# Weekly Working Hours in the Revised Labor Standards Act (2018)

## I. Clear Definition of '1 Week' and Maximum Working Hours per Week

### 1. Main contents

States clearly that 1 week is 7 days and shortens the maximum number of working hours per week from 68 to 52.

### 2. Enforcement Date

Enforced in phases by size of business.

- March 07, 2018: All public institutions; private-sector businesses employing 300 or more employees
  (For those businesses with 300 or more employees but among the 21 fields excluded as special cases, the enforcement date will be July 01, 2019.)
- January 1, 2020: Businesses with between 50 and 299 employees
- July 1, 2021: Businesses with between 5 and 49 employees

## II. Holiday Work Allowance

### 1. Main contents

- Employers shall pay wages, additional to the ordinary wage, of 50 percent or more of the ordinary wage thereof for up to 8 hours of holiday work.
- Employers shall pay wages, additional to the ordinary wage, of 100 percent or more of ordinary wage thereof for hours of holiday work, if the total holiday work exceeds 8 hours.

### 2. Enforcement Date : Enforced upon promulgation.

## III. Permission for Special Extended Work (applicable only to businesses employing fewer than 30 employees)

### 1. Main contents

- Considering that it is difficult for a business with less than 30 employees to shorten its working hours, special extended work is permitted during a certain period(by December 31, 2022).
- The maximum extended working hours shall be 8 hours pursuant to agreement between labor and management.
- Supplementary provision: Labor and management shall discuss extensive application of the Flexible Work Hours System by December 31, 2022.

### 2. Enforcement Date

Temporarily applicable from July 2021 (System of 52 working hours per week is enforced) to December 2022.

## IV. Complete Introduction of Rules on Holidays of Public Agencies

### 1. Main contents

- Public holidays pursuant to Rules on Holidays of Public Agencies also apply to workers of private-sector companies. An employer may, through a written agreement with the labor representative, grant workers paid leave on a particular working day, in substitution of a public holiday.
- Public holidays guaranteed as paid holidays shall be designated by Presidential Decree. It is estimated that at least 15 days of holidays a year will be given to workers.

### 2. Enforcement Date

- January 1, 2020: Businesses with 300 or more employees
- January 1, 2021: Businesses with between 50 and 299 employees
- January 1, 2022: Businesses with between 5 and 49 employees

Additional opinion: After research on actual conditions, the Minister of Employment and Labor will submit plans for support to the National Assembly if necessary.

## V. Reduced Number of Businesses Classified as Special Cases from 26 to 5

### 1. Main contents

- Ground transportation, water transportation, air transportation, all other transportation services and health services
- Of transportation services, buses on regular routes are excluded from classification as special cases.
- At least 11 hours is guaranteed as consecutive rest hours for the 5 remaining businesses stated above, coming into effect September 1, 2018.

## VI. Coordination of working hours of minor workers

### 1. Main contents

- The number of working hours per week has been shortened from 46 to 40.

# Explanation of the Guidelines on How to Handle Commuting Accidents

## I. Background to Recognizing a Commuting Accident as Work-related

Although Industrial Accident Compensation Insurance (IACI) has not applied to accidents that occur while commuting in principle, accidents which occur during a commute using transportation provided by the employer or equivalent have been acknowledged as industrial accidents. Even if two similar accidents occur while commuting, the accident that occurred while using transportation provided by the employer was recognized as a work-related accident, while an accident which occurred while commuting on foot or using personal or public transportation was not so recognized. The Constitutional Court ruled that this application was unconstitutional and violated the principle of equality. The Court made a decision as non-constitutional for the related legal provision, stating that a legislative amendment was to be made by the end of 2017.[1] Accordingly, the related provision was revised on September 28, 2017, and beginning January 1, 2018, accident insurance has been applied to accidents occurring during normal commutes.

## II. Revisions of the IACI Act and Guidelines for Accidents Occurring during Commutes[2]

### 1. Related legal provisions

**A. Industrial Accident Compensation Insurance Act: Article 37 (Standards for Recognition of Occupational Accidents)**

(1) If a worker suffers any injury, disease, or disability or dies due to any of the following causes, it shall be deemed an occupational accident: Provided, that this shall not apply where there is no proximate causal relation between his/her duties and the accident:

1. Accident on duty: (Contents omitted)
2. Occupational disease: (Contents omitted)
3. Accident occurring during a commute:
   (A) Accidents that occur while commuting to work under the control of the employer, such as using transportation provided by the employer or equivalent transportation;
   (B) Accidents that occur while commuting to work in common routes and manners.

(2) No injury, disease, disability or death of a worker due to his/her intentional action, self-harm or other criminal act, or caused by such act shall be deemed an occupational accident. (The following omitted).

[1] The Constitutional Court ruling on Sep. 29, 2016, 2014 Hunba 254 (Article 37 (1)-C of IACI Act)

[2] The Employee Welfare Corporation, 「Guidelines of How to Handle Accidents Occurring during a Commute」, 2017-48, Dec. 28, 2017

(3) If there is a deviation or interruption of the commuting route as per Subparagraph 3 (B) of Paragraph (1), the accident during the deviation or interruption and subsequent movement during the commute shall not be regarded as a work-related accident. However, if the deviation or interruption of the commuting route is an act necessary for daily life and there is a reason prescribed by Presidential Decree, it shall be deemed to be a work-related commuting accident.

B**. Enforcement Decree of IACI Act: Article 35 (Accident during commuting)**

(1) If an accident that occurred while a worker was commuting to work falls under all of the requirements of the following subparagraphs, it shall be deemed to be a commuting accident according to Article 37 (1) 3 of the Act.

1. An accident will have occurred while using the means of transportation provided by the employer for commuting or the means provided by the employer.
2. The management or use of the means of transportation used for commuting should not belong to exclusive workers.

(2) In the proviso of Article 37 (3) of the IACI Act, the term "the reason prescribed by Presidential Decree as an act necessary for daily life" means any of the following instances:

1. Buying necessary supplies for daily life;
2. Receiving education or training in accordance with Article 2 of the Higher Education Act or at vocational education and training institutions under Article 2 of the Vocational Education and Training Promotion Ac」 which can contribute to vocational ability development;
3. Exercising the right to vote;
4. Taking or bringing a child or disabled person under the care of an employee to a child care or educational institution;
5. Receiving medical treatment at a medical institution or public health center for the purpose of treating or preventing a disease;
6. Caring for a family member at a medical institution in a family that needs the worker's care;
7. Acts in accordance with the provisions of Items 1 to 6 which the Minister of Employment and Labor considers to be necessary for daily life, such as buying supplies necessary for daily life.

## 2. Guidelines for handling accidents which occur while commuting

(1) Basic concept of commuting: The term "commuting" refers to the movement between a residence and a place of employment or movement from one place of employment to another place of employment (Article 5 (8) of the IACI). An “accident occurring while commuting” is accepted as work-related if it occurs while traveling in relation to employment. That is, an accident occurring during the commute movement process is applicable, but not an accident which occurs while staying in a specific place on the route.

(2) Principles for recognizing work-related accidents for regular commuting: Accidents during commute are those that meet all of the following requirements, since the risks associated with normal commuting are specified:

① It must be a moving act that makes the "place of employment" such as a company, factory etc. and the "home" such as personal residence, etc. as a start or end point;

② It is assumed that the commuting activity is to be carried out before work begins or after the work is done;

③ It is assumed that commuting acts will be carried out according to "conventional routes and methods" in a social sense, and that there will be no "deviation or interruption".

# III. Specific Criteria for Determining Commuting Accidents as Work-related[3]

## 1. Residence

"Residence" refers to a base for providing labor or housing in which a worker practically resides. Therefore, all of the following instances are accepted as a residence:

① Sheltered residence: A place where a worker, alone or with a spouse, child, parent, or grandparent has lived or is expected to live for a considerable period of time.

② Non-lodging residence: When it is difficult to move daily considering the distance, time, and transportation difficulties between a residence and place of work, it becomes necessary to arrange for separate accommodation nearer the place of work and to commute to and from this place.

③ Temporary housing: Temporary accommodation for unavoidable reasons such as work, traffic disruption, natural disasters, etc.

## 2. Employment Relevance and Place of Employment

(1) Employment Relevance: In Article 5 (8) of the Act, the term "in relation to employment" refers to any act in which commuting is related to going to or coming home from work. In the event of an accident occurring beyond the normal commute time, it is necessary to check the facts such as the specific schedule before or after the work time and the distance between the residence and the workplace to judge whether the work is relevant or not. If a worker stops working after a considerable amount of time in the workplace (within approximately two hours) due to non-work reasons after the work day has finished, this is interpreted as having no employment relevance.

(2) Concept of place of employment: "Place of employment" is a place where workers provide labor, and it is a place where ordinary work is performed in accordance with labor contracts and employment rules, such as company and factory offices.

## 3. Usual commuting routes and methods

A "usual commuting route" means a route between residential and employment locations, or places of employment and places of employment, that can be utilized by ordinary people. Therefore, if an accident occurs outside the normal commuting route, it is not recognized as a commuting accident. "Usual commuting method" means the use of transportation in a rational way as recognized by socially-accepted rationale.

[3] Korea Labor Welfare Corporation, 「A Guide for Compensation of Accidents caused while Commuting」, Compensation 2018-da-2, January 2018.

**4. Deviation and suspension from route**

(1) "Deviation from route" refers to an act that differs from the ordinary commuting route, while "suspension from route" refers to an act that does not relate to commuting while on the commuting route. The deviation or stopping on the commute route must be caused by private activity not related to the purpose of the commute. However, minor acts (such as picking up a newspaper, getting gas, having a cup of coffee, washroom breaks, or having a shower) that normally occur during commute time are not regarded as deviations or interruptions from the route.

(2) Exceptions to application of deviations and suspension from route (① ~ ⑦ below): Exceptions to deviation and suspension from route due to activities necessary for daily life that may occur during normal commuting are recognized as exceptions. In the case of a recognized deviation or suspension from route, only an accident on the move is protected; not the whole process.

① Purchasing goods necessary for everyday life: Purchase of daily necessities is judged based on comprehensive consideration of the location and distance of the place of sale, necessity of action, urgency, time required, etc.

② Education or training that can contribute to vocational ability development in the vocational education and training institutions pursuant to Article 2 of the Higher Education Act or Article 2 of the Vocational Education and Training Promotion Act: Deviations and suspensions from route in order to participate in some hobby club or exercise are excluded. However, even if it is a flower arrangement or a sports dance, deviations and suspensions from route for the development of vocational abilities, such as acquisition of qualifications other than hobbies, are recognized.

