

Changes of Judicial Rulings Related to Annual Leave Compensation

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I. Introduction

The purpose of annual paid leave is to guarantee sufficient paid leave to workers who are exhausted from long-term work so they can recover their physical and mental health and enjoy a cultural life.¹ Monetary compensation is applied only in exceptional cases where annual leave is not available. As Supreme Court rulings have been made based on the purpose of such annual leave, existing rulings are currently being revised to reflect this.

The Supreme Court ruling on October 14, 2021 (2021 da 227100) ruled that the annual leave days for one-year fixed-term workers amounted to 11 days, not 26. Even in the case of retirees, the Supreme Court ruling on June 28, 2018 (2016 da 48297) ruled that, in cases where the calculation period of annual leave is from January 1 to December 31 of each year, if the retirement date is December 31, there was no annual leave allowance owing in the following year. Currently, the Ministry of Employment and Labor stipulates in its annual leave-related guideline “A fixed-term worker with a one-year employment contract must be granted up to 26 days of paid leave allowance when the contract period expires after meeting 80% or more of the attendance rate for one year.”² This is a combination of 15 days of annual leave granted for employees who have worked 80 percent or more for one year according to Article 60 (1) of the Labor Standards Act, and up to 11 days of accumulated monthly leave for employees who have worked less than one year, according to Article 60 (2). Based on this, front-line labor inspectors penalize employers for violating the Labor Standards Act if the employer does not pay 26 annual leave days.

As a result of these court rulings, the current guidelines of the Ministry of Employment and Labor lose their effect. With this in mind, how is annual leave calculated for fixed-term workers and retirees? In addition to this issue, I would like to examine in detail the standards upon which the Ministry of Employment and Labor decisions were based.

II. Judgments of the Supreme Court Rulings in 2018 and 2021

1. A case related to annual leave of retirees³

Workers were hired by the Uijeongbu City Facility Management Corporation and retired as

¹ Constitutional Court decision on May 28 2015: 2013 Honma 619; Kim Hong-Young, “Theory on System Improvement of Annual Leave for Guaranteed Rest,” Labor Law Research, (40), Seoul National University Labor Law Research Society, March 2016, p. 161.

² Ministry of Employment and Labor, “‘Explanation on Revised Labor Standards Act’ on the Expansion of Annual Leave Guarantee for Those who Work for Less Than One Year, etc.,” May 2018.

³ Supreme Court ruling on June 28, 2018: 2006 da 48297.

street cleaners. In the employment rules it is stipulated that retirement “shall be the last day of December of the year in which the person turns 61.” In accordance with the provisions of the collective agreement, 20 days of special paid leave were used for those eligible for mandatory retirement, and the mandatory retirement was on December 31st. The workers said, “The last day of December of the year in which we turned 61 was a special leave period, so the actual retirement date should be considered as January 1 of the following year. The employer is obliged to pay the workers the allowance for the unused annual leave due to their retirement on January 1st, since annual leave was accrued in the year they turned 61 years of age.”

Regarding this, the first and second trials agreed to the workers’ legal claims, but the Supreme Court ruled “The employment rules set the retirement age as the end of December when they turn 61. The retirement age is reached on December 31, when the person turns 61, and the employment relationship is naturally terminated. Therefore, workers cannot acquire the right to annual leave in return for work in the year in which they turn 61. Therefore, it cannot be seen that their retirement date is postponed to January 1 of the following year.”

2. A case related to annual leave of fixed-term workers⁴

A worker used 15 days of annual leave while working as a caregiver at an aged care welfare facility for one year from August 1, 2017 to July 31, 2018. On May 5, 2018, the Ministry of Employment and Labor distributed the guideline for the revised Labor Standards Act as it related to the expansion of the annual leave guarantee for workers with less than one year of employment. The guideline stated “If the contract period of a one-year fixed-term worker expires, an unused annual leave allowance of up to 26 days must be paid.”

The worker submitted a complaint to the Chungbu Regional Labor Office stating that he had not been paid 11 days' annual leave allowance. With the guidance of the labor inspector, the employer paid 717,150 won to the worker as an annual leave allowance for 11 days.

Later, the employer stated that the information that up to 26 days of annual leave would be granted to workers who signed a one-year fixed-term employment contract was incorrect. Since the worker used all the annual leave granted to him, he could not receive annual leave pay. The employer claimed that the worker is obligated to return the overpaid allowance because the employer paid the additional 11 days' annual leave allowance based on the erroneous guidance of the labor inspector.

