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Korean labor law: Rules of Employment and the Employer's Legal Responsibilities

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I. Introduction

Rules of employment set up an important system so that employers can systematically and uniformly manage their workers in a business or workplace. These rules refer to the employer determining the regulations needed to maintain corporate order and work efficiency at the workplace and the working conditions that will apply to all workers.[1] These rules of employment must be observed by the workers in the process of providing work, and also outline consequences for violating these rules. "Working conditions" refer to the conditions stipulated in the rules of employment in relation to worker wages, working hours, procedures for dismissal, and other treatment.[2]

Rules of employment can be written and enforced unilaterally by the employer, but once they are written, the employer and employees are bound to them and consequences for breaking those rules will apply to the applicable party, whether worker or employer. Employers cannot unilaterally change working conditions that have already been established. Any unfavorable changes are of no legal effect without the consent of a majority of the workers to whom the changes apply. In addition, the employer has both a legal obligation to prepare and report the rules to the Ministry of Employment and Labor, and a legal obligation to notify the workers of those rules in a public way. This is to ensure that the minimum standards set by the Labor Standards Act apply, through the rules of employment, to workplaces.[3]

I would like to take a detailed look at the legal requirements for rules of employment and how they are applied in practice.

II. Legal Nature of Rules of Employment

Rules of employment enforce legal regulations that must be observed in the workplace (legal effect), while providing the principle of equal decision-making between labor and management in determining working conditions (contractual effect).[4] The courts have ruled, "Rules of employment are written by the employer, based on the employer's corporate management rights, in order to unify the service rules and working conditions of workers at the workplace.

[1] Supreme Court ruling on Nov. 28, 1997: 97da24511.
[2] Supreme Court ruling on June 23, 1992: 91da19210.
[3] Lee, Seonggil, "A Legislative Review of the Employment Rules System," *Labor Law Research* (8) 69-119, Seoul National University Labor Law Research Society, June 1999, p. 78.
[4] Kim, Hyungbae, 「Labor Law」 24th ed., Parkyoungsa, Feb. 2015. p. 297; Lim, Jong-ryul, 「Labor Law」, 24th ed., Parkyoungsa, p. 366.

This is because the purpose of the Labor Standards Act is to protect and strengthen the position of workers in their reality of subordinate labor relations to protect and improve their basic livelihoods. This compels that rules of employment be drafted and become the legal norm."[5]

"Contractual effect" refers to the effect that arises from the relationship between the employer and the worker in the employment contract. Although working conditions are stipulated in rules of employment, any unfavorable changes are of no legal effect without the consent of the majority of the target workers (proviso to Article 94 of the Act). This is in accordance with the principle of protecting workers' vested rights and determining equal working conditions (Article 4 of the Act).

III. Specific Legal Obligations of the Employer in Relation to the Rules of Employment

Rules of employment are legal obligations that must be prepared by employers who employ at least a certain number of workers. Their specific details and effect are described in the Labor Standards Act.

1. Size of workplaces obligated to draw up rules of employment rules

(1) Legal requirements

Employers who employ "10 or more ordinarily-employed workers" must prepare rules of employment and report them to the Minister of Employment and Labor (Article 93 of the Act). It is much more difficult for smaller workplaces to have rules of employment in place, so their preparation is left to the discretion of the employer and is not a legal obligation.

(2) Practical application

The number of "ordinarily-employed workers" is determined by dividing the number of total employees by the number of working days in the one month prior to the date of occurrence of the reason for application of the law (the time when it is necessary to determine whether the rules of employment have been drawn up and the duty to report) (Enforcement Decree to the Labor Standards Act, Article 7-2). While employers employing fewer than 10 workers are not obligated to prepare or report establishment of rules of employment, if they are drawn up, all regulations stipulated by law related to those rules apply.[6] Here, employers obliged to prepare and report establishment of rules of employment refer to those who have substantial authority and responsibility for matters that constitute the details of those rules, such as workplace rules and working conditions.[7]

[5] Supreme Court ruling on July 26, 1977: 77da355.
[6] Seoul High Court ruling on Sep. 15, 2005: 2004nu23621.
[7] Supreme Court ruling on Dec. 24, 1992: 92do2341.

2. Items to be stated in the rules of employment

(1) Legal requirements

Article 93 of the Labor Standards Act lists the items to be written in the rules of employment as it relates to working conditions and employment regulations to be uniformly applied to a business or workplace. Article 93 consists of 13 items and applies to all workers in the relevant business or workplace, and can be divided into mandatory and optional items.

