Lay-offs of Production Workers

I. Introduction

When experiencing difficulties many companies, viewing labor as one of their highest expenses, prefer to reduce it as a first reaction, but arbitrary lay-offs can cause significant conflict and legal disputes between the company and its workers because their keeping job is a matter of their survival. Therefore, using a lay-off as a way of cutting costs should be the final step. In a lay-off situation, office workers usually have no problem getting hired elsewhere and tend to readily accept when they are asked for voluntary resignation in return for reasonable financial compensation, while production workers will desperately object to a lay-off because it is almost impossible for them to find similar jobs with equivalent wage levels. Accordingly, laying off production workers is extremely difficult to implement due to persistent objections from the related labor union as well as the workers involved. An example of this, showing how difficult lay-offs can be for both management and labor, is the situation at SSangyong Motor Company where recently, more than 20 production workers committed suicide as a result of being laid-off.

The following case demonstrates a lay-off that this writer provided legal advice for and which took place from December 2012 to August 2013 and that was reasonably implemented despite 'difficult situations' while doing so. Here, 'difficult situations' means that those subject to dismissal were production workers, that there was a labor union (hereinafter referred to as "the Labor Union") which consisted of all production workers, and that the Collective Agreement contained an article which restricted lay-offs.

II. Major Disputes at Each Implementation Stage and their Resolution

1. Planning stage

(1) I had taken a project for lay-offs within an automobile parts production company (hereinafter referred to as "the Company"), in December of 2012. This company was foreign-owned and had suffered continuous deficits since 2008, as it could not get new competitive automobile products from its American headquarters company, and expected to see a continued deficit in the near future. In order to reduce this ever-growing deficit, the Company had to reduce its work force by a minimum of 30%. The HR director of the Asia-Pacific Regional Head Office was of the opinion that the Company would close its doors if it could not implement these lay-offs in time.[1]

(2) When designing its lay-off plan, the Company had to reduce personnel through use of a voluntary early retirement system based upon a managerial dismissal schedule. As job security was part of the Collective Agreement with the Labor Union, it was considerably difficult to implement any arbitrary lay-off. The job security agreement stipulated that: "When the Company intends to reduce personnel due to urgent business reasons, it shall inform the Labor Union of the reason(s) 60 days prior to implementing dismissals and reach agreement with the Labor Union on the criteria and procedures for determining those who shall be subject to dismissal, as well as provisions for ERP bonuses. Provided, that the order of priority shall begin with voluntary applicants and most recently-employed." The conditions in a Collective Agreement that a company shall "reach an agreement with the Labor Union" and "the order of priority shall begin with ……most recently-employed" can be the biggest barriers in the process of managerial dismissal. The

[1] The Company was established in Korea 30 years ago, and had suffered increasing deficits and decreasing sales since 2008. The number of employees had also gradually been reduced from 400 in 2008 to 333 in 2010, and then to 270 in 2012.

reason for this is because these conditions frame the essential procedures required by law pertaining to managerial dismissal which the Company must follow. As for the ERP bonus, reaching an agreement is likely to be difficult as the Company expects a lower amount while the Labor Union may insist on the maximum amount. So, if the Company had sufficiently consulted with the Labor Union regarding the level of the ERP bonus, it would be no problem for the Company to determine unilaterally an appropriate level for an ERP bonus. The other two conditions were that "the Company shall reach agreement with the Labor Union on the criteria…… for determining those who shall be subject to dismissal," and "if the two parties cannot reach such agreement, the Company shall adhere to procedures that choose voluntary applicants and recent employees first". This means that the Company has to respect seniority and select most-recent employees as those subject to managerial dismissal in cases where there is no agreement on the matter. Accordingly, in order to deal with the restrictions on managerial dismissal, both parties are required to decide what would be an appropriate ERP bonus through consultation, and work hard to reach an agreement on fair criteria for dismissal. In the absence of this, the Company will have to dismiss based simply on seniority.

2. Negotiation stages with the Labor Union

(1) After announcing the plan for managerial dismissal in January 2013, the Company began negotiations with the Labor Union regarding efforts to implement dismissals and selection procedures for those subject to dismissal as required by the Labor Standards Act, Article (24), "Dismissal for Managerial Reasons". When the Company announced its intention to implement managerial dismissal, the Labor Union responded that it would cooperate with the Company if the Company would pay two years' average wages as an ERP bonus. To this, the Company proposed an ERP bonus of 6 months, after getting approval from the American Head Office, as it was running out of sufficient funds due to the long-term deficit accumulated over the past years. The Labor Union rejected such a low ERP bonus, and held a special ceremony where union officers shaved their heads and put up printed banners objecting to the managerial dismissal.

(2) The Company made efforts to negotiate with the Labor Union several times from March to May of 2013, but could not reach an agreement on ERP bonus levels or who would be subject to managerial dismissal. The Labor Union became subject to increasing pressure as they were aware of the typical tendency of foreign companies to close their businesses if they could not make money due to continuous deficits, and gradually started to compromise regarding lay-offs. On July 13, 2013, the Labor Union demanded an increase in the ERP bonus, explaining that the average wages for six months could be an amount equivalent to the average wages for only four months two years ago as they had not done much overtime lately. The Company accepted the Union's explanation as reasonable and received special approval for an increase in the ERP bonus up to 8 months for production workers, while maintaining the 6 months' average wages for office workers.

(3) The Company agreed with the Labor Union on the ERP bonus levels and the implementation of a Voluntary Retirement Program, but the Labor Union insisted that the Company should implement the managerial dismissal beginning with the most recently-employed, as there had been no agreement on those. The Company proposed that it should determine those subject to dismissal based on quality of performance and number of accidents over the past three years. While negotiating this matter, the Company instigated a Voluntary Early Retirement Program by posting the information within the company premises, but no production workers applied for this while only a few office workers applied. The Company realized that it would be difficult to effectively reduce the number

of employees through the Voluntary Early Retirement Program, and so informed the Labor Union that it was obliged to implement managerial dismissals with the recently-employed to be dismissed first. Based on this information, the Labor Union feared that the Company would implement another lay-off plan next year if it conducted managerial dismissals based on the principle that the most recently-employed were to be dismissed first, because the Company would not be able to reduce its labor costs and thereby improve the competitiveness of its products. Therefore, the Labor Union responded to the Company that it would accept the Company's criteria for those subject to dismissal if the Company would accept the two following conditions: (1) the Company would reduce the number of employees to be dismissed and (2) would implement the Voluntary Early Retirement Program one time more. To this, the Company agreed to reduce the dismissals from the original 60 production workers and 14 office workers to 40 production workers and 8 office workers. In addition, the Company implemented the Voluntary Early Retirement Program from July 13 to July 25, 2013. During this period, the target number of office workers applied, but only 10 production workers, leaving 30 still to be dismissed.

3. Implementation stage

(1) On July 25, 2013 the Company announced the managerial dismissals, informing the 30 production workers selected by following the criteria of those subject to dismissal that the Company and the Labor Union agreed upon, and put them on paid leave. In line with this, the Company informed the Labor Office of the plan for managerial dismissal. In addition, the Company stipulated in its dismissal letter that the affected persons would be able to apply for a Voluntary Early Retirement Package at any time prior to his/her termination date. Although the 30 production workers who received the advance notice of dismissal were supposed to wait at home, they came to the Company premises and occupied the Labor Union office. They then threatened the Labor Union Chairman, stating that he must hold an impeachment vote against union officers, and claiming that the Labor Union chairman's decision was null and void as it simply supported the Company's unilateral view. The dismissed workers, supported by former Labor Union officers led action, to impeach the current Union officers. The Labor Union Chairman feared violence from the dismissed workers and hid for three days, after which he returned and promised to hold an impeachment vote at the General Meeting.[2]

(2) Dismissed workers came to the Company and occupied the Labor Union office every day, from the day that they received their advance dismissal notices to the day of the impeachment vote, and picketed the main entrance gate, during times when workers were arriving and departing, protesting what they called the mutual conspiracy between the Company and the Labor Union. The dismissed employees were supposed to wait at home, but the Company could not control their collective action of coming to the office. The Company called the police and asked for their support after explaining the situation, but the police replied that they were not allowed to intervene in labor disputes, and if the dismissed workers intended to visit the Labor Union office, the police could not prevent their visiting. Eventually, the Company realized it had to block them from coming onto

[2] The Labor Union and Labor Relations Adjustment Act - Article 11 (bylaws) (1) Each of the following Labor Union and matters shall require a resolution adopted by the General Meeting: 2. Election or discharge of union officials; (2) The General Meeting shall adopt resolutions by the affirmative vote of a majority of the members present at a General Meeting where a majority of all members are present. However, resolutions as to the introduction and modification of bylaws, discharge of union officials, and merger, division, dissolution and structural change of a labor union shall be passed by the affirmative vote of at least two-thirds of members present at a General Meeting where a majority of all members are present.

company premises on its own, and so looked into acquiring the services of a Security Guard Agency[3]. The service could cost 540 million won for one month, which would be too expensive for the Company to accept under its current financial situation. Therefore, the Company could do nothing but wait and watch the dispute from the sidelines.

4. Concluding stage

(1) During the labor-labor disputes, the Company continuously recommended to the dismissed workers that they apply for the Voluntary Early Retirement Package and resign through their department heads and Human Resources managers. Thanks to these efforts, an additional 5 workers applied for this voluntary ERP-based resignation. The remaining dismissed workers expected that when the current union officials were impeached at the Labor Union's General Meeting, the new labor officers would renegotiate with the Company and cancel the managerial dismissals. On August 8, 2013 there was an impeachment vote against the current union officers and the result was 42 in favor of impeachment and 58 against, rejecting the discharge of the current officials. After this result, the 25 remaining dismissed workers all applied for voluntary retirement, believing that they could not win an unfair dismissal case as long as the current Labor Union officers cooperated with the Company.

(2) All 30 production workers eventually resigned with a voluntary ERP bonus package and the Company successfully avoided the managerial dismissals. This prevents any potential labor disputes related to legal claims, and furthermore was very fortunate in that the Company did not cause further pain to either the remaining workers or the resigned workers.

