# Application of Korean Labor Laws at Foreign Embassies & Limits on their Korean Employees

## I. Introduction

There are 96 foreign missions in Korea in the form of embassies, consulates, and culture centers, etc., where several thousand Korean employees work. In the process of advising various foreign embassies, the most frequently asked question is whether the embassy is required to pay severance pay to its Korean employees. This is because severance pay systems do not exist in the foreign embassies' home countries, and the system means that a considerable amount of additional money should be paid if the employee has a long service record. These embassies need the approval of their governments before paying out any unexpected additional expenses.

Korean labor law applies to all employees working inside Korea in accordance with the principle of territorial privilege for jurisdiction. Labor law violations are subject to criminal punishment because of their compulsory provisions, but for Korean employees working in foreign missions in Korea, their employers are diplomats who are exempted from criminal prosecution under the 'Vienna Convention on Diplomatic Relations'[1], which makes it very difficult to enforce labor law should it be violated by these diplomats. Korean labor law protects the fundamental rights of employees by providing restrictions on dismissal, guarantees of payment of wages and severance pay, compensation for industrial accident, and guarantee of the three primary rights of labor, etc. So, as judicial precedent and Labor Ministry guidelines regulate the protection and limitations of labor law, it can be very confusing for embassies and their Korean employees to understand the applicability of that law. Accordingly, here I would like to look into related laws, judicial rulings and Labor Ministry guidelines and seek a clearer understanding.

## II. Basic Principles

### 1. Related Laws

Employment contracts made between Korean employees and their embassy employers does not have stipulated regulations that must follow Korean labor laws, but according to the applicable principle of territorial privilege for jurisdiction in Korean territory (Article 12 of the Labor Standards Act), labor laws apply to all Korean employees. Even illegal migrant workers[2] are protected by Korean labor law. The Act Regarding the Conflict of Laws (Article 28)[3]

1 This Convention refers to the agreement between nations to guarantee the status of diplomatic agents, and was agreed in Vienna on April 18, 1961. Korea confirmed it in its National Assembly on January 27, 1970 (Treaty number 365).
(1) The Constitution of the ROK (Paragraph 1 of Article 6) stipulates, "Treaties duly concluded and promulgated under the Constitution and generally recognized rules of international law shall have the same force and effect of law as domestic laws of the Republic of Korea."
(2) The Convention (Paragraph 1 of Article 31): A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of (a), (b) and (c).
2 Seoul Incheon migrant workers union case (Supreme Court ruling on June 25, 2015, 2007doo4995
3 The law regulates the principle of international jurisdiction and the governing law regarding international legal relations.

stipulates, “For employment contracts, regardless of the governing law that both parties agreed to or did not choose, it is not possible to ignore the employee protections endowed by compulsory rules related to the governing law of the resident country.” The Labor Standards Act (Article 15) also stipulates that a labor contract which establishes working conditions failing to meet the standards required in this Labor Standards Act shall be null and void to that extent. Those conditions invalidated by the preceding sentence shall be governed by the standards provided for in this Labor Standards Act. For an example, in cases where an employment contract between both parties does not specify severance pay, the employer shall pay severance pay in accordance with the Labor Standards Act.

**2. Labor Ministry Guidelines**

Labor Ministry guidelines[4] regarding application of the Labor Standards Act to employees working in foreign embassies stipulates that “as the principle of territorial privilege for jurisdiction is generally accepted, foreign embassies in Korea are not exempt from Korea’s domestic laws unless there has been an agreement between the two countries where this is specified. Provided, as foreign embassies have diplomatic immunity, there is no jurisdiction of the court in Korea to enforce domestic laws (regarding applications for remedy of unfair labor practice or lawsuits seeking nullity for dismissal) in accordance with the Supreme Court ruling on November 14, 1989 (case number: 89noo4765). Accordingly, it can be expected that enforcing domestic laws will have considerable limitations.”

**3. Court Precedents**

Nevertheless, the Supreme Court upheld the jurisdiction of the Korean court in a lawsuit seeking nullity of a dismissal of an employee who had been hired by the US military and worked on a US military compound. The related high court originally rejected the lawsuit because the employee had named the US government as the defendant even though the US government did not have jurisdiction in Korea, but the Supreme Court allowed the jurisdiction to be able to take legal action against the US government in Korea. The Supreme Court ruled, “according to the customary international law, the activity of a nation’s sovereignty is excluded from another nation’s jurisdiction in principle, but it is not international law or part of normal international relations that exempt the other nation’s right of jurisdiction over judicial actions. **Accordingly, unless the diplomats’ judicial actions are considered actions of sovereignty, or, due to closed relations with this, there is a special condition that the execution of jurisdiction can result in unfair intervention of sovereign activities, our nation’s court can assume jurisdiction against the home nation of an embassy regarding labor issues related to diplomats.**”[5] This means that jurisdiction can be assumed when an employee takes legal action against the home nation of an embassy rather than the embassy itself.

4 Labor Ministry Guidelines: Geungi 68207-3085, on September 11, 2001
5 Supreme Court ruling on December 17, 1998, 97da39216

## III. Application of Labor Laws

### 1. Application of the Labor Standards Act

#### (1) Cases of unfair dismissal[6]

An employee named Ahn was hired by the Austrian Embassy from May 1, 1997 without a fixed period for employment, and worked there until termination of employment in 2010. When the Austrian Embassy dismissed the employee due to its reduced budget, the employee took legal action against the Republic of Austria. The Seoul District Court (Civil Court section 41) ruled in favor of Ahn in his lawsuit seeking nullity of the dismissal on April 6, 2014, stipulating "The Republic of Austria shall pay 95 million won in back wages. Additionally, the Embassy shall pay Ahn the monthly wage equivalent of 2.5 million won from the first day of the last month he was employed until the date that Ahn can be reinstated." The Court explained, "Ahn was not involved in the Embassy's sovereign activities, but performed an assisting role of support for embassy employees in terms of Korean language skills. Ahn's employment contract and dismissal were not related to the Embassy's sovereign activities, but closely related to employment-related judicial activities as one party to contract relations." It also added, "Even though a Korean court assumed jurisdiction regarding Ahn's dismissal, there is no concern that it intervened in the Embassy's sovereign activities unfairly. The ruling was decided by reference to a ruling made in 1998 in a lawsuit seeking nullity of a dismissal of a Korean employee who took legal action against the US government, which stipulated, "Unless there is a special condition that the execution of jurisdiction can result in unfair intervention in sovereign activities, our nation's court can assume jurisdiction against another nation regarding labor issues related to diplomats."

#### (2) Severance pay system

It is generally recognized that embassies in Korea have the duty to pay severance pay to their Korean employees. However, there are some disputes on whether embassies should pay severance pay to domestic workers such as housekeepers or gardeners.

#### (3) Application of the Industrial Accident Compensation Insurance Act

An embassy is a workplace to which the Labor Standards Act applies, but the enforcement of Korean law is restricted due to the employer's diplomatic status under the Vienna Convention on Diplomatic Relations. If the employer has an obligation for compensation according to the Industrial Accident Compensation Insurance Act, it is granted that the embassy shall be considered the employer to take up industrial accident compensation insurance. In the event of a work-related accident, the embassy shall compensate the injured employee(s) in accordance with regulations in the Labor Standards Act on work-related accidents. In cases where there is no jurisdiction in Korea regarding the execution of Korean laws, it would be impossible to enforce the law by withdrawing overdue premiums in a compulsory manner.[7] Accordingly, there are considerable restrictions in place on enforcing domestic law should a work-related accident occur.

6 This news reported by Newsis reporter, Hong Sei-hee on April 6, 2014, and quoted by multiple major newspapers such as Joongang Daily and Law Times. Documents of the ruling by this case's court (Seoul Central District Court) were not released.
7 Supreme Court ruling on April 25, 1997, 96da16940

**2. Collective Labor Relations**

Guaranteeing the three rights of labor would be difficult to accept by embassies. When Korean employees in the French Embassy established a labor union and elected a union chairman on June 10, 1988, the Embassy dismissed the chairman immediately. In response, the labor union filed an application for remedy of unfair labor practice with the Labor Relations Commission and also filed a lawsuit seeking nullity of dismissal with the Seoul District Court against the ambassador of the French Embassy. These two cases were dismissed because there was no jurisdiction given to the ambassador, who was also a diplomat with the related immunity. The following Supreme Court ruling explained, "Even though dismissing the labor union representative can be considered an unfair labor practice, if he could not be reinstated to his previous job by the Labor Relations Commission through an order for remedy, it can be regarded that the labor union representative's position is lost[8]." There have been no cases similar to this since then, but it is generally recognized that labor unions are not tolerated at embassies.

**3. The Four Social Security Insurances**

**(1) Employment Insurance and Industrial Accident Compensation Insurance**

These insurances are compulsory for businesses and companies that hire at least one employee ordinarily. Provided, businesses in the fields of agriculture, forestry, fisheries or hunting, for which four workers or fewer are employed by a person who is not a corporation, are excluded. Accordingly, although embassies are companies required to pay into these two compulsory insurances, Employment Insurance[9] and Industrial Accident Compensation Insurance cannot be enforced as compulsory insurances due to the special situations of the embassies, so embassy employees cannot receive benefits from these two insurances. Accordingly, in cases where an employee has a work-related accident, he must enter a claim for compensation under Korea's Labor Standards Act to the embassy's home country directly.

**(2) National Pension and Health Insurance**

For all companies ordinarily hiring at least one worker, subscription to the national pension and health insurance plans is mandatory. However, according to a news report, few embassies do so[10].

8 Supreme Court ruling on November 14, 1989, 89noo4765
9 Labor Ministry Guidelines: Employment Insurance-1333, March 3, 2005
10 Daily Labor News: "Blind spot of social security insurances for Korean employees working in foreign embassies", reported on October 13, 2003.

## IV. Wider Application of Labor Laws

### 1. Typical Labor Cases (News report)

According to a YTN news report on January 31, 2009, Min Jung-Bae, who had been working as a driver for the Indian Embassy since 2002 was dismissed on the last day of 2008. He received verbal notice on termination of his employment just one day before and was informed that, according to Indian law, he could not continue to be employed by the embassy once he reached 60 years of age and would not receive severance pay either. In this case, how can remedy be received? First, Mr. Min should apply for remedy for unfair dismissal with the Seoul Labor Relations Commission against the Indian government, not the Indian Embassy. Also, the employee should make a claim for unpaid severance pay through the Seoul District Labor Office. The aforementioned Supreme Court ruling in December 1998 stated "unless the diplomats' judicial actions are considered actions of sovereignty, **our nation's court can assume jurisdiction against the home nation of an embassy regarding labor issues related to diplomats."** Therefore, the employee can take legal action for unfair dismissal or unpaid severance pay in a Korean court against the Indian government. [11]

### 2. Desirable Direction for Application of Labor Law

Thousands of Korean employees working at foreign missions in Korea have been in the blind spot for protection under Korean labor law. When employees cannot be protected by labor laws, it is as if they are not guaranteed the basic protection of their fundamental rights protected by the Constitution. If the employees cannot receive severance pay, which is part of the wages paid in return for the labor provided, it can be regarded that they have worked as exploited workers. Generally, foreign embassies are considered "special" workplaces due to their diplomatic immunity and are excluded from the host nation's jurisdiction according to international law. However, as matters such as applications for remedy for unfair dismissal, compensation for work-related accidents, claims for unpaid wages, and related cases are directly related to employees' natural rights, they should be implemented promptly and equitably as evidence of the protection of the people's fundamental rights. Accordingly, the Ministry of Employment & Labor should provide, in an expeditious manner, clearer guidelines on labor laws as they apply to thousands of Korean employees working in foreign embassies and related foreign missions.