(2) Practical application

Of the matters listed in Article 93 of the Labor Standards Act, rules of employment must stipulate essential working conditions such as wages, working hours, recess hours, and holidays. Since there are no standards required by law in a number of areas related to shift work, family allowance, and others, including these items in rules of employment is optional. However, any wage reductions in the rules of employment (as part of the employer's disciplinary options) are limited to no more than 10% of one pay period. Finally, nothing in the rules of employment can be of a lower standard than in the Labor Standards Act or the applicable workplace collective agreement (Articles 95 and 96).

3. Procedures for drafting and changing rules of employment

(1) Legal requirements

The law defines how rules of employment are to be drafted and changed. The employer shall hear the views of the labor union organized by a majority of workers, or if there is no union organized by a majority of workers, the employer shall hear the views of a majority of workers in the relevant business or workplace. However, if the rules of employment are to be changed unfavorably for workers, their consent must be obtained before such change will have any effect (Article 94 of the Act). If the employer does not hear the views of applicable workers or obtain their consent before changing the rules unfavorably, a fine of not more than 5 million won shall be imposed (Article 114 of the Act). This is to protect the principle of equality between labor and management in determining working conditions and to ensure decent working conditions for the workers.

(2) Practical application

In general, if the already-existing working conditions or employment regulations are written into rules of employment, it is sufficient to inform the workers that rules of employment have been created and reflect the already-existing working conditions/employment regulations. When introducing any new regulations into the rules, the views of a majority of the workers must be heard. If there are any changes that will be unfavorable to the workers, the consent of the affected workers must be obtained.

Changes to rules of employment that are considered unfavorable to workers generally include lowering the working conditions or removing the existing rules on working conditions and introducing new rules that are less favorable. There are three categories of criteria for judging whether changes to the rules of employment are disadvantageous. First, if there are multiple changes to the rules, a decision will be made for each individual working condition, but if there is an interactive relationship or linkage between factors that determine one working condition, it shall be decided comprehensively. For example, even if the severance pay rate is adjusted downward, it is not considered a disadvantage if the total amount of severance pay does not decrease because the number of wage items included in the average wage increases.[8] Second, if a change to the rules of employment is beneficial to some workers and unfavorable to others, it is deemed unfavorable if the benefits resulting from the favorable and unfavorable are mixed with each other.[9] Third, if the change subdivides and materializes the contents conceptually because the existing regulations are unclear or comprehensive, and therefore are intended to resolve controversies in interpretation, it cannot be regarded as a disadvantageous change.[10]

4. Reporting rules of employment

(1) Legal requirements

Employers who regularly employ 10 or more workers must prepare rules of employment and report them to the Minister of Employment and Labor after hearing the views of their affected workers (Articles 93 and 94 of the Act). Before reporting the establishment or changes to the rules of employment, the employer must submit ① the employment rules and ② documents proving that the views of the labor union representing the majority of the workers, or the majority of the workers themselves, have been heard. If changes to the rules are unfavorable, documents must be submitted proving that consent has been obtained from the labor union representing the majority of workers, or from the majority of workers themselves (Article 15 of the Enforcement Regulation).

(2) Practical application

When a report of establishment of or changes to the rules of employment is received, the labor inspector shall check whether the necessary information pursuant to Article 93 of the Labor Standards Act is included and whether documents have been attached that prove that the views have been heard/consent has been obtained from a labor union representing the majority of workers, or a majority of the workers themselves. After that, a review is made by the labor inspector within 20 days of receiving the report, to ensure the details of the rules of employment do not conflict with relevant laws or regulations or the relevant collective agreement, and that any changes to the rules of employment, without proof of worker consent, are not unfavorable. If the procedural requirements for the rules of employment are not met, or if the details are in violation of law or collective agreements, a period of up to 25 days shall be given to comply with an order for correction.[11] Here, if the employer submits a "Report on Establishment of/Changes to Rules of Employment" certified by a licensed labor attorney, along

[8] Supreme Court ruling on Aug. 28, 1997: 96da1726.
[9] Supreme Court ruling on May 14, 1993: 93da1893.
[10] Supreme Court ruling on Aug. 25, 2011: 2010guhap42263.
[11] Ministry of Employment and Labor, Regulation No. 48, “Guidelines for Examination of Rules of Employment.”