III. Conclusion (Evaluation of the Lay-off)

This lay-off of production workers was well-implemented through the appropriate use of managerial dismissal as per the Labor Standards Act and the Voluntary Early Retirement Program in order to cope with managerial difficulties the Company faced. At first, the Company followed Article 24 (Restrictions on Dismissal for Business Reasons), which contains: 1) urgent necessity in relation to the business; 2) efforts made to avoid dismissal; 3) fair criteria for the selection of those persons subject to dismissal; and 4) consulting in good faith with the Labor Union regarding efforts to avoid dismissals and fair criteria for the selection of those persons subject to dismissal. The above case showed that the Company satisfied the legal requirements, which are to exert effort to avoid dismissals through the Voluntary Early Retirement Program. Furthermore, the Company compared other companies' ERP bonus levels with the Company's ability to pay, while setting up the ERP bonuses, and negotiated with the Labor Union in good faith by responding to the workers' demands, and then resolved the Company's ERP bonus levels based upon mutual agreement. In particular, while the selection of those subject to dismissal was previously determined as "those most recently employed" in the Collective Agreement, the employer persuaded the Labor Union to abandon the order of recent employment and to accept the result of personnel evaluations for the past three years. Throughout this lay-off process, the Labor Union and the Company showed the desired labor-management partnership which resulted in a win-win situation during difficult times.

[3] Estimate of cost of hiring a Guarding Service Agency: one person working 24 hours/day is 300,000 won/day. Twice as many guards are required as the number of strikers. The Company must provide meals and other necessary costs. 300,000 x 60 persons x 30 days = 540 million won/month; 7 months' cost = 3.78 billion won.

Are C Language Institute's Native English Instructors Employees or Freelancers?

I. Summary

The case of unpaid wages for C Language Institute started when 17 instructors submitted a petition to the Gangnam Labor Office for unpaid severance pay, weekly holiday allowance and annual paid leave allowance against C Language Institute on February 22, 2011. The Language Institute claimed that its native instructors were freelancers contracted with its "Agreement for Teaching Services' and were not employees to which the Labor Standards Act applied. Upon receipt of the petition, the Gangnam Labor Office did a thorough investigation of the petition over 18 months, and concluded that the Language Institute's 17 instructors were freelancers, not employees (Labor Improvement Team 4, September 28, 2012). Upon this conclusion, 24 instructors (the original 17 and 7 new applicants), began a civil action. On October 17, 2013, the Seoul Central District Court determined that C Language Institute's native instructors were employees under the Labor Standards Act (2011gahap121413), and ruled that the Language Institute was obligated to pay severance pay, weekly holiday allowance, and annual paid leave allowance. After this, the Language Institute filed an appeal against the District Court's decision. The main point of this case is whether native instructors are employees or freelancers. Even though the case is ongoing, I will review the criteria for evaluating "employee" status, give a summary of C Language Institute's practices, list the claims admitted by the Labor Office, and details of the Court's judgment. I will then anticipate the Appellate Court's judgment.

II. Change in Employee Status of the Institute's Instructors

In a previous case, the Supreme Court ruled that the part-time instructors contracted with the Preparatory Institute were not employees in its judgment (96do732) and quoted, "Whether a person is considered an employee under the Labor Standards Act shall be decided by whether that person offers work to the employer as a subordinate of the employer in a business or workplace to earn wages in actual practice, regardless of the type of contract." This ruling provided "concrete criteria to judge employee status under the supervision of the employer" for the first time, and since then the Courts and the Labor Relations Commissions have judged employee status based on this criterion. However, this criterion was changed in the judicial ruling (2004da29736) regarding the Preparatory Institute's instructors in 2006. The first change is that 'being supervised and directed during his/her work performance **specifically and directly** by the employer' was adjusted to 'being supervised or directed **considerably.**' This is because the instructors were not supervised or given specific or individual direction regarding the lecture content or methods by the Institute as the lecture characteristics were composed of intellectual activities. The second change is that one additional sentence was included to the effect that the characteristics of "employee" cannot be denied because of the absence of these items

determined at the employer's unilateral discretion by taking advantage of his/her superior position. Such items which may be determined by the employee's superior position are the employer's payment of basic wages, payment of business tax, income tax, and registration of the four social security insurances, and those items shall not be included in determining whether employee status exists or not.[4] The following judicial ruling is the standard criterion used to determine instructor status under employer supervision:

"Whether a person is considered an employee under the Labor Standards Act shall be decided by whether that person offers work to the employer as a subordinate of the employer in a business or workplace to earn wages in actual practice, regardless of whether the type of contract is an employment contract or a service agreement under Civil Law. Whether a subordinate relationship with the employer exists or not shall be determined by collectively considering: 1) whether the Rules of Employment or service regulations apply to a person whose duties are decided by the employer, 2) whether the person has been supervised or directed during his/her work performance considerably by the employer; 3) whether his/her working hours and workplaces were designated and restricted by the employer; 4) who owns the equipment, raw material, or working tools; 5) whether his/her position can be substituted by a third party hired by the person; 6) whether his/her service is related to creating business profit or causing loss directly like one's own business; 7) whether payment is remuneration for work and whether a basic or fixed wage is determined in advance; 8) whether income tax is deducted for withholding; 9) whether work provision is continuous and exclusive to the employer; 10) whether the person is registered as an employee by the Social Security Insurance Acts and other laws, and 11) the economic and social conditions of both sides. Provided, that as whether a basic or fixed wage is determined, whether income tax is deducted for withholding, and whether the person is registered for social security insurances could be determined at the employer's discretion by taking advantage of his/her superior position, the characteristics of an employee cannot be denied because of the absence of these mentioned items.[5]

III. Actual Facts

C Language Institute has used native instructors which it considered to be freelancers, not employees, for the past twenty years, with some characteristics as follows:

1. Contract relations: The Language Institute signed an 'Agreement for Teaching Services' with native instructors to provide foreign-language teaching services, and maintained contract periods of one year.

2. Working types: (1) The instructors used textbooks as determined by the Language Institute; (2) The instructors did other work in addition to teaching, such as meeting students' parents, etc; (3) There were no other rules of employment or personnel rules

[4] Supreme Court ruling on September 7, 2007: Hairdresser Institute instructors' employee status
[5] Supreme Court ruling 2004 da 29736, on December 7, 2007: Full-time instructors' employee status

applying to the instructors, but they had to observe the 'Instructor Code of Conduct' by adhering to a dress code and the teachers' service regulations; (4) The Language Institute installed CCTV cameras in each classroom and monitored the instructors; (5) The instructors used the classrooms provided by the Language Institute at the designated times.

3. Income characteristics and payment types: (1) The instructors were paid hourly wages starting at ₩30,000 per hour in proportion to teaching hours; (2) The instructors paid business tax and not income tax, and were not registered for the four social security insurances.

IV. The Language Institute's Claims

The Language Institute's instructors cannot be judged as employees under the Labor Standards Act when they are measured against the criteria to judge a subordinate relationship with the employer as shown in recent Supreme Court rulings. There are some signs to suggest employee status, while other signs point against it. However, overall the signs denying employee status are much more obvious. Even those signs which suggest employee status were caused more by the job's distinct characteristics than by the employer's superior position. The Language Institute's foreign instructors stayed in Korea for a short period of time and earned money through freelancing activities while they lived here; furthermore they signed an agreement to provide teaching services freely on an equal footing with the Language Institute, at their own discretion.

1. Contract relations:

(1) The Language Instructors signed an 'Agreement for Teaching Services' freely on an equal footing with the Language Institute, at their own discretion, and understood the character of the agreement; (2) There was no continuous relationship in employment as the instructors' contract periods and service periods were for one year or less, and there was also no exclusive relationship in employment as they were free to work for other institutes outside their teaching hours; 3) There was no need for the instructors to own the equipment, raw material, or working tools because of the characteristics of the teaching job, and the instructor could not provide a substitute by hiring another instructor due to the continuous contract with him/her.

2. Working types: (1) Rules of Employment and Personnel Regulations were not applicable to the instructors; (2) The CCTV cameras installed in each classroom were not designed to supervise or control the teaching content, but to supplement and improve the instructors' lessons, to simplify dispute resolution with the students, and to protect the Language Institute and its instructors; (3) The Institute prepared the textbooks due to the fact that the instructors, as foreigners who only stayed in Korea for a short period of time, could not understand the content necessary for teaching or the requirements of the students, and were not ready to choose the textbooks by themselves; (4) The Language Institute did not supervise or direct the teaching content substantially; (5) The teaching hours and

teaching locations were basically determined by the students' requirements as they pertained to the Institute's characteristics, but the actual teaching times and places were decided after input from the instructors.

3. Income characteristics and payment types: (1) The maximum number of students for each class was fixed for the most part, and for those classes without a fixed number of attendees, the instructors rejected a payment system of income-sharing based on attendance; (2) The instructors were not paid a fixed or basic pay, paid business tax, not income tax, and were not registered for the four social security insurances, none of which were based on the Language Institute's superior status.

V. Judgment of Seoul Central District Court[6]

The instructors are employees who offer work to the employer, as subordinates of the employer, in a business or workplace, to earn wages in actual practice. Therefore the Institute has an obligation to pay the weekly holiday allowance, the annual paid leave allowance and severance pay.

1. Contract relations: (1) The instructors signed an 'Agreement for Teaching Services' to teach English and to receive payment in return, and they worked for their contract periods.
(2) The instructors were prohibited from working elsewhere or acting as a substitute for another person.

2. Working types: (1) The instructors worked for 3 to 6 hours per day, 4 to 5 days a week; (2) The Institute provided regular training sessions during the contract period to familiarize the instructors with the desired methods of teaching English conversation; (3) The instructors conducted their classes in accordance with a class schedule that was set through prior discussion with the Institute, based on the subjects and schedule that the Institute had determined beforehand. The Institute advised the instructors of the content of the classes, and the expected progress of the class was determined in advance by the Institute, in addition to which the Institute produced and distributed the textbooks used. The instructors taught in accordance with the class content, used textbooks as determined by the Institute and were prohibited from using other textbooks; (4) The Institute installed CCTV cameras in each classroom and monitored such things as whether the instructors were following class time-frames or not, the instructors' attitude in the class as well as the content of the class, and made notes and advised the instructor as to what changes were required in the class after such monitoring; (5) The instructors wrote and submitted evaluation sheets of each student's attitude and grade, etc., in accordance with the Institute's regulations, attended conferences hosted by the Institute and explained the content of classes to parents, attended training sessions and workshops to improve their teaching skills, sent text messages to encourage students during the midterm and final exams, and performed other

[6] Seoul District Court ruling on October 17, 2013. 2011gahap121413 (Employee Status of Native English Instructors of C Language Institute (First ruling - appealed.)

related tasks; (6) The Institute performed regular evaluations of the instructors' work performance and notified them of the results, pointed out necessary improvements and provided a form called 'Plans for Self-Improvement' with instructions to fill out and submit it to the Institute. At times, the Institute conducted individual interviews concerning evaluation results; (7) The Institute enforced the instructions to native English teachers with its Instructor Code of Conduct; (8) The Institute controlled the instructors' attendance by requiring them to arrive at the Institute 20 minutes prior to class time and log into the Institute's system; (9) The Institute required that the instructors get approval for holidays at least one month in advance, and provide 24-hour notice when requesting absence from class because of illness or other personal consideration.