[11] Supreme Court ruling on December 17, 1998, 97da39216

# The Principle of Complete Payment of Wages & Exceptions

## I. Introduction

Company A gives a 20 percent discount to its employees when they buy company products, up to a maximum of KRW 2 million per year. Only employees and their direct family members living together may receive this discount when they purchase products. However, it was confirmed that one employee violated this company regulation, so the company issued a written warning and deducted, with the employee's agreement, KRW 500,000 from his salary: the amount involved in the violation. This type of situation has occurred frequently in business, and deals directly with whether a company can recover claimed damages by deducting employee wages.

As the wages paid in return for work provided directly support the employee's ability to sustain him or herself, deducting wages to pay for claims is strictly regulated. Article 43 (Payment of Wages) of the Labor Standards Act stipulates, "(1) Payment of wages shall be made in full to workers; however, if otherwise stipulated by special provisions of laws or decrees or a collective agreement, wages may be partially deducted or may be paid by other means than cash." Other provisions that deal with this subject include Article 20 (Prohibition of Predetermination of Nonobservance) [12], Article 21 (Prohibition of Offsetting Wages against Advances) [13], Article 22 (Prohibition of Compulsory Saving) [14], and Article 95 (Limitation on Punitive Provisions) [15]. Despite the principle of complete payment, there are a few exceptions. Some legitimate reasons for deductions include: ① deductions allowed by law or decrees (court rulings); ② deductions allowed by the collective agreement; ③ deductions made to correct miscalculation of wages. [16] Also, even though an exception for wage claims has the employee's consent, this needs to be handled in a strictly regulated manner. Here I would like to take a substantial look into exceptions to complete payment of wages.

## II. The Principle of Complete Payment & Exceptions

### 1. The principle of complete payment

The purpose of complete payment of wages is designed to protect employees and provide stability in their earning of a living by means of prohibiting employers from unilaterally deducting wages and requiring the complete payment of wages. Some exceptions exist, but these are strictly regulated in special provisions of laws or decrees or in collective agreements. [17] The courts have ruled, "In cases where an employer reduces personnel and at the same time

12 Article 20 (Prohibition of Predetermination of Nonobservance): No employer shall enter into a contract by which a penalty or indemnity for possible damages incurred from breach of a labor contract is predetermined.
13 Article 21 (Prohibition of Offsetting Wages against Advances): No employer shall offset wages against an advance or other credits given in advance on the condition of worker's labor.
14 Article 22 (Prohibition of Compulsory Saving): (1) No employer shall enter into a contract with a worker, in addition to a labor contract, which stipulates compulsory savings or the management of savings.
15 Article 95 (Limitation on Punitive Provisions): If a punitive reduction in wages for a worker is stipulated in the rules of employment, the amount of reduction for each infraction shall not exceed half of one day's average wages, and the total amount of reduction shall not exceed one-tenth of the total amount of wages during each period of wage payment.
16 Jongyul Lim, 『Labor Law』, 14th Edition, 2016, Parkyoungsa, pg. 417.
17 Article 109 (Penal Provisions): (1) Persons who violate the provisions of Article 43 shall be punished by imprisonment of up to three years or by a fine not exceeding twenty million won.

unilaterally cuts bonuses, if the employees continue to work without any particular claims, this deduction of wages still amounts to a unilateral decision by the employer and the employees' rights to claim these unilaterally-reduced bonuses shall not be considered waived." [18]

**2. Exceptions**

**(1) Deductions allowed by law and decree**

Laws and decrees which allow deductions are limited to income tax law, social security insurance laws, and other stipulated laws. In addition, a court decision to allow seizure of wages can be implemented by seizing one-half of wages exceeding the minimum cost of living (KRW 1.5 million) [19]

A particularly remarkable judicial ruling was recently made which ruled that deductions can be made from monthly wages, but not from severance pay or retirement pension. "Since Article 7 (Protection of Right to Receive Benefits) of the Employee Retirement Benefit Security Act (ERBSA) stipulates that the right to receive benefits under a retirement pension plan shall neither be transferred to others nor offered as collateral, such provision prohibiting transferring the retirement benefits as collateral is part of statutory law. Accordingly, a court ruling to allow seizure of benefits under a retirement pension plan is null and void, and a third-party debtor can refuse the payment, by quoting the above, from an employee's benefits, even if ordered by a court. On the other hand, Article 246 (Claims Subject to Prohibition of Seizure) of the Civil Execution Act (CEA) regulates that an amount equivalent to a maximum of 1/2 of wages, retirement pension or other wage claims of similar nature can be deducted. Since Article 7 (Protection of Right to Receive Benefits) of the ERBSA and Article 246 (Claims Subject to Prohibition of Seizure) of the CEA are affected by the relationship between general law and special law, it is translated that all benefits under retirement pensions shall not be transferred as collateral."[20] This means that because the ERBSA is a special law, it takes precedence over the CEA, which is a general law.

**(2) Deductions allowed by a collective agreement**

Deductions of union dues (or dues checkoff) are typical deductions allowed by a collective agreement. In cases where the labor union requests that the company deduct 10 times the usual monthly union dues (such as KRW 500,000 from each union member towards preparations for a strike), the company will need to decide whether to cooperate or not. For its part, the Ministry of Employment and Labor (MOEL) expressed its official opinion that if the labor union decides to raise funds to prepare for a strike by means of a legitimate decision-making process such as by resolution at a general meeting of all union members (or union representatives), the company shall cooperate by deducting the special union fees from employee monthly wages even though there is no individual consent to do so. [21] This means that, according to MOEL, it would be considered unfair labor practice for an employer to refuse to deduct the amount requested by the labor union to prepare for a strike.

18 Supreme Court on June 11, 1999, 98 Da 22185
19 Supreme Court on March 16, 1994, 94 Ma 1882; Civil Execution Act: Article 246 (Claims Subject to Prohibition of Seizure) (1) None of the following claims shall be seized: 4. Amount equivalent to 1/2 of wages, pension, salary, bonus, retirement pension, or other wage claims of similar nature: Provided, that where the amount falls short of the amount prescribed by Presidential Decree in consideration of the minimum cost of living under the National Basic Living Security Act or exceeds the amount prescribed by Presidential Decree in consideration of the cost of living for a standard family, such amount (1.5 million won) prescribed by Presidential Decree shall apply respectively;
20 Supreme Court on January 23, 2014, 2013 Da 71180
21 Labor Ministry Guideline: June 6, 2004, Labor Union – 1501

**(3) Deductions to correct miscalculation of wages**

In cases where an employer overpaid an employee by mistake, equivalent deductions from wages would be to correct the miscalculation, making it possible to adjust wages or severance pay, regardless of the principle of complete payment of wages. Provided, even in this case, the courts have ruled that the amount of retirement benefits deducted to retrieve overpaid wages shall be a maximum of 1/2 of the retirement benefits. [22]

## III. Criteria for Judgment & Related Cases Regarding Other Deductions

### 1. Criteria for judgment

The principle of complete payment of wages strictly regulates, in accordance with Article 43 of the Labor Standards Act, related judicial rulings and MOEL Guidelines an employer from deducting an employee's wages to cover damage claims against the employee. [23] This is because such a deduction is determined unilaterally by the employer.

Regarding the justification for this, judicial ruling has stipulated the following criteria for judgment: "It is prohibited for an employer to unilaterally deduct an employee's wages to cover claims against the employee by the employer, but in cases where the employer deducts or replaces the employee's wages after obtaining the employee's consent, as this consent can be regarded as the employee voluntarily agreeing to this deduction, this would not be a violation of Article 43 of the Labor Standards Act. Provided, in view of considering the purpose of the principle of complete payment of wages, determination of whether the employee actually voluntarily agreed to this deduction shall be strictly and carefully made." [24]

### 2. Related cases

**(1) Reimbursement of training expenses**

In cases where an employer assigns an employee overseas and subsidizes all training expenses for the employee to attend a training program, and that employee does not serve the compulsory employment period after completing the training, the employer can legitimately require the employee to reimburse part or all of the training expenses covered by the company. Accordingly, a training regulation that exempts an employee from the duty of reimbursement if that employee serves the compulsory employment period after completing the commissioned overseas training is not equivalent to a contract by which a penalty or indemnity is predetermined for damages incurred from a breach of the labor contract. Neither does such a training regulation violate Article 7 of the LSA (Prohibition of Forced Labor: No employer shall force a worker to work against his own free will through any means which unlawfully restrict mental or physical freedom) nor Article 21 (Prohibition of Offsetting Wages against Advances: No employer shall offset wages against an advance or other credits given in advance on the condition of a worker's labor). [25]

22 Supreme Court on May 20, 2010, 2007 Da 90760
23 Supreme Court on September 28, 1976, 73 Da 1768
24 Supreme Court on October 23, 2001, 2001 Da 25184
[25] Supreme Court on February 25, 1992, 91 Da 26232 (Korean Air)

**(2) Deductions from bonuses**

Sometimes an employer reduces or does not pay bonuses, with labor union consent, in the process of coping with the company's business difficulties. The MOEL has released guidelines for two different cases: bonuses already incurred and bonuses expected to be incurred. In cases where the employer intends to deduct from bonuses already incurred, which were paid in return for employee labor service, this is null and void even with labor union agreement or revision of company rules. In such cases, individual employee consent must be received. However, the employer reducing or deducting from bonuses expected in the near future is possible through revision of the collective agreement with labor union consent, or revision of the company rules after obtaining the consent from the labor union or the majority of employees. In such cases, receiving individual employee consent is not necessary. [26]

The courts have made rulings that align with this guideline. The wages (including bonuses) or severance benefits already incurred are considered the employee's private property, so unless the labor union receives individual employee agreement, it is not possible to deduct or delay those payments through a collective agreement. Accordingly, a collective agreement cannot require employees to reimburse payments already received, unless there is agreement from each individual employee.[27]

**(3) Housing loans from the company**

In cases where an employee resigns before he/she has reimbursed the company for a housing loan received from the company, if the employer deducts all unpaid debt in a lump sum from the severance benefits, this may be considered a violation of the principle of complete payment of wages. However, the courts have ruled in favor of lump sum deductions from severance benefits for the following reason: "Since the collective agreement is the agreement to determine items occurring in labor and management relations, it can be a real expression of the intentions of both parties. It can also be admitted that the individual employee's voluntary decision and agreement make it possible to deduct wages instead of entering a formal claim for repayment of debts owed to the company by that employee. In view of these points, if the collective agreement was made justifiably and contains items permitting the requirement to reimburse unpaid loans, such a collective agreement does not violate the principle of complete payment of wages."[28]

## IV. Conclusion

As in the cases given above, companies frequently deduct or require reimbursement for claims of illegal acts or other damages. Strictly speaking, this is a violation of the principle of complete payment of wages, which by law prevents the reduction of wages for general claims (debts) that an employee owes to his or her employer. Accordingly, if an employer deducts wages unilaterally to cover these claims, this deduction is invalid and makes the employer subject to punishment for violating the Labor Standards Act.

