Labor Management Manual for Foreign Investors 2011

Korea International Labour Foundation

Labor Management Manual for Foreign Investors(2011)

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✻ Foreword

With the advance of globalization, foreign direct investment (FDI) is of increasing significance to Korea as it is a major driving force behind the growth of national economy.

It is believed that FDI has made substantial contributions to the Korean economy and, with the improvement of the labor relations in general, the labor relations has been stabilized at foreign-invested firms, as evidenced by the decrease of labor disputes.

On the part of foreign investors, they have made much progress in understanding and overcoming the differences in social, cultural and economic terms. However, foreign investors in Korea are still facing a range of labor relations problems. This is why a harmonious labor-management relationship is all the more important.

In particular, the paid time-off system which bans on employers' wage payment to full-time unionists was enforced last year and the legalization of multiple unionism at company level will be implemented from this July. Accordingly, now is the time that a more cooperative and rational labor relations should be established.

In step with these changes, Korea International Labour Foundation, the international arm of the Korea Labor Foundation, has published an updated version of the 'Labor Management Manual for Foreign Investors', with a view to informing the foreign investors here in Korea of the changes in the labor relations and relevant laws and standards which they need to understand for efficient personnel and labor management.

Hopefully, this publication will help foreign managers have a better understanding, about the general labor relations in Korea and create cooperative labor relations, which, in turn, will increase their business efficiency and outputs and make them afford to generate more jobs.

July, 2011

Moon, Hyung Nam

Secretary General,
Korea Labor Foundation

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I. Overview

1. The trends of employment and labor market in Korea

1) Industrial relations trends

a. In 2010, the paid time-off system took effect and new arrangements were made to prepare for the multiple trade unions at company level.

b. In the meantime, the general labor relations were the most stabilized since the onset of the 1997-98 Asian Financial crisis.

c. Meanwhile, the government has remained stringent towards unlawful actions, in accordance with the labor policy to respect the law and principles. The consequence is that the numbers of illegal dispute cases and lost work days continue to decrease. The government is exerting its effort to ensure that this trend goes on.

d. Social partners in Korea, including the government, employers and workers, clearly aware that a stable labor relations is an important source of competitive advantages for individual companies, take part in the Economic and Social Development Commission (ESDC), a three-way consultative body, to cooperate in working out the ways to advance the law and institutions related to the labor relations.

Labor dispute trends by year

Year	2005	2006	2007	2008	2009	2010
Labor disputes	287	138<253>	115<212>	108 <130>	121<175>	86<184>
Strike participants	117,912	131,359	93,385	114,290	80,964	39,736
Lost working days	847,697	1,200,567	536,285	809,402	626,921	511,307
Days of labor disputes	48.6	54.5	33.6	37.0	27.9	36.2
Unlawful labor disputes	17(5.9%)	24(17.4%)	17(14.8%)	17(15.7%)	11(9.1%)	14(16.3%)

Note 1) < > indicates the figure of industrial disputes between 2006~2008, which is produced by using the same calculation method as before (the figure includes the number of enterprises that are involved in the strikes waged by industry-level unions).
2) Since '06, the method of calculating the number of industrial disputes has been changed: From '06, when many enterprises are involved in strikes waged by industrial unions such as the metal industry union and the health and medical workers' union, the number of industrial disputes is counted one. This new method of calculation has been adopted in consideration of ILO standards and the study on how to improve statistics on industrial disputes by Korea Labor Institute.
Source : Ministry of Employment and Labor (www.moel.go.kr)

① To establish labor relations institutions and practices compatible to the global standards;
- they are trying to map out better labor practices and collective bargaining mechanisms, reasonable regulations on industrial actions, and a more efficient system for dispute settlement.

② To build employer-employee cultureship based on mutual trust;
- they are supporting a constructive labor relations characteristic of participation and cooperation which is rooted in the partnership at workplace and regional level.

③ To create labor relations that respect the laws and principles;
- they are trying to ensure that unlawful strikes by trade unions and unfair labor practices by employers are strictly penalized according to the relevant provisions of law and principles and to establish autonomous arrangements for settlement of the labor disputes.

2) Labor market trends

a. The national economy, whose growth had slowed down (from 4.9% in 2007 to 2.5% in 2008 and further to 3.5% in 2009), due to the global financial crisis, began to pick up in 2010, largely thanks to robust exports. In 2010, GDP grew by 6.2% and employment rate also went up (from -0.3% in 2009 to 1.4% in 2010).

Labor market trends on a year-on-year basis

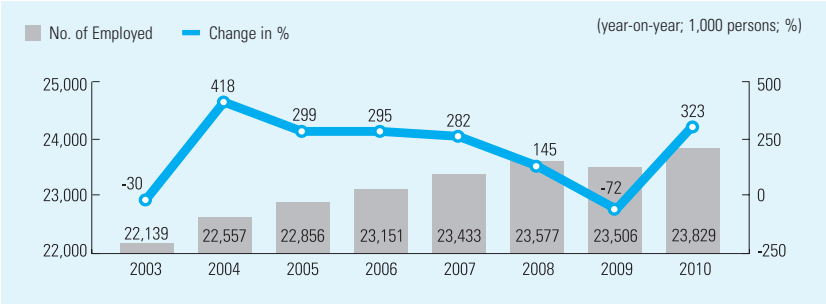
	Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Growth	GDP growth[1] (%)	8.5	3.8	7.0	3.1	4.7	4.2	5.1	5.0	2.5	3.5	6.2
	- Per capita GNI ($)	10,841	10,159	11,497	12,717	14,206	16,413	18,372	20,045	19,296	17,175	20,759
Em-	Growth of the employed persons(%)	4.3	2.0	2.8	-0.1	1.9	1.3	1.3	1.2	0.6	-0.3	1.4
ploy-	Unemployment rate[2] (%)	4.4	4.0	3.3	3.6	3.7	3.7	3.5	3.2	3.2	3.6	3.7
ment	- No. of unemployed2) (1,000 persons)	979	899	752	818	860	887	827	783	769	889	920
Wage	Nominal wage increase[3] (%)	8.6	5.8	11.9	8.7	9.5	8.1	5.7	6.6	3.1	-0.7	6.1
	Real wage increase[3] (%)	6.2	1.7	8.9	5.0	5.7	5.2	3.4	3.9	-1.5	-3.4	3.0
	Consumer prices growth(%)	2.3	4.1	2.8	3.5	3.6	2.8	2.2	2.5	4.7	2.8	2.9

Note: 1) From the 1st quarter of 2006 on, the season-adjusted quarter-on-quarter increase rate has been used in Korea, as in other advanced countries.
2) From 2000, the basis for unemployment rate and number of the unemployed is a 4-week job search
3) Manufacturing companies with 5 permanent employees or more (year-on-year comparison)
4) The figures are based on full-time employees of the manufacturing industry (by hour)
*The asterisk is a figure as of third quarter of year 2007
Source: Ministry of Employment and Labor(www.moel.go.kr)

b. The number of employed persons (wage earners) in 2010 totalled 23,829,000 (16,971,000), which is 323,000 more than 23,506,000 (16,454,000) of the previous year, or a y-o-y 1.4% rise.

• Regular employees accounted for 59.4% of the wage earners in 2010, a y-o-y 2.4%p up from the previous 57.0%.

Changes in the number of the employed



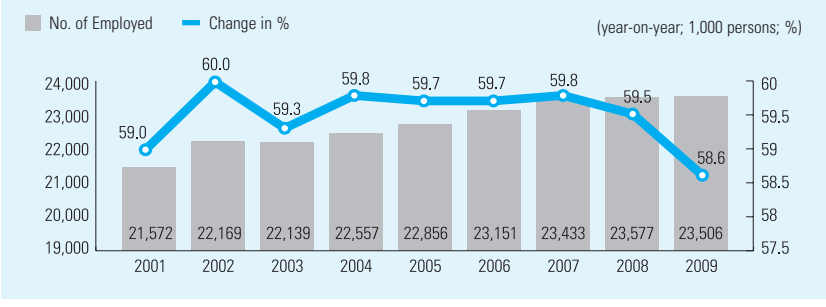
(year-on-year; 1,000 persons; %)

Year	2003	2004	2005	2006	2007	2008	2009	2010
No. of employee	22,139	22,557	22,856	23,151	23,433	23,577	23,506	23,829
(change in %)	(-0.1)	(1.9)	(1.3)	(1.3)	(1.2)	(0.6)	(-0.3)	(1.4)
No. of wage earners	14,402	14,894	15,185	15,551	15,970	16,206	16,454	16,971
Share of permanent work	50.5	51.2	52.1	52.8	54.0	55.6	57.0	59.4

Source: Ministry of Employment and Labor / Statistics Korea (www.kostat.go.kr)

○ Employment rate of 2010 marked 58.7%, which is 0.1%p up from the previous year.

Changes in the number of employed and employment rate



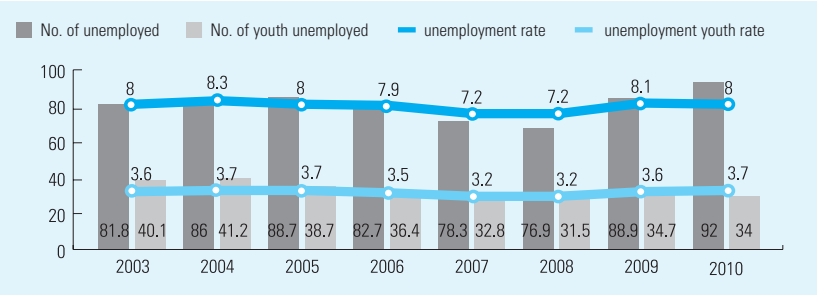
c. As of 2010, Korea's unemployment rate is 3.7%, which is among the lowest in OECD, and is far below than the OECD average of 8.6%. (The cross-country comparison is for those aged 15~64).

• However, among the unemployed, youth aged 15~29 takes up 37.0% (youth unemployment rate is 8.0%), while SMEs are still suffering from labor shortage. As a result, imbalance in labor supply and demand is persisting in the labor market.

※ Youth unemployment rate (%):7.9(year'01)→7.0(year'02)→8.0(year'03)→8.3(year'04)→8.0(year'05)→7.9(year'06)→7.2(year'07)→ 7.2(year'08)→8.1(year'09)→ 8.0% (year'10)

Changes in the number of unemployed and unemployment rate

(year-on-year; 10,000 persons; %)



Source: Ministry of Employment and Labor and Statistics Korea

Year	2003	2004	2005	2006	2007	2008	2009	2010
No. of employee	818 (49.0)	860 (47.9)	887 (43.6)	827 (44.0)	783 (41.8)	769 (41.0)	889 (37.7)	920 (37.0)
Unemployment rate	3.6 (8.0)	3.7 (8.3)	3.7 (8.0)	3.5 (7.9)	3.2 (7.2)	3.2 (7.2)	3.6 (8.1)	3.7 (8.0)

Note : The figures in parentheses refer to the percent share of youths aged 15~29 in the total unemployed and their unemployment rate.

Source: Statistics Korea

d. The Korean government, in a bid to resolve the problems of the high youth unemployment and the labor shortage among SMEs, has taken proactive measures to create jobs, including the Employment Permit System for foreign workers and the support for job skills development, and has promoted the employment information system.

3) Trade unions and employer organizations

a. Union density in Korea is about 10.1%, as approximately 1,640,000 out of the total 16,196,000 wage earners are unionized (as of end-2009).

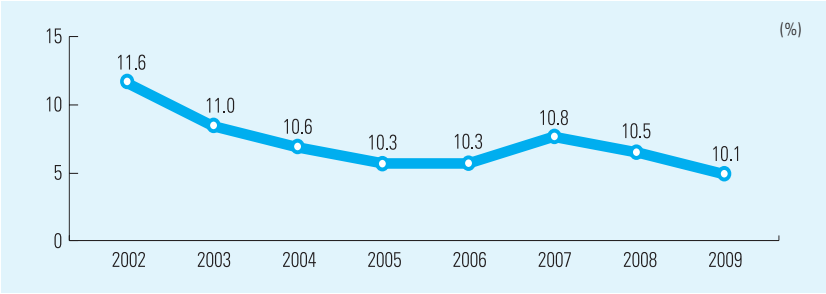
• This union density is very low, when compared to 12.3% of the US; 27.4% of the UK; 19.7% of Australia; and 18.5% of Japan.

Trade union organization (year-on-year; 1,000 persons; %)

Year	2002	2003	2004	2005	2006	2007	2008	2009
No. of unions	6,506	6,257	6,017	5,971	5,889	5,099	4,886	4,689
No. of union members (1,000 persons)	1,606	1,550	1,536	1,506	1,559	1,688	1,666	1,640
Organization rate (%)	11.6	11.0	10.6	10.3	10.3	10.8	10.5	10.1

Source: Ministry of Employment and Labor

Trend of union organization rate



Source: Ministry of Employment and Labor

b. As of end-2009, there existed a total of 4,689 company unions in Korea, many of which were affiliated with either of the two national organizations, that is, the Federation of Korean Trade Unions (FKTU) and the Korean Confederation of Trade Unions (KCTU).

• As of end-2009, there were 105 industry-level unions and federations (36 are affiliated with FKTU; 42 are with KCTU and 27 are independent).

National union organizations

(1000 persons, %)

	Total	FKTU	KCTU	Non-affiliated
No. of unions	4,689(100.0)	2513(53.6)	553(11.8)	1,623(34.6)
No. of unionists	1,640,334(100.0)	740,335(45.1)	588,394(35.9)	311,605(19.0)

※ As of end-December, 2009

c. The representative employers' organizations in Korea are the Korea Employers Federation (KEF) and the Korea Metal Industry Employer Association (KMIEA). Other major economic organizations include: the Federation of Korean Industries (FKI), the Korea Chamber of Commerce and Industry (KCCI), the Korea International Trade Association (KITA) and the Korea Federation of Small and Medium Business (KFSB).

Major employers' organizations

	KEF	FKI	KCCI	KITA	KFSB	KMIEA
Year of foundation	1970	1961	1884	1946	1962	2006
No. of member companies	386	499	167	66,064	995	101
Legal grounds	Civil Law (With permission of Employment and Labor Minister)	Civil Law (With permission of Ministry of Knowledge Economy)	KCCI Act	Civil Law (With permission of MIKE)	KFSB Act	Civil law (With permission of Employment and Labor Minister)

d. In Korea, the unions are traditionally company-based. Accordingly, collective bargaining has been mostly conducted between individual employers and company unions.

- However, since 2000, there has been a growing tendency of union centeralization: the company unions, especially in the sectors of finance, health and medical care and metal, tend to unite themselves into larger industrial/sectoral organizations. Consequently, a growing number of collective bargaining is carried out by industrial unions, not company-unions.

2. Labor law structure

1) Categories of labor law

a. Labor law is largely composed of four categories: the individual labor law; the collective labor law; the cooperative industrial relations law; and the employment law.

① Individual labor law

- The individual labor relations law defines the relationship between individual employees and their employers.
- In other words, they provide legal criteria pertaining to a contract of employment between an employer and his(her) employee, the contents of the employment relationship, and the procedural requirements for modifying or terminating the employment relationship, thus protecting working conditions for individual employees.
- This category of labor law includes: the Labor Standards Act, Act concerning Protection, etc. of Fixed-term and Part-time Workers, Act Relating to Protection, etc. of Dispatched Workers, the Minimum Wage Act, the Industrial Safety and Health Act, the Industrial Accident Compensation Insurance Act, Equal Employment and Work-Home Balance Assistance Act and the Employee Retirement Pay Guarantee Act.

② Collective labor law

- The collective labor law governs labor relations between worker organizations, such as trade unions and employee representatives, and employers.
- This labor law is intended to establish an autonomous problem-solving practice (labor-management autonomy), by guaranteeing the right to organize for workers who are underprivileged in social and economic terms, compared to their employers so that the former may be on an equal footing with the latter.
- This category of labor law includes: the Trade Union and Labor Relations Adjustment Act; the Labor Relations Commission Act; the Act on Establishment, Operation, etc., of Trade Unions for Teachers; and the Act on Establishment, Operation, etc., of Trade Unions for Public Officials' Trade Unions.

③ Cooperative industrial relations law

- The cooperative industrial relations law aims at realizing sustained development for enterprises, industrial peace and a continuous growth in the national economy, by promoting cooperation and participation of employers and employees and pursuing their co-prosperity.
- This law is complementary to the collective industrial relations law, in that the latter category of law is not sufficient to address the traditional antagonism and conflicts between the social partners and lead their relationship to a higher stage, although it has contributed to promoting equality in their relationship and the principle of labor-management autonomy.
- This category of labor law includes the Act concerning Promotion of Worker Participation and Cooperation, which was enacted on March 13,1997 to promote cooperation in labor relations.

④ Employment law

- This category of labor law, which includes the Basic Employment Policy Act; the Vocational Security Act; the Act Relating to Protection, etc. for Dispatched Workers; the Employment Insurance Act; the Act on Employment Promotion and Vocational Rehabilitation for the Disabled; the Aged Employment Promotion Act; the Workers' Vocational Ability Development Act; and the Act concerning Employment, etc of Foreign Workers, is intended to contribute to a stable life for workers and to further development of the national economy, by balancing the labor supply and demand in the labor market and promoting employment security.

2) Scope of labor law application

Whether or to what degree a specific labor law applies to a certain employer depends on the number of his(her) employees.

Labor Standards Act		Companies with 5 employees or more	• Some selected provisions apply to companies with 4 employees or fewer. • The obligation to set the rules of employment applies to companies with 10 employees or more.
Industrial Safety and Health Act	General provisions	All companies	• Companies in certain sectors and those with 4 employees or fewer are subject only to selected provisions.
	Appointment of personnel in charge of safety and health management	Companies with 100 employees or more	• In certain sectors, this provision applies only to companies with 50 employees or more.
	Appointment of a safety and health supervisor	Companies with 50 employees or more	• Certain sectors are exempted from this obligation.
	Industrial safety and health committee	Companies with 100 employees or more	• In certain sectors, this provision applies only to companies with 50 employees or more.
Minimum Wage Act		All companies	
Equal Employment and Work-Home Balance Assistance Act		All companies	• Companies with 4 employees or fewer are excluded.
Industrial Accident Compensation Insurance Act		All companies	• Companies in certain sectors (including companies in agriculture, forestry and fishery with 4 employees or fewer)
Act concerning the Promotion of Worker Participation and Cooperation		30 employees or more	• All employers hiring 30 employees and over with the right to determine working conditions shall establish a labor-management council, whether their exists a trade union or not. • Companies with 30 employees or more shall appoint a grievance-handling officer.
Trade Union and Labor Relations Adjustment Act, Employment Security Act		All companies	

Act on Employment Promotion and Vocational Rehabilitation for the Disabled	Companies with 50 employees or more	• Employers shall hire persons with disabilities at 2% or more of the total permanent employees. • Employees who fail to meet the required quota shall pay the levy, while those who exceed the 2% shall be granted a monetary reward. ※ Companies with fewer than 100 employees are exempted from the levy for not meeting the required quota. Those with 200-299 (100-199) employees will be subject to the levy starting from 2006(2007), provided that, for the first 5 years since then, the levy will be imposed at a discounted 50%.
Employee Welfare Fund Act	All companies	
The Aged Employment Promotion Act	All companies	• Employers with 300 or more shall make effort to hire the aged at the given quota or more. ※ Quota by industry: 2% in manufacturing; 6% in transportation/real estate or rental; 3% in others
Employment Insurance Act	All companies	• Companies in certain sectors (including those in agriculture, forestry and fishery with 4 employees or fewer) are excluded.

II. Industrial Labor Regulations

1. Employee recruitment

1) Recruitment methods

An employer is free to hire employees for a regular or non-regular (daily, contract or dispatch) job, depending on his/her business needs.

① An employer who wants to hire a new worker may get assistance from the following agencies:
- 95 Regional Employment and Labor offices, under regional labor administrations
- 253 local job information centers
- 23 local branches of the Human Resources Development Service of Korea
- 1 highly-skilled manpower information center, and 38 job banks for senior citizens
- Job application or searching is available at the Website: http://www.work.go.kr

※ http://www.work.go.kr

② Types of recruitment methods

On-line recruitment	Off-line recruitment
-Open recruitment on the Internet -Cyber job fair -Human resources pool system (human resources DB Bank) -On-line recruitment site	-IR/job fair -Professors' recommendations (college graduates or those with higher education) -Job placement agency (temporary work services, recruitment services, headhunters) -Employee referrals -Campus recruitment (visiting interviews) -Internship/business-funded scholarship -On-the-job recruitment -Walk-ins -Recruitment ads on mass media -Inside recruitment (job promotion, redeployment, rotation, re-employment, open recruitment)

2) Apprenticeship

a. An employer is allowed to initiate apprenticeship for a certain period of time for an employee after signing a contract of employment, during which the employee may improve his/her job competency and adaptability to the workplace.

b. An employer may not dismiss the apprentice unless he/she gives a justifiable reason as prescribed in Article 23 of the Labor Standards Act (LSA).

- However, before an elapse of 3 months during this apprenticeship, the employer may dismiss the apprentice without prior notice so long as he/she can give a justifiable reason(s) for such dismissal (Article 35 of the LSA).

c. For the apprentices who have worked for shorter than 3 months, the hourly minimum wage rate may be 10% lower than the minimum rate defined in the Minimum Wage Act (Article 5 of the Minimum Wage Act).

3) Non-discrimination

An employer may not discriminate against his/her employees in determining their working conditions, on the ground of gender, nationality, religion or social origin (Article 6 of the LSA).

4) Medical examinations

a. An employer, in order to maintain and protect the health of his/her employees, shall provide them a medical checkup at his/her expense at one of the hospitals that are designated by the Employment and Labor Minister or are carrying out the medical checkups required by the 'National Health Insurance Act' (Article 43 of the Occupational Safety and Health Act).

b. The employer shall provide a regular medical checkup for his/her employees: once or more biennially for office employees and once or more annually for other employees.

5) Hiring persons with disabilities

An employer with 50 full-time employees or more shall hire persons with disabilities at 2.3% or higher of the total employees. When he/she fails to meet the required quota, a contributory charge is applied (Articles 28 and 33 of the Act on Employment Promotion and Vocational Rehabilitation for the Disabled Persons).

① The disability employment charge is imposed only on the employers with 100 employees or more.

② The disability employment charge is calculated on a monthly basis and is imposed on a yearly basis (but may be paid in installments).

③ The charged amount is computed by multiplying the reference value with the number of people required to meet the quota, as below:

※ The amount of disability employment contributory charge =
(the quota requirements - the number of disabled employees) × the reference value

- The reference value is set at 560,000 won per disabled person, as of January 1, 2011.
- However, in the cases where an employer hires persons with disabilities at less than 50% of the disability employment quota, he/she shall pay additional 50% (280,000 won) of the reference value per person as a surcharge.
- As for an employer who does not hire a disabled person at all, the minimum wage rate shall replace the general reference value. (As of 2011, given that the hourly rate of minimum wage is 4,320 won and the workweek is 40 hours, the monthly charge shall be 902,880 won.)

※ For employers with 300 full-time employees or more: effective July 1, 2011
For employers with 200 ~ 299 full-time employees: effective January 1, 2012
For employers with 100 ~ 199 full-time employees: effective January 1, 2013

Changes in the (monthly) disability employment charge

Classification	Disability employment charge
Employers who meet 50% or more of the employment quota	the number of disabled persons less than the quota requirement × 560,000 won
Employers who meet less than 50% of the employment quota	(the number of disabled persons equivalent to 50% of the quota × 840,000) + (the number of disabled persons less than 50% of the quota × 560,000 won)
Employers who hire no disabled workers	the number of quota requirement × minimum wage rate

④ An employer who hires persons with disabilities at a proportion of 2.7% or higher of the total workforce shall be given a subsidy for his /her having outperformed the quota (monthly 150,000~500,000 won per person). This subsidy to promote disability employment is also offered to the companies not bound to the disability employment quota (employers with fewer than 50 employees).

⑤ In an effort to promote employment of persons with disabilities, the Ministry of Employment and Labor and the Korea Employment Agency for the Disabled provide employers with a range of services, including vacancy advertizing, recruitment and customized training.

- Furthermore, financial supports, including loans and free grants, are available to the employers who install facilities or equipment necessary for employment of disabled workers, introduce assistive technology devices for disabled employees or employ job instructors or personal assistants for workers with severe disabilities.

※ Eligible employers may take out a loan of up to 50 million won per disabled employee or up to 1.5 billion won per workplace which is payable in 10 years at annual interest rate of 3%. Additionally, they may rent or receive commonly-used or customized assistive devices for free.

6) Hiring national patriots and veterans

In accordance with the "Act on the Honorable Treatment and Support of Persons, etc., of Distinguished Service to the State.", manufacturers with 200 employees or more (referred to as "employment supporting companies") shall preferentially hire national patriots and veterans within 3~8% of their total workforce.

Additionally, in case those companies give a test for recruitment, they shall accord preferential points to the applicants who are a national patriot or veteran.

7) Hiring aged persons

a. An employer with 300 employees or more shall make efforts to hire aged persons at no less than a given rate of quota. (Articles 12 and 13 of the Act on

Prohibition of Aged Discrimination in Employment and Aged Employment Promotion, and Article 4 of the Enforcement Decree of the Act)

※ The aged employment quota by sector: 2% for manufacturing; 6% for transportation/real estate and rental; and 3% for others

- An employer should make an annual report to the competent Employment and Labor Office on how he/she has complied with the quota during the year.

b. When an employer determines a minimum retirement age, he/she shall make an effort to ensure that the age is 60 or older. (Articles 19 and 20 of the Act on Prohibition of Aged Discrimination in Employment and Age Employment Promotion, and Article 14 of the Enforcement Decree of the Act)

- An employer with 300 employees or more should make an annual report to the competent office of employment and labor on how he/she has run the retiring age scheme during the year.

c. The 'subsidy for extension of aged employment' is offered to an employer who has extended (or repealed) the retiring age or re-employed an aged person who retired upon reaching the retiring age.

- An employer who has repealed the existing retiring age scheme or extended the existing retirement age by one year or more to the age of 56 or older shall be given a monthly subsidy of 300,000 won per aged employee, who continues to work thanks to the repeal or extension of the retiring age, for one year.

- An employer who has re-employed an aged person who reached the retiring age of 57 or older shall be given a monthly subsidy of 300,000 won per re-hired retiree for six months (in the case of manufacturers with 500 employees or fewer, 12 months).

d. In case an employer has extended the minimum retirement age or re-employed aged persons who retired upon reaching a given retiring age; and has adopted the wage peak system under which once an employee reaches a certain age, his/her wage begins to decline, 'the wage peak subsidy' is offered to the affected employees to compensate for their wage loss.

Category	Qualifications	Benefits
Retirement Age Extension	·The employer raised the minimum retirement age to 56 or older with the prior consent of the representative of his/her employees; and ·The employees receiving the subsidieshave been working for 18 months or longer for that employer; and ·The employees receiving the subsidiesaccepted wage reduction from their peak wages and accordingly, have been getting 'reduced' wages since a certainpoint after they turned 50. ※Wage reduction rate: No less than 20% ofthe peak wage	·If the employee gets less than 80% of his/her peak wage, the difference between the actual wage and the 80% of the peak wage shall be compensated for up to 10 years from the day when the Wage Peak System takes effect in within 6 million won per year cap.
Reemploy-ment	·The employees have been working for 18 months or longer in a business where the retirementage is 57 years or older; and ·The employees, being 55 or older, have accepted 'reduced wage' before they reach the retirement age in exchange for future re-employment after their retirement; or ·The employees are re-hired within 3 months after their retirement but are paid less than they used to be. ※Wage reduction rate: - No less than 20% ofthe peak wage (for wage reduction before retirement age) - No less than 30% ofthe peak wage (for wage reduction after retirement age)	·If the wage is reduced by more than 20% from the peak before the retirement age, the difference (between the actual wage and the 80% of the peak wage) shall be compensated ·If the wage is reduced by more than 30% from the peak after the retirement age, the difference (between the actual wage and the 70% of the peak wage) shall be compensated ※For up to five years from the day the employee is rehired. (within 6 million won cap per year)
Working Hours Reduction	·The employees, i) who continue to work after retirement via retirement age extension or ii) who are re-employed after retirement, work less than 50% oftheir peak wage working hours. - Qualifications for Retirement Age Extensionand Reemploymentshall apply to casesi) and ii) respectively except the threshold wage reduction rate set at 50%. ※Wage reduction rate: No less than 50% ofthe peak wage	·If the wage is reduced by more than 50% from the peak, the difference (between the actual wage and the 50% of the peak wage) shall be compensated for up to 10 years, from the day of wage reduction, or up to 5 years from the day of re-employment, within 3 million won cap per year for both cases.

e. An employer who installs, updates, replaces or purchases age-friendly facilities or equipment may take out a low-interest loan to be drawn from 'the fund to improve the employment environment for the aged'.

- These loans are available to the employers who hire or plan to hire employees aged 50 or older and intend to install, update, replace or purchase the facilities or equipment that are deemed necessary to secure or promote employment of the aged workers.

☞ For more information on the subsidies for employment of aged persons, call the Ministry of Employment and Labor (at 1350) or visit the Ministry's website (www.moel.go.kr).

8) Hiring employees for dangerous or harmful work

An employer shall not hire any person(s) without qualifications, licenses or skills for dangerous or harmful work, for example, jobs dealing with pressurized vessels or radiation (Article 47 of the OSHA).

☞ For a detailed list of businesses subject to the above restriction, refer to the 'Rules of Restriction on Employment for Dangerous or Harmful Work' (Ordinance of the Ministry of Employment and Labor).

9) Hiring youths below age 15

An employer may not hire a person younger than 15, except when the person has obtained an employment permit issued by the Ministry of Employment and Labor (Article 64 of LSA).

10) Employment Permit System: hiring unskilled (non-professional) foreign workers

a. Overview

- The Employment Permit System, which authorizes employment of non-professional foreign workers in Korea, was adopted in 2004, in order to mitigate the labor shortage among SMEs (Act on Foreign worker's Employment, etc.).

• Meantime, ethnic Koreans with foreign nationalities are allowed to work in Korea under the 'Working Visit System'.

b. Employment Permit System

① Small- and medium-sized manufacturers (with fewer than 300 employees or with the capital of less than 8 billion won), farmers, ranchers and fishers, (with a gross tonnage being less than 20 tons) and constructors may hire the foreign workers from the below listed 15 countries on E-9 visa (E-9).

* 15 sending countries on EPS: Vietnam, Indonesia, Thailand, the Philippines, Nepal, East Timor, Myanmar, Pakistan, Cambodia, Sri Lanka, PRC, Kyrgyzstan, Uzbekistanc, Mongolia, and Bangladesh

② Employment process for E-9 visa holders

1. Employer's effort to hire Korean nationals →2. Application for approval of foreign employment → 3. Issuance of the employment permit → 4. Signing of the employment contract → 5. Issuance of the written confirmation on visa issuance → 6. Arrival of foreign workers and their pre-work education → 7. Workplace assignment and assistance for their stay in Korea

* The compulsory duration of the employers' effort to hire Korean nationals: 14 days (or 7 days in case they have made such efforts via mass media, including newspapers and broadcasting)

c. Working Visit System: employment of ethnic Koreans with foreign nationality

① The companies in the services sector (22 sub-sectors, including hotels and restaurants), small- and medium-sized manufacturers (with fewer than 300 employees or the capital less than 8 billion won), farmers, ranchers and fishers (with a gross tonnage being less than 20 tons) and constructors can hire ethnic Koreans with foreign nationalities on the visa of working visit (H-2). Unlike other foreigners, they may start looking for jobs after they have arrived in Korea.

② Employment process for H-2 visa holders

1. Employer's effort to hire Korean nationals →2. Issuance of the written confirmation on special employment permitted → 3. Signing of the employment contract → 4. Reporting on commencement of work

Q & A

Q) In case an employer has "informally decided to employ a person", can the employer revoke the decision for a reason attributable to the company?

A) "An informal decision to employ a person" means that the person has passed the employer's screening process for recruitment, including a job interview, but has not been formally employed yet. If the employer has simply placed the person in a stand-by status without entering into a specific agreement on terms and conditions of employment such as the official start of his/her employment and wage rate, he/she can hardly be deemed as an employee as defined under the Labor Standards Act and, accordingly, may not be protected by the same Act.

Still, in case an employer has revoked an informal decision to employ a person after having him/her wait for a certain period of time, it is advisable that the parties should endeavor to settle the case through consultation in the first place. If they fail to do so, then the person may file a civil suit for damages.

※ When an employer and a person sign an agreement which gives no specific requirement for graduation, acquisition of an academic degree or submission of documents and under which the person shall be automatically employed after a given period of time (or on a specific date), the agreement is a formal and definitive employment contract, not an informal decision on employment. In this case, the period during which the person has waited for his/her start of work may be regarded as a mutually agreed 'suspension period' or 'stand-by period'.

Q) What distinguishes "a probationary employee" from "a worker in a trial status"? If a worker in a trial status is dismissed, is such dismissal always justifiable?

A) "Probationary (apprenticeship) period" refers to a period during which a person who has been formally employed is trained or educated to develop his/her job skills; whereas "trial period" refers to a period during which a person is observed or evaluated for his/her qualification for the job before entering into a formal employment relation or signing a definitive employment contract.

It is deemed that the labor relationship during a trial period is governed by an

agreement of employment in which the parties to the agreement have the right to terminate the contract on hold. Therefore, if the employer dismisses or refuses to officially employ the person on a trial status, it is construed that the employer has exercised his/her reserved right to terminate the employment. Given that trial-based employment is intended to evaluate a person's competence, personality and skills to determine whether he/she is qualified for a particular job, employer's dismissal decision might be more easily and broadly accepted in a trial-based employment than in ordinary types of employment relationship.
However, even in the case of dismissal of a worker in a trial status, the dismissal will become socially justified only when such decision takes full account of the person's work attitude and competence observed during the trial period, and is solely based on objective and reasonable causes.

※ Workers in trial status are deemed to be 'those in probationary status' defined in Article 35 of the Labor Standards Act, so an employer does not need to make advance notice of dismissal to a worker in trial status who has worked for less than 3 months.

Q) Does a fidelity guarantee contract under the Fidelity Guarantee Act constitute a violation of the provision of the Labor Standards Act prohibiting 'predetermination of nonobservance'?

A) "Fidelity guarantee contract" refers to a contract which prescribes indemnity for damages that might be incurred to an employer by an employee's act of taking over or standing surety for liabilities or whatever it is called.
Article 20 of the Labor Standards Act (prohibition on predetermination of nonobservance) only debars an employer and an employee from entering into a contract which predetermines a penalty or indemnity for damage that might arise from any non-compliance with the employment contract. The said provision, therefore, does not prohibit concluding a contract to guarantee an employee's fidelity itself.
When an employer signs a fidelity guarantee contract with a guarantor, or a fidelity guarantee agreement which holds a guarantor and an employee jointly liable for possible damage, the employer is not in violation of Article 20 of the LSA.

※ Even if an agreement of employment is renewed, the fidelity guarantee contract that is tied to the agreement shall not be automatically renewed. The contract, in order to remain in force, needs to be newly agreed upon.

Q) Under what circumstances, can a foreign worker who has arrived in Korea under the Employment Permit System transfer to another workplace?

A) In principle, a foreign worker should remain in the workplace they first began to work. However, in the cases where there is a justifiable reason for workplace transfer (change), the foreign worker is exceptionally allowed to transfer to another workplace up to three times within the duration of employment permitted upon his/her first entry (up to three years).

※ When a foreign worker has acquired the second employment permit and has extended the duration, he/she may transfer to another workplace up to twice within the additional period of time.

In the previous years, every workplace change was counted to add up, whether the change is attributable to the employer or the foreign worker. But the law revised on December 10, 2009 provides that, in case "it is established that a foreign worker cannot continue to work in a particular workplace because of the business suspension or closing or for a reason not attributable to the worker", his/her workplace change shall not be counted. This revised provision is intended to better protect foreign workers' human rights.

※ Foreign workers are justified to change workplace, when

- the employer terminates the employment contract before expiry of the contract or refuses to renew the contract upon its expiry, for a justifiable reason;
- the business is temporarily shut down or closed due to reasons not attributable to the employee, forcing foreign workers to find new jobs
- the foreign worker's employment permission is revoked in accordance with Article 19 (1) of the Act on Foreing Workers' Employment, etc or the workplace is restricted from employing foreign workers in accordance with Article 20 (1) of the Act;
- when the working conditions are different from what is stated in the employment contract; or the employer unfairly treats the worker; or for other reasons that, in light of social norms, justify discontinuance of the work (effective on December 10, 2009); or
- Any of the justifiable reasons which are prescribed in a Enforcement decree are identified.

* Any person who interferes with foreign workers' change of workplace or business shall be punished by imprisonment for up to one year or a fine not exceeding 10 million won.

Q) When a foreign worker resigns from his/her company, does the worker have to report to the Ministry of Employment and Labor on his retirement/resignation?

A) If any change is made to foreign workers' employment, including their unauthorized departure from the workplace, injuries, deaths and renewal of their employ-

ment contract; the employer is required to report such changes to the competent Employment and Labor Office under the Ministry of Employment and Labor, no later than 10 days from the date on which the employer came to recognize such changes, and to the Immigration Office under the Ministry of Justice no later than 15 days.

※ The changes that must be reported in relation to employment of foreign workers (Article 17 of the Act on Foreign Workers' Employment, etc., and Article 23 of the Enforcement Decree of the Act)

- The employment contract with the foreign worker is terminated;
- The foreign worker has died;
- The foreign worker is deemed not suitable to continue to work in the workplace because of his/her injury, etc.;
- The foreign worker has been absent from work for five days or longer without taking a proper procedure, such as the employer's approval, or his/her whereabouts is unknown;
- The foreign worker could threaten the public hygiene because, for example, he/she has contracted any of the contagious diseases prescribed in subparagraphs 1~4 of Article 2 (1) of the Prevention of Contagious Diseases Act (cholera, hepatitis B, tuberculosis, AIDS, etc.) or is addicted to narcotic drugs;
- The permitted employment duration is expired;
- The foreign worker has departed from Korea due to expiry of his/her sojourn period (excluding the cases of temporary departure);
- The workplace or business has a new employer or a new title; or
- The foreign worker has changed his/her workplace when no change was marked on the side of his/her employer.

Q) In case a private educational institute hires an instructor of the institute as a freelance not as a wage earner for the purpose of tax payment, is the instructor regarded as an 'employee' as defined in the Labor Standards Act? In case a person has signed a contract to work freelance, is he/she still an employee being entitled to annual leave, extended work allowance, etc?

A) 'Employee' as defined in the Labor Standards Act refers to a person who, regardless of the kind of his/her work or the type of his/her contract, practically provides labor to a workplace or business in return for remuneration and is subordinated to the employer. Accordingly, his/her title or the tax category does not matter. Rather, it is necessary to determine whether the person is subordinated to the employer or not, in order to confirm his/her 'employee' status.

In particular, the following should be reviewed to establish whether an instructor at the private educational institute has a dominant-subordinate relationship with the owner of the institute: ① whether the instructor's job description is determined by the owner and his/her job performance is specifically under the owner's supervision and control, or whether he/she is allowed to work in other institutes; ② whether the instructor can refuse the owner's normal instruction, supervision or direction in light of his/her job performance; ③ whether the instructor is bound to a particular working hours (work start and finish time), apart from the class hours, or any other work schedule detailed by the owner; ④ whether the money paid to the instructor is purely in return for his/her work, not in a commission for his/her service; and ⑤ whether he/she is subject to sanctions in the event of violation of the given work rules.

Q) Is it possible to prolong the probationary period to 6 months?

A) An employee on probation in Article 35, subparagraph 5 of the Labor Standards Act refers to an employee who has been three months or less on probation, in principle. The definition of 'employee on probation' in Article 16 of the Enforcement Decree of the Labor Standards Act is made to supplement the provision of Article 35, subparagraph 5 of the Act ("exceptions to advance notice") and specify a probationary period during which an employer may dismiss the employee without giving an advance notice of dismissal. Accordingly, the definition does not require that a probationary period should not exceed three months. Even when a company includes a probationary period of six months in its personnel rules, the company is not in violation of the Labor Standards Act.

2. Determining terms and conditions of employment

1) Signing a contract of employment

a. A contract of employment shall be in written form, and it is advisable that each signatory to the agreement should keep a copy of the written contract (Chapter 2 of the LSA).

① When a contract of employment is concluded, the employer shall clearly state the wage, given working hours, holidays, paid annual leave, and other working conditions to the employee concerned, and shall specify in writing the components of his/her wage, and the methods of calculation and payment, given working hours, holidays, paid annual leave (Article 24 of the LSA; and Article 8 of the LSA Enforcement Decree).

② Given that general working conditions are provided for in the rules of employment, etc., it is possible that a contract of employment may only contain specific conditions for the particular employee, such as his/her job descriptions and location of work, along with the clause "other working conditions shall be the same as prescribed in the rules of employment".

③ A contract of employment may not provide for any estimated amount of penalty or damages or any compulsory deposit in case of the employee's breach of the agreement.

④ When an employer hires a minor, even his/her parents or guardian may not sign the contract of employment on behalf of the minor.

b. If a contract of employment contains provisions that are short of the criteria in the LSA, those provisions are deemed invalid and are replaced with the corresponding provisions of the LSA (Article 15 of the LSA).

2) Effective period of the employment contract

a. In Korea, the tradition has it that a contract of employment is concluded for an indefinite term. Namely, Korean workers are used to being employed until a given retiring age. However, a growing number of contracts are signed for a fixed term, although the traditional way of contract signing is still prevalent.

b. In the cases where a contract of employment provides for a fixed term of contract, the contract period can be freely determined within the limit given for a fixed-term job (2 years) under the Act on the Protection, etc., of Fixed-term and Part-time Employees.

c. When a fixed-term contract is made, the employment relationship under the contract shall be automatically terminated upon expiration of the term.

- If an employee has been employed for a term exceeding 2 years, the employee shall be treated as if he/she had signed a contract of employment for an indefinite term.

- However, in case an employee is employed for longer than 2 years for the work required to complete a particular project or task (refer to 8. 2 below), the employee may not be treated as working under a contract of employment for an indefinite term.

Example: A form of a written contract of employment

Contract of Employment

(Name of the employee) (hereinafter referred to as 'Employee') agrees to abide by the rules of employment of (name of the Company) (hereinafter referred to as 'Company') and other rules while working for the Company and signs a contract of employment as follows with the Company.

1. Term of contract: From ___ (dd) ___ (mm) ___ (yy) to ___ (dd) ___ (mm) ___ (yy)

2. Location of work:

3. Job description:

4. Working hours
 - Weekdays: From ___ to ___ (including ___ in recess)
 - Saturday: From ___ to ___ (including ___ in recess)

5. Working days/holidays:

6. Pay
 - Hour(daily or monthly) rate : won
 - Other benefits (allowance, bonus, etc.):
 ※ When bonus is paid, the rate(amount), payment date, etc. of the bonus shall be specified.
 - Pay day: _____ day of each month(week)
 - Pay method: (paid in person or in a bank account)

7. Others
 - The matters that are not specified in this contract shall be the same as those provided for in the relevant legislation and the rules of employment of the Company.

For the purpose of confirming the above, this written contract shall be made in two certified copies, which shall be kept each by the Company and the Employee.