In response, the lower court (the second trial) recognized the claim of the employer and issued an order for the worker to pay back the overpaid amount. The worker then appealed to the Supreme Court. The Supreme Court ruled “The right to use annual leave or the right to

⁴ Supreme Court ruling on October 14, 2021: 2021 da 227100.

claim annual leave allowance naturally arises when an employee provides work while meeting the attendance rate in the previous year, and is equivalent to the consideration for work for one year in the preceding year, not the year in which the annual leave is to be used. Paid annual leave as stipulated in Article 60 (1) of the Labor Standards Act is granted to workers who have worked at least 80% of one year, and the worker does not use annual leave within one year after acquiring the right to annual leave, or retires before one year has elapsed. In the event that annual leave can no longer be used due to reasons attributable to the employer, the worker can claim an annual leave allowance, which is a wage corresponding to the number of days of annual leave.⁵ However, the right to use a 2nd year's annual leave shall be deemed to occur on the day following completion of work for one year of the preceding year, unless otherwise specified. If the employment relationship is terminated due to retirement before then, no annual leave allowance may be claimed as compensation for the right to use annual leave.”⁶ Therefore, it was determined that workers who signed a one-year fixed-term employment contract were granted up to 11 days of annual leave.

III. Existing Standard Precedents on Annual Leave and Guidelines from the Ministry of Employment and Labor

1. Standards for judging annual leave compensation before 2005.

In the case of fixed-term workers or retirees before 2005, if they retire one day before the date of annual leave is granted, no annual leave allowance is paid, even if they have worked full time in the previous year. This is because the purpose of annual leave is to ensure continuous long-term employment through rest.

The Ministry of Employment and Labor makes this clear in the official Q&A guide. “Company A's annual leave period is one year from January 1 to December 31 of the current year, and annual leave compensation is paid for the number of days that annual leave is not taken.” In this case, the following is the answer to the question of whether an employee can claim annual leave compensation if the retirement date is December 31. “Annual paid leave occurs according to the attendance rate in the period subject to vacation calculation. Annual paid leave is not granted if there is no day left to use the leave due to the termination of the employment relationship, even if the employee has worked or attended more than 90 percent of the time during the period subject to vacation calculation. There is no meaning in granting annual leave, and so there is no problem related to the payment of annual vacation pay for not using vacation.”⁷

⁵ Supreme Court ruling on May 17, 2017: 2014 da 232296.

⁶ Supreme Court ruling on June 28, 2018: 2006 da 48297.

⁷ MOEL guidelines, July 15, 1999: Gungi 68207-1667.

2. Annual leave compensation from 2005 to 2018

The Supreme Court ruled that the annual leave as compensation for work should be considered as the nature of compensation for work regardless of whether or not annual leave was available. In accordance with this decision, the Ministry of Employment and Labor also shifted to the position that fixed-term workers should be compensated for 15 days of annual leave, which are the subject of work, even if they retire due to the expiration of the contract period, according to the purpose of this precedent.

The stipulations are as follows: The Supreme Court ruled "The right to use annual leave with annual leave allowance is acquired by an employee as a result of completing a prescribed amount of work for one year. After an employee obtains the right to annual paid leave, if he/she retires before using the annual paid leave, the right to use the annual paid leave is terminated because the right to annual leave is available only during employment. An employee can claim from the employer an annual leave allowance equivalent to the number of unused annual leave days until the end of the employment relationship."⁸ After this precedent, the Ministry of Employment and Labor held that if one year of full work (the requirement for annual leave) was met, annual leave would occur regardless of the termination of employment, and it obligated compensation for unused annual leave.

3. Compensation for annual leave from 2018 to 2021

The Labor Standards Act⁹, which was amended by Act No. 15108 on November 28, 2017 and enforced on May 29, 2018, deleted Article 60 (3) which stipulated, "If an employer gives a worker paid leave for the first year of work, 15 days, including the leave under Paragraph 2, and if the employee has already used the leave under Paragraph 2, the number of days of leave used shall be subtracted from 15 days."⁹ The reason for this amendment is to delete the rule that, when using paid leave for the first year of work, subtract it from the paid leave of the following year, so that a maximum of 11 days in the first year and 15 days in the second year can be received, respectively. This was designed to prevent annual leave from being reduced in the following year when it is used for the first year.¹⁰

However, the interpretation of the Ministry of Employment and Labor was different from the standard of precedent.¹¹ MOEL clarified with "How to pay unused allowance when a contract

⁸ Supreme Court ruling on May 27, 2005: 2003 da 48549, 48556.