[26] Ministry of Employment & Labor Guidelines: April 15, 1999, LSA 68207-587
[27] Supreme Court on January 28, 2010, 2009 Da 76317
[28] Supreme Court on June 27, 2003, 2003 Da 7623

# Changes of the Employment Permit System for Migrant Workers

## I. Introduction[29]

According to the '2015 Immigration Statistics of the Ministry of Justice', the number of foreign residents increased to 1,899,519 people in 2015, from 747,467 ten years ago. It is certain that there will be more than 2 million in 2016, and 10 years after that we can expect 3 million. The percentage of foreigners in comparison with the total population was 1.5% in 2005, increased to 3.7% in 2015, and is expected to be more than 6% by 2025.

The system for bringing in migrant workers has changed very much. In order to resolve the severe labor shortage of small- and medium-sized companies, Korea introduced the Industrial Trainee System[30] in 1993 to bring in foreign migrant workers, but it caused many problems such as corruption within the various countries in the sending of migrant workers, and violations of human rights within Korea. Therefore, Korea introduced the Employment Permit System (EPS) under the Act on Foreign Workers Employment, etc. (hereinafter referred to as the "Foreign Workers Act") in August of 2004 so that it could correct these problems and secure a long-term supply of migrant workers. The Employment Permit System consists of the non-professional employment visa (E-9) for foreign workers engaged in simple unskilled jobs and the visiting employment visa (H-2) for overseas Koreans. For the past ten years, as we have invited more and more foreign migrant workers, our industries in small- and middle-sized manufacturing, construction and related businesses have become dependent upon them. This has resulted in many changes to the Employment Permit System, and has resulted in an extension of the maximum stay period, expanded job descriptions, and even an improvement in protection of the human rights of the migrant workers themselves. Along with these changes, the number of overseas Koreans who come to Korea for work has increased, due to Korea's engagement policy towards these individuals.

I would like to review these changes below.

## II. Changes to the Employment Permit System

### 1. Increase in the number of countries sending migrant workers

There were 6 countries sending migrant workers to Korea in 2004; 4 more were added in 2006, and 5 more in 2007, for a total of 15 countries today.

[29] Ministry of Justice, 「Manual for Visa Issuance」, Immigration Office, April 1, 2016; Choi, Hong-Yup, 「A Study on Foreign Workers' Status in Terms of Labor Law」, Doctoral thesis, February 1997; Nho, Myung-Jong, 「Effects and Improvements of the Employment Permit System 」, Master's thesis, July 2015; Lee, Ke-Ho, 「A Study on Critical Reviews for the Korean Immigration Policies 」, Master's thesis February 2013

[30] The Industrial Trainee System operated along with the Employment Permission System until 2006, but was abolished on January 1, 2007.

- Countries sending migrant workers in 2004 (6): the Philippines, Mongolia, Sri Lanka, Vietnam, Thailand, Indonesia
- Countries added in 2006 (4): Uzbekistan, Pakistan, China, Cambodia.
- Countries added in 2007 (5): Bangladesh, Nepal, Kyrgyzstan, Myanmar, East Timor.

**2. Extended jobs**

Jobs allowed for migrant workers were in manufacturing, construction and agriculture & livestock in 2004, and were gradually extended to fishing and some service industries (cold storage warehousing, etc.) in 2014. Special EPS jobs were allowed in construction and some service industries (6) in 2004, and then widely extended to the manufacturing, agricultural & livestock, and fishing and service industries (29 jobs such as food service work, housework and nursing services, wholesale and retail services, etc.) in 2014.

<Job Status for Migrant Workers >

| Year | | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|
| Total | | 102,356 | 115,251 | 122,727 | 147,090 |
| EPS (E-9) | Total | 49,130 | 53,638 | 58,511 | 51,557 |
| | Manuf. | 40,396 | 45,632 | 48,967 | 40,875 |
| | Const. | 2,207 | 1,269 | 1,606 | 2,299 |
| | Agri. | 4,557 | 4,931 | 5,641 | 6,047 |
| | Serv. | 124 | 107 | 70 | 91 |
| | Fish. | 1,846 | 1,699 | 2,227 | 2,245 |
| SEPS (H-2) | Total | 53,226 | 61,613 | 64,216 | 95,533 |
| | Manuf. | 26,542 | 36,730 | 42,342 | 58,835 |
| | Const. | 7,343 | 1,700 | 187 | 3,270 |
| | Agri. | 641 | 394 | 432 | 463 |
| | Serv. | 18,329 | 22,476 | 21,061 | 32,739 |
| | Fish. | 188 | 124 | 120 | 149 |
| | Other | 183 | 189 | 74 | 77 |

<Status of Migrant Workers in the EPS >

| Year | | 2011 | 2012 | 2013 | 2014 |
|---|---|---|---|---|---|
| Total | | 102,356 | 115,251 | 122,727 | 147,090 |
| EPS (E-2) | New entry | 40,130 | 50,288 | 44,395 | 43,276 |
| | Re-entry (Long*) | - | 1,853 | 5,169 | 1,602 |
| | Re-entry (Spe**) | - | 1,494 | 6,553 | 4,101 |
| | Re-entry (Ar***) | - | 8 | 2,394 | 1,948 |
| SEPS (H-2) | | 53,226 | 61,613 | 64,216 | 95,533 |

* Long-term service without changing workplace
** Specially-equipped skill holders
*** Arbitrarily-equipped skill holders

**3. Extended period of stay**

At the beginning of the EPS, the maximum sojourn for migrant workers was strictly adhered to according to the principle of the short-term replacement cycle, but due to the continuous demands for more skilled migrant workers, the period of sojourn has gradually been extended to a special system for re-entry of skilled migrant workers who have never changed workplaces (Article 18-4). As for those who are qualified and are completing their sojourn (3 years plus 1 year and 10 months), if they apply for a re-entry employment visa, they can re-enter and work

at their workplace for another 4 years and 10 months. This means that the employee can work for up to almost 10 years (specifically, 9 years and 8 months).

| Aug. 2004 | May 2005 | Dec. 2009 | July 2012 |
|---|---|---|---|
| 3 years | 3 years + 3 years (1 month interval) | 4 years and 10 months (3 years + 1 year 10 months) | 4 years and 10 months (if conditions are met[31], 4 years and 10 months can be added after leaving the country for 3 months). In total: 9 years and 8 months (10 years) |

**4. Shortening the period to require efforts to hire Koreans first**

Companies wanting to hire migrant workers are required to first spend 30 days seeking to hire Koreans through the job center, something that was strictly observed in 2004. However, this effort was reduced to 14 days in 2010, and if the employer placed an advertisement in a newspaper or broadcasting media for 3 days or more, the required length of effort to hire Koreans first is reduced to 7 days.

| August 2004 | April 2010 |
|---|---|
| 30 days or more spent seeking to hire Koreans first through the Job Center (If the company rejects suggestions from the Job Center two times, the permit to employ is cancelled.) | 14 days or more spent seeking to hire Koreans first through the Job Center. Provided, if the company places an ad in a newspaper or broadcasting media for 3 days or more, the required period is shortened to 7 days. (If the company rejects suggestions from the Job Center two times, the permit to employ is cancelled.) |

**5. Compulsory duty to leave the country omitted**

When the migrant workers completed their employment for three years and expected to have an extension, it was required that they leave the country for one month or longer. However, under the new revision, migrant workers can renew their contract period for an additional two years without leaving the country (Article 18-2).

**6. Adjustment of contract period**

The employer and migrant workers can, in principle, have an employment contract for one year, which can be renewed within a maximum of three years. However, under the new revision, the fixed contract period of one year has been abolished, and migrant workers can now have an employment period of up to three years upon mutual agreement of both the employee and employer (Article 12).

[31] If the following three conditions are satisfied: ① No change of workplace; ② Workplace deemed to have difficulty hiring Koreans in consideration of the available jobs or the size of the workplace as determined by the Foreign Workforce Policy Committee (manufacturing with 30 workers or less, agricultural and stock breeding, and the fishing industry); ③ After re-entry, the migrant worker must work for the same employers.

**7. Extension of the job-seeking period**

In the past, when migrant workers left their workplaces, they were required to find a job within two months, but under the new revision, the job-seeking period has been extended to three months (Article 25). However, this does not apply to overseas Koreans with H-2 status.

## III. Expanded Use of the Special EPS for Overseas Koreans

### 1. Background of the special Employment Permit System

There is a general opinion among the various civil groups and all classes of society that Korea should maintain a warm engagement policy towards overseas Koreans from China and the former Soviet Union, and that there was some necessity to correct discrimination between them and overseas Koreans in advanced countries like the U.S.A. and Japan who freely engaged in employment activities with their employment permit visa (F-4). With this in mind, the Regulation Regarding Employment Management of Visiting Overseas Koreans (Labor Ministry Notice 2002-29) was announced on December 6, 2002, which allowed overseas Koreans aged 40 years or older, and who had relatives in Korea, to obtain employment in 8 service-related jobs.

Later this Employment Management System was integrated into the special EPS, and construction jobs were immediately added. The improved status for overseas Koreans was extended to China and the former Soviet Union, and the applicable jobs were also gradually extended. Eligibility was widened to overseas Koreans aged 25 years or older who had a relative or someone on their family register who resided in Korea. Then, starting in March of 2007, the Visiting Employment System was initiated, which allowed overseas Koreans who did not have any relatives in Korea to get a job. In 2016, allowed jobs increased to include more manufacturing and construction positions, plus 41 kinds of service industry positions. Overseas Koreans can now be employed for the available period (5 years) of a Visiting Employment Visa (H-2) and leave and/or come back to Korea with no limit to the number of visits.