3. Income characteristics and payment types: The instructors were paid monthly wages calculated by multiplying the number of working hours by hourly wages which varied between ₩28,000 and ₩45,000 per hour (differences were applied per person or per month) as previously determined, with no relationship to the number of students in attendance.

VI. Conclusion

C Language Institute has contracted native English instructors, not as employees, but as freelance contractors for the past twenty years, and has not paid any statutory allowances like severance pay required under the Labor Standards Act. Recently it has been the trend that the judicial rulings of the court have gradually widened the realm of employee status, changing the criteria by which employee status is judged. Items such as the outsourcing of contracts or use of commission contracts instead of employment contracts, payment of business tax and non-registration of the four social security insurances (all of which are easily determined by the employer due to his economically superior status), are considered to not be important factors in determining employee status. The most important factor in judging employee status is how much supervision the instructor received while providing labor service for money. On this point, the Seoul Central District Court's ruling can be expected to be based on practical employment relations. In particular, as native English instructors were hired through a working visa known as E-2 (Foreign Language Conversation Teaching), the 'Immigration Act' which requires native English teachers to work only for their contracted employer, applied to them. This means that as the instructors could only provide English teaching exclusively for the Language Institute to which they had contracted, following the Service Regulations, place of work, working hours, and fixed hourly salary as determined by the Language Institute, there is no argument that supports regarding them as freelancers who were never supervised. Accordingly, the native English instructors of C Language Institute will, in my opinion, be seen as employees protected by the Labor Standards Act.

Occupational Fatalities and Follow-up Actions

I. Occupational Fatalities: a Related Case

If an employee dies from an occupational accident, the employer must follow the procedures required by law and take actions deemed appropriate for the victim's family. When occupational fatalities occur at the workplace, the police will immediately begin investigating, while the company shall be required to begin discussing compensation and other necessary issues with the family so that funeral services can be conducted without delay. In relation to the above issues, I would like to look at one occupational fatality and the resulting actions taken by the employer, as a way to explain measures that companies can prepare in advance of any such tragedy.

Company A (hereinafter referred to as "the Company") operates a warehouse at Suwon airfield. At 8:20 in the morning on September 6, 2013, Employee A (hereinafter referred to as "the Employee") was in a warehouse guiding a forklift carrying air conditioning equipment. The air conditioner slipped off the left side of the forks and fell on the Employee, which caused serious injury. He was taken to Aju University Hospital in Suwon, where he died during emergency treatment. At this news, the Company called the police immediately to report the death. Once confirming the Employee had died, the police visited the accident site to begin their investigation. The Company called this labor attorney (who provides regular legal advisory services) in the afternoon of September 6, and requested answers to three urgent questions related to the procedures they were to follow in handling this accident.

The first question was "What recommendations do you have regarding overall handling of this occupational fatality, and the surviving family?" The second question was "While the Company handles this case through Industrial Accident Compensation Insurance, do we have other legal liabilities like civil claims or criminal charges?" The third question was "What process do we need to follow to have Industrial Accident Compensation Insurance cover this case?" *[For reference, the Employee was a senior citizen, 72 years of age, with a monthly average wage of ₩1,719,340, and a daily ordinary wage of ₩56,065].* This article will discuss the responses given to the Company's questions.

II. Handling Occupational Fatalities & the Surviving Family

First of all, as occupational fatalities are regarded as serious occupational accidents, the company shall immediately report it to the district Labor Office. The on-site manager shall begin discussions with the surviving family for funeral arrangements while the personnel team shall prepare to deal with the related corporate responsibilities. The following information details the major issues companies who face this tragedy must deal with: reporting a serious occupational accident, handling the surviving family, methods for compensating surviving family and calculating those industrial accident compensation benefits, and civil compensation for damages.

1. Immediate reporting of a serious occupational accident

In the case we are looking at, the Company shall immediately report the fatality to the police and the district Labor Office as this is a serious industrial accident. Should a company fail to report within 24 hours, a fine of up to ₩10 million will be levied.

□ **Reporting Incidence of Industrial Accidents (Article 10 of the Occupational Safety and Health Act: a fine up to ₩10 million will be levied for failure to report.)**

○ When an occupational death, injury or illness requiring medical treatment for four days or longer occurs, the employer shall report to the district Labor Office through an Occupational Accident Report Form within one month: Provided, that this shall not

apply if medical care benefits, survivors' benefits, or pensions for surviving family members have been applied for during that same period.

○ **When an occupational accident falls under one of the following serious occupational accidents, the report shall be made immediately:**
1. When the occupational accident results in the death of one or more employees; 2. When the occupational injuries of two or more requiring medical treatment for 3 months or longer has occurred at the same time; and 3. When the occupational injuries or illness of ten or more employees occur at the same time.

2. Handling the surviving family

The surviving family requested three items in a text message as required before conducting funeral services. The first was confirmation by the Company that the accident would be covered by Industrial Accident Compensation Insurance. Second was an agreement on the Company's responsibility in addition to industrial accident compensation and its related schedule. Third was an advance payment by the Company for medical expenses and funeral service fees. The Company responded in the following manner, and a three-day funeral service was held on September 8th (two days after the accident) on the basis of this response.

The company offers its response to the following items regarding your request by text message:

1. *Coverage by Industrial Accident Compensation Insurance: The company promises to handle this case through Industrial Accident Compensation Insurance, and will take care of it as soon as possible upon receipt of the necessary information from you.*
2. *The company's responsibility besides industrial accident compensation and its related schedule: If the company must be responsible for something more, we will accept that responsibility. We promise to meet and consult with the surviving family along with the company's appointed labor attorney and the surviving family's representative (or the surviving family's appointed labor attorney) on the date that the surviving family schedules.*
3. *Advance payment for medical expenses and funeral service fees: We are afraid that we are unable to pay the expenses in advance due to the fact that the fatality occurred suddenly and the funeral is scheduled for this weekend. Please cover the costs first and then we will reimburse you as quickly as possible. If the surviving family wishes, we will provide reimbursement for the medical expenses and funeral services on Monday, September 9th, the earliest time available for bank transactions.*

3. Calculating industrial accident compensation (survivors' pension and funeral expenses)

Surviving family members can request survivors' benefits and compensation for funeral expenses in accordance with the Industrial Accident Compensation Insurance Act, so it is desired for companies to calculate the benefits in advance. Compensation for occupational fatalities includes expenses for medical treatment and funeral services, and survivors' benefits. Lump sum payments for survivor's benefits in this case equaled ₩72,884,500, and for funeral expenses ₩9,300,770, for a total of ₩82,185,270. The details for compensation through Industrial Accident Compensation Insurance are as follows:

○ **Survivor's benefits:** 1,300 days' average wages;

Options for receipt of payment: 1) 100% Pension or 2) half pension and half lump sum. In this case, the total lump sum was calculated as ₩56,065 x 1,300 days = ₩72,884,500.

(1) 100% pension (the Employee's daily average wage was ₩56,065)

① Basic pension: ₩56,065 x 365 days x 0.47 = ₩9,617,950 per year

② Addition for Basic pension: ₩56,065 x 365 days x 0.05 x 1 = ₩1,023,186
(Up to four surviving family members can be added for additional basic pension: The victim's directly dependant family members – spouse, parents aged 60 or older, and children aged 19 or younger)
If the 100% pension is chosen, the total sum of ① and ② is ₩10,641,136. As this amount is divided by 12 months, the monthly payment would be ₩886,761.

(2) Half pension and half sump sum payment

① Lump sum: ₩72,884,500 x 50% = ₩36,442,250

② 50% pension: ₩886,761 x 50% = ₩443,380

○ **Funeral expenses:** 120 days' Average wages (Minimum: ₩9,300,770 ~ Maximum ₩13,051,700).
The calculation in this case was ₩56,065 x 120 days = ₩6,727,800. As this calculated amount is less than the minimum funeral expenses, the minimum amount, **₩9,300,770**, shall be paid.

Should the Employee's surviving wife die while the monthly pension payments made total less than the lump sum payment would have been, the remaining money shall be paid out in a lump sum to the next closest surviving family.

4. Civil claims on compensation for damage

When an employee dies from an occupational accident, as occurred in this case, the employer shall file for compensation through Industrial Accident Compensation Insurance, and then will be exempt from responsibility for such compensation. However, in cases where employer negligence (for example, a failure to take adequate safety precautions), results in the employee's death, the employer may also have civil liabilities to the victim's surviving family, in addition to industrial accident compensation.

Civil compensation for damages refers to all damages the victim suffered from proximate causal relations to the company's negligence. The judicial ruling divides such coverage of compensation for damages into three parts: direct damage, indirect damage and emotional damage. Direct damage due to occupational fatality would be medical and funeral expenses, while indirect damages would include the lost monthly wages for the period from death to retirement age and the lost severance pay due to early retirement; Emotional damages would be compensated by payment for consolation. General speaking, if the employee is younger or is less at fault than the employer, it is better for the family to choose civil compensation, as civil compensation for damages may far exceed the amount claimed for industrial accident compensation. However, in this case, as the victim was 72, lost monthly income would be significantly less, and lost severance pay would not occur, so only emotional damages would need to be decided.

For occupational fatalities, the Occupational Safety and Health Act regulates only medical care benefits, survivors' benefits, and funeral expenses. It does not include consolation payments, which means that such payments cannot be covered by industrial accident compensation. However, any benefits received for industrial accident compensation does not affect the right to claim civil compensation for emotional damage, meaning companies are not exempt from the responsibility to compensate for such damage. Accordingly, when an accident can be blamed on employer negligence, the surviving family can receive industrial accident compensation and claim civil compensation for emotional damages. The court will determine the amount of consolation payment in consideration of the victim's age, the degree of negligence, the amount of compensation received, etc.