(dd) (mm) (yy)

Company name:
Address : (Telephone number)
Representative: (Signature)

Employee name: (Signature)
Address: (Telephone number)
Identification no:

3) Recording and keeping the employee register and the payroll

a. An employer shall record and keep an employee register containing names, birth dates, etc. of the employees and a payroll specifying the elements of pay calculation, amounts paid, etc., for each factory, branch office or workplace (Articles 41 and 48 of the LSA).

b. An employee register and payroll, which may be combined into a single register, shall be kept for 3 years at the shortest.

4) Setting the rules of employment

a. The rules of employment is a set of rules that are unilaterally devised by an employer and concern contractual working conditions or work behaviors generally binding to his/her employees.

b. A company, factory or another form of workplace employing permanently 10 persons or more shall set the rules of employment, report it to the competent local Employment and Labor Office and inform the employees by keeping it posted at the workplace (Articles 14 and 93 of the LSA).

- When reporting the rules of employment to the local employment and labor office, the employer shall submit a statement or a written consent signed by his/her employees.

c. When an employer intends to devise or revise the rules of employment, he/she shall consult a trade union representing a majority of his/her employees or, if there exists no such union, a majority of his/her employees.

※ In case the rules of employment are to be revised to the disadvantage of the employees, the employer must obtain the consent from the union or a majority of the employees.

d. The rules of employment may not contradict the legislation or collective agreement that is applicable to the business or workplace concerned.

e. If a contract of employment contains provisions that are short of the standards prescribed in the rules of employment, those provisions are deemed invalid and

shall be replaced with the corresponding provisions in the rules of employment.

Q & A

Q) In case a Korean signs a contract of employment directly with an overseas foreign company, is he/she still subject to Korean labor laws?

A) The territorial principle is generally recognized in the international legal system, where the laws and regulations of a nation shall apply to all the people within the territory of the nation but is not applicable or enforceable outside its border.
In this light, when a Korean national signs an employment contract directly with a foreign company overseas, he/she is subject, with regard to his/her employment, to the laws and regulations of the foreign nation where the company is located. Similarly, when a foreign company employs a worker in Korea, the workers, whether a Korean or foreigner, is subject to the Korean labor laws.
However, if a Korean company in Korea sends employees to its overseas establishments under its supervision and controls working conditions of the employees, these employees are subject to Korean labor laws.

Q) What is the legal validity and scope of an 'employment restriction contract' introduced for the purpose of protecting trade secret?

A) A worker is obliged not to disclose to a third party any confidential information of the company that he/she has come to acquire while at work, after retirement as well as during his/her service. "Trade secrets" refers to production methods, sales skills and other techniques or information useful for business management, which are not made public, have their own economic values and have been kept secret with considerable efforts.
Article 10 of the "Unfair Competition Prevention and Trade Secret Protection Act" prescribes the right to request the court to take necessary actions to prohibit or prevent a person with access to trade secrets from breaking the secrecy.
Accordingly, an 'employment restriction contract' stipulates that "an employee is debarred from working for another firm where the trade secrets that he/she has acquired during his/her service in the company might be used, for a certain period of time after his/her retirement from the company." To define the validity of the contract, several factors should be taken into account, including the extent to which trade secrets are disclosed; the benefits of secrecy; the nature of the work concerned and the scope of the employees subject to the contract; working conditions of the

persons in charge of the secrets; additional rewards or gains offered for handling the secrets; and to whom termination of the employment relationship is attributable. Even when such contract is found valid, the extent and the duration of the restricted work should be deemed reasonable in light of social norms, so that they may not violate the freedom of occupational choice, the principle of prohibition of forced labor and the principle of free competition.

3. Wage

1) Definition

a. The term "wages" mean wages, salaries, and any other money and valuable goods an employer pays to a worker for his/her work, regardless of how such payments are termed (Article 2-(1)-5 of LSA).

b. Accordingly, a payment made to express favor or goodwill or reimburse the already paid expense is not counted as an element of the wage.

	Countable elements	Non-countable elements
Examples	·Regular and continual payments in bonuses, production incentives or efficiency allowance ·Retirement pay (post-paid wage) ·Allowances paid during paid holidays or paid monthly/annual leave ·Monetary payments for employee benefit, such as price-linked allowance, commuter allowance, family allowance and wintertime allowance which is paid regularly and at a flat rate or in an established practice	·Monetary payments made as a token of courtesy, goodwill or favor, such as allowance for congratulation or condolence ·Monetary payments made to reimburse the already paid expenses for business trips or transportations ·Dismissal notice allowance ·Compensation for damage, such as work shutdown compensation, etc.

c. The wage amount shall be at least the minimum wage rate (Article 6 of the Minimum Wage Act) and may be determined by an individual contract of employment or a collective bargaining agreement.

2) Ordinary wage vs. average wage

The LSA provides for two different concepts of wage: ordinary wage and average wage. Calculating the retirement pay or any other statutory allowance shall be based on either of the two.

	Ordinary wage	Average wage
Definition	Wage to be paid for a certain job (contractual hours or days of work to be done) on a regular and flat-rate basis.	The amount calculated by dividing the total amount of wages paid to the relevant worker during three calendar months prior to the date, when the event necessitating such calculation occurs.
Statutory payments using the concept	Overtime·holiday·nighttime work pay, dismissal notice pay and any other pay that a legal provision stipulates as "paid".	Retirement pay, temporary shutdown allowance, and industrial accident compensation.

※ Average wage 100% or ordinary wage 100%

3) Wage payment methods

Wage payment shall be made in accordance with the following 4 requirements (Article 43 of the LSA).

① Direct payment: Wage shall be paid directly to the employee concerned. On-line payment is also acceptable.

- Even when the employee has transferred the wage claim to a third party, the employer may not pay the wage to the third party or his/her representative.

② Full payment: Wage shall be paid in full, except when otherwise provided in the relevant law or collective agreement. (Deducting the wage for a loan or other form of liability is not allowed, while deduction for an advance payment is allowed.)

③ Cash payment: Wage shall be paid in circulating currency.

④ Regular payment: Wage shall be paid on a fixed date, at least once a month.

- However, temporary pay or allowance or any other equivalent payment and

good attendance pay for a period longer than 1 month are exceptions.

4) Minimum wage

a. An employer shall remunerate his/her employees at least at the minimum wage rate which is determined on an annual basis. When a contract of employment provides for a wage rate lower than the minimum rate, the provision is deemed invalid (Article 6 of the Minimum Wage Act).

- Regardless of types of employment or nationality, minimum wage is applied to workers defined by the Labor Standard Act including temporary, daily or hourly workers and foreign workers.

b. The minimum wage is determined and made public on an annual basis by the Minister of Employment and Labor.

- Statutory minimum wage rate for the period of Jan. 1 ~ Dec.31, 2011
  ☞ 4,320 won per hour / 34,560 won per day (8-hour workday)
- The hourly minimum wage rate for those who are engaged in such surveillance or intermittent work as defined in subparagraph 3 of Article 63 of the LSA may be 20% less (3,456 won per hour) than the general minimum rate, so long as the employer has obtained the Minister of Employment and Labor's approval for the under-rate.
- The minimum wage for apprentices may be 10% less (3,888 won per hour) of the general minimum rate for the period of 3 months or shorter.

c. As the following wage elements are not counted towards the minimum wage, they should be excluded in determining whether a certain wage is at least the minimum rate.

- Bonus, good attendance benefit, etc., which are not paid regularly every month or more frequently;
- Pay and additional pay for extended or holiday work, additional pay for night-time work, etc., which are paid for extra working hours (or overtime work) other than the given working hours; or
- Family allowance, commuter allowance, food allowance, etc. which are paid for employee benefit

5) Temporary shutdown allowance

a. When an employee cannot work for a reason attributable to his/her employer, the employer shall pay the employee suspended work pay at 70% or more of his average wage for the duration of suspended work(Article 46 of the Labor Standard Act).

① In case the amount equivalent to 70% of average wage exceeds ordinary wage, the employee may be paid the ordinary wage for the duration of suspended work (Article 46 of the LSA).

② If an employer cannot continue his/her business for an inevitable reason, he/she may pay his/her employees at a lower rate than the above when he/she obtains approval from the Labor Relations Commission for doing so.

b. Reasons attributable to an employer include unintentional causes, such as shortage of materials, reduced orders and decreased sales, as well as his/her acts of intentional negligence.

6) Annual pay system

a. Annual pay system is a type of wage determination, by which the wage amount is determined annually, based on the evaluated competency, performance and contribution of the employee concerned.

• The annual pay system can be adopted by way of signing a contract of employment, revising the rules of employment or negotiating a collective agreement.

b. Even when the annual pay system is in force, the principles of wage payment prescribed in the LSA are still binding.

① With regard to the principle of regular payment, the annual pay shall be given on a fixed date once or more per month although the pay is determined on an annual basis.

② Additional pay or premium for overtime work, night work or holiday work shall be also paid to employees under the annual pay system.

c. Termination of an annual pay period does not mean an end to the employment relationship. That is to say, the annual pay period is different from the period of employment contract, as the former refers to a pay reference period for which an employee's wage rate is determined and at the end of which the wage rate is re-negotiated.

d. Even when an annual pay system is in place, the provisions on retirement pay in the Employee' Retirement Benefit Security Act are still binding.

7) Limitation Period of wage claim

a. Wage claims have a limitation of 3 years.

- The term 'wage' refers to payment that includes bonus, overtime work pay, monthly/annual leave pay and retirement pay, as defined in the LSA.

b. When an employer delays paying wage or retirement pay for longer than 14 days to an employee whose employment relationship is discontinued by reason of retirement, etc., the employer shall pay deferral interests for the unpaid wage or retirement pay at an annual rate of 20% (in accordance with Article 37 of the LSA and Article 17 of the Enforcement Decree of the Act).

- However, the deferral interests will not apply to the periods during which there exist certain reasons specified in the relevant legislation, such as natural disaster, war, or legal or de facto bankruptcy.

8) Wage level

As of 2010, monthly average wage of regular employee, working for companies with five employees or more in all industrial sectors, averaged 2,931,000 won, which is 4.9% up from a year earlier (in real terms, 2,525,000 won and 1.9% up)

The monthly fixed pay per regular employee is 2,264,000 won, which is 4.5% up from a year earlier (2,166,000 won), recording a faster growth than in the previous year (0.6% up).

Wage level of regular employees (in all industries)

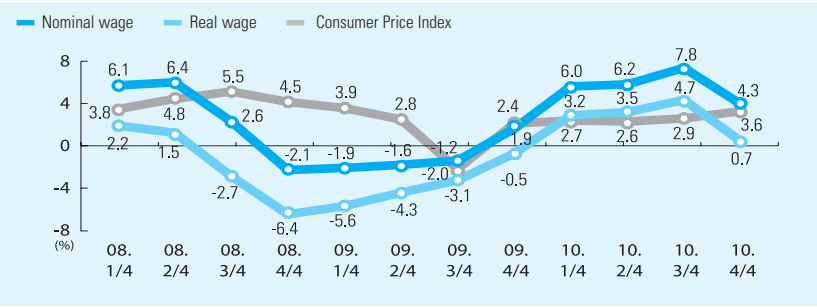
(in 1,000 won, %)

	2008	2009	2010
Total wage	2,810(3.4)	2,795(-0.5)	2,931(4.9)
Fixed + Extra	2,317(6.0)	2,322(0.0)	2,450(1.1)
Fixed pay	2,154 (6.3)	2,166(0.6)	2,264(4.5)
Extra pay	163 (-1.1)	156(-4.1)	186(19.3)
Special pay	493 (-6.2)	472 (-4.2)	480(1.7)
Real wage	2,562 (-1.2)	2,478(-3.3)	2,525(1.9)

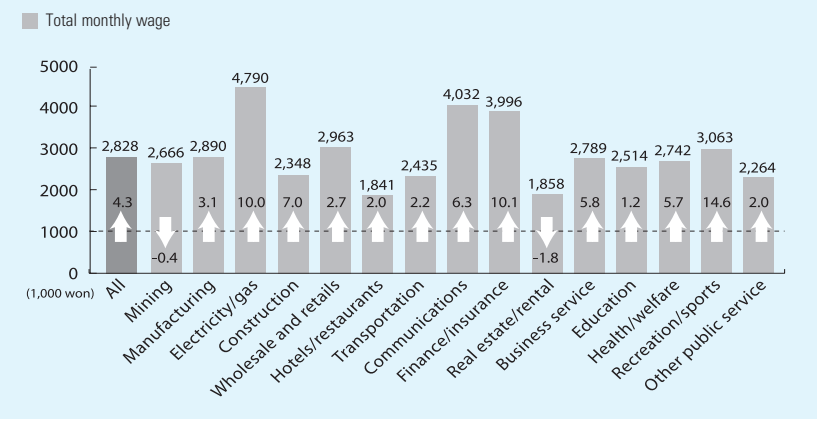
Note: The figures in ( ) refer to the year-on-year increase rates in % (calculated for regular employees at companies with 5 employees or more in all industries). 'Monthly Labor Statistics' is used for 2007 and previous years and 'The Survey of Wage and Work Hours at Companies' is used for 2008 and following years, while a new estimation method was adopted in 2008 and this new method was applied to the data in 2007 and following years for the purpose of time-series consistency.

Source: Ministry of Employment and Labor (http://laborstat.moel.go.kr), The Survey of Wage and WorkHours at Companies (former Monthly Labor Statistics)

Trends of wage increase for regular employees



Per capita monthly wage increase by industry



(in 1,000 won, %)

Industrial classification	Q 4 of 2009	Q 1 of 2010	Q 4 of 2010
All industries	2,711(1.9)	2,769(6.0)	2,828(4.3)
Mining	2,678(0.5)	2,622(9.2)	2,666(-0.4)
Manufacturing	2,803(3.6)	2,770(6.8)	2,890(3.1)
Electricity, gas & water	4,355(1.7)	3,954(8.4)	4,790(10.0)
Construction	2,193(-6.5)	2,350(-6.9)	2,348(7.0)
Wholesale & retails	2,886(1.8)	3,019(2.2)	2,963(2.7)
Hotels & restaurants	1,806(-1.8)	1,868(2.4)	1,841(2.0)
Transportation	2,382(3.1)	2,331(2.8)	2,435(2.2)
Communications	3,791(-0.3)	3,809(3.5)	4,032(6.3)
Finance & insurance	3,631(3.4)	3,883(5.5)	3,996(10.1)
Real estate & rental	1,892(-1.6)	1,946(6.9)	1,858(-1.8)
Business service	2,636(4.0)	2,753(10.0)	2,789(5.8)
Educational service	2,485(-7.4)	2,763(-1.8)	2,514(1.2)
Health & social welfare service	2,594(0.0)	2,675(5.7)	2,742(5.7)
Recreation, culture & sporting service	2,672(10.8)	2,725(17.4)	3,063(14.6)
Other public serivce	2,220(-3.2)	2,288(-0.8)	2,264(2.0)

Note: The figures in ( ) refer to year-on-year increase rates (for all employees of the companies with 5 employees or more in all industries).
Source: Ministry of Employment and Labor (http://laborstat.moel.go.kr), The Survey of Wage and Work Hours at Companies (former Monthly Labor Statistics)

Q & A

Q) Are 'bonuses' a wage component as prescribed in the applicable law? Does the law requires an employer to pay bonuses to his/her worker who is about to retire?

A) As there is no legal provision on bonuses, the collective agreement or the rule of employment in principle will define the bonus level, including its amounts, recipients, payment methods and other matters. Bonus may or may not be counted into the average wage, depending on the particular terms and conditions by which it is paid.

For instance, if a bonus is regularly paid in a fixed amount or rate and on a speci-

fied date, an employee who retired from the company before the bonus pay day can also claim a part of the bonus for the days he had worked, unless otherwise prescribed in the agreement or rules.

On the other hand, in case the collective agreement, the rule of employment or the contract of employment explicitly states that "only the currently employed are eligible for bonuses", the employer is justified not to give the bonus pay to the retired employee.

Q) When a company vehicle needs repairing after an accident arising from an employee's negligence, can the repair costs be deducted from the employee's wages, as is in the case of advance payment?

A) Wages are often the only source of income that workers make their ends meet. Therefore, to ensure workers' right to basic livelihoods, Article 43 (1) of the Labor Standards Act provides that wages should be paid in full, in cash and directly to the workers and part of their wages can be deducted if and only if the relevant law and regulation or the collective agreement specifically provides for such deduction.

Car repair expenses incurred by a car accident attributable to an employee's negligence should be recovered through civil proceedings, such as a civil suit for damages. Even if the employee has asked for advance payment to cover the expense, any deduction of his/her wage for that purpose can be construed as offsetting the damages and, therefore, may constitute a violation of the law.

Q) When an employer wants to shutdown his/her business temporarily due to economic recession, how should the employer pay temporary shutdown suspension allowances to his/her employees?

A) In case an employer decides to suspend the business for a reason attributable to him /herself, the employer should give the employees a temporary shutdown allowance equivalent to at least 70% of their average wage for the period of business suspension. However, if the 70% exceeds the ordinary wage, the latter may replace the former.

4. Working hours

1) Standard working hours

a. According to the LSA, standard working hours are 8 hours a day and 40 hours a week.

① In Korea, the revised LSA has shortened statutory working hours from the previous 44 hours to 40 hours a week. As this revision took effect starting from July 2004, the pre-revision provisions are still binding to the businesses that fall into the categories of businesses for delayed application of the revised LSA.

• The 40-hour workweek was extended to include business or workplaces hiring five or more regular employees starting from July 1, 2011.

② Hours of work refers to the period of time during which an employee provides his work, usually under the supervision or control of his/her employer. In general, the time needed to prepare work tools, have a pre-work meeting and make a post-work arrangement is also counted as working hours.

③ The 'contractual working hours' refers to the working hours agreed on by the employer and the employee, within the limit of standard working hours. (Article 2 of the LSA)

b. The statutory working hours are shown in the table below (Articles 50, 53 and 69 of the LSA).

Type of employees	Standard working hours		Extended working hours	Night · holiday work
	Per day	Per week		
General	8 hours	40 hours (44 hours)	12 hours a week * In case of 40-hour workweek, 16 hours a week temporarily for the first 3 years	No restriction
Pregnant employees			No extended work allowed	Allowed at the employee's request and with permission from the Employment and Labor Minister
Working mothers with a child younger than 1 year of age			2 hours a day/ 6 hours a week/ 150 hours a year	Allowed with the employee's consent and permission from the Employment and Labor Minister
Youths (15 or older but younger than 18)	7 hours	40 hours (42 hours)	1 hour a day/ 6 hours a week	Allowed with the employee's consent and permission from the Employment and Labor Minister
Employees doing dangerous or harmful work	6 hours	34 hours	No extended work allowed	

※ The figures in parentheses refer to the number of hours when standard working hours are 44 hours.

2) Increased flexibility in working hours

a. Flexitime (flexible working hour) system

① The flexitime system is designed to increase efficiency in using workforce by adjusting the length of working hours to seasonal, monthly or daily fluctuations in workload.

② An employer may adopt "flexitime" on a maximum 2-week basis by modifying the rules of employment, and may adopt the flexitime on a maximum 3-month basis by reaching agreement with the employee representative.

• When the flexible working hour system is introduced by rules of employment (on a basis of maximum two weeks) or written agreement with the representa-

tive of workers (*on a basis of maximum three months), workers may work more than eight hours a day or 40 hours a week on the condition that an average working hours per week, which are calculated by average working hours of a certain period (two weeks or *three months), do not exceed 40 hours per week. (Article 51 of the LSA)

※This regulation is not applied to workers aged between 15~18 and pregnant women workers.

- In a flexitime scheme on a 2-week basis, the working hours in a particular week may not exceed 48 hours; and in a flexitime scheme on a 3-month basis, the working hours in a particular week and on a particular day may not exceed *52 hours and 12 hours respectively.

* In case the statutory workweek is 44 hours, the forementioned 3 months shall be replaced with 1 month, and the asterisked 52 hours (the upper limit of working hours in a particular week on a 3-month-basis flexitime scheme) shall be replaced with 56 hours.

b. Selective working hours system

① The selective working hours system enables an employee to choose his/her start and finish time at a workplace, as long as he/she works for the contractual working hours within a given period of time.

② An employer who intends to introduce the selective working hours system shall reach an agreement in writing with the employee representative concerning the following matters:

- Coverage of employees (employees of 15 or older but younger than 18 should be excluded)
- Worktime reference period (should be a fixed length of time of 1 month or shorter)
- Total working hours during the reference period
- When designating a specific range of working hours that must be observed, the start/finish time of the work,
- When designating a range of working hours that can be arranged by the employee, the start/finish time of the work
- Other matters as prescribed in the Enforcement decree (standard working hours)

c. Discretionary working hours system

For a job whose nature makes it necessary for the employer to authorize the job holder to determine how the work is performed as the employee works outside the company or his/her work requires specific expertise or professional skills, the range of working hours or the working hours that the employee chooses is deemed the hours worked, so long as the employer and the employee representative have reached a written agreement on the following:

- Job description*
- That the employer will not give the employee any detailed instructions on how the latter performs his/her work and he/she arranges his/her working hours.
- That calculation of the hours worked is based on the written agreement.

*Jobs subjected to discretionary working hours (Article 31 of the LSA Enforcement Decree): ▲ R&D of new products or new technology, or research of either human and social studies and natural science; ▲design or analysis of the information processing system; ▲coverage, composition or edit of articles in newspaper, broadcasting or publication industries; ▲design in costumes, interior, manufacturing products or advertisement industry; ▲jobs of producers and directors of TV broadcasting and movies; ▲and other jobs designated by Employment and Labor Minister

3) Extended working hours

a. Extended work refers to the work done in excess of the standard working hours, and extended work is allowed up to 12 hours per week (16 hours per week for the first 3 years from the time the 40-hour workweek takes effect) under the agreement between the employer and the employee.

① In principle, the agreement on extended work between the parties concerned shall be made between the employer and the 'individual employee' concerned. Even when there exists a collective agreement on extended work, it does not limit the individual employee's right to reach agreement.

② As an exception to the above, the employer engaged in any of the following businesses may have his/her employees work for more than 12 hours of

extended work in a week, and may adjust their recess time, so long as the employer has reached an agreement in that regard with the employee representative (Article 59 of the LSA):

- Transportation, product sales or warehousing, or finance /insurance
- Film making or presentation, communications, educational research/survey or advertising
- Medical/health service, entertainment, incinerating/cleaning service or hairdressing
- Social service

b. In principle, a pregnant employee may not work overtime, and a mother with a child younger than 1 year of age may not work overtime longer than 2 hours a day, 6 hours a week or 150 hours a year.

- When an employer wants to have a female employee aged 18 or older work night-time (between 10 pm and 6 am of the next day) or on holidays, he/she shall get the employee's consent. In case an employer wants to have a pregnant employee or a youth below 18 work during the time above, the employer shall get permission from the Employment and Labor Minister.

4) Night or holiday work

a. Night work refers to the work done sometime between 10 pm and 6 am of the following day, and holiday work refers to the work done on a holiday.

b. For night or holiday work, the employee concerned shall be paid an additional 50% of the ordinary wage rate (Article 56 of the LSA).

- An employer who is subject to the 40-hour workweek system may pay at a lower 25% of ordinary wage hourly rate for the first 4 hours of extended work during the first 3 years.

5) Recess

An employer shall provide recess time of 30 minutes or longer for 4 working hours,

and 1 hour or longer for 8 working hours, while the employee is at work (Article 54 of the LSA).

① Recess time is not counted as working hours.

② In principle, employees are free to use a given period of recess. However, minimal restrictions may be imposed on the use of recess, if necessary for sustained order in business.

6) Guaranteed exercise of civil rights

An employer shall grant an employee at work a requested time to exercise his/her civil rights, such as voting for public offices under the Public Office Election Act, or perform his/her civil duties (Article 10 of the LSA).

① Examples: the rights to vote; the right to be elected; the right to referendum; appearance before the court of law as a witness; reserve force training; civil defense drill or training; inspection of the voters' list, etc.

② When an employee leaves his/her workplace during working hours to exercise civil rights or perform civil duties, he/she shall be paid for the hours spent for that purpose.

7) Outlining the revised provisions on the 40-hour workweek

A shortened workweek has entailed revision of some of the provisions on working conditions. As the revised provisions took effect starting from July 2004, the pre-revision provisions are still binding to some smaller businesses.

	Companies with 44-hour workweek (those subject to pre-revision provisions)	Companies with 40-hour workweek (those subject to revised provisions)
Timing for application		▫Finance-insurance, state-invested institutions, state-owned companies, private companies with 1,000 employees or more: July 1, 2004 ▫Companies with 300~999 employees, national or local government agencies: July 1, 2005. ▫Companies with 100~299: July 1, 2006 ▫Companies with 50~99: July 1, 2007 ▫Companies with 20~49: July 1, 2008 ▫Companies with 5~19: July 1, 2011 ※ The timing for application may be set at an earlier date under a labor-management agreement.
Standard working hours	44 hours a week/ 8 hours a day (Youths: 42 hours a week/ 7 hours a day)	40 hours a week/ 8 hours a day (Youths: 40 hours a week/ 7 hours a day)
Flexible working hours system	·2-week basis: up to 48 hours a week (44 hours on average) ·1-month basis: up to 56 hours a week/ 12 hours a day (44 hours a week on average)	·2-week basis: up to 48 hours a week (40 hours on average) ·3-month basis: up to 52 hours a week/ 12 hours a day (40 hours on average)
Extended work and its premium	·Extended work: up to 12 hours a week (For youths, up to 1 hour a day, 6 hours a week) ·Premium rate: additional 50%	·2-week basis: up to 48 hours a week (40 hours on average) ·3-month basis: up to 52 hours a week/ 12 hours a day (40 hours on average)
Monthly leave	1 day per each month of full attendance	Repealed
Annual leave	·10 days per each year of full attendance; 8 days per each year of 90% attendance or higher ·An additional 1 day per each year of consecutive work ·Monetary compensation in lieu is allowed when the cumulative number of days is 20 days or longer. ·Available to employees with service period of 1 year or longer	·15 days per each year of consecutive work ·Maximum days allowed are 25 days ·An additional 1 day per 2 years of consecutive work ·1 day per each month of full attendance in case of employees with service period shorter than 1 year (the number of days used is deducted from the number of annual leave days to be accrued in the first year of employment) ·Promotion for use of leave (newly inserted)
Optional leave in lieu		Leave in lieu of additional pay for extended work or night/holiday work (under agreement between the employer and employees)
Menstruation leave	1 day with pay per month	1 day without pay per month (when asked by a female worker)
Compensation for wage loss		The previous wage level and hourly normal wage rate may not be decreased.
Revision of collective agreement, rules of employment		Both parties shall make effort to adapt their rules of employment and collective agreement to the revised provisions.

8) Trends of working hours

The total working hours per month in 2010 marked 175.9 hours, which is 3.1 hour (1.8%) longer than (monthly 172.8 hours) in 2009.

Changes in monthly working hours by employment status

Employment status	2007	2008	2009	2010
All	174.2	171.4 (-1.6)	172.8 (0.8)	175.9 (1.8)
Permanent	180.0	177.8(-1.2)	179.7(1.1)	181.9(1.2)
Given hours worked	159.9	159.6(-0.2)	163.0(2.1)	163.8(0.5)
Overtime worked	20.1	18.2(-9.5)	16.8(-7.7)	18.1(7.7)
Temporary / daily	113.1	104.9(-7.3)	100.6(-4.1)	103.3(2.7)

Note: The figures in parenthesis refer to the year-on-year changes in %.

Changes in monthly working hours by company size

Company size	With 5-9 employees	With 10-29	With 30-99	With 100-299	With 300 or more
2007	174.7	182.7	184.0	175.5	170.2
2008	181.1	183.5	179.6	173.5	168.2
2009	180.1	180.0	177.4	173.8	163.8
2010	178.3	177.4	177.2	179.1	166.5

Changes in monthly working hours by industry

	Q3, 2008	Q4, 2008	Q1, 2009	Q2, 2009	Q3, 2009	Q4, 2009	Q1, 2010	Q2, 2010	Q3, 2010	Q4, 2010
All (with 5 employees or more)	171.7	172.9	166.2	172.6	176.9	175.4	171.5	176.9	172.6	182.7
Mining	171.4	182.6	175.0	180.9	181.4	180.7	172.0	177.6	173.3	188.7
Manufac-turing	185.5	189.6	174.9	188.9	185.1	188.4	183.3	189.7	183.1	194.0
Electricity, gas & water	175.8	179.1	170.8	175.9	178.0	173.7	168.4	173.5	171.3	176.8
Construc-tion	155.9	158.4	155.3	153.9	165.8	152.5	151.6	156.3	152.7	162.4

Wholesale & retail	168	170.2	165.5	170.6	176.6	175.2	169.3	175.1	170.9	179.6
Hotels & restaurants	174.4	174.9	166.6	169.5	175.6	173.3	164.4	168.1	164.6	172.7
Transportation	169.4	173.9	171.0	180.7	184.0	182.1	176.5	179.5	180.0	184.5
Communications	164.4	166.4	160.8	166.0	164.0	160.5	159.3	164.4	160.1	168.7
Finance & insurance	160.8	164.3	157.6	160.9	159.0	157.3	153.2	156.7	153.9	163.6
Real estate & rental	183.6	188.5	180.8	186.6	188.6	189.6	183.5	185.6	181.2	187.9
Business service	170.5	171.3	164.3	169.3	166.1	172.4	165.7	168.3	165.9	177.5
Educational service	149.2	145.2	151.5	145.4	146.9	139.6	135.9	142.3	137.9	151.4
Health & social welfare service	168.7	168.3	162.3	167.5	166.1	167.5	162.6	167.4	165.1	174.0
Recreation, culture & sporting service	166.1	156.2	147.3	156.9	158.6	159.6	157.0	165.3	162.1	170.4
Other public, repair & private service	176.6	177.8	171.1	178.5	178.5	177.1	171.9	175.0	171.2	177.5

Source: Ministry of Employment and Labor (www.moel.go.kr), The Survey of Wage and Work Hours at Companies

Q & A

Q) From when does the 40-hour workweek apply to businesses with five employees or more, and what obligations are added to the employers under the 40-hour workweek system?

A) The revised LSA provides for 8-hour workday and 40-hour workweek (which replaces the previous 44-hour workweek). The 40-hour workweek first applied to the largest companies and public organizations in July 2004 and has been extended gradually to cover smaller companies. Starting from July 2011, the 40-hour workweek shall include the businesses with 5~19 employees.

Accordingly, once the system has greater enforceability on July 1, 2011, the employers with 5~19 employees have to comply with the provisions on the upper limits of extended working hours and nighttime and holiday work, annual leave, monthly leave, menstrual leave and extended work allowance, as well as the statutory working hours.

Meanwhile, the 40-hour workweek may be introduced before July 1, 2011, when labor and management agree on the scheme in individual workplaces.

<LSA provisions that are not binding to the businesses with not more than four employees>

- The LSA provisions that are not binding to the businesses or workplaces with not more than four full-time employees include: Article 14 (Publicity of law and decree, etc.,); Article 16 (Term of contract); Article 19 (2) (Payment of travel expenses); Article 23 (1) (Restriction on dismissal); Article 24 (Restriction on dismissal for managerial reasons); Article 28 (Application for remedy for unfair dismissal, and Related Acts.); Article 46 (Temporary shutdown allowance); Article 50 (Hours of work); Article 51 (Flexible working hour system); Article 52 (Selective working hour system); Article 53 (Restriction on extended work); Article 56 (Extended, nighttime and holiday work); Article 57 (System of Using leave as Compensation); Article 58 (Special provisions for computation of working hours); Article 59 (Special provisions as to working and recess hours); Article 60 (Annual paid leave); Article 61 (Promoting the use of annual paid leave); Article 62 (Substitution of paid leave); and Article 73 (Menstruation leave).
- Meantime, they are subject to LSA's provisions on weekly holidays, work recess, maternity leave, industrial accident compensation, wage and advance notices on dismissal.

Q) Who and what kind of works are eligible for an overtime allowance? Are sales staff, marketing staff, managers or executives also entitled to overtime allowances?

A) Under the Labor Standards Act, the statutory working hours is eight hours a day and 40 hours a week, with recess hours excluded. However, an employee may work overtime within the limit of 12 hours a week, so long as the parties agree to do so, and the employer should pay additional 50% or more of ordinary wage for the overtime hours.

This provision shall, in principle, apply to each and every business/workplace with five employees or more. However, an employer has no obligation to pay overtime work allowance to the persons who are engaged in the work of management and supervision. As being practically representing the employer with regard to decision of working condition and administration of other labor affairs, they are not projected under the Labor Standards Act on working hours, holidays or recess. Therefore, the employer is not obliged to pay overtime allowances to such workers.

Q) What is the exact definition of 'recess hours'? Is it possible to replace recess hours with lunch hours?

A) The 'recess hours' as defined in the Labor Standards Act refers to, whatever it is called (recess hours, stand-by hours, etc.), the hours which an employee can spend, free from direction or supervision of his/her employer and are neither included in the actual hours worked nor are paid for. If an employee uses recess hours in the way mentioned above, it is believed that recess hours may be replaced with lunch hours.

※ An employer should allow at least 30-minute recess for every four working hours and at least one-hour recess for every eight working hours. The recess time should be given between the start and the end time during a workday.

※ Although there is no written regulation on split-up of recess hours, it is advisable that, given the purpose of the recess time system, recess time should be given in full without split-up. However, it would be acceptable to split recess time into several blocks of time if it is deemed reasonable and necessary in light of the nature of the work and working conditions at a particular workplace.

Statutory working hours
(Acticles 50, 53 and 69 of the Labor Standards Act)

Type of worker	Standard hours of work		Cap on overtime hours	Night / holiday work
	Per day	Per week		
Male worker	8 hours	40 hours (44 hours)	12 hours a week *In case of 40-hour workweek, 16 hours a week temporarily for the first 3 years	No limit
Female worker				Worker's consent
Pregnant workers			No extended work allowed	Allowed at the employee's request and with permission from the Employment and Labor Minister
Female workers with a child under the age of one			2 hours a day/ 6 hours a week/ 150 hours a year	Allowed with the employee's consent and permission from the Employment and Labor Minister
Minors (15 or older but younger than 18)	7 hours	40 hours (42 hours)	1 hour a day 6 hours a week	Allowed with the employee's consent and permission from the Employment and Labor Minister
Workers engaged in dangerous or harmful jobs	6 hours	34 hours	No overtime work allowed	

*The figures in parentheses refer to the number of hours when standard working hours are 44 hours.

Q) Under the statutory 40-hour workweek, are non-working Saturdays considered as paid holidays?

A) In case employees have a 5-day workweek and do not work on Saturdays under the statutory 40-hour workweek, the non-working Saturdays are not paid holidays, unless otherwise agreed upon by the employer and employees. If an employee works on a particular Saturday without such specific agreements, the employee is not entitled to holiday work allowance. But if his/her weekly working hours exceed 40 hours in that specific week, he/she will be paid overtime allowances.

Q) Under the 40-hour workweek, what is the reference number of working hours used to calculate monthly ordinary wage?

A) In case the employer and employees at a particular company have agreed to adopt 5-day workweek under the 40-hour workweek system, non-working Saturdays in principle, are unpaid holidays and thus are not counted into the number of working hours that constitute the monthly ordinary wage, unless otherwise agreed upon by the parties.

If non-working Saturdays are considered as paid holidays, the number of paid working hours on Saturday should be included in the reference number of working hours in calculating monthly ordinary wage.

※ Reference numbers of working hours and monthly ordinary wage (example)
① When the contractual working hours are 40 and there is no paid hour other than that: 209 hours
② When the contractual working hours are 40, and four paid hours on each Saturday: 226 hours
③ When the contractual working hours are 40, and eight paid hours on each Saturday: 243 hours

Q) What are the methods used to calculate nighttime, overtime and holiday work allowances? And what if certain hours can count as both or all of overtime, nighttime and holiday allowances? Then, how are the allowances computed?

A) For example, when an employee worked total 13 hours in the form of extended and nighttime works from 9 am to 11 pm on a paid holiday, with one hour of recess time, all of the following should be added up to determine the allowances that the employee is entitled to for the hours worked;
ⓐ Paid holiday allowance : 8 hours' wage (in the case of the monthly salary system, usually included in the salary)
ⓑ Holiday work allowance for the hours worked on the holiday: 13 hours' wage
ⓒ Additional allowance for holiday work (50% of ordinary wage): 6.5 hours' wage (50% of 13 hours' wage)
ⓓ Additional allowance for extended work, for the hours worked in excess of eight hours a day (50% of ordinary wage): 2.5 hours' wage (50% of 5 hours' wage)
ⓔ Nighttime work allowance (50% of ordinary wage): 0.5 hour's wage (50% of one hour's wage)
Therefore, the total allowance for the hours worked is equivalent to 30.5 hours' wage.

Q) Is an employer allowed to use in-company e-mails, instead of written communications, for the purpose of encouraging his/her employees to take out their leave days, as is prescribed in the Labor Standards Act?

A) Article 61 of the Labor Standards Act stipulates that an employer should inform his /her employees of their unused days of leave and give them a "written" notice, so that they can decide when to use the days and notify the employer of their decision. In case the employee, upon receiving such written notice, fails to notify the employer of their decision, the employer can arbitrarily determine when the employee to take out leave days and notify the employee of the leave schedule "in writing". Despite the employer's above efforts, if the employee does not use the remaining leaves and the unused leave has been expired, the employer has no obli-

gation to compensate for the unused leave.

The "written" notification specified in this provision is to ensure that efforts are made to promote and encourage employee's use of leave days, and to protect the employees' rights, while preventing potential disputes between the parties resulting from unclear measures.

In this light, the act of giving a notice by in-company e-mail or posting a notice on unused leave days for each employee on the company's bulletin board is not acceptable, since such act is not deemed to be as explicit as the act of giving an "written" notice to individual employees.

※ The law does not mandate an employer to make efforts to promote use of unused leave days. Accordingly, in case an employer has made no such effort as to promote use of unused leave days and his/her employee has neither decided when to use the leave days nor used the days, there is not penalty imposed on the employer. What he owes is the allowance for the unused days of annual leave, to be paid out to the employee.

Q) Is the optional compensation leave, which offers leave in lieu of the wage arising from extended, nighttime or holiday work, paid or unpaid? How the optical compensation leave is computed?

A) The optional compensation leave is designed to offset the wage resulting from extended, nighttime or holiday work. If this leave is unpaid, no remuneration will be paid for the day(s) on which an employee takes the leave and, what is more, the employer is not paid for the extended, nighttime or holiday hours he/she has already worked. In this light, the compensation leave should be with pay. Furthermore, considering that the allowance paid for extended, nighttime or holiday work and the compensation leave in lieu of the allowance should have an equal value, the additional remuneration prescribed in Article 55 of LSA should be also taken into account, in computing the duration of the leave.

※ For example, if an employee has worked two hours on a holiday, he/she is entitled to three hours' wage (including the additional one hours' wage) or three hours' leave in lieu. In case the hours worked are eligible to more than one of extended, nighttime and holiday work allowances, all of the additional portions of the corresponding allowances should be included when computing the duration of the leave.

However, given the purpose of this law, it would not be appropriate to apply it to the nighttime hours worked that are not counted in excess of the contractual working hours.

5. Holidays and leave

1) Overview

Holidays and leave days are somewhat similar in that employees do not work on the days. The difference is that the holidays, on which employees have no obligation to work in the first place, are excluded from the contractual working days, while employees are exempted, on their application or for a specific reason, from working on the leave days on which they are originally supposed to work.

Both holidays and leaves are classed into statutory and contractual ones. Statutory holidays and leaves are specified in the law with regard to their descriptions, conditions and effects; whereas contractual holidays and leaves are wholly based on an autonomous agreement between the labor and management on their availability, descriptions, conditions, in what process, and how much they are paid.

<table>
<tr><th rowspan="2">Classi-fication</th><th colspan="2">Statutory</th><th colspan="2">Contractual</th></tr>
<tr><th>Type</th><th>No. of days</th><th>Type</th><th>No. of days</th></tr>
<tr><td rowspan="2">Holiday</td><td>Weekly holiday (with pay)</td><td>1 day a week (in event of full attendance)</td><td rowspan="2">Public holidays, company foundation day, etc.</td><td rowspan="6">Whether holidays and leave are paid or unpaid, and how long they will be are determined by the employer and employees.</td></tr>
<tr><td>May Day (with pay)</td><td>1 day a year (May 1st)</td></tr>
<tr><td rowspan="4">Leave</td><td>Monthly leave (repealed)</td><td>-</td><td rowspan="4">Summertime leave, family leave, reward leave, etc.</td></tr>
<tr><td>Annual leave (with pay)</td><td>15 days per year of consecutive work (an additional 1 day for every 2 years of consecutive work)</td></tr>
<tr><td>Menstruation leave (without pay)</td><td>1 day a month (at the employee's request)</td></tr>
<tr><td>Pre- and post-natal leave (Paid leave: first 60 days)</td><td>90 days (Over 45 days after childbirth)</td></tr>
</table>

2) Weekly holidays

a. An employer shall grant a weekly holiday with pay at least once a week on average, provided that the employee concerned has worked all of the contractual working days (as determined in the rules of employment, etc.) for the preceding week (Article 55 of the LSA).

b. It is advisable that weekly holidays, which are not necessarily Sundays, should be stated in the rules of employment or other forms of company rules.

c. Once a weekly holiday is fixed on a specific day (for example, Sunday), it is possible that an employee who was absent from work on a working day might use the weekly holiday without pay.

d. An employee who has worked on a weekly holiday shall be paid at additional 50% of the normal wage rate for the hours worked (Article 56 of the LSA).

e. If a weekly holiday and another holiday with pay fall on the same day, only one of the two is considered valid, unless specified otherwise.

3) Contractual holidays

a. An employer may provide his/her employees with holidays other than statutory holidays, by specifying them in a collective agreement or the rules of employment.

•Examples: Company Foundation Day, public holidays, etc.

b. Whether those additional holidays will be paid or unpaid, and how long they will be are determined in an agreement reached by the employer and employees.

4) Monthly leave

a. In the companies with 44-hour workweek (companies with four employees or fewer), the employer should give one day of monthly paid leave to his/her employees. The employees may choose to save the days of monthly leave for up to one year and use them on a single or several occasions (Article 57 of the previ-

ous LSA).

Under the 44-hour workweek (for the companies subject to the previous LSA provisions)	Under the 40-hour workweek (for the companies subject to the revised LSA provisions)
1 day with pay per month of full attendance	Repealed

b. As the provisions on monthly leaves have been repealed under the revised LSA, above monthly leaves are not the statutory holidays in businesses or workplaces subject to the revised LSA (starting from July 1, 2011, the businesses or workplaces with five regular employees or more).

5) Paid annual leave

a. An employer shall grant 15 days of annual leave with pay to an employee who has recorded 80% or higher in attendance.

① However, under the 44-hour workweek system, the employer shall grant annual leave with pay in accordance with the pre-revision LSA.

