KangNam
Labor Law Firm
Room #1501, A-1501 406, Teheran-ro, Gangnam-gu, Seoul, 06192, Republic of Korea
Tel: +82-(0)2-539-0098
Fax: +82-(0)2-539-4167
www.k-labor.com

Revisions of the Labor Laws in the Second Half of 2021

Labor Attorneys Eonsoo Jeong, Yeana Yu

1. Increase of the Fines for Employers that Fail to Comply with Remedy Orders for Unfair Dismissal Etc.
2. Creation of Administrative Fines for Workplace Harassment
3. Simplification of Procedures for Substitute Payment by The Korean Welfare Corporation in The Event of Default by The Employer for Unpaid Wages etc.
4. Allowance for Fire Officers, Educational Officials (Teaching Assistants, Educational Expert Officials) And Retired Public Officials to Be Eligible Union Members
5. Allowance for Retired Teachers to join Teachers'Unions
6. Enforcement of Individual Payment Confirmation System for Medical Expense of Industrial Accident Compensation Insurance
7. Improvement of Approval Standards for Noise Induced Deafness as An Accident on Duty
8. Implementation of Employment Insurance for Persons in Special Types of Employment
9. Increase of Coverage for Persons in Special Types of Employment Industrial Accident Compensation Insurance
10. 52 Working Hours Per Week System Expanded Application to Business With 5 Employees or More
11. Mandatory Issuance of Pay Stubs When Paying Wages
12. Enforcement of The Revised Trade Union and Labor Relations Adjustment Act
13. Guaranteed Maternity Leave Benefits for Fixed-Term and Dispatched Workers

1. Increase of the Fines for Employers that Fail to Comply with Remedy Orders for Unfair Dismissal Etc.

Background	• Increase in the amount that the Labor Relation Commission can fine an Employer in the event that the Employer does not comply with the remedy as ordered by the Labor Relations Commission
Content	• Increases in the fines for Employers who fail to comply with an order for remedy from 20 million KRW to 30 million KRW
Enforcement Date	• Nov 19, 2021

■ **The fine the MOEL can issue to an Employer who fails to comply with an order issued by the MOEL for remedy has increased from 20,000,000 KRW to 30,000,000 KRW starting from Nov 11, 2021 (Labor Standards Act, Amended May 15, 2021)**

○ Amended Act applies to Unfair Dismissal, etc. that has occurred after Nov 19, 2021.

○ Applies to an Employer who fails to comply with an Order issued by the Labor Relations Commission, for example 'Reinstatement" or "Payment of lost wages during the Employees work suspension period", shall be fined for failure to comply with the Order of 30,000,000 KRW each time, up to a maximum of 4 times in a one year period for up to 2 years in total.

○ With this, it is expected to contribute to a prompt restitution for Employees.

2. Creation of Administrative Fines for Workplace Harassment

Background	• To enhance the effectiveness of prohibition on workplace harassment and enforcement of workplace harassment systems
Content	• Creation of administrative fine (not exceeding 10,000,000 KRW) for the Employer when an Employer is the cause of the Workplace harassment.
Enforcement Date	• Oct 14, 2021

■ **In order to reinforce the effectiveness of Prohibition of Workplace Harassment system, additional administrative fines have been created with enforcement starting from Oct 14, 2021.**

○ When if an Employer (including the case when the Employee is a relative according to the Article 767 of Civil Act) causes workplace harassment, they shall be punished by an administrative fine not exceeding 10,000,000 KRW,

○ When an Employer doesn't take appropriate measures, such as investigating the case, for the victimized Employees or take disciplinary measures against the perpetrator of workplace harassment etc., they shall be punished by an administrative fine not exceeding 5,000,0000 KRW.

○ With this, it is expected to contribute to the protection the victim of workplace harassment more stringently and to lead to greater voluntary enforcement of the statutes by the Employer.

3. Simplification of Procedures for Substitute Payment by The Korean Welfare Corporation in The Event of Default by The Employer for Unpaid Wages etc.

Background	• Unpaid Wages, and other monetary compensation, owed to Employees which the Employer did no pay upon the final ruling of the MOEL were difficult to collect and Unfair Dismissal claims were only available to current Employees
Content	• The scope of application of the law has increased to included current Employees previously retired Employees were the only parties that were covered by the Act. • The request for substitutive payment by the Korean Welfare Corporation use to take up too 7 months because the applicant had to wait for all final appeals to be completed • procedures now allow for MOEL Labor Board order to an Employee to make payment of wages which the Employer has failed to abide by for a period of two months or more to be accepted and acted upon by the Korean Welfare Corporation to allow them to make payment on behalf of the Employer • The Employer then has to pay back the monies paid out on their behalf by the Korean Welfare Corporation • A Certificate of Unpaid Wages from the Labor Board and a delay of two months in the payment are now the only requirements
Enforcement Date	• Oct 14, 2021

■ **In-service employees, current employees, shall be able to claim small amount substitute payment for unpaid wages starting from 14 Oct, 2021.**

○ The employee shall be able to claim small amount substitute payment even without the requirement of a Korean Civil Court to rule on the validity of the Certificate of Unpaid Wages from the MOEL Regional Labor Office. The Certificates of Unpaid Wages etc. issued by the MOEL Regional Labor Officer are the only statutory document required.

○ Korean Term of "Surrogate pay" changes into "Substitution pay for unpaid wages"

4. Allowance for Fire Officers, Educational Officials (Teaching Assistants, Educational Expert Officials) And Retired Public Officials to Be Eligible Union Members

Background	• Expansion of Public officials' fundamental labor rights in accordance with the ratification of International Labor Organization (***ILO)*** core convention
Content	• Abolishment of clauses limiting the scope of eligible Union membership based upon the Civil Service Official grade achieved. ※ After amendment there still are some limitations based upon the active duties of the Civil Servant (such as Public Officials who exercise the right to direct and supervise other Public Officials etc.) have not changed. Among Public Officials above grade five, those who are in practice shall be able to be eligible for Union membership. • Eligibility of Fire Officers and Educational Officials (Teaching assistants, Educational expert officials*) to have Union membership ※ The Supervisory Officials, the School Inspectors, the Educational research officials, the Educational researchers that conform to the Educational Officials Act. • Allowance of the retired Public Officials whom were eligible for Union membership (*Article 6(1)1. through 3. of the Establishment and Operation, etc., of Public Officials' Trade Unions Act**) to join a Union if the bylaws allow it ※ General Public Officials, Foreign Affairs, Consulate, Foreign Service Information & Technology, Fire Services Officers, Educational Officials, and other Specific Public officials
Enforcement Date	• Jul 6, 2021

■ **By the Amendment of The Establishment, Operation, etc., of *Public Officials' Trade Unions ACT*, the scope of eligible Union membership for public officials' has expanded.**

○ To be concrete, the clause that limited the scope of eligible Union membership to general public officials below grade six and equivalent officials thereto were abolished. The amendment included Fire officers and Educational officials and retired Public officials into the scope of the Act.

※ Provided that, still the limitation through duties such as the public officials who exercise the right to direct and supervise other public officials etc. maintain after amendment.

5. Allowance for Retired Teachers to join Teachers'Unions

Background	• Strengthening of the Labor Basic rights for retired teachers in order to ratify ILO's core convention.
Content	• Allowance of the retired Teachers to join the Teacher Unions.
Enforcement Date	• Jul 6, 2021

■ **By amendment of *Act on the Establishment, Operation, etc. of Teachers' Unions*, retired teachers now shall be eligible members of teachers' Union.**

○ The amendment is to ratify the ILO's core convention, guaranteed the retired teachers with Basic Labor Rights such as the right to organize etc.

○ The enforcement date of the amendment is Jul 6, 2021

6. Enforcement of Individual Payment Confirmation System for Medical Expense of Industrial Accident Compensation Insurance

Background	• To reduce the overbilling of Employees who are eligible for medical care benefits under the Industrial Accident Insurance program of the Worker's Compensation an Welfare Service
Content	• If an Employee makes an individual payment for the medical expenses, they can ask the Korea Worker's Compensation and Welfare Service for confirmation if the payment is considered a medical care benefit and should be paid by the Worker's Compensation and Welfare Service. • If there is an overpayment by the Employee to the medical institution, the Hospital, the Korea Worker's Compensation and Welfare Service will refund them.
Enforcement Date	• Jun 9, 2021

■ **From Jun 9, 2021, the individual payment of medical expenses of which an Employee made excessively, can be refunded from the insurance-related medical institutions.**
※ Newly inserted ***Article 41-2 of Industrial Accident Compensation Insurance Act***

○ There were some cases that the medical institutions charging the Employee for the medical expenses even it was deemed a medical care benefit and the Employee should not have paid.

○ When an employee ask the Korea Worker's Compensation and Welfare Service for confirmation whether if an individual payment of medical expense was covered by the Medical Care benefits from Industrial Accident Compensation Insurance Act the Korean Workers Compensation and Welfare Service will review of the expenses and determine the expense was covered or not and if not the medical institution should of refunded the excess payment.

○ If the medical institution does not make the refund to the Employee, the Korea Worker's Compensation and Welfare Service shall refund them instead.

7. Improvement of Approval Standards for Noise Induced Deafness as An Accident on Duty

Background	• To make Prompt and fair Industrial Accident Compensation by improving the approval standards of Noise Induced Deafness as an Accident on duty reflecting the advanced technique of medical treatment.
Content	① Shortening the examination period, ② Reducing the requirements for reexamination and ③ Establishing the requirements to omit reexamination.
Enforcement Date	• Jun 8, 2021

■ **Improvement on the approval standards for accident on duty in order to decide if Noise Induced Deafness if an Accident on duty or not promptly.**

○ Noise Induced Deafness is an sensorineural deafness that is created by being exposed to continuous sound which is above 85dB (decibels) for more than 3 years in workplace and which results in above 40dB of the hearing loss of one ear.

○ It took substantial amount of time until being approved as an Accident on duty by existing establishment, due to 3 or more hearing tests being required at intervals of 3~7 days, the required fulfillment of 5 requirements (which have been reduced to 3 requirements with the new standards), to carry out reexamination if not satisfied etc.

○ The necessary period for the process of Accident on duty for Noise Induced Deafness will be shortened by amending the ***Enforcement Decree of Industrial Accident Compensation Insurance Act(Article 34(3) attached table 3).***

① (Shortening the examination period) now: at intervals of 3~7 days → amendment: 48 hours

② (Reduction on the requirements for reexamination) now: 5 requirements → amendment 3 requirements

③ (Establishment of requirements to omit reexamination) By New Examination methods*, the reexamination can be omitted when if existing examination result can be judged as trustworthy.

※ Auditory Brainstem Response test, Speech audiometry, Immittance audiometry etc.

8. Implementation of Employment Insurance for Persons in Special Types of Employment

Background	• Promotion of "National Employment Insurance" that gradually expands the coverage of employment insurance so that all working citizens can receive protection from the employment safety net.
Content	• Mandatory application of employment insurance to persons in special types of employment in 12 occupations.
Enforcement	• July 1, 2021

■ **From July 1, 2021, persons in special types of employment must enroll into the employment insurance programs.**

○ As the coverage of employment insurance has been expanded to 12 occupations for persons in special types of employment, persons in special types of employment are also eligible for unemployment benefits and maternity benefits.

※ 7.1 Applicable occupations: Insurance solicitors, Solicitors of credit card holders, solicitors on registration of credit business, learning-aid tutors, door-to-door couriers, rental product visiting inspectors, home appliance delivery and installation engineers, door-to-door salespersons, truck owners, construction machine pilots, after-school instructors

1. Scope of Application		
Applicable person		- 12 occupations of persons in special types of employment
Major Exclusions		- Persons with an average monthly income of less than 800,000 KRW during a labor contract (can be added from Feb. '22) - 65 years of age or older (However, it is applicable to those who continue to subscribe to employment insurance before the age of 65)
2. Collection of Insurance Premium		
Premium Rate		- Unemployment benefit 1.4% (persons in special types of employment 0.7%, Employer 0.7%)
Requirements	Contribution requirements	- Qualified days of Employment of 12 months or more out of 24 months before termination of employment
	Reason for Termination	- Involuntary termination (including termination due to the Employers' reduced revenue as stipulated by Presidential Decree)
3. Payment of Job-Seeker Benefits		
Payment level		- 60% of the Daily Wages as calculated by the Korean Welfare Corporation, calculated on the total amount of remuneration for the 12 months before the end of employment at the time of termination
Payment period		- 120 days~270 days
Recognition of Income Activity		- When income is earned by the beneficiary while job-seeking benefits the amount the beneficiary is to receive as a paid benefit shall be reduced by the income, they have earned
4. Payment of maternity leave benefits		
Contribution Requirements		- 3 months before the date of childbirth (miscarriage, stillbirth)
Payment Level		- 100% of the average monthly remuneration for the year immediately preceding the date of birth
Payment Period		- 90 days (120 days for multiple children)

9. Increase of Coverage for Persons in Special Types of Employment Industrial Accident Compensation Insurance

Background	• Due to the high rate of applications for persons in special types of employment for exclusion from workers' compensation insurance, was overlooked by previous workers' compensation.
Content	• Strictly limit the reasons for applying for exclusion from workers' compensation insurance for persons in special types of employment. • Persons in special types of employment Temporary reduction of workers' compensation insurance premiums.
Enforcement Date	• July 1, 2021

■ **From July 1, 2021, reasons for exclusion from workers' compensation insurance for persons in special types of employment will be limited. (Enforcement of the revised *Industrial Accident Compensation Insurance Act* on January 5, 2021)**

○ The reasons for applying for exclusion are strictly limited so that persons in special types of employment can only be excluded from workers' compensation insurance during the period when they are unable to work for unavoidable reasons* such as sickness or childcare leave.