III. Other Legal Responsibilities for Employers, such as Civil Claims & Criminal Charges While Claiming Industrial Accident Compensation

1. Industrial accident compensation and civil claims for compensation

In cases where the employer is not at fault, the victim (or victim's family) can only receive industrial accident compensation according to the Industrial Accident Compensation Insurance Act, but they cannot claim compensation for damages through the Civil Law for illegal actions by the employer. However, if the employer is determined to be at fault for the accident, then the victim (or the victim's family) can claim compensation for damage through the Civil Law for illegal actions by the employer, according to the degree of fault. Provided, that industrial accident compensation awarded can be deducted from any such claims.

2. Industrial accident compensation and claims for criminal damage compensation

If there exists a direct offender and victim relationship in an occupational fatality, the surviving family can seek compensation for criminal action against the individual offender. The company in this case will not be the subject of the claim, but may still be the target of an intensive audit by the labor inspector for compliance with industrial safety rules according to the Occupational Safety and Health Act, as the workplace had a serious industrial accident. If, during this audit, the company is found to have violated any of the safety rules, it would have criminal charges filed against it. Accordingly, workplaces suffering a serious occupational accident shall need to have made thorough preparations to ensure they are not in violation of the safety rules found in the Occupational Safety and Health Act.

Article 66-2 (Penal Provisions) of the Occupational Safety and Health Act: A person who has caused the death of a worker in violation of Article 23 (Safety Measures) (1) through (3), or Article 24 (Health Measures) (1) shall be punished by imprisonment for not more than seven years or a fine not exceeding 100 million won.

IV. Covering an Accident through Industrial Accident Compensation Insurance

Industrial accident compensation is commissioned to and handled by the Employee Welfare Corporation by the Ministry of Employment & Labor. Surviving family members shall apply to the district office of the Employee Welfare Corporation for the benefits by filling out the form, "Application for Survivors' Benefits and Funeral Expenses" and receiving the employer's confirmation signature on the form. In cases where a serious industrial accident has occurred, the employer shall report to the Ministry of Labor immediately, while for minor industrial accidents, the employer shall apply for industrial accident compensation within one month from the date the accident occurred, or can submit an Occupational Accident Report Form to the district Labor Office. For accidents that are very clearly occupational, as was the case for the accident described here, only two or three weeks are necessary to receive confirmation as an industrial accident and related compensation. However, for occupational illnesses, it will take a minimum of two months for confirmation as an industrial illness. The procedures for determining whether an accident or illness is occupational are: Application for medical care benefits → Confirmation of illness details → Analysis of relationship between working environment and illness → Confirmation of advisory medical doctor's opinion → Approval or rejection by the Occupational Illness Deliberation Committee.

The Inclusive Wage System and Its Limits

I. Introduction

The inclusive wage system where an employer pays a fixed monthly salary is convenient for management, but can only be applied in some situations, as it can easily violate the Labor Standards Act. The inclusive wage system is a salary payment system where the employer determines the total wages, which include statutory allowances such as overtime, night, and holiday work allowances in consideration of job characteristics and convenience in calculating wages, and then pays a fixed wage every month. This system is often designed for use at workplaces where it is hard to measure working hours due to the job characteristics or for the convenience of calculating working hours even though those working hours are measurable. However, this inclusive wage system is also commonly used to avoid paying various allowances required under the Labor Standards Act.

Originally, statutory allowances under the Labor Standards Act were meant to be paid for actual work provided. If an employer pays wages that include statutory allowances in advance, this could violate the Labor Standards Act, but is allowed, albeit with strict limitations as determined in judicial rulings and administrative guidelines.

There are two generally-accepted types of inclusive wage systems. The first is for special work where it is difficult to measure working hours. The second is for convenience of calculation. In the following paragraphs, I would like to look into the two types of inclusive wage systems, and then review their respective restrictions.

II. The Inclusive Wage System and Related Judicial Principles[7]

Article 17 of the Labor Standards Act stipulates, "An employer shall clearly state wages, contractual working hours, and other working conditions. For matters as to constituent items of wages and the calculation and payment methods of wages shall be specified in writing." Article 56 of the LSA regulates, "An employer shall pay an additional fifty percent or more of the ordinary wages for extended work, night work, or holiday work." Based upon these regulations and the rules stipulated concerning ordinary wages, in making an employment contract, the employer shall first determine basic pay, and then from this basic pay, shall calculate the statutory allowances such as overtime, night work, and holiday work allowances according to actual working hours.

In principle, the payment of wages is according to the number of working hours. There are exceptional cases where working hours cannot be measured when considering actual hours worked, employment types and job characteristics like surveillance and intermittent work. In this case, the employer can make a wage payment contract that follows an inclusive wage system where the employer and employee can determine a monthly or daily wage that reflects all allowances, including statutory, without deciding the basic pay in advance, or the employer can make an employment contract with fixed amounts inclusive of all statutory allowances, based only upon the previously determined basic pay, without considering the actual number of hours worked. This inclusive wage system is

[7] Supreme Court ruling on August 19, 2005, 2003Da66523

permissible when there is no disadvantage to the related workers or as a justifiable method in view of special situations related to those jobs.

However, if working hours of a specific job are measurable, the principle is to pay wages according to working hours as reflected in the Labor Standards Act, unless a special situation exists where the LSA requirements do not apply. Therefore, for an employer to create a wage payment contract that uses an inclusive wage system (paying a fixed amount for statutory allowances) regardless of the number of working hours, is to violate the Labor Standards Act in principle and is not allowable by law.

III. Inclusive Wage System for Jobs with Certain Characteristics

1. Application

Judicial rulings allow inclusive wage systems due to the special nature of work for cargo truck drivers whose working hours are difficult to measure, guards engaged in surveillance and intermittent work, workers contracted on a daily basis, part-timers with remarkably shorter contractual working hours, shift workers on 24-hour shifts, and other similar jobs. As for other jobs where the working hours cannot be measured in reality, if the employer and the employees agree to fixed overtime and holiday work allowances for a certain number of working hours each month, and if the employees have received those fixed allowances without complaint for a certain period of time, this inclusive wage system is allowed unless there is disadvantage to the employees when considering all circumstances.[8]

2. Related cases

(1) In cases where an inclusive wage payment system has been agreed upon in the employment contract, the inclusive wage that the employee receives for overtime work allowance and other allowances equivalent to overtime, night, and holiday allowances (in accordance with the Labor Standards Act) is an acceptable inclusion of overtime allowance, night work allowance and holiday work allowance. In cases where the inclusive wage payment system has been agreed upon at a workplace, the employer does not pay the difference in allowances for overtime.[9]

(2) The labor service that the employees provided to Construction Company "S" was to guard and patrol workplaces for 24 hours straight every second day: surveillance work with lower mental and physical stress. This work naturally included overtime, night, and holiday work exceeding standard working hours under the Labor Standards Act. The employment contract made between the employees and the Company was not one with an ordinary type of wage payment (basic pay plus various allowances), but an inclusive wage system that paid a fixed amount monthly that included various allowances, as it is difficult to measure the employees' working hours in terms of overtime, night, and holiday work due to the specific job characteristics. When they were initially hired, the employees agreed on such an inclusive wage system in consideration of the specific type of work, and had never complained about the validity of this system until their employment at

[8] Wage Team - 2534, Sep 1, 2006

[9] Supreme Court ruling on June 14, 2002, 2002Da16958

Apartment G was terminated. Considering the aforementioned items, the inclusive wage system in this case shall not be determined null and void. [10]

(3) The "basic labor fees" included in "service expenses" that KBS paid to its workers, in accordance with its broadcasting production expense regulations, is remuneration for work from 9am to 9pm. On the other hand, KBS has paid a fixed daily wage, in accordance with its payment criteria for temporary workers, regardless of the quantity or quality of their working hours in cases where workers have worked from 9am to 9pm. KBS workers, including the workers in this case, agreed to this fixed payment and have received it without complaint. Furthermore, as this fixed daily wage could not have been regarded as disadvantageous in view of the Rules of Employment applying to them, the inclusive wage system (which includes overtime) for work from 9am to 9pm between KBS and its workers is acceptable. Therefore, the related workers are not eligible for overtime allowances for work between 6pm and 9pm. [11]

IV. Inclusive Wage Systems for Convenience of Calculation

1. Application

When a job's working hours are measurable, but overtime and night hours are not included in the working details, the job description or job characteristics shall not contain an inclusive wage system. However, payment of an additional fixed allowance for overtime in accordance with the Rules of Employment or labor contract is acceptable if it makes calculation simpler and encourages people to work those hours. A typical example is a fixed overtime allowance. In this case, if an employee works more overtime than previously determined for the fixed overtime allowance, the employer shall pay an extra statutory allowance. However, if the employee has worked less overtime than previously determined for the fixed overtime allowance, the employer shall still pay the fixed overtime allowance. For an example, if the inclusive wage incorporates overtime allowance for 10 hours per week, the employment contract shall specify basic pay and the fixed overtime allowance in the salary details. The payroll data should have a separate item for fixed overtime allowance in the constituent items of wages.

2. Cases violating the inclusive wage system

(1) An employment contract designed around an inclusive wage system was agreed upon, and incorporated a lower monthly leave allowance than the allowance stipulated in the Labor Standards Act, and an annual leave allowance had not been agreed upon by the employer and employees. As these working conditions could be estimated as disadvantageous, an employment contract with such an inclusive wage system is null and void in terms of the sections on monthly and annual leave allowances.[12]

(2) When it has been agreed that the employment contract would include compensation in the monthly wage for unused annual and monthly leave, this is only valid in cases where

[10] Seoul Appellate Court ruling on July 23, 2004, 2004Na2740
[11] Supreme Court ruling on April 28, 2006, 2004Da66995
[12] Suwon Court ruling on Jan 11, 2008, 2007Na17199

the employer allows the employees receiving those allowances to take annual or monthly leave. In cases where the use of annual or monthly leave is not allowed, such a contract is not valid because the right to use annual or monthly leave is restricted. [13]

(3) In cases where an inclusive wage contract includes a fixed overtime allowance due to the unreasonable difficulty in calculating working hours, the employer shall pay the fixed overtime allowance even though the employee has not worked overtime. [14]

(4) Even though an inclusive wage system was agreed upon, such agreement is not valid in cases where the fixed overtime allowance is significantly lower than the amount calculated in accordance with the Labor Standards Act. In reviewing employment type and job characteristics, this wage structure was designed as an inclusive wage system that paid a certain fixed amount for overtime allowance, even though measuring the number of hours worked is not difficult in this case. After a "service allowance" ceased to be paid (since May 1, 2004), the fixed overtime allowance became noticeably lower than the overtime allowance calculated in accordance with the Labor Standards Act. Accordingly, the agreement to pay a lower amount under the inclusive wage system is null and void, and the company shall pay back a suitable amount that was not paid. [15]

V. Conclusion

The inclusive wage system is applicable to such employees as cargo truck drivers, guards, shift workers, daily workers, etc., where it is difficult to measure working hours due to the job characteristics. Applying this inclusive wage system to these types of jobs can provide reasonable and suitable wages, motivate employees, and make calculation of wages simpler. In cases where working hours are measurable, some companies have introduced inclusive wage systems that include all statutory allowances, as well as annual and monthly leave allowances and severance pay. This creates a high risk of violating the Labor Standards Act and can lead to labor disputes with the related employees. Therefore, employers need to well understand the inclusive wage system and its purposes, and need to refrain from abusing it, ensuring their employees receive appropriate wages that include statutory allowances, so as to avoid discouraging them.