Under the 44-hour workweek (for companies subject to the previous LSA provisions)	Under the 40-hour workweek (for companies subject to the revised LSA provisions)
·10 days per year of full attendance, 8 days per year of 90% or higher attendance ·An additional 1 day per year of consecutive work ·Monetary compensation in lieu is allowed when 20 days or longer are accumulated. ·Available to employees who have worked for 1 year or longer	·15 days per year when 80% of the particular year is worked ·An additional 1 day per every two years of consecutive work (up to 25 days) ·1 day per month of full attendance, for employees who work shorter than 1 year ·Promotion for use of leave (inserted)

② An employer shall grant 1 holiday with pay per month of full attendance to his/her employees who have worked less than 1 year. For the first year, the number of leave days used shall be deducted from 15 days (Article 59 of the LSA).

③ The days on which an employee is absent from work by reason of occupational accident or pre- and post-natal leave, shall be treated as the days worked.

b. For an employee who has worked for 3 years or longer, the employer shall grant an additional 1 day in paid holiday for every 2 years following the first year, and the number of additional holidays shall be limited to 25 days.

c. An employer shall grant his/her employee annual leave on the days that the employee wants to use for his/her annual leave.

① However, when the employer believes that allowing the use of annual leave on the days wanted would do great harm to his/her business, he/she may reschedule the timing of annual leave (Article 60-(5) of the LSA).

② An employer may have his/her employee take a day off on a particular working day in lieu of an annual leave day with pay, as long as he/she and the employee representative have reached a written agreement to do so (Article 62 of the LSA).

d. Given that annual leave days may be saved for a year and can be split for use on several occasions, it is advisable that a ledger of leave days saved should be recorded and maintained for each individual employee.

6) Promotion for use of annual leave

a. When an employee has not used the leave days saved within the year, he/she shall be paid for the unused days of leave at average or ordinary wage rate, as prescribed in the rules of employment.

b. At a business or workplace subject to the revised LSA, if employees have not used their annual leave despite the employer's committment to promoting use of annual leave, the employer is exempted from the obligation to provide monetary compensation for the unused annual leave (Article 61 of the LSA).

• To qualify for such exemption, the employer should inform individual employees of the number of leave days unused within 10 days from the last three months before the 1-year period for use of leave is exhausted, and call on the

employees, in writing, to schedule the use of leave and make a written notice on the schedule to him/herself.

- In case the employee, after receiving the employer's call for use of unused leave, fails to make a written notice on the scheduled use of leave no later than 10 days, the employer should schedule the use of leave and make a written notice on the schedule no later than 2 months before the 1-year period for use of leave is exhausted.

c. An employer may choose to or not to take an action to promote use of leave, in consideration of the workforce need at the company concerned. In addition, he/she may take such promotional action for particular employees.

- An employee shall use his/her leave on the dates he/she or the employer has chosen, and if he/she fails to use his/her leave on the chosen dates, the employer has no obligation to compensate for unused leave.

7) Optional compensational leave

a. An employer may reach a written agreement with the representative of employees that provides for compensational leave in lieu of pay for extended work, nighttime work or holiday work. (Article 57 of the LSA)

b. Optional compensational leave shall be used in deduction of the contractual working hours. Whether to provide the leave on a hourly or daily basis will be decided in a written agreement by the parties concerned. In addition, this compensational leave shall be treated as the leave with pay.

c. When an employer and employees agree to adopt the optional compensational leave, they shall specify on when and how long it can be used. If the employer fails to provide the leave, he/she shall give corresponding pay to the employee concerned.

8) Menstruation leave

a. An employer shall grant a female employee one day of menstruation leave per

month upon her request (Article 73 of the LSA).

b. Menstruation leave may be unpaid.

c. However, at a business or workplace under the 44-hour workweek system, the employer shall, in accordance with the relevant provisions of the previous LSA, grant a female employee 1-day menstruation leave with pay, whether she has requested or not, based on the fact that she has a menstrual period every month.

Under the 44-hour workweek (Work places subject to the previous LSA)	Under the 40-hour workweek (Work places subject to the revised LSA)
One paid leave day per month	One unpaid leave day per month

9) Pre- and post-natal leave with pay

a. An employer shall grant a pregnant employee 90 days in pre- and post-natal leave with pay (Article 74 of the LSA).

- As the '90 days' above refers to 90 calendar days, it includes weekly holidays and other kinds of holidays that fall during the period.

b. An employer shall pay leave benefits for 60 days of the leave period, while the employment insurance fund will cover the benefits for the remaining 30 days (Employment and Labor Office).

① For the employees at the companies designated for preferential support (e.g. manufacturing companies with 500 employees or fewer), the employment insurance fund will cover the benefit for the entire 90 days.

※ Companies for preferential support (Article 12 of the Enforcement Decree of the Employment Insurance Act) : Mining businesses with 300 employees or fewer; manufacturing businesses with 500 employees or fewer; construction businesses with 300 employees or fewer; transportation, warehousing or telecommunications businesses with 300 employees or fewer; and businesses in other sectors with 100 employees or fewer; and the businesses falling into the categories prescribed in Article 2, paragraphs 1 and 3 of the Small and Medium Enterprises Act

② Those who are hired as non-regular (daily-based, commission-based, casual or

fixed-term) employees but are actually working for a permanent job may claim maternity (pre and post-natal) leave, regardless of their employment status.

③ Since maternity leave is available to an employee while she is in employment relationship with the employer who gives the maternity leave to her, the maternity leave expires at the time of termination of the employee's employment contract even before exhaustion of the maternity leave.

※ In this case, if the employer renews the employment contract with the non-regular (fixed-term or leased) female worker, he/she shall receive, in the "subsidy for post-natal return to work", 400,000 won per person per month for a contract of 1 year or longer and 600,000 won for a contract of an indefinite term for the first 6 months, and 300,000 won for the later 6 months for both kinds of contract (effective July 1, 2006).

c. Even when a pregnant employee has used more than 45 days in the pre-natal period, she shall be able to use at least 45 days in the post-natal period. The days used in excess of 90 days may be given without pay.

d. Protective leave shall be granted in the case of miscarriage or stillbirth, as follows:

- 16~21 weeks into pregnancy: 30 days of protective leave from the date of miscarriage or stillbirth;
- 22~27 weeks into pregnancy: 60 days of protective leave from the date of miscarriage or stillbirth; or
- 28 weeks or longer into pregnancy: 90 days of protective leave from the date of miscarriage or stillbirth
  - The duration of protective leave starts from the date of miscarriage or stillbirth. So, if the employee concerned applies for the leave after some days from the date, her leave will be shortened by the lapsed time.

e. An employer may not have a pregnant employee work overtime, and the employer shall transfer her to a job of lighter workload upon her request.

Q & A

Q) Is a general workplace also required to observe the non-working days under "the regulations on public holidays in government and public offices"?

A) "The regulations on public holidays in government and public offices" defines the non-working days in government and public offices. Such holidays are the days when government and public offices do not open, thus apply only to the public servants and government employees. Accordingly, such non-working days do not necessarily constitute holidays for the employees in general workplaces. Rather, the non-working days in general workplaces include the weekly holidays under the Labor Standards Act and the Labor Day under the Act on Establishment of the Labor Day. Additionally, the employer and employees may designate other non-working days under the collective agreement, the rules of employment or an individual contract of employment. An employer is not obligated to grant the public holidays under the regulations as non-working days for his/her employees, unless otherwise agreed upon. Therefore, if an employee has worked on a public holiday which is not designated as a non-working day, he/she is not entitled to holiday work allowance.

Q) In case an employer has his/her employees work on a national holiday, does it constitute a violation of the law? If an employee does not work on a national holiday and, instead, work on Saturday or Sunday, how should the employee be paid for his /her work?

A) The paid holidays for employees under the Labor Standards Act are weekly holidays (Article 55 of the LSA) and the Labor Day (May 1st under the Act on Establishment of the Labor Day).

In principle, the national holidays and other public holidays that are designated, whenever necessary, by the government are applicable only to the public servants and government employees. The national or public holidays may become non-working days for the employees in general workplaces only when the collective agreement or employment rule(s) specifies so.

The weekly holiday under the LSA is at least one day per week. And it does not have to be Saturdays or Sundays. Accordingly, in the cases where national holidays are not designated as non-working days for the employees in a particular workplace, the employer might consider having a national holiday in a particular as the weekly holiday of the week.

Q) Is it legally required to designate a general election day (voting for members of the

National Assembly) as a paid holiday?

A) "Civil rights", including the right to vote, are the basic rights of the citizens enshrined in the Constitutional Law of Korea. Nonetheless, an employer is not required to designate a general election day as a public holiday, unless otherwise provided in the collective agreement or employment rules. However, if an employee requests time off from his/her contractual working hours to exercise his/her election right and other civil rights or to fulfil his/her public duties, the employer should accommodate such request, either by approving the requested time-off, or by adjusting and rescheduling the time requested by the worker.

※ Most union activities do not belong to the duties for which employees may justifiably request time off from their work.

Q) Should an employer provide weekly holidays to the employees participating in an industrial action?

A) Article 55 of the Labor Standards Act and Article 30 of the Enforcement Decree of the Act provide that an employer should give weekly holiday of one day or more per week to the employees who have fulfilled the contractual working days during the week. The weekly holidays under the LSA is designed to ensure that employees, by using the holidays, recover from the fatigue from work, stay healthy, spend time on leisure and recreation and engage in other social and cultural activities. In this light, weekly holidays presume a normal employment relationship where the employee concerned has been working and is expected to continue to work for the employer.

In case the period of industrial action covers a whole workweek, given the purpose of the weekly holiday system, the employer is not obligated to grant paid weekly holidays to the employees participating in the industrial action. In case the industrial action, which is lawful, lasted less than one week, the employer should provide weekly holidays for the particular week, in proportion to the days worked in the week (excluding the days spent on the industrial action).

Q) What changes are made as regards the statutory working conditions holidays and leaves, in the businesses that adopt 40-hour workweek?

A) - Annual paid leave: 15 days per year when 80% or more of the annual hours are worked
- Additional leave of one day per two years of service (within the cap of 25 days)
  • Monthly leave of one day per month of full attendance, for the employees whose service period is shorter than one year

- Employer's effort to promote use of leave days (newly inserted)
- Monthly leave has been repealed.
- Menstrual leave: One day without pay per month

Leave	Under 44-hour workweek	Under 40-hour workweek
Monthly leave	1 paid day per month of full attendance	Repealed
Annual leave	○ 10 paid days per year of full attendance; or 8 paid days per year of 90% or more attendance ○ Additional 1 paid day per additional year ○ The leave days in excess of 20 days may be replaced with monetary compensation.	○ 15 paid days per year of 80% or more attendance ○ Additional 1 paid day per two years, up to 25 days ○ The employees who work shorter than 1 year shall be given: 1 paid day per month of full attendance plus, in the case of 80% or more attendance for one year, the remaining number of days by deducting the leave days spent from 15 days.
Menstrual leave	1 paid day per month	1 unpaid day per month, which is given upon the female employee's request
Optional compensation leave	Not applicable	Employers, under the written consent of the employees' representative, may give leave days in lieu of the wage to be paid for extended, nighttime or holiday works.

Q) In case an employee has taken maternity leave and parental leave in a particular year, how can the days of annual leave be calculated for the year?

A) Under the 40-hour workweek system, an employer should provide 15 paid days in annual leave to the employees with 80% or more attendance during the year. For the purpose of calculating the attendance rate, the days of maternity (pre- and post-natal) leave are counted in while the days of parental leave are not.

6. Exceptions to the provisions on working hours, recess and holidays

1) The provisions on working hours, recess, holidays and additional pay shall not apply to the following groups of employees (Article 61 of the LSA).

- Employees in agriculture, fishing, livestock or silkworm-raising
- Employees in surveillance or intermittent work, with permission from the Employment and Labor Minister

Classification	Surveillance work	Intermittent work
Definition	Mainly involves watching over other people's properties and requires relatively less physical and mental stress.	Occasional or intermittent work involving much recess and stand-by time
Example	janitors, security guards, watchmen, etc.	executives' chauffeurs, boiler repairmen, etc.

- Employees who have a control or supervisory power over other employees or deal with classified information and whose start/finish time at work is not strictly regulated because he/she is given discretion in his/her work

2) However, the LSA provisions on annual and monthly leave, night work pay, etc. apply to these groups of employees.

Q & A

Q) When and under what circumstances are employees in surveillance or in intermittent works not coverd by the general provision on working and recess hours under the LSA?

A) An application should be submitted for such exception to the competent office of employment and labor. Such application will be approved only when all of the below are satisfied

<Requirements for "the employees engaged in surveillance work">

1. They shall be engaged in a kind of work which is not physically or mentally exhausting, such as janitors, security guards and watchmen. And the surveillance jobs shall not incur or require high level of mental stress/concentration of the employee concerned (i.e., 24/7 surveillance without recess).

2. They shall be mainly engaged in surveillance work but perform other kinds of work on an irregular and short-time basis. However, if the employees, being hired for surveillance work, perform another kind of work repeatedly or concurrently, they shell be subject to the LSA.

3. They shall work 12 hours or less per day under the employer's supervision, or they shall work every other day (on a 24-hour shift) in either of the following cases:
   a) They shall have eight hours or more in recess time to sleep or spend freely; or
   b) Even when the requirement in a) above is not satisfied, they are not subject to the general rules, if they are the security guards of the apartment houses (including the apartment houses, tenement houses, multi-household houses and dormitories as prescribed in a~d of subparagraph 2 of Schedule 1 in the Enforcement Decree of the Housing Act) who have reached agreement on the absence of the recess time with the employer and are guaranteed to take 24 hours off in the following day of their work. (Revised on December 31, 2008)

<Requirements for "the employees engaged in intermittent work">

1. The work load is not too high in general and they shall spend much time in standing by to handle unexpected accidents, such as mechanical failures.

2. Their hours of actual work shall be half or less of their stand-by time and shall be no longer than eight hours. Employees who work every other day (on a 24-hour shift), however, shall have a relevant agreement with their employer and be guaranteed to take 24 hours off in the following day of their work.

3. They shall be provided with a room or resting facility where they can sleep or spend their time freely while on standby.

7. Modifying working conditions to the disfavor of employees

The terms and conditions of employment provided for in the LSA are the minimum standard, and so the parties to the employment relationship may not relegate the existing terms and conditions of employment on the ground of the LSA provisions (Article 3 of the LSA)

1) Revising the rules of employment

If an employer wishes to modify the rules of employment to the disadvantage of his /her employees, the employer shall obtain consent from the majority of the employees by way of a collective decision-making process or a meeting (Article 94-(1) of the LSA).

- The employer shall obtain consent from a trade union representing the majority of the employees or, if there exists no such union, consent from the majority of the employees.

2) Redeploying employees

As an employer has power over personnel management, he/she may be quite free to redeploy his/her employees so long as it is necessary for business purpose. Nevertheless, he/she shall give a justifiable reason for any act of transferring an employer to another position (Article 23 of the LSA)

- In order to determine whether an act of employee redeployment is justifiable or not, considerations shall be made about: its necessity for business purpose, its implications on the employee's quality of living, comparability of the previous position and the new one, and compliance with the good faith principle in the personnel transfer process.

Q & A

Q) According to Article 94 of the Labor Standards Act, when changing existing rules

of employment at disadvantage to the employees, the employer must hear opinions of the trade union representing majority of the total workers, or a majority of his/her employees in the absence of such majority union. How in practical ways the employer seek such opinion?

- When an employer intends to devise or revise the rules of employment, he/she should seek opinions or obtain consent from a majority of the employees, in principle, by way of the collective decision making process. However, if such process is not feasible in the workplace concerned, the employer may employ an alternative method suitable for the workplace; provided the employer should be able to give objective evidence to prove that he/she has heard opinions from a majority of the employees.
  If an employer has heard the employees' opinions about the devised or revised rules of employment by using the company intranet or newsletter, the employer should append the written (or printed) documents proving that he/she has heard opinions of a majority of the employees, when reporting the employment rules to the competent employment and labor office under Article 94 (2) of the Act.

Q) What if the rules of employment in a company is modified unfavorably to the workers? And based on what standards are the employment rules judged as being at disadvantage to the employees?

A) Under Article 94 of the LSA, when an employer is going to change the employment rules unfavorably to the employees, he/she is required to obtain consent of the trade union representing the majority of his/her employees or, if there exists no such union in the business or workplace concerned, consent of a majority of the employees. When determining whether the changes in the employment rules are unfavorable to the employees or not, comprehensive considerations should be taken into account as to whether the changed rules must be reasonable and justified in light of social norms; the purpose and reasons of the changes; the nature of work in the business or workplace; and the general structure of the provisions in the rules.

Q) Can an employer transfer his/her employees to another job or another location of work without their consent, if such transfer is deemed inevitable for a managerial reason?

A) Employee transfer, arising from a managerial inevitability, may not be invalidated without consents from the employees concerned, as long as the provision of Article 30 of the LSA is duly respected.

8. Employing fixed-term workers, etc.

1) Hiring daily workers

The LSA provisions are also applied to daily employees.

① Some of the provisions, however, shall be adapted to the unique nature of daily work, such as no fixed working days.

② Daily employees who have worked consecutively for 1 year or longer are entitled to retirement pay.

2) Hiring fixed-term workers, etc.

a. Fixed-term or part-time employees shall be subject to the Act concerning Protection, etc. of Fixed-term and Part-time Workers, as long as their employment contract is in force.

• The Act applies to any business or workplace employing 5 permanent workers or more.

b. An employer may use a fixed-term employee for less than 2 years, unless he/she is justified to do so for any of the following reasons (the proviso of Article 4-(1) of the LSA):

- The employer has pre-determined a period of time required to complete a particular business or task;
- Since an employee is on leave or dispatched to another workplace, there is a need to hire a substitute to replace the employee until he/she returns to the previous work;
- An employee takes schooling or vocational training and he/she sets a period of time required to complete the schooling or training;
- The employer signs a contract of employment with an aged worker (55 or older) as defined in subparagraph 1 of Article 2 of the Aged Employment Promotion Act;
- The employer hires workers with professional knowledge or skills or offers jobs under the Government's initiatives to promote welfare or reduce unem-

ployment, so long as such employment is prescribed in the Enforcement decree; or

- In other cases as are prescribed in the Presidential Decree

① A fixed-term employee who has been hired for a term exceeding 2 years shall be treated as if he/she had signed a contract of an indefinite term.

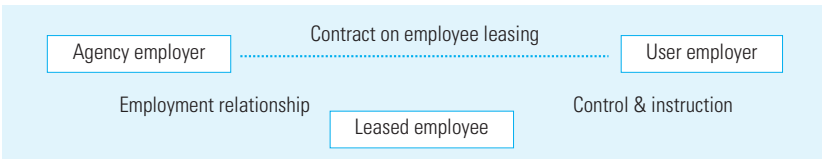
② When a fixed-term employee is hired for longer than 2 years, the employer should give a 'reasonable reason' for dismissal under Article 23 of the LSA, if he/she intends to terminate the employment on the ground that the contract of employment signed with the employee has matured.

c. When an employer needs to fill a vacant regular job (on a contract of indefinite term), he/she should make efforts, before recruiting a new worker, to hire an incumbent fixed employee of the business or workplace concerned who is engaged in the same or similar kind of work (Article 5).

3) Using dispatched employees

a. Under an employee dispatching arrangement, a temporary work agency hires an employee after concluding a leasing contract, but in fact the employee works for a user employer under the control and instructions from the user employer according to the leasing contract. (Subparagraph 1 of Article 2 of the Act concerning Protection, etc. of Dispatched Workers)

• Employee leasing is fundamentally based on the three-way relationship among the agency employer, the user employer and the employee. As the employee dispatch mechanism involves distinction in the hiring and using process, the responsibilities of an employer as prescribed in the LSA are divided between the agency employer and the user employer.



b. Dispatched employees may be used in the following cases:

① In case an employer wants to hire employees for jobs requiring professional expertise, skills or experiences or jobs whose nature is reasonably appropriate for employee dispatching, except for that involving direct production process in manufacturing, which is determined by the Presidential Decree; and

② In case there are job vacancies due to childbirth, illness or injury or there is a clear need to secure workforce on a temporary or intermittent basis.
- In this case, the using employer should make prior consultations, in good faith, with the trade union representing a majority of the employees in the business or workplace concerned or, if there exists no such union, with the representative for a majority of the employees.

③ However, under no circumstances can an employer use dispatched employees for harmful or dangerous activities such as construction work, loading/unloading at ports and railways and seafaring, as prescribed in the Enforcement decree.

※ Other jobs prescribed in the Enforcement decree include: dust work; the jobs for which the health management pocket book under Article 44 of the Industrial Safety and Health Act should be issued; the work of nursing assistants; the work of medical technicians; and the driving work in trucking business

Types of jobs allowed for employee leasing

Korean Standard Classification of Occupations	Types of jobs	Additional remarks
120	Computer professionals	
16	Administrative, business management and financial professionals	Excluding administrative professionals (161)
17131	Patent professionals	
181	Record keepers, librarians and other related professionals	Excluding librarians(18120)
1822	Translators and interpreters	
183	Creating and performing artists	
184	Movie, play and broadcasting professionals	
220	Computer associate professionals	

23219	Other technicians in electronic engineering	
23221	Technicians in communications engineering	
234	Draftspersons and CAD operators	
235	Optical and electronic equipment operators	Limited to assistants; and medical and clinical laboratory technologists (23531), radiological technologists (23532) and other medical equipment operators(23539) excluded
252	Associate professionals in no other than formal school education	
253	Other educational associate professionals	
28	Associate professionals in arts, entertainment and sports	
291	Managerial associate professionals	
317	Office supporting workers	
318	Publication, postal and other related workers	
3213	Debt collectors and other related workers	
3222	Telephone switchboard and directory service workers	Excluding the cases where telephone switchboard and directory service is a core activity of the business concerned
323	Customer service workers	
411	Personal protection and other related workers	
421	Cooks	Excluding the cooks of tourist hotels under article 3 of the Tourism Promotion Act
432	Travel guides	
51206	Gas station attendants	
51209	Attendants in other retail stores	
521	Telemarketers	
842	Motor vehicle drivers	
9112	Building cleaning persons	
91221	Janitors and security guards	Excluding the security work under the subparagraph 1 of article 2 of the Security Service Act
91225	Parking lot attendants	
913	Delivery and transportation workers, metermen and other related workers	

*Based on Notice No. 2000-2 of the statistics Korea

c. Dispatched employees may be used for the following length of time:

Jobs requiring professional knowledge, skill or experience	1 year or shorter	Extensible for up to 1 year, with 3-party agreement ※In the case of aged workers (55 or older), dispatching period may be extensible for over 2 years.
When there is a clear and objective reason, such as childbirth, illness, injury, etc.	Period of time required to address the need	
When there is a temporary or intermittent need of more workforce	3 months or shorter	Renewable for 3 more months, with a three-party agreement

d. The user employer and the agency employer shall sign a written agreement on employee leasing.

- The written agreement shall contain the number of dispatched employees, their job descriptions, the reason(s) for dispatching, name and location of their workplace, duration of dispatching, the first date of dispatching, their working conditions, pay for the dispatching, etc. (Article 20 of the Act relating to Protection, etc. of Dispatched Workers)
- When an agreement on employee dispatching is signed, the user employer should provide necessary information to the agency employer.
- The agency employer, when he/she hires a worker for dispatching, should notify the worker, in writing, of the purpose of dispatching, and should give the worker a written statement containing the contents above (as required in Article 20 of the Act) at the time of dispatching.

e. An employer may not use a dispatched employee for a job which is vacant due to dismissal for an economic reason, for a certain period of time after the dismissal. In addition, he/she may not use a dispatched employee for a job discontinued due to industrial action, while such industrial action is in process.

f. Under certain conditions, a user employer should directly employ a dispatched worker (Article 6-2 of the Act relating to Protection, etc. of Dispatched Workers).

① A user employer is obligated to directly employ a dispatched worker:
- In case the employer continues to use the worker for over 2 years; or

• In case the employer uses the worker for the work not permitted for dispatching.

※ However, a user employer is exempt from the obligation of direct employment when (i) the dispatched worker concerned gives an explicit objection to being directly employed by the user employer; or (ii) the employer has a justifiable reason for not employing the worker directly which is prescribed in the Enforcement decree.

☞For the dispatched workers who are subject to the previous provision on the legal fiction of employment (Article 6-(3)) at the time when the revised act takes effect, the provision shall remain in force (Article 3 of the Addenda).

② When a user employer hires a dispatched worker directly, the employer should guarantee the worker a certain level of working conditions.

• If the user employer has an employee whose work is the same as or similar to the work of the dispatched worker concerned, the working conditions under the employment rules applicable to the employee shall apply to the dispatched worker.
• If the user employer has no such employee, the working conditions for the dispatched worker should be at least the same as those previously given to him/her.

③ When a user employer intends to directly hire a worker for the job he/she has used a dispatched worker, he/she should make efforts, before recruiting a new worker, to hire the dispatched worker first for the job.

4) Hiring part-time workers

a. When an employer wants to hire a part-timer, he/she shall devise a contract of employment that contains the period of contracted work, working days, pay, working hours and other information required by the Employment and Labor Minister, and deliver a copy of the contract to the would-be part-time employee.

b. Working conditions of part-time employees

① Working conditions of part-time employees (whose contractual working hours per week is shorter than that of a regular employee engaged in comparable work at the same workplace) shall be determined and protected in pro-

portion to their working hours compared with that of full-time employees in the same work (Article 25 of the LSA).

- Monthly and annual leaves of part-time employees shall be determined on an hourly basis, in proportion to their working hours compared with that of full-time employees in the same work.
- Part-time employees are entitled to the same weekly holidays, menstruation leave unpaid and pre- and post-natal leave as full-time employees. In this case, the wage paid by the employer shall be based on a daily normal wage rate.
- The daily normal wage rate of part-time employees shall be calculated by multiplying hourly wage rate by the number of contractual working hours per day (which comes from dividing the number of contractual working hours for 4 weeks by the number of contractual working days for 4 weeks).

② Overtime hours of part-time workers may not exceed 12 hours a week (Article 6 of the Act concerning Protection, etc. of Fixed-term and Part-time Workers).

- In case an employer wants a part-time employee to work longer than the pre-determined hours, he/she should obtain prior consent of the part-time employee.
- If the employer instructs the part-time employee to work longer without obtaining the employee's consent in advance, the employee has the right to refuse to follow the instruction.
- In this case, the employer may not victimize the employee for having refused to work overtime.

③ An employer has no obligation to give retirement pay or provide weekly holidays or annual leave to a part-time employee, if the employee's contractual working hours per week is significantly short (that is, 15 hours or shorter, averaged over 4 weeks).

5) Ban on discriminatory treatment

Both the Act concerning Protection, etc. of Fixed-term and Part-time Workers and the Act relating to Protection, etc. of Dispatched Workers clearly ban discriminatory treatment without reasonable justification.

a. Discriminative treatment by employers is banned for fixed-term, part-time or dispatched workers.

- No employer may treat a fixed-term employee unfavorably, in relation to an employee who, under a contract of an indefinite term, is engaged in the same or similar work in the same business or workplace, simply on the ground that he/she is on a fixed-term contract.
- No employer may treat a part-time employee unfavorably, in relation to a full-time employee who is engaged in the same or similar work in the same business or workplace, simply on the ground that he/she is working part-time.
- A user employer and an agency employer may not treat a dispatched worker unfavorably, in relation to an employee who is doing the same or similar work for the user employer, simply on the ground that he/she is a dispatched worker.

b. When a fixed-term or part-time employee or a dispatched worker believes that he/she has been treated unfavorably, he/she may file an application before the Labor Relations Commission in accordance with the procedures in order to remedy discrimination as specified in the Act concerning Protection, etc. of Fixed-term and Part-time Workers (Articles 9~16).

① The application should be filed, no later than 3 months from the date of occurrence of the discrimination in question.

- In case the discrimination had occurred for 2 days or longer, the application should be filed no later than 3 months from the last date when the discrimination occurred.
- The employee who files such an application should give a detailed description on the discriminatory treatment in question.

☞ The matters concerning the procedures and methods for making such an application to the Labor Relations Commission shall be determined by the National Labor Relations Commission in the 'Rules of the Labor Relations Commission'.

② When an application is filed, the Labor Relations Commission starts its investigation and inquiry into the case. The Commission may initiate the process of mediation or arbitration, while in the course of inquiry.

- The process of mediation or arbitration should be initiated no later than 14

days from the date when the application was filed.
- The mediator's or arbitrator's proposal shall be made no later than 60 days.
- Once the mediator's or arbitrator's proposal is accepted, it shall have the same effect as the reconciliation in court proceedings.

c. If the Commission determines that discriminatory treatment has been made, it shall order the employer concerned to take an action to remedy the discrimination.

- The Commission's remedial order may provide for discontinuance of the discriminatory act, improvement of wage and other working conditions, payment of monetary compensation, etc.
- The competent authority may require the employer to report on whether and how he/she has complied with the remedial order. If the employer fails to do so, he/she shall pay the monetary penalty.

d. The employer may not victimize the employee for having filed an application to remedy discriminatory treatment or having turned up and made statements before the Labor Relations Commission.

e. The provisions on prohibition and rectification of discriminatory treatment came into effect on July 1, 2009 and has been applied to businesses with five or more full-time workers since then. Yet, smaller companies with four or less employees are not subject to the provision.

Q & A

Q) What if an employee, who used to renew his/her contract of employment every year since January 1, 2009, renews the contract on January 1, 2010? From when is this fixed-term employee deemed under an open-ended labor contract? And, if a worker signed a fixed term labor contract with more than 2 years' service period, for example, 5 years, before the enforcement of the Act on the Protection, etc. of Fixed-term and Part-time Employees; from when is the employee classified as a worker under an indefinite-term contract?

A) • As for the first question of 'when a fixed-term worker being converted into a worker under an open-ended labor contract':

The amended labor law limits the maximum period of hiring workers on fixed term contracts without a justifiable reasons to 2 years starting from July 1, 2007. And that provision is applicable to the cases where a labor contract is renewed, or extended, or a new contract is signed on or after the enforcement date of July 1, 2007. Accordingly, if the employer had not renewed a fixed-term contract until January 1, 2009 since July 1, 2007, the fixed term employee shall be considered as a worker under an open-ended term, starting from January 1, 2011 when the two years limit has run off from January 1, 2009. However, in case an employer has predetermined a particular period of employment necessary for completion of a specific business or job, the employer may hire fixed-term employees for such business or job for a period exceeding the statutory two years. (See the subparagraphs of Article 4 (1) of the Act on Protection, etc. of Fixed-term and Part-time Employees and Article 3 of the Enforcement Decree of the Act.)

- As for the second question of having a five-year labor contract before the enforcement of the Act:

  The Act on Protection, etc. of Fixed-term and Part-time Employees, mandates an employer to convert employees under a fixed term contract to an open-ended contract after their two years' service for him/her. The two years shall be computed based on the date when the employer has first renewed or extended the employment contract since July 1, 2007. Meantime, the specified contract term, in this case 5 years, does not matter.

Q) When an employer has hired about 30 employees aged 58 or older for part-time jobs on a 1-year contract, and the employer renews the employment contract for another year after their term of one year has expired, are these workers given the status of regular workers?

A) According to subparagraph 4 of Article 4 (1) of the Act on Protection, etc. of Fixed-term and Part-time Employees, an employer can hire aged workers (of 55 or older, as defined in the Aged Employment Promotion Act) on fixed-term contracts for more than two years. Accordingly, unless there are exceptional circumstances, the employer can hire a worker aged 58 or older on a fixed-term, without being subject to the capped 2-year periods of employment, which came into effect starting from July 1st, 2007. Therefore, even when an employee aged 58 or older has worked on a fixed-term contract in excess of two years, his/her contract will not be automatically converted into an open-ended contract.

Q) What is the meaning of the term 'counterpart employees' that is used in remedying and determining discrimination at work?

A) 'Counterpart employees' of the fixed-term workers refer to those who (i) perform the same or similar kind of work as the fixed-term employees (ii) on a contract of an open-ended term.(under Article 8 (1) of the Act on Protection, etc. of Fixed-term and Part-time Employees) (iii) in the business or workplace concerned.
'Counterpart employees' of the part-time workers are those who (i) perform the same or similar kind of work as the part-time employees (ii) on a full-time basis (under Article 8 (2) of the Act on Protection, etc. of Fixed-term and Part-time Employees) (iii) in the business or workplace concerned.
'Comparable employees' of the temporary agency workers are "those who perform the same or similar kind of work as the temporary agency workers in the business or workplace of their using employer" (under Article 21 (1) of the Act Relating to Protection, etc. of Dispatched Workers).
The work shall be 'same and similar' in terms of the occupation, job responsibility and descriptions involved. In other words, the work of counterpart employees is replaceable with the work of each corresponding group of non-regular employees. In case there exist several groups of candidate counterparts, the one who has the lowest working conditions among the candidates shall be the counterpart employee to the non-regular worker concerned.

Q) Even when a fixed-term employee does not want to change his employment status, is the fixed-term contract automatically converted into an open-ended one?

A) In accordance with Article 4 (2) of the Act on Protection, etc. of Fixed-term and Part-time Employees, in case an employer has hired a fixed-term employee for longer than two years, the employee shall be treated as on an indefinite-term contract, upon the 2-year limit being exhausted. This time restriction is applicable to the cases where a fixed-term contract was signed or renewed or the contractual period in a fixed-term contract was extended on July 1, 2007 or after.
However, the subparagraphs of the proviso of Article 4 (1) of the Act or in the Enforcement decrees enlist exceptions to the 2-year cap where a fixed-term contract for a period longer than two years shall not be treated as an indefinite-term contract even after the employee continued to work longer than two years.
In case an employer hires the same employee repeatedly only for a particular period during a year for a seasonal or natural environmental reason, the fixed-term contract should be converted into an indefinite-term contract only when all of his/her separate work periods combined exceed the 2-year cap. In this case, the employee should be treated and protected as an indefinite-term employee only while he/she is engaged in the given work in the particular period.
By the way, in case a fixed-term employee has worked longer than two years and is

under no exceptional circumstance, the employee should be treated as an indefinite-term employee under the Act even when he/she is explicitly opposed to such change.

Q) In case an employee has continued to work as a contract worker by renewing his/her contract repeatedly, can the employer dismiss or let go of the employee, on grounds of his contract expiration?

A) When an employer and an employee have signed a fixed-term contract of employment, the employment relationship between the two shall automatically terminate, in principle, upon the contract expiration without any of the employer's additional actions, including dismissal notice. However, in case a fixed-term employee has worked for a considerable period by repeatedly renewing the contract, the fixed-term arrangement is deemed only in name, not in contents. Therefore, the contract may be replaced with an open-ended term contract. Still, it is hard to say exactly how many times a fixed-term contract should be renewed to qualify for such conversion. Instead, as for each case of repeated renewal of fixed-term contracts, a comprehensive consideration should be taken with respect to; whether it was necessary to use fixed-term work for the particular job in the first place; whether the employer has a genuine intention of signing a fixed term contract to hire the employee for the specified period of time; whether the employee, after having his/her contract renewed continuously, has a reasonable and considerable expectation for another renewal; the practices of employment in the business concerned; and the employer's employment relationship with other fixed-term employees in the same business, just to name a few.

9. Disciplinary measures or dismissal

1) Reasonable justification for disciplinary measures or dismissal

a. An employer may not dismiss or lay off an employee, suspend his/her work, transfer him/her to another position, reduce his/her pay, or take any other disciplinary measure against him/her, without giving reasonable justification (Article 23-(1) of the LSA).

① An employer may dismiss an employee or take a disciplinary measure against an employee, only when he/she can give a societally acceptable reason for doing so, by proving that the employee has failed to comply with the contract of employment by committing unauthorized absence from work, bad work behavior, criminal offence or personal record forgery, or that the employee has caused a disturbance in the management.

② It is advisable that justifiable reasons for dismissal and other disciplinary measures should be stated in the rules of employment or collective agreements.

b. Reasons for dismissal

Disciplinary dismissal	Ordinary dismissal	Dismissal for economic reasons
• Failure to follow instructions on job or personnel management • Unauthorized absence • Early-leaving without approval, negligence • Poor performance at work • Irregularities at work • Physical or verbal violence at work • Criminal offences outside workplace • Obstruction of business, violation of the company rules • Causing financial damage to the company • Undermining the company's reputation • Violating work rules and safety rules • Forging educational or professional attainment	• Physical or mental disorder, physical disabilities • Lack of the vocational ability required • Close relationship with a competitor company • Loss of ability to catch the trends, while working in a trendy business • Being addicted to alcohol or drug	• Economic crisis at the company in the wake of persistent bad management • Removal of some business activities, due to poor performance • Structural adjustment, technological innovation, sectoral change, in order to improve productivity • Business transfer or merger to prevent further deterioration of business conditions • Employee redundancy as a result of organizational reform, etc.
Reasons attributable to employee	Reasons attributable to employee	Reasons attributable to employer
• Written notice on reason for dismissal • This type of dismissal shall be conducted according to the dismissal procedures, if they exist.	• Written notice on reason for dismissal • This type of dismissal is to be based on the provisions in a collective agreement or work rules.	• Written notice on reason for dismissal should be given, and the dismissal should be based on the given process of dismissal for economic reasons.

2) Procedures for disciplinary measures or dismissals

a. An employer who wants to dismiss his/her employee should make a written notice on the reason for dismissal, the date of dismissal, etc. (Article 27 of the LSA).

- If the employer dismisses the employee without giving such written notification, the dismissal shall be rendered null and void.

b. The rules of employment or collective agreement shall specify a set of procedures for disciplinary measures, which shall be referred to when the employer wishes to dismiss or discipline his/her employee(s).

c. A dismissal or disciplinary measure may be invalidated, if the required procedures are not fully observed.

3) Dismissal for economic reasons

a. An employer may dismiss his/her employee(s) when it is proven that there is an urgent economic need, according to the given procedures in Article 31 of the LSA.

b. In order to justify dismissal for an economic reason, the employer shall meet the qualifying conditions: ① there is an urgent economic need; ② the employer has made every effort to avoid dismissal; ③ reasonable and fair criteria are used to select workers to be dismissed; and ④ he/she has consulted employee representatives in good faith.

※ The actions which the Supreme Court acknowledges as efforts to avoid dismissal include: ① to reduce labor costs by cutting overtime work or ordinary working hours; ② to freeze new recruitments ③ not to renew contracts for casual jobs; ④ to redeploy or dispatch employees, provide training for other occupations or move to a different sector of business; ⑤ to suspend the business (providing leave for the employees); ⑥ to adopt a voluntary retirement program; and ⑦ to scale down the office size or freeze executive remunerations.

c. When an employer, who dismissed his/her employee for an economic reason, intends to hire a worker for the job that the employee had to leave, within 3 years of the date of such dismissal, the employer shall make efforts, before searching for a

new worker, to employ the worker dismissed pursuant to Article 24 for the job concerned so long as the worker wants to get hired again (Article 25-(1) of the LSA).

Conditions and procedures of dismissal for economic reasons

- Incidence of an urgent economic need
  - Managerial crisis in the wake of persistent business malpractices
  - Business transfer, M&A, etc. to avoid financial deterioration

⇩

• Effort to avoid dismissal - Restrictions on extended work, and promotion for simultaneous use of leave - Labor cost reduction by cutting working hours or wage - Recruitment freeze - Ceasing to renew contract for temporary employees - Redeployment, dispatch - Temporary suspension of work - Applicants for early retirement	⇔ Good-faith consultation (50-day notice to the employee representative on measures to avoid dismissal and criteria to select employees to be dismissed)	• Trade union, or employee representative

⇩

• Fair and reasonable criteria to select employees to be dismissed - The employer and employees shall try to understand the other's position. ※ Gender discrimination is banned in the selection process.	⇔ consultation	• Seeking for alternatives for dismissal • Presenting opinions on the selection criteria, or suggesting alternatives

⇩

- Report to the Ministry of Employment and Labor required 30 days before dismissal of:
  - 10 persons or more at a company with fewer than 100 employees;
  - 10% or more of total employees at a company with 100～999 employees;
  - 100 persons or more at a company with 1,000 employees or more

⇩

- Dismissal for economic reasons
  - The employer shall give a 30-day prior notice or pay dismissal allowance (equivalent to 30 days' normal wage)

⇩

- Effort to re-employ the employees dismissed
  - When the employer wishes for new employees within 3 years from the dismissal for an economic reason

4) Restrictions on dismissal

a. An employer may not dismiss an employee who is on leave due to occupational illness or injury or on pre- or post-natal leave, or within 30 days after such leave.

- An exception can be made, however, when the employer has made a temporary compensation as prescribed in Article 84 of the LSA, or when he/she cannot continue his business (Article 23-(2) of the LSA).

b. An employer may not dismiss an employee for his/her having joined or established a trade union or having carried out union activities.

c. An employer may not discriminate against an employee in conducting dismissal, on the grounds of his/her gender, faith, nationality or social origin. For example, an employer may not force an employee to quit his/her job just because he/she is going to marry.

d. An employer may not dismiss or take disciplinary measures against an employee, for his/her having informed a labor inspector of the employer's violations.

5) Dismissal notice

a. An employer who intends to dismiss his/her employee shall give a 30-day notice to the employee or pay him/her 30 days' normal wage (dismissal notice allowance) (Article 26 of the LSA).

b. However, the employer does not have to give the above mentioned prior notice to the following employees (Article 35 of the LSA):

- Daily-paid employees who have worked for 3 months or shorter
- Monthly-paid employees who have worked for 6 months or shorter
- Employees who are hired for a fixed period of 2 months or shorter
- Employees in apprenticeship (of 3 months or shorter)
- Employees who are hired for seasonal work for a fixed period of 6 months or shorter

c. An employer is exempted from the obligation to give prior notice, when it is

impossible for the employer to continue his/her business due to national disaster, war or any other unavoidable reason. An employer may also dismiss his/her employee without giving an advance notice on dismissal, in case the employee has caused the employer a severe business problem or a massive property loss on purpose, and the cause of dismissal falls into any of the reasons prescribed in the Employment and Labor Ministry Ordinance (Article 26 of the LSA).

※ The following cases may constitute "the reasons prescribed in the Employment and Labor Ministry Ordinance" (see the annexed list in the Enforcement Rules of the LSA).

① The employee took a bribe for allowing an inflow of flawed products from a supplier that has disturbed the production process of the company;

② The employee made another person drive a business vehicle without authorization and cause a car accident;

③ The employee revealed confidential information on business to another competitor company, which adversely affected the business;

④ The employee made up or disseminated ungrounded facts or masterminded unlawful collective actions that have caused a considerable disturbance to the business;

⑤ The employee took advantage of his/her job position or committed breach of trust by misappropriating, embezzling or using company money for private purpose for a long time (e.g., embezzling the proceeds accrued from operation on of a company vehicle);

⑥ The employee stole or carried products or product materials out of the company without authorization;

⑦ The employee, being engaged in personnel management, treasury or accounting, manipulated the records or produced fraudulent statements that caused damage to the business;

⑧ The employee destroyed company equipment or properties deliberately, causing a considerable disturbance to the business; or

⑨ The employee perpetrated such an act as is societally regarded as disturbing the

business seriously or causing considerable financial damage to the company.

6) Remedies for unfair dismissal

a. An employee who believes that a disciplinary measure (including dismissal, lay-off, suspension of work, job transfer and pay cut) taken against him/her is unjustifiable, may file the case before the Labor Relations Commission. Another way to remedy the unfair act is to initiate civil proceedings at a court of law.

b. The application for remedy to the Labor Relations Commission shall be made within 3 months from the date of the allegedly unfair act in question.

c. When the Commission determines that the dismissal in question is unfair, it may order the employer concerned to restore the dismissed worker to the previous job or pay monetary compensation to the worker (Article 30-(3) of the LSA).