③ The right to participate in voting or the right to vote: The right to participate in voting means the right to vote by participating in an election (the presidential election and the parliamentary election are typical), and the term "referendum" means an act in which a citizen of a certain age exercises the right to vote on important matters of national policy.

④ The act of bringing a child or disabled person virtually protected by an employee to a child care institution or an educational institution or bringing him/her from an institution: "Child" means a person who is in the age range of childcare, kindergarten, elementary, middle and high school. "Persons with disabilities" means a person with disabilities covered under the Welfare of Persons with Disabilities Act.

⑤ An act to receive medical care for treatment or prevention of disease at a medical institution or public health center: It is permitted to detour for medical treatment or preventive purposes during a commute, but not for everyday life items such as consultation for cosmetic purposes.

⑥ Caring for a family member at a medical institution: To take care of a family member etc. who is hospitalized at a medical institution.

⑦ Acts that are in conformity with the provisions of Items 1 to 6 and which the Minister of Employment and Labor deems necessary for daily life:

Acts that comply with the provisions of No. 1: Activities that occur repeatedly for the purpose of daily living (going to a laundry, repairing shoes). Acts of daily living, such as eating, drinking,

ablutions, etc.; an act performed through business necessity (eating a meal at work on the grounds that there is no restaurant in the workplace; bathing outside the workplace because the business does not have shower facilities)

Acts in conformity with the provisions of No. 2: Participate in training for improvement of vocational skills at academies. To be educated or trained for improvement of vocational ability, such as a foreign language academy, computer academy (Hangul, Excel etc.), driver's license school.

Acts in accordance with the provisions of No. 3: Exercising the right to vote as prescribed by law, such as the election of labor union officers or the election of apartment tenants' officers.

Acts in conformity with No. 4: The act of bringing a child or a disabled person to a nursing home, not a childcare institution, or bringing him/her to a consignment agency such as a welfare center for the disabled or a daycare facility.

Acts in accordance with the provisions of No. 5: attending a health center or smoking cessation clinic.

Acts in accordance with Regulation 6: Caring for a family member in a nursing home or similar place where the address is different from that of the worker.

5. Judging whether or not a criminal act applies:

According to Article 37 (2) of the IACI Act, commuting accidents caused by criminal activities (drunk driving, unlicensed driving, intruding on the main line, etc.) are not accepted as commuting accidents in principle.

## IV. Note: General information related to commuting accidents

### 1. Comparison between IAC insurance and automobile insurance

| | **IAC Insurance** | **Automobile Insurance** |
|---|---|---|
| Benefits | ①Medical care benefits, ②Suspension benefits, ③Nursing benefits, ④Rehabilitation benefits, ⑤Disability benefits, ⑥Injury-disease compensation annuity, ⑦Survivors' benefits, ⑧Funeral expenses | ①Medical care benefits, ②Injury insurance, ③Disability insurance, ④Death insurance, ⑤Funeral expenses, ⑥Consolation money |
| Faultrate | Take no responsibility | Take responsibility |
| Alimony | No alimony | Alimony (consolation money) |
| Payments | Pension or lump payment<br>(Pension is available for disability grade 7 or higher) | Lump sum payment (no pension) |
| Details | Survivors' pension (monthly pension calculation)<br>100% pension = daily average wage x 365 x 47/100/12<br>* Each pension subject person will be added 5 from 47. | Insurance benefit = actual income x number of available working months x labor loss rate x Leibnitz coefficient<br>* Only 2/3 of the actual income at the time of death is recognized (living expenses deduction). |

**★ Application: Comparison of industrial accident insurance and automobile insurance in case of death[4]**

(Assumption: 35-year-old employee with a monthly average wage of KRW 3 million, dependents: wife and one child, 50% responsibility).

| Division | IAC Insurance | Automobile Insurance |
|---|---|---|
| Pension /Insurance | 100% pension (month): KRW 1,896,058 = KRW 97,826 x 365 x 57/100/12 (Receiving monthly allowance until the spouse dies.) | Death insurance (lump sum payment): KRW 3,000,000 x 2/3 x 171.06 x 50% (responsibility) = KRW 171,060,000 |
| Funeral expenses | KRW 97,826 x 120 days = KRW 11,739,120 | KRW 5,000,000 x 50% = KRW 2,500,000 |
| Damage compensation | No damage compensation | KRW 80,000,000 x 50% = KRW 40,000,000 |
| Details | * Over 10 years: KRW 155,266,113 = KRW 203,526,993 + 11,739,120<br>* Over 20 years: KRW 418,793,106 = 407,053,986 + 11,739,120 | Total amount: KRW 213,560,000 (Lump sum payment, no pension). |

If a commuting accident is related to an automobile accident, the worker can choose which type of insurance to apply; either industrial accident compensation insurance or automobile insurance, depending on the degree of compensation. As a general criterion for this choice: 1) industrial accidents are more favorable for those with a disability grade 7 or higher; 2) automobile insurance is advantageous for those younger in age or with less responsibility for the accident. The industrial accident compensation insurance is compensated at a fixed amount irrespective of fault.

## 2. Whether the premium rate increases or not due to IACI applications

For industrial accident compensation insurance treatment due to a commuting accident, it is not an accident occurring under the control of the employer because commuting accidents occur outside the workplace. Therefore, it does not affect the insurance premium.

[4] Ilwoo Lee, "Major issues on revision of law on commuting accidents", Monthly Labor Law, February 2018.

# The Employment System for Foreign Workers and Available Remedies for Violation of Their Legal Rights[5]

## I. Introduction

Korea is now an "aged society" in addition to having low fertility rates, and has been introducing more foreign workers due to the resulting labor shortages. As of the end of October 2017, 2.14 million foreign nationals reside in Korea, accounting for 4.1% of the total population. That number is predicted to exceed 3 million within four years, which will be equivalent to 5.8% of Korea's total population.

There are about 1.42 million foreign workers who remain in the country under an employment relationship. More specifically, there are 294,000 non-professional workers (20.7 percent), 833,000 overseas Korean workers (58.7 percent), 48,000 professionals (3.7 percent) with legal visa status, and 244,000 illegal workers (17.2%).[6]

If foreign workers are to continue working here, they should be protected under labor law without discrimination. In practice, however, this does not happen the way it should. Some of the reasons include: ① the difficulty foreign workers have in identifying their rights in Korea because of their lack of ability to communicate; ② the absence of freedom of movement due to strict controls under the Immigration Act; ③ the limitations they have on choosing their workplace; and ④ the institutional problems that make legal remedy difficult to receive for violation of their rights. It is a matter of basic human rights for foreign workers to work where they are entitled to a life worthy of human beings and the right to pursue happiness, and the nation and the company have an obligation to protect these rights. Labor rights guaranteed by the Labor Standards Act are the minimum protections for human dignity, so that foreign workers can work in pursuit of this happiness.[7]

In the following section, I will look at Korea's employment system for foreigners, remedies for violation of their rights, and ways to make improvements.

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[5] Based on Bongsoo Jung, 「A Study on the Employment System for Foreign Workers and Available Remedies for Violation of Their Legal Rights」, PhD thesis for Ajou University, 2018.

[6] Employee Status (Source: Ministry of Justice, "Monthly Statistics of Immigration", October 2017.

| Division | | (i) Non-professional Workers | | (ii) Overseas Koreans | | | | (iii) Professional | (iv) Illegal Workers |
|---|---|---|---|---|---|---|---|---|---|
| Visa | Total Persons/Total Percentage | E-9 Non-professional | E-10 Ship crewmen | H-2 (Working visit) | F-4 (Overseas Korean) | F-5 (Permanent resident) | (Family visitation/ residence) (F1,2) | Prof. etc. (E-1/ E-7) | - |
| Persons | | 278,308 | 16,026 | 229,901 | 409,178 | 89,067 | 105,666 | | |
| Persons | 1,420,901 | 294,334 | | 833,812 | | | | 48,721 | 244,034 |
| Rate (%) | 100% | 20.7% | | 58.7% | | | | 3.4% | 17.2% |

[7] Hyojae Cho, 「Human Rights Odyssey」, Kyoyangin, Feb 2015, pg. 322.

# II. Employment Systems in Major Countries & Global Standards

## 1. Global Standards

Korea joined the United Nations (UN) and the International Labour Organization (ILO) in September 1991. It has ratified seven of the eight UN human rights treaties (year of Korean ratification in parentheses): ① the International Covenant on Economic, Social and Cultural Rights (1966); ② the International Covenant on Civil and Political Rights (1966); ③ the Convention on the Elimination of All Forms of Racial Discrimination (1978); ④ the Convention on the Elimination of All Forms of Discrimination against Women (1984); ⑤ the Convention on the Rights of the Child (1990); ⑥ the Convention for the Prevention of Torture (1995); and ⑦ the Convention on the Rights of Persons with Disabilities (2009). The UN Convention on the Rights of Foreign Workers (1990), which the Korean government has not yet ratified, contains provisions that would require Korea to change its current law on foreign workers' human rights to meet global standards.[8] However, since the Convention on the Rights of Foreign Workers is an internationally-recognized standard for labor rights, it is an important reference point for policymaking on foreigners in Korea.[9]

Korea has also ratified the following ILO conventions: ① Convention No. 111 on Employment and Occupational Discrimination (1998) and ② Convention No. 19 on Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents (2001). Korea has not yet ratified the 97th Foreign Workers Convention (of 1949) and the 143rd Convention on Migrant Workers (Supplementary Provisions, of 1975). The 97th Migrant Worker Convention allows family companions, but the Korean Employment Permit System does not. The 143rd Convention on Migrant Workers (Supplementary Provisions) includes provisions that Korea cannot accept: illegal workers cannot be discriminated against; foreign workers can accompany their families; and illegal workers have the same social security protections as legal workers.

## 2. The Foreign Employment Systems in Major Countries

In Germany, foreigners make up about 8.7% of the total population and are an essential part of the workforce, maintaining harmonious economic activities with domestic workers. In order to prevent domestic conflict and reduce social costs, professional foreign workers who can contribute to economic development are accepted on a preferential basis to stay for a long period of time while non-professional foreign workers are controlled to maintain a short-term

[8] Not meeting global standards include the failure to protect family reunification, restrictions on workplace changes, the exclusion of health insurance coverage for illegal workers, restrictions on freedom of choice, etc.

[9] Sunsoo Kim, "Human rights for foreign workers", 「Hwanghae Culture」 No. 15, Saeul Cultural Foundation, June 1997, pg. 194.

cyclical system. Germany has also been embracing policies friendly to German workers from overseas. In 2005, an integrated immigration law was enacted which seeks to integrate foreign workers by providing them with German language and vocational skills education.