### 2. Difference between the general EPS and the special EPS

**(1) Employment through the general EPS**

An employer who intends to hire migrant workers should make an effort to hire Koreans for at least 14 days, and after these efforts, the employer should apply for migrant workers at the Labor Ministry's Job Center. The Job Center will review the qualification of the employment request first, and then recommend a list of migrant workers. Once the employer has chosen migrant workers from the list, a permit certificate will be issued. After this, the employer will fill out the standard Employment Contracts and submit them to the Job Center. The Job Center will submit the list of those workers to be hired to the Human Resources Development Service of Korea (HRD Korea), and HRD Korea will send those standard Employment Contracts to the relevant migrant workers. The migrant workers will sign the Employment Contracts and send them to the employer. The employer will then apply for a certificate of visa issuance to the Ministry of Justice. HRD Korea will invite those migrant workers to Korea, and will implement

employment training and health examinations, and have them registered for migrant workers' insurance and then send them to their employers.

**(2) Employment through the special EPS**

Overseas Koreans who have acquired a Visiting Employment (H-2) Visa from their Oversea Embassy enter Korea and attend the employment training provided by HRD Korea. After this, they register for employment at HRD Korea or the Job Center, and can then get a job through the Job Center or find a job on their own. Provided, it is possible to get a job in the construction industry only after they have received an Employment Approval Certificate after attending construction employment training. An employer who intends to hire overseas Koreans should get a confirmation letter from the Job Center allowing them to hire overseas Koreans, after making the required effort to hire resident Koreans first, and then hire overseas Koreans through the Job Center or their own channels. For a special EPS, the standard Employment Contract should be signed. The contract period is determined by mutual agreement within the available employment period, and the employment contract becomes valid as of the day when the overseas Korean actually begins to provide his or her labor service. Changing jobs is permissible, with no limitations, unlike general migrant workers.

## IV. Conclusion

When looking back on the Employee Permit System that was introduced in 2004, 12 years ago, its system has undergone many changes. First, the short-term period of sojourn has been extended from 3 years to 9 years and 8 months. Second, permitted jobs were also extended not only to non-professional manufacturing, but also to the construction and service industries. Third, regarding the duty to hire Koreans first, existing efforts have become a formal procedure that does not assist Korean job seekers in practical terms. As evidence of this, this duty has been reduced from 30 days to only 7 days. Fourth, the number of illegal migrant workers has increased and now numbers more than 208,778 people as of December 2014. This has resulted in social problems, human rights violations and other issues.

In reviewing these four issues, while Korean immigration policy aims to prevent permanent settlement of migrant workers and to assist Korean nationals in gaining employment, the effectiveness of these policies is threatened. New government policy is needed to implement more desirable immigration policies and resolve the problems that arise from the differences between current government policies and practical applications.

# Criteria for Determining "Employee" Status

## I. Introduction

Nowadays, there are many kinds of jobs becoming available and people working under service or freelance contracts, but those who are engaged in such jobs are not recognized as employees to whom labor laws apply. In one particular case[32], a large private institute (hagwon) hired instructors under contracts for 'teaching services', and treated them as independent business owners with freelancer status, a determination which led to serious labor disputes later on. In cases where an instructor works as an independent business owner and not as an employee, he is ineligible for various protections under labor law such as regulations regarding wages and annual leave, protection from unfair dismissal, and compensation from social security insurances for work-related accidents. However, in cases where an instructor has been determined as an employee, all labor law protections apply. Therefore, instructors look for coverage under labor law, while institute owners seek to avoid employee status for their instructors, due to the additional expenses and the risk of collective action by those instructors.

For these reasons, a clear determination of employee status can resolve labor disputes, and so hereby I would like to review the criteria for determining employee status in terms of legal provisions, expert opinions, and judicial rulings.

## II. Judgment of Employee Status

### 1. Concept

Article 2 (1) of the Labor Standards Act stipulates that the term "worker" in this Act refers to a person who offers work to a business or workplace to earn wages, regardless of the kind(s) of job he/she is engaged in. The concept of "employee" includes the following factors: 1) it is not determined by the kind(s) of job he/she is engaged in; 2) the person works at a business or workplace; 3) the person offers work to earn wages. In understanding this concept, wage is put at the center, while the key point to be considered is whether a subordinate relationship exists between the work provider and the work user. That is, "employee" means "a person who offers work to earn money through a subordinate relationship". [33]

A subordinate relationship is one where a person hired by the employer provides work to the employer, and under the employer's direction and orders, carries out the tasks the employer wants done. So, an employee who offers work to earn wages can be translated as "a person offering work under a subordinate relationship with an employer."[34] The views of "subordinate relationship" by scholars can be classified into two groups: 1) interpretational and 2) law-based.

---

[32] Supreme Court ruling on June 11, 2015, 2014da88161: CDI's unpaid severance pay case.
[33] Jongryul Lim, 「Labor Law」, 13th edition, 2015, Parkyoung sa, page 32.
[34] Kaprae Ha, 「Labor Law」, 27th edition, 2015, Joongang Economy, page 102.

**2. Scholarly views**

**(1) Interpretational**

This view claims that the current judicial ruling regarding the criteria for determination of employee status has some difficulty in understanding because its criteria are enumerated with factual evidence in parallel order. To overcome this problem, the criteria should be categorized into substantial signs and formal signs from which employee status can be determined as existing or not.[35] Such substantial signs include whether there is command and control, the relationship between the work offered and the current business, and the work provider's situation. The formal signs refer to items whose existence depends on the employer's decisions, which include whether income tax and social security insurance premiums are paid, whether personnel evaluations for the person are performed, and whether the person has a contractual duty to receive permission before getting a second job.[36] That is, this view holds that employee status can be determined through the substantial signs, and formal signs can be excluded from the factors that determine a subordinate relationship.

**(2) Law-based**[37]

This view holds that the concept of 'employee' should be interpreted in accordance with the related legal provisions. Korean labor law has the definition of employee in Article 2(1) of the Labor Standards Act ("the LSA"), and any judgment of employee status should begin with the interpretation of this provision. The LSA definition of 'employee' contains four determining factors; **① the status can be determined "regardless of the kind of job"; ② the person offers work "to earn wages"; ③ the person offers work "at a business or workplace"; and ④ "the person offers work"**. Of these four factors, "status can be determined regardless of the kind of job" is not directly related to establishing employee status, and so will not be included for consideration. First, the employee provides work to earn wages. "The term 'wages' in the Labor Standards Act means wages, salaries and any other money and valuable goods an employer pays to a worker for his/her work, regardless of how such payments are termed." (Article 2(5) of the LSA) Therefore, it is sufficient to prove that wages are paid in return for work, but there is no limit on how such payments are termed. Therefore, even though wages were paid per unit of work performance, without considering the unit for the number of working hours, as long as they are paid in return for labor service, such payment can be regarded as wages. Second, "at a business or workplace" means that the employee provides work on the employer's business premises or workplace. Even though there are no particular instructions regarding working hours, place, and method of work, the person is assigned to the labor area with tangible work duties. Third, "the person offers work" means that the employee provides work to the employer, which is known to be a subordinate position. The employer's instructions can include instructions regarding time, place, and type of work provided. In

35 Sungtae Kang, "Different types of employment, and judgment of employee status under the Labor Standards Act",『Labor Law Study』No. 11 ho, 2000, p. 35
36 Sungjae Yoo,『Legal arrangement according to the variety of employment types: employee status in non-traditional employment』, Korea Legislation Research Institute, 2003.
37 Jonghee Park, "Employee concept according to the Labor Standards Act",『Labor Law Study』, No. 16 ho, 2003, pp. 74-76

determining employee status, all three of these factors do not have to be present, but whether the employee was supervised and under the employer's instructions or not must consider all of them.

### 3. Judicial ruling

#### (1) Criteria of the judicial ruling

The Supreme Court gave clear criteria for determination of employee status in a lawsuit case involving a full-time instructor at a private institute: first, employee status may exist regardless of the type of contract; second, the criteria for determination of a subordinate relationship are enumerated to 12 items; third, the conditions suggested as signs of employee status shall be determined as decisive or not by considering whether the employer can unilaterally decide whether those conditions exist. These criteria are used to determine employee status, and they are stipulated in the following paragraph.

The Supreme Court[38] ruled, "Whether a person is considered an employee under the Labor Standards Act shall be determined by whether, in actual practice, that person offers work to the employer as a subordinate of the employer in a business or workplace to earn wages, regardless of the contract type such as an employment contract or a service contract. Whether or not a subordinate relationship with the employer exists shall be determined by collectively considering: ① whether the rules of employment or other service regulations apply to a person; ② whether that person's duties are decided by the employer, and ③ whether the person has been significantly supervised or directed during his/her work performance by the employer; ④ whether his/her working hours and workplaces were designated and restricted by the employer; ⑤ who owns the equipment, raw materials or working tools; ⑥ whether the person can be substituted by a third party hired by the person; ⑦ whether the person's service is directly related to business profit or loss as is the case in one's own business; ⑧ whether payment is remuneration for work performed or ⑨ whether a basic or fixed wage is determined in advance; ⑩ whether income tax is deducted for withholding purposes; ⑪ whether work provision is continuous and exclusive to the employer; ⑫ whether the person is registered as an employee by the Social Security Insurance Act or other laws, and the economic and social conditions of both sides. Provided, that as whether basic wage or fixed wage is determined, whether income tax is deducted for withholding, and whether the person is registered for social security insurances could be determined at the employer's discretion by taking advantage of his/her superior position, the characteristics of employee cannot be denied because of the absence of these mentioned items."

"The above criteria are not applied formally or uniformly, but in the event facts equivalent to the above items exist, it should be determined after reviewing whether these facts were decided by the employer's superior position or required naturally by such job characteristics."[39]

[38] Supreme Court ruling 2004da29736, on December 7, 2006: Full-time instructors' employee status
[39] Supreme Court ruling on May 11, 2006, 2005da20910: Ready-mix truck driver case.

**(2) Understanding the judicial judgment**

In reviewing the court's criteria for determining employee status, three key items need to be explained. First, when determining whether employee status exists, the judicial ruling is decided by the definition provision of Article 2 (Paragraph 1) of the Labor Standards Act. "In determining employee status under the Labor Standards Act, this shall be determined by whether the person has provided work to the employer through a subordinate relationship for the purpose of earning wages at the employer's business or workplace." This judicial ruling includes a definition of the term, 'employee', which means a person providing work in return for wages through a subordinate relationship with the employer.

Second, the court ruled, "Whether a person is considered an employee under the Labor Standards Act shall be determined by whether, in actual practice, that person offers work to the employer as a subordinate of the employer in a business or workplace to earn wages, regardless of the contract type, such as an employment contract or a service contract." This judicial ruling shows that employee status shall be recognized not based upon the formal type of contract made between two parties, but by the substantial relationship in actual practice.