- In case the worker doesn't want to return to the previous work, the employer should provide the worker with money or other equivalents that are at least equal to the wage which the worker would have been paid for the period of his/her absence if he/she had not been dismissed.
- The money or other equivalents at least equivalent to the wage includes monetary compensation for the unfair dismissal and bonus. They are paid in lieu of reinstatement.

d. An employer who fails to comply with the Commission's remedial order for unfair dismissal or disciplinary measures (suspension from office, positional change, pay cut, etc.) shall pay enforcement levy (Article 33 of the LSA).

- The enforcement levy targets the remedial order from the National or Regional Labor Relations Commission. Even when the employer rejects to accept the order and files an administrative suit, the enforcement levy shall be still imposed on him/her.
- The enforcement levy may not exceed 20 million won, and may be imposed up to twice per year for up to 2 years.
- An employer who fails to comply with the finalized remedial order shall be penalized (with imprisonment for a term not exceeding 1 year or a fine not exceeding 10 million won) (Article 111 of the LSA).

7) Retirement age scheme

a. Under the retirement age scheme, an employee who has reached a given age shall have his/her employment relationship terminated, regardless of his/her willingness or ability to work

- The LSA does not specify any retirement age. Therefore, the parties to the employment relationship shall determine a retirement age, considering the nature of the occupation involved and in reference to relevant provisions of the collective agreement or the rules of employment.

b. The retirement age may vary, depending on job position or employment status. In any way, the employer may not discriminate employees in determining their retiring ages, on the ground of gender, nationality, faith or social origin.

Q & A

Q) When a fixed-term employment contract is about to expire, should the employer give an advance notice of dismissal to the employee?

A) An employer with not less than five full-time workers may hire fixed-term employees for up to two years unless there is a justifiable reason for extending the fixed-term employment in excess of the statutory 2-year time limit (i.e., a long term project or operation that consumes more than 2 years to complete). The employment relationship between the parties to a contract of fixed-term employment is terminated upon the contract expiration with no additional action of dismissal, unless specified otherwise.

Accordingly, when an employment relationship is terminated upon the expiration of the fixed-term employment contract, the employer bears no obligation to give an advance notice to the employee, as the termination itself is not based on dismissal in the first place. Nevertheless, it is recommended that the employer give such advance notice to inform the employee of termination of his/her employment upon expiry of the contract of employment, in order to prevent possible disputes between the parties.

Q) Can an employer dismiss employees for reasons of poor performance and work attitudes?

A) Article 23 (1) of the Labor Standards Act states that "an employer shall not dismiss, lay off, suspend or transfer an employee, cut his/her wage or take other punitive actions against the employee without giving justifiable reasons".
Accordingly, an employer can discipline his/her employees to the extent that such actions do not go beyond the boundaries required to achieve the purpose of maintaining the corporate order; and when such actions are taken by a duly authorized body in compliance with the procedures specified in the collective agreement or the employment rules.
'Poor work attitude' refers to employee's behaviors that undermine work efficiency or production output, arising from his/her lack of concentration on duties at work. If an employee is dismissed simply on the ground of his/her poor work attitude and temporarily poor performance, it would be deemed too harsh as a disciplinary action. However, if the employer can give objective evidence to prove that the employee's performance has been considerably poor and the employee has failed accommodate the employer's several instructions or orders to improve his/her work attitude or performance or participate in training, his/her dismissal may be seen as justified and legitimate.

Q) In case an employer gives a dismissal notice to his/her employee 25 days in advance, which is five days short of the statutory 30-day period, should the employer pay five days' dismissal allowance to the employee?

A) The employer should give an advance notice at least 30 days before the presumed date of dismissal (even when the layoff is for managerial reasons and economic recession). If the employer fails to do so, he/she should pay at least 30 days' ordinary wage (as dismissal notice allowance) to the employee.
An advance notice of dismissal can be given either verbally or in writing and must indicate the date of dismissal. A notice with unspecified dates or with conditions attached is null and void.
The period of advance notification is calculated based on calendar days, not working days. Therefore, holidays, if any, are counted into the period. The day when the notice is given does not count toward the period of advance notice, and the period starts with the following day. Even when the period of a particular advance notice is short of the legally required 30 days, the employer is still responsible to pay the 30 days' ordinary wage in full as an dismissal notice allowance.

Q) In case an employee submits a letter of resignation, should the employer accept it immediately?

A) Retirement (resignation) terminates the employment relationship by the employ-

ee's unilateral expression of ending it, and can be classed into several types: voluntary retirement, agreed-on retirement and retirement at a retiring age. As there are no provisions in the Labor Standards Act with regard to the retirement procedures, the parties should comply with the relevant provisions in the Civil Act unless otherwise provided in the collective agreement or the employment rules.

When an employee tenders a letter of resignation but the employer does not process the resignation, the resignation shall take effect after one full reference period of wage payment (the month, under the monthly pay scheme) that immediately follows the resignation submission date.

The time when retirement takes effect
(Article 37 of the Rules of the Ministry of Employment and Labor)

After submitting resignation letter;		Effective dates
In case an employee expresses his/her intention of retirement (by submitting a letter of resignation) and the employer accepts (processes) the resignation		The time when the resignation is accepted
In case the collective agreement or the employment rules has special provisions on when retirement takes effect		The time specified in the agreement or rules
In case the employer has not processed the resignation	If wage is paid for a fixed period of time (e.g. monthly)	After the reference period of wage payment (the month, under the monthly pay scheme) following the period when the resignation is submitted
	If there is no fixed period of time for wage payment	One month after the date when the employer is notified of the employee's intention of retirement

Q) If an employee's unilateral retirement incurrs damages to the company, can the employer file for a damage claim?

A) In accordance with Article 660 of the Civil Act, an employee on an open-ended employment contract can express his/her intention of retirement at any time, and the employee has no obligation to pay damages on the ground of breaching the contract even when he/she has unilaterally submitted a letter of resignation. On the other hand, in case an employee on a fixed-term contract arbitrarily retires from the company, the employer may file a civil suit for damages against the employee on the ground of his breach of employment contract. However, no employer may force an employee to provide labor on the ground of his/her breach of employment contract, which constitutes 'forced labor' prohibited under Article 7 of the Labor Standards Act.

Q) In what cases is dismissal of probationary employees justified?

A) According to Article 23 of the Labor Standards Act, an employer may not dismiss his/her employee without giving legitimate reasons. In order to determine whether there is a justifiable reason for dismissing an employee, it is necessary to make case-by-case considerations on whether, in light of social norms, the employer has a good reason to discontinue the employment relationship with the employee.

However, given that probationary employment is intended to assess a person's competence, personality and skills to determine whether he/she is qualified for a particular job, the scope of justifiable reasons of dismissal is broader than in ordinary types of employment (Supreme Court Ruling No.92Da15710 on August 18, 1992).

10. Considerations to be made in case of dismissal or retirement

1) Retirement benefit (under the Workers' Retirement Benefit Guarantee Act)

Each and every employer should adopt either retirement pay or retirement pension, in order to pay retirement benefit to retiring employees.

a. When applying a retirement benefit system to the employees of the same workplace, the employer may not operate it in a discriminative way based on the position, occupational type, department and location of an employee.

b. The employer has no obligation to pay retirement benefit to an employer who has worked for less than a year or whose given working hours per week averaged over four (4) weeks is less than 15 hours.

c. Starting from December 1, 2010, all companies, including small business with four or less regular employees, are required to pay the retirement benefits to their employees. The contribution rate to be borne by the employers with four employees or fewer, shall progressively increase from the initial 50% to that covered by employers with not less that 5 regular employees.

※ More precisely, until December 31, 2012, the employers with four employees or less shall pay only 50% of the rates of retirement benefit (under DB-type retirement pension and retirement pay) and employer contribution (under DC-type retirement pension) that are required on the employers with five employees or more. Starting from 2013, the employers of smaller businesses shall make the same contribution as its bigger counterparts.

2) Retirement pay (Chapter 2 of the Workers' Retirement Benefit Guarantee Act)

a. An employer who adopts a retirement pay scheme shall provide a retiring employee with 30 days' average wage for every year of consecutive service.

b. As there is no limit on the qualifying reasons of retirement, the retirement pay shall be given in any case when the employment contract is terminated, whether for the employee's resignation or death, the company's extinction, the completion of the assigned work, the arrival of the retiring age or the disciplinary dismissal.

c. Retirement pay can be settled before retirement.

① This interim retirement pay scheme allows an employer to give retirement pay to his/her employee, even before his/her retirement, for the consecutive years he/she has been employed so far. Once the interim payment is made, the consecutive years of service for purpose of retirement pay computation shall be counted anew from right after the point of time the interim payment is made for.

② The interim retirement pay can be made only at the request of the employee, and the unit period for the interim payment shall be agreed on by the employer and employees.

③ Even when retirement pay is settled before retirement, the consecutive years of work for the purpose of calculating other benefits, such as additional annual leave days with pay, job promotion, pay scale raise and bonus, shall remain unchanged.

d. When an employer chooses to contribute to a retirement insurance fund or another type of trust fund for lump-sum retirement payment as prescribed under the Enforcement decree so that a retiring employee may receive retirement bene-

fit in annuities or lump-sum payment, it shall be deemed that the employer has adopted a retirement pay scheme.

① The amount of the lump-sum pay from the retirement insurance or trust may not be smaller than the amount that would be paid under a retirement pay scheme.

② Starting from December 2005, companies can not purchase a new retirement insurance policy, and the existing retirement insurance programs are only valid until December 31, 2010.

3) Retirement pension (Chapter 3 of the Workers' Retirement Benefit Guarantee Act)

a. Under a retirement pension program, the employer entrusts an outside financial institution to manage a fund from which a retiring employee receives an annuity or a lump-sum pay.

b. There are two different plans of retirement pension: defined benefit (DB) and defined contribution (DC). An employer who wants to adopt a retirement pension program shall choose either of the two:

- Defined benefit(DB) plan: The amount of pension benefit payable to the employee is predetermined, while the amount to be covered by the employer may vary depending on the outcome of the fund management.
- Defined contribution(DC) plan: The amount to be covered by the employer is predetermined, while the amount of pension benefit payable to the employee may vary depending on the outcome of the fund management.

Classification	Retirement pay	Retirement pension	
		Defined benefit (DB)	Defined contribution (DC)
Funding source	In-company reserve	Plan assets making 60% or more of the presumed amount of retirement benefit	1/12 of total annual wage
Who manages the reserve	Employer	Employer	Employee
Transferability of the reserve in the event of job transfer	Not transferable	Transferable (through an individual retirement account)	
Level of benefit	30 days' average wage × the number of service years		Flexible
√ Interim withdrawal ☆ secured loan	Possible	√ Impossible ☆ allowed within 50% of the reserve	√ Possible with limits ☆ allowed within 50% of the reserve

c. Retirement pension is to be paid to a retiring employee who is aged 55 or older and has paid his/her contribution for 10 years or longer. The pension shall be paid for 5 years or longer.

① The pension shall be paid on a lump-sum basis when the retiring employee is not eligible for annuities or wants to receive a lump-sum payment of the pension.

② In case an employee has an individual retirement account with a retirement pension provider, he/she can deposit the money that he/she receives in lump-sum payment when leaving a company, with the account from which he /she can get an annuity upon retirement.

d. Before adopting a retirement pension program, the employer shall obtain the employee representative's consent, draw up the rules of retirement pension and report it to the competent labor office.

• The rules of retirement pension, which is a retirement pension plan at the level of individual companies, shall be set up autonomously by the employer and employees within the limits of statutory standards.

e. In order to apply a retirement pension program, the employer shall sign a contract with a retirement pension provider (financial institution) which is to perform the work of retirement pension (operating the program and managing the fund).

4) Settlement of money payables

a. In the event of an employee's death or retirement, his/her employer shall pay wage, retirement pay, monetary compensation for occupational accident and any other claims that have occurred under the employment relationship, within 14 days from his/her death or retirement (Article 36 of the LSA and Article 9 of the Workers' Retirement Benefit Guarantee Act).

b. However, if the employer and the employee have agreed, within the 14 days, to extend the grace period over to a particular date, the employer may delay the payment until that date.

5) Priority payment claim of wage

a. Claims to wage, retirement pay, monetary compensation for occupational accident, or other claims under the employment relationship shall be paid in preference to tax, public charges or other claims, except for the claims secured by a pledge or mortgage on the entire properties of the employer concerned (Article 38-(1) of the LSA, and Article 11-(1) of the Workers' Retirement Benefit Guarantee Act).

b. However, wage for the last 3 months worked and retirement pay and monetary compensation for occupational accident for the last 3 years worked shall be paid, even in preference to the claims secured by a pledge or mortage on the entire properties of the employer (Article 38-(2) of the LSA, and Article 11-(2) of the Workers' Retirement Benefit Guarantee Act).

Priority in payment claims

① 1st : wage for the last 3 months, retirement pay for the last 3 years, and monetary compensation for industrial accident
② 2nd : tax and public charges, which take precedence over the claims secured by pledges or mortgages
③ 3rd : claims secured by pledges or mortgages
④ 4th : wage, retirement pay and other claims under employment relationship that do not belong to ① above
⑤ 5th : tax, public charges and other claims

6) Issuing a certificate of employment

a. When a retired worker requests his/her previous employer to issue a certificate of employment which specifies the duration of employment, job description, job position, wage and other details, the employer shall prepare a certificate containing accurate information and deliver it to the employee (Article 39 of the LSA).

- The employer shall ensure that the certificate of employment gives only the information the employee has requested.

b. Those qualified to request issuance of a certificate of employment are confined to former employees who had worked for 30 consecutive days or longer, and such request may be made within 3 years of retirement (Article 19 of the Enforcement Decree of the LSA).

7) Ban on obstruction of employment

Nobody is allowed to devise or use secret codes or lists or communicate by way of such secret codes or lists for the purpose of obstructing employment of a person (Article 40 of the LSA).

Q & A

Q) Is it possible to implement all of the three retirement benefit systems - DB-type retirement pension, DC-type retirement pension and retirement pay - all at once in a workplace?

A) The retirement pension system and the retirement pay system are simply different types of instruments to support the ex-employees after retirement, and are not mutually exclusive. That means, it is up to the employer and his/her employees whether they add or not add retirement pension programs to the retirement pay scheme. Accordingly, a company can introduce DB pension, DC pension and retirement pay all at the same time, allowing individual (groups of) employees to select one of the three systems that are in their best interests.

Q) How should the service years accrued be treated in a workplace that adopts a retirement pension plan, for the purpose of determining the actual retirement benefit?

A) There are some cases where the amount of retirement pay accrued for the years worked was settled and given to the employees before his/her retirement, but it is more common to carry over the accrued pay to the newly adopted pension plan to set aside a sufficient fund for old-age incomes. However, under a DB-type pension plan, the employer might bear a too much financial burden if he/she is required to make a lump sum deposit for the total amount accrued during the whole length of service years to plan assets (or external sources). In this regard, the employer is allowed to make installment-type deposit to plan assets over a period of up to five years.

Replacement of the term "severance pay" by "retirement pay"

○ "A lump-sum cash payment upon termination" had often been translated into the English term "severance pay" in Korea, but such translation often caused unnecessary confusion and misled foreigners, and ultimately leading to lack of accurate understanding about the dismissal system in Korea.

- "Severance pay" generally means the money which is paid to a worker when he/she is dismissed and, therefore, it is viewed as a part of dismissal costs in the international community.
- The use of the term "severance pay" in Korea contributed to a distorted view of the rigidity of the labor market in Korea as all of the retirement pay was earmarked as the dismissal costs in the financial statements.

○ In order to help people to better understand the dismissal system in Korea, the existing English term (severance pay) is now replaced with a more correct and consistent term (retirement pay).

Q) Does a company have to give retirement pay to its executives?

A) In case the executive concerned is a worker as defined in the Labor Standards Act, he/she is entitled to the retirement benefit (retirement pension or retirement pay) to the retiring executive. The retiring executive shall be recognized as a statutory 'worker' if and only if he/she supplies work to the employer for the purpose of earning wages, in subordinate relations to the employer. The type of contract he/

she has entered into, being an employment contract or a subcontract under the Civil Act, does not matter.

Q) What are the labor law provisions concerning the eligibility and calculation of retirement pay?

A) Following is the formular of computing retirement pay value: daily average wage (to be defined below) x 30 (days) x the number of consecutive work days / 365 (days).

This offers the actual retirement pay value of employees who have worked one year or longer in a business with five regular employees. According to Article 2 of LSA, to get the daily average wage, you have to add up the wages paid to the employee concerned for 3 months prior to the date when the cause of retirement pay calculation occurred, and then divide the total wages by the total number of days in the 3 months period. The Act also specifies that, in case the average wage is smaller than the ordinary wage of the employee, the latter shall replace the former.

※ As for small business with no more than 4 regular employees, a retiring employee shall be given 50% of the retirement pay that is given in larger companies until the end of 2012. From 2013 on wards, their retirement pay shall be in tandem with their counterparts in large companies.

Q) In case an employee requests interim (or early) disbursement of his/her retirement pay, should the employer always accept the request?

A) According to the Employee Retirement Benefit Security Act, retirement pay should be given, in principle, at the time of retirement of the employee concerned. Still, it is legally possible to make an interim payment of retirement pay for the employee's consecutive service duration, before his/her retirement.

Specifically, Article 8 (2) of the Employee Retirement Benefit Security Act provides that "an employer may, upon an employee's request, give the employee retirement pay for his/her consecutive service period, even before his/her retirement".

Namely, the early disbursement of retirement pay can be made upon the request of the employee concerned, but the employer is not obligated to accept the request. It is recommended that the employer and employees, in an effort to prevent any subsequent labor disputes, should draw up reasonable internal rules in advance on the conditions and procedures of the interim payment.

In addition, at companies with the annual pay system, it is quite common to include a portion of retirement pay in annual pay. This allows the retirement pay to be disbursed on an interim basis. This type of interim payment is valid only when the amount of retirement pay included in annual pay is specified; the interim payment is made upon the employee's request; and the aggregate amount of interim pays all combined is no less than the amount calculated under the formula in Article 8 (1) of the Employee Retirement Benefit Security Act. The interim payment before retirement is tied to the consecutive service year(s) worked and, accordingly, the employees who have worked less than one year are not eligible for the interim payment before retirement.

Q) How do you determine the actual amount of unused annual leave allowance, a component of the retirement pay?

A) Let's assume that an employee is about to retire this year (Y0). If he has not used up his annual leave days of the previous year (Y-1), which was assorted in accordance to his attendance rate of the preceding year (Y-2), the unused leave allowance shall be counted toward his daily average wage.
However, in case the employee has not used up the annual leave days that were accrued in the year of his/her retirement (Y0) according to his/her attendance rate of the previous year (Y-1), the allowance for those unused leave days (Y+1) shall not be counted toward his/her average wage for the purpose of calculating his/her retirement pay.

Q) In case an employee has been paid monthly with one thirteenth (1/13) of his/her annual pay and has worked shorter than one year, is the employee still entitled to retirement pay?

A) In principle, a retiring employee who has worked one year or longer in a company is eligible for retirement pay, and the amount of retirement pay is equivalent to at least 30 days' average wage per year of consecutive service.
Accordingly, an employer has no statutory obligation to provide retirement pay to an employee whose consecutive service period is less than one year. Meantime, wage payment scheme is determined by the employment agreement between the employer and the employee. Again, any payment scheme under employment contract is a mutually agreed rule of the two, including the captioned 1/13th payment scheme where both have agreed on the 1/13 monthly payment of the yearly salary whiling setting aside the last portion (1/13) as a retirement pay after one year service by the employee. And according to this mutual agreement, the employee cannot claim for the retirement pay or the last portion of the one 13th wage if he/she

leaves the company before completing the contracted one year service.

Q) What if an employer refuses to give the withheld money back to the employees after deducting some from the monthly wage as a retirement pay reserve?

A) Under the Employee Retirement Benefit Security Act, retirement pay shall be given to a retiring employee who has worked one year or longer in a business and its amount is at least 30 days' average wage per year of consecutive service.
The legal provision requires employers to establish a fund of retirement pay and give retirement pay to an eligible retiring employee. No employer may force his/her employees to pay for the fund, whatever such payment is called.
Accordingly, if an employer withholds a certain part of employee wages in a pretext of saving up for retirement pay, the employer is in violation of the principle of 'wage payment in full' under Article 43 of the Labor Standards Act, and the employees may get a remedy for their right to wage by making a complaint to the competent office of employment and labor.

Q) Is it necessary to include family allowance, meals allowance, housing allowance, commuting allowance or transportation expense in calculating retirement pay?

A) Under the Labor Standards Act, wage is defined as 'any money and valuables, whatever they are called, that are given in return for work'. If the allowance or expense, being included in monthly wage, has been paid on a regular and continual basis, it should be counted toward daily average wage for the purpose of calculating retirement pay.

Q) Now that the retirement benefit system is also enforceable to the businesses with four employees or fewer, what are the new arrangements for those small companies?

A) The scope of the obligatory retirement benefit system was further extended on December 1, 2010 to cover all companies, including the small businesses with four employees or fewer. The contribution rate to be paid by the employers with four employees or less, shall increase on a gradual basis from the initial 50% to their larger counterparts.

※ More precisely, for the period of December 1, 2010 ~ December 31, 2012, the employers with four employees or fewer shall pay only 50% of the rates of retirement benefit (under DB-type retirement pension and retirement pay) and employer contribution (under DC-type retirement pension) that are enforceable to the employers with five employees or more. Starting from 2013, the employers of smaller businesses shall bear the same rate.

<Employees not eligible for the retirement pay system>

① Those who have worked less than one year; or

② Part-time employees whose weekly working hours, as averaged over four weeks, is shorter than 15 hours

11. Wage claim guarantee system

1) Definition

This system aims to ensure financial stability to retiring employees by disbursing the deferred payments from the Wage Claim Guarantee Fund on behalf of their employers, in partial or full, when the employees have not received their wages, work suspension pay or retirement pay due to business bankruptcy, etc. (hereinafter "subrogate payment")

2) Contributions to the wage claim guarantee fund

a. All the employers subject to the Industrial Accident Compensation Act shall also contribute to the wage claim guarantee fund.

b. The rate of contribution shall be determined by the Minister of the Employment and Labor within the limit of 0.2% of the total wages of the employee concerned (currently, 0.08% of the total wages), and is collected together with the industrial accident compensation insurance premium.

3) Requirements for eligibility for subrogate payment

a. Subrogate payment from the wage claims guarantee fund can be made only when the following conditions are met:

① The employer concerned shall be covered by the industrial accident compensation insurance and has been in operation, for six months or longer; and a courting ruling on bankruptcy (insolvency or workout) has been issued or the employer shall be deemed under a de facto bankruptcy (declared by the head of the competent office of employment and labor, upon the employee's application); and

② The employee retired form the business concerned 1~3 years before the day when he/she filed for recognition of court-declared or de facto bankruptcy of the business concerned.

b. An employee who wishes to receive subrogate payment from the wage claim guarantee fund shall obtain a written verification of his/her eligibility from the head of the competent office of employment and labor which had jurisdiction over the business concerned at the time of his/her retirement, and shall submit an application for verification and a written claim for such payment to the head of the same local office no later than two years from the date of a court ruling on bankruptcy, insolvency, etc. or recognition of any other relevant incidents.

4) Coverage of subrogate payment

In principle, the subrogate payment from the wage claim guarantee fund is made for wage or suspension pay for the last 3 months of work, or retirement pay for the last 3 years of work. However, the subrogate payment is subject to the following ceilings by age.

(Thousand)

Age	Younger than 30	30~40	40~50	50 or older
Wage·retirement pay	1,500	2,400	2,600	2,100
Suspension pay	1,050	1,680	1,820	1,470

Note: Wage and suspension pay are monthly-based, while retirement-pay is yearly-based.

5) Subrogation right and penalizing fraudulent recipients

a. Once the subrogate payment is disbursed from the wage claim guarantee fund on behalf of the employer concerned, the Employment and Labor Minister shall have the subrogation right which allows the Minister to collect from the employer the money subrogated to the employee.

b. A person who has fraudulently received a subrogated payment or has helped another person fraudulently receive such a payment, shall be penalized with imprisonment up to 3 years or a fine up to 200 million won.

- In this fraudulent case, the money disbursed from the fund is an unfair profit and therefore may be recollected by the Minister of Employment and Labor.

Q & A

Q) What is the 'wage claim guarantee system'? How employees can make subrogate payment claims under the system?

A) This system aims to ensure financial stability to retiring employees by disbursing all the deferred payments (i.e., outstanding wages, work suspension allowance, or retirement pay due to business bankrupcy, etc, hereinafter "subrogate payment") from the Wage Claim Guarantee Fund on behalf of their employers, in partial or full. An employee who, faced with a de facto bankruptcy of his/her company, wishes to receive subrogate payments from the wage claim guarantee fund shall first apply for verification of bankruptcy no later than one year from the date of his/her retirement. Additionally, the employee shall submit an application for verification and a written claim for subrogate payments to the head of the competent office of employment and labor no later than two years from the date of a court ruling on bankruptcy being issued, insolvency, commencement of workout, etc. or recognition of any other relevant incidents.

12. Employment relationships in the case of mergers or business transfers

1) Mergers and employment relationship

a. A 'merger' refers to two companies or more being integrated into a single company. There are two types of mergers: 'consolidation' in which two or more different companies are all disassembled to build a single new company; and 'merger' in which one company takes over the business of the other company (companies) to become a bigger one.

b. In the event of merger, the effective contracts of employment and the exiting rules of employment at the merged company (companies) shall be taken over comprehensively by the merging company.

① Wage and other working conditions shall remain unchanged, and the years of consecutive work, for the purpose of computing retirement pay, shall be carried over.

② To the extent that the employment relationship remains the same, the existing collective agreement shall also be retained. Accordingly, both the normative part and the obligatory part in the collective agreement shall be taken over by the merging company as its rights or obligations to the trade union(s) and employees of the merged company(companies).

2) Business transfer and employment relationship

a. A 'business transfer' refers to the transfer of an organization created for a business purpose, without any change being made to the personnel and the physical structures that make up the organization.

b. In the case of business transfer where the nature of business remains unchanged, the principle of job retention applies to the employees of the transferor employer.

• Business transfer concerns takeover of physical facilities, most of the employees and business-related assets, claims and liabilities.

c. The parties to a business transfer (that is, transferor and transferee) may agree to exclude part of the employees from employment retention. However, this kind of agreement, which is virtually not much different than employee dismissal, is valid only when a justifiable reason under Article 23 of the LSA can be presented for such exclusion.

[Reference: Free Economic Zone]

Free economic zones refer to the special zones where exceptional economic activities are permitted. At the present, Incheon, Busan/Jinhae and Gwangyang Bay are designated as free economic zones.

Free economic zones are not strictly bound by the national laws and regulations. Rather, they are subject to the "Act concerning Designation and Operation of Free Economic Zones".

Title	Location	Time of completion	Size	Target sectors
Incheon (designated in Aug. 2003)	Incheon	2020	209㎢	Business service, IT/BT, international finance, tourism/ leisure
Busan-Jinhae (designated in Oct. 2003)	Busan City, Gyeongnam Province	2020	104㎢	Maritime logistics, automobiles, machinery, shipbuilding
Gwangyang Bay Area (designated in Oct. 2003)	Jeonnam Province, Gyeongnam Province	2020	90㎢	Maritime transport, parts and materials
Yellow Sea (designated in May 2008)	Gyeonggi Province, Chungnam Province	2025	55㎢	Auto parts, IT/BT, value added logistics
Daegu-Gyeongbuk (designated in May 2008)	Daegu, Gyeongbuk Province	2020	39㎢	Education, medical service, fashion, IT, parts and materials
Saemangeum-Gunsan (designated in May 2008)	Jeonbuk Province	2030	66㎢	Automobiles, shipbuilding, parts and materials, environment-friendly business

• In accordance with Article 17 of the Act, the companies in free economic zones are exempted from application of certain law provisions, including Article 33-2 of the Act on Honorable Treatment and Support of Persons of Distinguished Services to the State, Articles 55 and 73 of the Labor Standards Act and Articles 5 and 6 of the Act on Protection, etc. of Dispatched Workers. The

companies will also enjoy more flexible labor management as follows.
- Employers have no obligation to employ veterans or patriots, persons with disabilities or aged people;
- The provisions on monthly paid leave shall not apply;
- Employers may provide unpaid holidays or unpaid menstruation leave; and
- Employers may use dispatched workers for a wider range of work for a longer period of time.

☞ For more information on free economic zones, please visit the website (http://www.fez.go.kr).

Q & A

Q) In case the two companies in the process of merger or acquisition have different systems and arrangements in general, do they have to harmonize the systems and arrangements?

A) In the case of merger and acquisition, the buyer shall take over the seller's rights and duties, as they are, arising from the employment relationships which exist at the time of the M&A undertaking. If the two companies involved in the merger or acquisition provide different working conditions, it is possible to harmonize them as prescribed in Article 94 of the Labor Standards Act, and apply the same conditions to both employes. Or the employees in the two companies will remain subject to the existing conditions, respectively.

Q) If two companies are merged into one, should the new company after merger retain all of the employees in the undertakings?

A) In case two businesses or more merge into a new business while each keeping its previous business and organizational composition intact*, the new company, in principle, should continue the previous employment relationships. (*whether the business identity and nature is kept intact and preversed vary case by case.)
However, the new business is allowed to discontinue the existing employment relationships, if it is believed that the employer still honors the good faith principle in light of social norms, has no intention to make things unfavorable to the employees and has obtained employees' voluntary consents for ending the relationship.
Meantime, in the case of P&A (purchase and assumption) or in case a business is purchased by way of public auction or open bidding after its closure, the previous

business nature before the acquisition is highly likely to discontinue. Therefore, the buyer does not necessarily have to retain the employees of the seller.

Q) When two companies have been merged into a new company, is it possible for the new company to place all of the employees on probationary employment for 3 months or 6 months from the date of merger and then dismiss the employees with low performance during the probationary period?

A) When a business merge or acquisition has been concluded in a normal way under the agreement between the parties, the buyer is supposed to take over the working conditions, as they are at the time of the merge or acquisition. In this light, the new company should not place all employees on probation simply on the ground of business undertaking.

In regard of employee dismissal, Article 23 (1) of the Labor Standards Act provides that "an employer may not dismiss or take a punitive action against his/her employee, without giving a justifiable reason". Justifiable reasons include unavoidable managerial difficulties as well as reasons attributable to the employee concerned which validate termination of his/her employment contract.

The reasons attributable to the employee includes his/her poor job performance. Specifically, if the employer can give objective evidence to prove that the employee's performance is considerably poor and the employee has failed to improve his/her performance in spite of the employer's repeated instructions or orders for the employee to redress his/her work attitude or enhance job performances or participate in training, his/her dismissal may be seen as justified and legitimate.

Q) When two businesses have been merged into one, it is still possible for the company to run a dual system on pay and benefit package by continuing the existing systems before the merger?

A) A merging company is free to draw up new working conditions, taking into account the nature of the employees, working conditions and other relevant matters in the merged company. However, the employment terms and conditions in the merged company shall remain effective, in principle, until a uniform set of working conditions is adopted through amendment of the employment rules, etc., unless otherwise provided in the merger agreement.

In case, in later days, the employees of the merged company are fully integrated to the employees of the merging company, as a consequence of personnel appointments, etc., it would be desirable to establish a single harmonized set of working conditions, for example, by revising the employment rules.

Q) In the case of merger or acquisition, is it possible to dismiss the employees whose work is considered redundant or modify the payment system of the target (purchased) company at disadvantage to the employees?

A) Under Article 23 (1) of the Labor Standards Act, an employer shall not dismiss or take a disciplinary action against his/her employee, without giving a justifiable reason. If the acquiring employer intends to change the wage system of the purchased company to the employees' disfavor, he/she should obtain prior collective consent from the employees in the acquired company, in accordance with Article 94 of the LSA.

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III. Collective Labor Relations

1. Organization and dissolution of trade unions

The Constitution (Article 33) provides for the right to organize, the right to collectively bargain and the right to collectively act, in order for employees to maintain or improve, on their own, their working conditions, including wage and working hours.

1) Requirements for the establishment of trade unions

a. Employees may organize, out of their free will, a trade union to maintain or improve their working conditions or to promote their social and economic status.

b. There are no statutory restrictions on the organizational structure of a union. Accordingly, employees are free to organize a union, whether it is company, industrial or occupational based.

c. In principle, multiple unions are lawful. Nevertheless, until June 30, 2011, another union may not be established at a company or workplace when there already exist a union that represents the same group of employees (Article 7, (1) of Addenda to the Trade Union and Labor Relations Adjustment Act (TULRAA)).

d. An organization which falls into any of the followings is not recognized as a trade union (Subparagraph 4 of Article 2 of the TULRAA).

- In case the employer or an employer representative who always acts in the interest of the employer is allowed to join the organization;
- In case a considerable portion of the expenditure of the organization is financed by the employer;
- In case the organization is mainly aimed at mutual aid, community activities or other welfare purposes;
- In case non-employee persons are members of the organization, provided that a dismissed worker who has filed his/her dismissal case before the Labor Relations Commission may not be regarded as a non-employee person until the National Labor Relations Commission(NLRC) gives a decision on the case; or
- In case the organization is mainly aimed at political activities.

2) Reporting on organization of a trade union

a. A person or a group of persons who intend to organize a trade union shall submit a written report, along with bylaws of the body organized, to the competent administrative authority. A certificate of union establishment shall be issued within 3 days of the reporting, unless any legal problem is detected about the organization (Article 10-(1) of the TULRAA).

b. Competent authority's review on the establishment of a trade union.

Classification	Description
Issuance of the certificate	When the competent authority finds no disqualifying aspect, it shall issue a 'certificate for reported establishment' within 3 days of reporting. ※ In case the certificate is issued, the trade union concerned is deemed to have established on the date when the establishment report is delivered to the competent authority (Article 12 of the TULRAA).
Request for more information	In case bylaws are not attached, the reporting form is not filled in completely, or untruthful facts are contained, the authority shall request for more information or correction within 20 days of such request.
Reject of the report	In case the organization is determined as disqualified or has not responded to the request above, the establishment reports shall be turned down.

3) Effects of the establishment of a trade union

a. A trade union, upon receiving the certificate above, is entitled to legal protection such as immunity from civil or criminal liabilities for its justifiable union activities, the right to apply for labor dispute adjustment, and remedies to unfair labor practices , etc. (Articles 3, 4, 6 and 7 of the TULRAA).

b. Effects of the establishment of a trade union

① granted the title of a trade union;
② request for the Labor Relations Commission to mediate a labor dispute;
③ request for the Labor Relations Commission to remedy an unfair labor practice;
④ making it an incorporate body by registering with the competent register office;

⑤ exemption from taxation for its union activities, in accordance with the tax code (except for profit-making activities); and
⑥ immunities, for justifiable industrial actions, from civil and criminal liabilities

4) Dissolution of a trade union

a. A trade union shall be dissolved in the case of any of the followings (Article 28 of the TULRAA):

① Occurrence of any of the causes for dissolution prescribed in its bylaws;

② merger or division of the business concerned;

③ resolution made to do so at a general meeting or by the council of delegates; or

④ decision by the competent authority to do so with the resolution of the Labor Relations Commission, when the union has no executive officials and has not carried out any union activity for 1 year or longer

b. With regard to ④ above, it is deemed that "a trade union has not carried out any union activity for 1 year or longer" when it has not collected any membership dues from its member workers or has not called any general meeting or a meeting of delegates for 1 year or longer.

5) Improvements in the full-time union officials system

a. 'Full-time union officials' is a unionized employee who, under the collective agreement or another agreement with the employer, does not provide the contractual work but is exclusively engaged in union activities.

b. Even though it is reasonable that a full-time union officials' wage should be paid by the union concerned, it has been customary in Korea that the wage is totally funded by the employer.

c. In an effort to address this unreasonable practice, a ban on employers' wage payment to full-time union officials was written in law in 1997. However, the coming-into-effect of the ban had been delayed for 13 years, until January 1, 2010 when a tripartite agreement was reached on a full-scale enforcement of the provisions concerned.

d. Additionally, the paid time-off system was introduced to allow employers to pay unionized employees, within a certain limit, for the union work done during their working time so long as it falls into the kinds of union work prescribed in TULRAA. This new system took effect on July 1, 2010.

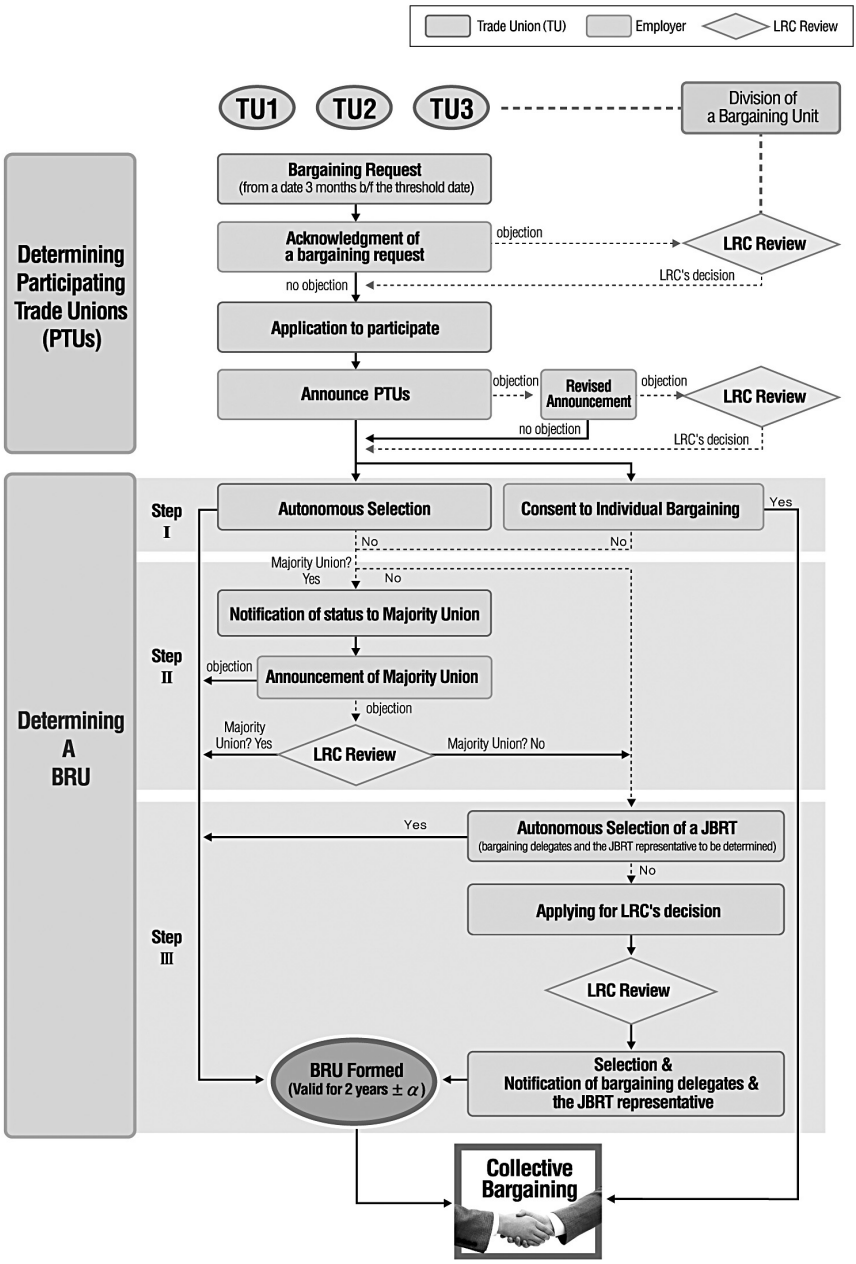
e. The maximum of paid time-off hours is determined by the Time-off System Deliberation Committee, a three-way consultative body, after thorough considerations are made about the purpose of the revised TULRAA and the outcome of the survey on union activities. The Committee tries to ensure that the maximum helps fully protect the union activities at SMEs while encouraging the unions at large companies to finance their activities by themselves.

6) Multiple unionism

a. In principle, multiple unions are lawful. Nevertheless, until June 30, 2011, another union may not be established at a company or workplace when there already exist a union that represents the same group of employees (Article 7, (1) of Addenda to the Trade Union and Labor Relations Adjustment Act (TULRAA)).

b. Starting from July 1, 2001, more than one union may be established at the same business or workplace. This union plurality is to guarantee workers' right to act collectively. As a precondition, however, multiple unions are obliged to work out a single channel for collective bargaining so that excessive competition among them may be avoided and the unsettling elements in labor relations may be minimized.

c. There are three ways of setting a single bargaining channel: first, the unions concerned may reach a voluntary agreement on channel unification; second, a majority union may serve as a negotiator; and, if either of the two didn't work, a joint negotiating delegation (based on the unions' voluntary decision or, upon request, the Labor Relations Commission's decision) may be set up. The negotiator union is given the duty of fair representation, in order to prevent unreason-


Trade Union (TU)
Employer
LRC Review
TU1
TU2
TU3
Division of a Bargaining Unit
Determining Participating Trade Unions (PTUs)
Bargaining Request (from a date 3 months b/f the threshold date)
Acknowledgment of a bargaining request
objection
LRC Review
LRC's decision
no objection
Application to participate
Announce PTUs
objection
Revised Announcement
objection
LRC Review
no objection
LRC's decision
Determining A BRU
Step I
Autonomous Selection
Consent to Individual Bargaining
Yes
No
No
Majority Union?
Yes
No
Step II
Notification of status to Majority Union
objection
Announcement of Majority Union
objection
Majority Union? Yes
LRC Review
Majority Union? No
Yes
Step III
Autonomous Selection of a JBRT
(bargaining delegates and the JBRT representative to be determined)
No
Applying for LRC's decision
LRC Review
BRU Formed
(Valid for 2 years ± α)
Selection & Notification of bargaining delegates & the JBRT representative
Collective Bargaining

able discrimination against minority unions.

※ Joint Bargaining Representative Team: Among the unions that have participated in setting up a single bargaining channel, the union whose members account for 10% or more of all participating union members shall form a joint bargaining representative team to negotiate with the employer.

7) Paid time-off system

a. In a bid to resolve the long-held unreasonable practice of employers' wage payment to full-time union officials, the paid time-off system was adopted on July 1, 2010, along with the ban on employers' payment to full-time union officialss.

b. The paid time-off system is an advanced system under which employers may pay wage for the union activities that are in the common interests of the labor and management.

① Definition of paid time-off employees

- 'Paid time-off employees' refer to the employees who, under the collective agreement or the employer's consent, use the given hours of paid time-off to perform activities such as consultations or negotiations with the employer, grievance handling and workplace safety work, prescribed in the Trade Union and Labor Relations Adjustment Act (TULRAA) or other relevant laws, and those who perform the work of maintaining and managing the union for the purpose of developing sound labor relations (Article 24 (4) of the TULRAA).

② Distinction between "full-time union official" and "paid time-off employees"

- "Full-time union official", defined as "those who are exclusively engaged in union work" in Article 24 (1) and (2) of the TULRAA, shall not be paid wages by the employers.
  - The employer and the unions may decide on the number and work of full-time union officials, but their remuneration should be financed by the union.