In Japan, foreigners accounted for 2.1% of the total population in 2015, with governments there maintaining conservative policies on their introduction as part of the workforce. Trainee systems are in place that do not recognize trainees as workers. Entry of non-professional foreign workers is strictly controlled to keep social costs down, while professional foreign workers are welcomed. There are primarily three ways Japan minimize the number of non-professional, non-Japanese foreign workers. First, simple work allows hiring of foreign workers, but only as industrial trainees through a “trainee practice system” rather than as workers. In effect, foreigners are employed for up to three years as short-term circulating trainees considered vulnerable under international labor standards. Second, Japan invites overseas Japanese workers from South America to work as permanent residents. Third, domestic foreign students are actively employed as short-time workers, able to work up to 20 hours a week and mostly in the services sector.

The United States was populated by immigrants to become the nation it is today, and the government still allows more than one million foreigners entry every year: 800,000 immigrants and 200,000 foreign workers. Foreign workers are accepted into three categories: about 85,000 H-1B (professional foreign workers), about 66,000 H-2B (non-farm workers) per year, and workers in agriculture (H-2) who are accepted without restriction in numbers in order to deal with the scarcity of labor in rural areas. Such non-professional foreign workers are used in short-term circulation for work in the agriculture and services sectors for a period of up to three years. After this period, they must leave the country. On the other hand, professional foreign workers are institutionalized to encourage them to stay long-term.

In Singapore, about 30% of the total population is made up of foreign workers. Singapore divides foreign workers into professional, semi-professional, and non-professional. People in the first two categories are strongly encouraged to stay, while non-professional foreign workers are used short-term for labor contracts of up to 4 years. In order to recruit a worker for simple work, the employer must pay a security deposit of SGD 5000 per person and pay a monthly employment levy. In addition, quotas are set for each workplace dictating how many foreigners they can hire. The professional workforce can stay on an unlimited basis as long as they are employed.

## III. Korea’s Employment System for Foreign Workers

In Korea, non-professional foreign workers are currently introduced and managed through the Employment Permit System, while professional foreign workers are managed according to their immigration status in accordance with the Immigration Control Act. It is difficult to overcome the social conflict and backwardness of the industrial structure from having the

Employment Permit System manage only non-professional workers.

We need to look at the employment systems for overseas Koreans and professional foreigners as well as non-professional foreigners to maintain a balance. Herein, I review the current status and problems with the employment systems in Korea, and suggest ways to improve them in reality.

First, I look at improving the protection of human rights for non-professional foreign workers. Specifically, ① granting the freedom to choose their workplace, ② granting the freedom to change their employer, ③ maintenance of a short-term circulation policy, and ④ decreasing illegal stays.

Second, I suggest active efforts to employ overseas Korean workers. This will necessitate abolishing the current employment system (H-2) and giving overseas Koreans in China and the states of the former Soviet Union a status of residence as overseas Koreans (F-4) from developed countries. In addition, the government would be wise to support education towards social integration for Korean workers on a systematic basis and assist them as they settle in Korea. Through this, the social costs of an increase in non-professional foreign workers will be reduced and needed numbers added to the labor force.

Third, I suggest plans to expand the introduction of professional foreign workers in the following ways: (1) Introduce a work permit system exclusively for professional foreign workers; (2) Integrate the management of professional foreign workers into the Foreigners' Employment Act; (3) Establish a synergistic relationship between the Immigration Control Act and the Labor Standards Act; and (4) Promote the active employment of foreign students in Korea.

## IV. Available Remedies for Violation of Foreign Workers' Legal Rights

I review the current status and problems surrounding protection of foreign worker rights in individual employment relations, collective labor relations, social insurances and foreign workers' insurance, and also suggest measures for improvement.

First, in terms of individual employment relations, details would include:

① Guaranteeing equal treatment: Prohibition of discrimination is the principle. However, in reality, when rules for exceptions recognize rationality, discrimination based on those rules is recognized as just discrimination. These rules are: (i) discrimination in working conditions based on proficiency with the Korean language, years of service, etc.; (ii) discrimination based on contractual terms of fixed-term workers under the Fixed-term Employment Act (Article 4); and (iii) discrimination by visa classification according to the Immigration Act (Article 17). However, if the degree of discrimination is excessive and violates the principle of proportion, it cannot be recognized as reasonable discrimination.

② Providing annual paid leave: This applies to foreign workers under statutory working conditions. Annual paid leave is a statutory leave granted as part of compensation for a

month's or a year's work, but in reality, it is rarely given to foreign workers. [10]

③ Establishing an exclusive administrative window for handling foreigners: Foreign workers are presently assisted by the system of Foreign Counseling Centers because they cannot communicate through general administrative offices and cannot have their rights-related complaints addressed. These centers do not represent a permanent remedy system but offer temporary specialized counseling and do not have administrative authority. Therefore, labor supervisors should be dispatched to these centers to give them that authority. The Anti-Corruption and Civil Rights Commission also advised the Ministry of Employment and Labor to grant administrative authority to Foreign Counseling Centers to resolve the complaints of foreign workers.[11]

④ Introducing a legal system for foreign workers that integrates the Labor Standards Act and the Immigration Act.

Second, in terms of collective labor relations, details would include:

① The three labor rights must be guaranteed to improve working conditions. Current law and court rulings guarantee union activities for foreigners, but union activities will be limited due to the fixed contract periods of the members. Therefore, foreign workers should be actively accommodated by unit labor unions in the workplace or incorporated into local unions if they work at unorganized workplaces.

② The labor-management cooperation system needs to be revived and receive the participation of foreign workers.

Third, regarding social insurances for foreign workers, details would include: ① Regarding unemployment insurance, foreign workers should be required to subscribe, and more should receive vocational skills education. If foreign workers subscribe to unemployment insurance, they would be eligible for more than unemployment benefits, as allowances for maternity leave and childcare leave would kick in (Article 6 of the Employment Insurance);

② Regarding industrial accident compensation insurance, workplaces presently excluded from agricultural and livelihood coverage need to be included;

③ Regarding national health insurance, even illegal immigrants must be required to subscribe. National policy excludes the application of national health insurance for illegal workers, in order to prevent illegal stays (Article 109 of the National Health Insurance Act). However, the health of foreign workers should be protected as a fundamental human right.

④ Regarding national pension, as non-professional workers return to their home countries after serving a short period, the requirement to subscribe to Korea's national pension scheme should be waived as they are not entitled to the benefits. Paying premiums for benefits they will never receive is a drain on the foreign worker as well as their employer. For professional foreign workers or overseas Korean workers who are able to stay for a long time, it is

[10] Amnesty International, "Exploitation and forced labor of migrant agricultural workers in South Korea", Oct 2014, pp. 29-30.

[11] Anti-Corruption and Civil Rights Commission, 「Improvement of the Employment Permit System to improve the treatment of foreign workers」, Mar 2015, pg. 20.

reasonable to require that they subscribe. As long-term care insurance for the elderly (part of the national health insurance scheme) kicks in for long-term hospitalization after age 65, non-professional foreign workers can apply for exemption from paying the related premiums. Following the same logic, the national pension system will need to be revised to allow non-professional foreign workers to apply for exemptions.

⑤ Regarding foreign workers' insurance, it is necessary for foreign workers staying long term to be able to receive severance pay upon termination of employment, rather than the foreign workers' departure guarantee (equivalent to severance pay) that can be collected only when leaving the country. This latter system is a violation of property rights and discrimination against foreigners by imposing restrictions on retirement pay, which is the part of wage to be paid to resigning workers on condition of resignation. Although the Constitutional Court has decided that it is a legal action taken to prevent illegal stays, it is necessary to supplement the system so that it allows foreign workers to stay for a long time to receive the foreign workers' departure guarantee as retirement allowance before they depart only as an exception.

## V. Conclusion

When evaluating Korea's employment system for foreigners, it is important to see the advantages and disadvantages together of their use and protect their human rights. The changes proposed above to these employment and remedy systems for foreign workers will enable Korea to develop as a society where foreigners and Koreans can work together and coexist harmoniously. Therefore, foreigners who stay for a long time should no longer be considered foreigners, but acknowledged and accepted as our neighbors and fellow residents.

# Korean Labor Laws as the Continent Law and Professional Legal Qualifications in Korea

Authors: Bongsoo Jung / Kumsung Ryu / Gerald Staruiala

## I. Introduction

When giving a consultation to foreigners with regards to Korean labor law, there may be a difficulty in communication. Sometimes, such difficulty results from difference of ordinary usage of a term but, in many more cases, it is due to difference of each country's legal system and from which each country's laws originates.

Basically, fundamental of laws of almost all countries can be classified into the Continental Law system and the Common Law system. Korea has adopted the German Continental Law system whereas English speaking countries have adopted the Common Law System. Each System is a basis of judiciary judgement, which differs in how the judge determines a case, etc.

Meanwhile, Korea acknowledges several certified public professional qualification in addition to Attorney at Law, which needs proper explanation to foreigners in English speaking countries (Hereinafter, the “foreigner” here in this article refers to foreigner in English speaking countries.). I'd like to explain the difference of legal and attorney systems as below.

## II. The Common Law System vs The Continental Law System[12]

### 1. Execution of public law and judicial powers of administration under the Continental Law System

The Continental system started with the French Revolution. According to the declaration of human rights, all law that is the expression of the “volonté générale” is determined by the legislature, the assemblée nationale. The court is only the body that applies the law. The power to make the law has totally shifted from the court to the legislature. The second most important step towards an autonomous new legal system was made by Napoleon. He provided for the whole administration a new type of law, the public law, which was not any more under the jurisdiction of the traditional courts.

The Korean Legal System is based upon such Continental Legal, widely adopted by European Countries, System with Korean Social Philosophy. However, the Continental Legal System, the

[12] Discussion regarding the Common Law and the Continental Law has referred to [Common Law and Continental Law: Two Legal Systems, April 22, 2005, Professor Thomas Fleiner, Director, Institute of Federalism, Fribourg, Swiss]

Korean Legal System and the responsibilities and authorities of each of the Ministries of the Government of Korea in their role in the implementation of the Korean Legal System is widely unknown by Foreigners; workers, or managers alike in English speaking countries.