* ① In case of suspension for more than one month due to injury, illness, pregnancy, childbirth, or childcare, ② In the case the business is closed for more than one month due to reasons attributable to the Employer, ③ In case the Employer inevitably closes the business for more than one month due to natural disaster, war, or a disaster equivalent thereto, or the spread of an infectious disease under the Infectious Disease Control and Prevention Act

○ At the time of enforcement, the existing exclusions for persons in special types of employment will be applied again collectively, and persons in special types of employment who wish to be excluded must apply for exclusion again and be approved by the Korea Workers' Compensation and Welfare Service.

■ Considering that the burden of industrial accident insurance premiums for Employers and persons in special types of employment increases due to restrictions on reasons for exclusion, a system for reducing industrial accident insurance premiums for high-risk, low-income, special high-skilled jobs (for one year from July 1, 2021) will be implemented temporarily.

10. 52 Working Hours Per Week System Expanded Application to Business With 5 Employees or More

Background	• The reduction of excessive working hours for Employees has been a long term goal in the Republic of Korea.
Content	• Phased implementation of the up to 52 hour per week rule by Company size and industry - July 2018: 300 or more Employees (300 or more workers excluded from the special industry will start in July 2019.) - January 2020: 50-299 people - July 2021: 5-49 people
Enforcement Date	• July 1, 2021

■ **52 working hours per week system expanded application to Business with 5 Employees or more**

○ Up to 52 hours per week rule applies to companies with 5 to 49 Employees.
- Current: Applies to 50 or more people
- Revision: Applies to 5 or more people

11. Mandatory Issuance of Pay Stubs When Paying Wages

Background	• Preventing labor-management conflicts related to arrears in wages by obligating the issuance of wage statements and promoting quick resolution of disputes
Content	• When Employers pay wages, it is mandatory to issue a pay stub • Wages composition items and calculation methods, and if wages are deducted in accordance with the proviso to Article 43 (1) of the Labor Standards Act, the details, etc. shall be specified in the wage statement. • Wage statement can be issued as an electronic document in accordance with the 「Electronic Document Act」 in addition to paper
Enforcement Date	• Nov 19, 2021

■ **From November 19, 2021, the Employer must issue pay stubs when paying wages to workers.**

○ In the pay stubs, the composition items and calculation method of wages, and the details of wage deductions according to laws and regulations or collective agreements, etc. must be recorded.
※ For details on the wage stub, refer to 「***Enforcement Decree of the Labor Standards Act***」

○ Pay stubs can be delivered in writing or electronic documents in accordance with the Framework Act on Electronic Documents and Transactions

○ When pay stubs are issued, Employees can check the details of wages and prevent disputes between labor and management over wages.
※ A fine of not more than 5 million won is imposed for violations of the issuance of wage statements

12. Enforcement of The Revised Trade Union and Labor Relations Adjustment Act

Background	• Ratification of ILO core conventions and improvement of labor-management relations system
Content	• Under the Trade Union Act, any worker can establish and join a Union. • Elimination of the prohibition of wages for full-time Union Employees, but integrate the working hour exemption system (unification) • Extension of the upper limit on the validity period of a collective agreement from 2 up to 3 years/Improvement of the system related to collective bargaining • Establishment of the principle of prohibition of industrial action that obstructs operation by excluding the occupation of Employers
Enforcement Date	• July 6, 2021

■ **The revised *Trade Union and Labor Relations Adjustment Act* will come into effect from July 6, 2021.**

○ The revised Union law reflects the ILO's Freedom of Association Agreement, the most universal international standard related to basic labor rights, while reflecting the characteristics of labor-management relations at each Korean Company

○ From July 1, 2021, regardless of the size of the Company, an equivalent amount of maternity leave benefits will be paid for the remaining vacation period.

Criteria	Amendments
Qualifications to join a trade Union	- Persons who are not employed by the Company (non-Employee), such as laid-off workers, can also join the Union for each Company.
Principles of Union activities for non-Employee Union members	- Non-Employee Union members must not interfere with efficient business operations during Union activities within the workplace. - Decisions on the time-off limit for each workplace, the bargaining representative of the Union, and the voting for or against industrial action are based on Union members who are employed workers.
Qualifications of trade Union's executive	- The qualifications of Union's executives can be freely determined by the Union's own regulations. - The executives of the Union for each Company can be elected from among the members of the Company.
Paying full-time Union Employees	- Removal of regulations prohibiting payment of wages to full-time Union Employees - Discipline through integration (unification) into the working hour exemption system ① Employers can still pay wages only within the limit of working hours exemption ② Collective agreements and Employer consent that exceed the exemption limit are invalid ③ Discipline as unfair labor practice when the Employer pays wages in excess of the exemption limit
Reorganization of the system related to collective bargaining	- In case of individual negotiations with the consent of the Employer, the duty to bargain in good faith and non-discrimination is granted - State and local governments are obliged to make efforts to promote various negotiation methods - Establishment of the basis for the integration of separate bargaining units
Valid period of collective agreement	- It can be freely determined within a period of up to 3 years by Labor-Management agreement
Industrial action in the form of occupying the office	- New principle of prohibiting industrial action that obstructs operation by excluding Employers from occupation

13. Guaranteed Maternity Leave Benefits for Fixed-Term and Dispatched Workers

Background	• Alleviation of the economic burden caused by childbirth of non-regular workers and establishment of the use of the maternity protection system without discrimination in terms of employment
Content	• When the contract period expires during the period of maternity leave to fixed-term or dispatched workers, regardless of the size of the Company, an equivalent amount of maternity leave is paid for the remaining leave period.
Enforcement Date	• July 1, 2021

■ **From July 1, 2021, maternity leave benefits are guaranteed to fixed-term and dispatched workers whose employment contract has expired during maternity leave.**
※ Equivalent amount of Maternity leave benefits: 100% of ordinary wages (up to 2 million won per month) for the remaining maternity leave from the expiration date of the labor contract to the end of the maternity leave

○ In the case of fixed-term or dispatched workers, if the contract period expires during the maternity leave period, even if the statutory leave period is left, as the employment relationship is terminated, maternity leave benefits cannot be received.

○ From July 1, 2021, regardless of the size of the Company, an equivalent amount of maternity leave benefits will be paid for the remaining vacation period.

Multiple Labor Unions and the Duty of Fair Representation

I. Introduction

Article 33 Paragraph 1 of the Constitution stipulates that workers have the right to organize independently, bargain collectively, and to act collectively in order to improve working conditions. Workers are guaranteed improvement of working conditions through the exercise of these three rights as fundamental under the Constitution. To realize this, the Labor Union Act was enacted to protect these basic rights. However, the exercise of these rights was restricted because only one labor union was recognized in any one singular workplace. To improve this, multiple unions were allowed in individual workplaces as of July 2011, and this multiple union system stipulates the duty of fair representation of the multiple unions, along with a procedure for determining the representative union channel for bargaining (Articles 29-2 and 29-4 of the LUA). The purpose of this system of a representative union bargaining channel is to deal with practical problems that can arise when multiple unions engage in collective bargaining with employers, such as antagonism between unions and labor management on issues that arise from having to negotiate the same content numerous times. The intent is to prevent problems such as difficulties and differing working conditions based on union membership.[1] If the majority union takes the initiative in collective bargaining through the bargaining channel system, this in fact means that minority unions are limited in their bargaining rights or in the exercise of their union rights, which may make it difficult for them to survive as unions. To compensate for this, the concept of the duty of fair representation on the part of the bargaining representative

[1] Constitutional Court Decision on April 24, 2012: 2011 Hunma 338.

union was introduced, and through this, minority unions were able to exercise their roles and maintain their power as unions.[2)]

As of July 2011, as multiple unions were permitted, majority unions were established in the workplaces of several metal unions, under the leadership of the employer, as a result of which there were cases in which the existing unions, which lost their collective bargaining status, were incapacitated. In fact, it can be said that this was a case of failure to understand the duty of fair representation in conjunction with the purpose of the bargaining channel unification system. Over the past 10 years, a lot of precedents on the duty of fair representation have accumulated. In this article I would like to review the criteria for judging the duty of fair representation and the effectiveness of remedies.

II. Subject, Scope, and Burden of Proof for Duty of Fair Representation

1. Subject

The bargaining representative union and the employer shall not discriminate between the unions participating in the procedure of determining the representative union channel for bargaining, or its members, without reasonable grounds (Article 29-4 of the LUA). It is the bargaining representative union and the employer who bear the duty of fair representation. Here, in principle, the bargaining representative union bears the duty of fair representation, but depending on the case, the employer may also bear such duty (duty of non-discrimination) together with the bargaining representative union.[3)] However, the employer alone does not assume the duty of fair representation. A minority union removed from the procedure of determining the representative union channel for bargaining has the right to ask the duty of fair representation to the bargaining representative union. Applicants who can claim the duty of fair representation are minority unions that have participated in the representative union channel for bargaining, while unions that did not participate are excluded.

2. Scope

The purpose of the fair representation duty is to prohibit discrimination between labor unions participating in the process of determining the representative union channel for bargaining. The duty of fair representation must be observed not only in the articles of the collective agreement, which is the result of collective bargaining, but also in the process of collective bargaining.[4)] In order for the bargaining representative union to treat the minority union equally in the process of collective bargaining and to fulfill the duty of fair representation procedurally and appropriately, it is necessary to provide information about the collective bargaining and the conclusion of a collective agreement to the minority union. However, since the discretion of the majority union is allowed in the collective

---

2) Seoul High Court ruling on April 24, 2014: 2013 Nu 53105.

3) Park, Jisoon, "The Concepts and Contents of the Duty of Fair Representation", Labor Review, Korea Labor Institute, June 2011, p. 14.

4) Supreme Court ruling on August 30, 2018: 2017 Da 218642.

bargaining process, if a minority union is discriminated against without reasonable cause by deviating or abusing the discretion of the bargaining representative union, the duty of fair representation is violated.[5)]

The issues related to the duty of fair representation are ① the scope of union members, the subject of membership, and qualifications, ② the limit of paid time-off and treatment of paid full-time employees, and ③ the union shop issue in the content of the collective agreement. In the course of union activities, ① union fee deduction, ② requirements for recognition of paid union activities, ③ selection of labor-management council members, ④ union office, ⑤ union bulletin board, etc. are provided for. In the process of collective bargaining, ① gathering opinions on the proposal for negotiations, ② explaining the progress and results of negotiations, and ③ selecting the bargaining agenda are stipulated.[6)]

3. Burden of proof

Responsibility in lawsuits is apportioned according to who has the duty to verify the burden of proof. In general, the burden of proof rests with the party making the claim. However, regarding the burden of proving the duty of fair representation, the Supreme Court has ruled, "If it is recognized that the bargaining representative labor union or the employer discriminated against another union or its members participating in the procedure for determining the representative union channel for bargaining, the fact that such discrimination has reasonable grounds should be verified by the bargaining representative union or the employer with the burden of proof for the claim."[7)] It was determined that the burden of proof rests with the bargaining representative union and the employer, because the legal provisions specify the duty of fair representation which the bargaining representative union and the employer have to a minority union in accordance with Article 29-4 of the Labor Union Act.[8)]

III. Judgment Criteria in Each Instance of Duty of Fair Representation

The judgment of the Labor Relations Commission and the courts on whether the duty of fair representation was violated has mainly consisted of the provision of union offices, the issue of allotment of paid time-off, discrimination toward minority unions, and applications for remedy for discrimination in the process of concluding collective bargaining.

1. Provision of a union office

While an employer is not obligated to provide a specific office where the union may perform its daily work, if there is an office available at all times to the bargaining

5) Supreme Court ruling on September 13, 2018: 2017 Doo 40655.
6) Lee, Kyungwoo, "Objects of Fair Representation and Judgment Criteria", Labor Law, December 2018, Joong-Ang Kyungjae.
7) Supreme Court ruling on August 30, 2018: 2017 da 218642.
8) Administrative Court ruling on September 29, 2016: 2015 Guhap 8459.

representative union (unless there are special circumstances), space available to other unions should be provided to minority unions, with a proportional principle generally applicable to the size of the office provided for the minority union.[9)]

The most common item in remedies for violation of the duty of fair representation in the Labor Commission is this issue of a union office. While the majority union was quite often provided with an office, this was not always the case for minority unions,[10)] or else the office was located far away from the workplace, thereby being disruptive to union activities.[11)] Even in cases where the minority union was assigned a significantly smaller office, it has been considered to be a violation of the duty of fair representation.[12)]

2. Allocation of paid time-off

In principle, the idea of proportionality according to the number of union members is applied in relation to the distribution of paid time-off. However, given that the bargaining representative union is engaged in activities related to collective bargaining and participation in the labor-management council, it is justifiable to grant a little more in the distribution of paid time-off, within a reasonable range according to social norms.[13)] However, not allocating any paid time-off to minority unions or granting too little to minority unions is a violation of the duty of fair representation.