[13] Labor Standards - 7485, Oct 19, 2004
[14] Kwangju Court ruling on Jun 30, 2010, 2009Na4816
[15] Supreme Court ruling on May 13, 2010, 2008Da6052

Unemployment Benefits

I. Employees Eligible for Unemployment Benefits

1. Who is eligible for employment benefits?

Employment benefits are paid to unemployed persons who are satisfying the following two criteria: the employee had to leave a job involuntary for reasons such as dismissal for managerial reasons, expiration of contract period, etc. after having worked more than 180 days during the last 18–month period, and the unemployed person is actively making efforts to become reemployed. However, unemployment benefits shall not be given in cases where the employee has left his/her job to transfer to another job or become self-employed or in cases where the employee is separated from employment following the advice of the employer or dismissed due to reasons attributable to him/herself.

※ Cases dismissed due to critical reasons attributable to employee

1. In cases where he/she is sentenced to imprisonment (without being assigned prison labor or more severe punishment) for violating the Criminal Act or laws relating to employment;
2. In case he/she has, on purpose, caused a considerable hindrance to the business or inflicted any damage to property due to embezzlement, disclosure of corporate secret, damage to property, etc. and
3. In case he/she has been absent from work for a long time without due notice and justifiable reasons.

* Though the employee who falls under one of the above items resigned voluntarily by the employer's advice, he/she shall not be eligible for recipient of unemployment benefit.

2. Can the employee receive unemployment benefit if he/she was hired while receiving unemployment benefit?

Unemployment benefit is paid to an unemployed person when he/she reports unemployment and was recognized as an eligible recipient, and when he/she made efforts for reemployment. Therefore, this beneficiary process requires the recognition of unemployment and evidence to prove efforts for reemployment for a unit period of three to four weeks. Therefore, in principle, the reemployed employee cannot be eligible for unemployment benefit. Provided that in case an eligible recipient is employed in a job that is deemed certain to keep him/her employed for more than six months, or in cases where an eligible recipient is deemed certain to run his/her own business for six months or more, then the reemployed person can get a certain portion (1/3 ~ 2/3 of the benefit still left) as an early reemployment incentive.

3. If the employee signed a letter of resignation, can he/she receive unemployment benefits?

In cases where the employee resigned from the company voluntarily due to reasons such as submitting a resignation letter because of a change of occupation, becoming self-

employed or going back to school, unemployment benefit shall not be given in principle. However, the employee can receive unemployment benefits under the following special circumstances:

Reasons for unemployment acceptable for eligible beneficiary
(Employment Insurance – Decree (Article 101 (2) – Table 2)

1. In cases where one of the following occurred for longer than two months within a one-year period prior to his/her resignation:
   A. Where his/her current working conditions decreased lower than those suggested at the time of employment or those generally applied during employment, or in cases where his/her payment of wages was delayed;
   B. Where his/her wages paid for contractual working hours was lower than the minimum wage under the Minimum Wage Act;
   C. Where the employer violated the restriction on extended work under Article 53 of the Labor Standards Act; or
   D. In cases where the allowance for business suspension was less than 70 percent of his/her average wage.
2. In cases where the company surely faces bankruptcy or cessation of business, or in cases where a massive personnel reduction is planned.
3. Under one of the following reasons, the employee was advised by the employer to voluntarily resign, or in cases where the employee resigned through the employer's promotion campaign for voluntary resignation in accordance with personnel reduction plan.
   A. Transfer, acquisition and merger of business, or partial cessation of business or change of business;
   B. Change of working environment due to closing or downsizing of the organization or the introduction of new technology/technical innovation; and
   C. Business deterioration, personnel redundancy or an equivalent reason.
4. In cases where it is hard to commute due to one of the following reasons:
   A. When the company relocates or the employee is transferred to a far-away workplace;
   B. When the employee moved to support his/her spouse or family; and
   C. When it is hard to commute to the company due to unavoidable reasons.
5. In cases where the employee had to nurse his/her parents or family member who is ill for more than 30 days.
6. In cases where the employee cannot fulfill his/her duties due to deteriorating health, mental and/or physical disorder, disease, injury, loss of eyesight, hearing or sense of touch.
7. In cases where the employee cannot fulfill his/her duties continuously due to pregnancy, childbirth, or military service under 'the Military Service Act'.
8. In cases where there is an assumption that ordinary employees might also resign from the company if they were under such similar circumstances.

II. Amount of Unemployment Benefit

1. How much can an unemployed person receive from unemployment benefits?

The unemployment benefit is 50% of the average wage prior to separation within the range of 90 to 240 days in accordance with the age and insured period as of separation time.

→ Maximum amount: 40,000 won per day

→ Minimum amount: daily contractual working hours x 90% of daily minimum wage

※ Beneficiary days of unemployment benefit

Insured period / Age	Less than 1 year	Over 1 year ~ less than 3	More than 3 ~ less than 5	More than 5 ~ less than 10	More than 10
Less than 30	90 days	90 days	120 days	150 days	180 days
30 ~ 50		120 days	150 days	180 days	210 days
Over 50 or the disabled		150 days	180 days	210 days	240 days

2. Until when can the unemployed person apply for unemployment benefits?

Even though an unemployed person is eligible for unemployment benefits, he/she cannot receive unemployment benefits if 12 months has passed from the day of separation. These 12 months are called 'period of benefit payment'. As unemployment benefits cannot be paid if the period of benefit payment expires, the unemployed person shall apply for the eligibility of benefit payment to the Employment Support Center without delay right after separation.

※ Reasons for extension of payment period (maximum extension is 4 years)

1) Injuries or diseases of the recipient (excluding injuries or diseases for which injury and disease benefits are being paid);
2) Injuries or diseases of the recipient's spouse or lineal ascendants or descendants;
3) Mandatory military service under the Military Service Act;
4) Detention or execution of sentence on criminal charges; and
5) Pregnancy, childbirth, and childcare (limited to within 3 years after birth of a child).

III. Payment Procedure of Unemployment Benefit

1. What do you do to receive unemployment benefits?

To receive unemployment benefits, the unemployed person shall visit the Employment Support Center in his/her location with identification documents, such as a Residence Certificate or Driver's License, immediately separation and report unemployment. The report of unemployment shall include an application for work and an application for the recognition of eligibility for benefit, and then the head of an Employment Security Office shall notify the applicant of the results of the decision within 14 days.

2. What is the recognition of unemployment?

The recognition of unemployment means that the head of an Employment Security Office recognizes that the unemployed person has actively engaged to become reemployed during a certain recognition period of unemployment, after unemployed person received the recognition of

beneficiary eligible for unemployment benefits. An eligible recipient shall present him/herself on a date of recognition of unemployment designated by the head of an Employment Security Office over the course of an one to four week period counted from the date of reporting unemployment and report the efforts made to be reemployed, and the head of the Employment Security Office shall recognize his/her unemployment based upon reported contents. An eligible recipient cannot receive unemployed benefit if he/she could not get the recognition of unemployment because of failure to attend the Employment Security Office.

3. What are active efforts to become reemployed?

An eligible recipient shall make active efforts to become reemployed (i.e., get a job) in accordance with the reemployment action plan completed on the first recognition day of unemployment so that he/she can get the recognition of unemployment. Here, reemployment action means the unemployed person's reemployment activities such as submission of job applications or participations in job interviews, and/or efforts to become self-employed. Job-seeking activities also include submission of job applications by mail, fax or email, participation in job interviews with recruiters in the job fair, or attending occupation guidance programs conducted by the Employment Security Office.

IV. Illegal Receiving of Unemployment Benefit

1. What is the illegal receiving of unemployment benefits?

Unemployment benefits are payable when the unemployed person is recognized as an eligible recipient by the head of an Employment Security Office and makes efforts to be reemployed during the recognition period of unemployment. It is illegal to receive unemployment benefits through false or other fraudulent methods.

※ The most common cases of illegally receiving benefits involve a person not reporting reemployment during the recognition period of unemployment or reporting it using fraudulent information, or that he/she made a false report regarding the reason for separation or his/her wages while employed.

2. What are the penalties for illegally receiving unemployment benefits?

If it is found that a person received unemployment benefits through illegal methods, he/she shall refund the benefit received and additionally pay the same amount equivalent to the illegally received benefit as a penalty. Further, his/her unemployment benefits will stop, and the person concerned could face criminal prosecution. If a company manager was involved in perpetuating the illegality, the employer shall also share joint responsibility with the person.

A. A small illegal benefit can be forgiven only once.
B. Criminal punishment can be pursued where a person violates the law twice, where two people or more collaborate and receive benefits illegally, and in cases where a person rejects the requests to repay the illegally received benefits despite repeated demands from the Employment Security Office.
C. In cases where illegal benefits were paid due to a falsified description on the company's confirmation of severance, an additional fine (2 ~ 3 million Won) will be charged to the company.

The Severance Pay System and the Retirement Pension Plan

I. Introduction

Before December 2005, there were only two types of retirement payments stipulated in the Labor Standards Act: the Statutory Severance Pay Plan to be paid upon resignation and the Interim Severance Pay Plan which could be paid while the employee was still employed. However, in December 2005, the Employee Retirement Benefit Security Act (hereinafter referred to as the ERBS Act) was enacted and introduced something new: the Retirement Pension Plan, which can take the form of either a Severance Pay System or a Retirement Pension Plan. The Retirement Pension Plan is also further broken down into three types: the Defined Benefit Plan, the Defined Contribution Plan and the Individual Retirement Plan. Under these plans and upon retirement, employees can receive gains made from investment of their pension funds, either as a lump sum or monthly pension from an outside financial agency.