Foreigners may not understand well that the Civil servants of the public administration protecting the public interest by administrative proceedings (part of public law) are provided with the power to execute and enforce public law. For example, according to Korean Labor Standards Act, a labor inspector, who is the Civil servant of the Ministry of the Employment and Labor shall have the authority to perform the official duties of the judicial police officer in accordance with the Act relating to Persons to Perform Duties of Judicial Police and Scope of the Duties with regard to the crimes in violation of this Act or other laws or decrees pertaining to labor affairs (Article 102 (5) of Labor Standards Act). An employer or a worker shall, without delay, report on matters required, or shall present himself, if the Minister of Labor, the Labor Relations Commission under the Labor Relations Commission Act (hereinafter referred to as the “Labor Relations Commission”) or a Labor Inspector requests to do so in relation to the enforcement of Labor Standards Act (Article 13 of Labor Standards Act), and any person who fails to report or present him/herself or makes a false report in response to a request from the Minister of Employment and Labor, the Labor Relations Commission or a labor inspector or any person who refuses, avoids or otherwise obstructs a clinical or medical examination conducted by a labor inspector or a doctor designated by a labor inspector ; fails to answer his/her question or gives an false answer ; fails to submit books and documents ; or submits false books and documents shall be punished by a fine for offense not exceeding five million won. Meanwhile, the Continental law system, which has been largely followed by Korea gives to the minister or its administration judicial powers and judicial functions, with which foreigners are not familiar. (However, United States has the National Labor Relations Board which is an independent federal agency and quasi-judicial body under the National Labor Relations Act) As the best example, according to Korea Labor Standards Act, the Labor Relations Commission is authorized to issue a remedy order to the employer, if the case is determined to constitute an unfair dismissal, etc., after the completion of the inquiry, and dismiss the application for remedy if the case is determined not to constitute an unfair dismissal, etc. (Article 30 (1) of Labor Standards Act) the effect of remedy order, dismissal decisions or decisions on reexamination rendered by the Labor Relations Commission shall not be suspended by an application for reexamination to the National Labor Relations Commission or by the initiation of an administrative lawsuit(Article 32 of Labor Standards Act), and if no application for reexamination is made or no administrative lawsuit is filed within the certain period, the remedy order, dismissal decision or decision on reexamination shall be finally confirmed. In addition, a person who fails to comply with a remedy order confirmed or confirmed after the filing of an administrative lawsuit, or a decision rendered after the reexamination of a remedy order shall be punished by imprisonment of up to one year or a fine not exceeding ten million won(Article 111 of Labor Standards Act).

## 2. Difference Between a Perception of the Common Law and That of the Continent Law towards Rights and Obligations

Foreigners will not understand the Legal process in Korea entails the administration finding the facts, to establish the “truth” and to decide according to its own findings what is in the common interest (best for the Society of the Republic of Korea). In the common law perception the one who wins the case is “right” whereas according to the continental European perception the one that is “right” is the one who wins the case. Foreigners in English speaking countries will be familiar with a Common Law system and will expect that a “Lawyer” will make a clever legal argument to “convince” the Judge that they are “Right” and the other party is “wrong”, the process is very adversarial.

Further, foreigners will be familiar with that once the “Judge” is convinced that the Foreigner’s “Lawyer” is “Right” then the “Judge” will “decide” the punishment and in the event there is not a “traditional punishment” then the “Judge” has the power to determine what the “punishment” will entail. Foreigners do not understand that in the Legislative Body creates the Public Law, the Administration (Ministries as an extension of the Legislative Body) have the power to implement and to enforce their decisions implementing public law statutes and even to punish people who disobey their decisions or the obligations or prohibitions regulated by labor law statutes. Foreigners will not understand that the statutes ratified by the Korean Legislators contain rights and obligations because Foreigners will be under the standing that a right or an obligation can only be created by the judge and a sentence of the court. The idea of a unified legal system, which includes all possible legal rights and obligations, is not familiar to the common law tradition. According to the perception of the Common Law tradition, the one who wins the case is right. Rights and obligations are not given by the law, they are determined in cases decided by the court, and with an adversarial procedure. For this reason, in the United States, Canada, the UK and other Common Law systems, labor law made by the legislature was criticized as being much more partisanin the interest of the employers.

On the contrary to the Common Law System, in the Korean Legal System, case law is to be secondary and subordinate to statutory law including labor laws. Thus the rules of the procedure before the court have to help the judge to find justice and to let the party who is in the right win the case. Justice is not considered to be a result of the case, but as the source of the rights to be found by the judge. Foreigners will not understand that the Ministry of Labor and Employment is responsible for the Administration of many Statues as the “Government Administrative Organ” and it is the responsibility of the Ministry of Labor, through their decisions, to implement labor law statutes and even to punish people who disobey their decisions or the obligations or prohibitions regulated by labor law statutes. Especially, since Korean labor laws are basically compulsory which sets the minimum standards, an employment contract which establishes working conditions which do not meet the standards provided for in labor laws shall be null and void to that extent, and those conditions invalidated shall be governed by the standards provided in this Act.

## III. Professional Legal Qualifications (Attorney at Law, Certified Judicial Scrivener and Certified Public Labor Attorney)

### 1. Attorney at Law

In Korea, the duties of an attorney-at-law shall be to perform acts related to lawsuits, representation in claims for administrative dispositions or other general legal affairs as delegated by parties or other persons concerned or as commissioned by the State, local governments or public agencies (hereinafter referred to as "public agencies") (Article 3 of Attorney at Law Act). Foreigners from Common Law Legal systems will only be aware of the terms “Lawyer” or “Attorney”.
If the Foreigners are from the UK, they may be aware of the terms “Barrister” who represents clients in the higher courts of law and “Solicitor” who mainly gives legal advice, prepares legal documents. Foreigners from the USA, Canada etc., will be familiar with the services that a Korean Attorney at Law provides their legal services. An American Attorney or Canadian Attorney have almost the same responsibilities, rights, powers and duties in the courts and to their clients.

### 2. Certified Judicial Scrivener

According to Certified Judicial Scriveners Act, a judicial scriveners perform such duties as a. Preparation of documents to present to a court or the Public Prosecutors’ Office; b. Preparation of documents related to the affairs of a court or the Public Prosecutors’ Office; c. Preparation of documents necessary for registration or application for registration; d. Proxy of application for registration and a case of deposit; e. Consultation on acquisition of property, proxy of application for purchase or application for bidding in an auction case under the Civil Execution Act and a public auction case under the National Tax Collection Act or other statutes, etc(Article 2 of Certified Judicial Scriveners Act). In terms of their duty of preparation documents related to the affairs of a court, they are similar to duties of Solicitor in UK.

### 3. Certified Public Labor Attorney

According to Certified Public Labor Attorney Act, a person who has passed a qualification examination for certified public labor attorneys shall be qualified for a certified public labor attorney (Article 3 of Certified Public Labor Attorney Act) and performs a. Acting as a representative or an agent for notification, application, report, statement, request (including filing a complaint, a request for examination and a request for a trial) and remedy of rights etc., made to the authorities under labor-related Acts and subordinate statutes ; b. Preparing and confirming all the documents under labor-related Acts and subordinate statutes ; c. Consultation and guidance regarding labor-related Acts and subordinate statutes and labor management ; d. Labor management diagnosis for businesses or workplaces to which the

Labor Standards Act is applicable ; and e. Private mediation or arbitration prescribed in the Labor Union and Labor Relations Adjustment Act(Article 2 of Certified Public Labor Attorney Act). Such introduction of certification of public labor attorney is closely relevant with execution of public law and judicial powers of administration under the Continental Law System.

The concept of Certified Public Attorneys will be unknown to most Foreigners. The terms “Public” is in reference to Public Law and since they will come usually from a Continental Law system, and not a Common Legal System, they will not know that in Korea the “Labor Laws”, which are administrated by the Ministry of Labor and Employment, and the adjudication process of the administrative tribunal (i.e. Labor Commission) requires that the Plaintiffs are able to provide the Power of Attorney to people who have specialized in the Study of the Labor Laws if they want professional legal aid. Further, many foreigners tend to have the greatest challenge in understanding that a Certified Public Labor Attorney is a Specialist Legal Service Provider who has dedicated thousands of hours of hard work, and tends to be far more efficient, cost effective in dealing with labor issues in Korea. Many “Foreign Legal Consultants” from America may refer to Korean Certified Public Attorneys as “Paralegal” mistakenly, and it indicates that the Foreign Legal Consultant does not fully understand the basis of the Korean Legal System.

# Protection of Motherhood

## I. Understanding Motherhood Protection

The Korean government is taking steps to protect motherhood through specific provisions stipulated by the Constitution of the Republic of Korea[13] as well as other practical provisions stipulated by various labor laws. Despite these protection laws, the birthrate has decreased to an average of just 1.17 persons per couple as of 2016, and the government has strengthened its efforts in response towards revising labor laws designed to promote workforce participation by women and also increase the birthrate. I present here a summary of the most recent laws and revisions concerning protection of and support for motherhood.

## II. Protection of Maternal Employees

A . Protection of Mat refers to a woman who is pregnant or is within her first year after childbirth, and is therefore provided special protection under the various laws so designed.

### 1. Employment in hazardous/dangerous work prohibited

Employers shall not assign maternal employees to mentally and physically hazardous work. In addition, they shall not assign women aged 18 or older who are not pregnant to work that is hazardous to their possible future pregnancy and/or childbirth. Occupations that are prohibited are described in the attached Table 4 of the Presidential Decree. (Article 65 of the LSA (Labor Standards Act)).

### 2. Restrictions on extended work, night work and holiday work

**(1) Extended work**

Employers shall not place pregnant female employees on overtime duty or flexible work, and, in the event of such a request from the employee, she shall be assigned light duties. Employers shall not permit women who have had less than one year since childbirth to work more than 2 hours in overtime per 8-hour work day, and 6 hours per work week of 40 hours, even if so agreed in a collective agreement (Article 51, 71, 74 of the LSA).

**(2) Night work and holiday work (Article 70 of the LSA)**

Employers shall not assign maternal employees to work at night (from 10 P.M to 6 A.M.) or on holidays. However, exception to such restrictions on night work and holiday work are possible

[13] Constitution of the Republic of Korea (Article 36, Subparagraph 2): The State shall endeavor to protect mothers.

in cases where the employer obtains permission in advance from the Minister of Employment & Labor and 1) there is consent from the employee with less than one year since childbirth; or 2) a pregnant woman makes such a request.

## 3. Protection leave for maternal employees

### (1) Maternity leave

Employers shall grant pregnant female employees 90 days of maternity leave (120 days if a woman is pregnant with two or more babies), to be used before and after childbirth. In such cases, a minimum of 45 days (60 days for multiple babies) shall be allocated after childbirth. At the end of the maternity leave, the employer shall allow the female employee to return to the same work, or other work at the same rate of pay, as before the leave. The first 60 days (75 days for multiple babies) of leave shall be paid leave. The remaining 30 days (or 45 days for multiple babies) qualify for reimbursement of up to 1.6 million won through employment insurance, provided, that for companies[14] eligible for preferential support, the employee concerned will receive the first 60 daysng 30 days (or 45 days for muup to 1.6 million won per month) from employment insurance. In this case, the employer will pay the amount of the ordinary wage exceeding the government subsidy (Article 74 of the LSA).