⁹ Article 60 (Annual Paid Leave) (1) Every employer shall grant any employee who has worked not less than 80 percent of one year a paid leave of 15 days.

(2) Every employer shall grant any employee who has continuously worked for less than one year or who has worked less than 80 percentage of one year one paid-leave day for each month during which he/she has continuously worked.

¹⁰ Supreme Court ruling on October 14, 2021: 2021 da 227100.

¹¹ MOEL Guidelines "Guidelines for the revised Labor Standards Act related to the expansion of annual

period expires after a fixed-term worker with a one-year employment contract after the enforcement of the revised law meets 80% or more of the attendance rate for one year.” The precedent is that fixed-term workers who have a one-year labor contract have the right to claim 15 days' worth of annual leave compensation at the end of the contract period if the attendance rate for one year is 80% or more.¹² The Ministry of Employment and Labor explained in its administrative guidance: “According to the amendment of the law, paid leave that occurs one day for each month of work in the first year is recognized separately. After the amendment of the law, when the contract period of one year of fixed-term workers expires, up to 26 days of unused allowance must be paid.” Therefore, as compensation for work of less than one year is accrued as 11 days and 15 additional days in return for 1 year of work, a total of 26 annual paid leave days should be guaranteed.

4. After the precedent in 2021

Since the right to use annual leave shall be deemed to arise on the day following completion of work for one year of the preceding year, if the employment relationship is terminated due to retirement, no annual leave allowance may be claimed as compensation for the right to use annual leave.¹³ Due to the logic of this precedent, the guideline of the Ministry of Employment and Labor has lost its effect. In the future, this regulation will be applied to all retirees and fixed-term workers with an expiration period of one or two years, so that they do not have the right to claim annual leave allowance.

IV. Excerpts From the Current Annual Leave and Suggestions for Improvement

Annual paid leave is a paid leave granted to recover bodies and minds which have been exhausted from long-term work and 15 days are granted to workers who have worked more than 80% of the year. In addition, one additional day is added every 3 years, and the maximum granted is up to 25 days. If an employee does not use annual leave within one year after acquiring the right to it, or retires before one year has elapsed, he/she may claim annual leave allowance (a wage equivalent to the number of days of annual leave) from the employer. According to the annual leave regulations of the Labor Standards Act which were changed in 2018, the amount of annual leave accrued for one year is 11 days, with one paid leave day per month. At the end of the first year, 15 days are generated on the premise of continuous service and will be used for one year.

If an employee works for one full year and quits the next day, he can claim 11 annual leave days and 15 annual leave days on the premise of the last full year of work. This may be

leave for workers less than one year, etc.”, May 2018.

¹² Supreme Court ruling on May 27, 2005: 2003 da 48549, 48556.

¹³ Supreme Court ruling on October 14, 2021: 2021 da 227100; Supreme Court ruling on June 28, 2018: 2006 da 48297.

somewhat of a violation of the principle of equity. There are differences in the paid allowance when an employee leaves the company on a specific day, because of annual paid leave that occurs based on the previous year's work. Therefore, it is often the case that a worker has determined his/her resignation date based upon the days of additional annual leave to be granted. As a way to solve this problem, a method of calculating the current annual leave system in proportion to the length of service may be proposed. For example, 11 days are granted for the first year of service, and 15 annual leave days accrued in the second year are guaranteed to be used continuously or in installments. However, if the employee resigns in the middle of the second year, quarterly deductions can be made proportionally. I think this would be helpful in improving the existing method of granting annual leave.

V. Conclusion

I think that the precedent for the retirees in 2018 on annual leave and the precedent for the one-year fixed-term worker are reasonable judgments in line with the purpose of guaranteeing annual leave. I believe that the purpose of annual leave is to guarantee sufficient paid leave to recover bodies and minds exhausted from long-term work, but not as a simple monetary compensation.

Unfortunately however, the fact that the number of days of annual leave varies greatly may violate the principle of equity and may be a reason for workers to adjust their resignation date. Therefore, in improving annual leave, I think it would be better if paid leave were guaranteed in an equitable way in proportion to the length of the relative labor service, regardless of what actual point in time the individual resigns.