a majority of the workers concerned, non-union members are also affected by the wage adjustment concluded by the labor union due to the general binding force of the workplace (Article 35 of the Labor Union Act). In workplaces without a labor union, wage increases are determined unilaterally by the company within an appropriate range through changes to the employment rules or labor contract. However, since wage reductions are regarded as an unfavorable change working conditions, an agreement between labor and management is necessary.

Wage reductions refer to a lower wage than before being paid at a certain point in the future. The total wages paid is lowered by reducing or abolishing the basic wage and/or various allowances, with the process carried out in a manner decided in collective decision-making. If there is a majority union, this is done through a collective agreement, but if there is no majority union, it is necessary to go through the procedures required to make unfavorable changes to the employment rules. Even if labor and management have agreed, wages cannot be reduced below the minimum wage level, and additional rates or legal allowances (such as overtime/night/holiday work allowances, weekly holiday allowance, annual paid allowance, etc.) are not subject to reductions, in accordance with the Labor Standards Act.² Also, the reduced wage is not included in the calculation of average wage. Wage reductions are judged differently for each case. Here are some of these individual cases.

(1) Even if individual workers agree on a wage reduction, this cannot replace collective consent. Wage reductions involve paying less in the future for the same work that is currently provided, which makes them an unfavorable change to working conditions. In order for consent to a reduction in wages obtained from individual workers to be considered valid, the collective agreement must be changed according to required procedures.³

(2) In order to overcome a management crisis, a company significantly reduced its workforce and unilaterally stopped paying bonuses to workers who were retained. The fact that workers who were retained have continued to work without objection to the unilateral cessation of bonuses, does not mean that those workers have given up their right to claim future bonuses.⁴

(3) In accordance with the general binding force of Article 35 of the Labor Union Act, the effect of an agreement on wage reductions with a majority labor union also extends to non-union workers in the same kind of job in a workplace. However, if a separate contract for wages is signed for each worker, such as an annual salary contract, the individual worker's consent for a wage reduction is also required.⁵ On the other hand, if the number of workers who were in the labor union at the time of the labor-management agreement on wage reduction did not reach a majority of the workers, the general binding force of Article 35 of the Labor Union Act cannot be granted.⁶

(4) In changing the shift work system, reducing the shift from 4 groups/3 shifts to 3 groups/3 shifts is an

² Ministry Guidelines: Labor Standards Team-797, Mar. 26, 2009.

³ Incheon District Court ruling on June 25, 2010: 2009 gahop 14735.

⁴ Supreme Court ruling on June 11, 1999: 98da22185.

⁵ Labor Ministry Guidelines: Industrial Relations Team-1112, Nov. 18, 2008.

⁶ Supreme Court ruling on May 12, 2005: 2003da 52456.

unfavorable change for workers. Conversely, if the increase is from 3 groups/3 shifts to 4 groups/3 shifts, unless the contractual working hours are shortened or wages are reduced, it is not regarded as a disadvantageous change to working conditions, even though related wages or allowances are reduced due to the reduction in overtime work.⁷

(5) A change in the pay system can also lead to a reduction in wages. In cases where the amount of wages decreases from a reduction in the proportion of basic salary and an increase in the proportion of performance salary, the court considers it as a disadvantageous change in working conditions even though only some employees' wages decrease while the wages of most employees increase.⁸

(6) If the wage peak system is introduced within the statutory retirement age, it is a disadvantageous change in working conditions because it results in a reduction in wages for workers at that time.⁹ In this case, if there is a labor union organized by a majority of workers, the consent of that labor union is required. Here, a union organized by a majority of workers refers to a union organized by a majority of all workers who are subject to the existing employment rules, regardless of the scope of union membership.¹⁰

III. Wage Freezes

Freezing wages refers to keeping wages the same for future work as was paid for past work of the same type. In cases where a company regularly increases regular wage, ceasing or additionally restricting this regular increase in wage is an unfavorable change to working conditions. The company can freeze wages through amendment of the collective agreement or following the procedures for changing the employment rules disadvantageously. However, it is not a disadvantageous change to working conditions if wages are frozen when there is no regular salary increase.

(1) If the personnel regulations stipulate that regular increases occur on January 1st and July 1st of each year, and if the annual increase in salary has been carried out regularly and uniformly, this is considered to be a habitual wage practice. In this case, if the employer unilaterally freezes the regular increase without engaging with workers in the collective decision-making method, the courts have deemed that the amount of regular increase that remains unpaid by the regular payment date each month as unpaid wages.¹¹

(2) A certain school had financial difficulties, and the principal explained the situation to teachers at a school affairs meeting, suggested that the basic salary increase for general school teachers be frozen that year. The teachers present did not object at the time to this. However, this lack of objection at the meeting with the teachers cannot be considered the same as obtaining collective consent.¹²

⁷ Labor Ministry Guidelines: Labor Standards Team 68207-1732, Nov. 4, 1994.

⁸ Supreme Court ruling on June 28, 2012: 2010da 17468.

⁹ Suwon District Court ruling on June 23, 2017: 2016gadan 115485.

¹⁰ Supreme Court ruling on February 29, 2008: 2007da 85997.