- "Paid time-off employees" are those who, within the given hours of paid time-off, can perform the work specified for the hours under the TULRAA. The hours spent on the specified work may be paid by their employers.
  - However, the hours spent by a paid time-off employee in participating in a

strike, running for a public office or performing other work not in the common interest of the employer and the union, are not eligible to paid time-off. Accordingly, the employer may not pay for the hours and the employee may not claim paid time-off for those hours.

- In other words, the revised TULRAA provides that full-time union officials may be in place, under an agreement between the employer and the union, but their remuneration should be paid by the union, not by the employer.
  - It also stipulates that, apart from the existing full-time union officials, the employees with paid time-off may spend the given hours of work on the activities prescribed in the Act, including negotiations and consultations with the employer, grievance handling and workplace safety work, without any loss of their wages.

- It should be noted that paid time-off is not applicable to activities other than those prescribed in the revised TULRAA.

Full-time union officials vs. Paid time-off employees

Classification	Full-time union official	Paid time-off employee
Legal provisions	Article 24 (1) and (2) of the TULRAA	Article 24 (4) of the TULRAA
Scope of work	Union work, with no restriction attached	·Consultations and negotiations with the employer, grievance handling, workplace safety work and other activities prescribed in the TULRAA and other relevant law and regulations; or ·The work of maintaining or managing the union, for the purpose of promoting sound labor relations; - Trade union management under Chapter 2, Section 3 of the TULRAA - Other kinds of work for union maintenance or management in the common interest of the employer and employees at the workplace concerned
Remuneration	Unpaid	May be paid within the limit of the given hours of paid time-off
Number of applicable employees	Decided under an agreement by the employer and the union	Decided by the employer and the union, within the limit of the given paid time-off hours

③ The limited hours of paid time-off (Public Notice of the Ministry of Employment and Labor No. 2010-39, on May 14, 2010)

Number of unionist employees*	Limited hours of paid time-off	Number of paid time-off employees
Fewer than 50	Up to 1,000 hours	○ Paid time-off employees on a part-time basis cannot exceed three times the number of full-time union officials at trade unions with less than 300 members. ○ Paid time-off employees on a part-time basis cannot exceed two times the number of full-time union officials at trade unions with 300 members or more.
50~99	Up to 2,000 hours	
100~199	Up to 3,000 hours	
200~299	Up to 4,000 hours	
300~499	Up to 5,000 hours	
500~999	Up to 6,000 hours	
1,000~2,999	Up to 10,000 hours	
3,000~4,999	Up to 14,000 hours	
5,000~9,999	Up to 22,000 hours	
10,000~14,999	Up to 28,000 hours	
15,000 or more	By June 30, 2012: Up to 28,000 hours + additional 2,000 hours per every 3,000 persons	
	July 1, 2012 or after: Up to 36,000 hours	

* Refers to the total number of unionists employees in a particular workplace or business.

Q & A

Q) Is it possible to establish a trade union of non-regular employees who are not a member of the existing union in a single company?

A) Article 5 of the Trade Union and Labor Relations Adjustment Act provides that "workers are free to organize a trade union or to join it," while Article 7 (1) of the Addenda to the Act stipulates that "if a trade union has been organized in a business or workplace, another trade union covering the same members as the trade union's shall not be established until June 30, 2011 notwithstanding Article 5 of this Act."

If the bylaws of a new trade union specify that the members covered in it are clearly different from that of the existing union and, therefore, none of the members of the existing union are to join the new one, the union can be established.

※ Under the revised TULRAA of January 1, 2010, in a company where there exists a trade union, anoth-

er union with the same membership coverage may not be established, regardless of its organizational structure, until June 30, 2011. However, starting from July 1, 2011, multiple unions are permitted at business level, with no restrictions on their organizational structure or membership coverage.

Q) When there exist multiple unions at the same workplace, what process should the unions go through to set up a single bargaining channel? If the process encounters difficulties, what should they do?

A) Starting from July 1, 2011, employees will be free to establish or join a union at a business or workplace level, but to conduct collective bargaining with their employer, they must create a single channel of bargaining regardless of an overlap in members covered by the trade unions or organizational structure. Exceptionally, however, bargaining with individual unions is possible when the employer agrees to do so.

For the purpose of unifying the bargaining channel for multiple unions at business level, the unions should first designate the bargaining representative union among themselves within the given period of time. If they fail to do so, the union which represents a majority of the unionist employees who participate in the channel unification process shall become the representative union. If this method does not work either, the participating unions should appoint a joint bargaining representative team among the unions whose members account for 10% or more of the entire participating union members.

※ In case a question is raised about whether the majority union has a majority membership, a request may be made to the Labor Relations Commission for confirmation. Upon request, the Commission shall check the register of union members, the register of employees, check-off, the statement on union due payment etc. to see if the union takes up a majority of the participating unions. In case the unions fail to organize a joint bargaining representative team, the Commission, also upon request, shall take into account the proportion of each union among the entire participating unionists, and decide upon the joint bargaining representative team.

Q) A collective agreement on the employer's wage payment to full-time union officials was automatically renewed for another year on September 1, 2009. Now that the revised law prohibits employers' wage payment to full-time union officials, what measures should be taken considering the circumstances that the wage payment to full-time union officials by employers is banned in the revised law?

A) The revised TULRAA took effect on January 1, 2010, but the Act provides in Article 3 of the Addenda that a collective agreement which was effective on January 1, 2010 shall be considered to remain effective until the expiry date pre-

scribed at the time of its signing, notwithstanding the provision banning employers' wage payment to full-time union officials.

Even though the revised law forbids employers to pay wage to full-time union officials, it is also crucial to ensure that independent agreements at the workplace are fully respected and industrial conflicts over the newly adopted ban are minimized for a soft landing of the new system. This is why the collective agreements which allow wage payment to full-time union officials need to remain effective so long as they were concluded before January 1, 2010. Accordingly, the collective agreement in question shall be deemed effective till August 31, 2010, one year from September 1, 2009.

It should be noted that the provision in Article 3 of the Addenda is only applicable to the collective agreements that were effective on January 1, 2010. Therefore, a collective agreement which was renewed or whose effect was extended under the clause of automatic extension on January 1, 2010 or after shall be excluded from application of the provision.

Q) In case of a merger of two or more companies, each of which has its own trade union, what happens to the unions and their collective agreements?

A) In general, in the case of merger or acquisition, if the unions of the individual businesses involved are clearly distinct in terms of the target member group and can afford to maintain their organization independently, their presence in the merged company is not against the provisions of the TULRAA.

However, if the target member group of the existing unions in fact overlaps some time after the merger of two or more businesses, due to organizational integration and personnel exchanges within the merged company, the unions are advised to hold a general assembly (or a meeting of delegates) to form and operate a single trade union according to the purpose of Article 5 (1) of the Addenda to the TULRAA.

In the case of merger or acquisition, the surviving or new company shall retain the rights and obligations of the extinguished company (companies) in general and the existing collective agreement shall remain effective during the prescribed period. Accordingly, it is reasonable that the relevant provisions in the effective collective agreement shall be followed with regard to the treatment of full-time union officials including receiving wages from the employer.

Q) Does a team manager in a company fall into the category of 'employer or other persons who always act in their employer's interest' as provided in the TULRAA?

A) The scope and eligibility of union membership may be stipulated in the bylaw of

the union concerned, so long as the union members are not 'the employer or those who always act in the employer's interest' listed in Article 2 (2) and (4) a) of the TULRAA.

In order to establish that a person is not an employer or other persons who acts in the employer's interest, specific facts must be examined and considerations must be made comprehensively on whether the person has the authority or responsibilities for the management of personnel, wage, employee welfare and labor affairs, and whether he/she is in contact with the employer's confidential information and so in light of his/her job duties and responsibilities, he/she is not right for union membership.

Q) In case a company union has transformed itself into a chapter of an industrial union, do the existing delegates maintain the same position?

A) If a company union has decided, by a quorum for resolution, to change itself into a branch or chapter of an industrial trade union in accordance with the provision of Article 16 (2) of the TULRAA and has been affiliated with an industrial union, the branch or chapter is merely part of the internal organization of the industrial union and therefore the operation of chapters and branch unions shall abide by the rules of the industrial union.

Since the company union switched into a branch or chapter of an industrial union while remaining unchanged in terms of its structural identity, the existing delegates shall also remain qualified for the same position during their given term of office, unless there are good reasons to disqualify them.

Q) Does the newly introduced paid time-off system recognize the existing full-time union officials the same as before?

A) Under the revised TULRAA, employers are forbidden to pay wages to full-time union officials and any employer shall be punished for unfair labor practice if he/she fails to comply with the law.

However, paid time-off is allowed to ensure constructive union activities and improve the wrong practices of full-time union officials. Under this new system, a certain number of employees can use a specified number of paid time-off hours to consult or negotiate with the employer, handle grievances, engage in workplace safety work and other activities in the common interest of the labor and management and perform the work of maintaining and managing the union for the purpose of promoting sound labor relations. Therefore, under the paid time-off system, the existing full-time union officials do not have the same entitlements as before.

Q) Please specify the details of paid time-off which were reviewed and determined by the Paid Time-off Deliberation Committee on May 1, 2010.

A) The Paid Time-off Deliberation Committee, comprised of employees', employers' and public interest representatives reviewed and determined the upper limit of paid time-off hours based on the December 4 tripartite agreement and the revised TULRAA which were the basis for the introduction of paid time-off.

The Committee, also in accordance with the December 4 tripartite agreement, set up a three-way fact-finding team which conducted a survey of union activities at business level in step with the survey schedule and questionnaires confirmed in the plenary meeting of the Committee.

Based on the survey outcomes, the Committee set the upper limit of paid time-off hours at a higher level than the average paid hours of union work for the existing full-time union officials. In particular, the upper limit for small and medium unions, which are seldom financially independent, was set even higher. (Refer to p. 128 for related table)

Q) In case a unionist employee who is not eligible for paid time-off hours has performed union work such as consultation or negotiation with the employer, how should wages be paid for the hours worked?

A) Under the paid time-off system, an employee may take time off during his/her working time on the condition that he/she uses the time-off hours to consult or negotiate with the employer or perform any other predetermined work. The employees who are given paid time-off hours must engage in these kinds of work.

In case a union member who is not designated as a paid time-off employee has been engaged in union work prescribed in the law, in principle, the employee shall not be paid for the hours spent on the union work. Still, the hours spent could be paid, under the employer's consent or the collective agreement.

However, if a paid time-off employee gets paid for his/her paid time-off hours without performing the given work or a general union member gets paid too much for his/her hours worked for the union, it will constitute an act of unfair labor practice.

Q) When there exist multiple unions at the same workplace, how should the limit of paid time-off hours be calculated for the workplace?

A) Under Article 11-2 of the Enforcement Decree of the TULRAA, the upper limit of paid time-off hours for a particular workplace or business is based on the total number of union members and the scope of the work concerned at the particular workplace or business. This provision is reiterated in the decision of the Paid

Time-off Deliberation Committee.
Accordingly, even when more than one union exists in a company, the upper paid time-off limit for the company shall be based on the total number of union members in the company. Then, the unions shall reach an agreement on how to divide the limited hours among themselves.

※ If a company has two unions (A union with 500 union members and B union with 1,000 union members), the company is subject to the upper limit designated for the companies with 1,500 unionists, not to the combination of two separate limits for those with 500 and those with 1,000.

Q) Is it possible for the employer and the union to set only the upper limit of paid time-off hours under the collective agreement, without specifying the number of the employees who can use the hours?

A) In accordance with Article 24 (4) of the TULRAA and Article 11-2 of the Enforcement Decree of the Act, not only the limit of paid time-off hours but also the number of employees who use them should be specified.
Therefore, if the employer and the union have set the limited hours in the collective agreement but have not specified the number of paid time-off employees and, consequently, the number of the employees who used paid time-off hours surpassed the applicable limit, the company is in violation of the law.
In this light, the labor and management should reach an agreement on the upper limit and the number of paid time-off employees for the company, and the union should notify the employer of the list of paid time-off employees before embarking on the union work.

2. Collective bargaining

1) Parties to collective bargaining

a. Parties to collective bargaining refers to "those who conduct collective bargaining in their name and are responsible for the rights and duties given to the bargaining parties that result from the collective bargaining".

① The employee party in collective bargaining is a trade union which meets the statutory requirements for union establishment, regardless of its organizational structure or the size of membership.

② The employer party is the employer him/herself in the case of a private business, or the legal person in the case of an incorporated business.

b. The trade union and the employer, both the original parties to collective bargaining, may delegate to a third party their authority to collectively bargain or negotiate collective agreement, and those authorized by the union or the employer may exercise the authority to the extent they are authorized (Article 29-(2) of the TULRAA).

2) Matters subject to collective bargaining

a. There are no statutory regulations as to the matters subject to collective bargaining. However, in light of the fact that collective bargaining is fundamentally aimed at maintaining or improving working conditions, the matters subject to collective bargaining should be; those concerning working conditions; those of collective nature; or those at the disposal of the employer.

b. In principle, matters relating personnel management or the right of business management are excluded from the subject of collective bargaining. However, they could be included when those matters are closely associated with working conditions of employees.

c. Complaints made in the course of individual employment relationships may not be subject to collective bargaining, but may be dealt with at the labor-management council, etc.

d. Issues beyond the employer's ability to resolve, such as political issues, may not be subject to collective bargaining.

3) Good faith principle

a. The parties to collective bargaining shall negotiate collective agreement in good faith and may not abuse their right to collectively bargain in the process (Article 30-(1) of the TULRAA).

b. Either the union or the employer may not refuse or omit to bargain or conclude collective agreement, without giving a justifiable reason for doing so (Article

30-(2) of the TULRAA).

c. An employer's act to who refuses or omits to negotiate collective agreement or does not comply with the obligation to bargain in good faith constitutes an act of unfair labor practice (subparagraph 3 of Article 81 of the TULRAA).

4) Wage negotiation

a. Wage increase is a core element of the collective bargaining. Productive bargaining should be conducted to ensure that the job responsibility-based or performance-based pay system and the wage peak system are prevalent.

① Productive bargaining

- Productive bargaining is a form of collective bargaining leading to a productivity agreement in which the labor and management are committed to increasing productivity and profits and sharing the gains in a fair manner.

- For example, employees may agree to be fully engaged in the activities designed to increase productivity, including workplace innovations, while the employer guarantees them job security, offering fair gain-sharing and job-sharing.

- Productive bargaining concerns not only introduction of the job responsibility-based or performance-based pay system, adoption of the shift work system, reduction of work hours and upgrading of the pay or job responsibility structure, but also the practices intended to reduce the loss resulting from the bargaining, such as efficient reduction of the bargaining period and cost and no-strike declaration.

- The Ministry of Employment and Labor is making company-based and region-based efforts to promote productive bargaining, by providing more practical assistance for individual companies, such as consulting service, educational and promotional programs for employers and employees, rewards for good practices and supports to increase private-sector capacities.

② Job responsibility- or performance-based pay system

• Seniority-based pay system, in which pay rates are based on personal elements such as employees' service period and age, has weakened wage competitiveness and employees' motivation to work.

• Accordingly, in order to increase corporate competitiveness, it is crucial to convert the seniority-based pay system into the job responsibility-based or performance-based system, within the framework of productive bargaining. The consequent improvement in employee performance may lead to job security and job creation, which will ultimately result in the increase in both corporate productivity and employee income.

• Meanwhile, in case the contract of employment, the rules of employment or the collective agreement is modified to adopt the responsibility- or performance-based pay system, it is necessary to go through the statutory procedures, including employees' advance consent.

- This merit pay system should not be adopted merely with the intention to cut wage or convert the current regular jobs into irregular ones. It also should be ensured that the statutory standards for calculation of holidays and retirement pay are fully satisfied under the system.

③ Wage peak system

• Wage peak system involves wage reduction in exchange for job security and extended employment in old age (delayed retirement or job retention even after the retiring age). This system may ease employers' burden of labor costs while extending employment for older workers in this aging society.

• When negotiating to introduce the wage peak system, the labor and management usually focus on the peak time (age) and the wage reduction rate. If the peak age is too young, the system might be regarded as a means of employee dismissal or structural adjustment.

- In case the contract of employment, the rules of employment or the collective agreement is modified to adopt the wage peak system, it is necessary to go through the statutory procedures, including consulting with the employees and obtaining consent from the union or the majority of the employees.

• The Government provides a support program to promote the wage peak system (retirement age extension, reemployment, working hours reduction).

※ For more information, see "Employment Security Support Programs - subsidies for wage peak system" under Part IV. Employment Promotion Programs of this publication, or visit the website of the Employment Insurance (http://ei.go.kr).

Q & A

Q) Is it possible to address matters concerning non-regular employees who are not affiliated with the negotiating union when conducting collective bargaining?

A) Under Article 29 (1) of the TULRAA, "the representative of a trade union has the authority to bargain with employers or employers association, and to make collective agreements for the trade union and union members." Accordingly, in principle, matters pertaining to those who are not members of the union concerned shall not be dealt with in the collective bargaining concerned.
In the case non-regular employees are not members of the union, the union representative may demand collective bargaining on the non-regular employees' working conditions only after the non-regular employees have acquired union membership.

Q) What is the criteria for determining justifiable reasons to refuse to conduct collective bargaining?

A) Article 81.3 of the TULRAA defines and prohibits as unfair labor practice a "refusal or delay of a concluding a collective agreement or conducting collective bargaining, without justifiable reasons, with the representative of a trade union or a person who has been authorized by a trade union."
The judgment on whether there has been a justifiable reason for refusing collective bargaining shall be made in consideration of the time, venue and subject matters requested by persons authorized by an employer and trade union, and their attitude toward bargaining, based on whether compliance with obligations for collective bargaining by an employer is deemed difficult to expect under social norm. (See the Supreme Court Ruling No. 97Nu8076 on May 22, 1998.)

Q) In case a union demands a certain form of collective bargaining, should the employer always accept the demand?

A) Article 30 of the TULRAA provides for the principle of "good faith and sincerity", as well as a ban on abuse of authority, with regard to collective bargaining. Furthermore, Article 81.3 of this Act stipulates that if an employer refuses or delays concluding a collective bargaining or conducting collective bargaining with a union representative or a person who has been authorized to represent the union, without giving a justifiable reason, he/she commits an act of unfair labor practice. Accordingly, when the representative of a nationwide industrial union calls for collective bargaining to an employer who hires the union members, the employer should respond to the demand in good faith, unless he/she has a justifiable reason to refuse to accept the demand. However, this does not mean that the employer should always accept the type of collective bargaining suggested by a trade union. It is desirable for the parties to consult with each other to determine the type or method of collective bargaining, taking into account how the union is composed and whether the employer is affiliated with an employer organization.

□ Forms of collective bargaining

• Enterprise-level bargaining
  - Collective bargaining between the employer of a particular business and the union representing the employees at the business

• Multi-employer bargaining (industry-level bargaining)
  - Collective bargaining between a nationwide or local union at industry or occupation level or the union organization authorized for this purpose and an employer organization or a representative employer who is authorized for this purpose

• Diagonal bargaining
  - Collective bargaining between an industrial or occupational union or its umbrella union that is authorized for this purpose and individual employers

• Joint bargaining
  - Collective bargaining between individual unions jointly with their umbrella union and individual employers

3. Collective agreement

1) Conclusion of collective agreement

a. A collective agreement is essentially based on the agreement by the parties to collective bargaining, and shall be in writing and signed or sealed by both parties.

b. A resolution at a session of the labor-management council or an agreement between the employee members and the employer members of the council may not be treated as equal to a collective agreement.

2) Valid term of collective agreement

a. No collective agreement may be effective for longer than 2 years (Article 32-(1) of the TULRAA).

b. The effect of a collective agreement is lost when its valid term expires, but the part concerning employees' working conditions (normative part) shall remain effective as it is inserted into their individual contract of employment.

c. If the employer and the union have yet to reach a collective agreement despite their good-faith commitment to working out a new agreement to replace the existing one, the latter shall remain valid for 3 more months from the date of its termination (Article 32-(3) of the TULRAA).

d. In case there is an additional agreement that the existing collective agreement shall remain valid even after its effective duration exhausts until a new agreement is concluded, the existing agreement shall be applicable in that way. However, either party may terminate the existing collective agreement by giving notice to the other party 6 months before the date the party wants the agreement to be terminated (Article 32-(3) of the TULRAA).

3) Contents of collective agreement

a. Collective agreement is made up of two different parts: the one concerning

working conditions and treatment of employees (normative part); and the other concerning the rights and obilgations or the trade union and employer (obilgatory part).

Classification	Description
Normative part	Wage rate, wage payment method, working hours, holidays, leave, retirement pay, bonus payment, other employee benefits, work rules, employee disciplines, dismissal, etc.
Obligatory part	Peace obligation, peace clause, provisions on collective agreement, provisions on scope of union members, provisions on union work, union shop clause; provisions on industrial actions, provisions on checkoff, provisions on full-time union members etc.

b. Normative part vs. obligatory part

c. Any part of work rules or an individual employment contract which contradicts the normative part of the collective agreement is invalid and is replaced by the corresponding provisions of the collective agreement (Article 33 of the TULRAA).

4) Extended coverage of collective agreement

a. In principle, a collective agreement is binding to the relevant signatories (the union, its member employees and the employer). In exceptional cases, however, the effect of a collective agreement is extended to non-union members so long as certain requirements are met.

① General binding force at company level

- In case a majority of comparable regular employees at a business or workplace are bound to the same collective agreement, the remaining comparable regular employees at the business or workplace shall be also covered by the collective agreement (Article 35 of the TULRAA).

② General binding force at regional level

- In case two thirds or more of comparable regular employees in a region are bound to the same collective agreement, it can be determined that the

remaining comparable regular employees and their employers in the region shall be also subject to the collective agreement. For such extension of the coverage of a collective agreement, the competent authority, at the request of either party or both parties or on its own, shall bring the case before the Labor Relations Commission for resolution (Article 36 of the TULRAA).

b. Contents subject to extension of coverage

- As it is not possible to apply the obligatory part of a collective agreement to non-union employees, the extension of coverage is limited to the normative part of the agreement.

5) Termination of collective agreement

A collective agreement is terminated in any of the following cases:

a. Expiration of the valid term
- The valid term of a collective agreement may be determined by the labor and management parties within a limit of two years. However, in case no valid term is specified or a term of longer than two years is given in a collective agreement, the valid term shall be deemed to be two years for the agreement.

b. Modification or termination of the signatories
- Modification or termination of the union
  - In case a union has been dissolved, the collective agreement to which the union is a party shall be automatically extinguished.
  - In case a union has been modified in its organization, the collective agreement to which the union is a party shall remain effective if it is acknowledged that the union still has the same identity.

- Modification or termination of the employer
  - In case a company is dissolved, the collective agreement to which the employer is a party shall remain effective until the liquidation process for the company is completed and shall be extinguished upon completion of the process.
  - In case a company is changed in its structure, for example, from an unlimited partnership to a limited partnership or from a limited liability company to a

stock company, the collective agreement to which the company is a party shall be retained as it is.

- In the case of merger or acquisition, the parties to a collective agreement shall lose their status as a signatory to the agreement, but the collective agreement shall remain effective as all the rights and obligations of the extinguished company will be comprehensively retained by the acquiring or surviving company.

Automatic extension and automatic renewal of the collective agreement

a. Automatic extension of the agreement

- Collective agreement subject to automatic extension refers to an agreement which provides that 'this agreement shall be effective until a new agreement is concluded'. This automatic extension is intended to avert any no-agreement period upon expiration of the existing agreement.

- The purpose of automatic extension is to stabilize labor relations by extending the existing agreement until a new agreement is signed and to carry out collective bargaining in stable labor relations. Accordingly, a clause of automatic extension should not extend the effect of an agreement contrary to the will of the signatories.

- If one of the parties wants to terminate a collective agreement subject to automatic extension, the party may notify the other party of its termination as of the day following the expiration of the agreement.
  - Once a notification is made on the termination of the collective agreement, the termination will take effect after 6 months.

b. Automatic renewal of the agreement

- A collective agreement subject to automatic renewal refers to an agreement that for examples states that "in case either of the parties to this agreement does not express its intention of reorganizing the agreement or propose any amendments to the agreement no later than 30 days from expiration of the agreement, it shall be deemed that the agreement will remain effective for two more years from the expiration date".

- The clause of automatic renewal is intended to omit the process of signing a new agreement that is practically the same as the existing one.

Working conditions upon expiration of collective agreement

- While the obligatory part of a collective agreement is automatically terminated once the agreement is extinguished, its normative part is included in the individual contract of employment.

Q & A

Q) What are the differences between the normative validity and the obligatory validity of a collective agreement?

A) While a collective agreement is recognized as a norm, it is also has the nature of a collective contract between an employer and a trade union. However, for the purpose of protecting workers and stabilizing labor relations, the TULRAA grants to certain provisions of collective agreement the validity of binding not only the parties to the agreement but individual employees and the employer (the normative validity). The other provisions without the normative validity are given the obligatory validity, which is the effect of binding the contractual parties. As such, the provisions of a collective agreement are classified into two ways, in terms of their effect: the normative part and the obligatory part.

□ The normative part and its validity

- Normative validity is given by law to the provisions of a collective agreement concerning "working conditions and other treatment of workers" (Article 33 (1) of the TULRAA).
  - The matters concerned include: ① wages, allowances and retirement pay; ② work hours, holidays and leaves; ③ types and calculations of industrial accident compensation; ④ rules on conduct at work, personnel, promotion, rewards and punishment, and dismissal; ⑤ safety and health at work; ⑥ employee welfare and benefits.

- The normative part applies forcefully and directly to the individual labor relationship (Article 33 (2)).
  - In case the rules of employment or a contract of employment violates the pro-

visions on working conditions and other treatment of workers specified in the applicable collective agreement, the part shall be null and void ("forceful validity").
- The part in the rules of employment or a contract of employment which is rendered invalid by the forceful effect, and the part for which the employment rules or a contract of employment has not specified shall be governed by the terms and conditions of the collective agreement ("direct validity").

• Even when the term of a collective agreement expires and a new agreement has not been signed, the normative part of the previous collective agreement shall be a part of individual labor contracts and remain effective.

□ The obligatory part and its validity

• The provisions concerning the rights and obligations of the parties to a collective agreement have an "obligatory validity".
- The applicable provisions include the peace clause, union shop clause, provision on collective bargaining, provision on the scope of unionists, provision on union work and provision on industrial actions.

• The obligatory part of a collective agreement is based on the validity of the 'law of obligations' by which the parties to the agreement shall bear certain obligations to each other.
- A union shall comply with its obligations arising from the obligatory part of a collective agreement and make efforts to ensure that its members also comply with the provisions of the agreement.

Q) How are "mandatory bargaining subjects" distinguished from "permissive bargaining subjects"?

A) Under Article 2.5 of the TULRAA, the subjects of industrial action pertain to working conditions, including work hours, employee welfare and dismissal. Article 29 (1) of this Act merely stipulates that "the representative of a trade union shall have the authority to conduct bargaining and conclude a collective agreement with the employer on behalf of all trade unions or union members", but does not explicitly state the subjects of collective bargaining. In general, however, the subjects that an employer is obliged to bargain are called "mandatory bargaining subjects" and those that an employer is not obliged to bargain are called "permissive

bargaining subjects".

In case a union calls for collective bargaining on mandatory subjects, the employer is obligated to accept the demand in good faith, and these subjects constitute a legitimate purpose of an industrial action. By contrast, an employer is not required to bargain the permissive subjects but may choose to conclude an agreement on any of those subjects, and the subjects will have a binding force only when they are specified in a collective agreement and cannot be used as a legitimate purpose of an industrial action.

In general, the subjects concerning employees' working conditions, such as wages, work hours, holidays and leaves, employee welfare and benefits, workplace accident compensation, and safety and health at work are mandatory bargaining subjects; whereas those concerning the collective labor relations, such as union activities, withholding of union dues (checkoff) and full-time union members, are permissive bargaining subjects.

Q) When a collective agreement has an automatic extension clause, what is the valid term of the agreement, on what date can the agreement be terminated, and what is the validity of the agreement once it is terminated?

A) In accordance with the proviso in Article 32 (3) of the TULRAA, in the case a collective agreement contains a separate clause stating that the agreement "shall remain in effect until a new collective agreement is concluded," the parties shall keep to the automatic extension clause. However, if one of the parties to the agreement wants to terminate the agreement, the party may terminate it by giving notice to the other party six months before the desired date for terminating the agreement. Accordingly, a collective agreement with the automatic extension clause under Article 32 (3) of the TULRAA shall remain effective until it is replaced by a new agreement, unless there is a reason for otherwise. However, if one of the parties to the agreement wishes to terminate the agreement during the automatic extension period, a notification must be given to the other party six months before the intended date of termination.

※ In case a collective agreement with the automatic extension clause under Article 32 (3) of the TULRAA has lost its effect as a consequence of the notification by the party to the agreement on its termination, the so-called obligatory part of the agreement shall also lose its validity upon termination of the agreement whereas the provisions there of pertaining treatment of workers such as working conditions (so-called normative part) shall remain valid as part of individual contracts of employment, until the provisions are amended under a new agreement.

Q) Are the expenses of meals and transportation prescribed in a collective agreement also regarded as working conditions?

A) The working conditions under Article 2.5 of the TULRAA refers to the conditions on treatment of employees that are specified in the contract of employment. Specifically, those conditions include not only wages, working hours, employee welfare and dismissal (which are enumerated in the Labor Standards Act) but also the matters prescribed in Article 96 of the Labor Standards Act and subparagraphs 1 and 3 of Article 7 of the Enforcement Decree of the LSA (Supreme Court Ruling No. 94Nu9177 on Feb. 23, 1996).

Therefore, it seems that the expenses of meals and transportation that are paid by an employer to his/her employees to promote their welfare and benefits are part of working conditions, unless there is a good reason to say otherwise.

※ An arbitration process is, in principle, conducted for a subject of labor dispute, and Article 2 of the TULRAA defines labor dispute as "any controversy or difference arising from disagreement between parties to labor relations concerning the determination of terms and conditions of employment such as wages, working hours, welfare, dismissal and other treatment." In addition, working conditions here refers to the conditions on treatment of employees that are specified in the contract of employment. Specifically, those conditions include not only wages, working hours, employee welfare and dismissal (which are enumerated in the Labor Standards Act) but also the matters prescribed in subparagraphs 1~11 of Article 94 of the Labor Standards Act and subparagraphs 1 and 3 of Article 7 of the Enforcement Decree of the LSA. Accordingly, a dispute arising from the disagreement between the parties over the matters other than working conditions is not a labor dispute which is legitimate under the law. Unless under exceptional circumstances, this kind of dispute may not be a subject of arbitration (Supreme Court Ruling No. 94Nu9177 on Feb. 23, 1996).

4. Industrial action

A trade union may take an industrial action as a means to have a strong position at the bargaining table, and an industrial action which is taken in a legitimate manner shall exempt the union from any civil or criminal liability.

▶ The requirements for legitimacy of an industrial action are: it shall be taken by a legitimate trade union; its purpose shall be to maintain or improve working conditions of the employees and promote their social and economic status; and it shall follow the procedures stipulated in law.

1) Subject of industrial action

a. Industrial actions are legitimate only when they are taken by a trade union (or a bargaining representative union) established under the TULRAA or an employer or employer association.
- The term "employer association" does not mean a simple organization of employers, but an organization which, under its rules or by law, i) provides that it may conduct collective bargaining and conclude a collective agreement with a union and also ii) has the power and authority to adjust or control its member employers.

• A branch or chapter of a trade union is a lower organization of a trade union and therefore, a branch or chapter cannot serve as a counterpart for the management side in collective bargaining agreement and industrial dispute action. However, they can serve as a counterpart in industrial action within the range of authorities commissioned to them by the trade union rules.

b. A wild cat strike by a temporary body which is not a trade union shall not be regarded as legitimate.

c. Employees in major businesses of defense industry who are mainly engaged in production of electricity, water or defense goods may not take industrial actions (Article 41-(2) of the TULRAA).

2) Purpose of industrial action

a. An industrial action shall be aimed at maintaining or improving working conditions of the employees and promoting their economic and social status.
   - Additionally, given that the subject involved in industrial action should be dealt with in collective bargaining, i) it should be what the employer can handle or resolve; ii) it should be of a collective nature; and iii) it should not be against the enforceable provisions.

b. In general, a political strike or a sympathy strike are not legitimate.

3) Procedures of industrial action

a. An industrial action which is taken without any collective bargaining in advance shall not be regarded as legitimate.

   • Without a special change in circumstances, a union may not stage a strike to revise or abolish a collective agreement while the agreement is in force.

b. Once a labor dispute occurs, the parties shall apply for labor dispute adjustment to the Labor Relations Commission or a third party or organization chosen by both parties. Either party may not take an industrial action before getting through the mediation by the Commission or a third party or organization (which lasts 10 days for disputes in private sector, and 15 days for disputes in public sector) (Article 45 of the TULRAA).

c. No industrial action by a trade union shall be conducted unless a majority of union members (in the case of multiple unions, a majority of the participating union members) have decided in favor of taking industrial action by a direct, secret, and unsigned ballot.

   • In case a union wants to conduct a ballot on industrial action, the union shall put up a notice on places such as the bulletin board of the union office no later than seven days before the voting day. The notice should specify the date and venue for voting, the list of voting and vote counting officials and other necessary matters concerning the voting and vote counting.

d. When a trade union plans to conduct an industrial action, it shall report in writing to the competent authority and the Labor Relations Commission that have jurisdictions over the union, about the timing and location of the industrial action, the presumed number of participants, and the method of the industrial action.

4) Restrictions on industrial action

a. Any industrial action entailing a violent, threatening or destructive act shall be deemed illegitimate. Furthermore, occupying certain facilities for the purpose of industrial action may not be allowed.

※ Facilities prohibited from occupation (Article 21 of the Enforcement Decree of the TULRAA)

1. Electrical, electronic computing or communications facilities;
2. Carriages on railways or the tracks thereof (including urban railways);
3. Ships under construction or repair, or at anchor (except for the cases where a seaman, as is defined as in the Seamen Act, gets aboard the ship concerned)
4. Aircraft, air navigation safety facilities or the facilities for take-off and landing of aircraft or transportation of passengers and cargo;
5. Locations storing or depositing materials posing the risk of explosion, including gunpowder and explosives, or other toxic materials stipulated under the Control of Toxic Chemcial Control Act; and
6. Other facilities or places which, if occupied, are likely to suspend or close down production or other importance processes or cause grave danger and harm public interest and which are designated by the Minister of Employment and Labor in consultation with the heads of relevant government ministries or agencies.

b. Any industrial action which suspends, closes or hampers normal functioning of safety protection facilities (emergency care units in hospitals, gas explosion prevention facilities, etc.) shall be deemed illegitimate. Therefore, a trade union shall ensure that a minimal number of employees required for normal functioning of those safety protection facilities are at work, even while the union is in the course of industrial actions.

c. Special care is stipulated on method of resolution and procedures of industrial actions in public services, which, unlike those in ordinary businesses, are likely to have an adverse impact on the national economy and people's daily living.

- An industrial dispute of the public service industry is handled by the special mediation committee and receives other special considerations like mediation period (15 days).

• In particular, in the case of a workplace designated as an essential public service provider, acts to suspend, abrogate or obstruct fair maintenance and operation of the essential public service cannot be subject to industrial action.

※With the revision of the Trade Unions and Labor Relations Adjustment Act, the compulsory arbitration of the labor disputes at essential public services, however, was repealed on January 1, 2008.

• Public services vs. essential public services

Public services	Essential public services
Regular passenger liners, air transportation	Railroads, city railroads, air transportation
Water, electricity, gas, petroleum refinery and supply	Water, electricity, gas, petroleum refinery and supply
Public health service, medical service, blood supply service	Hospitals, blood supply service
Banks, minting	Bank of Korea
Broadcasting, communications	Communications

d. When an industrial action has occurred at a public service or a business of a larger size or an extraordinary nature, and is likely to jeopardize the national economy of people's everyday life, the Minister of Employment and Labor may decide on emergency mediation for the labor dispute, after hearing the opinion of the Chairperson of the National Labor Relations Commission.

• If such a decision is made, the industrial action in progress shall be discontinued immediately and the disputing parties may not resume any industrial action for the following 30 days.

[Reference: Essential public service maintenance]

a. Definition of essential public service maintenance

• Essential public service refers to the work whose suspension or discontinuance would apparently jeopardize people's health and life, physical safety or everyday living.
• During the period of industrial actions, any person who takes an action to sus-

pend, discontinue or obstruct the justifiable maintenance and operation of an essential public service shall be penalized with a fine for the act.

b. Contents of essential public service

- Based on the criteria (definition) of essential public service specified in the law, the Enforcement Decree shall prescribe the contents of essential public service for each public service.

※ For example, with regard to the hospitals, surgical operations, medical treatment of or first aid to emergency or critically ill patients could be included.

c. Signing an agreement on maintenance of essential public service

- The labor and management shall, subject to the criteria given in the law, sign an agreement on the extent of essential public service, jobs involved and the number of workers required to maintain the essential public service.

※ For example, in a hospital, an agreement on essential public service could specify that 20 nurses, 3 blood testing employees and 2 x-ray photographing employees are required to maintain 00% of the work at the emergency room, intensive care units and operating rooms and other related supporting work.

- The agreement on minimum essential service should be in writing and signed or sealed by both parties of the labor relations.

d. Decisions by the Labor Relations Commissions

- If there exists no such agreement between the employer and employees, either or both of the parties should ask the Labor Relations Commission to decide on the matters concerning essential public service.
- Upon receiving the request, the Commission, after taking account of the particulars of the essential public service at the business or workplace concerned, may decide on the extent of essential public service, jobs involved and the number of workers required to maintain the essential public service.

e. Industrial action in accordance to the Commission's decision

- In case the Labor Relations Commission has made a decision on the required level of

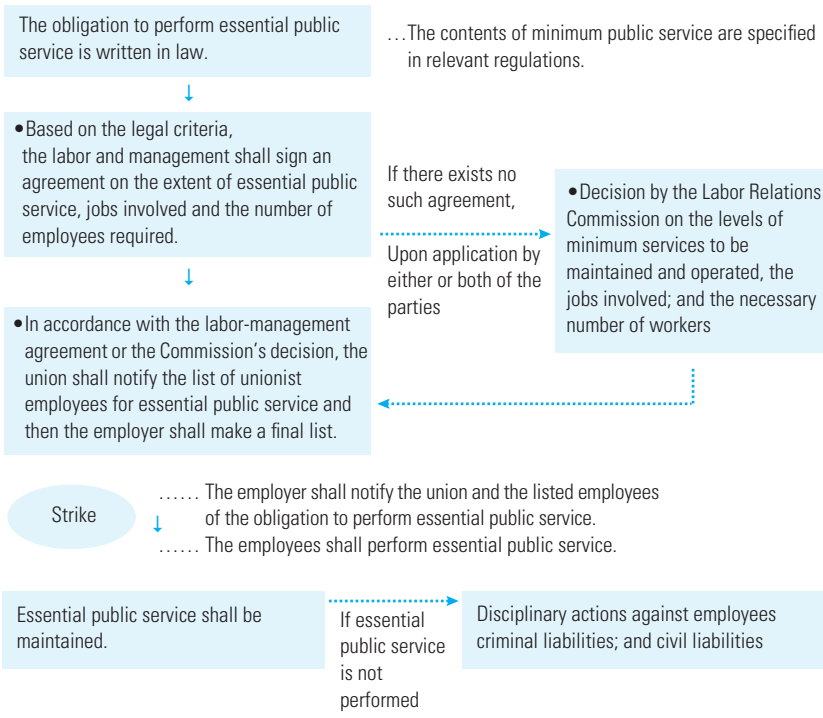
maintenance and operation of minimum services to be maintained and an industrial action has been taken in compliance with the decision, the industrial action shall be deemed to have justifiably maintained and operated the minimum services.

f. Carrying out minimum public service at an individual workplace

- In this case, if the worker engaged in minimum services is a member of two or more trade unions, the worker shall be designated after considering the ratio of union members engaged in the minimum services concerned at each trade union.

- The union should give a list of unionist employees who are to perform the essential public service during the period of industrial actions, and then the employer should finalize the list and notify the union and the listed employees of the decision.
- If the union fails to give a list of unionist employees for essential public service by the time when it commences industrial actions, the employer should make a list of employees and deliver it to the union and the listed employees.

Essential public service maintenance process



5) Wage payment during industrial action

a. When an employee participated in an industrial action and did not provide work for a period of time, his/her employer is not obligated to pay wage to the employee for the time he did not work (no-work no-pay principle) (Article 44 of the TULRAA).

b. A trade union may not initiate an industrial action in order to demand wage payment for the period of the industrial action.

6) Restriction on hiring during industrial action

a. While an industrial action is in process, the employer concerned may not hire or temporarily use a person who has no relation to the business concerned to resume the work discontinued by the industrial action (Article 43 of the TULRAA).

b. Moreover, the employer may not contract out or subcontract the work discontinued by an industrial action, while the industrial action is in process.

c. However, using replacements shall be permitted only in essential public services (Article 43 (3) and (4) of the TULRAA).

- The employer of an essential public service is allowed to replace striking employees with external workers who have no relation with the business, or to outsource or subcontract the work, so long as the external workers account for 50% or less of the strikers.
- Since replacement work is available only during the period of industrial actions, employers may not use replacement work on a permanent basis on the ground of the strike.

Q & A

Q) What are the subjects and scope of legitimate labor disputes?

A)"Dispute over rights" refers to the dispute between the labor and management over the translation, application, observance, etc. of the rights that are already confirmed in the law and regulations, collective agreements or the rules of employment. This kind of dispute usually involves paying off unpaid wages, reinstation of dismissed workers, compliance with the collective agreement or remedies from unfair labor practice.

In comparison, "dispute over interests" refers to the dispute over the creation, retention, modification, etc. of rights in regard of working conditions, and includes the disputes over wage increase, renewal or conclusion of the collective agreement.

Given that the Trade Union and Labor Relations Adjustment Act confines legitimate labor disputes to the disputes over interests, an industrial action arising from a dispute over rights is not justifiable under the law.

Q) If an employer uses workers from the head office or another workplace to replace the employees participating in the industrial action, is the employer in violation of the relevant law?

A) According to Article 43 of the TULRAA, the employer may not hire persons unrelated to the business concerned or use replacements during a period of industrial action so as to continue the work which has been suspended by industrial action. "Persons unrelated to the business concerned" are construed as the persons who are not employees of the company concerned. Therefore, if the employer has multiple workplaces under the same business and has used the employees from the head office or another workplace, he/she does not violate this provision.

5. Lock-out

An employer may declare lock-out to counteract an industrial act taken by the trade union.

1) Definition

Lock-out refers to "an employer's act of refusing to accept work provided by his/her employees, as a counteraction to the industrial action taken by the employees. It is a type of industrial action that an employer is allowed to take in order to guarantee an equal playing field in the labor relations.

- Lock-out is distinguished from mass layoff, in that the employment relationship is retained in the former. Lock-out is also distinguished from business suspension or closing, in that reception of labor is discontinued only temporarily in the case of lock-out.

2) Requirements for lock-out

Lock-out may not be done in a preemptive or offensive way.

• Lock-out shall be executed only after the trade union commences industrial action. That is, a lock-out declared before any industrial action by the union is

unlawful (Article 46 of the TULRAA).