with a report of that labor attorney's review of the rules of employment or changes to those rules, an additional examination of the relevant rules by the labor inspector will be waived.[12]

5. Obligation to notify workers of the rules of employment

(1) Legal requirements

Employers must post or retain the rules of employment in a place where workers can read them at any time, and make them widely known to workers (Article 14 of the Act). The rules must not be seen by the workers as merely internal documents of the employer and of no effect. Since rules of employment are the norms within the company as determined by the employer, it is not necessary to follow the method stipulated in Article 14 of the Labor Standards Act for new or changed rules to take effect, but the rules of employment must be made widely known to the workers by any suitable method.[13]

(2) Practical application

The workers must be notified by the employer for the drafted or changed rules of employment to have any effect. Although the method of posting is not described in detail by law, if the right of access is guaranteed so that workers can read them at any time, it can be considered that the duty of disclosure has been fulfilled by the employer, even if the rules are posted on the internal computer network.[14]

6. Representation of a majority of workers

(1) Legal requirements

When reporting the rules of employment, the views of the labor union shall be heard if there is a labor union organized by a majority of workers in the relevant business or workplace, or the opinion of a majority of workers shall be heard if no such labor union exists. Consent must be obtained from this union, or the majority of workers if no such union exists, if changes are unfavorable (Article 94 of the Act). "A majority of workers" refers to the majority of the workers who are subject to the change(s) in the rules of employment.[15]

(2) Practical application

1) When the rules of employment are applied uniformly: In order to unilaterally make changes to existing working conditions in a way that is unfavorable to workers, consent from the group of workers to whom the previous rules of employment apply must be obtained through a collective decision-making method. In addition, if the changes to the rules are to apply only to

[12] Labor Standards Team-8048, Nov. 29, 2007, "Guidelines for Waiving Examination of Workplace Rules of Employment upon Confirmation of Examination by Certified Labor Attorney."
[13] Supreme Court ruling on Feb. 12, 2004: 2001da63599.
[14] Supreme Court ruling on June 23, 1992: 92nu4253.
[15] Supreme Court ruling on Feb. 29, 2008: 2007da85997.

a specific group of workers at the time of the change, but application to other groups of workers is expected in the future, consent from all workers expected to be affected now or in the future shall be obtained. In other words, even if only company executives are directly disadvantaged in the immediate changes to the salary system for executives, if the rules shall apply to any general employee in the future through promotion, the consent of a majority of all employees—executives and general employees—is required.[16]

2) When working conditions differ between worker groups and separate employment rules apply: There are no personnel transfers between worker groups, and workers in the two groups have different working conditions at the time of hiring. Under such circumstances, if the rules of employment are changed for a specific group, "the majority of workers" is deemed to be the majority of workers in the affected group, not the entire workforce. This would apply, for example, in a workplace where personnel are divided into production and management according to business necessity.[17]

3) Labor union organized by a majority of workers: A labor union organized by a majority of workers refers to a union organized by a majority of all workers for whom the existing rules of employment apply, regardless of whether or not they are members of a union: i.e., it does not mean a labor union organized by a majority of only workers eligible to join a labor union. Even if changes are made disadvantageously only towards executives who are not eligible for union membership, if the changed working conditions will likely apply to ordinary workers in the future, consent from the union organized by a majority of workers shall include those for whom the changed working conditions are expected to apply in the future.[18]

IV. Conclusion

Legally requiring that rules of employment be introduced at workplaces ordinarily employing at least 10 workers, and reporting the establishment of rules of employment to the Ministry of Employment and Labor, is designed to ensure at least a minimum standard for working conditions at workplaces and in worker management and supervision. Rules of employment stipulate the employer's regulations for employment and employee working conditions. If the rules of employment are changed in a way unfavorable to the workers, then consent must be obtained from the majority of workers (through the worker representative(s)) or the labor union representing the majority of workers. This measure protects the principle of equality in working conditions by law. Employers need to therefore make systematic efforts to create, through their rules of employment, a workplace culture able to maintain and improve working conditions while

[16] Supreme Court ruling on May 28, 2009: 2009doo2238.
[17] Supreme Court ruling on Dec. 7, 1990: 90daka19647.
[18] Supreme Court ruling on Nov. 12, 2009: 2009da49377.

establishing a desirable management order.