The ERBS Act, revised July 26, 2012, strengthened the Retirement Benefit Plan to ensure the retirement benefit is used as income during old age, rather than extra income before retirement. Interim severance payments are now restricted, and one of only seven reasons must exist.[16] The Individual Retirement Plan has also been introduced. In cases where retirement pension holders resign before retirement, opening of an IRP is mandatory, and funds are transferred as a lump sum from the previous employer to either the new employer's pension plan, or an IRP account. The accumulated retirement benefit in this IRP account will, by law, be kept and managed until the employee is 55.

Hereafter, I would like to look at the differences between the severance pay system and the Retirement Pension Plan, the necessity for the Retirement Pension Plan, and details of the different types of pension plans.

II. Differences between the Severance Pay System and the Retirement Pension Plan

The differences between the Retirement Pension Plan and the Severance Pay System are as follows:

---

[16] Enforcement Decree (Article 3) of the Employee Retirement Pension Security Act (Reasons for Interim Severance Pay) ① 1. Where an employee who has not owned a house has purchased a house in his/her own name; 2. Where an employee who has not owned a house makes a "key money" deposit (according to Article 303 of the Civil Act) or a security deposit (according to Article 3-2 of the Housing Lease Protection Act) for the purpose of moving into a residence. In this case the employee can only apply for the retirement pension one time during employment in a company or business;
3. Where an employee, employee's spouse according to Article 50 (Paragraph 1) of the Income Tax Act, or his/her dependent family member has received medical care for six months or more;
4. Where an employee has been declared bankrupt under the Debtor Rehabilitation and Bankruptcy Act within five years from the time of providing the retirement reserve as collateral;
5. Where an employee has received a decision for commencement of a rehabilitation proceeding under the Debtor Rehabilitation and Bankruptcy Act within five years from the time of providing the retirement reserve as collateral;
6. Where wages are decreasing due to the Wage Peak System according to rules from Paragraph 1 ~ 3 of Article 28 (1) of the Enforcement Decree of the Employment Insurance Act; and
7. Where other reasons and conditions prescribed by Ordinance of the Ministry of Employment and Labor, such as natural disasters, etc., are met.

1. Under the Retirement Pension Plan, the company deposits the retirement contributions with an outside financial agency, and the employee receives a retirement benefit from the financial agency upon resignation. Under the Severance Pay System, the employer pays a pre-determined amount in severance pay upon employee resignation.
2. The Defined Benefit Plan is the same as the severance pay system, with the amount calculated in the same way: multiplying the average wage for each of the most recent three months by the years of service. The Defined Contribution Plan requires a deposit of 1/12 of the employee's annual salary every year, with the individual retirement benefit varying according to performance of fund investments.
3. In cases where an employee receives a lump sum from the Retirement Pension Plan, he/she shall receive it into an IRP. However, under the Severance Pay System, the employee can still receive a lump sum as before, as there is no obligation to transfer to an IRP in the Severance Pay System. However, the employee can open an IRP account and receive payment there if he or she wishes.
4. The Retirement Pension Plan guarantees the principal funds contributed, as they are managed by an outside agency. Under the Defined Benefit Plan also, the principal deposited outside is guaranteed. However, the Severance Pay System has a weakness in that should the company go bankrupt, the funds may not be available, since they were deposited within the company.
5. The Retirement Pension Plan requires regular retirement contributions to an outside agency, which can reduce the company's financial burden as it does not have to pay out large amounts upon resignation, contrary to the severance pay system. As the severance pay should be paid in full as a lump sum upon retirement, the company will have a heavier financial burden.

III. Necessity for and Introduction of the Retirement Pension Plan

1. Necessity for the Retirement Pension Plan

From the employee's perspective, the reasons necessitating the Retirement Pension Plan are as follows: Firstly, it is necessary to supplement the social welfare system. Currently, most people depend on the National Pension only. However, this is not enough for necessities. With three levels of social security (National Pension, Retirement Pension, and Individual Pension), the employee will be far better prepared. Secondly, it is necessary to protect the right for employees to secure their retirement benefits. If the company goes bankrupt, the employee will most likely not receive wages of any kind. To ensure benefits do not remain unpaid, companies shall deposit their contributions at an outside financial agency through the Retirement Pension Plan.

From the employer's perspective, the reasons necessitating the Retirement Pension Plan are as follows: Firstly, companies can reduce corporate tax through the Retirement Pension Plan. Only 20% of the retirement benefit reserve each year can be considered business expenses, and each year this percentage will be reduced 5% until 2016, when there will be no tax benefit at all. However, 100% of retirement reserve for the Retirement Pension Plan

can be claimed as a tax deduction each year. Secondly, the Defined Benefit Plan aids in reducing company debt, as the retirement pension deposit is deducted from the retirement reserve. The Defined Contribution plan allows the total amount the company has paid into the retirement benefit each fiscal year to be regarded as actual retirement payout, thereby reducing company debt. Thirdly, companies introducing the Retirement Pension Plan can also save from a reduction in wage claim premiums: 50% of the premiums multiplied by the guaranteed rate covered by the Defined Contribution retirement benefit.

2. Introduction of the Retirement Pension Plan

The employer shall establish pension regulations, obtain the consent of the employee representative, and permission from the Ministry of Employment & Labor before introducing the Retirement Pension Plan. Upon employee retirement, the financial agency shall pay out a lump sum or a regular pension from the retirement fund the employer deposited. The retirement pension company (trustee) will be a financial agency such as a bank, insurance company, or securities firm, and perform operational management and asset management. Operational management includes designing of the retirement pension, operational method of the assets, and administration. Asset management includes such tasks as depositing contributions and paying out retirement benefits, maintaining and managing assets, establishing and managing/operating the account.

IV. Types of Retirement Pension Plan

1. The Defined Benefit Retirement Plan (DB)

(1) Concept: Under the Defined Benefit plan the company deposits 60% or more of the retirement contributions expected for the year to an outside agency, and the financial agency pays 100% of the retirement benefit within its obligation to pay[17]. The Defined Benefit plan is characterized by a prior confirmation of the severance payment. This is calculated in the same way as in the existing Severance Pay System, and is equal to the final month's total wage. Severance pay is calculated by multiplying the average monthly wage (over the final 3 months) before resignation/retirement by the years of service.

(2) Characteristics: As the amount of retirement benefit is determined beforehand, plans for the retirement years are possible. As the company contributes to and manages the retirement reserve directly, the employee is free of those responsibilities. One disadvantage is that transferring the retirement deposits to another company is difficult. Depositing additional money or withdrawing money early is not allowed by law, but it is possible to borrow the money as a secured loan, for the following purposes: 1. First-time purchase of a house; 2. Medical treatment for 6 months or longer for the employee or his/her dependents; 3. Decision for commencement of a rehabilitation proceeding; 4. Bankruptcy; or 5. Other reasons and conditions such as natural disasters, etc., prescribed

[17] The Minimum Reserve is the amount equivalent to 60% of the Standard Mandatory Reserve from July 26, 2012 to the end of 2013. After this period, the Minimum Reserve is to increase 10% every two years, becoming 70% of the Standard Mandatory Reserve from 2014 to the end of 2015, then 80% of the Standard Mandatory Reserve from 2016 to the end of 2017, and the rate stipulated by decree of the Minister of Employment & Labor from 2018 on.

by Ordinance of the Ministry of Employment & Labor. The DB Plan is suitable for companies with job security, low turnover, and who provide high salary increases.

(3) Conditions for eligibility: The employee receives retirement pension or lump sum allowance upon retirement. The retirement pension is eligible for those who are 55 years old or older and have subscribed to it for 10 years or more. In this case, the beneficiary period shall be 5 years or longer. The lump sum payment is paid to those who were not eligible for pension and who want to receive it as a lump sum payment. This lump sum payment means that the retirement benefit is transferred to the IRP account.

2. The Defined Contribution Retirement Plan (DC)

(1) Concept: The level of contribution the employer and employee make is predetermined by pension law, with the employee's final retirement benefit determined by the company's contributions and the employee's investment gains. Investment outcomes are up to the employee and the final payment depends on the performance of his or her investments. The employer deposits 1/12 of the employee's annual salary every year. A retirement payment is deposited every month, like an interim severance payment. Final payout is determined by performance of the employee's investments. The employee's retirement benefit is equal to company contributions and investment returns.

(2) Characteristics: Employees can put additional money into this fund. As the fund is separately managed, it is easy to move it to another company, plus, payout can be higher than the Defined Benefit plan if the investment returns are good. However, management of the retirement funds is at the risk of each employee, who is responsible for choosing appropriate investments. The companies that are more suited to the Defined Contribution plan are 1) Companies with lower salary increases and 2) Companies implementing an annual salary system.

(3) Conditions for eligibility: The employer deposits 1/12 of the employee's annual salary every year. The employee manages the retirement fund, and will receive it as a monthly pension or lump sump payment upon retirement. The retirement pension is eligible for those who are 55 years old or older and have subscribed to for 10 years or more. In this case, the beneficiary period shall be 5 years or longer. The lump sum payment is paid to those who were not eligible for pension or who want to receive it as a lump sum payment. This lump sum payment means that the retirement benefit is transferred to the IRP account.

The Defined Contribution Plan holder can legally withdraw the deposit or borrow the money as a secured loan during employment for the following reasons: 1) First-time purchase of a house; 2) Medical treatment for 6 months or longer for the employee or his/her dependents; 3) Decision for commencement of a rehabilitation proceeding; 4) Bankruptcy; or 5) Other reasons and conditions such as natural disasters, etc., prescribed by Ordinance of the Ministry of Employment & Labor.

3. The Individual Retirement Plan (IRP)

(1) Concept: The Individual Retirement Plan can take the form of a Company IRP or an individual IRP. The Company IRP is a retirement pension plan as described in the Employee Retirement Benefit Security Act and is acceptable as a retirement benefit scheme for companies that employ 9 or fewer employees. It operates in basically the same way as the Defined Contribution plan, but companies do not have to create the pension rules. In cases where the company later employs 10 or more employees, the Defined Contribution plan shall be adopted. The Individual IRP was designed for the employee to be able to manage his or her own retirement benefit until retirement or until receiving it if resignation occurs earlier.

(2) Characteristics/ Conditions for eligibility: Under the Retirement Pension Plan, when the employee resigns or retires, the retirement benefit shall be transferred to an IRP. Upon reaching the age of 55, the employee can receive a regular retirement pension or lump sum payment. The IRP reserve cannot be withdrawn earlier than the required age except for the legal reasons described in Article 2 of the Enforcement Decree of the ERBS Act: Reasons for Offering Right to Receive Benefits as Collateral. However, The Retirement Pension Plan (DB, DC, Company IRP) shall be transferred to the IRP except in the following situations: 1) The subscriber receives payment after age 55 upon retirement; 2) The subscriber returns the borrowed money with wage collateral; 3) The retirement fund is equal to 1.5 million won or less, as stipulated by the Minister of Employment & Labor.