¹¹ Labor Ministry Guideline: Wage 68200-649, December 5, 2000

¹² Supreme Court ruling on June 9, 2005: 2005do 1089.

IV. Wage Returns

Wage returns refer to the return of wage bonds (wages, bonuses, etc.) already incurred for previous work based on the free-will consent of the individual worker. Due to the waiver of the right to claim wages that occurred legally, wages can only be returned through due process. Since a unilaterally-determined wage deduction by the employer violates the principle of paying full wages, individual workers' written consent is required.¹³ However, even in this case, any waiver of the right to claim severance pay is invalid because it violates the Labor Standards Act.¹⁴

For procedures to be deemed reasonable, individual workers' consent is required. Since the return of wages is effective only if it is the individual workers' voluntary decision, individual workers must recognize the purpose of wage returns and sign a return consent form in their own name.¹⁵ While the court holds that it is desirable to obtain consent for each individual worker when returning wages, it is also possible to obtain individual consent by having workers sign a name list of workers if the company has sufficiently explained the difficult situation to the workers.¹⁶ An agreement to return wages in the collective agreement has no effect. This is because the return of wages involves wages that already belong to individual workers, and the union cannot be forced to abandon individual member property rights. Wages returned by workers come from the workers' income and are returned voluntarily, and the employer is not obligated to return them again to the worker.¹⁷ Returned wages are included in the calculation of average wages as they are wage bonds that were given to the employee and then returned to the employer by the employee.¹⁸ Examples of cases where a return of wages was not recognized:

(1) To waive unpaid wages for which individual workers have the right to claim payment due to the arrival of the payment period, a collective agreement with the labor union is not enough for the workers to be deemed to have agreed to waive the unpaid wages. It can only be done to the extent that the company has received individual and explicit consent from the workers in advance to waive their right to the unpaid wages. Even if a labor union agrees to give up some worker wages in the collective agreement or through labor-management consultations, this has no effect on labor union members who have not individually consented.¹⁹

(2) Even if wages and bonuses are returned in accordance with a revised collective agreement, if a worker does not individually consent to the return of wages and bonuses incurred by his/her previous work, that worker shall not have their wages returned. If the workers who did not agree to the return of wages and bonuses later resigned after those wages/bonuses were deducted without their individual consent, those returned wages will be considered unpaid wages.²⁰

¹³ Article 43 of the Labor Standards Act (Wage Payment) and Supreme Court ruling June 11, 1996: 98da22185 Waiver of wage claims is recognized as a clear expression of the employee's intention.

¹⁴ Supreme Court ruling July 26, 2002: 2000da27671.

¹⁵ Labor Ministry Guidelines: Labor Standards Team 68207-843, Dec. 13, 1999.

¹⁶ Supreme Court ruling on Sep. 29, 2000: 99da67536.

¹⁷ Seoul District Court ruling on Apr. 16, 2003: 2002na 20291.

¹⁸ Supreme Court ruling on Apr. 10, 2001: 99da39531.

¹⁹ Jeonju District Court ruling on Apr. 26, 2000: 99na5708.

²⁰ Labor Ministry Guidelines: Unemployment 68430-84, Oct. 21, 1999.

(3) Daegu 00 Company gave a donation to help Daegu citizens suffering from the corona pandemic in April 2020 by resolution of its labor-management council. It then informed the employees of the council's decision, and deducted KRW 10,000 from each individual. In response, the new labor union filed a complaint with the Daegu Labor Office for violation of Article 43 (Wage Payment) of the Labor Standards Act as these wages were deducted without the individual consent of the workers. The company then requested individual consent from all the workers, but only 50% agreed, so the deducted wages had to be returned to those workers who did not submit individual consent forms.²¹

(4) If each worker agrees to return the allowance for unused annual leave that has occurred, it cannot be considered a violation of the law if the employer does not pay an allowance within the agreed range for unused annual leave. However, if the return of unused annual leave allowance agreed upon by the worker also applies to leave that will occur in the future, procedures must be followed that allow a collective agreement or the employment rules to be changed disadvantageously.²²

V. Conclusion

To overcome difficulties due to the COVID-19 pandemic, company management is increasingly working with labor to have wages returned or have them reduced or frozen. In such cases, it is necessary to understand and prepare in advance because the legal outcomes vary. The return of bonuses or other allowances is to return the wages vested to the worker for previous work and requires written consent from the individual worker. If the company handles a wage return through the labor union, the problem of delayed payment of wages arises. Wage reductions mean less in wages in the future, so even if management comes to an agreement with individual workers, wage cuts are invalid unless procedures are followed to make a disadvantageous change to the employment rules or collective agreement. Therefore, for wages to be reduced, employment rules and collective agreements must be changed through collective consent rather than individual worker consent. And in particular, according to the principle of favorable conditions, unexpected problems may arise, so it is necessary to change both the labor contract and the employment rules to prevent future disputes.

²¹ Daegu Labor Office decided this deduction was illegal. Related Labor Ministry Guidelines: Labor Standards-68207-843, Dec. 13, 1999.

²² Labor Ministry Guidelines: Labor Standards 684207-871, Mar. 23, 2000.