* Amount of Maternity Leave Benefits for Companies Eligible for Priority Support

1. Maximum amount: 4.8 million won (1.6 million won per month) in cases where the amount of ordinary wage corresponding to 90 days of maternity leave or miscarriage/stillbirth leave exceeds 4.8 million won, provided that in cases where the period of payment of maternity leave benefits, etc., is less than 90 days, the amount shall be calculated based on the number of actual leave days; and
2. Minimum amount: an amount equivalent to ordinary wage for the period of payment of the maternity leave benefits, etc., calculated using the hourly minimum wage as the hourly ordinary wage of the employee in cases where the hourly ordinary wages of the employee are lower than the hourly minimum wage applied on the beginning date of maternity leave or miscarriage/stillbirth leave in accordance with the Minimum Wage Act.

[14] **Preferentially Supported Companies (Article 12 of the LSA Presidential Decree)**

| Type of Industry (Classification code) | Number of Employees |
|---|---|
| 1. Manufacturing (C); | 500 persons or less |
| 2. Mining (B); 3. Construction (F); 4. Transportation (H); 5. Publishing, filming, broadcasting, and IT services (J); 6. Facility management and company support services (N); 7. Professional, science and technology services (M); 8. Health and social security insurance services (Q). | 300 persons or less |
| 9. Wholesale and retail services (G); 10. Hotel and restaurant services (I); 11. Finance and insurance (K); 12. Art, sports, and other leisure-related services (R); | 200 persons or less |
| 13. Other businesses. | 100 persons or less |

Employers shall not dismiss any female employee during a period of temporary interruption of work before or after childbirth as provided herein and within 30 days thereafter. For the purpose of calculating annual paid leave, the maternity leave shall be regarded as attended days. Also, in calculating the average wage for purposes of severance payment, the period of maternity leave and the wage paid during the maternity period shall be deducted from the calculation of average wage required to be included in the period and wage.

**(2) Advance maternity leave**

In cases where an employee who is or was recently pregnant requests leave due to a miscarriage or other pregnancy-related reason, the employer shall allow her to take leave at any time prior to the expected due date. In any case, 45 or more continuous days (60 days for multiple babies) shall be provided after childbirth or miscarriage. Reasons for advance maternity leave are as follows (Article 74 of the LSA):

① In cases where a pregnant employee went through a miscarriage or stillbirth in the past;
② In cases where a pregnant employee is over 40 years of age at the time of the request for a maternity leave; and
③ In cases where a pregnant employee submits a medical document issued by a hospital that describes the danger of miscarriage or stillbirth.

**(3) Maternity leave for miscarriage or stillbirth**

At the request of a maternal employee who has suffered a miscarriage or stillbirth, the employer shall grant her leave for miscarriage or stillbirth, except where the miscarriage is the result of an artificially-induced abortion. If a maternal employee who has had a miscarriage or stillbirth *asks* for maternity leave, she must submit to the employer an application for miscarriage or stillbirth leave, providing the reason for the request for leave, the date of the miscarriage or stillbirth and the pregnancy period, along with a medical certificate issued by a medical organization. In cases of miscarriage or stillbirth, the employer shall pay the ordinary wage for the period given for maternity leave, just as with a normal maternity leave, as follows:

① A pregnancy period of 11 weeks or less: five days from the date of miscarriage or stillbirth;
② A pregnancy period of 12 weeks or more but less than 15 weeks: ten days from the date of miscarriage or stillbirth;
③ A pregnancy period of 16 weeks or more but less than 21 weeks: thirty days from the date of miscarriage or stillbirth;
④ A pregnancy period of 22 weeks or more but less than 27 weeks: sixty days from the date of miscarriage or stillbirth; and
⑤ A pregnancy period of 28 weeks or more: ninety days from the date of miscarriage or stillbirth.

**(4) Reduced working hours during the pregnancy period**

In cases where a maternal employee who is pregnant for 12 weeks or less or 36 weeks or more applies for reduced working hours, the employer shall allow it. Provided that the pregnant employee's current working hours are less than 8 per day, the employer may reduce

her working hours to 6 hours per day. The employer cannot reduce the wage of the employee due to the reduced working hours.[15] (Article 74 of the LSA)

**(5) Allowing paid time off for prenatal examinations**

If a pregnant female employee makes a request to take time off from work to receive a regular pregnancy health checkup, the employer shall allow her to do so. An employer shall not reduce an employee's wages on the grounds that she took time off for the relevant health checkup. The paid time off allowance for prenatal examinations is as follows: 1) one time per every two months up to the 7th month of pregnancy; 2) one time per month during the 8th and 9th months; 3) one time every two weeks during the 10th month or later (Article 74-2 of the LSA, Article 10 of the Protection of Motherhood Act).

### 4. Paternity leave

If an employee requests leave on the grounds of his spouse giving birth, the employer shall grant him leave of three days or more within five days. In this instance, the first three days' leave shall be paid. The leave may not be requested after a lapse of thirty days from the date when the employee's spouse gave birth. (Article 18-2 of the Act on Equal Employment & Support for Work-Family Balance Assistance: hereafter referred to as the 'Equal Employment Act').

### 5. Nursing Hours

A female employee who has an infant under twelve months of age shall be allowed to take paid nursing recesses, twice per day for at least 30 minutes each (Article 75 of the LSA).

## III. Childcare Leave & Reduction of Working Hours for the Childcare Period

**1. Childcare Leave** (Article 19 of the Equal Employment Act, Article 10 and 11 of its Presidential Decree, Article 70 of the Employment Insurance Act):

Employers shall grant childcare leave if an employee asks for it to take care of his/her child (including an adopted child) aged 8 or under who is attending up to the 2nd grade of elementary school. This shall not apply in such cases where 1) an employee has offered continuous services in the business concerned for less than a year prior to the scheduled date of childcare leave, or 2) an employee requested after a lapse ofeave for the same infant. An employee who intends to apply for childcare leave shall submit to his/her employer an application with documentation verifying the birth date of the infant to be cared for, not less

[15] Enforcement date of reduced working hours during a pregnancy period:
1. Business or workplace ordinarily employing 300 employees or more: September 24, 2014;
2. Business or workplace ordinarily employing less than 300 employees: March 24, 2016

than 30 days prior to the scheduled start date of leave. The childcare leave benefits from Employment Insurance for the first three months shall be paid at a rate of up to 80/100 (from a minimum of 0.7 million won to a maximum of 1.5 million won). The remaining period for 9 months shall be paid at a rate of up to 40/100 of the monthly ordinary wage, from a minimum of 500,000 won per month to a maximum of 1 million won per month.

The period of childcare leave shall be one year or less. The childcare leave can be used all at once or at two different times, up to a total period of one year. The period of childcare leave shall be included in the employee's continuous service period. Employers shall not dismiss or give any other unfavorable treatment to a employee on account of taking childcare leave, nor dismiss the employee concerned during the childcare-leave period; provided that this shall not apply if the employer is not able to continue operating his/her business. After the end of the childcare leave, the employer shall restore the employee to the same work as before the leave, or any other work paying the same level of wages. In calculating the attendance rate for the annual paid leave, the period of childcare leave shall be exempted for the contractual working hours, which means that the annual paid leave is only granted for the period of actual work, excluding the period of childcare leave.[16] The period of childcare leave for a fixed-term employee or a dispatched employee shall not be included in the employment period or the dispatched period.

## 2. Reduction of working hours for the childcare period

(Article 19 of the Equal Employment Act, Article 73-2 of the Employment Insurance Act):

If an employee eligible to ask for childcare leave requests a reduction of working hours instead of childcare leave, the employer shall grant it. However, the employer is not required to grant it in cases where it is not possible to hire replacement personnel, and where it causes a considerable difficulty for the normal operation of business If the employer does not grant the reduction of working hours for the childcare period, the employer shall notify the employee in writing of the reason for such decision, and have the employee take normal childcare leave or else consult with the employee as to whether to support him/her through other measures. Employers shall not apply unfavorable working conditions to an employee who works reduced working hours for the childcare period on grounds of the working hour reduction, except when applying them in proportion to the usual working hours.

The period of working hour reduction for the childcare period shall be one year or less. If the employer grants a reduction of working hours for the childcare period to the relevant employee, the working hours after reduction shall be a minimum of 15 hours per week but shall not exceed 30 hours per week. Employers shall not dismiss or give any other disadvantageous treatment to the employee on account of the working hour reduction. After the period of working hour reduction is over, the employer shall restore the employee to the original work or to other work paying the same level of wages as before the reduction of working hours.

[16] Government guideline: Labor Standards-4336, August 18, 2004.

# A Self-Auditing Guide for Employers of The Standard Working Conditions

The contents described here are checked frequently by the labor inspectors and given for correction orders to the companies. Employers are advised to comply with the list of items. The document is a checklist and for information purposes only. If you are unsure if your company complies, please check with your Labor Attorney.

## I. Labor Standards Act

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

- An employer shall make a labor contract with all employees hired directly by the company, regardless of type of occupation, working period, etc.
- A labor contract, which establishes conditions of labor that do not meet the standards provided by the law, shall be invalid to that extent. The law shall govern those conditions invalidated in accordance with the above.
- In order to prevent both parties' disputes, it is required to make a written labor contract to make sure of its contents.

### 2. An employer shall clearly state the terms of working conditions at the time of making and changing a labor contract, and issue a copy of the employment contract to the employee.

※ *Punishable by a fine for the offense not to exceed five million WON*

➲ Statement of Terms of Employment (Article 17 of the LSA, Article 8 of the Enforcement Decree)

- An employer shall clearly state remuneration, contractual working hours, holidays, annual paid leave, and other terms of employment. For matters as to each constituent items of remuneration, the methods of calculation and payment, holidays, and annual paid leave shall be specified in writing and the employee contract shall be issued to the employee.

※ Working Conditions to be specified:
① Remuneration; ②Contractual working hours; ③Holidays; ④Annual paid leave; ⑤Place of employment and work to be performed; ⑥Matters to be stipulated in the Rules of Employment (ROE); and ⑦Matters determined by dormitory rules, in case of having workers lodge in a dormitory attached to the workplace

**3. A Registry of the workers shall be made and preserved.**

※ *Punishable by a fine for the offense not to exceed five million WON*

Registry of Workers and Preservation of Documents regarding Contract (Article 41, 42 of the LSA)

- An employer shall maintain a registry of workers, preserve a registry of workers and other important documents regarding labor contract for three years.