Third, the judicial ruling shows that status as an employee under the Labor Standards Act shall be determined by whether the person provides work through a subordinate relationship or not, and in order to confirm such subordinate relations, several signs are listed and estimated collectively. In particular, these signs can be divided into 12 items, which can be compared and analyzed for similarity to employee characteristics and for similarity to employer characteristics. After reviewing which characteristics are more evident in the relationship in question, determination of whether employee status exists shall be made.

## III. Conclusion

The scholarly view and judicial view are consistent in the following criteria: 1) In employment relations, employee status shall be determined by whether there is a subordinate relationship between the parties or not **(judgment by subordinate relations)**; 2) whether there is a subordinate relationship between the parties or not shall not be determined by the type of contract or title, but by actual facts of the labor provision **relations (judgment based upon actual relations)**; and 3) the actual facts of the labor provision relations shall be determined in consideration of an overall collective evaluation of all **items (overall consideration)**. Accordingly, employee status according to subordinate relations shall be determined after considering practical facts of the employment and reviewing them overall. Judicial ruling states that the criteria for ruling on employee status shall not be determined by the format of employment relations, and shall not consider as important in judgment whether the person paid corporate tax or was registered for the social security insurances, which can easily be decided by the employer due to his/her superior position. These points emphasize that employee status shall be determined by employment relations in actuality.

# Freelancers and Employees

## I. Whether or not a Freelancer is considered an Employee (A Recent Case)

A Freelance Contract (or Service Contract) refers to an agreement where one party (the service recipient) entrusts another party (the service provider) with particular work, and the service provider accepts it (Commission: Article 680 of Civil Law). Unlike an employment contract where an employee is responsible to provide work under direction and supervision of an employer, a Freelance Contract shows that the service provider (freelancer) has been commissioned to provide a specific service, and will work independently. As a freelancer, an individual contractor independently disposes the work assigned to him or her by the service recipient, receives limited directions and is under no supervision. The service provider, therefore, is excluded from the application (and protection) of Labor Law.

On February 22, 2011, 17 native English teachers who had worked for Hagwon C, one of the biggest language institutes in the country, filed a petition with the Kangnam Labor Office against Hagwon C for unpaid wages of 350 million won for severance pay, etc. Hagwon C claimed that as these teachers were freelancers and had signed an 'Agreement for Teaching Services', they were not entitled to severance pay as normally required under Labor Law. However, the 17 teachers claimed that even though their contracts were Freelance Contracts, they had **a)** provided labor service under Hagwon C's direction and supervision and even under its strict control, **b)** their workplace and working hours had been restricted, and **c)** they had received fixed hourly wages. The major issue in this labor case was whether the teachers were Hagwon C employees to which the Labor Standards Act applied, or whether they were freelancers (service providers under Civil Law). In the following pages, I would like to concretely clarify the issue, based upon related judicial rulings and administrative guidance on whether these 17 teachers of Hagwon C should be considered to have employee status.

## II. Labor Cases Denying Employee Status to Freelancers

### (1) A substitute driver is not an employee under the Labor Standards Act

"The substitute driver cannot be an employee when considering the following items collectively: The company provided the substitute driver with customer information from someone requesting a substitute driver. The substitute driver purchased a mobile phone privately in order to receive this information and also paid the mobile phone bills himself. In addition, he purchased car insurance privately to deal with possible car accidents while doing such work. The substitute driver was able to come and go to the office freely, and received payment according to work done. He did not receive fixed pay. The company could not punish him for negligence or disobedience because company service regulations did not apply to him." (Daegu Court 2007 gadan 108286)

**(2) If a director performs his work duties independently and at his own discretion without specific directions or supervision over his work performance, such a director is not considered to be an employee.**

"The director cannot be an employee when considering the following items collectively: The person was registered as a director in the corporate register. He had carried out his duties independently at his own discretion. He had paid his expenses with the company credit card, used the company car independently, and had not received any directions or supervision of his work performance from the company, but simply reported to the representative director." (Court 2005 guhap 36158)

**(3) Even though the person has provided labor service, if he was not in an employment relationship, he cannot be regarded as an employee under the Labor Standards Act.**

"The person cannot be an employee when considering the following items collectively: Even though the employee's place of work was restricted to company premises and the company could not substitute him with other employees, the service provider was not limited to specific working hours when his coming to and leaving the office was controlled. The company did not have any authority to discipline the person for violation of service regulations, even though the company exercised some rights to direct and supervise in the course of work performance. His earnings were not remuneration for his labor service, and he did not receive fixed or basic pay. The establishment or termination of the labor service contract was up to the service provider." (Busan District Court Ruling on May 17, 2006, 2005 gudan 1293)

**(4) A private tutor who receives a commission due to results for the number of commissioned duties performed is not an employee.**

"A private tutor cannot be an employee when considering the following items collectively: The private tutor did not receive substantial or direct orders nor was supervised by the company in the process of performing the required duties. Unlike a regular employee of the company, the private tutor was hired by a branch office, and had not had his/her work hours controlled, was free to have duplicate employment, and could terminate the service contract at anytime. Payment was paid regardless of the contents of the labor provided, or the time that the private tutor worked. Rather, payment and amount were decided by the results of the commissioned duties performed. It is therefore difficult to deem the payment as remuneration paid in return for work." (Court 2003 guhap 21411)

**(5) A golf caddie cannot be considered as an employee of the Labor Standards Act.**

"A caddie cannot be an employee when considering the following items collectively: the caddies in question did not receive any monetary remuneration from the company except for service fees. They were assigned to work in a specific order, but did not have their working hours regulated, and so whenever they finished their work, they could leave the golf course immediately. In the process of work performance, they did not receive any substantial or direct orders or supervision from the company, but simply provided their labor service according to the needs or direction of the golf players." (Seoul Admin. Court 2001 gu 33013)

**III. Concrete Criteria for Determining "Employee" Status**

"Whether a person is considered an employee under the LSA shall be decided by whether that person offers work to the employer as a subordinate of the employer in a business or workplace to earn wages in actual practice**, regardless of whether the type of contract is an employment contract or service agreement under Civil Law."** (Supreme Court 2008 da 27035)

The Ministry of Labor determines whether the contractor has employee or freelancer status when considering collectively the seven items suggested below by the aforementioned Supreme Court ruling.

**(1) Whether the Rules of Employment or service regulations apply to a person whose duties are decided by the employer, and whether the person has been supervised or directed during his/her work performance specifically and individually by the employer:** Supervision and direction mean that the person implements the work that the employer wants him/her to do under the employer's direction and command. There are various criteria for determining "under the direction and supervision of the employer", but this shall be determined by considering the following criteria collectively.
① Whether such things as employment, training, retirement, etc. apply to said person; ② Whether said person can decide what work he/she will do, or whether said person has freedom to obey or reject work instructions.

**(2) Whether his/her working hours, working days and workplaces are designated and restricted by the employer:** ① Whether his/her working hours or working days are designated: falls under "Restrictions in working hours"; ② Whether his/her workplaces are designated or the times determined when said person shall provide labor service in the directed workplaces: falls under "Restrictions in workplaces."

**(3) Whether a third party hired by said person can be a substitute for him/her:** The inability to substitute someone for oneself to do the labor service is not a basic criterion in determining whether a subordinate relationship exists or not, but when a substitute is possible, this becomes a significant indicator that a relationship of direction and supervision may not exist.

**(4) Whether said person owns the equipment, raw material, or working tools he/she uses:** If the machine or tools owned by the work performer are very expensive, and if the person shall be responsible for his/her own workplace injuries, he/she is closer to being a business owner who judges and takes on risk at his/her own discretion, and indications that he/she is an employee are weak.

**(5) Whether payment is remuneration for work and whether a basic wage or fixed wage is determined in advance:** ① If remuneration is a fixed amount regardless of work performance and paid at a fixed rate for work, and if the fixed amount is designed to provide a living for the person, this can be described as characteristics of being an employee; ② If the person's level of remuneration is remarkably higher than other employees who do the same or a similar job

in a corresponding company, this can be remuneration for a business assignment with individual responsibility and risk and not a characteristic of being an employee.

**(6) Whether work provision is continuous and exclusive to the employer:** If the person is restricted from simultaneous employment with another company by company regulations, or if the person cannot work for two or more companies at the same time due to his/her unavailability in reality, said person's provision of labor service can be regarded as exclusive to the employer.

**(7) Whether the person is registered as an employee under the Social Security Insurance Acts or other laws:** In cases where the person pays income tax on his/her remuneration, this is a supplementary fact that can be positively determined as an employee characteristic. However, simply because remuneration has not been subject to income tax is not a clear indication that this remuneration isn't a wage.

## IV. Judgment on Employee Status of Hagwon Teachers (Conclusion)

The English teachers of Hagwon C in the above-mentioned labor case were judged by the Labor Office to be employees providing labor service for the purpose of earning wages. It was confirmed that what they claimed were unpaid wages (such as severance pay, paid weekly allowance, and annual paid leave allowance) were actually unpaid wages guaranteed by the Labor Standards Act. As the decision of the Labor Office has not been made public, I assume that the judgment can be understood through the following labor case.

**"Teachers are considered employees who provide labor service under employment relations and are entitled to severance pay."** (Suwon Court 2007 godan 5596)

1) The Hagwon determined what subjects teachers would teach, and stipulated teaching hours and work places for the teachers.
2) The Hagwon repeatedly delivered letters to encourage teachers to improve quality and content of their classes, and sometimes sent out general rules regarding its operations. In reality, teachers had generally been directed and supervised in many ways.
3) The Hagwon owned all furnishings, materials, and equipment that teachers used, with the exception of lesson materials.
4) Teachers could not be substituted by a third party in reality, except for very exceptional cases such as illness or unexpected tragedy.
5) Teachers received remuneration calculated by multiplying a fixed hourly amount by the number of working hours. The remuneration was paid in return for work itself, and the Hagwon's earnings did not affect individual teachers' level of remuneration.
6) On the other hand, some teachers had taught at other hagwons while working for the employer, which may be problematic to being declared "exclusive to the employer", but in reality, such teachers' classes at this Hagwon were relatively smaller.
7) Even though the Hagwon had two systems of employment for staff and teachers, did not apply the Rules of Employment to teachers, did not charge income tax, and let teachers insure themselves through the individual National Health Insurance outside of the company's National Health Insurance, these conditions are secondary in evaluating employee status as the employer can determine these conditions due to his/her superior position in employment relations.