- If a lock-out is not withdrawn even after the union has declared a halt to the industrial action with sincerity, the lock-out shall be considered an offensive one and so shall be deemed unjustifiable.

An employer who intends to declare a lock-out shall report in advance to the competent authority and the jurisdictional Labor Relations Commission (Article 46 (2) of the TULRAA).

3) Effects of lock-out

If a lock-out is performed properly, the employer concerned is exempted from the obligation to pay wage to the employees concerned for the period of lock-out, and may remove the employees participating in the industrial action from the production facilities or the workplace.

The freedom of business operation should be guaranteed, irrespective of the presence of industrial action. Accordingly, even when an employer has declared lock-out, he/she may use the employees who are not subject to the lock-out such as non-union members to continue his/her business during the lock-out period.

Q & A

Q) In case a trade union wages an hour-based partial strike (one hour a day) after going though a set of lawful procedures, is it possible for the employer to conduct a lock-out only for the hours of strike?

A) An employer may conduct a lock-out in a defensive or passive way to counter a union's strike or sabotage if it is required urgently for managing the business. If the union takes repeated industrial actions during a certain period of time every day for the purpose of maximizing the effect of its strike or for another strategic reason, the employer does not have to repeat declaring and withdrawing a lock-out to confront the recurrent industrial actions, unless the lock-out is considered an unreasonable means to counter the industrial action or defend the business.
In other words, if the union does not express its intention to withdraw the industrial action, the employer may maintain the lock-out during the period of industrial action, even for the hours when no industrial action is taken.

6. Adjustment of labor disputes

Mediation of labor disputes refers to a set of procedures which are intended to resolve, in a swift and fair way, a labor dispute arising from disagreement between the labor relations parties over working conditions, thereby preventing any loss from industrial actions on the parties and facilitating the stability and growth of the national economy.

Mediation and Arbitration

Mediation	Arbitration
A mediator, who is a third party, gives a proposal to solve the labor dispute, which the parties to the labor dispute concerned shall review. However, the parties are not bound to accept the proposal.	An arbitrator, who is also a third party, gives a proposal to solve the labor dispute, which the parties to the dispute concerned shall accept the reached agreement.

1) Mediation procedures

a. There are two types of mediation: private mediation by a third party, who the parties concerned have agreed to choose as a mediator; and public mediation.

- A private mediator or arbitrator should be qualified as a public interest member in charge of mediation according to Regional Labor Relations Commission, and can be remunerated by the parties of the labor relations in the form of fees, allowances or travel expenses (Article 52 of the TULRAA).

※ Those who are qualified for public interest members of the Regional Labor Relations Commission (Article 8 (1)-2 of the Labor Relations Commission Act)

a. Those who were or have been an associate professor or at a higher position at a publicly certified university or college;
b. Those who were or have been a court judge, a prosecutor, a military judicial officer, a defense lawyer or a certified labor affairs consultant for seven years or longer;
c. Those who were a grade 2 public servant or a public servant belonging to the senior civil service group, who has 7 years or more of services for labor relations affairs ; and
d. Those who have 15 years or more of services for labor relations affairs or are socially respected and recognized to be suitable for a public interest member for mediation.

b. Commencement of mediation

- When one party or both parties to a labor dispute have applied for mediation by the Labor Relations Commission in order to settle the dispute, the Commission shall initiate mediation without delay and the parties concerned shall commit themselves to the mediation.
- The Labor Relations Commission may assist the disputing parties in resolving their dispute in an autonomous manner, by making arrangements for mutual negotiations even before the application for mediation is made, as well as during the statutory period of mediation (Article 53-(2) of the TULRAA).

c. Duration of mediation

- Mediation shall be completed within 10 days in the case of a labor dispute in an ordinary business, and 15 days in the case of a labor dispute in a public service.
- However, the duration of mediation may be extended for another 10 or 15 days, if there is an agreement to do so between the parties concerned (Article 54 of the TULRAA).

d. Mediator

- The mediation committee within the competent Labor Relations Commission shall mediate the labor dispute brought before it. The mediation committee is made up of three commissioners of the Commission: each representing the employer, the labor and the public interests.
- In the absence of the employer commissioner and the labor commissioners, three public interest commissioners alone could organize a mediation committee. If there exists a labor-management council member who has been approved by both parties, he/she can be designated as a mediator.
- The Commission may appoint a single mediator in place of the mediation committee mentioned above so long as the mediator is the person chosen by both parties after they apply for or consent to such appointment of a single mediator.

e. Mediating activities

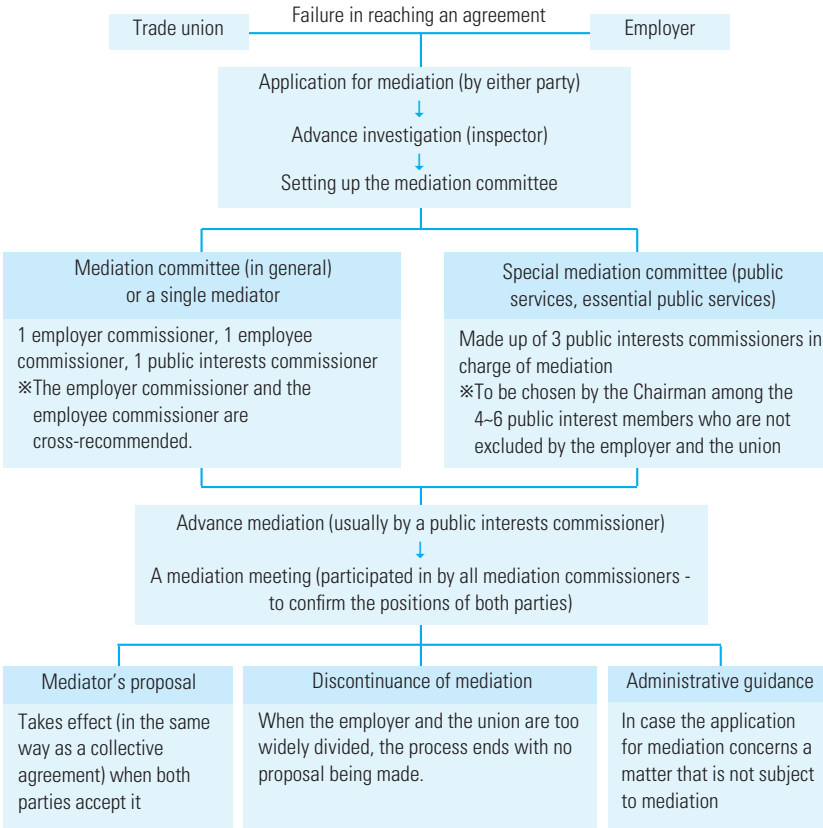
- The mediation committee or the single mediator shall hear the opinions of both

parties to the labor dispute and make fact-finding investigations to map out a mediator's proposal, and shall recommend both parties to accept it.

f. Effects of mediation

- Once the mediator's proposal is accepted by both parties, it shall have the same effect as a collective agreement.
- In case the mediator's proposal is not accepted by the parties, the mediation committee shall notify the parties that the mediation procedure is ended. Then, arbitration shall commence if the parties have agreed on that. In case there is no such agreement, the parties may take industrial actions.
- It should be noted that the Commission may continue to mediate a labor dispute even after the end of mediation was declared for the case. In the event of post-factum mediation, the mediation preceding requirement may not apply (Article 61.2 of the TULRAA).

Mediation procedures chart



※ When there occurs a labor dispute covering 2 or more jurisdictional areas of Regional Labor Relations Commissions, the parties to the labor dispute shall file the case to the National Labor Relations Commission for mediation.

2) Arbitration procedures

a. Arbitration is a process in which arbitration process in arbitration commission consisting of public interests commissioners gives a binding proposal. Arbitration commences at the request of the parties concerned.

b. Commencement of arbitration

- Arbitration can commence at the request of both parties to a labor dispute or at the request of either party under the collective agreement, or when the decision to initiate arbitration is made for a labor dispute in an essential public service.

c. Duration of arbitration

- Once a case of labor dispute is brought to arbitration, the parties to the dispute may not take any industrial action for 15 days (Article 63 of the TULRAA).

d. Arbitrator

- Arbitration is carried out by the arbitration committee within the competent Regional Labor Relations Commission or the National Labor Relations Commission.
- The arbitration committee comprises three commissioners, who are public interests members of the Labor Relations Commission (LRC) and whom the chairman of the LRC designates out of the public interests members nominated through agreement among themselves.
  - In case the disputing parties fail to reach an agreement, the arbitration committee comprises three public interest members who are designated by the Chairman.

e. Arbitrating activities

- The arbitration committee may ask the parties concerned to come over to present their opinions, or hear from the commissioners representing both parties. Then, it shall map out an arbitrator's proposal, based on the circumstantial evidence and relevant information.
- The arbitrator's proposal (arbitration award) shall be in writing and delivered to the parties to the labor dispute concerned, stating the date when the proposal (award) will take effect.

f. Effect of arbitration

- A finalized arbitration ruling shall have the same effect as a collective agreement.

• Since the effect of the arbitration ruling or the decision on review by the Labor Relations Commission is not suspended by an application for second review or an administrative suit under Article 69 (1) and (2) of the TULRAA, the disputing parties shall comply with the arbitration ruling or the decision on review.

Procedure of arbitration

Application for arbitration (labor·management)

↓

Advance investigation (inspector)

↓

Setting up an arbitration committee

↓

Arbitration meeting → arbitration award (by arbitrators)

When the arbitration award is contended as it is found unlawful or beyond the given authority, a second review on the award shall be filed for within 10 days.

↓

Second review on arbitration award (National Labor Relations Commission)

When the award is contended again as it is still unlawful or beyond the given authority, administrative proceedings shall be filed for within 15 days.

↓

Administrative litigation

Q & A

Q) If an employer and a union are divided only over the method of conducting collective bargaining, is this considered a labor dispute?

A) In the definition of Article 2.5 of the TULRAA, an industrial action is taken by the parties in a labor dispute to attain their demands. A labor dispute means any controversy arising from disagreement between the parties to labor relations concerning the determination of terms and conditions of employment such as wages, working hours, employee welfare and dismissal, that the parties find impossible to negotiate on their own despite continuous efforts to come to an agreement.

In case the parties have applied for mediation by the Labor Relations Commission for simply being divided over the method of collective bargaining and have not engaged in any negotiation over working conditions, it is not regarded as a labor

dispute as defined under Article 2.5 of this Act and does not meet the requirements for labor dispute and industrial action as provided in the TULRAA.

Q) If a trade union suspended a strike for which a mediation process was going on and then resumed industrial action, is the union required to go through another mediation process?

A) In the case that the strike had not been resolved while undergoing the mediation process and there is no objective reason to deny consistency of labor dispute between the two points of time, the union does not have to undergo another of process of mediation or voting by union members.

7. Prohibition of unfair labor practices

1) Types of unfair labor practices

An employer should not commit any act of unfair labor practice which is stipulated in Article 81 of the Trade Union and Labor Relations Adjustment Act as follows:

① Dismissing or discriminating against an employee on the ground that the employee has joined or intends to join a trade union or to establish a trade union, or has performed a justifiable act for the operation of a trade union;

② Employing a worker on the condition that the worker should not join a trade union, or should withdraw from or join a particular union;

☞ However, in the case where a particular union represents two-thirds or more of the employees in the same workplace, the employer may conclude a collective agreement which provides for joining the union as a precondition of employment. In this case, the employer may not take any action to the disadvantage of an employee just because he/she has withdrawn from the union.

☞ Starting from July 1, 2011, Multiple Trade Unions is legalized. Then, an employer may not treat an employee unfavorably in employment, simply on the ground that the employee has walked out of the existing union and organized a new union or joined another union.

③ Refusing or omitting, without giving a justifiable reason, to conduct collective bargaining or conclude a collective agreement with the union representative or a

person authorized for the purpose by the union;

☞ However, an employer may refuse to accept a request to conduct collective bargaining in certain cases such as: where a person with no legitimate authority has requested collective bargaining; where the requested bargaining pertains to an issue that is not subject to collective bargaining; or where the requested bargaining, in terms of its procedure or form, does not comply with the relevant law or the collective agreement.

④ Dominating or interfering with the organization or operation of a union by employees, paying wage to full-time union officials or giving financial support for operation of the union;

☞ However, an employer may allow employees to perform the work (the work on which paid time-off hours can be spent) under Article 24 (4) of the Act during their working time. Additionally, an employer may donate a fund for the purpose of promoting employee welfare or preventing or relieving economic difficulties or other sufferings, and/or offer an union office of a minimal size.

⑤ Dismissing or discriminating against an employee on the ground that the employee has taken part in a collective act which is justifiable; has reported incidence of unfair labor practices by the employer to the Labor Relations Commission; has testified about such offences; or has presented other evidence to the Employment and Labor Minister.

2) Procedures of the remedy for unfair labor practices

a. An employee or a trade union that reasonably believes his/her or its right has been infringed on by the employer's act of unfair labor practice, may file the case to a competent Regional Labor Relations Commission for remedy.

① There are a National Labor Relations Commission and 12 Regional Labor Relations Commissions.

② In case either party of labor and management is dissatisfied with the decision of a Regional Labor Relations Commission, it may apply for a new trial to the National Labor Relations Commission.

b. Remedy procedures

① Filing for remedy

An employee or a trade union that reasonably believes that his/her or its right has been infringed on by the employer's act of unfair labor practice, may file the case before the competent Regional Labor Relations Commission for remedy, no later than 3 months from the date when such an act of unfair labor practice was conducted.

② First ruling by the Regional Labor Relations Commission

The Regional Commission, upon arrival of the application for remedy, shall carry out an investigation into factual aspects of the case and conduct an inquiry of the parties concerned and, based on the outcome of the investigation and the inquiry, may issue an order for a remedial action by the employer or decide to dismiss or reject the application for remedy when the case is found not to be subject to unfair labor practice (Article 84 of the TULRAA).

※The application may be dismissed or returned in any of following cases:

-When the claimant union is not a union organization recognized under the TULRAA;
-When the filing is made after 3 months from occurrence of the alleged unfair labor practice;
-When it is clear that the action in question is not an act of unfair labor practice; or
-When the remedy is neither beneficial to the employee nor possible to achieve.

③ Second ruling by the National Labor Relations Commission

In case either party (employer or employee) is dissatisfied with the order by the Regional Labor Relations Commission or Special Labor Relations Commission for a remedial measure or its decision to dismiss the application, the party may ask the National Labor Relations Commission to review the case, no later than 10 days from the date of arrival of the notice of the ruling.

④ Administrative filing

If a party concerned finds the decision on review made by the National Labor Relations Commission unacceptable, it may file an administrative suit under the Administrative Litigation Act, no later than 15 days from the date of arrival of the notice of the ruling (Article 85 of the TULRAA).

8. Establishment and functions of the labor-management council

1) Organizing the labor-management council

a. The labor-management council is a two-way 'consultative body' that is intended to promote participation and cooperation of employers and employees in order to increase employee welfare and facilitate business growth in a sound manner.

b. The labor-management council shall be established at a workplace or business employing 30 persons or more with the right to determine working conditions (Article 4 of the Act on the the Promotion of Worker Participation and Cooperation. APWPC).

- In case an enterprise is divided into more than one workplace, the labor-management council shall be set up at the primary location of the enterprise if the business employs 30 persons or more.

c. The labor-management council shall be composed of employee members and employer members each numbering 3 to 10, and shall have a regular meeting once in every 3 months.

① The employer members shall include the representative of the business (or workplace) and those who are appointed by the representative. The employee members shall include those who are elected in a secret and direct vote by the employees, or those entrusted by the union representative and the union if there exists a trade union representing the majority of the employees.

② The council members shall be non-standing and unpaid and their tenure shall be 3 years and renewable.

③ The hours spent to join the meetings of the labor-management council and the hours spent for a relevant purpose which is specified in the council regulations shall be counted in the hours worked.

2) Functions of the labor-management council

There are three types of functions at the labor-management council: consultation, resolution and reporting.

☞ For details on consultation, resolution or reporting, please see Articles 20, 21 and 22 of the APWPC.

☞ The employee members may ask the employer to provide information on the matters for consultation or resolution, prior to the relevant meeting of the labor-management council. The employer may choose not to provide the information requested, if the information relates to business secrets or personal details.

① Matters for consultation: productivity improvement; employee welfare promotion; improvement of working conditions for employees, including occupational safety and health; employee grievance handling; improvement of personnel management and other labor affairs systems, etc.

② Matters for resolution: establishment of the basic plan for employee training and ability development; establishment and management of employee welfare facilities; establishment of the company welfare fund, etc.

☞ In order to address issues unresolved or resolve disagreement on how to interpret or implement resolutions, either a mediation machanism may be set up by mutual agreement between the employer members and the employee members, or mediation may be conducted by a 3rd party like the Labor Relations Commission.

③ Matters for reporting: overall business plan and performance quarterly production plan and performance; personnel policy, etc.

☞ When an employer has failed to report or explain about a matter for reporting, the employee members can require that information on the matter should be given.

3) Grievance handling

a. Each and every workplace employing 30 persons or more shall have 3 or fewer grievance handling officers representing the employer and employees.

b. In case there exists a labor-management council, the officers shall be appointed

from the council members. Meanwhile, if there does not, the employer shall appoint the officers (Article 26 of the APWPC).

4) Labor-management council and trade union

a. The labor management council and collective bargaining have a different goal, in that the former is aimed at pursuing the common benefit of the employer and employees, whereas the latter is fundamentally based on the contradicting positions of the employer and employees (trade union).

b. The presence of a labor-management council has no effect on the role and functions of a trade union which are provided for by the Trade Union and Labor Relations Adjustment Act (Article 5 of the TULRAA).

- An employer who omits to comply with his/her obligation to conduct collective bargaining, opposes establishment of a trade union, or dominates or interferes with operation of a union on the ground that there exists a labor-management council, commits an act of unfair labor practice.

Comparison between collective bargaining and labor-management council

Classification	Collective bargaining	Labor Management council
Ground law	Trade Union and Labor Relations Adjustment Act	Act on the Promotion of Workers'Participation and Cooperation
Purpose	To improve the status and working conditions of workers	To enhance the benefits of both parties
Workplaces covered	All workplaces with a trade union	Workplaces with 30 employees or more
Parties	Trade union and employer (employer organization)	Employee members and employer members
Activities	The parties negotiate a collective agreement on working conditions (wage, working hours, etc.).	The employer reports on business conditions and the parties consult and resolve the matters brought before the council.
Follow-up	If the parties fail to reach an agreement, an industrial action can be taken.	The employer has the right to final decision, and even when the parties fail to resolve their differences, they may not take an industrial action.
Nature	Process of mutual reconciliation	Process of mutual understanding

5) Government's financial support programs for labor-management cooperation

a. The Government's financial support programs for labor-management cooperation

- The assistance programs that cover part of the expenses of the programs which are voluntarily co-initiated by an employer and employees to facilitate co-prosperous and cooperative labor relations, improve unreasonable industrial relations practices and foreign investors' confidence, and promote workplace innovations.

b. Programs eligible for the financial support (examples)

- Programs designed for a stronger labor-management partnership:
  - to build mutual trust and increase cooperation;
  - to create or promote the skills of conflict management, communications and negotiations; or
  - to improve labor relations by means of productive bargaining methods

- Programs designed for innovations and higher competitiveness at workplace:
  - to promote open management and employees' participation and facilitate labor-management communications;
  - to operate a system of grievance handling or employee suggestions; or
  - to increase productivity and organizational efficiency

- Programs designed to address the issues and problems of common interest

c. Coverage of financial support

- Expenses required to organize training/educational courses, meetings, seminars, etc.
- Expenses required to conduct research and studies or obtain consulting, advice or other kinds of service
- Expenses required to produce and distribute PR materials including publications, VTRs and CDs; and
- Expenses required to organize events for labor-management unity or other activities for a stronger labor-management cooperation (sporting activities not

related to promoting labor-management partnership are excluded).

d. Level of financial support

- Up to 40 million won at a company or workplace level
- Up to 60 million won at a regional or sectoral level
- An employer who wants to get support for the costs spent shall individually cover costs of 10% or more of the amount of support. (In case of large companies and public organizations, the coverage rate should be 30% or more.)

e. Duration of the program

- The applicant for the support should complete the program within the contract period of the current year.

f. Selection of recipients

- Upon application: Recipients are selected after a given process of screening applications jointly submitted by the employer and the trade union.
  - Joint application by the employer and the union → Application submissions (local employment and labor office) → Screening (screening committee) → Provision of support

- Support provided upon reporting: Recipients are selected among the vulnerable companies reported by local employment and labor offices, also after a given screening process.
  - Reporting by local offices → Screening (screening committee) → Support for creation of the program → Provision of support

※ For more information, please visit the website of the "Advanced Labor Relations Culture" under the Ministry of Employment and Labor (www.nosabravo.or.kr).

Q & A

Q) When a business which is required to set up a labor-management council fails to create the council, what penalty will be imposed on the business? What is the required timetable for establishment of the labor-management council?

A) Under Article 4 (1) of the Act on the Promotion of Worker Participation and Cooperation (APWPC), a business or workplace with 30 full-time workers or more who have the right to determine working conditions is obligated to establish the labor-management council. Additionally, under Article 12 (1) of the APWPC, the council shall be held on a regular basis once every three months (if violated, the employer shall be imposed a fine not exceeding two million won) and, under Article 18 (1) of the Act, the council shall establish bylaws and submit it to the Minister of Employment and Labor within 15 days (if violated, the employer shall be punished by a fine for negligence not exceeding two million won).

All considered, although there are no explicit penal provisions for cases where a labor-management council is not established, a workplace with 30 full-time workers or more may be penalized if no regular meeting is held or no bylaws are submitted to the Ministry because no council has been established. However, in case it is believed that the employer has made full effort to establish a council and hold a regular meeting but the legal requirements have not been fulfilled for a reason beyond his/her control or responsibility, he/she can be exempted from the liability for the failure.

In addition, the timetable for establishment of the labor-management council is not explicitly written in law. This means that the council shall be set up immediately when there is cause for establishment (that is, when a company comes to have 30 full-time workers or more, Article 4 (1) of the APWPC). Accordingly, when the number of full-time workers at a business or workplace grows to 30 or more, the employer shall, without delay, consult with the trade union representing a majority of the employees for the purpose of establishing a labor-management council. If no such union exists, the employer shall make full efforts to set up the council through a democratic process such as public notification to inform employees of the matters required for the establishment of the council.

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2011

IV. Social Insurances

1. Overview of the four statutory social insurances

1) Every employer shall join four social insurances for his/her employees: industrial accident compensation insurance (against occupational disease and injury), health insurance (against non-occupational illness and injury), national pension (against invalidity and death and for old-age life) and employment insurance (against joblessness).

☞ These 4 social insurances are integrated and linked with each other. For more information, please visit the Website (www.4insure.or.kr).

2) The four insurances mentioned above are the statutory insurances of Korea.

① Employment Insurance (EI) is a social security insurance which started in 1995. EI embodies the labor policy integrating unemployment benefits, job security program and job skills development program.

② Industrial Accident Compensation Insurance (IACI) is a compulsory insurance system in which the state protects the living of the employees and their family who suffer occupational accidents, including work-related injuries, diseases, physical disabilities or death. IACI took effect in 1964.

③ National Pension Plan, which began in 1988, aims to provide pension for the people who are unable to earn income due to old age, disabilities or death so that they can lead a minimum life.

④ Health Insurance System, which started in 1997, funds the insurance benefits for prevention, diagnosis and treatment of people's illness and injury and their rehabilitation, maternity, death, and health promotion.

Summary of statutory social insurances in Korea

Classification	Employment insurance	Industrial accident compensation insurance	National pension	Health insurance
Purpose	To prevent unemployment, promote employment and develop workers' vocational ability	To relieve employees from occupational injury, disease, disabilities or death	To help people prepare for old age, invalidity or death, by providing pension	To prevent, diagnose or treat non-occupational illness and injury
Commencement	July 1995	July 1964	Jan. 1988	July 1977
Employers obligated	Employers with 1 permanent employee or more	Employers with 1 permanent employee or more	Employers with 1 permanent employee or more	Employers with 1 permanent employee or more
Employees covered	Those below 65 years old	All employees of the employer obligated	Employees aged 18 or older but younger than 60	All employees of the employer obligated
Those excluded	Employers, foreigners	Employers (in some special cases, employers are also covered)	Employees who have worked shorter than 1 month	Employees who have worked shorter than 1 month
Coverage for foreigners	May be covered when they want to be	Shall be covered	In principle, they shall be covered (but, it depends on their nationality)	Shall be covered
Acquisition of the insured status	Day of starting work	Day of starting work	Day of starting work	Day of starting work
Termination of the status	1 day after the employee leaves the company	1 day after the employee leaves the company	1 day after the employee leaves the company	1 day after the employee leaves the company

Insur-ance contri-bution	Em-ployee	Averaged monthly cash earnings × 0.55% (unemployment benefit)	None	Standard monthly pay × 4.5%	Monthly income × 2.82%
	Em-ployer	- Unemployment benefit: total wage amount x 0.55% - Employment security - vocational ability development program: total wage amount x 0.25~0.85%	Total wage amount× 0.006~ 0.354 (varies depending on industrial sector)	Standard monthly pay × 4.5%	Monthly income × 2.82%
Benefits guaranteed		Unemployment benefit, employment security program, vocational ability development program	Sickness benefit, suspended work benefit, disabilities benefit, survivor benefit, funeral expense, injury/ disease compensation annuity, nursing benefit, vocational rehabilitation benefit(after July 1,2008)	Old-age pension, disabilities pension, survivor pension Ministry of Health and Welfare (National Pension Service)	medical care expense, medical checkups, funeral expense
Governing body		Ministry of Employment and Labor (Korea Workers' Compensation and Welfare Service(COMWEL), Job Centers)		Ministry of Health and Welfare (National Pension Service)	Ministry of Health and Welfare (National Health Insurance Corporation)

2. Industrial accident compensation insurance

1) Overview

a. The industrial accident compensation insurance (IACI) is a social insurance system in which the government provides an occupationally ill or injured employee with the compensation to be paid by his/her employer under the Labor Standards Act.

b. Under this system, individual employers are obligated to make a given rate of contribution to the insurance fund and, in return, are partly exempted from paying compensation for occupationally ill or injured employees. The government uses this fund to give employees insurance payment for their work-related injury or disease.

2) Obligatory contribution to the IACI fund

a. Every employer with 1 employee or more shall contribute to the IACI fund, with the following businesses excluded:

① Unincorporated business with fewer than 5 employees in agriculture, forestry, fishing or hunting;

② Construction projects priced lower than 20 million won which are conducted by others who are not construction business owners, or the projects to construct a building with the gross area of 100㎡ or below or to repair a building with the gross area of 200㎡ or below;

③ Housekeeping services

④ The businesses which are eligible for accident compensation under the Public Officials Pension Act, the Veterans' Pension Act, the Seafarers' Act, Fishing Vessels and their Crew Members' Accident Compensation Insurance Act and the Private School Teachers and Staff Pension Act.

* An employer shall report to the COMWEL on establishment of the insurance relationship, no later than 14 days from the date when he/she commenced the business and hired his/her employee(s).

b. Even the employers excluded from the obligatory contribution as mentioned above may contribute to the IACI fund, if they want to be insured and then obtain an approval from the Korea Workers' Compensation & Welfare Serivce (COMWEL) (excepting the cases of ③ and ⑤).

3) Insurance premium

a. In step with the integrated collection of the four social insurances, the basis to measure the premium of industrial accident compensation insurance has been changed in 2011, from the previous 'total amount of wage' to the 'total amount of remuneration (taxable labor income)'. Additionally, the payment method, which was previously based on annual reporting and payments by employers has been replaced with a monthly notification.

☞ Exceptionally, certain businesses which find it difficult to pay insurance premiums under a new system of monthly notification (in the sectors of construction and lumbering) shall use the previous annual reporting mechanism.

b. Accordingly, the insured employers shall report the total amount of paid remuneration no later than the end of February every year, using 'the written form of reporting total remuneration'.

※ In this case, the total amount of monthly remuneration for individual employees specified in the written form shall be the basis to measure the average monthly remuneration for the year concerned which, in turn, shall be the basis to compute the monthly insurance premium for the year concerned (the aggregate of individual employees' monthly remunerations × the industrial accident insurance premium reference rate).

☞ The industrial accident insurance premium reference rate is announced annually by the Minister of Employment and Labor in its official gazette.

c. In addition, the insured employers shall report the employment information and the average annual remuneration whenever there is a new or leaving employee at the workplace or other relevant change.

※ Employment information to be reported (and the point of time for reporting): new employee (15th of the following month); leaving employee (15th of the following month); leave (no later than 14 days from the commencing date of leave); employee transfer (no later than 14 days from the date of transfer); and information changes (no later than 14 days from the date of change)

4) IACI benefits

a.When an employee of the insured employer suffers an occupational injury or illness that requires four days or longer of medical treatment or dies or sustains a disability due to a work-related cause, IACI benefits shall be paid when the employee or his/her surviving family member submit an application or file a claim.

b. IACI benefits include: sickness benefit, suspended work benefit, injury-disease compensation annuity, disability benefit, survivor benefit, carer benefit, funeral expense benefit and vocational rehabilitation benefit (created on July 1, 2008).

※ The workers suffering pneumoconiosis may receive sickness benefit, pneumoconiosis compensation annuity, funeral expense benefit carer benefit and vocational rehabilitation benefit. However, they are not eligible to suspended work benefit, injury-disease compensation annuity, disability benefit and survivor benefit (under the revision of May 20, 2010).

c. In case an employee is given the IACI benefit for a work-related accident, the employer shall be exempted from the liability to compensate the employee for the damage incurred by the same accident under the Labor Standards Act, and he /she shall also be exempted from the liability for damages under the Civil Law or any other law or regulation within the range of the IACI benefit.

5) Industrial accident compensation procedure

a. In case an employee suffers an injury or disease at work or a work-related injury or disease (including death) and wants to receive IACA benefit for the injury or disease (or death), he/she (or his/her family) shall submit an application for sickness benefit (or a claim for survivor compensation) to Korea Workers' Compensation & Welfare Service (COMWEL).

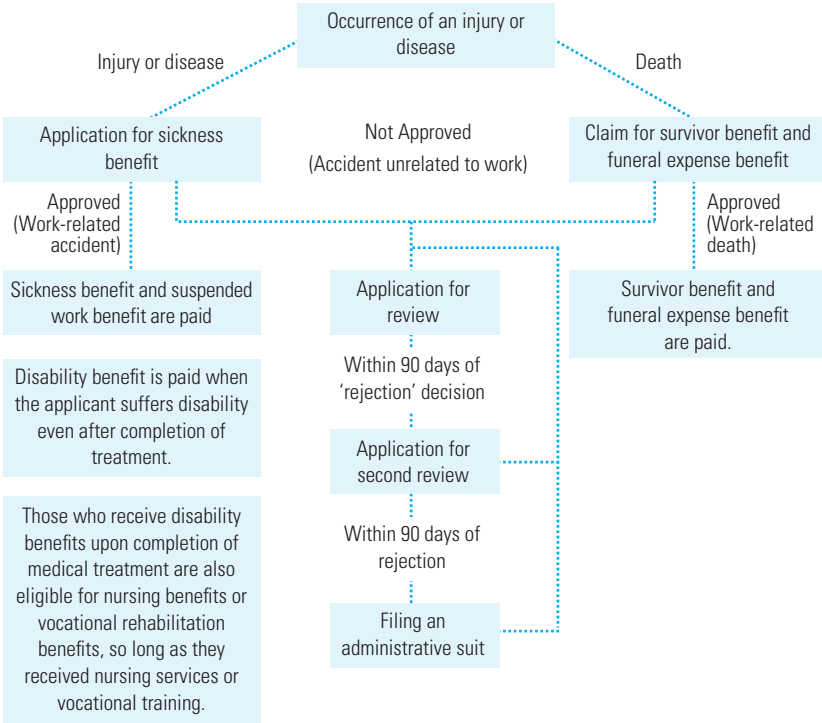
b. COMWEL, upon receiving the application for sickness benefit or the claim for survivor compensation, shall screen the application or claim in light of the relevant rules, determine whether the injury, disease or death involved is work-related, and then notify the applicant (employee or surviving family) of its decision.

c. When the injury or disease involved is found to be work-related, the employee shall be given sickness benefit and suspended work benefit for the period of his/her medical treatment and, if he/she suffers disability after the medical treatment is completed, shall be also paid disability benefit. In the case of a work-related death, survivors benefit and funeral expense benefit shall be offered.

d. When a disability benefit recipient is also eligible for nursing benefits has used nursing services, he/she shall be given nursing benefits. In case he/she takes vocational training to get employed or returns to the previous job, he/she shall also receive vocational rehabilitation benefits.

e. In case COMWEL determines that the injury, disease or death involved is not work-related and the applicant is not eligible for the benefit, the applicant may ask COMWEL to review the application within 90 days of the 'disapproval or non-payability' decision. If the applicant is still unsatisfied with the 'rejection' decision, he/she may file an application for second review or an administrative suit within 90 days of his/her knowledge of the decision.

Industrial accident compensation procedure



Incidence of occupational accidents in 2010

	End-Dec. 2009	End-Dec. 2009	Difference Year-on year change	(%)
No. of workplaces	1,608,361	1,560,949	47,412	3.04
No. of employees	14,198,748	13,884,927	313,821	2.26
No. of employees affected	98,645	97,821	824	0.84
- No. of occupationally injured	90,842	89,100	1,742	1.96
- No. of occupationally ill	7,803	8,721	-918	-10.53
No. of deaths	2,200	2,181	19	0.87
- Due to occupational injuries	1,383	1,401	-18	-1.28
- Due to occupational diseases	817	780	37	4.74
Accident rate(%)	0.69	0.70	-0.01	-1.43
Death rate (as rated per 10,000 persons)	1.55	1.57	-0.02	-1.27
- Due to occupational injuries	0.97	1.01	-0.04	-3.96

3. Employment insurance

1) Overview

The employment insurance (EI), which was introduced in July 1995 as a core element of the active labor market policy, is aimed at increasing competitiveness of the companies by providing a range of supports, as well as providing financial support for unemployed workers, preventing unemployment in the restructuring process and promoting re-employment of the unemployed.

2) Obligatory contribution to the EI fund

a. Every employer with one employee or more is obligated to pay contributions to the EI fund.

-However, the following are exceptions: unincorporated businesses with four full-time workers or fewer in the sectors of agriculture, forestry, fishing or hunting; construction projects built by non-constructors and priced below 20 million won or construction of a building of 100 ㎡ or smaller or the repair of a building 200㎡ or smaller; and domestic services.

• The obligated employer shall report to the local head office or branch of the Korea Workers Compensation and Welfare Service (COMWEL) on establishment of the insurance relationship and to the Employment and Labor Office under the local employment and labor office on acquisition of insurance coverage, both no later than the 15th day of the following month.

However, even an employer who is not obligated to pay EI contributions may be insured, if he/she, with the consent of a majority of his/her employees, has obtained approval of the head of the local COMWEL.

b. Daily employees and part-time employees are also covered by EI.

c. The following groups of employees are excluded from EI coverage.

① Those aged 65 or older (but eligible to EI programs of employment security and skills development);

② Those whose given hours of work is less than 60 hours per month (or less than 15 hours a week)

※ However, those who work for a living for three consecutive months or longer, and daily workers are covered by EI.

③ Those who are employed for the following jobs:
- "Public officials", as is defined in the State Public Officials Act and the Local Public Officials Act (public officials in special services or contract-based public officials may join EI starting September 22, 2008).
- Those who are subject to the Private School Teachers and Staff Pension Act
- The employees of special post offices under the Special Post Offices Act

④ Foreigners

In principle, foreigners are not covered by EI. However, F-2 visa (residence) and F-5 visa (permanent residence) holders are automatically obligated to join EI, and the holders of the visas that allow the holders to stay and get employed in Korea (C-4, E-1~E-8, E-10, F-4 and H-2) may choose to join EI. In the cases of the foreigners with D-7 (business supervisor), D-8 (corporate investment) and D-9 (international trade), the principle of reciprocity is applied: thus, if the law of the foreigner's own country excludes Korean people in that country from coverage of its employment insurance system, the foreigner is also excluded from EI coverage in Korea.

3) EI contributions

a. An insured employee shall report the statement on the total remuneration paid to all of his/her employees to the competent local office of the Korea Workers' Compensation & Welfare Service (COMWEL), no later than the end of February every year.

b. The employer shall pay the monthly insurance premium which is computed and imposed by COMWEL and notified to the National Health Insurance Corporation, no later than the 10th of each month.

- The monthly premium comes from multiplying the aggregate of individual employees' average monthly remuneration by the given contribution rate.

- The individual employees' average monthly remuneration refers to the taxable portion of their wage, for the purpose of calculating the insurance premium, under the Income Tax Act (thus, the nontaxable portion is excluded when calculating the premium).

c. The insurance premium to be paid by an employee (0.55%) shall be withheld by his/her employee at the time of wage payment.

d. An employer who fails to report the total remuneration paid, the estimated insurance contribution or the confirmed contribution or makes a fraudulent report shall be punished by a fine for negligence not exceeding three million won.

※ An employer in a construction or lumbering business shall report and pay both the estimated contribution of the current year and a confirmed contribution of the previous year, no later than March 31 of each year. (In case an insurance relationship is established during the insurance year, the employer shall report and make payments no later than 70 days from the date of the establishment of the insurance relationship.)
- The confirmed contribution comes from multiplying the total remuneration paid in the previous year by the contribution rate.
- The estimated contribution comes from multiplying the total remuneration estimated for the current year by the contribution rate.
- The estimated contribution may be paid all at once or in four quarterly installments. In case of a lump sum payment, 3% of the estimated contribution is discounted.

☞ EI contribution rates

Employment Insurance		Employee's Contribution	Employer's Contribution
Unemployment benefit		0.55%	0.55%
Employmet security/ skills develop-ment programs	Employers with fewer than 150	-	0.25%
	Priority employers with 150 employees or more	-	0.45%
	Employers with 150 employees or more but fewer than 1,000	-	0.65%
	Employers with 1,000 employees or more	-	0.85%

4) Job-seeking benefits

a. Job-seeking benefits are paid to an unemployed worker for a given period of time so that the worker can search for a new job and his/her family can make a stable living until he/she finds a job.

b. Qualifications for eligibility for job-seeking benefits

① Job-seeking benefits are paid to an unemployed worker who meets the given requirements for such entitlement. The benefit is paid when a qualified worker reports his/her unemployment to the competent Employment and Labor Office of his/her residential area.

※ Job-seeking benefits shall be not be paid to a worker once 12 months have passed from the following day of his/her separation. Therefore, it is advisable that unemployed workers report their unemployment status without delay.

Given periods of time for benefit payment (days)

Age \ Insured duration	below 1 year	1~3 years	3~5 years	5~10 years	10 yesrs or longer
Under 30	90	90	120	150	180
30~49	90	120	150	180	210
50 or older or disabled persons	90	150	180	210	240

Classification	Requirements	Benefit amount (Daily rate of work search benefit x the given number of days)
Job-seeking benefit	- Worked 180 days or longer at a workplace covered by the employment insurance during the last 18 months before unemployment; - Left the company by an involuntary reason such as a financial problem of the company; ※ Those who voluntarily left the company or were dismissed for a reason attributable to themselves are not eligible. - Has failed to find a new job in spite of his/her ability and willingness to work and a strong work search effort. ※ Those who have received or are sure to receive 100 million won in retirement pay or severance pay may not be eligible to unemployment benefit for 3 months from the date of reporting on unemployment. ※ With regard to a person who was a daily worker when he/she left the company, all of the following requirements should be fulfilled: ① He/she had worked less than 10 days during the month immediately preceding the date when he/she applied for the benefit eligibility; and ② In case he/she left a company for a reason which, under Article 45 of the Act, restricts his/her eligibility to the benefit, during the 180 insured days immediately preceding the date of his/her last job loss, he/she worked as a daily worker for 90 days or more of the 180 days.	50% of the average pay before job separation Maximum(1day): 40,000 won Minimum(1day): 90% of minimum wage rate (Minimum wage in 2011: 4,320 per hour) ※ Refer to the 186p table
Injury -disease benefit	- For the day(s) after reporting on unemployment that are not recognized as being unemployed because the worker concerned cannot work due to illness, disease or injury - In case an unemployed worker cannot work due to illness, disease or injury for 7 days or longer, he/she shall claim the benefit, by submitting documented evidence. - In case of childbirth, the worker shall receive this benefit for 45 days from the date of childbirth.	At the same amount as job-search benefit
Benefit for extended training	Unemployment benefit recipients who are enrolled in the training program required under the vocational ability development program of the local labor office	At the same amount as job-search benefit (within the limit of 2 years)
Individual extended benefit	Unemployment benefit recipients who have a particular difficulty in getting a job and are deemed to be in need of financial support for their living, based on their income level, property or dependants.	70% of the daily rate of job-search benefit (within the limit of 60 days)
Special extended benefit	The unemployed whose entitlement to unemployment benefit is terminated during a certain period designated by the Employment and Labor Minister, in case due to a rapid increase in unemployment or other reasons, it is particularly difficult to find a new job.	70% of the daily rate of job-search benefit (within the limit of 60 days)

5) Subsidies for employment security and skills development programs

These subsidies are available to the employers who, instead of cutting workforce, retain jobs or recruit unemployed people, so as to increase job security of incumbent employees while promoting employment of the disadvantaged workers.

Financial backing is offered to the employers who give vocational training to their employees and the workers who take up training for the purpose of self-development.

☞ For more information, visit the websites of the Ministry of Employment and Labor and the Korea Workers' Compensation & Welfare Service, respectively at www.moel.go.kr and www.kcomwel.or.kr.

a. The EI employment security program provides subsidies for the employers who take measures to create jobs.

① When an employer has created jobs by introducing work sharing, work shifts or reduced actual working hours and consequently has an increased number of employees.

- the employer shall be granted 3.6 million won per new employee once six months have passed from the date of introduction of the work arrangement concerned, and additional 3.6 million won after the following six months (capped at 30% of the average monthly number of employees before the introduction of the work arrangement).

② When an employer of a preferentially supported business in manufacturing or knowledge-base services has improved the employment environment and hired unemployed workers and consequently has an increased number of employees.

- the employer shall be reimbursed a total of 50% (capped at of 50 million won) of the money spent in improving the employment environment (limited to 10 million won per increased employee) and granted 1.2 million won per increased employee (within the limit of 30 persons).

③ When an employer has created jobs by splitting the jobs required for business, reorganizing work schemes or developing part-time jobs and has hired

unemployed persons for the new part-time jobs on an indefinite-term contract.

- the employer shall be granted 50% of the wage paid to the new part-time employees (capped at 400,000 won per employee per month) six months after his/her employment and the following six months (payments provided twice).

Other than this, the subsidies are also avaliable to employers in promising sectors including new renewable energy sector who hire unemployed persons, or to employers of a preferentially supported business in manufacturing or knowledge-based services who hire a professional workforce or use the workforce under the sponsorship of large companies.

b. The EI employment security program also provides subsidies for employment retention

① When an employer who faces inevitable employment adjustment challenges because of changes in business conditions or industrial structure* has undertaken any of the following actions to retain jobs and consequently has succeeded in retaining jobs, the employer shall be granted the subsidies as below:

※ For example, the sales or production in the year has decreased by 15% or more from a year earlier.