The paid time-off system is stipulated in a collective agreement, within the legal limits, in consideration of the number of union members who are employees of the workplace, or if the employer consents. Designated union members can consult with the employer, negotiate, handle grievances, and engage in industrial safety activities without loss of wages by using paid time-off, or can dedicate their full time to union activities and union management tasks (Article 24 of the LUA). Based on 2000 hours, one full-time employee can use an individual's entire working hours for union activities, and the number of paid time-off employees is determined based on this.

In terms of guaranteeing time-off for union activities, a measure (for example) that allocates 50 minutes of new employee training time to the bargaining representative union and 10 minutes to the minority union is a violation of the duty of fair representation.[14)] This is because the 10 minutes allocated to the minority union is too short to promote and enroll in the union, making normal union activities impossible.

---

9) Supreme Court ruling on September 13, 2018: 2017 Doo 40655.
10) Seoul High Court ruling June 17, 2016: 2015 doo 57064; Administrative Court ruling on November 24, 2017: 2017 Kuhap 60642.
11) Deajon Regional Court ruling on August 28, 2019: 2018 Kuhap 104220.
12) Administrative Court ruling on September 29, 2016: 2015 Kuhap 8459.
13) Seoul High Court ruling on April 24, 2014: 2013 Nu 53105.
14) Administrative Court ruling on April 4, 2014: 2013 Kuhap 4590.

3. Discrimination of minority unions regarding working conditions

In addition to the provision of a union office and the allocation of paid time-off, there may be various discriminations in the interpretation or implementation of the collective agreement. For example, if the collective agreement explicitly stipulates that certain labor conditions apply only to the bargaining representative union, or if there is a provision that excludes application to members of a minority union. Other examples would include: ① An instance in which only the anniversary of the foundation of the bargaining representative union is recognized in the collective agreement, while the anniversary of a minority union is not.[15] ② The act of providing a bulletin board to a minority union which differs from that of the bargaining representative union. This would be considered discriminatory, which is a violation of the duty of fair representation. For example, if the bargaining representative union was provided with an electronic bulletin board and the minority union was provided with a general bulletin board.[16] ③ The payment of welfare funds, overseas training expenses, and student subsidies to only the bargaining representative labor union would also be a violation of the duty of fair representation.[17]

4. Discrimination in the bargaining process

Collective bargaining takes place in the following order: preparation of the negotiation request, the negotiation process, an agreement through negotiation, an internal approval procedure through a general meeting of union members regarding the provisional agreement, and finally, the conclusion of the collective agreement. In this process, the bargaining representative union must provide all necessary information to minority unions and receive their opinions when preparing a draft for a bargaining request.[18] Information on the progress of the collective bargaining process must be provided. When a provisional agreement is drawn up, an opportunity to vote for or against the agreement must be provided. Here, the bargaining representative union's discretion regarding the collective bargaining and conclusion is recognized, but violations of the duty of fair representation may be acknowledged for any parts where information to the minority union was not provided or the process of collecting opinions was not implemented when preparing the bargaining request.[19]

IV. Corrective Procedure in Case of Violation of the Duty of Fair Representation

1. The party to the request for relief

The applicant for relief from the violation of the fair representation duty would be a minority labor union participating in the process of determining the representative union channel for bargaining. A labor union that does not participate in the bargaining unification process cannot be an applicant. Since the application targets the bargaining representative union channel for bargaining, it cannot concern the employer only, but both the bargaining

---

15) Supreme Court ruling on August 30, 2018: 2017 Da 218642.
16) Administrative Court ruling on May 3, 2018: 2017 Kuhap 77626.
17) National Labor Relations Commission decision on May 12, 2015: 2014 Kongjung 34.
18) Choi, Chang-Gwi, "National Commission Judgment Cases and Some Legal Issues on Fair Representation Obligation" Kangwon Law, 41, December 12, 2014, page 1101.
19) Supreme Court ruling on October 29, 2020: 2019 Da 262582.

representative union and the employer at the same time, or the bargaining representative union only can be the target.

2. Exclusion period

In the case of discrimination between the bargaining representative labor union and the employer in violation of the duty of fair representation, a minority union may request the Labor Relations Commission to correct the violation within three months from the date of the violation (the date of conclusion of the collective agreement) (Article 29-4 (2) of the LUA). For the discriminatory content stated in the collective agreement, a claim for relief must be filed within three months from the date of conclusion of the contract; after this three-month period, a request for relief cannot be made because it has gone beyond the exclusion period.

3. Remedy Procedures and Effectiveness Measures

When the Labor Relations Commission receives an application for remedy for violation of the fair representation duty by a minority union, it hears the claims of the applicant and the respondent within 60 days, and then holds a judgment hearing to determine whether unreasonable discrimination has occurred and issues either a remedy order or a decision to dismiss. If either party is dissatisfied with the relief order, it can apply for reconsideration with the National Labor Relations Commission within 10 days, or file for a lawsuit to the administrative court within 15 days. If no retrial or administrative litigation is filed, the order or decision becomes final. If the bargaining representative union and the employer do not comply with the confirmed corrective order, they shall be punished by imprisonment for not more than three years or by a fine not exceeding KRW 30 million (Articles 89 and 29-4 (4) of the LUA).

VI. Conclusion

The duty of fair representation is a system in which minority unions relinquish their bargaining rights through the process of determining a representative union channel for bargaining, but these minority unions still represent the rights and interests of their members and maintain their substance as unions. A bargaining representative union that violates the duty of fair representation will be ordered to correct or be liable for damages. Through this provision of the duty of fair representation, minority unions can survive, promote the rights and interests of minority union members, and continue their union activities. In this era of plural unions, minority unions should be fully aware of the duty of fair representation by the majority-represented union and the employer, and protect the rights and interests of their unions and members by securing the rights of their minority unions.

Criteria for Judging Unfair Labor Practices and Specific Examples

I. Introduction

Article 33 Paragraph 1 of the Constitution stipulates that workers have the right to independent association, collective bargaining and collective action in order to improve their working conditions. These three labor rights are basic rights of the people guaranteed by the Constitution. The Trade Union and Labor Relations Adjustment Act (hereafter, the TULRAA) mentions these three labor rights and provisions on unfair labor practices. It describes in detail what amounts to violation of each of the three labor rights, stipulates the procedure for applications for remedy against unfair labor practices through the Labor Relations Commission, and allows criminal punishment for unfair labor practices through the Labor Office. According to the courts, a system to deal with unfair labor practice was specifically established by the TULRAA to quickly normalize labor relations by securing the three rights of labor, and preventing and stopping the actions of employers that destroy the order of collective labor relations.[20)]

Unfair labor practices can be said to infringe on the three labor rights, and are divided into five types of actions (as described in Article 81 of the TULRAA) by the employer and any person in a position equivalent to employer that disadvantage the union or its members. In this regard, I would like to take a detailed look at the specific criteria for deeming a labor practice unfair, and examples of each type that occur in reality.

II. Criteria for Judging Labor Practices as Unfair

There are three elements that must be present for a labor practice to be deemed unfair: it should include actions by the employer, at least one of the five items described in Article 81 of the TULRAA should exist, and the employer must intend to engage in the unfair labor practice.

1. Actions by the employer

Unfair labor practices are a result of actions of an employer. In the TULRAA, an employer is excluded from membership in a labor union, is someone in charge of managing the business, someone acting on behalf of the employer in matters relating to the employed workers, or someone always acting specifically in the employer's interest (Articles 2 and 4). Here, the acts by “someone acting on behalf of the employer in matters relating to the employed workers” refer to matters such as determining the working conditions of workers, managing personnel, salaries, welfare, and labor, or giving orders or supervising

20) Supreme Court ruling May 8, 1998: 97nu7448.

work—a person who has been given certain powers and responsibilities by the employer. "Someone always acting specifically in the employer's interest" refers to ① those directly participating in labor relations decisions such as personnel management, salary, disciplinary action, auditing, and labor management of workers, or ② those working to implement the employer's plans and policies for employment relations, and has the authority to handle confidential matters.[21)]

Even if a worker who does not fall within the scope of employer follows the employer's instructions or acts specifically under the tacit approval of the employer, acts that obstruct the organization or operation of the union must be regarded as an employer's acts.[22)] However, if an ordinary worker personally engages in unfair labor practices that infringe on the three labor rights, it cannot be regarded as an unfair labor practice by the employer.

2. Five types of unfair labor practice

① Disadvantageous treatment due to labor union activity: Dismissal or unfavorable treatment of a worker on the grounds that he/she has joined or intends to join a labor union, or has attempted to organize a labor union, or has performed any other lawful act for operation of a labor union (Infringement of the right to organize);

② Anti-union contract: Dismissal or unfavorable treatment of a worker is written into the contract for joining or intending to join a labor union, or attempting to organize a labor union, or performing any other lawful act for operation of a labor union (Violation of the right to organize);

③ Refusing or neglecting to engage in collective bargaining: Refusing or delaying execution of a collective agreement or other collective bargaining with the representative or other person authorized by the labor union, without justifiable reason (Infringement of the right to collectively bargain);

④ Domination of, interference in, or subsidizing operating expenses for labor union activities: Dominating or interfering in the organization or operation of a labor union by workers, and paying wages to full-time officers of a labor union or financially supporting labor union operations (Violation of the right to organize);

⑤ Disadvantageous treatment for reporting on collective actions or unfair labor practices: Dismissal of workers or acts against their interest on the grounds that they have participated in justifiable collective activities, or that they reported to or testified before the Labor Relations Commission the fact that the employer has violated the provisions of this Article, or that they have presented other evidence to the relevant administrative agencies (Violation of the right to take industrial action);

---

21) Supreme Court ruling on Sep. 8, 2011: 2008doo13873.
22) Lim, Jong Ryul, 「Labor」 18th ed, Parkyoungsa, 2020, p. 283.

3. Intention to engage in unfair labor practice

In order to judge a labor practice as unfair, it must be done with a clear intention by the employer to engage in what he/she knows is unfair, such as an employer intentionally disadvantaging a worker for his/her legitimate union activities. According to a related court ruling, "Whether an employer's conduct falls under the unfair labor practices stipulated in the TULRAA is determined after comprehensively reviewing all circumstances that can infer whether the employer intends to engage in unfair labor practice."[23)]

III. Criteria for Judgment of Unfair Labor Practice, by Type

1. Unfavorable treatment

Three conditions must be met for an action to be deemed unfavorable treatment. First, workers must organize or join a labor union or participate in collective action. Second, workers were disadvantaged because they joined or participated in a labor union or because they participated in collective action. Third, any unfavorable treatment from the employer towards the workers must be in direct response to legitimate union activities of the workers.

(1) A case related to a job transfer stipulates that "If it is recognized that the practical reason the employer ordered a transfer was because the worker engaged in legitimate labor union activity, it should be regarded as unfair labor practice despite the employer ostensibly citing work-related reasons." [24)]

(2) In a case related to dismissal, "Despite the apparent reason for dismissal when an employer dismisses a worker, if it is recognized that the dismissal is based on the fact that the worker actually performed a justifiable union act, dismissal must be regarded as an unfair labor practice. Whether a worker's justifiable act for the union's work is the actual reason for dismissal depends on the reasons for dismissal as suggested by the employer, the content of the worker's justifiable actions for union affairs, the timing of dismissal, the relationship between the employer and the union, and so on. The judgment must be made by comprehensively examining whether or not there is an abuse of disciplinary discretion and various circumstances that can presume existence of the employer's intention to engage in unfair labor practices."[25)]

2. Anti-union contracts

An anti-union contract consists of efforts to obstruct the right to organize, coercion of unity, and union shop rules for a union with fewer than 2/3 of the employees as members.

(1) Interference with the right to organize involves setting as a condition of employment

---

23) Supreme Court ruling on Nov. 15, 2007: 2005 doo 4120.
24) Supreme Court ruling on Nov. 7, 1995: 95 nu 9792.
25) Supreme Court ruling on Dec. 23, 1994: 94 nu 3001.

that a worker will not join or will withdraw from a union. Here, when it comes to any union, in the era of multiple labor unions, membership in the company's favored union can be a condition of employment. In addition, requiring withdrawal from a union as a condition of employment can be seen as including the intention to neutralize the majority union in the existing employment relationship.

(2) The coercion of unity is an act in which workers are required to become members of a specific union as a condition of employment. This can be judged that the employer intends to make a particular union become the majority union, which the employer can then exercise influence over, and to render the majority union less powerful.

