

Korean labor law: Checklist of Standard Working Conditions To Prepare for Labor Inspectors' Audit

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Employers must comply with the following items and procedures to ensure they are in harmony with the Labor Standards Act. "Self-auditing guide" - the Ministry of Employment and Labor (2023): The contents described herein are checked frequently by labor inspectors and given for the companies to act accordingly. Employers are advised to comply with the guidelines. I hope the companies can prepare for their necessary documents in accordance with standard guidelines of the Labor Standards Act.

I. Labor Standards Act

1. An employer shall make a labor contract with all employees hired directly by the company

- ※ An employer shall make a labor contract with all employees hired directly by the company, regardless of type of occupation, working period, etc.
- ※ Any labor contract that establishes conditions of labor that do not meet the standards provided by law shall be invalid to that extent. The law shall govern those conditions invalidated in accordance with the above.
- ※ In order to prevent disputes between the employer and the employed, a written labor contract is required so both parties can be sure of the details of employment.

2. An employer shall clearly state the terms of employment at the time the labor contract is made. (Article 17 of the LSA, Article 8 of the Enforcement Decree)

- ※ Punishable by a fine not to exceed five million won
- ※ Statement of Terms of Employment
 - i) An employer shall clearly state remuneration, contractual working hours, holidays, annual paid leave, and other terms of employment. For matters as to each constituent item of remuneration, the methods of calculation and payment, holidays, and annual paid leave shall be specified in writing.
 - ii) Terms of Employment to be specified :
 - (1) Remuneration (2) Contractual working hours (3) Holidays (4) Annual paid leave (5) Place of employment and work to be performed

3. A Registry of the workers shall be made and preserved.(Article 41, 42 of the LSA)

※ Punishable by a fine not to exceed five million WON

※ Employers shall maintain a registry of workers, and preserve this registry, along with other important documents regarding the labor contract, for three years.

a) Matters to Be Entered in the Registry of Workers

Name; Sex; Date of birth; Address; Personal history; Type of work to be performed; Date of employment or renewal of employment, a contractual period if any period has been determined, and other matters related to employment; Date of dismissal, retirement or death, and the reasons thereof; and Other necessary matters

b) Important Documents Regarding the Labor Contract

Labor contracts; Wage ledgers; Documents pertaining to the basis for the determination of, payment method used, and calculation of wages; Documents pertaining to employment, dismissal or retirement; Documents pertaining to promotion or demotion; Documents pertaining to leaves of absence; Documents pertaining to approval or authorization; Documents of written agreements; and Documents pertaining to certification of minors.

4. Contractual working hours for employees shall not exceed forty hours per week and eight hours per day, excluding recess hours.

※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON

5. An employer shall pay an additional fifty percent or more of the ordinary wages for extended work, night work, or holiday work. (Article 56 of the LSA)

※ Punishable by imprisonment of up to three years, or by a fine not to exceed twenty million WON

※ Night work means the work provided from 10 p.m. to 6 a.m., and holiday work means the work performed during times that are exempt from the "duty to provide labor" as stipulated by law, collective agreement, Rules of Employment (ROE) or labor contract.

6. If a worker quits or retires, an employer shall pay the forthcoming wages, compensation, and other money or valuables within 14 days after the cause for such payment has occurred; however, this period, under special circumstances, may be extended by mutual agreement between the parties concerned. (Article 36 of LSA)

※ Punishable by imprisonment of up to three years, or by a fine not to exceed twenty million WON

7. An employer shall allow, on average, one or more paid days off per week to workers who have fulfilled their contractual working days per week. (Article 55 of the LSA)

※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON

※ When employees work on paid holidays, the employer shall pay additional wages (fifty percent or more of the ordinary wages).

8. An employer shall grant 15 days' paid leave to workers who have worked more than 80 percent of their contractual working days over one year. After the employee's first year of service, the employer shall grant annual paid leave of one additional day for each two years of consecutive service. (Article 60, Article 62 of the LSA)

※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON

※ **An employer shall grant one day's paid leave per month to a worker whose consecutive service period is shorter than one year.**

※ The total number of leave days, including the additional leave, shall not exceed 25.