# Supreme Court Recognizes C Language Institute Native English Instructors as Employees

## I. Introduction

**1. Supreme Court ruling**: On June 11, 2015, the Supreme Court ruled that native English instructors (hereinafter referred to as "the Plaintiff") working for "C" Language Institute (hereinafter referred to as "the Defendant") are employees rather than freelancers, and are entitled to severance pay, annual paid leave allowance, and weekly holiday allowance (Supreme Court ruling 2014da88161).[40]

**2. Summary of the case**: The case began when 17 instructors submitted a petition to the Labor Office for unpaid severance pay, weekly holiday allowance and annual paid leave allowance against the Defendant on February 22, 2011. Upon receipt of the petition, the Labor Office did a thorough investigation over 18 months, and concluded that the Language Institute's 17 instructors were freelancers, not employees (Labor Team 4 of GangNam Labor Office, September 28, 2012). Upon this conclusion, 24 instructors (the original 17 and 7 new applicants), began a civil action. On October 17, 2013, the Seoul Central District Court determined that C Language Institute's native instructors were employees under the Labor Standards Act (2011gahap121413). After this, the Language Institute filed an appeal against the District Court's decision, but the Seoul High Court maintained its first ruling (Seoul high court 2013na68704) and the Supreme Court also maintained the same ruling on June 11, 2015.

**3. Main dispute**: The main point of this case was whether native instructors are employees or freelancers. The courts used the legal criteria for determining whether someone is an employee or not in their judgment. The Defendant claimed that the Plaintiffs 1) signed an 'Agreement for Teaching Services' voluntarily, not an employment agreement, and also paid a business tax; 2) that the Defendant paid remarkably high benefits in consideration of there being no severance pay; and 3) that, as the Plaintiffs agreed that this agreement would not include severance pay, if the Plaintiffs requested additional severance pay, it would be a violation of the good-faith principle. Hereunder, after reviewing the legal criteria for the concept of "employee" and the Defendant's claims, I would like to evaluate the validity of the Supreme Court's judgment of this case.

## II. Facts

**1. Parties**: The Defendant, one of the largest language institutes in Korea, operates 157 branches and employs 1,300 native English instructors. The Plaintiffs are 24 native English teachers from foreign countries (including some with residency in Korea), except 2 who are Korean nationals.

[40] This article discusses the Supreme Court Ruling (2014da88161, June 11, 2015) and the related Seoul High Court ruling (2013na68704, November 24, 2014).

**2. Details of the Institute's Operations**

(1) The Defendant signed an 'Agreement for Teaching Services' with native instructors to provide foreign-language teaching services.

(2) The Plaintiffs used textbooks as determined by the Defendant. As needed, the Plaintiffs participated in developing textbooks for which they received additional compensation.

(3) The instructors did other work in addition to teaching, such as meeting students' parents, etc., for which they also received additional compensation.

(4) There were no other rules of employment or personnel rules applying to the Plaintiffs, but they had to observe the 'Instructor's Code of Conduct' by adhering to the teachers' service regulations.

(5) The CCTV cameras installed in each classroom were designed to supplement and improve the instructors' lessons, to simplify dispute resolution with the students, and to protect the Language Institute and its instructors.

(6) The Defendant hired a Head Instructor to train the Plaintiffs in both teaching methods and techniques.

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

(8) The Plaintiffs did not own the tools and materials necessary for teaching, but used those provided by the Defendant, and were not able to substitute a third party to cover his/her classes.

(9) The Plaintiffs were paid hourly wages starting at ₩30,000 per hour in proportion to the number of teaching hours, and did not use a performance-based pay system related to the number of students.

(10) The Agreement for Teaching Services between the Plaintiffs and the Defendant was signed annually.

(11) The Plaintiffs could not work for or be employed by other language institutes or companies in accordance with the restrictions of the E-2 work visa that only allows them to teach at the designated workplace.

(12) The instructors paid business tax but not income tax, and were not registered for the four social security insurances.

**3. The Plaintiffs' Claims**: The Plaintiffs worked for the Defendant as employees and quit their jobs, and the Defendant did not pay the severance pay stipulated in the Labor Standards Act, weekly holiday allowance, or annual paid leave allowance despite the obligation to do so. Therefore, the Plaintiffs entered their claim for payment.

**III. Legal Criteria for Determining Employee Status**

**1. Legal Criteria**

Article 2 (Paragraph 1) of the Labor Standards Act stipulates the definition of an employee as "a person who offers work to a business or a workplace for the purpose of earning wages, regardless of his/her occupation."

The Supreme Court[41] ruled, "Whether a person is considered an employee under the Labor Standards Act shall be determined by whether, in actual practice, that person offers work to the employer as a subordinate of the employer in a business or workplace to earn wages. Whether or not a subordinate relationship with the employer exists shall be determined by collectively considering: **① whether the rules of employment or other service regulations apply to a person; ② whose duties are decided by the employer, and ③ whether the person has been supervised or directed during his/her work performance significantly by the employer; ④ whether his/her working hours and workplaces were designated and restricted by the employer;**[42] ⑤ who owns the equipment, raw materials or working tools; ⑥ whether one's position can be substituted by a third party hired by the person; ⑦ whether one's service is related to creating business profit or causing loss directly like one's own business; ⑧ whether payment is remuneration for work performed[43] or **⑨ whether a basic or fixed wage is determined in advance; ⑩ whether income tax is deducted for withholding purposes**[44]; ⑪ whether work provision is continuous and exclusive to the employer; **⑫ whether the person is registered as an employee by the Social Security Insurance Acts or other laws,** and the economic and social conditions of both sides."

**2. Understanding the legal criteria**

The legal criteria for employee status is based upon 12 items, 'substantial criteria for determining subordinate relations,' suggested by the above court ruling. The judgment method is to review each particular case individually and comprehensively, and when a person's situation satisfies the majority of items, he/she is regarded as an employee to whom the Labor Standards Act applies. These 12 items can be divided into three parts: subordinate employment factors (①,②,③,④), independent business factors (⑤,⑥,⑦, ⑧,⑪), and double standard factors (⑨,⑩,⑫).

The subordinate employment factors look at how much the employer supervises the worker in the process of performing his/her duties. Recent judicial rulings show that considering the occurrence of various jobs and more independent work performances, 'being supervised and directed during his/her work performance specifically and directly by the employer' has changed to 'being supervised or directed considerably'[45]

> The independent business factors are decided by whether the person can create profit by his/her efforts while working. For part-time instructors, the institute used a performance-based salary system that divided profit according to the number of students attending each part-time worker's classes. In this case, part-time instructors were not recognized as employees.[46]

The double standard factors deal with an item which is decided unilaterally by the employer and may result in the worker being taken advantage of by the employer due to the employer's superior position: "whether a basic or fixed wage is determined in advance; whether income

[41] Supreme Court ruling 2004da29736, on December 7, 2006: Full-time instructors' employee status
[42] Subordinate employment factors: 4 of 12 items (①,②,③,④) are related.
[43] Independent business factors: 5 of 12 items (⑤,⑥,⑦,⑧,⑪) are related.
[44] Double standards factors: 3 of 12 items (⑨,⑩,⑫) may be decided unilaterally by the employer which may result in the employer taking advantage of his/her superior position.
[45] Supreme Court ruling 2004da29736, on December 7, 2006: Full-time instructors' employee status
[46] Supreme Court ruling 98do732, on July 30, 1996: Part-time instructors' employee status

tax is deducted for withholding purposes and whether the person is registered as an employee by the Social Security Insurance Acts or other laws." When these items are present, the courts can easily determine the person is an employee, but the absence of these items shall not mean that the person is not an employee.[47]

## IV. Major Points in the Defendant's View & the Court's Judgment

### 1. Type of contract

The Defendant called the contract for native English teachers an "Agreement for Teaching Services" and designated the Plaintiffs as "instructors". In particular, the Defendant claimed, "the plaintiffs, mainly from famous colleges of advanced countries such as the United States, are people who will return to their home countries after working for a short time at a high level of remuneration while experiencing Korean culture and retaining their freedom at the same time as foreigners. Because of these special characteristics, their economic and social conditions are equal or superior in the relationship with the Defendant. In reference to this, the contracts with native English instructors were delegation contracts or lecture service contracts, which are similar to subcontracts."

As for this, the court recognized as "employees" those who signed a contract entitled "Service Contract Regarding Instructions at the Institute & Instruction and Management of Students" or "Lesson Service Offer Contract".[48] In addition, even though some plaintiffs working for the Defendant consider themselves freelancers, not employees, the essence of the relationship between the Plaintiffs and the Defendant does not change. Whether a person is considered an employee under the Labor Standards Act shall be decided by whether that person offers work to the employer as a subordinate of the employer in a business or workplace to earn wages in actual practice, regardless of the type of contract.

### 2. Salary including severance pay & agreement excluding severance pay

The Defendant claimed ① "the possibility of recognizing the status of "employee" is slim because the Plaintiffs' monthly salary, which was between 3,469,128 won and 3,979,976 won, is higher than the average Korean teacher's monthly salary, which is 1,030,000 won, the salary of other regular employees of the Defendant, and the monthly salary of native English teaching assistants who work for the Education Office, which pays them 1,800,000 won to 2,700,000 won." ② According to the Agreement for Teaching Services, "The Instructor agrees and understands that he/she shall not receive any benefits available to full-time employees including but not limited to severance pay, health insurance, and pension payments, all of which are the sole responsibility of the Instructor."

As for this, the Court explained that "① The Defendant's claims lack legal grounds because not only are the duties dissimilar to those of the Korean teachers, regular employees, and native English teaching assistants who work for the Education Office, the amount of salary does not determine whether or not they are employees." ② The Court also stipulated that

[47] Supreme Court ruling 2006do777 on September 7, 2007: Hair Designer Instructors' employee status
[48] Supreme Court ruling 2004da29736 on December 7, 2006; SC ruling 2005doo8436 on January 25, 2007

"Severance pay is the deferred remuneration to be paid in return for continuous employment to an employee who leaves employment after serving a certain period of time. The concrete right to request severance pay occurs on the condition of the fact of termination of continuous employment. It is null and void due to it being a violation of the Labor Standards Act, compulsory regulation, if an employee previously signed a special contract that the employee would give up the right to request severance pay at the time of resigning from his/her job."[49]

**3. Judgment on whether or not the requests are a violation against the principle of good faith**

The Defendant claimed that the Plaintiffs' claims were not acceptable because they violated the principle of good faith in light of justice and the principle of equity for the following reason: If the Plaintiff's claims were validated, the Defendant would have no choice but to bear additional loss from the burden of paying severance pay, other legal allowances and social security insurance premiums, etc, while the Plaintiffs will enjoy unintended additional benefits. This would result in unexpected, excessive cost to the Defendant, and consequentially, have serious impact on the Defendant's stock price, and seriously threaten the growth of the Defendant as an ongoing business.