(3) In union shop, when a labor union represents at least two-thirds of the workers in the relevant workplace, a collective agreement stipulating that workers shall become a member of the union as a condition of employment is an exception. This clause is an exception to the coercion of unity, and can only be concluded when at least two-thirds of the workers in the relevant workplace are represented. It amounts to an anti-union contract and unfair labor practice for the union shop clause to refer to a union with less than two-thirds of the workers employed at the relevant workplace. Even if a union shop is properly included, the employer may not act disadvantageously to a worker expelled from the union or because he or she has left the union and formed a new one or joined another (Article 81 (2) of the TULRAA).

3. Refusing or neglecting to bargain collectively

The purpose for establishing a labor union is to improve working conditions through collective agreements. In order to conclude these collective agreements, the union must determine the working conditions in writing through collective bargaining with the employer. An employer refusing or neglecting to sign a collective agreement or engage in other collective bargaining with a union representative or a person delegated by the union without justifiable reasons is an unfair labor practice.

Here, refusal to bargain collectively means failing to engage in the collective bargaining demanded by the labor union, while neglecting to engage in collective bargaining means to formally comply with the collective bargaining requirement, but not in good faith.

Even if the union demands collective bargaining, the company may refuse if justifiable reason exists. For that reason, the court precedent stated, “Whether or not there is a justifiable reason for the employer refusing or neglecting to engage in collective bargaining is determined after taking into account the bargaining powers of the union, the negotiating time, place, matters to be negotiated on, and the employer’s attitude towards negotiating with the union. In general, it should be judged according to whether it is unreasonably difficult to expect the employer to fulfill the collective bargaining obligation.[26)]

4. Domination of or interference in labor union activities

(1) Domination/interference

The act of controlling or intervening in the organization or operation of a labor union constitutes unfair labor practice. Employers dominating or interfering in union activities refers to an employer controlling or interfering with the organization or operation of the union through anti-union remarks or specific actions to obstruct the independent decision-making authority of the union. According to a court precedent, "The unfair labor practices of domination and interference refer to the employer influencing the organization and/or operation of the union, thereby influencing the decision-making of the union or interfering with its autonomous operation and activities. It includes acts such as interfering with the union or encouraging division. In the event of such employer actions, if the intention to dominate or interfere in the organization or operation of the union is recognized, unfair labor practice is determined by taking into account the circumstances, place, content, method, and impact on the operation or activities of the union, etc."[27]

(2) Paying salaries to full-time union employees

It is unfair labor practice for an employer to pay wages in excess of the working hours exemption limit or subsidize the operating expenses of the labor union. In consideration of the number of union members who are employed by a business or workplace, those exempt for a certain number of hours from the obligation to perform company business are subject to this Act but may perform the duties prescribed by other laws and related to maintenance and management of the labor union and the development of sound labor-management relations. The problem here is receiving wages in excess of the working hours exemption limit. However, the act of subsidizing wages for workers who are simply full-time union workers and have not been designated as exempt from working hours is itself an unfair labor practice.[28] The wages paid to those exempt from working hours shall correspond to the working hours exempt from the duty to provide work. Even if it is based on a collective agreement between labor and management, paying wages to full-time employees beyond the working hour exemption limit constitutes unfair labor practice.[29]

(3) Aid for operating expenses

It is an unfair labor practice for an employer to subsidize a labor union's operating expenses. Provided, however, that workers can donate funds to workers' welfare funds, to

---

26) Supreme Court ruling on Feb. 24, 2006: 2005 do 8606.
27) Supreme Court ruling on May 22, 1998: 97 nu 8076.
28) Supreme Court ruling on Jan. 28, 2016: 2012 du 12457.
29) Supreme Court ruling on Apr. 2, 2016: 2014 du 11137; Supreme Court ruling on May 15, 2018: 2018 du 33050.

help each other in the event of financial disaster or other misfortune, and the employer may provide a minimally-sized union office. Exceptions are made for assistance to the extent that there is no risk of infringing on the independent operations or activities of the union.

In aiding the labor union with its operating expenses, a certain employer's domination-interference in the union was strictly regarded as unfair labor practice.[30] However, the Constitutional Court ruled, "The prohibition against aid for operating expenses prohibits any act of aid with operating expenses with the two exceptions stipulated in the proviso to Article 81, No. 4 of the TULRAA, which regulates more than required, so it cannot be regarded as an appropriate means to achieve the legislative purpose."[31]

(4) Anti-union speech, dominance and intervention

Behaviors that can affect workers and labor unions include expressing opinions through speeches or in-house broadcasting and acting to express opinions through home correspondence-letters. If it is judged that such media expression by an employer has the intention to suppress union activity or coerce union members, it can be presumed that there is intent to dominate or interfere with union activity.

Accordingly, employers have restrictions on freedom of public expression, while the labor union has regulations prohibiting unfair labor practice in exercising the three labor rights. Therefore, determining whether the expression of opinion or written notice of an employer or a person in the employer's position is an unfair labor practice should be based on whether the employer intends to infringe on any of the three labor rights. According to a related precedent, "In order for an employer's anti-union speech to be considered domination or interference, there must reasonably be fear among the union that such speech seeks to undermine its independence or organizational strength, and the existence of such concern depends on the content, place, method and situation surrounding the statement, and the labor union. It should be judged individually by comprehensively considering the impact on employees and the presumed intent of the employer."[32]

IV. Conclusion

The three labor rights are basic rights of the people guaranteed by the Constitution, and the Trade Union Labor Relations Adjustment Act was enacted to materialize them. Through union activities, it is possible to maintain and improve the working conditions of workers. It is the regulations against unfair labor practice in Chapter 6 of the TULRAA that enable the exercise of these three labor rights. The system determining whether unfair labor practice

30) Jeon, Min-kyung, "Criteria for judging unfair labor behavior, such as aid for labor union operating expenses," Critique of Labor Cases, Vol. 21, Lawyers for a Democratic Society, Aug. 2016, p. 197.
31) Constitutional Court decision on May 31, 2018: 2012Hunba 90 decision; Kim, Hyeong-bae/Park, Ji-soon, 「Labor Law Lecture」 8th ed., Shinsho, 2019, p. 656.
32) Supreme Court ruling on Sep. 2006: 2006 do 388.

has occurred is designed to enhance the viability of the union by guaranteeing the three labor rights and works towards development of mutually-beneficial labor-management units.

Current Conditions, Problems and Solutions of and for Foreign Agricultural Workers

I. Introduction

Movement between countries is currently restricted due to the corona pandemic, which causes many difficulties in introducing foreign workers into the labor force.[33] In particular, rural areas in Korea are undergoing serious changes that make farming impossible without the assistance of foreign workers. Farm household populations are declining and the proportion of the elderly is increasing. The farm household population decreased from 3.11 million in 2009 to 2.31 million in 2018. The proportion of farm households aged 65 and over rose by more than 10% from 34% in 2008 to 45.8% in 2019.[34] Despite this stagnation of the agricultural industry, the supply of food through agriculture is a security issue that is directly related to the survival of the people and cannot be neglected.

Currently, the only official channels for hiring foreign workers for rural areas are the Employment Permit System (EPS) and the Seasonal Workers EPS. If foreign workers are to be introduced into agriculture, the current system is not adequate for supplying the necessary manpower in a timely manner because there are many small farms requiring seasonal work. The current processes are limited in their ability to resolve the shortage of labor in rural areas, and for this reason, especially in the case of crop cultivation, illegal foreign workers used in the busy season account for 90% of manpower. In 2019, before the outbreak of the corona pandemic, there were 2.52 million foreign residents in Korea, including 390,000 illegal workers. Although the Ministry of Justice knows that the majority of foreign workers engaged in agricultural crop cultivation are illegal immigrants, they generally do not implement any crackdown or deportation measures because they realize it is impossible to farm without them.

On December 20, 2020, on a cold winter day, the death of a foreign worker from Cambodia living in a greenhouse accommodation on a farm in Pocheon, Gyeong-gi province was widely reported in the media.[35] This incident resulted in an exposure of the poor

33) Ministry of Justice, "Guidelines for Temporary Seasonal Work Permit System for Foreign Residents in Korea", April 19, 2021.

34) Um, Jinyoung and 7 others, "Policies for Utilization of Foreign Workers in accordance with Changes in the Agricultural Employment Environment", Korea Rural Economic Research Institute, Oct. 2020. Page 3.

35) KBS Internet News, "Sudden death of a foreign worker on a cold winter day", December 23, 2021.

living conditions of foreign workers engaged in agriculture, which is emerging as a social problem. In addition, Korea faces an urgent need to resolve the shortage of manpower in agriculture, and the government has taken no action, despite the fact that large numbers of illegal foreign workers are used in agriculture. In recognition of this reality, I would like to examine in detail the current conditions and problems, and suggest plans for improving the current foreign workers employment systems in the agricultural field.

II. Current Employment Systems for Foreign Agricultural Workers

In 2019, the number of non-professional workers (E-9) and overseas Korean workers (H-2) engaged in agriculture through the Employment Permit System was 31,378, and the number of short-term residents (C-4) through the seasonal workers EPS was 3,600.[36] In the case of livestock and greenhouse farming, it is possible to introduce an EPS that requires employment for more than one year, providing a stable workforce. However, in the case of crop cultivation agriculture, the long-term employment system EPS is not compatible with the requirements of small farm households and the need for seasonally-intensive employment.

1. Employment Permit System (E-9, H-2)

This system has been in effect since 2004, and has allowed non-professional foreign workers from 16 countries to work in Korea. The introduction of a non-professional worker grants a status of stay for 3 years in accordance with the Foreign Employment Act, and may be used for an additional 1 year and 10 months. Many of these people work in so-called '3D' industries (Dirty, Dangerous and Demeaning) where Koreans are reluctant to accept employment. Workers who enter the country under the EPS sign a three-year contract with a specific employer and are strictly prohibited from moving to another workplace unless there are special circumstances. Employment of foreign workers is limited to cases in which employers have made an effort to hire domestic workers through the job centers of the Labor Ministry, but were unable to do so. These conditions are applied to the fields of manufacturing, construction, and agriculture, but not the service industry. Overseas Korean workers are also used as non-professional workers and are employed in almost all industries, including the service industry, with guaranteed freedom of movement and stay for 5 years.[37]

Livestock or greenhouse cultivation requires continuous employment, so it's possible to use the EPS to employ foreign workers for long periods of time. However, in the case of crop-cultivation agriculture, it is difficult to use foreign workers on a regular basis because demand is concentrated in April-June and September-October.[38] In recognition of these characteristics of agriculture, an additional system which allows foreigners to work at places

36) Um, Jinyoung and 7 others, page 38 of the above paper; JoongAng Ilbo, "Foreign workers enter one after another. In rural and fishing industry, 'Corona manpower shortage is solved.' June 18, 2021, page 18.
37) Jung, Bongsoo, "The Employment System of Foreign Workers," Ajou University Ph.D. thesis, Feb. 2018, pages 32-37.
38) Um, Jinyoung and 7 others, page 59 of the above paper.

other than with their exclusive employer during the non-busy farming season has been introduced. This additional workplace system allows foreign workers to work for another agricultural employer during their off-season while maintaining an employment relationship with their original employer.[39)]

2. Seasonal Workers EPS (C-4, E-8)

The Seasonal Workers EPS was introduced in November 2014 to solve the manpower shortage in the agricultural sector only during the busy farming season. Each local government coordinates the Seasonal Workers EPS and supports farmers in their efforts to hire and utilize seasonal foreign workers twice a year (spring and autumn) for a short period of 5 months or less. This is gradually expanding as a method for local governments to help solve the labor shortage of farmers who require additional workers. Although the Seasonal Workers EPS has many advantages, it is not easy to introduce large numbers of foreigners at the right time, and it is difficult for small and poor farmers to directly hire such seasonal workers.[40)]

3. Use of illegal foreign workers

In crop cultivation agriculture, 90% of all foreign workers are illegal immigrants - this employment of illegal foreign workers has become normal and routine.[41)] The reasons why farmers use illegal foreign workers are: First, the farmers are not large enough to hire foreign workers for long terms because their crops are small. Second, in the case of crop cultivation agriculture, there is no opportunity for continuous employment as the work is divided into the busy season and the off-season. Third, there are private manpower agencies for foreigners who fulfill their requirements with just one phone call. Illegal foreign workers are in a blind spot for human rights protection because they do not receive benefits such as protection from unpaid wages, health insurance, and industrial accident compensation insurance.

III. Problems

1. Difficulty in employing foreign workers

(1) The shortage of manpower in rural areas cannot be solved with the Employment Permit System, which was designed for hiring non-professional workers. Mechanization and informatization of agriculture are accelerating, and it is becoming necessary to train professional farmers, but the current short-term rotational EPS may not be suitable for this, considering that a foreign worker has to return to his or her home country after becoming familiar, to a certain extent, with operating machines and growing crops.

---

39) Um, Jinyoung and 7 others, pages 112-114 of the above paper.