9. Employers shall grant pregnant female workers 90 days of maternity leave, to be used before and after childbirth. In such cases, 45 days or more shall be allocated after childbirth. The first 60 days' leave shall be paid leave. (Article 74, Article 75 of the LSA)

※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON

※ The length of protective leave granted shall be determined according to the length of pregnancy:

1. Where the pregnancy period of the worker who has a miscarriage or stillbirth (hereinafter referred to as "pregnancy period") is less than 11 weeks : up to 5 days from the date of miscarriage or stillbirth ;

2. Where the pregnancy period is 12 weeks or more but less than 15 weeks : up to 10 days from the date of miscarriage or stillbirth ;

3. Where the pregnancy period is 16 weeks or more but less than 21 weeks : up to 30 days from the date of miscarriage or stillbirth

4. Where the pregnancy period is 22 weeks or more but less than 27 weeks : up to 60 days from the date of miscarriage or stillbirth ; and

5. Where the pregnancy period is 28 weeks or more : up to 90 days from the date of miscarriage or stillbirth.

10. No employer shall dismiss a worker without justifiable reason. If an employer intends to dismiss a worker, the employer shall notify the worker in writing of the reasons for dismissal and the date of such dismissal.

11. An employer shall give advance notice of at least thirty days before dismissing a worker. If notice is not given thirty days before dismissal, ordinary wages of more than thirty days shall be paid to the worker. (Article 26 of the LSA)

※ Punishable by imprisonment of up to two years, or by a fine not to exceed ten million WON

※ Exceptions for Advance Notice of Dismissal

(1) A worker who has been employed on a daily basis for less than three consecutive months;

(2) A worker who has been employed for a fixed period not exceeding two months;

(4) A seasonal worker who has been employed for a fixed period not exceeding six months; or

(5) A worker still in the employment probation period.

12. An employer ordinarily employing ten workers or more shall prepare the Rules of Employment (ROE) and file them with the Minister of Labor. (Article 93 of the LSA) ※ Punishable by a fine not to exceed five million WON

※ Contents of Rules of Employment (ROE)

Hours of operation, Breaks, Holidays, Leaves and Shifts, Determination of wages, Calculation of wages, Means of payment, Closing of payment, Pay days, Wage increases, Calculation of family allowances, Means of pension payment, Pensions prescribed in Article 8 of the Employee Retirement Benefit Security Act, Bonuses, Minimum wages, Meal allowance, Allocation of expenses for operational tools or, Educational facilities for workers, Protection of pregnant female workers, Work-home balance assistance, such as maternity leave, child-care leave, etc., Safety and health, Improvement of work environment according to employee sex, age, and physical characteristics, Support pertaining to occupational or non-occupational accidents, Awards and Disciplinary action, etc.

13. An employer shall keep workers informed of the main points of the Rules of Employment (ROE), by posting them at all times or keeping them in places where workers have free access. (Article 14 of the LSA)

※ Punishable by a fine not to exceed five million WON

II. Employment Retirement Benefit Security Act

14. When an employee retires or resigns, the employer shall, within 14 days, pay a sum equal to 30 days or more of average wages for each year of consecutive service. (Article 4, Article 8, Article 9 of the ERBSA)

※ Punishable by a fine not to exceed five million WON

III. Employment Retirement Benefit Security Act

15. Employers shall pay their workers wages not less than the minimum wage. (Article 6 of the Minimum Wage Act)

※ Punishable by imprisonment of up to three years, or by a fine not to exceed twenty million WON

※ Minimum Wage (as of 2021) : 8,720 won per hour / 69,760 won per day(8 hours) / 1,822,480 won per month

16. An employer shall inform workers of the minimum wage by displaying it in areas easily visible to workers, or by other appropriate means. (Article 11 of the Minimum Wage Act)

※ Punishable by a fine not to exceed one million WON

VI. Equal Employment and Work-home balance assistance act

17. Employers shall conduct employee education one or more times per year to prevent sexual harassment at the work place. (Article 12, Article 13)

※ Punishable by a fine not to exceed three million WON

※ The sexual harassment prevention education under paragraph (a) may be conducted through employee training sessions, meetings, etc. depending on the size and circumstances of the business.

※ Providing sexual harassment prevention education simply by posting information,

or other indirect dissemination of educational material, shall not be recognized as sexual harassment prevention education.