※ Matters to Be Entered in Register of Workers

① Name; ② Sex; ③ Date of birth; ④ Address;⑤ Personal history;
⑥ Type of work to be performed;
⑦ Date of employment or renewal of employment, a contractual period if any period determined, and other matters relating to employment;
⑧ Date of dismissal, retirement or death, and the reasons thereof; and
⑨ Other necessary matters

※ Important Documents Regarding Labor Contracts

① Labor contracts; ②Wage ledgers;
③ Documents pertaining to the basis for the determination, payment method and calculation of wages;
④ Documents pertaining to employment, dismissal or retirement;
⑤ Documents pertaining to promotion or demotion;
⑥ Documents pertaining to leaves of absence;
⑦ Documents pertaining to approval or authorization;
⑧ Documents of written agreements; and
⑨ Documents pertaining to the minor certification.

**4. For each minor under 18, an employer shall keep in the workplace a certificate proving his/her family relationships and written consent of his/her parent or guardian.**

※ *Punishable by a fine for the offense not to exceed five million WON*

A Minor Certificate (Article 66 of the Labor Standards Act) is required to have on file

**5. When an employer intends to have a female aged 18 or older work at nighttime and on holiday, the employer shall obtain the consent of the female concerned.**

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

Restrictions on Night Work and Holiday Work (Article 70 of the LSA)

- When an employer intends to have a female aged 18 or older work from 10 P.M. to 6 A.M and on holiday, the employer shall obtain the consent of the female concerned.

**6. An employer shall not have a pregnant female, or one who is younger than 18, work at night and on holidays.**

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

➲ Restrictions on Night Work and Holiday Work (Article 70 of the LSA)

- If an employer intends to have a pregnant female, or one who is younger than 18, work from 10 P.M to 6 A.M. and on holiday, the employer shall obtain consent of the employees and permission from the Minister of Labor.
- In the case of a pregnant female, the employer can have the employee work at nighttime and on holiday only when she makes a request and the employer receives permission from the Minister of Labor

☞ An employer, before obtaining permission from the Minister of Labor, shall consult in good faith with a workers' representative of the business or workplace concerned as to whether there will be night work or holiday work and its implementation methods for workers' health and maternity protection.

**7. Employees' contractual working hours shall not exceed forty hours per week and eight hours per day excluding recess hours.**

※ *Punishable with a fine imprisonment of up to two years, or a fine not to exceed ten million won*

➲ Working hours (Article 50 and Article 69 of the LSA)

- Working hours per week shall not exceed forty hours excluding recess hours, and Working hours per day shall not exceed eight hours excluding recess hours.
- The workers' waitin hours under the employer's direction and supervision to work shall be regarded as working hours. (implemented from Aug 2, 2012).
- Working hours of a person aged between 15 and 18 shall not exceed seven hours per day and forty hours per week.
- Working hours exceeding contractual working hours shall be paid with an added allowance for extended working hours.

**8. Extended work shall be implemented with agreement with the worker, and extended working hours shall not exceed 12 hours per week.**

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

➲ Restriction on Extended Work (Article 53 of the LSA)

- If the parties concerned reach agreement, the working hours stipulated in Article 50 may be extended up to twelve hours per week.

**9. An employer shall additionally pay fifty percent or more of the ordinary wages for extended work, night work or holiday work.**

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

➲ Extended Work, Night Work and Holiday Work (Article 56 of the LSA)

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

【Calculation method of ordinary wages】
The term "ordinary wages" means hourly wages, daily wages, weekly wages, monthly wages, or contract wages that are determined to be paid periodically or in lump sum to an employee for his/her prescribed work or whole work.

① In the case of wages determined on an hourly basis, the amount of the hourly wages;
② In the case of wages determined on a daily basis, the amount calculated by dividing the daily wages by the number of contractual working hours per day;
③ In the case of wages determined on a weekly basis, the amount calculated by dividing the weekly wages by the number of hours based on which weekly ordinary wages are calculated ;
④ In the case of wages determined on a monthly basis, the amount is calculated by dividing the monthly wages by the number of hours (one-twelfth of the number of hours calculated by multiplying the number of hours based on which weekly ordinary wages are calculated by the average number of weeks in the year) based on which monthly ordinary wages are calculated ; and

⑤ In the case of wages determined under a contract wage system, the amount calculated by dividing the total sum of wages under that contract wage system during the period for wage calculation by the total number of working hours during that period.

**10. Wages shall be paid in full to worker in cash and at least once per month on a fixed day.**

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

➲ Payment of Wages (Article 43 of the Labor Standards Act)

➢ Wages shall be paid at least once per month on a fixed day. Payment of wages shall be directly made in full to worker in cash; however, if otherwise stipulated by special provisions of laws or decrees or a collective agreement, wages may partially be deducted or may be paid by other than cash.

※ However, this shall not apply to extraordinary wages, allowances, or any other similar payment or those wages provided for period exceeding one month according to attendance rate.

☞The term "wages" in this Act means wages, salaries and any other money and valuable goods an employer pays to a worker for his/her work, regardless of how such payments are termed.

**11. If a worker retires, an employer shall pay the wages, compensations, and other money or valuables within 14 days after the cause for such payment has occurred; however, the period, under special circumstances, may be extended by the mutual agreement between the parties concerned.**

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

➲ Related ACTS: Payment of Money and Valuables (Article 36)

**12. An employer shall allow on the average one or more paid holiday per week to a worker who attended contractual working days per week.**

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

➲ Related ACTS: Holidays (Article 55 of the LSA)

**13. When an employee works on paid holiday, an employer will pay additional wages (fifty percent or more of the ordinary wages). When an employer works on paid holiday, an employer shall pay base pay, wages related to holiday work, and additional allowance respectively.**

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

➢ Holiday means the day exempt from duty to provide labor according to the law, collective agreement, or Rules of Employment (ROE). It has two types: statutory holiday and contractual holiday.

※ **A Statutory Holiday**: is a holiday provided by the law, which contains weekly holiday and Labor Day

※ **A Contractual Holiday** is a holiday stipulated by the collective agreement or the Rules of Employment (ROE), and its paid or non-paid shall be determined by mutual agreement.

**14. An employer shall grant 15 days' paid leave to a worker who has registered more than 80 percent of attendance during one year. After the first year of service, an employer shall grant one day's paid leave for each two years of consecutive service.**

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

➲ Annual paid leave (Article 60, Article 62 of the LSA)

➢ An employer shall grant 15 days' paid leave to a worker who has registered more than 80 percent of attendance of work during one year.

※ If the worker has already used the annual leave during the first one-year of his service, the number of used leave days shall not be deducted from the 15 days of leave[enforcement date 29, May, 2018].

※ After the first year of service, an employer shall grant one day's paid leave for each two years of consecutive service in addition to 15 days of annual paid leave to a worker who has worked consecutively for 3 years or more. In this case, the total number of leave days including the additional leave shall not exceed 25.

<Examples of calculated leave days per service year>

| **Years of Employment** | 1 | 2 | 3 | 4 | 5 | 10 | 15 | 20 | More than 21 |
|---|---|---|---|---|---|---|---|---|---|
| **Number of Annual Days of Leave** | 15 | 15 | 16 | 16 | 17 | 19 | 22 | 24 | 25 |

※ A period falling under any of the following subparagraphs shall be considered a period of attendance: A period during which a worker is unable to work due to occupational injuries or diseases; and A period during which a pregnant woman does not work on maternity leave

☞ The leave shall be forfeited if not used within one year. However, this shall not apply in case where the worker concerned has been prevented from using the leave due to any cause attributable to the employer.

➢ An employer shall grant paid leave upon request of a worker, and shall pay ordinary wages or average wages prescribed in employment rules or other regulations during the period of leave. However, the leave period concerned may be changed, in case granting the leave as requested by the worker might cause a serious impediment to the operation of the business.

➢ An employer may have workers take paid leave on a particular working day in lieu of the annual paid leave, if the employer and the workers' representative agree in writing.

➲

**15. An employer shall grant one day's paid leave per month to a worker whose consecutive service period is shorter than one year, or whose attendance is less than 80 percent, if the worker has offered work without an absence throughout a month.**

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

➲ Governed by Annual paid leave (Article 60 of the LSA)

**16. If the employer has taken measures to promote the use of paid leave, the employer shall have no obligation to compensate the worker for the unused leave.**

➲ Promoting the Use of Annual Paid Leave (Article 61 of the LSA)

➢ Within the first 10 days of the six months before unused leave is to be forfeited, an employer shall notify each worker of the number of his/her unused leave days and urge them in writing to decide when they would use the leave and to inform the employer of the decided leave period; and

※ If the Employee is notified by the employer to declare which days they would like as paid leave 10 day after the announcement, the employer shall determine which days the employee can use as paid leave, and notify the worker of the decided leave period in writing no later than 2 months before the unused leave is to be forfeited.

※ If a worker's leave has been forfeited for non-use, the employer shall have no obligation to compensate the worker for the unused leave. (This shall not be deemed to have caused the non-use attributable to the employer's action.)

**17. Employers shall grant pregnant female workers 90 days(120 days if a woman is pregnant with two or more babies)of maternity leave, to be used before and after childbirth. In such cases, 45 days(60 days) or more shall be allocated after childbirth. The first 60 days(75 days)' leave shall be paid leave.**

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

➲ Protection of Pregnant Women (Article 74, Article 75 of the LSA)

☞ At the request of a pregnant female worker who has a miscarriage or still birth after 16 weeks of pregnancy, the employer shall grant her protective leave.

- Workers who have a miscarriage or still birth after a pregnancy period of within 11 weeks : five days from the date of miscarriage or still birth
- Workers who have a miscarriage or still birth after a pregnancy period of 12 weeks or more but less than 15 weeks: ten days from the date of miscarriage or still birth
- Workers who have a miscarriage or still birth after a pregnancy period of 16 weeks or more but less than 21 weeks : thirty days from the date of miscarriage or still birth

- A pregnancy period of 22 weeks or more but less than 27 weeks : sixty days from the date of miscarriage or still birth; and
- A pregnancy period of 28 weeks or more: ninety days from the date of miscarriage or stillbirth

☞ A female worker who has an infant less than twelve months shall be allowed to take paid nursing recesses, twice per day for more than 30 minutes each.

**18. An employer shall, upon the request of a female worker, grant her one-day menstruation leave per month.**

※ *Punishable with a fine not to exceed five million WON*

➲ Menstruation Leave (Article 73 of the LSA) :

☞ A company shall determine whether menstruation leave is paid or not paid under the Rules of Employment.