40) Lee, Seong-Soon, "Operations and Issues of the Foreign Seasonal Work Permit System in Agriculture," Multicultural Contents Study 36, 2021. pages 168-174.

41) Um, Jinyoung and 7 others, pages 74 & 95 of the above paper; Hankyoreh paper, "Farmers in Gyeongnam province are about to give up harvesting Garlic and Onions", June 6, 2021.

(2) Foreign workers want a stable income, but in the case of agriculture, there is a strong tendency for foreign workers to move from crop cultivation to greenhouse cultivation or livestock farming because their income is not guaranteed due to the variance in busy seasons and off-seasons. Therefore, in consideration of the characteristics of the work, dual employment systems in agriculture have become necessary. Industries that require year-round employment need the current EPS, while a Seasonal Workers EPS and a foreign workers dispatch system are needed as countermeasures to deal with the busy farming season.

2. Limitations on the introduction of seasonal foreign workers

The Seasonal Workers EPS, which is a method for hiring foreign workers, is utilized in exclusive support of local governments. The basic working conditions are limited to following mandatory duties for wage payment, written labor contracts, and the coverage of an industrial accident compensation insurance. This is a very positive system for crop cultivation agriculture that needs to be activated to cope with the manpower needed during the busy farming season. However, since it is used for a short periods of time, immigration costs are high, and it is difficult for small farms to use, which limits the benefits of this system.[42)]

3. Employment of illegal foreign workers

Although the Employment Permit System attempts to meet the demands of agriculture by supplementing the systemic problems of the EPS with the addition of other workplaces, it is not being activated to its full ability due to the complicated rules of the system, job insecurity for foreign workers, and possible violations of the Labor Standards Act. Many farmers have used Seasonal Workers EPS during the busy season through its introduction system, but this has not been widely accessed yet. The Seasonal Workers EPS is introduced and subsidized by local governments, but as farmers need to hire those foreign workers directly as their employees, it is not an easy system to use because only farmers of a certain size can afford to hire and use them.[43)] For this reason, about 90% of farm households use illegal foreign workers. Because of this use of illegal immigrant workers, not only do the individual expenses of farms increase, but the human rights of illegal foreign workers are also not properly protected.

IV. Suggestions for Improvement

1. Stable employment of foreign manpower

To secure a stable foreign workforce, overseas Korean workers should be utilized. To secure sufficient agricultural manpower, it is necessary to induce the settlement of overseas Korean workers in agriculture by simplifying the Visiting Employment (H-2) visa and

42) Lee, Seong-Soon, pages 168-174 of the above paper.

43) Jeon, Yun-koo, "Intermediate Exploitation of Foreign Workers Utilization System in Agricultural Sector – Additional Workplace System of Employment Permit System", Labor Law Review, 48, April 2020, pages 186-190; Lee, Seong-Soon, pages 168-174 of the above paper.

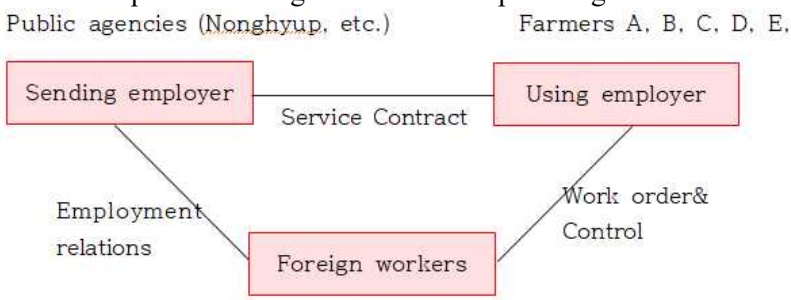
granting them the qualifications of long-term stay overseas Koreans (F-4) or shortening the period required to obtain permanent resident status (F-5) so they can engage in the agricultural field for long periods of time. As overseas Koreans speak the Korean language, easily integrate into Korean culture, and have high acceptability in rural areas, such policies need to be actively and widely promoted.

In order to supplement the shortage of rural manpower in the corona disaster environment, illegal immigrants should be legalized through temporary work permit visas. The number of illegal immigrants is approaching 400,000 in 2021, and it is understood that many of them work in rural areas.[44] While granting them legal work-visa status, it is also necessary to protect their human rights while we solve the shortage of manpower in rural areas. In addition, a flexible operation of the immigration system, similar to the long-term residence system for agricultural foreign workers, is required. Inducing skilled foreign workers to stay for a long time is necessary to solve the shortage of manpower in rural areas. This makes it necessary to create an appropriate environment for long-term stay, such as applying the extended period of stay for agricultural foreign workers or issuing professional visas (E-7) for long-term stay foreign workers, even in rural areas, so their family members can also be invited.

2. Introduction of a foreign workers dispatch system

This is a method for legally employing foreign workers and utilizing them as dispatch workers through public agencies such as Nonghyup, instead of using the current private manpower agencies. Pertaining to this, I would like to introduce the foreign workers dispatch system in Japan.[45]

<Dispatched Foreign Workers in Japan's Agriculture>



Japan enacted the National Strategic Special Zone Act for the Foreigner Introduction Project to support its agricultural industry and has been implementing it in specific regions

44) Ministry of Justice, 「Statistical Monthly Report of Immigration/Foreign Policy」 February 2020.
45) Um, Jinyoung and 7 others, pages 149-153 of the above paper.

since September 2017. In the agricultural sector, public agencies like Nonghyup operate the foreigners dispatch, provide an employment contract with foreign workers, and allocate them to the farmers. This project was designed to reflect the seasonality of agricultural labor and send dispatched foreign workers to farmers, which means that the farmers can secure sufficient manpower for a short period of time only during the busy farming season.

A farmer draws up a service contract with Nonghyup as the sending employer, and then receives and uses foreign workers. There is no limit to the number of foreign workers that can be accommodated per farm, and the Labor Standards Act applies to such foreign workers as they provide work as dispatched workers. The period of available stay is up to 3 years, which they can use to stay continuously or stay for 6 months only during the busy farming season, returning to their home country during the non-farming season, and then coming back to work and staying for another 6 months, repeatedly up to 3 years. Foreign workers who fall under this worker dispatch must be 18 years of age or older, have at least one year of work experience related to farming, and have practical knowledge of farming duties. In addition, they must be able to read and speak Japanese at a level conducive to daily life (N4 level).

3. Improving the living environment

Currently, the rural residence of foreign workers often consists of temporary greenhouses. In response to this, the Ministry of Employment and Labor announced that as of January 1, 2021, if this type of living facility is confirmed, the employment permit will be denied.[46] Rather than requesting the improvement of the residential environment solely on the part of the farmers, the local government or government level in the course of improving the residential environment should play a more active role in subsidizing the building of such living facilities. Since most farmers in Korea operate on a small scale, practically speaking it is difficult to build separate dormitories for each farmhouse. Therefore, consideration of ways to provide a group residence by the local government or the state, or to provide a dormitory building for foreigners in each village for a certain fee. Active support, such as building infrastructure at the local or national level, rather than by individual farmers, is needed so that farmers can attract and employ foreign workers easily whenever necessary.

46) JoongAng Ilbo, "Rural and fishing villages cannot employ foreign workers without dormitories." March 2, 2021.

Understanding Labor Case Investigations by the Police and Prosecutor's Office

11. What if I have requests for the police or prosecution during the investigation?

You can request a copy of the documents related to the investigation held by the police through an information disclosure request. You can also ask for return of any seized items. For mobile phones and computers, information necessary for the investigation by the investigating agency will need to be extracted, but a request can be made to the police that other data be excluded. In addition, requests can be made that any seized documents required for filing taxes, such as accounting books, be returned.

If a victim is concerned about retaliation, he or she can ask the investigating agency to provide personal protection, ask for anything learned during the investigation be kept confidential, or ask them to use a pseudonym for yourself when writing their report.

You may request an investigation with witnesses to ensure the authenticity of your statement. It is also possible to request that opposite party statements that contradict your own be verified through a lie detector test to confirm their credibility, but the other party is not obliged to respond.

12. How can I use police investigation documents as proof of proceedings in civil cases such as claims for related damages?

There are many cases in which criminal investigation records are used in related civil litigation cases. In civil litigation, the plaintiff (usually the worker) seeks to prove the

relevant claim (for example, the illegal actions of an employer in a claim for damages caused by those illegal actions), as without a criminal case being conducted beforehand, the plaintiff would not have access to the evidence necessary to prove his claim. However, here the onus is on the plaintiff to prove that the defendant caused damage.

The plaintiff can ask the investigating agencies in the criminal case to provide the related investigation records so that the civil court has access to them.

When such a request for investigation records made with the investigating authority is accepted by the court, the investigating authority must send the court all records, which can then be used as evidence.

In addition, the parties concerned may request to inspect the documents or submission of other important documents kept by the investigating agency, to see if they are of use in the civil case. In other words, in litigation related to dismissal, and unfair dismissal applications, the court may request that the investigating agency submit related documents, etc., etc. to prove the cause for dismissal.

13. Good use must be made of evidence statements.

For both investigations or trials, facts are acknowledged by evidence. In criminal trials, the accused is presumed to be innocent, so the investigator must prove guilt. Investigators should be proactive in their attestation but may not be very competent. Therefore, it is necessary to urge investigators who perform verification activities on behalf of the victims regarding reliable verification evidences.

For accusers without the right to compulsory investigation, that is, to summon persons for interviews and execute search and seizure warrants to collect evidence, guilt is difficult to prove.

It is necessary to request investigators to collect evidence by designating witnesses (witnesses, reference persons), seizure search sites, and requesting fact-finding agencies to find facts.

For evidence collected for criminal cases, the victim needs to provide to the investigating agency the name of the item and the purpose, explaining how it helps prove a fact or facts. This would be done in a document entitled Explanations of Evidence.

On the other hand, if you are investigated as the accused, it is necessary to refute the evidence presented by the victim or investigating agency.

When providing testimony, the evidence shall be rebutted, as well as reason given for and evidence of the credibility of statements. Rebuttals of presented evidence include suggesting that it may have been forged, manipulated or irrelevant to the case at hand.

Sometimes relevant judicial rulings need to be provided for reference.

14. What are some criminal cases that may arise in the collective bargaining process and how should they be dealt with?

In the collective bargaining process, the union sometimes enters a complaint about the employer to the local MOEL Office, insisting that the employer has committed unfair labor practices, such as illegally collecting union members' personal information, stealing union-related secrets, secretly observing trends in the union, or coercing union members to withdraw from the union.

In connection with this, there is a case where a statement by the union member as well as information sent over the company's internal communication network were leaked and used as evidence. The company also secured evidence such as the union leaking confidential company documents, defaming managers in charge of labor, engaging in illegal filming, and distributing falsehoods about the company through the company's communication network. The company sued the union for defamation, damage to reputation, and for violating laws on the confidentiality of telecommunications.

When such a complaint comes, the investigating agency will uncover the facts of the allegation through an interview of the accuser and analysis of the presented evidence. The accused then responds by securing and explaining his/her own evidence, and refuting the evidence presented by the accuser.

Labor unions can use placards, demonstrations and SNS article comments, company-provided offices, and even representatives' houses to promote their claims to the media.

Labor and management sometimes have to handle criminal cases rather than engage in collective bargaining. This delays collective negotiations. In such cases, it is necessary to urge investigating agencies to take care of the case accurately and quickly by actively requesting in writing opinions on relevant cases so that the cases can be dealt with fairly and quickly.

15. What are some criminal cases that may arise in the collective action process and how should they be dealt with?

A company may need to handle violations of law and illegal collective actions such as illegal sit-ins, damage to property, obstruction of business related to damage to property, and violence related to union strikes. The union may need to handle management violating the law or violence in the process of breaking up sit-ins and damage to property.

Companies can use security services to protect company property, such as through workplace lock-out measures in response to a union strike. In such cases, the management needs to ensure the security company has been formally registered, and whether the necessary training has been completed before assigning them to the workplace.

In addition, it is necessary to supervise the management personnel in charge of pre-deployment training to instruct them on how to avoid infringing on human rights and avoid the use of violence. Access to the company-provided union office in relation to legitimate union activities must be guaranteed. Companies may contact the local MOEL office in advance and request placement of a labor inspector.

In addition, if there are concerns about physical conflict related to entering or exiting company premises or occupation of the business site, evidence to support such concerns needs to be obtained, such as through CCTVs or a camera installed on the rooftop, along with a request for reinforcement from the police. There is also a need to deploy staff assigned to use their cell phone cameras to record what they see and hear.

It may also be necessary for countermeasures to be in place to prevent persons from going up to high locations on the premises in advance, such as towers, gantry cranes, chimneys, roofs, etc. Efforts may be needed to ensure dangerous goods unrelated to occupations on the yard are not brought on the premises in advance, and fire inspections conducted in cooperation with a fire station.

It is always a good idea to check with the police whether or not the labor union has reported its intention to hold a rally or demonstration and whether such report was done in accordance with the necessary procedures, and whether the planned demonstration was reported as it was conducted. A note can be sent to the police in advance to request their assistance in protecting company facilities.