18. Employers shall allow an employee with a child aged 8 and under(or in the secondary year of elementary school or lower)to take childcare leave to care for that child, upon application by that employee. (Article 19)

※ Punishable by a fine not to exceed five million WON

19. Employers shall pay equal wages for the work of equal value in the same business. (Article 8)

※ Punishable by imprisonment of up to three years, or by a fine not to exceed twenty million WON

※ Criteria for work of equal value shall be the skills, effort, responsibility and working conditions, etc., required to perform the work. In setting the criteria, the employer shall listen to opinions of the employee representative in the Labor-Management Council.

※ When an employer discriminates in wages based upon objective criteria such as education, job experience, seniority, position, etc., it shall not be regarded as discrimination.

20. Male employees who apply for leave because their wives gave birth shall be given 10 days of paid paternity leave. (Article 18-2)

※ Punishable by a fine not to exceed five million WON

V. Act on the Promotion of Worker Participation and Cooperation

21. An employer shall establish bylaws for the Labor-Management Council and shall submit them to the Labor Office. (Article 4, Article 18 of the Act)

※ Penalty for not establishing a Labor-Management Council: fine of not less than 10 million WON

※ Penalty for not submitting the bylaws: fine of up to 2 million WON

※ All businesses that ordinarily hire more than 30 persons shall establish a Labor-Management Council, establish its bylaws, and submit them to the Minister of Labor within 15 days from the date the Council is established.

※ A Labor-Management Council shall be established at each business or workplace and will be vested with the right to decide working conditions.

22. The Labor-Management Council shall hold meetings at least once every three months. ※ Punishable by a fine not to exceed two million WON

23. The Grievance-Handling Team shall consist of a maximum of three people, representing labor and management. (Article 26, Article 27 of the Act)

※ Punishable by a fine not to exceed two million WON

VI. Protection for non-regular employees (Short-term, part-time, or dispatch employees)

24. Sending Employers and Using Employers shall implement any final judgment order for correction if they receive one from the Labor Relations Commission or the court. (Article 8 to Article 14 of the Short-term Employee Act and the Article 21 of the Dispatch Employee Act)

※ Punishable by a fine not to exceed one hundred five million WON

25. An employer shall not discriminate against non-regular employees (fixed-term employees, part-time employees, and dispatch employees) with regard to wages or other working conditions on the grounds of their employment status compared with other workers under a labor contract without a fixed term who are engaged in the same or similar jobs in the business or workplace concerned.

※ Applicable to both the Sending Employer and the Using Employer

26. An employer may hire fixed-term employees for a period not exceeding two years. If an employer hires fixed-term employees for more than two years, they shall be considered regular employees who have no fixed term. (Article 4 of the Short-term Employee Act)

27. Using Employer shall not receive labor service from a dispatch employee from an unauthorized dispatch company nor shall use a dispatch employee in a position where dispatch employees are not allowed. (Article 5 of the Dispatch Employee Act)

※ For Using Employer: Punishable by imprisonment of up to three years, or by a fine not to exceed twenty million WON

28. The length of dispatch shall not exceed one year. If there is agreement between

the Sending Employer, the Using Employer, and the dispatch employee, the length of dispatch may be extended beyond one year. In any case, the total length of dispatch extension shall not exceed one year, and the total length of dispatch, including extensions, shall not exceed two years. If the Using Employer continues to use the dispatch employee beyond two years, he/she shall directly hire the dispatch employee as a regular employee without a fixed term of employment.

※ Violation by the Using Employer: imprisonment of up to three years, or a fine not exceeding twenty million WON

※ Failure to directly hire a dispatch employee beyond two years: Punishable by a fine not exceeding thirty million WON

※ With regard to older dispatch employees under subparagraph 1 of Article 2 of the Aged Employment Promotion Act, notwithstanding the latter part of the provision of paragraph 2, the length of dispatch may be extended for more than two years.

※ Times when dispatch employees are permitted under Article 5 (2) (exceptional reasons)

☞ The period of time required to resolve clear and objective causes of a shortage of manpower, such as childbirth, illness and injury; and

☞ For a maximum of three months when there is a need to secure manpower on a temporary and intermittent basis. If the cause is not resolved and there is agreement between the Sending Employer, the Using Employer, and the dispatch employee, this three-month period may be extended once, and is not to exceed an additional three months.

29. In accordance with the introduction of the workplace harassment prevention law, it must be reflected in essential items in the employment rules (by July 1, 2019)