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

➲ Restriction on Dismissal, etc. (Article 23, Article 27 of the LSA)

➢ No employer shall dismiss, lay off, suspend, or transfer a worker, or reduce wages, or take other punitive measures against a worker without justifiable reasons., No employer shall dismiss any worker for the following periods:

- During a period of temporary interruption of work for medical treatment of an occupational injury or disease and within 30 days thereafter;
- During a period of temporary interruption of work before and after childbirth as provided herein and within 30 days thereafter; and
- During childcare leave

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

➢ In violation of the above period, Punishable with a fine imprisonment of up to five years, or by a fine not to exceed thirty million WON

**20. An employer shall give an advance notice to a worker at least thirty days before dismissal. If the notice is not given thirty days before the dismissal, ordinary wages of more than thirty days shall be paid to the worker.**

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

➲ Advance Notice of Dismissal (Article 26 of the LSA)

※Exceptions for Advance Notice of Dismissal (Article 35 of the LSA)

① A worker who has been employed on a daily basis for less than three consecutive months;
② A worker who has been employed for a fixed period not to exceed two months;
③ A worker who has been employed as a monthly-paid worker for less than six months;
④ A worker who has been employed for seasonal work for a fixed period not to exceed six months; or
⑤ A worker in a probationary period.

**21. An employer ordinarily employing ten workers or more shall prepare the Rules of Employment (ROE) and file it with the Minister of Labor.**

※ *Punishable with a fine not to exceed five million WON*

➲ Preparation and Filing of Rules of Employment (ROE) (Article 93 of the LSA)

※ Contents of Rules of Employment (ROE)

① matters pertaining to the starting and finishing time of work, recess hours, holidays, leaves and shifts;
② matters pertaining to the determination of wages, calculation of wages, means of payment, closing of payment, time of payment and wage increase;
③ matters pertaining to calculation of family allowances and means of payment;
④ matters pertaining to retirement;
⑤ matters pertaining to retirement pay prescribed in Article 4 of the Employee Retirement Benefit Security Act, bonuses and minimum wages;
⑥ matters pertaining to meal allowance and allocation of expenses for operational tools or necessities;
⑦ matters pertaining to educational facilities for workers;
⑧ matters pertaining to the maternity protection of female workers, such as maternity leave, child-care leave, etc., and support for reconciliation between work and family life;
⑨ matters pertaining to safety and health;
⑩ matters pertaining to the improvement of workplace environments according to workers' characteristics, such as gender, age or physical attributes;
⑪ matters pertaining to support pertaining occupational or non-occupational accidents;
⑫ matters pertaining to award and punishment; and
⑬ other matters applicable to all workers of the business concerned.

**22. If any amendments to the Rules of Employment (ROE) occur, the employer shall file the amendments with the Minister of Labor.**

※ *Punishable with a fine not to exceed five million WON*

➲ Preparation and Filing of Rules of Employment (ROE), and procedure for revisions (Article 83 and Article 94 of the LSA)

☞ An employer shall seek consultation of a labor union if there is a labor union that is composed of the majority of the workers in the workplace concerned, or the consultation of the majority of workers. If there is no labor union composed of the majority of the workers, with regard to the preparation of and or amendment to the Rules of Employment (ROE). However, if the Rules of Employment (ROE) are to be modified unfavorably to workers, the employer shall obtain all the workers' consent.

**23. An employer shall keep workers informed of. the main points of the Rules of Employment (ROE), by posting at all times or keeping them where workers have free access.**

※ *Punishable with a fine not to exceed five million WON*

➲ Related ACTS: Publicity of Law and Decree, etc (Article 14 of the LSA)

## II. Employment Retirement Benefit Security Act

**24. When the employee retired, the employer shall pay 30 days or more of average wage for each year of consecutive service within 14 days.**

※ *Punishable with a fine not to exceed five million WON*

Establishment of Retirement Benefit Scheme (Article 4, Article 8, Article 9)

☞ The employer may pay employees interim severance payments for the consecutive years of service in advance, even before the employment is terminated, upon the employees request. In this case, the consecutive years of service for calculation of severance pay will be recalculated after the interim severance payments.

## III. Minimum Wage Act

**25. An employer shall pay the worker's wages not less than the minimum wage rate.**

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

➲ Effect of minimum wage (Article 6 of the Minimum Wage Act)

※ Minimum wage per hour 7,530 won as of 2018
※ Daily wage (for eight hours): 60,240 won

☞ Minimum wage can be lowered for the following
A person employed on probation for three months or less when the contract period is one year or longer; and A person engaged in surveillance or intermittent work: on the condition that the employer has obtained approval of the Minister of Labor.

**26. An employer shall inform workers of the minimum wage concerned by displaying it where it can be easily seen by the workers, or by other appropriate means.**

※ *Punishable with a fine not to exceed one million WON*

➲ Obligation of notice (Article 11 of the Minimum Wage Act)

※ The contents of the minimum wage to be made known to workers:
① Minimum wage of a worker;
② Wages not included in the calculation of the minimum wage;
③ Scope of workers to be excluded from the application of the minimum wage; and
④ Day, month and year the minimum wage takes effect

## IV. Equal Employment and Work-Home Balance Assistance Act

**27. An Employer shall conduct employee education to prevent sexual harassment at the work place once or more times a year.**

※ *Punishable with a fine not to exceed three million WON*

➲ Prohibition of Sexual Harassment at Work and Education to Prevent Sexual Harassment at Work (Article12, Article 13)

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

※ Contents to be included in the sexual harassment prevention education

① Laws and regulations regarding sexual harassment at work;
② Procedure for dealing with sexual harassment at work of the workplace concerned and criteria of measures thereof;
③ Grievance counseling and remedy procedures for victims of sexual harassment at work of the workplace concerned; and
④ Other matters necessary for the prevention of sexual harassment at work

※ The prevention education under paragraph (a) may be conducted through employee training, morning sessions, meetings, etc. depending on the size and circumstances of the business: Providing the sexual harassment prevention education by means of mere dissemination, posting, etc. of educational material shall not be recognized as prevention education.

**28. An employer shall keep the documents related to the matters for three years.**

※ *Punishable with a fine not to exceed three million WON*

➲ Keeping of Related Documents (Article 33):

※ Documents to be kept:

① Documents concerning recruitment, hiring, wage, money and goods other than wage, training, deployment, promotion, retirement age, retirement and dismissal
② Documents concerning education to prevent sexual harassment at work;
③ Documents concerning the measures taken against sexual harassment at work;
④ Documents concerning Affirmative Actions Measures; and
⑤ Documents concerning childcare leave.

**29. An employer shall not discriminate against men or women based on gender in recruitment and hiring.**

※ *Punishable with a fine not to exceed five million WON*

➲ Recruitment and Hiring (Article 7)

➢ When recruiting and hiring female workers, an employer shall not present nor demand certain physical conditions such as appearance, height, weight, etc., unmarried status, and other conditions determined by the Ordinance of the Ministry of Labor, which are not required to perform a certain job for which the employer intends to recruit or hire.

☞ The term “discrimination” means that an employer applies different conditions of

employment or work to workers or takes any other disadvantageous measures against them without any reasonable reasons on account of sex, marriage, status within family, pregnancy, or child-birth, etc. This includes the case where even if an employer applies the same hiring or working conditions to males and females, if the number of males or females who can meet the conditions is considerably less than that of the opposite sex. If this causes disadvantageous results to either sex, and if the conditions applied cannot be justified as fair ones, it shall constitute the discrimination.

**30. Employers shall allow an employee with a child up to 8 years of age who is attending up to the 2nd grade of elementary school yet to take childcare leave to care for that child, upon application by that employee..**

*※ Punishable with a fine not to exceed five million WON*

➲ Childcare Leave (Article 19)

※ The duration of childcare leave shall be one year or less.
※ An employer shall allow the employee who ended the childcare leave to return to the same work, which the employee used to do before the childcare leave, or to the work paying the equivalent level of wages.

➲ Reduced hours of work during childcare period (Article 19-2)

➢ If an employee applies for a reduced number of work hours in lieu of full days of childcare leave, the employer shall allow the employee to work shorter workdays.

※ The reduced hours shall be 15~30 hours a week, and the periods of childcare lave and reduced hours of work combined shall not exceed one year.

**31. An employer shall pay the equal wage for the work of equal value in the same business.**

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

➲ Ensuring Equal Opportunity and Treatment for Men and Women (Article 8)

※ The criteria for the work of equal value shall be the skills, efforts, responsibility and working conditions, etc., required to perform the work. And in setting the criteria, an employer shall listen to opinions of a member representing employees at the Labor-Management Council.

☞ It is not regarded as discrimination in cases where the employer discriminates wages based upon objective criteria of education, job experience, seniority, job grade, etc.

**32. An employer shall not discriminate against men or women in other payments besides wages, welfare, training, deployment, and promotion.**

※ *Punishable with a fine not to exceed five million WON*

➲ Ensuring Equal Opportunity and Treatment for Men and Women (Article 9, 10)

➢ An employer shall not discriminate against men or women in managing welfare programs such as payment of money and goods or loans other than wages in a bid to support workers lives.

☞ Other payments besides wages :
Living subsidizing or welfare allowances such as house rending or housing allowance, family allowance, transportation allowance, commuting allowance and Kim-Chi allowance, housing loan, etc.

**33. An employer shall not discriminate against men or women with respect to retirement age limit, retirement, and dismissal.**

※ *Punishable with a fine imprisonment of up to five years, or by a fine not to exceed thirty million WON*

➲ Ensuring Equal Opportunity and Treatment for Men and Women (Article 11)

**34. If a worker requests leave due to his spouse giving birth, the employer shall grant him leave of three days or more within five days. The first three days shall be paid leave.**

※ *Punishable with a fine not to exceed five million WON*

➲ Related ACT: Paternity leave (Article 18-2)

➢ When 30 days have passed from the date of childbirth, paternity leave is not available.

※ Paternity leave will be given 3 days in principle, but it is allowed for the employee to use leave shorter than 3 days.
※ Within 30 days after the date of childbirth, a male employee may be given designated dates by his request.

➢ Paternity leave is non-paid leave by the law, but it can be stipulated as paid leave according to collective agreement or Rules of Employment (ROE).

# V. Act on the Promotion of Worker Participation and Cooperation

**35. An employer shall establish bylaws of Labor-Management Council and shall submit it to the Labor Office.**

※ *Penalty for not established the Labor-Management Councils: not less than 10 million WON / Penalty for not submitting the bylaws: fine up to 2 million WON*

【Applies to companies with 30 employees or more】

➲ Establishment of the Labor-Management Council (Article 4, Article 18)

➢ All businesses that ordinarily hire more than 30 persons shall establish a labor-management council, establish its bylaws, and submit it to the Minister of Labor within 15 days from the date of the establishment of the Council.

※ The labor-management council shall be established at each business or workplace which is vested with the right to decide the working conditions.