Korean Labor Law Promoting Employment of Persons with Disabilities & Their Protection in the Workplace

I. Introduction

Persons with disabilities also have the right to pursue happiness with dignity and value as human beings, and are entitled to state protection of these rights (Articles 10 and 34 of the Constitution). In accordance with this principle, employers of at least a certain size are obliged to hire persons with disabilities, and laws prohibiting discrimination against them in employment are being, and have been, implemented. Accordingly, employers shall provide employment opportunities to such persons and shall not discriminate against any workers in personnel management, such as in hiring, promotion, transfer, education and training, etc., merely on the grounds that the workers have disabilities. When discrimination does exist, separate legal remedies are provided to ensure the effectiveness of their protection.

In spite of these strict legal systems, many employers choose to pay the employment levy instead of hiring persons with disabilities. In accordance with the urgent demand for greater awareness of the social acceptability of persons with disabilities, Education on Improving Workplace Awareness of Persons with Disabilities is a new statutory form of education established in 2018, with associated penalties for failures by employers to implement such education. If employers are unable to fulfill their obligation to hire persons with disabilities, companies know they only need to pay the employment levy instead. However, since related and legally-required education has been introduced, what follows is a detailed definition of persons with disabilities, the required employment promotion measures, prohibition against discrimination and remedy for infringed rights, and education on improving workplace awareness of persons with disabilities. We then comprehensively review the working standards for persons with disabilities.[47)]

II. Definition of & Obligation to Employ Persons with Disabilities

1. Definitions & Related Laws

Korea labor law related to persons with disabilities includes the Act on the Employment Promotion and Vocational Rehabilitation of Persons with Disabilities (hereinafter referred to as the "Employment Act for Persons with Disabilities")[48)] and the Act on the Prohibition of

47) Ha, Kap-Rae, 「Labor Standards Act」, 28th edition, Joongang Economy, October 2016, pp. 616-624; Kim, El-Lim, Yun, Ae-Rim, 「Labor Standards Act」, KNOU PRESS, Nov. 2017, pp. 304-309.

48) The Employment Act for Persons with Disabilities was enacted on Jan 13, 1990, and recently revised on

Discrimination against the Disabled (hereinafter referred to as the "Act Against Discrimination of Persons with Disabilities")[49]. The purpose of the Employment Act for Persons with Disabilities is to contribute to the employability of such persons so that they may live as regular members of society through work suited to their abilities (Article 1). Here, the term "person with disabilities" refers to someone who has had his/her long-term working life substantially restricted due to a physical or mental disability that corresponds to the standards prescribed by Presidential Decree.[50] There are 15 types of disability specified in Article 2 of the Enforcement Ordinance of the Act on Welfare for Persons with Disabilities: ① physical disabilities, ② brain lesions, ③ blindness, ④ deafness, ⑤ language disability, ⑥ mental retardation, ⑦ developmental disability, ⑧ mental disorder, ⑨ kidney disorder, ⑩ cardiac disorder, ⑪ respiratory disorder, ⑫ liver disorder, ⑬ facial disorder, ⑭ intestinal fistula ⑮ epilepsy with other disabilities.

The purpose of this Act Against Discrimination of Persons with Disabilities is to prohibit discrimination on the basis of disability in all aspects of life, and to effectively safeguard the rights and interests of individuals discriminated against on the grounds of the disability, thus enabling them to fully participate in society and establishing their right to equality which will ensure their human dignity and sense of value (Article 1). This law stipulates the concept and criteria for discrimination against persons with disabilities, and also provides a framework for judging discrimination based not only on employment but also access to and use of education, goods and services, judicial and administrative procedures, services and political rights, motherhood and fatherhood, family, home, welfare facilities, and right to health. It prohibits discrimination and stipulates the right to relief for victims of discrimination through the National Human Rights Commission Act (NHRCA). In Article 9, the Disability Discrimination Act provides that "the prohibition of discrimination on grounds of disability and the right to relief under the Act shall be in accordance with the provisions of the NHRCA, except as provided in this Act."

2. Obligation to Employ Those with Disabilities

An employer who employs 50 or more persons at any time shall be deemed to be obligated to employ persons with disabilities to the rate prescribed by the President (hereinafter referred to as "the mandatory employment rate") up to 5 percent of the total number of employees (Article 28 of the Employment Act for Persons with Disabilities). The mandatory employment rate from 2021 is 3.1% (Article 25 of the Enforcement Decree). Here, "ordinary employment" refers to an employee who has 16 or more working days per month regardless of the type of labor contract. Specifically, the number of employees hired for 16 days or more per month is calculated by dividing the number of months of operation (minus month(s) with less than 16 days of operation) for one year (Article 24 of the Enforcement Decree).

The Minister of Employment and Labor may pay an employment incentive calculated in proportion to the number of persons with disabilities who have been hired exceeding the standard employment rate, including employers who are not subject to employment obligations. The payment unit price shall be within the range of the minimum wage converted on a monthly basis, and shall be preferentially set for those with severe

---

Nov. 28, 2017. The Ministry of Employment and Labor is in charge.

49) The Act Against Discrimination of Persons with Disabilities was enacted on Apr. 11, 2007, and revised on Dec. 19, 2017. The Ministry of Health and Welfare is in charge.

50) The Enforcement Decree to the Act contains the following two items: 1. A person determined to have a disability as specified in Article 2 of the Enforcement Decree to the Act on Welfare for Persons with Disabilities; and 2. The holder of a Distinguished Service certificate as prescribed by the former part of Article 101 paragraph (1) of the Enforcement Decree to the Act on the Honorable Treatment of and Support for Persons, etc. of Distinguished Service to the State or other documents that certify that the person has carried out distinguished services as prescribed by paragraph (2) of the same Article.

disabilities and women with disabilities (Article 30 of the Employment Act for Persons with Disabilities).

3. Employment Levy on Companies Failing to Employ Persons with Disabilities

Employers who do not hire persons with disabilities, or do not meet the mandatory employment rate, must pay an annual employment levy to the Minister of Employment and Labor. However, employers with fewer than 100 permanent employees are exempted from this obligation. Employers subject to the obligation to employ persons with disabilities shall declare in writing their number of permanent employees per month, their number of employees with disabilities and the amount of levy (if any) paid each year by January 31 of the following year, and shall pay the levy for that year. The Employment Levy for Persons with Disabilities is the annual sum of the total number of persons with disabilities to be hired under the mandatory employment rate minus the number of persons with disabilities regularly employed each month multiplied by the burden base amount (Article 33 of the Employment Act for Persons with Disabilities).

$$\text{Total Levy} = \left\{\left(\begin{array}{c}\text{Total number of persons}\\ \text{with disabilities to be hired}\end{array}\right) - \left(\begin{array}{c}\text{Total number of}\\ \text{persons with disabilities}\\ \text{hired annually}\end{array}\right)\right\} \times \text{Base burden}$$

III. Discrimination Against Those with Disabilities

1. Criteria for determining discrimination

Direct discrimination is where (1) those with disabilities are treated unfavorably, due to their disability, through restriction, exclusion, separation, or denial without justifiable reason (Article 4 (1) of the Act Against Discrimination of Persons with Disabilities).

Indirect discrimination refers to (2) when persons with disabilities who are not adversely affected by restrictions, exclusion, separation, or rejection in a formal way but still undergo adverse consequences for their disability by applying criteria to them, without justifiable cause, that do not consider their specific situation; (3) where reasonable accommodation is not provided to persons with disabilities without just cause. Here, "reasonable accommodation" refers to that which would enable the person with disability to participate in the same activities as those without disabilities, including facilities, tools, services, etc., taking into consideration the gender of the person with the disability; (4) behavior by a person in a way that directly advertises or promotes adverse treatment such as through restriction, exclusion, separation, rejection, etc. without justifiable reason. In this case, the advertisement usually includes actions deemed to have an advertising effect that promotes adverse treatment; (5) In the from above (1) to (4), discrimination against a person who is dealing or accompanying a person with a disability for the purpose of helping a person with a disability In this case, acts by persons with disabilities against other persons with disabilities shall also be subject to determination as discrimination on the basis of that

which is prohibited by this Act; (6) interfering with the legitimate use of assistance animals or devices for those with disabilities, or other acts prohibited by Article 4 against assistance animals and devices for those with disabilities (Article 4 of the Act Against Discrimination of Persons with Disabilities).

Actions that are taken in accordance with the following situations are not considered unjustifiable discrimination: (1) Excessive burden or considerable difficulty is incurred by avoiding prohibited discrimination, making it inevitable due to the nature of specific work or business performance; (2) Active measures taken by this Act or other laws and ordinances to realize the real equality of persons with disabilities and to correct discrimination against persons with disabilities shall not be regarded as discrimination under this Act (Article 4 of the Act Against Discrimination of Persons with Disabilities).

If there are two or more causes for discriminatory action but the main cause is recognized as due to a disability, the action shall be regarded as discrimination under this Act. When judging discrimination, the gender of the person with the disability, the type and degree of the disability, and other characteristics of the person with disability shall be fully considered (Article 5 of the Act Against Discrimination of Persons with Disabilities).

2. Discrimination correcting organization and remedies for infringed rights

In the event a person is discriminated against in a way prohibited by the Act Against Discrimination of Persons with Disabilities, that person or any person or organization who knows this fact may appeal to the National Human Rights Commission (NHRC). Even if there is no complaint, the NHRC may investigate in its own power when there is a reasonable cause to believe discrimination has occurred that is prohibited by the Act Against Discrimination of Persons with Disabilities (Article 38 and 39).

The NHRC shall notify the Minister of Justice of the details of any recommendation for the forbidden discrimination behaviors. The Minister of Justice gets involved in cases where a person who receives a recommendation from the NHRC does not carry out the recommendation without justifiable cause. This can include: (1) a failure to implement recommendations for discriminatory acts against multiple persons; (2) a failure to implement recommendations for repeated discriminatory acts; and (3) intentionally disregarding a recommendation to disadvantage the person being discriminated against. The Minister of Justice may also get involved if he/she deems a correction order is necessary and the degree of real or potential damage is severe and the effect on the public interest is recognized as serious (Article 43 of the Act Against Discrimination of Persons with Disabilities). Corrective orders can include ① suspension of the discriminatory acts, ②

compensation for damage, ③ implementation of measures to prevent recurrence, and ④ other measures deemed necessary to correct the discrimination.

Any party contesting the order of correction by the Minister of Justice may file an administrative suit within thirty (30) days from the date of receipt of the order. The order of correction shall be finalized if no action has been filed within this period of time (Article 44 of the Act Against Discrimination of Persons with Disabilities). The Minister of Justice may impose a fine of up to KRW 30 million against persons failing to follow a correction order without just cause (Article 50 of the Act Against Discrimination of Persons with Disabilities).

IV. Compulsory Education on Protecting the Rights of Persons with Disabilities

1. Compulsory Education & Related Penalties

Employers shall work to eliminate bias in the workplace against those with disabilities, create stable working conditions for them, and educate their workforce to improve their awareness of persons with disabilities. Mandatory education covers all businesses or workplaces employing more than 50 workers and shall consist of one hour per year. Employers shall keep records related to the education for 3 years. (Articles 5-2, 5-3, 86 of the Employment Act for Persons with Disabilities, and (3) Article 5-2 of the Enforcement Decree).

2. Content of Mandatory Education

Education to improve workplace awareness of persons with disabilities shall include: ① the definition of disability and types of disability; ② human rights, prohibition of discrimination against, and provision of fair accommodations for persons in the workplace with disabilities; ③ laws and systems related to employment promotion and vocational rehabilitation of persons with disabilities; and ④ other contents deemed necessary to improve workplace awareness of persons with disabilities. This education can be done collectively, as an inquiry or a meeting, or through remote education using the Internet or other communication network, or experiential education in consideration of the size and characteristics of the business (Article 5-2 of the Employment Act for Persons with Disabilities).

V. Conclusion

All people need to have social consideration for people with disabilities as all live with the possibility of becoming disabled themselves. There is a societal need to better ensure

the employment of persons with disabilities and prohibit discrimination against them. In addition, employers and workers need to learn how to protect the rights of their colleagues with disabilities and guard against discrimination. I hope businesses in Korea will take this new opportunity to improve the treatment of this sector of society in the workplace through legally-mandated education.