- In case an employer has undertaken a temporary business shutdown for more than 20% of the given work days in a month and paid temporary shutdown benefits to the employees concerned, the employer shall be reimbursed 2/3 (1/2, in case of large companies) of the benefits paid.
- In case an employer has given his/her employees leave for one month or longer with or without pay, the employer shall be reimbursed 3/4 (2/3, in case of large companies) of the wages paid and also granted training expenses. For unpaid leave, 200,000 won per person shall be given, and if training is offered during the unpaid leave, training expenses and allowances are provided.
- In case an employer has converted into a different business and redeployed 50% or more of the previous employees into the new business, the employer shall be reimbursed 3/4 (2/3, in case of large companies) of the wages paid.

② Subsidies are not available in the cases of changes due to seasonal factors

- The maximum duration of subsidies is 180 days for temporary business shutdown, vocational training and leave all combined (one year for work-force redeployment).
- If training is given upon completion of a job retention program for 180 days, subsidies may be granted for up to an additional 90 days.

※ Within the limit of 40,000 won per employee (training expenses excluded)

c. The EI employment security program also provides subsidies for employment of aged persons

① Aged employment promotion subsidy

Category	Qualifications	Eligible benefits and duration
Retirement Age Extension	When employers remove the retirement age or extend the minimum retirement age by at least one year to 56 or above.	300,000 won per month is provided for one year per worker who has worked 18 months or longer in the relevant business and, with the removal or extension of the retirement age, is able to continue to work. - Support is provided for elderly employees who continue to work after reaching the previous retirement age within 5 years after the retirement age is removed or raised.
Reemploy-ment of Retirees	When employers continue to hire elderly employees who reached the retirement age (57 or older) and have been working for 18 months or longer, or rehire a retired person within 3 months of his/her retirement.	300,000 won per month per rehired worker is provided for six months (12 months, in case of manufacturers with 500 employees or fewer).

② Wage peak subsidy

Category	Qualifications	Eligible benefits and duration
Retirement Age Extension	When employers raise the minimum retirement age to 56 or older with the prior consent of the representative of his/her employees, and the employees have been working for 18 months or longer for that employer and have been getting reduced wages since a certain point after they turned 50 ※ Wage reduction rate: No less than 20% of the peak wage	An employee whose wage is reduced to 80% or lower of his/her peak wage shall be given a subsidy of up to 6 million won per year to make up for the wage difference for up to 10 years from the date when the wage begins to decrease.
Reemploy-ment	When employees have been working for 18 months or longer in a business where the retirement age is 57 years or older and the employees are rehired within 3 months after their retirement with reduced wages	An employee whose wage begins to decrease before reaching the retiring age (55 or older) shall be given a subsidy of up to 6 million won per year to make up for the wage difference from the 80% of his/her peak wage, while an employee whose wage begins to decrease upon or after reaching the retiring age shall be given a subsidy of up to 6 million won per year to make up for the wage difference from the 70% of his/her peak wage, both for up to five years.
Working Hours Reduction	When employees who continue to work via retirement age extension or reemployment work less than 50% of their peak wage working hours	An employee whose wage is reduced to 50% or less of his/her peak wage shall be given a subsidy of up to 3 million won per year to make up for the wage difference from the 50%, for up to 10 years from the date when the wage begins to decrease (if he/she has been reemployed, for up to five years from the date of reemployment).

d. In an effort to promote employment of the people who find it particularly hard to get a job under ordinary conditions, the subsidy for employment promotions shall be granted to the employers that hire unemployed persons, who fall into any of the following categories and who have registered with the employment security office, as an insured employee for at least six months.

(1) Those who have finished an employment support program for the persons that, the Minister of Employment and Labor notifies as having particular difficulty in finding a job under ordinary conditions;

(2) Persons with severe disabilities under Article 2(2) of the "Act on Employment Promotion and Vocational Rehabilitation for Disabled Persons" who are unemployed for one month or longer;

(3) Unemployed female breadwinners (as is prescribed in the regulations of the Employment and Labor Ministry) who are unemployed for one month or longer;

- Those protected by Article 11.2 of the "Enforcement Decree of the National Basic Living Security Act", or
- Those protected under Articles 5 and 5.2 of the "Single-Parent Family Support Act"

(4) Those with limited or no access to the employment support program due to residence in islands who are unemployed for one month or longer

※ Eligible benefits and duration

- The subsidy shall be granted in two installments: 2.6 million won shall be given six months after employment and 3.9 million won shall be given another six months later (capped at 75% of the wage paid).
- In case of the persons with severe disabilities or on welfare who are paid 1.5 million won or more per month, 3.4 million won shall be given six months after employment and 5.2 million won shall be given another six months later.
- The maximum number of subsidy recipients per company is 30% (20% in large companies) of the insured employees as of the end of the immediately preceding year. If the number of those eligible exceeds 30 employees, the subsidy shall be given only up to 30 employees. The number of subsidy recipients in a business with nine employees or fewer is limited to three.

e. The EI subsidies are given to the employers who retain the employees on parental leave or hire workers to replace them.

- In case an employer gives the employee childcare leave of 30 days or longer (excluding the days of maternity leave) or working hour reductions during childcare period and retains the employee for 30 days or longer upon returning to work, the employer shall be granted a monthly 200,000 won per person for the period of retained employment.

  ※ When an employee is retained for 30 days after returning to work from childcare leave, 50% of the subsidy is given; and the remaining 50% is given when the employee is retained for six months.

- In case an employer hires a worker to replace the employee on childcare leave (or working hour reduction during childcare period) 30 days before leave or reduced working hours (or, if childcare leave or reduced working hours is used immediately following the end of maternity leave, then 30 days before maternity leave) and retains the substitute worker for 30 days or longer and also retains the employee who has used childcare leave (or working hour reductions during childcare period), for 30 days or longer upon returning from the leave (or working hour reductions), the employer shall be granted a monthly 300,000 won (200,000 won, in large companies) per substitute worker for the period during which replacement work is used.

  ※ During the three months before the employment (hiring) and the six months after the employment (hiring), no employee should be dismissed for the purpose of employment adjustment.

- In case an employer signs a contract of employment for one year or longer with an employee whose contract or dispatched period is terminated while she is on maternity (or miscarriage or stillbirth) leave, immediately upon expiration of the period or within one year from childbirth, the employer shall be given a monthly 400,000 won for six months.
- In case the employer concludes an indefinite-term contract, he/she shall be given a monthly 300,000 won for the first six months and a monthly 600,000 won for the following six months.

f. An employer who gives vocational training to his/her employees shall be entitled to financial backing for the training costs.

① When an employer directly provides vocational training to his/her present or prospective employees or commissions the training to a specialized training provider, he/she shall be subsidized for training costs.

※ How to calculate the subsidy for training costs: the reference unit amount of training costs for the sector concerned × adjustment factor × the number of training hours × the number of trainees × 80% (100%, in case of preferentially supported businesses)

- In case an employer provides basic training of a monthly 120 hours or longer to his/her prospective employees or registered job applicants for one month or longer and gives them training allowance, the employer shall receive up to 200,000 won per month for the training allowances paid.
- In case an employer provides training of daily five hours or longer while giving the trainees meals and lodging or paying the expenses of meals and lodging, the employer shall receive up to 3,000 won per day for the meals and up to 8,500 won per day for the lodging (capped at 212,500 won per month).

② When an employer provides on-site-job training to the trainees who have completed a course of collective training or e-training, the employer shall be subsidized for training costs.

※ How to calculate the subsidy: the reference unit amount of training costs for the sector concerned × adjustment factor × the number of training hours × the number of trainees × 40% of the 80% of training costs spent (100%, in case of preferentially supported businesses)

③ In order to support the small and medium companies which cannot afford to invest in vocational training for their employees, the government provides support programs to promote organized learning and core job skills of SME employees.

- Subsidies are provided for seven types of support including operation of learning organizations and arrangement of the learning space and the subsidies range from 70% to 100% of the costs spent depending on the type of program.
- In case of training to promote core job skills, the subsidy shall amount to 100% of the training costs spent (capped at 20,000 won per hour) and the labor costs (100% of the minimum wage in the production sector).

g. When an employer or a training corporation builds a training facility or purchases training equipment, a loan of up to 6 billion won shall be granted to cover up to 90% of the costs.

Loan interest rate	- Preferrentially supported business and employer organizations: annual 1% - Large companies and employer organizations participating in the training consortia for smaller companies: annual 1% - Large companies: annual 2.5% - Worker organizations, training corporations and training providers designated by the Ministry of Employment and Labor: annual 4%
Loan period	- Within 10 years (5 years after a 5-year grace period)
Repayment method	- Interest: To be paid no later than the final day of each quarter (four times a year) to the designated financial institution - Principal: To be paid in 4 equal installments a year for 5 years after a 5-year grace period

h. When an employer, whether independently or jointly, develops and operates a qualifications program for his/her employees, which is tailored to the unique needs of his/her business, he/she shall receive a subsidy to cover part of the expenses of the qualifications system.

Q & A

Q) What support can an employer receive from the government if the employer, looking beyond an economic crisis, wants to retain employees or employ new workers?

A) An employer who makes effort to retain employees are eligible to the following subsidies:

① Employment retention subsidy

• In case an employer carries out a temporary business shutdown or leave of absence to retain incumbent employees when employment adjustment is inevitable due to economic downturns, the employer shall be reimbursed 1/2~3/4 of the wages and allowances paid for the duration of the employment retention effort.

② Subsidy for paid training leave and replacement work in SMEs

• In case an SME employer (a preferentially supported business or a business

with fewer than 150 employees) provides his/her employees with paid leave of 30 days or longer during which the employees receive vocational training of 120 hours or longer, and hires workers to replace them, the employer shall be reimbursed the training costs spent, the wages paid to the employees and part of the labor costs spent to hire replacement workers.

- The subsidy amount for training costs is calculated as follows: the reference unit amount of training costs for the sector concerned × adjustment factor × the number of training hours × the number of trainees × 100%.

- The subsidy amount for the wages paid to the employee trainees is calculated as follows: the number of training hours × 150% of the hourly minimum wage.

- The subsidy amount for labor costs of replacement workers is calculated as follows: the number of the given work hours × 100% of the hourly minimum wage.

③ Subsidy for employment promotion

- An employer who hires disadvantaged workers such as aged workers, unemployed youths, long-term unemployed persons or female workers, through an employment security office shall be given for one year, a monthly subsidy of 150,000~600,000 won per worker hired.

④ Subsidy to promote use a professional workforce at SMEs

- In case an employer with a preferentially supported business in manufacturing or knowledge-based services hires a professional workforce such as technical experts and product or technology developers, or hires or uses them under the sponsorship of a non-preferentially supported company, the employer shall receive a government subsidy.

  The subsidy level is a monthly 1.2 million won per professional worker hired for the first six months and a monthly 600,000 won per worker for the following six months, provided within the limit of 3/4 of the wages paid by the employer to the professional worker concerned.

⑤ Subsidy to support new work shifts

- An employer who increases the number of his/her employees by adopting a new work shift system shall receive a government subsidy. If the employer introduces a work shift or increases the number of shifts (to four or fewer) and

consequently employs more workers, he/she shall receive a quarterly 1.8 million won per increased employee (1.2 million won in the case of large companies) for one year (limited to 1/3 of the previous number of employees).

※ Employees whose monthly wage is less than 600,000 won or who are on a fixed-term contract of employment or are hired for part-time and temporary work are not eligible.

Q) Is an executive of a foreign company also covered by the Employment Insurance?

A) The employees in a company covered by the Employment Insurance shall be insured by the EI, whether the company is a Korean or foreign-based one. However, those who do not fall into the category of employees such as CEOs are not insured.

'Employee' is defined as a person who provides work under the employer's supervision and instruction and receives money or valuables in return for his/her work in a form of wage. Accordingly, the director and the auditor of an incorporated company, the director of a corporate body under Civil Law and a representative or an executive position of an association may not be treated as employees.

However, if a person, despite his/her job title of executive director, director, auditor or vice president, does not have any practical power or authority to execute the matters concerning the employees or any responsibility for personnel management, labor affairs or any other aspect of business management, the person shall be regarded as an employee. In this light, specific facts should be examined in order to determine whether or not a person is an employee.

Q) If an employee leaves the company voluntarily, is he/she eligible for unemployment benefits under Employment Insurance? What are the qualifications for eligibility for the benefits?

A) Unemployment benefits are available to the unemployed workers who meet the following qualifications: ① they should be insured for 180 days or longer during the immediately preceding 18 months; ② they have left the company for involuntary reasons such as an economic dismissal or upon expiration of their employment contract; ③ they have not found a new job even though they have the will and ability to work; and ④ they are actively searching for work

In principle, a worker who has left the company on a voluntary basis is not entitled to unemployment benefits. Still, if the worker had made all efforts to avert separation only to find it impossible to continue his/her employment for a reason attributable to the employer, he/she is eligible for unemployment benefits.

※ In any of the following cases, even a voluntary leaver is eligible for unemployment benefits.

1. Any of the following lasted for two months or longer within one year immediately preceding the date of separation:
   - The actual working conditions were lower than those proposed at the time of recruitment or those which ordinarily applied to the employee;
   - The wage was unpaid;
   - The wage paid for the given work was lower than the minimum rate under the "Minimum Wage Act";
   - The restriction on extended work which is provided for in Article 53 of the Labor Standards Act was violated; or
   - As a consequence of the temporary business shutdown, the wage paid was less than 70% of the average wage before the temporary shutdown.

2. The employee faced discriminated at the workplace on the ground of religion, gender, physical disability or union activity.

3. He/she suffered, against his/her own will, sexual harassment, sexual abuse or another form of sexual assault at workplace.

4. The workplace was sure to go bankrupt or shut down, or it intended to carry out a massive job cut.

5. He/she was asked to resign by the employer or signed up for voluntary retirement under the employment adjustment plan, for any of the following causes:
   - Transfer, merger or acquisition of the business;
   - Abolition of part of the business, or occupational conversion;
   - Abolition or curtailment of the organization due to restructuring of the staff organization;
   - Modifications in work methods as a consequence of new technologies or technical innovations; or
   - Economic difficulty, personnel congestion or any other similar cause

6. He/she could not commute to work (as it took three hours or longer to go to and from the workplace in an ordinary means of transportation that was available to him/her) for any of the following causes:

- Relocation of the workplace;
- Job transfer to a workplace in another local area;
- Change of residence to live together with his/her spouse or dependants; or
- Any other unavoidable cause

7. He/she had to give care to his/her parent or live-in relative who suffered illness or injury for 30 days or longer but was not allowed to use leave for the days for a reason attributable to the company.

8. A "serious accident", as is defined under Article 2.5 of the "Occupational Safety and Health Act", took place at the workplace and, despite the Employment and Labor Minister's order to improve safety and health conditions, failed to improve the conditions by the due date, exposing the employees to the risk of the same accident.

9. It is objectively acknowledged, based on the opinion of a medical doctor or the employer that the insured employee could not perform the given work due to lack of physical strength, physical or mental disability, illness, injury or impairment of vision, hearing or the sense of touch and he/she was not allowed to switch to another type of work or take leave for a reason attributable to the company.

10. He/she could not continue to perform the work, due to pregnancy, childbirth, parenting of a child under three years or military service under the "Military Service Act", but was not allowed to take leave for a reason attributable to the company.

11. The employer's business became unlawful as a consequence of formulation or revision of the applicable laws and regulations or, unlike at the time of recruitment, the employer came to produce or sell the goods or services that are forbidden in the laws and regulations.

12. He/she could not continue to work at the workplace, as he/she reached the given retiring age or his/her contract of employment expired.

13. It is objectively acknowledged, in light of the conditions of the company and the insured employee, that other ordinary employees would also have left under the conditions.

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V. Industrial Safety and Equal Employment

1. Preventing industrial accidents

An employee's injury at work is not only a misfortune to the employee and his/her family but also a loss to the company he/she belongs to, in terms of reduced skilled manpower and compensation for the injury. In this light, an employer shall make every effort to prevent occupational accidents.

1) Safety and health education

a. An employer shall educate a new employee on occupational safety and health in relation to his/her work for 8 hours (1 hour, in the case of daily jobs) or longer, and shall give an additional educational course lasting 2 hours (1 hour, in the case of daily jobs) longer whenever the employee's job description is changed (Article 31 of the Industrial Safety and Health Act (ISHA)).

b. Afterwards, an office employee or an employee who is directly engaged in the work of sales should be given occupational safety and health education, on a regular basis, at least for 1 hour per month or 3 hours per quarter and the employees in other types of occupations should be given such education at least for 2 hours per month or 6 hours per quarter (at least 2 hours per month, in the case of the employees who are engaged in the specified 38 dangerous or harmful jobs) (Article 31 of ISHA and Appendix Table 8 of the Enforcement Rules of ISHA).

c. In particular, when an employer hires an employee for a dangerous or harmful job, such as producing or handling explosives or inflammables (as are specified in Appendix Table of the Enforcement Decree of ISHA), the employer shall educate the employee on occupational safety and health for 16 hours (2 hours, in the case of daily jobs) or longer (Article 31 of ISHA).

2) Setting up and operating the industrial safety and health committee

a. A workplace with 100 full-time workers or more (those with 50~99 workers in the case of dangerous or harmful occupations) and a construction business with the projects priced at 12 billion won (15 billion won in the case of public works

projects) or more shall set up and operate an occupational safety and health committee and shall devise a set of occupational safety and health regulations (Articles 19, 20 and 22 of the Occupational Safety and Health Act and Article 25 of the Enforcement Decree of the Act).

☞ Regarding the designation of the committee members and composition and operation of the committee, refer to the Article 25-2 of the Enforcement Decree of the ISHA, and for deliberation and others, refer to the Article 19 of the ISHA.

b. In the case of construction industry, if a council on occupational safety and health is organized and in operation with the same number of members from labor and management, it is regarded that the occupational safety and health committee (Article 19 of the ISHA) and a consultative body (Article 29 of the ISHA) concerning safety and health is constituted and in operation (Article 29-(2) of the ISHA).

☞ Regarding the constitution and operation of a labor-management consultative body, please refer to Articles 26-3~26-5 of the Enforcement Decree of the ISHA.

3) Safety and health management structure

An employer with 50 employees or more shall appoint qualified safety and health officers and report on such appointment to the local employment and labor office (Article 13~18 of ISHA):

- Safety officer (1 or 2 persons, depending on sector and company size)
- Health officer (1 or 2 persons, depending on sector and company size)
- Safety and health supervisor (1 supervisor who is the person actually in general control of the business, in the case of a business with 100 employees or more; and in the case of dangerous or harmful work, 1 supervisor in a business of 50 employees or more)

※ For criteria for selection and allocation of safety and health officers, see Appendix Tables 3 and 5 of the Enforcement Decree of the ISHA, and for functions, authorizations and appointment of the officers, see Articles 12~24 of the Enforcement Decree of the ISHA.

4) Evaluating the working environment

An employer of the business dealing with dangerous or harmful chemical substances or producing a high level of noise shall evaluate the working environment within 30 days from the date when a new workplace or work process is added or there is any change in the existing workplace or work process. Afterwards, an additional evaluation shall be made once in 6 months (the frequency may be adjusted to once every three months or once a year, depending on the evaluation results). The evaluation results shall be reported to the local employment and labor office within 30 days from the completion date of the evaluation (Article 42 of the ISHA).

※ When the evaluation reveals that a certain harmful element exceeds the legal limit of exposure, the employer concerned shall submit a report stating what he/she did to improve the working environment within 60 days from the completion date of the evaluation.

5) Medical examination

a. An employer shall offer his/her employees a regular medical checkup, to protect and maintain their health (Article 43 of the Industrial Safety and Health Act).

- Employees who are required to take a special medical checkup (as they are engaged in the work dealing with harmful substances or materials) should receive medical checkups before they are assigned to the work, as well as special medical checkups, periodical medical checkups, and tentative medical checkups. In addition, medical checkups should be conducted for them whenever necessary (Article 98 of the ISHA Enforcement Rules).
- All employers should ensure that the general medical checkup is conducted at least once every two years for the employees engaged in office work, and at least once every year for other employees.
- When an employer receives the result of a special medical checkup from the medical service provider, he/she should take any measure to protect the employee's health and then report to the jurisdictional local employment and labor office.

b. With regard to an employee who develops an infectious disease, mental disorder or another disease which might worsen due to work, the employer shall prohibit or restrain the employee from working, in accordance with a medical doctor's

prescription (Article 45 of the ISHA).

※ For details on those whose work shall be prohibited or restricted due to disease, see Articles 116 and 117 of the Enforcement Rules of the ISHA.

6) Required actions for occupational safety and health

a. An employer shall take necessary actions for occupational safety and health as prescribed by the Ordinance of the Ministry of Employment and Labor, to prevent possible occupational accidents and diseases (Articles 23 and 24 of the ISHA).

☞For details on the required actions for occupational safety and health, please refer to the Rules on Industrial Safety Standards (No. 293 of the Ordinance of the Employment and Labor Ministry) and the Rules on Industrial Health Standards (No. 195 of the Ordinance of the Employment and Labor Ministry).

- An employer shall install or attach the safety and health markings for harmful or dangerous materials or processes, for the purpose of warning employees against them or increasing the awareness toward occupational safety and health (Article 12 of the ISHA).

b. In case there is an imminent danger of occupational accident or there has occurred a critical accident at work, the employer shall ensure that the work concerned is immediately stopped and necessary actions for occupational safety and health are taken before the work is resumed (Article 26 of the ISHA).

7) Restricting the use of harmful substances

The ISHA restricts the use of harmful materials, such as radiation and chemical substances, as follows:

① No person may produce, import, transfer, supply or use the harmful substances, such as paints containing white lead, listed in Article 29 of the Enforcement Decree of the ISHA. In addition, a person who wants to manufacture or use any of the particularly harmful substances, including dicholorobenzidine, nitrate, sulfate and hydrochloride, shall obtain prior permission from the local employ-

ment and labor office (Articles 37 and 38 of the ISHA).

② As for the prescribed 13 kinds of harmful substances, including benzene, which might cause occupational diseases to workers, the exposure level at workplace should be kept below the given level (Article 39.2 of the ISHA).

③ A person who wants to manufacture or import chemical substances other than those listed in Article 32 of the Enforcement Decree of the ISHA, including naturally produced chemical substances and radioactive materials, shall conduct a testing on harmfulness and danger of the substances that he/she wants to manufacture or import, and then report the testing result to the Employment and Labor Minister (Article 40 of the ISHA).

④ A person who wants to manufacture, import, use, transport or store chemical substances shall prepare the Material Safety Data Sheets(MSDS) stating the names of the chemicals, the degree of harmfulness or risk and the emergency treatment; post the MSDS at the workplace; label the containers and packages of the chemicals; and inform the employees of what are included in the MSDS (Article 41 of the ISHA).

☞ The KOSHA-Net(http://www.kosha.net), the information service net of the Korea Occupational Safety and Health Agency (KOSHA), provides an online MSDS data search service with regard to the chemical substances available within the country.

⑤ An employer of the workplace with harmful or dangerous facilities shall prepare and submit a process safety report to the authority concerned, in order to prevent any critical accident at work resulting from leakage of dangerous substances from the facilities, or fire, explosion, etc. of the facilities (Article 49.2 of the ISHA).

☞ For details on the businesses and substances covered, see Article 33-6 and Appendix Table 10 of the Enforcement Decree of the ISHA.

8) Restricting the manufacturing, import or use of harmful or hazardous machinery, equipment and facilities or protective devices and gears

The ISHA restricts the manufacturing or import of harmful or hazardous machinery, equipment and facilities or protective devices and gears, as follows:

① A person who wants to manufacture or import any of the harmful or hazardous machinery and equipment (8 kinds) or protective devices (8 kinds) and gears (12 kinds) shall prove that they comply with the safety standards given by the Labor Minister and shall ensure that the machinery, equipment, device or gear he/she wants to manufacture or import obtains the safety certification by the Employment and Labor Minister (Article 34 of the ISHA).

② A person who wants to manufacture or import any of the machinery and equipment (3 kinds) or protective devices (8 kinds) and gears (3 kinds) which are subject to voluntary safety checkup and reporting shall confirm that the machinery, equipment, device or gear he/she wants to manufacture or import comply with the voluntary safety checkup standards given by the Employment and Labor Minister and shall report the result to the Minister.

☞ For the list of the machinery, equipment, etc. which are subject to the voluntary safety checkup, please refer to Article 28.2 of the Enforcement Decree of ISHA.

③ No person may manufacture, import, transfer, rent or use any of the machinery, equipment, facilities, devices or gears which are subject to safety certification or voluntary safety checkup and reporting unless he/she obtains such safety certification or conducts voluntary safety checkup and reporting, whichever is appropriate (Articles 34.4 and 35.4 of ISHA).

☞ The product for which safety certification is obtained or voluntary safety checkup and reporting is completed shall have the mark on it.

The ISHA restricts use of harmful or hazardous machinery, equipment and facilities, as follows:

① The machinery or equipment specified in Article 27 of the Enforcement Decree of ISHA, including presses, lifts and boilers, may not be transferred, rented, installed or used unless adequate protective measures for the safety purpose are taken (Article 33 of ISHA).

② An employer who uses presses, lifts and other kinds of harmful or hazardous

machinery, equipment or facilities (12 kinds) shall have them tested for their safety in accordance with the standards set by the Employment and Labor Minister. No one may use any of them unless they have passed the test (Article 36 of ISHA)

☞ For the list of the machinery and equipment subject to the safety test above, please refer to Article 28-3 of the Enforcement Decree of ISHA.

③ In case an employer creates a program of voluntary safety examination which may replace the safety test above in consultation with the employee representatives and conducts the voluntary program, he/she will be exempted from the safety test. Each voluntary program is valid for 2 years (Article 36-2 of ISHA).

☞ The voluntary examination program may be conducted, either directly by the employer using his own staff and facilities or by any of the providers designated by the Employment and Labor Minister.

9) Safety and health actions in subcontracted work

When an employer wants to subcontract part of his/her business in the same workplace, he/she shall take necessary actions, as follows:

① In case an employer wants to separate from his/her business a section of harmful or dangerous work (e.g. plating or dealing with mercury, lead or cadmium) which is specified in Article 26 of the Enforcement Decree of the ISHA to subcontract out the work so long as it would be done within the same workplace, the employer shall obtain prior approval for such subcontracting from the local employment and labor office (Article 28 of the ISHA).

② When subcontracting out part of his/her business, the employer shall take actions for occupational safety and health to prevent occupational accidents among the employees of the subcontractor (Article 29 of ISHA).

☞ For details on the actions for occupational safety and health for the subcontracted work, please refer to Articles 29~30-2 of the Enforcement Rules of ISHA.

③ When an employer in the construction sector signs a construction contract, he/she shall include the occupational safety and health management expense in the

projected price of the contract, and shall not use the expense for any other purpose. In addition, when the construction project is of a given size or larger, the employer shall seek technical guidance by a professional agency for occupational accident prevention designated by Minister of the Employment and Labor (Article 30 of the ISHA).

☞ For details on the construction projects covered, see Article 32 of the Enforcement Rules of the ISHA.

10) Support programs for industrial accident prevention

The government offers technical assistance for health management to the companies under the risk of harmful elements such as chemical substances and dusts.

① Every workplace insured with the Industrial Accident Compensation Insurance is eligible and in particular workplaces with fewer than 50 employees are provided with technical assistance.

② The government provides technical assistance for management of work environment; establishes a local occupational health center to give workplace health management services including counseling about occupational diseases; and helps promote activities to improve health at the workplace.

The government offers technical assistance for safety management to prevent occupational accidents.

① Every workplace insured with the Industrial Accident Compensation Insurance is eligible and in particular manufacturing businesses with fewer than 50 employees and the construction businesses with the projects priced at less than 12 billion won are provided with technical assistance.

② The government provides technical assistance to accident-prone workplaces; helps them build up a safety management system; gives technical guidance to prevent construction accidents and chemical accidents; and carries out accident prevention programs tailored to the service sector.

A workplace seeking to install industrial accident prevention facilities may receive

a long-term loan at a low interest rate.

- Every workplace insured with the Industrial Accident Compensation Insurance is eligible to this loan within the limit of 300 million won per workplace.

The government provides a support program to create a clean workplace for disadvantaged employees at high-risk businesses with fewer than 50 employees that are prone to accidents due to poor technical and financial capacity.

① The government provides comprehensive support, in terms of technology, financing and education, and in a close link with the areas of inspection, supervision and technical assistance.

② The subsidy amounts to 50% of the costs spent for this purpose, capped at 20 million won per workplace.

Q & A

Q) When an industrial accident takes place, under what conditions can an affected employee file a civil suit for damages and what is the scope of the employer's liability for the accident?

A) In case an industrial accident has caused harm to an employee, the employee may file a civil suit for damages to the court of law if the accident is attributable to the employer's intention or fault.
It should be noted, however, that when the employee gets compensation for the accident in accordance with the Industrial Accident Compensation Insurance Act, the employer's civil liability for damages shall be reduced by the amount of monetary compensation paid under the Act and, accordingly, the employee may receive civil compensation for damages with the amount from IACI compensation benefits subtracted.

Q) What kinds of educational courses should the employer give to his/her employees on occupational safety and health as required by the law, and how many hours should each course provide?

A) An employer is required to provide his/her employees such safety and health cours-

es as follows, so that they can acquire information on harmful or dangerous factors at work and other relevant knowledge on occupational safety and health and can deal with them properly to prevent industrial accidents.
The obligatory education for occupational safety and health that an employer should provide are: ① regular course; ② course for newly recruited employees; ③ course for modified work ; and ④ special course.

"Regular course" is categorized as below, depending on the occupation of the employee concerned:

Type of occupation of employee		Training hours
Office work		At least 1 hour per month, or at least 3 hours per quarter
Non-office work	Direct sales work	The same as above
	Work requiring particular care against hazards and danger	At least 2 hours per month
	Other work	At least 2 hour per month, or at least 6 hours per quarter
Supervision or management position		At least 8 hour per half-year, or at least 16 hours per year

The "course for newly recruited employees" should be one hour or longer for daily employees and eight hours or longer for other employees. The "course for modified work" should be one hour or longer for daily employees and two hours or longer for others.
Additionally, the "special course", which is given to the employees who are allocated to harmful or dangerous work, should last two hours or longer for daily employees and 16 hours or longer for other employees. However, it is reduced to two hours or longer for short-term or intermittent work.

2. Institutions and assistance for employee welfare promotion

Greater welfare of employees is beneficial in that it helps secure human resources, increase productivity and motivate employees to work.
It is advisable that the specific ways to improve employee welfare should be determined after the employees are fully consulted.

1) Employee welfare fund (EWF)

Employers are encouraged to build an in-house employee welfare fund (under the Basic Workers Welfare Act)

① The requirements for establishing an employee welfare fund are: to set up a preparatory committee on establishment of the fund consisting of representatives for the employer and employees; to make the company contribute the amount of money determined by the committee (the reference amount is 5% of the net profit before corporate tax or income tax of the company for the immediately preceeding business year); and to obtain approval from the Ministry of Employment and Labor.

② Part of the fund principal and the whole profit of the current business year shall be used: to help employees accumulate their wealth by providing a financial aid to purchase houses or employee stocks; to lend money to ensure a stable living for low-income employees and their family; and to grant scholarship.

③ For the purpose of mutual cooperation and gains sharing between large companies and SMEs, employers may use in-house employee welfare funds for suppliers' employees or dispatched employees, as well as for their employees (effective December 9, 2010).

④ The entire amount of money contributed to the fund shall be treated as a pecuniary loss under the taxation code. Furthermore, no registration tax is imposed on this kind of fund, and tax benefits are available to the payments made to employees under the employee welfare fund system.

2) New employee stock ownership program (ESOP)

Employers are advised to utilize a new version of the employee stock ownership program(ESOP) (under the Basic Workers Welfare Act).

① The "Employee Stock Ownership System" enables employees to acquire and hold the stocks of the company they are working for, helping them create wealth and improve corporate productivity. ESOP has introduced various arrangements, including priority allocation system (20% lock-up option is given in the event of capital increase with compensation), employee stock purchase plan (a sort of stock option) and loan-type plan, expanding employees' opportunity to acquire the company stocks and lowering their risk of property loss.

② In order to establish an employee stock ownership association to operate the employee stock ownership system, the employer shall form a preparation committee, hold an inaugural general meeting of the association and then report on the establishment to the local employment and labor office.

③ For the purpose of extending the benefits of the employee stock ownership system when a company with the system has a supplier whose transaction with the company accounts for 50% or more of its annual sales, the supplier's employees may also join the employee stock ownership association with the consent from the association (effective December 9, 2010).

④ All contributions made by the employer to the employee stock ownership association shall be treated as business expenses, and the contributions made by major shareholders shall be non-taxable within the limit of the amount equivalent to 30% of their income. Meanwhile, employees shall receive tax benefits with money paid to purchase company stocks, up to 4 million won per year, being non-taxable.

3. Equality in employment

The principle of equal employment is aimed at guaranteeing equality in employment and treatment for both men and women while promoting female employment and increasing workers' welfare by facilitating their reconciliation of work and family.

- To this end, the government has been committed to reconciling family and work, while making every effort to address the gender-based discrimination in employment, relieve female workers of the burden of housework and childcare and upgrade the maternity protection to the degree acceptable in the light of international standards.

The government has given the "Equal Employment Award" to the companies with good practices and records in equal employment, and the "Affirmative Action Award" to the companies which have taken active measures to remove gender-based discriminatory practices in employment, on the Week of Equal Employment every year. The winners of these awards are also offered administrative and financial incentives.

1) Prohibiting discrimination in employment

The term "discrimination" in employment refers to such cases where an employer applies different terms and conditions of employment or take actions to the disadvantage of an employee, on the ground of the employee's gender, marital status, family composition, pregnancy, childbirth, etc., without giving a justifiable reason.

- Even when an employer applies the same terms and conditions of employment to male and female employees, if the number of male or female employees who meet the conditions is significantly lower than that of the employees of the opposite gender, bringing unfavorable consequences to the employees of a particular gender, and the employer cannot justify those terms and conditions of employment, this case shall be regarded as discrimination in employment.
- However, the employer concerned shall not be deemed discriminative, when, because of the nature of the work concerned, it is inevitable to employ workers of a particular gender for the work; the employer takes actions to protect maternity, such as pregnancy, delivery and breast-feeding, of female employees; or the employer takes the affirmative action to increase equality in employment in accordance with the relevant law and regulations.

a. An employer may not discriminate against a job applicant on the ground of gender.

- An employer may not present certain conditions that are not necessary for performance of the job offered, such as appearance, height, weight, or the status of being unmarried, especially when female workers are recruited.

b. An employer shall give the same rate of pay for the work of equal value at the same workplace.

- The criteria which are used to determine the work of equal value shall be the skills, effort, responsibility and working conditions that are required to perform the work. The employer shall consult the employee representative(s) of the labor-management council before finalizing the criteria.
- When the employer provides his/her employees with cash, other valuables or loans, in addition to their wage, to support their living, he/she shall not discriminate based on their gender.

c. No employer may discriminate his/her employees based on their gender with respect to training/education, job deployment, job promotion, retiring age, retirement or dismissal.

- No employer may enter into a contract of employment with a female worker which stipulates marriage, pregnancy or delivery as a cause of her dismissal.
- When an employer decides to dismiss his/her employees for an urgent economic reason, he/she shall create reasonable and fair criteria for such dismissal and select the employees to be dismissed in accordance with the criteria, giving no gender-based regard in the process.

2) Maternity protection

a. The employer shall give a pregnant employee 90 days' leave in the pre- and post-natal period, ensuring that at least 45 days is reserved for the post-natal period.

- In addition, in the cases where a pregnant employee has a miscarriage or stillbirth after having been pregnant 16 weeks or longer, the employer shall provide her with protection leave in accordance with the given standards, if the

employee asks for such leave. This, however, does not apply to the cases of miscarriage due to abortion (except for the cases prescribed in Article 14-(1) of the Newborns' and Mothers' Health Promotion Act).

※ The duration of protective leave differs depending on the period of pregnancy:
- Miscarriage or stillbirth after 16~21 weeks of pregnancy: up to 30 days of protective leave from the date of miscarriage or stillbirth;
- Miscarriage or stillbirth after 22~27 weeks of pregnancy: up to 60 days of protective leave from the date of miscarriage or stillbirth; or
- Miscarriage or stillbirth after 28 weeks or longer of pregnancy: up to 90 days of protective leave from the date of miscarriage or stillbirth
  - Since the duration of protective leave starts from the date of miscarriage or stillbirth, if the employee concerned applies for the leave some days after the date, her leave will be shortened by the number of the days.

• In relation to the wage of an employee on maternity leave, the employer is obliged to pay wage to the employee for the first 60 days of leave and the Employment and Labor Office will pay her normal wage for the remaining 30 days (Employment and Labor Office).

- However, in the cases of preferentially supported companies, the Employment Insurance Fund will pay all of the 90 days' wage for the employee concerned.

※ Preferentially supported companies (Article 15 of the Enforcement Decree of the Employment Insurance Act)
- Mining businesses with 300 employees or fewer; manufacturing businesses with 500 employees or fewer; construction businesses with 300 employees or fewer; businesses in transportation, warehousing or communications with 300 employees or fewer; and workplaces in other sectors with 100 employees or fewer

※ Eligibility and subsidy amount of maternity leave benefits
☞ Eligibility: the employees who are insured with EI for at least 180 days
☞ Subsidy amount: ordinary wages (within the limit of 1.35 million won per 30 days and 4.05 million won in total)
- In case the ordinary wage of the employee concerned exceeds 1.35 million per month, the excess amount shall be paid by the employer.

• In the cases where a female employee, being on a contract of shorter than 1 year or on dispatched employment, is pregnant 16 weeks or longer or is going to have her contract of employment or dispatched employment terminated while on pre- and post-natal leave or miscarriage or stillbirth leave, the employer who concludes a contract of employment or dispatched employment with the employee for a period of 1 year or longer shall be given the government subsidy.

※ For a contract of employment for 1 year or longer: 400,000 won per month for 6 months
For an indefinite-term contract: 600,000 won per month for the first 6 months and 300,000 won per month for the following 6 months

b. An employer shall allow a pregnant employee to use the time required to have a regular medical checkup for pregnant women under Article 10 of the Newborns' and the Mothers' Health Promotion Act, and may not reduce her wage on that ground (effective for the employees who are pregnant as on July 1, 2008 or after).

※ The frequency of the regular medical checkup for pregnant women under the Act:
☞Until 7 months' pregnancy: every other month
8~9 months' pregnancy: once a month
10 months' pregnancy or after: every other week

c. Upon the request of a female employee with a child younger than 1 year, the employer shall give her two nursing breaks a day, each lasting 30 minutes or longer.

d. When an employee with a pre-school child aged 6 or younger (a child aged 1 or younger for the children born before January 1, 2008) applies for leave to take care of the child, the employer shall grant the employee childcare leave of up to one year.

• An employee on childcare leave of 30 days or longer shall be paid 40% of his/her ordinary wage (within the range of 500,000 ~ 1 million won) per month in childcare leave benefits from the Employment Insurance Fund (upon his/her application to the Employment and Labor Office).

e. In the cases where an employee who is eligible for childcare leave applies for reduced hours of work, in lieu of full days of childcare leave, the employer may allow the employee to work shorter workdays (effective June 22, 2008).

- The reduced hours of work shall be 15~30 hours a week, and the period of shorter workdays shall not exceed 1 year.
- As for the employee who is working shorter hours for childcare purpose, the employer may not derogate his/her working conditions simply on the ground of reduced hours of work, excepting for such working conditions as are propotional to the hours of work. In principle, the employer may not ask the employee to work longer than the reduced hours, but in case the employee explicitly asks for extended work, the employer may have the employee work overtime within the limit of 12 hours a week.

- In case the employer does not allow the employee to work reduced hours for childcare purpose, the employer should give the reason to the employee in writing and then persuade him/her to use full days of childcare leave or consult with him/her on the other possible ways to support him/her.

f. In the cases where an employee uses childcare leave or reduced hours of work for childcare purpose, he/she may choose among: one-time childcare leave; one-time reduced hours of work for childcare purpose; childcare leave days in two divisions; and reduced workdays in two divisions. In any case, the period shall not exceed 1 year.

- The employer shall ensure that an employee returning from childcare leave or reduced workdays for childcare purpose is placed at a job of the same work or the same pay rate as before leave or working hours reduction, and may not dismiss the employee or take another unfavorable measure against him/her on the ground of the use of the leave or shorter workdays.

- The employer who offers childcare leave or reduced working hours during the childcare period shall be provided with a subsidy (of 200,000 won per month per employee concerned). In addition, in cases where an employer hires new workers to replace the workers on childcare leave or on reduced working hours during the childcare period, the employer shall be provided with a subsidy for hiring substitute workers at 200,000 won (300,000 won in the case of preferentially supported businesses) per month per substitute worker.

g. A male employee who applies for leave on the ground of his wife's childbirth shall be given 3 days in paternity leave.

- The employer is obliged to give paternity leave once the employee's request is made. As the law does not provide for the employer's obligation to give the leave with pay, the employer may choose whether to pay or not for the days of leave.
- However, once 30 days has passed from the date of childbirth, the paternity leave is not available.

h. Additionally, an employer who creates or expands workplace childcare facilities to relieve the burden of childcare of his/her employees shall be given a subsidy to cover the costs of operating the facilities, purchasing educational materials and paying nursing teachers.

- A workplace with 500 full-time workers or more or with 300 full-time female workers or more is obligated to establish workplace childcare facilities (under the Infant Care Act).
- An employer or an employer organization that wants to establish and operate workplace childcare facilities is given 100~200 million won to cover the remodeling costs, plus up to 50 million won to cover the expense of furnishings. (The subsidy level ranges from 60% to 80%, depending on the company size.)
- When an employer or an employer organization operates workplace childcare facilities and a third (1/3) or more of the children in the childcare facility are the children of the employees who are working for the employer(s), or a fourth (1/4) or more of them are the children of those who are hired by the employer (s) and a half (1/2) or more are the children of the other insured workers (who are working for other employers), the childcare facility is eligible for the subsidy that covers the labor costs of the childcare facility teachers, head manager and cooks, providing 800,000 won per person.

3) Affirmative action

a. The affirmative action is intended to stimulate employment of women whose rate of employment is lower than men, by addressing the gender-based discriminatory practices at the company level or in the internal labor market.

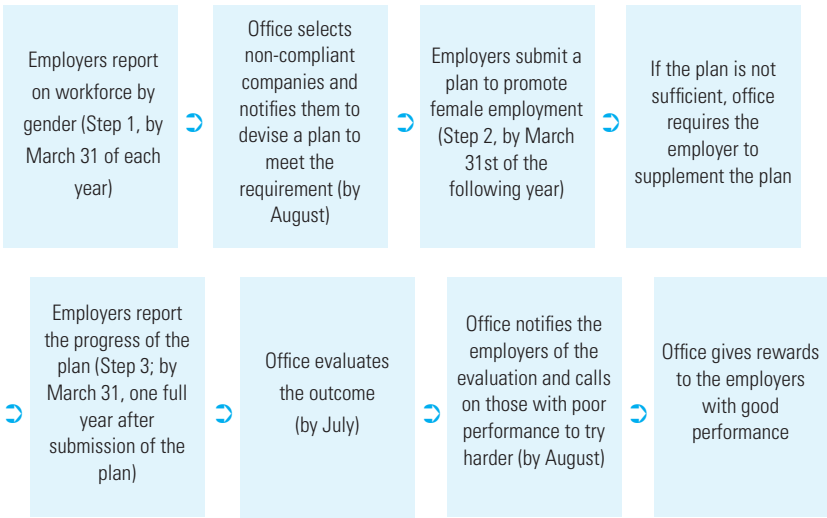
- When company hires a considerably low proporation of female workers or female officers, in comparison with other companies of a similar size in the

same sector, it is seen as a sign of indirect discrimination. In the caes, the employer is required to take actions to improve the inepuality.

b. Scope of application

- Companies permanently employing 500 persons or more
- Public organizations with 50 employees or more, as defined in "The Law on Operation of Public Organizations"

c. Affirmative action process



① All the companies that are bound by the affirmative action provisions shall report on the number and the share of male and female employees by job status and responsibility no later than the end of March of each year.