**36. A Council shall hold meetings once every three months.**

※ *Punishable with a fine not to exceed two million WON*

【Applies to companies with 30 employees or more】

➲ Composition, operation, etc. of the Council (Article 6, 7, 12, 19 of the Act)

➢ A council shall be composed of an equal number of members representing the employers and the workers, respectively, the number of which shall not be less than three nor more than ten.

※ While members representing workers (hereinafter referred to as "workers' members") shall be elected by workers, labor union representatives or those recommended by a labor union shall be the workers' members in cases where the labor union is formed by a majority of workers.

➢ Workers' members shall be elected by workers by direct, secret and unsigned vote.

※ There shall be a chairperson of the Council and the chairperson shall be elected by vote from the members. In this case, each one from workers' members and employers' members may be co-chairperson. The employers' members and workers' members shall have a secretary respectively. '

➢ A Council shall hold a meeting once every three months, draw up, and keep minutes of its meetings.

※ Matters to be recorded in the meeting minutes

① Date, time and place of the meetings;
② Members who participated in the meetings;
③ Contents of consultations and matters agreed upon; and
④ Other matters discussed at each meeting.

☞ The meeting minutes shall be signed or sealed by all members present and be kept for three years from the date it is taken.

**37. Grievance Handling Members shall consist of three members or less representing labor and management.**

※ *Punishable with a fine not to exceed two million WON*

【Applies to companies with 30 employees or more】

➲ Grievance Handling Members, etc. (Article 26, Article 27 of the Act)

- All businesses or workplaces shall have Grievance Handling Members, three or less, in order to hear and handle workers' grievances: This shall not apply to businesses or workplaces with less than 30 workers
- When a worker makes a grievance to the Grievance Handling Members, the Grievance Handling Members shall inform he/she of the measures taken and results thereof within ten days. Matters, which are considered too difficult to be handled by the Grievance Handling Members, shall be brought before the Council and dealt with through consultation thereat.

☞ An employer shall not take any action to the detriment of the grievance-handling member in relation to their performance of functions. The hours spent by a grievance-handling member for consultation and grievance handling shall be regarded as hours worked.

**38. Grievance Handling Members shall consist of three members or less representing labor and management.**

【Applies to companies with 30 employees or more】

➲ Grievance Handling Members, etc. (Article 10 of Enforcement Decree of the Act)

# VI. Protection laws for non-regular employees (a short-term, part-time, or dispatched employee)

**39. An employer, a sending employer and a using employer shall implement the final judgment order for correction if he/she receives it from the labor relations commission or the court.**

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

➲ The Discrimination Correction System (Article 8 to Article 14 of the Short-term Employee Act and the Article 21 of the Employee Dispatch Act)

➢ An employer shall not give discriminatory treatment against non-regular employees (fixed-term employees, part-time employees, and dispatched employees) on the grounds of their employment status compared with other workers engaged in the same or similar jobs under a labor contract without a fixed term in the business or workplace concerned. The discrimination correction system is designed to prohibit disadvantageous treatment (without justification) regarding wages and other working conditions of non-regular employees (a short-term, part-time, or dispatched employee) in comparison with target employees (a term-less contract employee, ordinary employee, or directly hired employee).

➢ If a fixed-term worker, a part-time worker, or a dispatched employee receives discriminatory treatment, he/she can apply for a redress to the Labor Relations Commission. However, this shall not apply if six months or more have passed since the day when the discriminatory treatment occurred.

➢ Concerning discriminatory treatment and disputes, the burden of proof shall be placed on employers. (Article 9 (4) of the Short-term Employee Act)

➢ Upon receiving the redress application, the Labor Relations Commission shall conduct a necessary investigation and an inquiry into related parties immediately.

☞ The Labor Relations Commission, if it judges that the treatment in question is discriminatory after ending the investigation and inquiry and judges, it shall issue a redress order to the employer.

➢ If a party challenges a redress order or dismissal decision by the Regional Labor Relations Commission, the party may apply for review to the National Labor Relations Commission within 10 days of receiving the notice of the redress order or dismissal decision. If a party objects to a review decision made by the National Labor Relations Commission, the party may bring an administrative lawsuit against the decision within 15 days of receiving the notice of the review decision.

☞ If a request for review is not made within the period and an administrative lawsuit is not brought within the period prescribed, the redress order, dismissal decision, or review decision shall be confirmed as a final one

**40. An employer shall not give discriminatory treatment regarding wages and other working conditions against non-regular employees (fixed-term employees, part-time employees, and dispatched employees) on the grounds of their employment status compared with other workers engaged in the same or similar jobs under a labor contract without a fixed term in the business or workplace concerned.**

※ *Applied to the Employer, the Sending Employer and the Using Employer*

➲ Target employee for comparison:

➢ The judgment of discrimination shall require the existence of target employees for comparison. The target employees do not only play a role as a comparison criteria to estimate disadvantageous treatment, but also play a role as the basis and criteria for the Discrimination Correction Committee to determine parameters of the correction order. The target employees shall be term-less contract employees engaged in the same or similar job in the business or workplace.

☞ The 'same or similar job' means the job that is similar in job classification, duties, and job specification. That is, it will be considered synthetically based on the possibility of substitution within each group of employees.

➲ The prohibition scope of discriminative treatment: Wages and other working conditions

➢ Justifiable Reason: With regard to justifiable reasons for discriminatory treatment, the burden of proof shall be placed on employers. (Article 9 (4) of the Short-term Employee Act)

**41. When an employer makes a labor contract with fixed-term or part-time employees, he/she shall clearly state in writing matters described in Article 17 of the Short-term Employee Act.**

※ *Punishable with a fine not to exceed five million WON*

➲ Written Statement of Working Conditions

① Matters concerning the contract period;
② Matters concerning working hours and rest hours;
③ Matters concerning components, calculation and payment methods of wages;
④ Matters concerning holidays and leave;
⑤ Matters concerning the place of work and jobs to do; and
⑥ Work days and working hours of each work day (only applied to part-time workers)

**42. An employer may hire fixed-term employees for a period not to exceed two. If an employer hires fixed-term employees for more than two years, the fixed-term employees shall be considered as workers who have made a labor contract with no fixed term.**

- Employment of Fixed-term Employees (Article 4 of the Short-term Employee Act

**43. Using Employer shall not receive labor service from a dispatch employee from an unauthorized dispatch company nor shall use a dispatch employee in a position where dispatch employees are not allowed.**

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

- Jobs Permitted for Worker Dispatch (Article 5 of the Employee Dispatch ACT)

➢ Jobs permitted for worker dispatch shall be those jobs judged suitable for that purpose given their nature and the expertise, skills or experiences they require, and prescribed by the Presidential Decree (32 jobs), but excluding direct production jobs in the manufacturing.

※ Any person shall not run worker dispatch undertakings or be offered the labor service from such worker dispatch in violation of the related articles.

➢ In case where there is a vacancy due to child birth, illness, injury, etc., or the need to temporarily/occasionally secure manpower, worker dispatch may be permitted.

☞If an employer intends to use dispatched workers in this case, he/she shall have sincere consultation with the employee representative in advance.

➢ Notwithstanding the exceptional provisions, worker dispatch shall be not permitted for work described in any of the following subparagraphs.

☞If an employer uses a dispatched employee at jobs prohibited for worker dispatch, the employer shall have obligation to hire hi/her immediately. (If not, a fine shall be charged.)

※ Jobs Prohibited for Worker Dispatch

① Work performed on a construction site;
② Job areas in which worker supply services are permitted involving the cargo work;
③ Seamen's work;
④ Hazardous and dangerous work;

⑤ For work in areas that are considered to contain hazardous dust;
⑥ The work that is subject to the issuance of health management pocketbooks as prescribed in the Occupational Safety and Health Act; 6.
⑦ The work of medical persons and the work of assistant nurses;
⑧ The work of medical technicians;
⑨ The driving work in a passenger vehicle transport business; and
⑩ The driving work in a freight vehicle transport business.

➢ The using employer shall directly employee dispatched worker concerned in cases of illegal dispatches. (Article 6 − 2)

**44 The length of a dispatch period shall not exceed one year. If there is an agreement between the sending employer, the using employer, and the dispatched worker, the period may be extended. In this case, the extended period, if extended once, shall not exceed one year, and the total dispatch period, including the extended period, shall not exceed two years. If a using employer continues to use the dispatched worker in excess of two years, he/she shall directly employ the dispatched worker concerned**

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

➲ Length of Dispatch Period (Article 6 of the Employee Dispatch Act)

➢ The length of a dispatch period shall not exceed one year, except for when the case falls under Article 5 (2) (in case where there is a vacancy due to childbirth, illness, injury, etc., or the need to temporarily or occasionally secure labor).
➢ If there is an agreement between the sending employer, the using employer, and the dispatched worker, the period may be extended. In this case, the extended period, if extended once, shall not exceed one year, and the total dispatch period, including the extended period, shall not exceed two years.
➢ With regard to aged dispatched workers under subparagraph 1 of Article 2 of the Aged Employment Promotion Act, notwithstanding the latter part of the provision of paragraph (2), the dispatch period may be extended for more than two years.
➢ The period of worker dispatch under Article 5 (2) (exceptional reasons)

☞ Period required to resolve the cause in case where there are such clear and objective causes such as childbirth, illness and injury; and
☞ Period within three months in the case where there is a need to secure manpower on a temporary and intermittent basis. If the cause is not resolved and there is an agreement among a dispatch employer, a using employer, and a dispatched worker, the period may be extended one time, not to exceed three months.

➲ Obligation of Employment (Article 6-2)

➢ If a using employer continues to use the dispatched worker in excess of two years

(including violation of jobs not permitted and using a dispatched employee from an unauthorized dispatched company), he/she shall directly employ the dispatched worker concerned.

- If a using employer directly employs a dispatched worker, working conditions for he dispatched worker shall be as follows:

☞ If among workers employed by the using employer, there is a worker performing the same or similar kind of work the dispatched worker performs, working conditions prescribed in employment rules applicable to the worker shall apply to the dispatched worker; and

☞ If among workers employed by the using employer, there is no worker performing the same or similar kind of work the dispatched worker performs the level of working conditions for the dispatched worker shall not be lower than the level of existing ones for the dispatched worker.

**45. In cases where a sending employer has not been able to pay the wages of a dispatched worker due to causes attributable to the using employer, the using employer shall be liable jointly with the concerned sending employer.**

※*Applied to the Sending and Using Employers: Punishable with a fine imprisonment of up to three years, or by a fine not to exceed twenty million WON*

➲ Special Cases Relating to the Application of the Labor Standards Act (Article 34)

※ Using Employer's Liability

① In case where a using employer breaches a contract on worker dispatch without a justifiable reason; and

② In case where a using employer fails to pay for worker dispatch, which is stipulated in the contract on worker dispatch, without a justifiable reason