Criteria for Determining Whether Workplace Harassment Has Occurred

I. Introduction

The Workplace Anti-Bullying Act was enacted in January 2019 and came into effect in July of the same year. Three incidents contributed to enactment of this law. The first case is known as the “nut rage” incident involving an executive of Korean Air in 2014. Vice President Cho 00, a daughter of Korean Air’s owners, exploded in rage that her Macadamia nuts were served in a bag, not on a plate, verbally abusing the flight attendant and the chief flight attendant and forcing both to kneel and apologize to her. Ms. Cho then ordered the plane—heading for a runway at New York’s John F. Kennedy Airport to fly to Seoul—to return to the boarding gate where she ordered the chief flight attendant to get out. Then the plane departed.[51] In 2019, Korean Air was ordered by the court to pay 70 million won to former chief flight attendant Park 00, for the personnel disadvantages received as a result of the incident.[52] The second case involves a nurse who killed herself, leaving a suicide note that said, "Workplace harassment makes it difficult to work." In March 2019, the Labor Welfare Corporation's Disease Judgment Committee recognized the incident as an industrial accident caused by workplace harassment. In the third case, at the end of 2018, a video surfaced of Yang 00, chairman of WeDisk, a start-up IT company, calling in an ex-employee and brutally assaulting in the office. Yang is currently in prison for this and illegal business activities.[53]

Until recently, investigation and treatment of workplace harassment has been entirely up to companies.[54] There were only two related rules when the Workplace Anti-Bullying Act

51) Moon, Kangboon, “Is this workplace harassment?” 2020. Gadian, p. 34.
52) Seoul High Court ruling on Nov. 5, 2019.
53) Moon, Kangboon, “Is this workplace harassment?” 2020. Gadian, pp. 35-36.
54) Shin, Kwonchul, “Legal Concepts and Criteria for Determining the Occurrence of Bullying in the Workplace,” Labor Law (69), Korean Labor Law Association, Mar. 2019, p. 228.

was enacted. First, rules of employment had to include procedures for dealing with workplace harassment and for remedy. Second, employers were to be punished if they disadvantage those who report harassment in the workplace. The procedures for handling reports of bullying were entirely up to the employer, which did little to actually resolve the problem. Accordingly, in April 2021, the following five employer obligations were added in amendments to the relevant laws. Employers are now obligated to: 1) Prohibit bullying in the workplace, 2) Conduct objective investigations of reported bullying incidents in the workplace, 3) Take appropriate actions to protect alleged victims, 4) Establish and carry out disciplinary action in response to bullying in the workplace, and 5) Comply with confidentiality requirements related to harassment investigations in the workplace, with fines levied for negligence.

When determining whether bullying has occurred in the workplace, the criteria are somewhat complex given the blur between the employer's discretionary personnel rights and the employee's personal rights. I will take a look at the related details and criteria for judgement herein.

II. Factors in Determining Whether Workplace Harassment Has Occurred

1. Concept of workplace harassment

The Labor Standards Act (Article 76-2) prohibits harassment in the workplace, which is defined as "an act of inflicting physical or mental pain on other workers or worsening the working environment through an abuse of the superior position of the employer or relationships in the workplace." There are four components to workplace harassment: (i) Defined target: employer or employee, (ii) Abuse of position: Using position or work relationship against the target, (iii) Repeated actions towards the target, or assigning of tasks, unnecessary for performance of contracted work: Actions beyond the appropriate scope of work, (iv) Infringements of human rights and/or degradation of the working environment: Any action that causes physical or mental pain or worsens the working environment. All four factors above must be met for an incident to qualify as workplace harassment.

2. Explanation of the factors in harassment[55)]

(1) Defined target: Employer or employee

The Labor Standards Act (Article 2 (2)), defines an employer as someone in charge of managing the business, or a person who acts on behalf of the employer with respect to matters related to workers. Someone in charge of managing the business does not have to be the business owner but is in charge of general business management, and refers to

55) Ministry of Employment and Labor, "Manual for Judgment and Prevention of Harassment in the Workplace," 2019, pp. 24-27.

someone who represents a business externally after comprehensive delegation from the business owner for all or part of the business management. Anyone who acts on matters related to workers for the business owner is delegated authority from the business owner or the person in charge of business management and is involved in making personnel decisions, such as hiring and dismissal of those within their own realm of responsibility, and directing and supervising the workers on the job, and working conditions. It also refers to someone who can decide and execute matters related to working conditions. Relatives of the employer are included in the scope of "employer" with revision of the Labor Standards Act in 2021 (Article 116). "Employer" includes those with an advantage over other workers, such as via position or work relationship.

In the worker dispatch relationship, according to the Act on the Protection, etc., of Dispatched Workers, a bullying agent in the workplace can also include an employer who directly supervises and directs the work of a dispatched worker.

(2) Abuse of position: Using position or work relationship, etc., against the target

Harassment in the workplace mainly occurs in places where there is a strong organizational culture or authoritarian hierarchy. It occurs mainly in the form of actions by people with superior social or economic status using their power and superior status against those less socially privileged.[56)]

A superior relationship refers to one in which it is likely to be difficult for those in lower positions to resist any bullying behavior. An abuse of position refers to an offender using their superiority against someone in a command-and-control relationship, or even if it is not a direct command-order relationship, it is to use the higher position or rank system. Workplace harassment does not occur unless it involves the abuse of superiority in position or relationship.

(3) Repeated actions towards the target, or assigning of tasks, unnecessary for performance of contracted work: Actions beyond the appropriate scope of work

Actions that are inappropriate and recognized as exceeding the scope of work can be classified into the following seven categories.

1) Violence and intimidation: Actions that involve direct physical force or the threat of physical force, such as directly or indirectly inflicting violence on an object.
2) Verbal behavior, such as violent, abusive language or gossip: If it is determined that gossip is spread to a third party, such as in an open place, to damage the victim's reputation, it is beyond the appropriate scope for work. In particular, continuous and repetitive verbal abuse or abusive language can seriously harm the victim's personal rights and cause mental pain, so engaging in it constitutes an act beyond the appropriate scope for work.

56) Lee, Soo-Yeon, "The Concept of Workplace Harassment and Judgment Criteria", Ewha Gender Law 10(2), Ewha Womans University Gender Law Research Institute, Aug. 2018, p. 119.

3) Orders to perform tasks related to assistance with non-work affairs: These are orders that exceed the appropriate scope of work and beyond what is considered normally acceptable in human relations. Examples include continuous and repetitive instructions to run personal errands related to daily life.
4) Bullying and exclusion: Intentional disregard and exclusion in the process of performing work are acts that are beyond the appropriate scope of work and beyond the social norm. Examples include intentionally not providing important information related to work or excluding someone entitled to participation in the decision-making process without justifiable reason, forcing someone to move or leave the department without good reason, discriminating against someone in training, promotion, rewards, or routine benefits without good reason, etc.
5) Repetitive instructions for work unrelated to the employment contract: If instructions are given to an employee repeatedly to do work that is unrelated to that specified at the time the labor contract was signed, and if a justifiable reason is not recognized, it amounts to an act beyond the appropriate scope for work. Examples including menial tasks only when an employee was hired for specific other tasks, or giving the employee little work without justifiable reason.
6) Assigning an excessive amount of work: If the action is judged to be inappropriate, such as not allowing even the minimum amount of time physically necessary for the task, without unavoidable reasons, it is beyond the appropriate scope of work.
7) Interfering with smooth business performance: Actions that interfere with smooth business performance, such as not providing essential equipment (computers, telephones, etc.) necessary for business, or blocking access to the Internet or company intranet, are beyond social norms and inappropriate for business.

(4) Infringements of human rights and/or degradation of the working environment

This refers to actions of an employer or a worker that inflict physical or mental pain on another worker through harassment in the workplace or worsening the working environment. It can be said that the working environment has been degraded if an employer intentionally moves certain workers to work in front of the washroom, embarrassing them or creating an environment in which workers cannot perform their duties properly. Intention of the offender is not a prerequisite to determining that actions directly cause physical or mental pain or worsen the working environment.

III. Criteria for Determining Workplace Harassment

1. Conflict between the employer's right to order work and the employee's personal rights

In determining whether or not bullying has occurred in the workplace, there are cases in which the employer's right to order work and the employee's personal rights are in conflict. In labor disputes, an employer’s exercise of personnel rights in a way that violates the

employee's personal rights is often viewed as illegal under the Civil Act.

The employer's right to command work is one of the personnel rights, which is an authority unique to the employer and necessary to maintain and establish corporate order. The courts have ruled that employers have considerable discretion in determining the extent of personnel management necessary for business, as they are responsible for personnel.[57] In contrast, the Constitutional Court argues that the right to work includes not only the "right to a place to work" but also "the right to a reasonable environment in which to work," with the latter a basic right to protect against infringement on human dignity. It has ruled that this right includes the right to demand a healthy working environment, fair compensation for work, and guarantee of reasonable working conditions.[58]

Here, in determining the appropriate scope of work, it is necessary to determine whether the employer's right to order the work or the worker's personal rights should take precedence. In this case, it is necessary to determine whether or not it is illegal to determine certain work as falling within the appropriate scope for a job through an "evaluation of conflicting fundamental rights."[59] Of the requirements for determining whether an action constitutes workplace harassment, whether or not it departs from the appropriate scope of work needs to be determined so that conflicts over the basic rights of the employer and employee can be harmoniously resolved.[60] This is determined in the light of sound common sense and practices of the social community, and whether there is rationality or substantiality in common social concepts, etc., which shall be judged individually and in relationship to each other.[61] However, since the problem of workplace harassment arises on the premise of an imbalance of opwer and infringes on the personal rights of workers, an evaluation of conflicting fundamental rights is required from the perspective of the victim, and should focus more on the protection of personal rights.[62]

2. Criteria for determining whether workplace harassment has occurred

The factors and criteria suggested by the court can be used to determine whether workplace harassment has occurred. This shall be decided by considering and evaluating the following collectively: "① the relationship between the offender and victim, ② the motive and intention of the act, ③ the timing, place, and situation, ④ the details of the victim's explicit or presumed reaction, ⑤ the content and extent of the act, and ⑥ the repetition or

57) Supreme Court ruling on July 22, 2003: 2002do7225, and many similar rulings.
58) Constitutional Court decision on Nov. 28, 2002: 2001hunba50; Constitution Court decision on Aug. 30, 2007: 2004hunma670.
59) Naver Korean dictionary: An evaluation to compare and judge the legal interests of conflicting fundamental rights.
60) Lee, Sang-Gon, "A Study on Improvement of the Law on Bullying in the Workplace," PhD Thesis, Graduate School of Ajou University, Aug 2020, pp. 163-164.
61) Supreme Court ruling on Feb. 10, 1998: 95da39533: Whether the employer is liable for compensation for harassment in the workplace.
62) Lee, Sang-Gon, "A Study on Improvement of the Law on Bullying in the Workplace," PhD Thesis, Graduate School of Ajou University, Aug. 2020, p. 165.

continuity of the act."[63] Simply put, it is possible for an employer to infringe on human and personal rights or worsen the employment environment with position (power relations), related work (work relations), or other actions unwanted by the receiving party that are outside the scope of the relevant work (harassment, abusive language, etc.).[64]

The employer is the exerciser of authority, while the employee has voluntarily consented to perform subordinate duties. Therefore, it is not easy to distinguish if harassment has occurred or if the employee is simply unhappy with work duties.[65] Nevertheless, if the above criteria are individually reviewed and judged comprehensively, it is believed that clarity will emerge in each individual case as to whether or not workplace harassment has occurred.

IV. Conclusion

The Workplace Anti-Bullying Act, introduced in July 2019, is a major influence on reducing the existing patriarchal authoritarian culture in the workplace and guaranteeing the personal rights of workers. Nevertheless, if resolving workplace harassment is left up to companies, there will be no effective results any time an employer deals with bullying half-heartedly. Amendment to the Workplace Anti-Bullying Act in April 2021 includes provisions to punish employers for engaging in or failing to take the appropriate action for workplace harassment, and obligate employers to conduct an objective investigation if they become aware of workplace harassment. This amendment is particularly helpful to workers. In the future, when harassment occurs in the workplace, the Ministry of Employment and Labor will thoroughly review the incident and actively intervene and punish any employers who fail to take appropriate action, which will work to drastically reduce recurrence. Actions to prevent workplace harassment and provide practical remedies when it does happen can be expected to occur at the same time.

63) Supreme Court ruling on Feb. 10, 1998: 95da39533.
64) Kim, Elim, "Gender Equality and Law," Korea National Open University Press and Culture Center, 2013, p. 242.
65) Shin, Kwonchul, "Legal Concepts and Criteria for Determining the Occurrence of Bullying in the Workplace," p. 243.

Sexual Harassment in the Workplace & Lessons Learned

I. Summary[66]

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

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

II. Details of the Sexual Harassment Case at Work

1. Sexual Harassment by Offender A

On April 27, 2011, during a team-building event at a company workshop with all employees (about 30), the victim-employee had to do something as a penalty in a game.