V. Conclusion

Although the Retirement Pension plans were introduced in December 2005, they have not yet been widely used due to the existing severance pay system. However, recent revisions to related law restricts interim severance payment and provides many incentives to introduce the Retirement Pension plans, incentives which are expected to gradually increase use of the Retirement Pension plans. Retirement benefits have often been used as an additional bonus to normal wages. However, they should be used as retirement benefits to supplement old-age security. Accordingly, these Retirement Pension plans should be encouraged further to help people have the funds they will need, through strategic government support. Employees also need to recognize that the retirement benefit is not money to be spent on pre-retirement costs, but is to be saved as a matter of course to prepare for the golden years.

Criteria for Evaluating Sexual Harassment and the Employer's Duty

I. Concept of sexual harassment

EQUAL EMPLOYMENT ACT, Article 2 (Definition)
(2) "Sexual harassment at work" in this Act refers to a situation where an employer, a senior, or an employee makes another employee feel sexually humiliated or offended by using sexually charged behavior or language using their high status at work or in relation to work, or provides a disadvantage in employment on account of a rejection of the sexual gesture or other requests.

1. Using their high status at work or in relation to work
(1) It means, no matter whether the situation takes place inside the workplace orin a public area, employer or employee use their status at work or in connection to work.
(2) Although it occurs beyond working hours and outside the workplace, it is sexual harassment if it is connected to work performance.
(3) The concept of workplace includes the customer' office, dinner with a business partner, business partner's or customer's etc., if there is a connection to work.
(4) Although there is no connection in regards to rank in the workplace, its a connection with the counterpart of a customer company that the employee has to contact in connection with work.

2. Environmental and conditional sexual harassment
(1) Environmental sexual harassment
Environmental sexual harassment is where an employer, a senior, or an employee sexually humiliates or offends another employee with sexually charged behavior or language using a higher status at work or in connection to work, or creates a disadvantage in their employment.
(2) Conditional sexual harassment
Conditional sexual harassment is where an employer, a senior, or an employee disadvantages another employee by using their higher status at work or in connection to work on account of rejection to sexual advances or demands.

II. Types and criteria of evaluating sexual harassment

1. Types of sexual harassment
[Implementation rule of the EEA (Attachment) - related to the Article 2 of the ACT]
A. Physical behaviors

(1) Behaviors such as physical contact like kissing, hugging, or hugging behind
(2) Behaviors such as touching the physical parts like breast, hip, etc.
(3) Behaviors such as forcing massage and caressing

B. Linguistic behaviors

(1) Behaviors such as saying a filthy joke or telling lustful and indecent words, including in telephone conversations)
(2) Behaviors such as likening appearance to sexual things or evaluating
(3) Behaviors such as asking about sexual relationships or facts, or intentionally distributing information of a sexual nature
(4) Behaviors such as forcing sexual relations or requesting sexual relations
(5) Behaviors such as forcing a female to sit close and fill glasses at a dinner meeting, etc.

C. Visual behaviors

(1) Behaviors such as putting up or showing lustful photos, pictures, drawings, etc., including distribution by email or fax
(2) Behaviors such as intentionally exposing or touching one's own physical parts in a sexual manner

D. Other language or behavior which makes other workers feel sexually humiliated or offended as a socially accepted notion

2. Criteria of evaluating sexual harassment

(1) Concept of criteria for evaluating sexual harassment

[Implementation rules of the EEA (Attachment)]

Whether or not evaluating sexual harassment, you should consider the victim's subjective conditions. As a socially accepted idea, you should also consider together how a reasonable person evaluates or copes with the situation against the particular controversial behaviors involved in the victim's case. Accordingly, you should review whether the situation created a threatening and hostile employment environment as a result and hindered work efficiency.

(2) Concrete contents of evaluating sexual harassment

A. Undesired behaviors

Whether a certain behavior belongs to sexual harassment shall be determined for each case after totally considering all situations and a record of the characteristics of the sexual language or behavior involved and the incident occurring background. Of course, it is not sexual harassment when two parties want or agree to have a sexual relationship.

However, it is sexual harassment when one party does not want such behavior. An undesired act shall not require repeating or recurring. A one time sexual act can be regarded as a sexual harassment.

B. Victim's perspective

Criteria of evaluating sexual harassment at work are situations where the victim felt sexually humiliated or offended. It can be sexual harassment if the victim felt sexually humiliated or offended. In this case, whether or not the offender intended to sexually harass cannot affect the evaluation criteria. That is, sexual harassment at work provides important criteria, which is how the victim was affected by the sexual language or behavior.

C. No clear expression of intention required

Recognition of sexual harassment does not require that the victim prove that the offender intented to sexually harass. The undesired behavior in practice shall be estimated objectively in consideration of the victim's language and behavior or surrounding circumstances.

D. Whole circumstances considered during the incident

Whether sexual harassment was or was not committed shall be reviewed by considering totally the record events and all surrounding circumstances. All facts and circumstances related to the work environment causing sexual harassment shall be organized and recorded totally and synthetically. Also, the review of the records shall be implemented from all points of view and considering all circumstances.

III. Employer's duties to prevent sexual harassment

Article 12 (Prohibition of Sexual Harassment at Work)

Employers, senior workers or workers shall not engage in sexual harassment at work.

Article 39 (Fine for Negligence)

(1) An employer who commits an action in violation of Article 12 shall be punished by a fine for negligence of ten million won or less.

Article 13 (Education To Prevent Sexual Harassment at Work)

(1) An employer shall implement an educational program to prevent sexual harassment at work and create a safe work environment for workers. The methods, content, and frequency of the program and other necessary requirements shall be determined by Presidential Decree.

Article 39 (Fine for Negligence)

(3) One who falls under any of the following subparagraphs shall be punished by a fine for negligence of 3 million won or less. 1. One who fails to implement the measures prescribed in Article 13(1).

*** Implementation Decree, Article 4 of the EEA

(1) The employer shall implement an educational program to prevent sexual harassment at work once or more per year.

(2) The preventive program shall include the following items.

1) Laws concerning sexual harassment

2) Procedures or criteria for remedy in the event of sexual harassment at work

3) Consultation for grievance and procedure for remedy to the victim of sexual harassment at work

4) Other necessary items to prevent sexual harassment at work

(3) A preventive program can be implemented through employee seminars, morning meetings, conferences in consideration of the size of the business and the situation. Provided, that simply distributing or putting up educational materials cannot be deemed as the implementing preventive training.

Article 14 (Measures to be taken in case of Sexual Harassment at Work)

(1) An employer shall take disciplinary actions and other equivalent measures without delay upon the finding of sexual harassment at work.

Article 39 (Fine for Negligence) (2) An employer who commits an action in violation of Article 14(1) shall be punished by a fine for negligence of five million won or less.

(3) An employer shall not take unfavorable measures such as dismissal, or other disadvantageous measures against a worker who was sexually harassed at work.

Article 37 (Penal Provisions) (2) An employer who commits an act in violation of Article 14(3) shall be punished by imprisonment of three years or less or a penalty of 20 million won or less.

Article 34 (Application to Dispatched Workers)

When the provision of Article 13(1) is applied to the workplace where dispatched workers are used pursuant to the Act relating to Protection, etc. for Dispatched Workers, the using employer prescribed in Article 2(4) of the Act relating to Protection, etc. for Dispatched Workers shall be regarded as the employer prescribed in this Act.

Procedures for Employers Handling Instances of Sexual Harassment[18]

I. Summary (Introduction)

Incidents of sexual harassment occurred in a Korean branch office (hereinafter referred to as "the Company") of a foreign company. The female employee victimized by the sexual harassment (hereinafter, "the victim-employee") submitted a petition to the National Human Rights Commission over the incidents. The victim-employee then informed the company of the petition she had submitted, and details within her statement to the Human Rights Commission. From this, the Company investigated the senior sales manager concerned (hereinafter, "Offender A"), estimated that his actions were sexual harassment, and then took appropriate disciplinary action against him. Shortly after, the Human Rights Commission transferred this case to the Gangnam Labor Office of the Ministry of Employment and Labor. On June 16, 2011, the Company received a written notice from the Labor Inspector in charge of sexual harassment cases, that there would be an investigative hearing. The Labor Inspector also informed the Company that there were two more alleged offenders that the victim-employee had not mentioned to the Company. After being informed of the additional alleged sexual harassment, the Company investigated the sales director (hereinafter, "Offender B") and the country manager (hereinafter, "Offender C"), and after evaluation, determined their behaviors were also sexual harassment, based upon their statements and the victim's, and took appropriate disciplinary actions against Offenders B and C. On June 28, 2011, the Company attended the investigative hearing at the Labor Office and explained the measures that it had taken appropriately according to related law. The Labor Inspector in charge agreed that the Company had taken the proper actions and closed the petition. However, the Labor Inspector discovered that the Company had not given any education to its employees to prevent sexual harassment at work in 2008 and 2009, but had started only in 2010. For this non-fulfillment of the Company's legal duty to provide education on sexual harassment prevention, the Company was fined 2 million won.

According to the 'Equal Employment and Work-Home Balance Assistance Act,' sexual harassment at work refers to "a situation where a person's superior or colleague harasses him/her with sexually-charged behavior or language," and it is the employer who is responsible to prevent sexual harassment at work and take appropriate measures if such harassment occurs. I would like to review the appropriate measures taken by the Company.

II. Details of the Sexual Harassment Case at Work

1. Sexual Harassment by Offender A

On April 27, 2011, during a team-building event at a company workshop with all employees (about 30), the victim-employee had to do something as a penalty in a game. The penalty was that she had to write her name with her backside. Before doing so, she

[18] A sexual harassment petition case at GangNam Labor Office from Apr to Jun 2011

told everybody that they couldn't take any video with their cameras or cell phones. The sales manager (Offender A) took a video of her with his cell phone secretly, saved it and forgot about it. On May 19, 2011, at a company dinner, Offender A remembered the video he had secretly recorded, and showed the video to his colleagues in turn. The conversation among those employees was sexually humiliating for the victim-employee, and included such expressions as "It would be fun to show this as a highlight at a Sales Kick-Off event," and "Since we can't see her face, send her ID picture to me with the video." The victim-employee demanded Offender A to delete the video, but Offender A did not do so. At this, the victim-employee informed the personnel team of her displeasure and requested a formal apology from him. Offender A would not offer a formal apology, and simply showed his displeasure at her informing the personnel team.