As reviewed, the Court ruled that attempting to restrict the basic rights of an employee guaranteed by compulsory provisions such as the right to claim severance payment by applying the principle of good faith is to go against the constitutional value and the nature of compulsory provisions of the Labor Standards Act. Therefore, it is unacceptable, as long as there are no special circumstances that would affect the judgment, to give priority to the wrongful belief of the employer over the legitimate right of the employees by categorizing the Plaintiff's claims as a violation of the principle of good faith even though the Labor Standards Act guarantees the employee's definite rights as compulsory provisions. If the Defendant's claims were accepted with only the evidence the Defendant had submitted, it is unlikely that it will lead to severe managerial difficulties for the Defendant or be a menace to the Defendant's existence. In addition, it cannot be recognized that the Plaintiffs' claims for severance payment, etc, is illegitimate and goes against the principle of good faith due only to the claims the Defendant has submitted.[50]

**V. Conclusion**

C Language Institute has contracted native English instructors, not as employees, but as freelance contractors for the past twenty years, and has not paid any statutory allowances like severance pay required under the Labor Standards Act. Recently, court rulings have gradually widened the realm of employee status, changing the criteria by which employee status is judged. Items such as the outsourcing of contracts or use of commission contracts instead of employment contracts, payment of business tax and non-registration of the four social security insurances (all of which are easily determined by the employer due to his superior position), are considered to be unimportant factors in determining employee status. The most important factor is how much supervision the instructor receives while providing labor service for money. On this point, the Supreme Court's rulings can be expected to be based on actual employment relations in the future.

[49] Supreme Court ruling 97da49732 on March 27, 1998
[50] Supreme Court ruling 2012da89399 on December 18, 2013

# Manager of a Luxury Brand Store: Not an Employee

## I. Summary (Store managers' claim for severance pay, etc.[51])

Two store managers whose contracts were unsatisfactorily terminated at the Korean branch of a luxury brand company in July 2012 filed a petition with the Labor Office in October 2012 for non-payment of severance pay, annual paid leave allowance, etc. In this labor case of unpaid wages, the company claimed that the store managers were not entitled to severance pay in accordance with the Labor Standards Act as they were independent sales service contractors, while the store managers claimed that they were employees providing labor for wages under the employer's supervision and receiving fixed basic pay and incentives, and requested about 80 million won for severance pay and other legal allowances. The labor inspector in charge of this case recommended the company accept an adjusted settlement at the beginning of this investigation, seeming to suggest the store managers' claim was reasonable. However, the company would not accept any settlement with the two store managers, as 16 other store managers may then have made similar claims against the company. Labor cases are usually handled within two months by the Labor Office, but this case took 7 months, finally concluding in April 2013. In the end, the labor inspector rejected the store managers' claim, determining the store managers were not employees but independent contractors. I would like to look into the details of this case: factual grounds, points of dispute, the claims of both parties, related Supreme Court ruling, and the labor inspector's decision.

## II. Factual Grounds and Point of Dispute

### 1. Factual grounds

○ The company entered into an outsourcing contract for sales service with store managers who preferred a sales service contract to an employment contract. Many other similar luxury brand companies have used store managers as independent contractors.
○ Store manager A began working as the manager of the Chungdam branch under a service contract in September 2008. When ordered to work as manager of another store due to renewal construction at her store, store manager A terminated the service contract. Store manager B was hired as an employee in September 2010 and worked as a store manager. When offered a commission-based contract, store manager B terminated the employment contract and signed a sales service contract to work as an independent selling contractor. The company later chose not to renew the service contract with this store manager due to her poor sales performance.
○ The store managers' monthly pay was 2 million won plus 4% of normal total sales and 2% of total sales during discount sales periods. The contract period was 6 months and could be renewed if there was no termination notice one month in advance.

[51] Labor Attorney Bongsoo Jung handled this case at the Gangnam Labor Office from October 2012 to April 2013.

○ There were no particular rules of employment or other regulations applicable to the store managers.
○ The store managers attended a sales meeting once a month, but there were no daily or weekly reports. An employee at each store reported sales on a daily basis through the computer system.
○ Each store has one store manager and two to four employees. Employees (excluding the store manager) received management and supervision from the head office, and their annual paid leave was controlled.
○ The store managers' workplace was fixed, but their working hours were discretionary, with their arrival and departure not controlled by the company.
○ The store managers did not own the equipment, products, uniforms, etc., necessary to sell the products, and used the items provided by the company. However, the store managers bore the expenses necessary in the store such as telephone bills, clothing repair costs, etc. It was not possible for the company to replace the store manager's position with a third person.
○ The store manager could hire part-timers as they wished, with their wages paid by the company.
○ The store manager treated VIP customers to meals, entertained them with golf, and distributed leaflets at his/her own cost. Sometimes the store managers further discounted the standard discounts of the company to increase sales.
○ The company has never punished or disciplined its store managers. The company could only refuse to renew their service contracts.
○ Store managers paid corporate income tax instead of labor income tax, and were not registered for social security insurances.

**2. Points of dispute**

A major point of dispute was that although the store manager was an independent contractor with the sales service outsourcing contract, he/she claimed severance pay under the Labor Standards Act, and so whether there was a relation of supervision between the company and the store manager needed to be determined. According to the sales service outsourcing contract, the company didn't outsource the entire store, but made an individual, independent contract only with the store manager while keeping employment relations with all other employees working at that store. Is it legal to consider the store manager alone as an individually contracted service provider?

**III. The company's claim**

**1. Judgment of whether the store managers had subordinate relations with the employer**

The company claimed that the store managers were not employees under the Labor Standards Act, were not entitled to severance pay, annual paid leave, or other legal allowances. Details can be found in the table.

| **Supreme Court Ruling** (9 items: details for judgment) | | **Factual Grounds** | **Judgment** | |
|---|---|---|---|---|
| | | | Employee | Contractor |
| 1) Employer's direction & supervision | ① Rules of Employment | Rules of Employment were not applied. | X | ● |
| | ② Employment contract | Sales outsourcing contract was made. | X | ● |
| | ③ Arrival/departure from work, annual leave, disciplinary action | No control of arrival/departure time, or annual leave. No disciplinary action. | X | ● |
| | ④ Work instructions | No work reports made or instructions given. | X | ● |
| 2) Restricted working hours and work places | ⑤ Working hours | No control of working hours. | X | ● |
| | ⑥ Work place | Work place was restricted. | ● | X |
| 3 )Equipment, working tools, expenses | ⑦ Ownership of equipment, working tools | The employer owns equipment, tools, etc. | ● | X |
| | ⑧ Expenses | The store manager bears cost of repairs and telephone bills. | X | ● |
| 4) Replacement | ⑨ Replacement with a 3rd party | As the work is assigned exclusively to the particular person, it is not possible to substitute the store manager with a 3rd party. | ● | X |
| 5) Earning through sales | ⑩ Pursuit of profit | Pursuit of profit-earning by individual effort is possible. Store managers entertained customers with golf during working hours. | X | ● |
| | ⑪ Independent business | Independent business possible. | | ● |
| | ⑫ Liabilities for damage | Company, not store managers, responsible for losses. | ● | X |
| 6) Characteristics of wage | ⑬ Reward of labor | Income is decided by evaluation of total sales. | X | ● |
| | ⑭ Independent business | Individual can create own profit. | X | ● |
| 7) Basic pay | ⑮ Whether basic pay is fixed | Basic wage: 2 million won + Commission (4%). | ● | X |
| 8) Income tax, etc. | ⑯ Income tax and social security insurances | Corporate tax applied, social security insurances not. | X | ● |
| 9) Continuous service, etc. | ⑰ Continuous work | Work is continuous. | ● | X |
| | ⑱ Exclusive work | Work is assigned exclusively to the contractor during the contract period. | ● | X |
| **Evaluation** | | **There are more characteristics for sales outsourcing than employment relations.** | **7** | **11** |

**2. Summary of the company's claims**

As described in the above table, the store managers 1) entered into a sales service contract, not an employment contract, and worked as contractors on an equal footing with the company; 2) made efforts to increase their own sales-based income as independent contractors; and 3) worked without employer's direction or supervision at work, but were engaged in sales activities using their own time and money. The company did not reimburse them for any expenses related to business or sales activities, but paid out commissions based upon the store's total sales. Accordingly, there were no subordinate relations between the two store managers and the company.

**IV. Related Supreme Court Ruling and Labor Inspector's Criteria for Judgment**

**1. Related Supreme Court ruling**

The Supreme Court explains the criteria for evaluating whether the person is an employee or not in 9 categories, compares and analyzes between the evidence of employee characteristics and evidence of employer characteristics in terms of those 9 categories, and determines whether the target person is an employee or not according to the results of comparison. The weight to determine the results can be assigned on the basis of: 1) whether the employer supervises or not; 2) whether income is remunerated in return for labor service; and 3) consideration of the character and content of the labor service. However, wages and registration for the four social security insurances, which are usually decided by the employer, cannot be an important factor in determining employee characteristics. Whether the store manager is considered an employee according to labor law shall follow the criteria of the Supreme Court ruling:

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

that as whether basic wage or fixed wage is determined, whether income tax is deducted for withholding, and whether the person is registered for social security insurances could be determined at the employer's discretion by taking advantage of his/her superior position, the characteristics of employee cannot be denied because of the absence of these mentioned items. (Supreme Court ruling 2004 da 29736, December 7th, 2007)

**2. Labor inspector's criteria for judgment**

It was expressed during the proceedings that the labor inspector responsible for this case had a very difficult time determining whether the two store managers should be regarded as employees. Store manager B's case was especially difficult, because although her status changed from employee to independent contractor, she continued to work a similar job at the same store, and could be interpreted as an employee. However, after looking at the criteria for employee characteristics, he judged that the characteristics as an independent contractor outweighed those for an employee.

"Those characteristics as non-employee include: 1) the store managers chose to sign a sales service contract because it had much better working conditions than the employment contract; 2) the store managers made efforts to increase their income through increased sales, and spent their own money to do so; and 3) the employer had not supervised the store's business and so the store manager operated the store independently. In considering the aforementioned facts, it was found that there were no subordinate relations between the employer and the store managers."

**V. Conclusion: Company's measures**

Store managers A and B were determined to be independent contractors by the Ministry of Labor in the process of investigation for unpaid wages, but as many employee characteristics were identified, it is necessary for employers to take action if they wish to prevent similar labor cases in the near future. Accordingly, companies need to: 1) make a clear decision on whether the store manager shall be treated as an employee or an independent contractor; 2) when entering into a sales service contract for store managers, increase sales commissions and abolish fixed wages to increase the independence of the store manager; 3) introduce a full-coverage outsourcing for branch stores so that the independent contractor has exclusive control of his/her store.