66) A sexual harassment petition case at GangNam Labor Office from Apr to Jun 2011

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

2. Sexual Harassment by Offender B

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

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

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

3. Sexual Harassment by Offender C

On March 29, 2011, the victim-employee was trying to get out of the company dinner

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

III. Company Recognition of Sexual Harassment and Handling Procedures

1. Employer procedures in dealing with sexual harassment complaints

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

- 1st Stage: Receipt of the sexual harassment complaint (HR or Labor Department)
- 2nd Stage: Interview and investigation

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

  The person-in-charge shall weigh the collected information obtained during the investigation. As soon as the person-in-charge reaches a final conclusion, it shall be reported to the employer.
- 3rd Stage: Confirmation and disciplinary measures

  If it is confirmed that sexual harassment has occurred, the employer shall take appropriate action against the offender, such as a transfer to another department or position, warning, reprimand, work suspension, or dismissal, etc.
- 4th Stage: Report of the results

  Upon closing the investigation, the company shall notify the victim and the offender of the results.
- 5th Stage: Preventative action

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

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

When it recognized the victim-employee's accusations regarding sexual harassment, the Company immediately requested statements from the victim-employee and the alleged offenders. As the country manager (Offender C) was involved in this case, the Company used a labor attorney to interview the victim-employee and the alleged offenders and receive their statements, to ensure fair conclusions. After receiving their statements and witness accounts, the Company determined the related behaviors were sexual harassment according to the criteria for evaluating whether certain behavior is sexual harassment at work. In this process, the Company handled the investigations quickly and confidentially, in order to protect the alleged offenders and the victim-employee at the same time. The alleged offenders resisted this investigation, saying they did not intend to harass her sexually. However, the Company explained to them seriously of the criteria for determining the existence of sexual harassment, "In evaluating whether certain behavior is sexual harassment or not, the victim's subjective conditions must be considered. As a socially accepted idea, how a reasonable person evaluates or copes with a situation against the particular controversial behaviors involved must also be considered in the victim's case." The Company concluded that the three men's behaviors were sexual harassment and they were disciplined in accordance with the level of their violations. After this, the Company invited an external expert, (a labor attorney), and implemented training for all employees towards preventing sexual harassment at work. The Company also strove to prevent the reoccurrence of any sexual harassment by posting a notification on the bulletin board, detailing ways to prevent any further sexual harassment in the work environment.

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

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

IV. Conclusion

These cases of sexual harassment at work were related to environmental sexual harassment, and the employees recognized that their behavior at company dinners could be interpreted as sexual harassment even if they didn't think much about it. These cases brought some educational benefit to the Company as well as the employees realized that their unintentional behavior could be interpreted as sexual harassment because the criteria for determining sexual harassment is partly judged from the victim's perspective, rather than

the offender's intention. In addition, this case contributes to the building of healthy relationships between employees. The Company was able to protect the victim from being further humiliated, through appropriate measures against sexual harassment. The Company also took appropriate action to prevent a repeat of sexual harassment by determining acceptable discipline for the offenders, carrying that discipline out, and providing education to prevent sexual harassment of other employees.

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

The Personal information Protection Act and Personnel Management

I. Introduction

Personal information is easily obtained in our internet-driven information society, and there have been many cases of abuse. Recently, financial companies, search engines, game companies, and others have been the victims of information hacking, resulting in a plethora of spam mail, illegal use of other people's names, voice phishing, and identity theft. Accordingly, in the endeavor to provide a consistent code to protect personal information, the "Personal information Protection Act" was signed into law on March 29, 2011, and enforced from September 20, 2011. This act is a general law that combines all laws related to protection of personal information and contains strong penal provisions. This law also covers all processes of gathering personal information, both on- and offline.

I would like to explain the main points of the Personal information Protection Act, and then guide in understanding what companies need to do to prepare for appropriate management of their labor force.

II. Major Details of the Personal information Protection Act

The Personal information Protection Act regulates matters concerning the use of personal information in order to protect and promote people's rights and interests by protecting them from unwanted collection, leakage, illegal use and abuse of their personal information. The law includes the following six major subjects.

1. Expansion of Scope

The Personal information Protection Act is a general law applying to the relationship between individuals and those collecting their personal information. Previously, personal information was protected in specifically designated ways through separate laws such as the Information & Communication Act and the Credit Information Act, but the protections offered there have been expanded and applied to all handlers of personal information working in either the public or private sector. Accordingly, this law also applies to companies that do not conduct any online business.

2. Expansion of Protection

The scope of protection of personal information covers not only information processed electronically, but also paper records such as those used in Civil Service Offices, etc. "Personal information" means data that distinguishes or reveals individual identity (including name, resident registration number, date of birth, address, etc.) and data that reveals an individual's past and current conditions and situations (including educational background, financial status, medical history and health, etc.).

3. Restrictions on use of unique identifying information

Unique identifying information provided to the individual by law, such as resident registration numbers, shall be prohibited, in principle, from processing. In cases where a specific law requires such information, or where it is deemed obviously necessary for the urgent benefit of life, body or property of a subject of information or a third party, gathering such information is permitted. Individual resident registration numbers shall not be required on websites. Any person violating this shall be punished with imprisonment of up to five years or with a fine not exceeding fifty million won.

4. Restrictions against use of video recording devices

Installation and operation of video recording devices in open places is now restricted. A "video recording device" is any instrument, such as CCTV (closed-circuit television) or network cameras, which is installed and remains in a designated place and is meant to videotape objects and/or people, or transmit the video recordings through a wired or wireless network. The arbitrary use of such operations in a way that differs from its intended purpose, recording video in places other than the originally intended area, and recording of voices, are all prohibited. Any person violating this shall be punished with imprisonment of up to three years or with a fine not exceeding thirty million won.

5. Collection and use of personal information

The collection of personal information must satisfy certain criteria, and any information gathered shall only be used in the specified way. These criteria are: 1) The target person must have agreed to give such information; 2) an article of law exists which requires the collection of such information in order to observe the law; 3) it is needed by a public agency to carry out duties assigned by related law; 4) it is necessary for one party to enter into or implement a legal contract with the individuals concerned; 5) such information is urgently necessary to protect life, body, and interest of individuals and/or third parties; 6) it is necessary for the justifiable interests of the handler of such information, and is more important than the rights of individuals. In this last case, it shall be closely related to the justifiable interest of the handler of such information, and shall not exceed a reasonable scope. A person who violates this shall be punished with a fine for negligence up to fifty million won.

6. Duty to report leaks of personal information

When recognizing that personal information has been leaked, the handler of such information shall notify the individuals concerned of this fact without delay, and shall include: 1) the details of the leaked personal information; 2) the time the leak occurred, and any related details; 3) information about how the individual can minimize any damage caused by the leak; 4) any countermeasures the handler of such information has taken, and procedures for remedy for any damage; and 5) the contact information of the department individuals can contact to report any resulting damage.

Any person violating this duty to report leaks of personal information shall be punished with a fine for negligence of up to thirty million won. Any person responsible for failing to report to the appropriate government authority on the way the organization handled the leak shall be punished with a fine for negligence of up to thirty million won.

III. Management of Personnel and Personal information

Laws related to the protection of personal information are applied equally to most companies. Regarding the management of personnel, the main issues are the management of employees' personal information and the company use and management of video recording devices.

1. Details on management of employees' personal information

Collecting and using personal information is tightly restricted, but in cases where an employee enters into an employment contract to offer work in return for wages from the employer, the employer shall know the employee's name, resident registration number, address, wage information, and other necessary data, as this is an example of "it is necessary for one party to enter into or implement a legal contract with the individuals concerned." These items of personal information are essential to management of personnel regarding the four social insurances, year-end income tax adjustment, and issuance of

various certificates. Accordingly, no individual agreement is necessary regarding the use of personal information in this way. However, it is still necessary for the employer to inform the employee of the collection and use of his/her personal information related to the making of an employment contract. This notification shall include the purpose for collecting the personal information, where to read and/or correct such information, the period it will be retained, and management after he/she leaves the company, etc.

Can personal information obtained through resumes, etc. at the time of hiring be exempt from the requirement for consent from employees to collect or use their information, as it can be considered "necessary for one party to enter into or implement a legal contract with the individuals concerned"? [67]

According to the Enforcement Decree (Article 27) of the Labor Standards Act, the employer shall record the employees' name, resident registration number, matters on the basis of wage calculation, and other working conditions in the wage ledger. In other cases such as the collection and use of job seekers' personal information, consent does not have to be given, according to Article 1 (subparagraph 4) of the Enforcement Decree of the Labor Standards Act (making and implementing a contract). The information about individual employees shall generally be used not only for employment contracts, but also other purposes such as welfare, labor union management, training, etc. Furthermore, as companies are likely to gather such sensitive information, it is greatly desirable to inform the employees concerned of the use of personal information from employment-related documents, and the period of use, etc.

In cases where the employer collects unique and sensitive identifying information such as resident registration number at the time of employment, excluding where there are concrete reasons to gather such information due to related law, it shall be necessary for the employer to receive separate agreement from the employees concerned.

2. Company use and management of video recording devices

Video recording devices shall not be installed or operated in public places. Exceptions are as follows: 1) In cases where its use is concretely permitted by law and/or decree; 2) In cases where its use is necessary to prevent or investigate crime; 3) In cases where its use is necessary for facility security and prevention of fire; 4) In cases where its use is necessary to enforce traffic laws; and 5) In cases where its use is necessary to collect, analyze and distribute traffic information. While use of video recording devices is permitted in these cases, the company shall set up a board notifying employees of the presence of such recording devices.

'Public places' refers to places like roads, parks, plazas, and other places the public is free to use. The lobby of a company building can be used by many unspecified people, so it is included in the restrictions on installing a video recording device. However, the inner

67) "Explanation of Laws and Decrees Concerning Protection of Personal information" (the Ministry of Public Administration & Security, Dec. 2011, pg. 90)

rooms and hallways of the company building, where access is strictly controlled and only to internal employees and those receiving permission, would be considered closed to the public, and so are excluded from restrictions on installation of video recording devices. Provided, in cases where the video recording device was installed and is in operation to collect individual imagery information, other protections of privacy still apply. That is, when a company obtains the employee's permission, and when the recording is necessary to accomplish the justifiable interests of the handler of such information, installing and operating a video recording device is allowed.

Case: Monitoring the Workplace[68)]

Some companies install and operate video recording devices to monitor work activities. Such video recording devices installed in the workplace have been the cause of conflict between the employer's authority to supervise work and workers' right to privacy.

Workplaces off-limits to outsiders are in principle 'closed places', and Article 25 (Restrictions on use of video recording devices) does not apply, while the principle of general protection of privacy does. In relation to this, "the Act concerning the Promotion of Worker Participation and Cooperation" stipulates that management shall consult employees before installing video recording devices such as CCTVs, which can be done through labor-management discussions, where a balance between monitoring work and protecting privacy may be struck.

IV. Conclusion

The Personal information Protection Act regulates matters concerning use of personal information in order to protect and promote people's rights and interests by protecting people from unwanted collection, leaks, illegal use and abuse of their personal information. The Personal information Protection Act is a general law designed to protect people's privacy, and has very strong penal provisions. Accordingly, companies shall keep employees' private files only for personnel management, and shall require 'employee consent for the use of personal information' for other purposes, to prevent legal disputes. Also, in using CCTV at the workplace, companies should ensure that workers are not led to believe they are simply being 'watched', and labor union office entrances should be avoided when placing video recording devices.

68) "Explanation of Laws and Decrees Concerning Protection of Personal information" (the Ministry of Public Administration and Security, December 2011, Page 166)

노동법 앱 개발 (Mobile App)

기본서 Basic Guides	1. 노동법전 2. 노동법 해설 3. 노동 사건 사례	1. Labor Law 2. Labor Law Guide 3. Labor Cases
동영상 (Video)	YouTube	Korean and English videos (each 20 categories)
매뉴얼 Manual	1. 구조조정 2. 해고 3. 외국인 고용과 비자 4. 노동조합 5. 임금 6. 근로시간, 휴일, 휴가, 7. 비정규직 근로자 8. 근로계약 9. 근로감독 준비 10. 산업재해보상보험 11. 고용보험 12. 노동위원회 13. 취업규칙 14. 남녀고용평등 15. 직장내 괴롭힘 방지 16. 노사협의회 17. 산업안전보건법 18. 부당노동행위 19. 국민연금, 국민건강보험 20. 근로감독 체크리스트	1. Workplace Restructuring 2. Dismissal 3. Foreign Employment and Visa 4. Labor Union 5. Wage 6. Working Hours, Holiday, Leave 7. Irregular Workers 8. Employment Contract 9. Labor Inspection Preparation 10. Industrial Accident Compensation Insurance 11. Employment Insurance 12. Labor Relations Commission 13. Rules of Employment 14. Equal Employment Act 15. Workplace Harassment Prevention 16. Labor Management Council 17. Industrial Safety and Health Act 18. Unfair Labor Practices 19. National Pension, Health Insurance 20. Labor Inspection Checklists
외국인 Foreigner	출입국관리법과 외국인 (관련법, 기고글, 동영상, 비자 36가지 설명)	Immigration Laws and Foreigner Workers (Law, Articles, Video, Types of visa)
자동계산 Automatic Calculation	1. 연차휴가 2. 퇴직금 3. 4대보험 4. 퇴직소득세	1. Annual Paid Leave 2. Severance Pay 3. Social Insurance Premiums 4. Retirement(Severance) Income Tax
Labor Auditing, FAQ	1. 주요 질문/답변 2. 인사감사	1. FAQ 2. Labor Auditing

● "___" underlined parts are being prepared, and other parts are completed and posted.
● "___" 표시는 준비 중임. 나머지는 완료 되었음.