2. Sexual Harassment by Offender B

On May 19, 2011, at the same company dinner, Offender B wandered around, pouring traditional wine for his colleagues. When he came to the victim-employee's seat, he said to her, "Ms. Lee, you sat in my seat. You must like me" and sat beside her. He then said, "Shall we have a love shot?" The victim-employee was humiliated as he was suggesting that she was a "bar hostess" (a position which sometimes involves sexual behavior). The victim-employee very obviously did not like his suggestion, saying "That is a very dangerous thing to say." To which Offender B replied, "I'm not dangerous."

On March 29, 2011, at a company dinner, all the employees went to a Singing Room after dinner. There, while the victim-employee was singing a song by Sym Subong at someone's request, Offender B approached the victim-employee with a gesture in blue dancing, but the victim-employee avoided looking at him. After the song was finished, she sang another song by Ju Hyunme, which talked about a 'confession of love' many times. When she returned to her seat, Offender B said to her, "You were talking to me. That story was about me, right?"

On February 11, 2011, at a company dinner, Offender B approached the victim-employee and said, "Let's hug each other!" It was hard for the victim-employee to refuse in front of all her colleagues, so she patted his shoulder from a distance. The victim-employee began to wonder seriously how she could continue working with her manager (Offender B) who, without hesitation, had shown sexually-charged behavior and caused this humiliation to a married employee at a company dinner with their colleagues.

3. Sexual Harassment by Offender C

On March 29, 2011, the victim-employee was trying to get out of the company dinner because she was humiliated by Offender B's sexual behavior, but after giving it more thought, she went to the country manager (Offender C) to say 'good-bye'. When she said to him, "I have to go home early," Offender C offered his hand to shake hers. Shortly after they shook, Offender C said goodbye again, wanted to shake hands again, and attempted to kiss her hand. Surprised, the victim-employee took her hand back quickly, but some of

her fingers touched Offender C's lips. The victim-employee was very embarrassed, shocked, and humiliated.

III. Company Recognition of Sexual Harassment and Handling Procedures

1. Employer procedures in dealing with sexual harassment complaints

Upon receiving a complaint of sexual harassment, the employer will conduct interviews, investigate the facts, implement appropriate measures such as disciplinary punishment, etc. and then inform the victim-employee.

-1st Stage: Receipt of the sexual harassment complaint (HR or Labor Department)

-2nd Stage: Interview and investigation

Upon receiving the complaint, the person-in-charge is to quickly set up an interview and begin a thorough investigation. If necessary, the investigator can hear the defendant's testimony instead by organizing a face-to-face meeting between him/her and the victim.

The person-in-charge shall weigh the collected information obtained during the investigation. As soon as the person-in-charge reaches a final conclusion, it shall be reported to the employer.

-3rd Stage: Confirmation and disciplinary measures

If it is confirmed that sexual harassment has occurred, the employer shall take appropriate action against the offender, such as a transfer to another department or position, warning, reprimand, work suspension, or dismissal, etc.

-4th Stage: Report of the results

Upon closing the investigation, the company shall notify the victim and the offender of the results.

-5th Stage: Preventative action

The employer shall pay special attention to the victim-employee after the closure of the sexual harassment case to prevent further sexual harassment of that employee.

2. The Company's handling of the above cases of sexual harassment

When it recognized the victim-employee's accusations regarding sexual harassment, the Company immediately requested statements from the victim-employee and the alleged offenders. As the country manager (Offender C) was involved in this case, the Company used a labor attorney to interview the victim-employee and the alleged offenders and receive their statements, to ensure fair conclusions. After receiving their statements and witness accounts, the Company determined the related behaviors were sexual harassment according to the criteria for evaluating whether certain behavior is sexual harassment at work. In this process, the Company handled the investigations quickly and confidentially, in order to protect the alleged offenders and the victim-employee at the same time. The alleged offenders resisted this investigation, saying they did not intend to harass her sexually. However, the Company explained to them seriously of the criteria for determining the existence of sexual harassment, "In evaluating whether certain behavior is sexual harassment or not, the victim's subjective conditions must be considered. As a socially accepted idea, how a reasonable person evaluates or copes with a situation against the particular controversial behaviors involved must also be considered in the victim's

case." The Company concluded that the three men's behaviors were sexual harassment and they were disciplined in accordance with the level of their violations. After this, the Company invited an external expert, (a labor attorney), and implemented training for all employees towards preventing sexual harassment at work. The Company also strove to prevent the reoccurrence of any sexual harassment by posting a notification on the bulletin board, detailing ways to prevent any further sexual harassment in the work environment.

The Company held a Disciplinary Action Committee composed of three members designated by the Company in accordance with the disciplinary regulations in the Rules of Employment, and took disciplinary action after reviewing the disciplinary details. There are five types of discipline: 1) written warning, 2) wage reduction, 3) suspension from work, 4) recommended resignation, and 5) dismissal. The Company decided the level of discipline according to the level of violation as follows.

A. Offender A: ① 10% wage reduction from one month's salary; ② Suspension of promotion for six months; ③ Official apology to the victim in front of company directors
B. Offender B: ① Written warning; ② 2.5% wage reduction from one month's salary (July)
C. Offender C: Written warning

IV. Conclusion

These cases of sexual harassment at work were related to environmental sexual harassment, and the employees recognized that their behavior at company dinners could be interpreted as sexual harassment even if they didn't think much about it. These cases brought some educational benefit to the Company as well as the employees realized that their unintentional behavior could be interpreted as sexual harassment because the criteria for determining sexual harassment is partly judged from the victim's perspective, rather than the offender's intention. In addition, this case contributes to the building of healthy relationships between employees. The Company was able to protect the victim from being further humiliated, through appropriate measures against sexual harassment. The Company also took appropriate action to prevent a repeat of sexual harassment by determining acceptable discipline for the offenders, carrying that discipline out, and providing education to prevent sexual harassment of other employees.

Due to the victim-employee's complaint of sexual harassment to the Labor Office, the Company was investigated to determine whether or not it had followed the employer procedures for handling sexual harassment complaints. The Labor Office found that the Company had carried out its duties as employer very well according to the Equal Employment Act, except for one, which was skipping its obligation for two years before setting up sexual harassment education last year. As already mentioned, the Company was fined 2 million won for two occurrences of failing to provide education to prevent sexual harassment. Beyond this, the victim-employee's petition to the Labor Office was concluded without any further penalty or demand.

<Attachment>

Major Changes to Labor Laws in 2013-2014

No	Subject	Details	Related Law & Implementation Date
1	**Minimum wage**	- Hourly wage: ₩5,210 - Daily wage (8 hours): ₩41,680 - Monthly wage (40 hours/week = 209 hours): ₩1,088,890	Notification of Minimum Wage for 2014 (Jan 1, 2014)
2	**Scope of "discriminatory treatment" for fixed-term and part-time employees and dispatched employees**	○ "Discriminatory treatment" to include wage, regular incentive, welfare, working conditions, etc.	Fixed-term & Part-time Employees Act (Sep 23, 2013) Dispatched Employees Act (Sep 23, 2013)
3	**Occupational safety & health**	○ Adding agriculture, fishing, software development companies with 300 employees or more to the businesses requiring a health and safety manager. ○ Adding manufacturers of wigs and similar products and sewing companies to the businesses requiring a safety manager. ○ Adding construction companies with construction revenues of ₩8 billion or more and construction companies with 600 employees or more to the businesses requiring a health manager.	Presidential Decree of the Occupational Safety & Health Act (Jan 1, 2014)
4	**Paternity leave for employees of companies with fewer than 300 employees**	○ **3 days' paid paternity leave mandatory for companies with fewer than 300 employees** (+2 additional unpaid leave days available)	Article 19 of the Equal Employment Act (Feb 2, 2013)
5	**Family care leave for companies with fewer than 300 employees**	○ **Family care leave mandatory for companies with fewer than 300 employees**	Article 19 of the Equal Employment Act (Feb 2, 2013)
6	**Workplaces ordinarily employing fewer than 5: Company responsible for severance pay**	○ 100% of severance pay to be paid by companies for the period since Jan 1, 2013 (50% for the period between Dec 2010 and Dec 2012).	Article 8-2 of the Equal Employment Act (Jan. 1, 2013)

7	**Wage Claim Guarantee Fund**	○ Omitted the clause to reduce the burden of Wage Claim Guarantee Fund for employers employing fewer than 5 workers	Deleted – Article 10 (paragraph (1) of the Wage Claim Guarantee Act (Jan 1, 2013)
8	**Calculation of fine for failure to hire disabled employees**	* Basic fine: 3/4 or more of required disabled employees hired * Basic fine + additional 1/4 of basic fine: 1/2 or more to less than 3/4 of required disabled employees hired * Basic fine + additional 1/2 of basic fine: Less than 1/2 of required disabled employees hired * Monthly minimum wage: charged to companies (ordinarily employing 100 employees or more) that have not hired any disabled employees	Act on Employment Promotion and Vocational Rehabilitation for Disabled Persons (Jan, 2013)
9	**Introduction of peak wage system for reduced working hours**	As a result of the peak wage system *Working hours are reduced to 15 hours or more, but 30 hours or lower per week * Wages are reduced by 30% or more over the previous year	Article 28 of Employment Insurance Act Enforcement Decree (Jan, 2013)
10	**Industrial Accident Compensation Insurance: survivor's pension**	* Survivor's pension: Beneficiary age of children or grandchildren has been extended to a maximum of 19 years. * Age limitation eliminated for male spouses to receive survivor's benefit.	Article 63, 64 of Industrial Accident Compensation Insurance Act (Implemented Dec 18, 2012)
11	**Substitute holiday**	*If a long holiday such as Lunar New Year's Day or Chuseok Day falls on a weekend day (ie, Saturday or Sunday), the following business day shall also be regarded as a holiday. *If Children's Day falls on a weekend day (ie, Saturday or Sunday), the following business day shall also be regarded as a holiday.	Act on Public Holidays for Public Employees
12	**Introduction of retirement age**	*Shall apply to companies with 300 employees or more from January 1, 2016. *Shall apply to companies with fewer than 300 employees from January 1, 2017	Article 19 of the "Act on Prohibition of Age Discrimination in Employment & Aged Employment Promotion"