- In case an employer runs two or more businesses and the businesses belong to different kinds of business sectors, the employer should make separate reports for the different businesses.

② An employer who fails to meet the female employment standard should submit a plan to initiate the affirmative action, no later than March 31 of the following year.

- The plan should specify the measures which the employer shall undertake from January 1 to December 31 of the following year.

- The female employment standard shall be based on the analysis of the employer reports on employment by gender and shall be published by way of AA-NET on an annual basis. An employer whose female employment rate is less than 60% of the industrial sector to which his/her business belongs to shall submit the action plan.

- The action plan should include:

  ▶ An analysis of the use of female workforce and a target of female employment;
  ▶ A plan to improve employment management; and
  ▶ Particular conditions that make it difficult to hire female workers

- Once the employer has handed in the action plan, if the plan is found not appropriate, the local employment and labor office shall require the employer to supplement the plan.

③ The employer should proceed with the action plan for one year and then shall report the outcome no later than March 31 of the following year.

- The regional employment and labor office shall evaluate the employer's performance and then notify him/her of the evaluation result. Depending on the evaluation result, the administration shall order the employer to make more efforts to comply with the plan, or award him/her financial or administrative backing for the outstanding performance.

d. Enforcing bodies in the affirmative action process

- The affirmative action process is enforced by the Affirmative Action Committee (which reviews major elements of the program) and the Regional Employment and Labor Office (which requires employers to submit the action plan and report the outcome, and receives the plan and the report).

4) Banning and preventing sexual harassment at work, and voluntary settlement of disputes

Banning and preventing sexual harassment at work

a. An employer, higher-ranking employee or co-employee sexually harasses an employee when the former takes advantage of his/her position at work or a job-related activity to commit physically or verbally sexual acts which may take the latter feel sexually humiliated, or takes any measures to the occupational disadvantage of the latter on the ground that he/she has not accepted such acts or other related requests.

b. The victims of sexual harrassment at work include both men and women. Job applicants who are sexually harassed in the process of recruitment and hiring are also covered.

- All cases where the physical or verbal act in question is job-related or is committed by the offender using his/her job position are regarded as those of sexual harassment at work, whether it is done inside or outside the company premises.

c. The followings are examples of sexual harassment at work:

① Physical acts
- Physical contact such as kissing and hugging (including hugging from behind);
- Acts of touching certain parts of the body, notably breasts and buttocks; and
- Acts of coercing massages or caresses

② Verbal acts
- Acts of making obscene jokes and other lewd discourses face to face (including such acts on the telephone);
- Acts of making comparisons or evaluations on appearances by using sexual expressions;
- Acts of asking a question on factual aspects of sexual relationship or deliberately disseminating information on sexual relationship;
- Acts of coercing or appeasing sexual intercourse; and
- Acts of forcing an employee to sit beside him/her at such setting as a group dinner and forcing her/him to serve drinks

③ Displaying acts

- Acts of posting or displaying obscene photos, pictures, notes and publications (including such acts via computer communications or facsimile); and
- Acts of intentionally exposing or touching, in others' view, parts of his/her own body that are related to sexuality

④ Other physical or verbal acts that are generally accepted as sexually humiliating or disgusting.

d. Employers and rank-and-file employees are not allowed to commit sexual harrassment at work. An employer shall educate his/her employees to prevent sexual harassment at work, at least for one hour and once a year. The employer may provide this education using in-house materials or personnel or commissioning such education to an outside training provider designated by the Minister of Employment and Labor.

- The education to prevent sexual harrassment at work should include the guide to the relevant laws and regulations; how a case of sexual harrassment at the workplace shall be handled and what standards are set up for the process; the programs that a victim of sexual harrassment at the workplace may use to report his/her case and get remedies; and other matters related to prevention of sexual harrassment at work.

e. When sexual harassment is committed at work, the employer shall discipline the offender or take another proper action against the offender, in consideration of the intensity and continuity of sexual harassment.

f. An employer shall not take any measure in employment to the disadvantage of a victim of sexual harassment or a person who claims he/she is a victim of sexual harassment.

g. If an employee asks for resolution of a grievance due to sexual harassment by a third party who is closely related to the work such as a customer, the employer should immediately make efforts to resolve the grievance by changing his/her location of work or transferring him/her to another job. The employer may not dismiss the employee or take another unfavorable measure against him/her on the ground that he/she has alleged sexual harassment by a third party or he/she has refused to accept sexual requests from a customer, etc.

Prevention and settlement of the disputes

- When an employer receives a complaint on discrimination in employment from his/her employee, he/she should resolve the case him/herself or bring the complaint before the labor-management council for settlement no later than 10 days from the date of the reception of the complaint. Then, the employer should notify the employee concerned of the settlement outcome or the fact that the case has been forwarded to the labor-management council.

Q & A

Q) When a dispatched worker has committed an act of sexual harassment at work, is the using employer required to take disciplinary action against the employee?

A) In the case of sexual harassment at work by a dispatched worker, the using employer is responsible for the procedures of confirming facts and referring the case to the dispute settlement process. However, as the using employer has no power to discipline the employee, he/she cannot take disciplinary action against the employee directly. Instead, once the dispatched worker is found guilty for sexual harassment at work, the using employer may advise the agency employer of the dispatched worker to discipline the employee. If the agency employer fails to take a proper action, the using employer may call for termination of the contract for dispatching the employee.

Q) Does transferring a sexual harrassment victim to another job constitute an act of unfair employee transfer?

A) In general, employee transfer is one of the disciplinary actions that can be taken against the offender in the case of sexual harassment at work. If the victim him/herself volunteers or asks to move to another job or agrees on the job transfer, the transfer is not questionable.

However, if the employer orders a job transfer not necessary for business purposes without obtaining the consent of the victim employee or it is against his/her own will, the employer takes a disadvantageous measure against the victim, as prescribed in Article 14(2) of the Act on Equal Employment and Support for Work and Family Reconciliation.

Q) Is an employer allowed to provide sexual harrassment prevention education over

the Internet?

A) If an employer provides his/her employees with on-line education to prevent sexual harassment at work, the education course is acknowledged only when it is equipped with functions that can check the progress for each unit, confirm the educated content and provide the Q&A session.
In case educational materials have simply been distributed, posted or sent by e-mail or posted on the Internet, it is difficult to confirm that the employees have received the materials and understood the contents and, therefore, the employer is not acknowledged as having provided the education.

Q) What support does the government provide in relation to childcare leave and reduced working hours during childcare period? Please specify the childcare leave benefits for employees under the revised law, and the childcare leave subsidies and the replacement work subsidies that are available to the employers who provide childcare leave to their employees.

A) An employer who provides his/her employee with childcare leave or reduced working hours during the childcare period for 30 days or longer (not overlapping with the 90-day maternity leave) and retains the employee upon returning from the leave or reduced working hours for 30 days or longer shall be given a subsidy of 200,000 won per month.
In addition, if an employer hires a worker to replace the employee on childcare leave or reduced working hours between the commencing date and the ending date of the leave or reduced working hours (between the commencing date of the maternity leave and the ending date of the childcare leave or reduced working hours should the leave or reduced working hours start right after the end of the maternity leave), the employer is eligible for a subsidy of 200,000 won (300,000 won in the case of preferentially supported businesses) per month per substitute worker. (Article 30 of the Enforcement Decree of the Employment Insurance Act)

Q) Is an employee on prenatal and postnatal leave or childcare leave also entitled to a bonus during the leave period?

A) There are no legal provisions on bonus payments and thus in principle, the amount, conditions, eligibility and payment methods of bonuses shall be in accordance with the collective agreement or the rules of employment. Whether or not bonuses are counted toward the average wage depends on the type of bonus payment. If the collective agreement or the employment rules provides that bonuses should be also paid for the period of prenatal or postnatal leave or childcare leave, the employer shall comply with the provision.

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Manual for
Foreign Investors
2011

VI. Appendix

1. General environment of investment in Korea

1) Country information

Korea at a glace

Official name	Republic of Korea
Capital	Seoul
Area	100,140 ㎢ (as of end-2009)
Population	49,770,000 (people)
Language	Korean
Illiteracy rate	0% (among those aged 20~40)
Religion	Buddhism 24%; Protestantism 23%; Catholic 8%; Others 0.8%; None 44.2%
Climate	Continental climate with distinct four seasons
Time difference	GMT + 9 hours
Political system	Democratic republic; Presidential system
Size of economy	15th in the world (based on GDP); OECD member nation
Currency	Korean won
Major industries	IT, semiconductors, automobiles, shipbuilding, steel, petrochemistry, etc

Major economic indicators

	2004	2005	2006	2007	2008	2009
GDP (USD 100 million)	681	791	887	1,050	928	834
Real GDP growth (%)	4.6	4.0	5.2	5.1	2.2	0.2
Per capita national income (USD)	15,082	17,531	19,722	21,695	19,231	17,175
Export (USD billion)	254	284	325	371	422	364
Import (USD billion)	224	261	309	357	435	323
Current account (USD billion)	28	15	5	6	-6	43
Unemployment rate (%)	3.7	3.7	3.5	3.2	3.2	3.6
Consumer price index (CPI) growth (%)	3.6	2.8	2.2	2.5	4.7	2.8
National bond yield-to-maturity rate (3-year,%)	4.1	4.3	4.8	5.2	5.3	4.0
Foreign exchange reserve (USD billion)	199	210	239	262	201	270

Source: The Bank of Korea, Korea Customs Service

2) Regional supports for foreign investment

Seoul

1) Local tax
- On condition of the sector involving high technologies, the industry-supporting service business and the company housed in the foreign investment zone, the acquisition tax and registration tax will be 100% exempted for the first 10 years and reduced by 50% for the following 5 years; and property tax will be 100% exempted for the first 7 years and reduced by 50% for the following 3 years.
- On the condition of the sector involving high technologies, the industry-supporting service business and the company housed in the foreign investment zone, acquisition tax and registration tax will be 100% exempted for the first 7 years and reduced by 50% for the following 3 years.

2) Employment subsidy
- On condition that there are more than 10 additional permanent employees due to foreign investment in the current year and foreign investment takes up 30% or higher, the subsidy not exceeding 1 million won per month per additional employee will be given for up to 6 months.

3) Cash support
- When USD 10 million or more in foreign investment is used to create or expand a plant facility, or a research facility permanently employing 10 or more researchers is created or expanded in the industry-supporting service business, the sector involving high technologies and the parts and materials industry, 50% of the foreign-invested amount will be reimbursed after the case concerned is reviewed for such reimbursement by the Foreign Investment Committee.

Busan

1) Local tax
- For a foreign-invested firm established in the economic free zone, acquisition tax and registration tax shall be 100% exempted for the first 7 years, and shall benefit from 50% tax-reduction for the subsequent 3 years thereafter.

2) Employment subsidy

- When a foreign-invested firm is (i) in the sector involving high technologies, the industry-supporting service business and the strategic business of the City and newly employes 20 or more workers or (ii) is a research institute with 5 or more researchers, the employment subsidy will be up to 500,000 won per employee in excess of 20 persons in the case of (i), and 50% or less of the basic pay in the case of (ii), both for up to 6 months.

Gyeonggi Province

1) Local tax

- On condition of the sector involving high technologies, the industry-supporting service business and the company housed in the foreign investment zone, acquisition tax, registration tax, property tax and aggregate land tax will be 100% exempted for the first 15 years.

2) Employment subsidy

- When a foreign-invested firm signs an investment agreement with the Province or is housed in the complex rented by the Province and permanently employs more than 20 Korean nationals before the lapse of 5 years from its business commencement, monthly 500,000 won shall be paid to each and every new employee within the limit of 3 years.

3) Cash support

- In case of an R&D facility for the sector involving high technologies which are eligible for tax exemption or reduction, a facility to develop high technologies or high-tech products as is prescribed in the industrial development law, or a facility which is acknowledged by the Governor as required for attracting foreign investment, up to 50% of the total expense incurred will be reimbursed, based on the review by Foreign Investment Promotion Council.

Daejeon

1) Local tax

- On condition of the sector involving high technologies, the industry-supporting service business and the company housed in the foreign investment zone, acquisition tax and registration tax will be 100% exempted, and property tax and aggregate land tax will be 100% exempted for 15 years.

2) Employment subsidy

- In case a registered foreign-invested firm, in operation for 5 years or less, newly employes 20 or more local residents within the jurisdiction of the City, the subsidy will be up to 500,000 won per month per employee in excess of 20 persons, for up to 6 months.

Incheon

1) Local tax

- On condition of the sector involving high technologies, the industry-supporting service business and the company housed in the foreign investment zone, acquisition tax, registration tax and property tax will be 100% exempted for the first 10 years and reduced by 50% for the following 3 years.
- For a foreign-invested form housed in the economic free zone, acquisition tax and registration tax will be 100% exempted for 15 years; and property tax will be 100% exempted for the first 10 years and reduced by 50% for the following 3 years.

2) Employment subsidy

- When more than 20 full-time workers are newly employed, the subsidy will be up to 500,000 won per month per employee in excess of 20 persons.
- When more than 20 workers are newly employed, the subsidy will be 100,000 ~ 500,000 won per month per employee in excess of 20 persons, for 6 months.

※ For more information on regional supports for foreign investment, visit the website of Invest KOREA www.investkorea.or.kr.

3) Strong points of investment in Korea

a. A variety of policy measures and incentives to support foreign-invested firms

- Consistent efforts have been made to improve the business environment for foreign-invested firms which have grown to play an important part in the Korean economy. For instance, the 2009 plan to advance the attraction of FDI was devised and implemented and the status of Chairman of the Foreign Investment Committee has been promoted to the level of Prime Minister.
- An array of incentives offered by Korean Government, which include tax reduction and exemption, cash grants and business locations, are some of the

most generous in OECD.

b. A large domestic market with consumers of refined tastes

- With population of 49,770,000 and the world's 15th largest GDP, Korea has a domestic market with great potential.
- As Korean consumers are enthusiastic about high-tech and new technologies, many global enterprises use the Korean market for testing of their new products.

※ P&G, Loreal, Microsoft, Motorola and eBay are doing business in Korea.

c. IT environment

- Korea has ranked the 1st for the three consecutive years from 2005~2007 in the worldwide evaluation of digital opportunity index (DOI) which gives a comprehensive analysis of Internet penetration, ratio of communications fees to income and Internet utilization.
- Korea has an alarming IT environment, as are evidenced in the world's highest broadband Internet subscription rate and the mobile phone penetration rate of 68%.

d. High education-consciousness and passion for work

- According to the IMD's 2008 World Competitiveness Yearbook, Korea recorded 53% in the ratio of college graduates among the adults aged 25~34, which is unmatched by the corresponding figures in other OECD nations.
- Koreans are known for their diligence. For instance, Korea ranked 2nd in terms of GDP growth rate per hour worked in the years of 2001~2006 and its labor productivity grew by 10.3% in manufacturing and by 2.9% in services in 2010.

e. Improving labor relations

- Social partners in Korea, sharing the view that a stable labor relations is the most vital for a good environment for foreign investment, are making concerted efforts to build a productive labor relationship.
- With the passage of the revised TULRAA providing for multiple unionism at enterprize level and the introduction of a paid time-off system in January, 2010, institutions and legal frameworks have been substantially upgraded, which is critical in advancing labor relations.

f. Unbeatable location

- Korea is located between China and Japan, the two large markets, and there

exist about 60 cities with population of one million or more within three hours' flight.

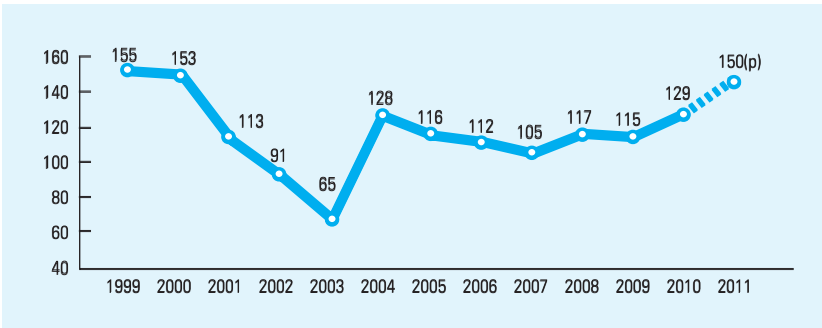
- Major FTAs, including those between Korea and the US and Korea and EU, are to be ratified, and once those agreements are ratified, the Korean market will be able to improve the business environment radically through a higher level of market opening and competition.

2. Current status of FDI

1) Scale and trend of FDI

FDI (foreign direct investment) in Korea marked a turning point in the period of the foreign exchange crisis. Specifically, FDI showed a sharp rise over the period, owing to the policies to promote foreign investment (including deregulation and liberalization in financing, M&A, land and other economic areas; enactment of the law on promotion of foreign investment; and creating a systematic structure, including Invest KOREA, to attract foreign investment), which were adopted in an effort to break through the financial difficulties.

FDI trend in Korea (1991~2010)



Source: Ministry of Knowledge Economy
*Figures for 2011 are preliminary, not actual.

In 2010, the inbound foreign direct investment (on a report basis) showed a sharp increase, posting USD 13.07 billion, which was 13.8% up from the previous year (USD 11.48 billion). This is the highest figure since the end of the 1997-98 foreign exchange crisis. It seems that the fast rate of economic growth at home, the Korea-EU FTA in effect and the 2010 Seoul G20 Summit all togther had a positive effect on attracting foreign direct investments.

FDI volumes by year (on a report basis)

(in USD million, % change)

	2006	2007	2008	2009	2010
FDI volume(increase in, %)	11,242 (▲2.8)	10,514 (▲6.5)	11,711 (11.4)	11,484 (▲1.9)	13,071 (13.8)

FDI trend in 2009 and 2010, by sector and investment type

(in USD million, % change)

	2009			2010		
	M&A	Greenfield	Total	M&A	Greenfield	Total
Manufacturing	266(▲68.0)	3,459(59.0)	3,725(23.9)	1,156(334.7)	5,501(59.0)	6,657(50.9)
Service	3,094(▲9.8)	4,501(▲9.2)	7,594(▲9.5)	859(▲72.2)	5,444(20.9)	6,303(48.2)
Others	15(▲91.1)	150(1.4)	165(▲47.9)	1(▲93.3)	110(▲26.6)	112(▲32.1)
Total	3,375(▲23.8)	8,109(11.4)	11,484(▲1.9)	2,016(▲40.3)	11,055(36.3)	13,071(13.8)

※ 'Others' include the primary industry and the sectors of electricity, gas, water supply and construction.

Thanks to the fast recovery from the economic crisis, the inbound FDI in Korea peaked in 2010 (13.8% year-on-year rise) during the past decade. It is expected that the Korea-US and Korea-EU FTAs, which have come to effect in 2011, will have a positive influence on foreign investment, contributing to creating remarkably improved environment for foreign investment.

The Korean government, in a consistent effort to attract FDIs, will focus its effort on improving the investment climate, by setting up "the 2nd 3-year (2011~2013) plan for better FDI environment" to provide more and better incentives for foreign investment. In addition, it will designate target sectors for FDI attraction, including the green business, and strengthen the effort to lure FDIs that bring in greater potential for job creation in Korea.

An analysis of the FDI trend in 2010 shows that, by type of investment, M&A-type investment fell by 40.3% from a year earlier to USD 2.016 billion, while green-field-type investment grew by 36.3% to USD 11.055 billion.

By industrial sector, manufacturing recorded USD 6.657 billion, which is a 78.7% increase from the previous year, while services posted USD 6.303 billion, 17% down from a year earlier. To have a closer look at the investment in manufacturing, the volume increased in machinery and equipment and transporting machinery but decreased in non-metal ores and metal. As for the services sector, the FDI volume increased in communications, real estate and rental, and culture and recreation but decreased in wholesale and retail (distribution), and business service.

By size of investment, large-scale investment of USD 100 million or more stood at USD 7.451 billion which is 7.1% up from a year earlier, whereas the investment smaller than USD 100 million amounted to USD 5.620 billion in total, 24.2% down from the previous year.

2) FDI composition by country

An analysis on Korea's inbound FDI composition by country shows that the investment by the traditional large investors, such as the US, Japan and EU, takes up a smaller proportion while the investment by the countries in Asia has been growing substantially. The investment from the US rose by 32.8% year-on-year, and the investment from Japan increased by 7.7% year-on-year but went down in terms of its share in the total investment to 15.9% (from 16.8% in 2009). Meanwhile, the investment from EU dropped sharply by 39.7%.

FDI inflow to Korea by country

(on a report basis; in number of cases and USD million)

	2008		2009		2010		1962~2010	
	No	Amount	No	Amount	No	Amount	No	Amount
International cooperative organizations	-	-	-	-	-	-	117	272
Americas	628	1,904	555	2,167	540	2,686	11,252	55,426
US	456	1,328	388	1,486	382	1,974	9,244	43,783
Canada	45	90	51	303	53	480	644	4,415
Bermuda	10	41	5	24	2	7	164	1,776
Cayman Islands	57	329	41	213	34	130	405	3,737
Virgin Islands	57	113	52	132	44	61	606	1,230
Others	3	3	18	9	25	34	189	485
Asia	2,158	3,280	1,768	3,704	1,844	6,892	28,728	54,200
Japan	460	1,423	370	1,934	422	2,083	11,215	25,975
Singapore	102	916	104	436	123	773	1,127	6,688
Hong Kong	96	242	93	773	77	92	1,252	4,127
Malaysia	15	53	17	84	18	106	746	7,152
China (Republic)	389	336	538	161	616	414	7,126	3,086
Taiwan	24	144	19	7	42	208	525	1,148
Others	1,072	166	627	309	546	3,216	6,737	6,024
E U	443	6,339	379	5,297	397	3,196	6,319	59,664
Germany	91	685	85	570	66	268	1,541	9,242
Great Britains	96	1,231	87	1,950	93	650	1,209	10,699
France	51	538	39	110	37	160	831	5,966
Belgium	17	72	7	32	15	83	204	3,388
Netherlands	79	1,230	73	1,901	83	1,185	1,191	20,034
Ireland	9	115	6	5	8	326	230	2,581
Others	100	2,468	82	729	95	524	1,113	7,754
Other regions	515	188	429	316	326	297	3,372	4,295
Total	3,744	11,711	3,131	11,484	3,107	13,071	49,671	173,585

3) Foreign-invested firms in Korea

The number of foreign-invested companies in Korea, which was 5,130 in 1998, exceeded 10,000 for the first time in 2001, and grew further to approximately 14,000 in 2010.

Number of foreign-invested firms in Korea, by year

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
No	6,491	9,420	11,515	12,909	14,765	15,434	14,806	13,346	14,844	16,479	13,550	13,812

Note: In July 2005, about 2,500 foreign-invested companies whose business had been shut down were left out from the registration. Therefore, the number of companies actually increased by about 1,000 in 2006.
Source: KOTRA

3. Labor management in foreign-invested firms

1) Current trends of labor disputes in foreign-invested firms

a. Thanks to the strong efforts to attract foreign investments since 1998, the number of foreign-invested firms kept growing and reached 14,000 in 2010. Along with the growth in their number, they also have a growing share in the Korean economy. In recent years, approximately 15% of the labor dispute incidents in Korea took place in foreign-invested workplaces.

Labor disputes in foreign-invested firms, by year

(in number of cases; %)

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total(A)	322	320	462	181	138	115	108	121	86
Foreign -invested firms(B)	26	32	34	5	14	14	19	21	13
Propor-tion (B/A)	8.1	10	7.4	2.7	10.1	12.1	17.5	17.4	15.3

※ In 2006, the statistical reference of Ministry of Employment and Labor to count the number of labor dispute cases were changed and the new method was applied retroactively to 2005.

※ The new statistical reference and the reason of the modification

- The statistical reference was changed from 'the number of workplaces which went on a strike' to 'the number of collective bargaining units leading to a strike'.
- Reason: In the past when the collective bargaining was primarily company-based, the number of workplaces which went on a strike was almost identical to the number of bargaining units leading to a strike. However, as a growing proportion of collective bargaining is industry-based and group-based, there are many cases where, upon breakdown of collective bargaining, several workplaces go on a strike simultaneously. Accordingly, there is a considerable difference between the two figures.

Labor disputes in foreign-invested firms, by year

(in number of cases; %)

Year	2004	2005	2006	2007	2008	2009	2010
Total dispute cases (A)	462	287	253	212	130	175	184
In foreign-invested firms (B)	34	27	36	29	23	32	24
Proportion (B/A)	7.4	9.4	14.2	13.6	17.6	18	13

Note: 'Foreign-invested firms' refer to the firms, 50% or more of whose equity is owned by foreigners.
Source: Ministry of Employment and Labor, "The Analysis of and Data on Current Labor Disputes"

b. The labor disputes at foreign-invested firms have several characteristics. First, the companies whose unions are affiliated with Korean Confederation of Trade Unions (KCTU) (especially those affiliated with Korean Metal Workers' Union (KMWU)) are more prone to labor dispute than those with the unions affiliated with Federation of Korean Trade Unions (FKTU), the other national union organization. Second, the companies which once experienced labor dispute are likely to report recurrent of labor dispute. Third, there are more labor dispute cases at the companies with a foreign CEO or plant manager than at the companies with a Korean CEO or plant manager.

c. Meanwhile, just like the labor disputes at Korean companies, many of the labor disputes at foreign-invested firms occur in the manufacturing sector, including auto parts and steels, and most of them are concentrated in the May~August period.

2) Characteristics of the labor relations in foreign-invested firms

a. In the beginning, a foreign-invested firm usually has a CEO sent by the parent company. The foreign CEO is likely to be in conflict with Korean employees and the trade union, because the former insists on introducing the personnel management system of his/her own country which is centered around the rules and rationality, while the latter is sued to the traditional way of thinking which puts paternalism before rationally.

b. The differences between the foreign managers and Korean employees in terms of values, behaviors, lifestyle and other cultural aspects might strain the labor relations. Therefore, it is of great importance to understand such differences and try to resolve them by way of communication and interpersonal relationship.

c. As the employees and the trade union of a foreign-invested firm are mindful of the possibility of joblessness resulting from withdrawal of the foreign captial, they are highly likely to demand guaranteed job security, employee participation in business management or short-term profit sharing.

d. When the management rushes to bring in working processes, management mechanims and other systems from other countries with a view to increasing rationality and efficiency in business management, this could result in tension between the management and the union and employees as such rapid changes would increase employees' uneasiness and sentiment of job insecurity, misleading them to expect a pay cut.

e. Foreign investors have a strong tendency to establish systems, make decisions and solve problems within the framework of the law and institutions of the country where they are doing business. Accordingly, they are likely to counteract with a lock-out in the event of a labor dispute or strictly apply the principle of no-work no-pay to the duration of industrial actions.

3) Suggestions for labor management in foreign-invested firms

a. The successful foreign-invested firms in Korea have cooperative and stable labor relations. They also have the following advantages in common:

① They have built mutual trust by increasing transparency in business management.

② They have increased employees' commitment and responsibility to the company, by establishing interpersonal relationships with employees.

③ They have recognized employees as their business partners.

④ They have promoted communication between the labor and management to have a better understanding about each other.

⑤ They provide employees with adequate welfare programs, boosting their morality at work and increasing productivity.

⑥ They give employees greater access to education and training opportunities, improving their vocational ability and assisting them with self-development.

⑦ They have made various contributions to the community, improving their reputation and creating an atmosphere of cooperation.

⑧ They try to have a better understanding about labor law and practices of Korea, in an effort to prevent labor disputes and conflicts.

b. Toward the ultimate goal of further advance labor relations, the Koran government has made every effort to minimize the social costs incurred by labor conflicts; realized a more flexible and stable labor market; strengthen social protection for the disadvantaged workers; and build social-inclusive labor relations.

c. It is advisable that foreign investors focus on the following in their effort to increase cooperation between the labor and management, keeping in mind that long- and mid-term commitment is more important than short-term responses:

① To resolve the issues of labor relations and human resources (HR), in high touch with the employees and worksites;

- Top CEO's strong support: To understand the significance / pay attention / give strong support in terms of personnel affairs, budget and regular meeting
- Change in behaviors of manager and support teams: Responsibility / joint reaction / information sharing and reporting / problem-solving in high touch

with worksite operations

- Greater regard to worksite jobs: To develop policies to treat worksite operations preferentially / business culture centered around worksite operations
- Establishment of disciplines at work: To respect all the relevant regulations and rules / to strictly apply rewards and penalties / to strictly distinguish hierarchical positions / to devise and implement a fair personnel system / to implement PMP (Performance Management System)
- Communication and utilization of consultation meetings: To create mutual trust by way of formal and informal meetings
- Personnel affairs counseling and grievance handling: President / factory supervisor / executives / directors and managers / team leaders

② To build partnership

- To increase transparency in corporate governance;
- To increase rationality in labor movement;
- To activate the functioning of the labor-management council;
- To implement a range of programs to increase cooperation between the labor and management;
- To share information on business management;
- To increase employee participation in business management;
- To ensure fair compensation for performance and profit sharing, based on a reasonable PMP;
- To develop education programs suited to the business strategy; and
- To strengthen leadership of the management and the trade union

4. Average wage vs. ordinary wage

Criteria of classification	Ordinary Wage	Average Wage	Other Payments
1.Basic wages determined to be paid for contractual working hours or statutory working hours	○	○	
2.Fixed wages determined to be paidperiodically or uniformly on a daily, weekly or monthly basis for contractual working hours or statutoryworking hours during a period based on which wages are calculated (wage calculation period)			
① Allowances paid under the payment conditions set in advance given the importance of work and position : job allowances (finance, accounting), position allowances (section manager, team leader), etc.	○	○	
② Allowances paid to adjust for price changes or wage gaps between positions : price allowances, adjustment allowances, etc.	○	○	
③ Allowances paid to those holding a certain skill, qualification, and licence or engaged in special work : skill allowances, licence allowances, special work allowances, dangerous work allowances, etc.	○	○	
④ Allowances paid periodically and uniformly to employees working in special areas : remote-area allowances and cold-region allowances	○	○	
⑤ Allowances paid uniformly, regardless of the number of days worked, to those who are aboard a bus, taxi, cargo vehicle, ship or aircraft and engaged in driving, operating or navigating it : riding allowances, flight allowances and sailing allowances	○	○	
⑥ Allowances paid every month uniformly, regardless of work performance, for the purpose of improving production skills and efficiency.	○	○	
⑦ Other wages or allowances equivalent to those prescribed in ① through ⑥.	○	○	
3. Payments variable depending on whether work is actually done or not, and other payments made for the period not subject to wage calculation			
① Overtime work allowances, night work allowances, holiday work allowances, allowances for work on monthly paid leave days, allowances for work on annual paid leave days, and menstruation leave allowances paid under the 'Labor Standards Act' and the 'Act on Establishment of Labor Day', or allowances paid as a reward for work on a holiday according to the employment rules		○	
② Allowances paid in a fixed amount based on the number of days worked: Riding allowances, flight allowances, sailing allowances and allowances for working in a pit		○	

Criteria of classification	Ordinary Wage	Average Wage	Other Payments
③ Allowances paid periodically based on work performance for the purpose of improving production skills and efficiency: production promotion allowances, efficiency allowances, etc.		○	
④ Allowances intended to give preferential treatment to long-serving employees or promote full attendance: full attendance allowances, consecutive service allowances, diligence allowances, etc.			
⑤ Day & night duty allowances paid in an amount determined in advance under the employment rules, etc.		○	
⑥ Bonuses			
A. In cases where their payment conditions, amount and period are prescribed in the employment rules, etc. or an employee naturally expects to receive them in light of social norms as they are customarily paid to all employees: regular bonuses, physical fitness expenses, etc.		○	
B. In cases where they have never been paid customarily, but are paid temporarily or conditionally in accordance with the company's profits at the employer's discretion or out of kindness: gain-sharing pay, incentive pay, production incentives, rewards, incentives, etc.			○
⑦ Service charges (i.e. tips): in cases where they are collectively managed and distributed by an employer		○	
4. Payments made for the purpose of supporting employee's living or promoting their welfare and fringe benefits, regardless of the number of hours worked			
① Commuting allowances, automobile maintenance expenses			
A. In cases where they are rendered periodically and uniformly to all employees		○	
B.In cases where they are rendered variably according to the number of days attended or only to certain employees			○
② Company housing allowances, winter fuel allowances, and kimchi-making allowances			
A.In cases where they are rendered periodically and uniformly to all employees.			
B.In cases where they are rendered temporarily or only to certain employees		○	

Criteria of classification	Ordinary Wage	Average Wage	Other Payments
③ Family allowances and education allowances			
A. In cases where they are rendered uniformly to all employees, including singles		○	
B. In case where their amount varies depending on the number of family members or they are rendered only to certain employees (under the name of school expense support, employee education support, etc.)			○
④ Meals or meal expenses			
A. In case where such meal expenses are prescribed in the contract of employment, the employment rules, etc., and rendered uniformly to all employees		○	
B. In cases where their amount varies depending on the number of days attended			○
5. Payments excluded from wages			
① Allowances for suspension of business, retirement pay, allowances in lieu of advance notice of dismissal			○
② Payments made for the purpose of supporting employees' living or promoting their welfare and fringe benefits: congratulatory allowances, condolence allowances, medical expenses, disaster recovery fees, training facility and gym fees, uniform fees, provision of commuting vehicles, dormitory, company housing, etc.			○
③ Insurance premiums for social security or damage coverage : employment insurance premiums, health insurance premiums, national pensions, driver insurance, etc.			○
④ Payments made to cover actual expenses : business travel expenses, information gathering expenses, business expenses, expenses for purchasing working tools, etc.			○
⑤ Payments made for unexpected reasons or the reasons that are not certain to occur and for which payment conditions are predetermined: marriage allowances, accident, injury or disease allowances, etc.			○
⑥ Corporate facilities or their maintenance expenses : expenses for equipment loss			○

5. Types of jobs allowed for temporary work supplies

Korean Standard Classification of Occupation	Types of jobs	Additional remarks
120	Computer professionals	
16	Administrative, business management and financial professionals	Excluding administrative professionals (161)
17131	Patent professionals	
181	Record keepers, librarians and other related professionals	Excluding librarians(18120)
1822	Translators and interpreters	
183	Creating and performing artists	
184	Movie, play and broadcasting professionals	
220	Computer associate professionals	
23219	Other technicians in electronic engineering	
23221	Technicians in communications engineering	
234	Draftspersons and CAD operators	
235	Optical and electronic equipment operators	Limited to assistants; and medical and clinical laboratory technologists(23531), radiological technologists(23532) and other medical equipment operators (23539) excluded
252	Associate professionals in no other than formal school education	
253	Other educational associate professionals	
28	Associate professionals in arts, entertainmentand sports	
291	Managerial associate professionals	
317	Office supporting workers	
318	Publication, postal and other related workers	
3213	Debt collectors and other related workers	
3222	Telephone switchboard and directory service workers	Excluding the cases where telephone switchboard and directory service is a core activity of the business concerned

Korean Standard Classification of Occupation	Types of jobs	Additional remarks
323	Customer service workers	
411	Personal protection and other related workers	
421	Cooks	Excluding the cooks of tourist hotels under article 3 of the Tourism Promotion Act
432	Travel guides	
51206	Gas station attendants	
51209	Attendants in other retail stores	
521	Telemarketers	
842	Motor vehicle drivers	
9112	Building cleaning persons	
91221	Janitors and security guards	Excluding the security work under the subparagraph 1 of article 2 of the Security Service Act
91225	Parking lot attendants	
913	Delivery and transportation workers, metermen and other related workers	

6. Contact information and regional employment and labor administrations and offices

Regional labor administrations and offices		DDD	Management Div.	Labor Management Assistance Div.	Labor Inspection Div.	Industrial Safety Div.	Employment Security Center
Seoul	Seoul Admin.	02	2250-5821	2250-5722	2250-5740	2250-5781	2004-7301
	Seoul Gangnam	02	598-0513	3465-8433	598-2455~6	598-1671	3468-4747~54
	Seoul Dongbu	02	2142-8801~7	2142-8866	2142-8818~9	2142-8870~8	2142-8924
	Seould Seobu	02	2077-6111~4	2077-6125	2077-6134	2077-6170~3	2077-6103~7
	Seoul Nambu	02	2639-2140~8	2639-2245	2639-2215~24	2639-2271~8	2639-2300~7
	Seoul Bukbu	02	950-9711	950-9737	950-0751~71	950-9811~5	2171-1700
	Seoul Gwanak	02	460-4500		460-4600	460-4400	3282-9200
	Uijeongbu	031	850-7711~2	850-7604	850-7770	850-7640	828-0900
	Goyang	031	931-2900		931-2820	931-2870	931-2800
	Chuncheon	033	258-3562~6		258-3570~8	258-3580~4	258-3551
	Taebaek	033	550-8602~7		550-8622~4	550-8625~7	552-8605
	Gangneung	033	641-4902		645-4702~3	646-2515~6	610-1919
	Wonju	033	748-2401~3		745-0009	744-3370	734-9090~2
	Yeongweol	033	371-6210~6		371-6230~4	371-6235~7	371-6260
Busan	Busan Admin.	051	850-6320~1	850-6380	850-6412~4	850-6445~9	860-1919
	Busan Dongrae	051	556-7955	552-0382	552-5912~3	552-3025~6	559-2400
	Busan Bukbu	051	304-3212~4	304-3215	304-3244~5	305-4949	330-9900
	Changwon	055	239-6520~30	239-6556	239-6560~72	239-6580~90	239-6500
	Ulsan	052	228-3811~14	228-1862	228-3851~62	228-1882~90	228-1961~68
	Yangsan	055	370-0912~8	370-0958	387-0803~4	370-0931~5	330-6400, 356-8225~6
	Jinju	055	760-6540~9		760-6520~32	760-6560~7	753-9090~2, 884-8219
	Tongyoung	055	650-1931~7		650-1911~7	650-1940~5	641-9090, 637-5490~1

Regional labor administrations and offices		DDD	Manage-ment Div.	Labor Management Assistance Div.	Labor Inspection Div.	Industrial Safety Div.	Employment Security Center
Daegu	Daegu Admin.	053	667-6310	667-6279	667-6230~52	667-6360~5	667-6000
	Daegu Bukbu	053	605-9006~16	605-9059	605-9100~22	605-9150~7	605-6500
	Pohang	054	284-7991~2	271-6271	275-6872~4	275-6875	284-7994~5
	Gumi	054	450-3570~81		450-3510~22	450~3550~7	440-3360, 431-2728~9
	Yeongju	054	638-6381		634-0913, 1921	635-0646	631-1919
	Andong	054	851-8012~4		851-8030	851-8049	851-8061
Kyeongin	Kyeongin Admin.	032	460-4501~2	430-4566	460-4601~12	460-4401~5	460-4700
	Incheon Bukbu	032	556-0921~2	556-0924	556-0927~32	556-0933~7	512-1919
	Suwon	031	259-0211,9		259-0381~83	259-0253~4	231-7861~7
	Bucheon	032	714-8710~9	714-8724	714-8741~56	714-8781~9	320-8900
	Anyang	031	463-7381~8	463-7338	463-7311~26	463-1152~6	463-0721~3
	Ansan	031	412-1907~8	412-1979	412-1950~8	412-1970~7	412-6990~3
	Seongnam	031	788-1581~8	788-1515	788-1531~41	788-1571~8	739-3174~8
	Pyeongtaek	031	646-1121~4		646-1125~6	646-1183~4	646-1201~03
Gwangju	Gwangju Admin.	062	2207-100	2207-212	2207-250	2207-300	609-8500
	Jeonju	063	240-3321~7	240-3375	240-3351~64	240-3391~8	270-9100
	Iksan	063	839-0001~04		839-0021~29	839-0033~37	839-0041
	Kunsan	053	4500-511~7		4500-521~4	4500-531~5	4500-540
	Mokpo	061	280-0101~9		280-0131~9	280-0171~6	280-0500
	Yeosu	061	6500-110~9	6500-194	6500-120~8	6500-130~7	6500-140~7
Daejeon	Daejon Admin.	042	480-6212~4	480-6363	480-6252~5	480-6301~6	480-6481~4
	Cheongju	043	299-1110~8	299-1156	299-1210~25	299-1310~21	230-6700~1
	Cheonan	041	560-2811~22	560-2890	560-2841~56	560-2861~69	620-7400
	Chungju	043	845-7760~2		848-3652~4	851-4545	850-4017
	Boryeong	041	930-6110~9		930-6130~9	930-6140~9	930-6200

Support for labor affairs management at foreign invested-firms

Ministry of Employment and Labor organizes seminars and forums on labor policies for foreign investors and social partners, in order to increase their understanding about the relevant law and institutions in Korea and promote labor management cooperation.

- ▶ KOILFA, Invest KOREA and American Chamber of Commerce (AMCHAM) co-host, on a yearly basis, labor policy briefings for foreign investors by Minister of Employment and Labor, policy forums for the labor and management at foreign-invested firms and workshops for mid-level managers at foreign-invested firms.
- ▶ Two officials of Ministry of Employment and Labor are dispatched to Invest KOREA (Labor Relations Support Team), which is a part of KOTRA exclusively working to promote and support foreign investment, so that they can provide labor affairs management service specifically for foreign-invested firms, including priority management for (30) foreign-invested firms with vulnerable labor relations, local circuit meetings, labor relations seminars for foreign-invested firms and grievance-handling in relation to labor affairs at foreign-invested firms.

Each and every local administration and office of employment and labor has a labor inspector who is dedicated to labor affairs management at foreign-invested companies.

- ▶ They also provide indirect aids for labor affairs management at foreign-invested firms, by way of the tripartite meetings for foreign-invested firms, visiting consultancy in the areas with many foreign-invested firms, etc.
- ▶ Feel free to contact the dedicated labor inspector in your area, if you have a difficulty or a problem in relation to labor relations or labor affair management.

References are published and disseminated to help labor affair management at foreign-invested firms.

- ▶ Ministry of Employment and Labor has published English versions of 'Labor Law in Korea' and 'Employment and Labor Policy in Korea' on a yearly basis, and disseminated them among Korean embassies overseas, foreign embassies and other foreign missions and foreign employer associations in Korea. Electronic versions of these publications are posted at the Website of the Ministry.
- ▶ Additionally, the Ministry publishes and disseminates a range of documents on new systems and pending issues whenever necessary, both in prints and electronically, to support labor affair management at foreign-invested firms.

☞ Visit the Website of the Ministry of Employment and Labor (http://www.moel.go.kr) for this publication and English versions of the labor law and regulations in Korea.