# Hair Shop Employees and the Labor Standards Act

## I. Introduction

Hair shops can be seen almost everywhere in Korea. Many are small, but recently, hair shops have been becoming larger, nicer, and more specialized as more franchises are moving into the market. As this has happened, labor disputes related to the working conditions of employees working at these shops have become more frequent. Many hair shops have contracted hair designers as individual business owners and excluded application of some labor laws by paying commissions according to their individual sales. Although this type of contract makes hair designers appear as individual business owners, their status has often been judged as employees because employers have direct managerial and occupational control. Another issue is interns who assist hair designers while learning the skills they will need as hair designers. In the course of becoming hair designers, candidates should go through internships for two to three years, during which they receive less than minimum wage and work longer hours than legally allowed. For the sake of those interns in apprenticeship, the Youth Union filed a lawsuit in February 2013 against hair shop franchise companies for violation of labor laws. In relation to these issues, I would like to evaluate whether hair designers and interns are in fact employees, and, if so, review and suggest the most desirable solutions in terms of labor law.

## II. Hair Designer's Petition for Unpaid Severance Pay & Matters to be Considered

### 1. Case summary

Upon resignation from a hair shop franchise, a hair designer submitted a petition to the Labor Office for unpaid severance pay in June 2012. The hair designer claimed that she was entitled to severance pay since she had been an employee in reality even though she had signed an individual business owner contract when working relations began in January 2011, while the hair shop company contended that she was an individual business owner, not an employee, so severance pay could not occur. The company submitted related documents and persuaded the Labor Office to determine that the company did not have to pay severance pay to hair designers. The documents submitted by the company explained working relations regarding status, occupation and contract in terms of criteria for workers' characteristics.

A comparison between judicial ruling and Labor Ministry guideline will make it possible to properly establish the criteria for determining working relations between hair designers and the related companies.

**2. Judicial ruling: Hair designer determined to be an employee**

(Seoul District Court 2010 gahap 11116 (Lawsuit): 2010kahap18407 (Cross action)

According to the contract made between Hair Shop A and a hair designer at the time working relations began, if the hair designer were to start up her own hair shop after resignation, she would compensate the company 20 million won in damages. The hair designer did resign and opened up her own hair shop 400 meters away. Hair Shop A filed a lawsuit with the court for compensation due to violation of the contract: prohibition of competitive business. To defend herself, the hair designer filed a cross action, claiming that she did not receive severance pay for her period of employment. As a result, the contract article prohibiting opening up a competitive business was declared null and void by the court, while the hair designer's cross action was ruled as valid due to her status as an employee, making her eligible for severance pay.

➔ **The court's reasons for this ruling**

1) Even though the contract stipulated that the hair designer was described as an individual business owner, the actual owner of the hair shop (the employer) determined the hair designers' working place, working hours, working dates, and working methods, and urged them to observe these determinations. In addition, if the rules were violated, the hair shop owner took such action as charging a penalty or excluding the relevant designer from receiving customers.

2) The hair designer could not choose the off days that she wanted, and when taking days off (excluding specified holidays), had to submit documents proving to the hair shop owner why she had needed the days off.

3) The hair designer could not, according to the contract, work for other hair shops as a hair designer without the hair shop owner's written consent, and exclusively worked for the employer's hair shop. Furthermore, her contract had been renewed automatically and continuously.

4) As hair designers could not substitute themselves with third parties, the possibility for substitution did not really exist.

5) The employer provided most hair-cutting tools, equipment, and other items used in hairdressing.

6) The hair designer had been paid a monthly fixed amount for the first few months at this hair shop, but was later paid an amount related to her own sales, even though there was no difference in work structure.

7) The contract described the reasons for termination, which are the same as the reasons for disciplinary dismissal of workers. It was strongly forbidden for hair designers to reveal customers' individual information obtained at this hair shop or take them to their new place of business if they left to work elsewhere.

8) In consideration of the aforementioned matters, and regardless of the fact that the hair designer received remuneration strictly according to her sales, paid corporate tax based upon her business registration, and was not registered for national pension, national health insurance, employment insurance, or industrial accident compensation insurance**, the hair designer offers work as a subordinate of the employer in order to earn wages in actual practice, which means that the hair designer is an employee according to the Labor Standards Act.**

**3. Labor Ministry guideline: Hair designer determined as not an employee**

(Labor Standards-6228, Nov 18, 2004)

The Minister of Labor determines that it would be difficult to regard the hair designer as an employee in cases where the hair designer is contracted as an individual business owner with the hair shop and receives an amount in proportion to his/her sales.

A hair designer shall not be considered an employee if the following is true:
1) The hair designer who made a freelance contract with the hair shop owner is engaged in such hair designing work as perms, cutting, and dyeing at a designated hair shop, but is not subject to the hair shop's Rules of Employment. Each hair designer works independently and free of the hair shop owner's direction or supervision; 2) The hair designer receives a commission in proportion to his/her sales without a basic pay rate or fixed pay (like 20% to 25% of his/her monthly sales); 3) The hair designer is not exclusively engaged in one particular hair shop. After finishing 8 hours work per day, he/she is free to work at other hair shops; 4) In cases where the hair designer cannot work for personal reasons, it is possible to substitute him/herself with others who hold the same level of hair design skills; 5) Despite violations to the contract, there is no disciplinary action except for termination of the contract; 6) The hair designer pays corporate tax and is not registered for the four social security insurances.
Considering the above facts, the hair designer cannot be determined as an employee. Regardless of the fact that the hair designer works for a particular hair shop, submits work reports twice a week for the calculation of commissions, and receives all working tools except for scissors, **your hair designer does not provide labor service as a subordinate under the employer's supervision to earn wages.**

**4. Opinion**

**In evaluating a hair designer's employee characteristics, the criteria behind the Labor Ministry guideline and judicial ruling show that whether a person is considered an employee or not shall not be decided only by the declared type of contract, but also in consideration of the amount of supervision that exists at work for the hair designer.** Generally a person who provides labor service in return for a commission tends not to be considered an employee by this fact alone, but by considering many facts collectively and substantially about whether the person offers work to the employer under the employer's supervision to earn wages in actual practice.

## III. Hair Shop Interns and Internship Characteristics

### 1. Background

A person desiring to become an official hair designer does so after completing a two- to three-year internship at a hair shop, despite having already obtained a hair designing certificate. Most hair designers are working as individual business owners under commission contracts related to their own sales with the hair shop owner. Accordingly, the hair shop treats interns, in the course of becoming individual business owners, as trainees or apprentices, and pays ₩700,000 to ₩1 million as a training stipend. They are not registered for the four social security insurances and pay a corporate income tax of 3.3%. However, interns mostly provide actual labor service, not training, for 10 to 12 hours every day for 5 working days per week. Here, I would like to review the interns' characteristics as employees, and if determined as employees, what should be done.

### 2. Determining whether interns are employees

Internship training at a hair shop includes different steps like 'perm' → 'dry' → 'color' → 'cut' and involves approximately six months per step. As previously mentioned, in order to become a hair designer, a two- to three-year internship is required, during which interns learn hair designing skills from hair designers. In theory, the internship is spent learning work skills, but in reality interns spend their time cleaning, arranging, shampooing and drying customers' hair, and assisting the hair designers. Accordingly, in reviewing their working relations, hair shop interns cannot easily be considered purely as trainees, but rather a combination of worker and intern.

Labor Ministry guidelines stipulate "in cases where those in internship become regular employees, whether internship period shall be regarded as consecutive service period" shall be determined in the following manner: "Whether a person is considered an employee under the LSA shall be decided by considering the subordinate relations with the employer collectively, regarding the details of the job, characteristics of supervision by the employer, disciplinary action, ability to ignore work instructions, and wage characteristics, etc. In cases where students provide labor service to gain academic credit without a promise to hire in accordance with the academic-industrial cooperation agreement, even though the agreement contains working hours, training stipend, application of social security insurances, etc., they are not generally considered employees. However, **in evaluating the employment contract made with the company (work details and characteristics, payment of wages, etc), if their work is very similar to provision of labor service, and conducted under the employer's supervision, the trainees can be considered employees. In this case, an internship period shall be considered a continuous working period** (Labor Ministry Guideline-826, Apr 7, 2009).

**3. Working standards under the Labor Standards Act**

As long as interns are considered employees under the Labor Standards Act (LSA), hair shops shall observe LSA working standards. Let's look at an imaginary intern's working conditions at a hair shop where he/she works for 10 hours a day and five days a week.

(1) Minimum wage: the hourly minimum wage for 2013 is 4,860 won. In working 40 hours per week, the monthly minimum wage is ₩1,015,740.

(2) Overtime: Currently, the intern works 2 hours overtime per day, which equals 10 hours per week. When added with overtime allowance (50%), this equals an additional 15 hours per week. The monthly overtime pay would equal: 1 week (10 hours x 50% additional allowance) x 4.345 weeks = 315,900 won. Therefore, the monthly minimum wage plus overtime allowance would be ₩1,331,640.

(3) Recess hours: 30 minutes per 4 working hours / 1 hour for every 8 working hours

(4) Annual paid leave: Besides the above minimum wage, 15 annual paid leave days per year shall be granted on working days.

(5) Severance pay: for an intern who has served for one year or more, 30 days' average wages shall be paid per consecutive service year.

(6) Extinctive prescription: As minimum wage, overtime allowance, annual paid leave, and severance pay have a three year extinctive prescription, the intern can claim unpaid wages for the past three years during his/her working period or after resignation. If the hair shop owner refuses to pay a legal claim, the owner may face not only criminal charges, but also has civil obligation to pay.

**4. Desirable resolutions**

Even though hair shop interns have apprentice working relations, they shall be regarded as employees under the Labor Standards Act. It is therefore necessary to ensure number of working hours and payment are legally permitted according to the minimum working standards. As for wages, all allowances such as meal expenses and housing subsidies shall be included into basic pay so that their wages shall be equal to or greater than minimum wage. Training hours and working hours also need to be separated and managed differently. Once they are, paying wages for working hours only can be considered.

**IV. Conclusion**

Even though hair shops are relatively small businesses, they are still considered workplaces to which the Labor Standards Act applies. Regardless of the named type of contract or whether or not they are registered as employees (through application for the four social insurances), hair designers shall be considered employees if they provide labor service under the employer's supervision. As for hair shop interns (whether they are called trainees or students), as long as they are employees, hair shop owners shall observe the Labor Standards related to wages and working hours.

# Is a Telemarketer an Employee?

## I. Introduction

"Specially hired service providers" refer to those who provide labor service on a regular basis in a specific workplace, but who are not yet recognized as employees. Typical jobs include golf-club caddies, home-study teachers, cement truck drivers, and telemarketers. They are not generally recognized as employees because they are not in a subordinate relationship with the employer due to their job characteristics, and also do not provide exclusive services to the employer. However, in recent judicial rulings, if a person is exclusively attached to one workplace, and if there is a considerable subordinate relationship with the employer, such a person can be considered an employee. Previous judgment criteria depended on whether the base pay was given, whether the four social security insurances were subscribed to, and whether income tax was paid, but these things can be determined arbitrarily by the employer, given his or her economically superior position, and so determining whether someone is an employee must now be through determining whether an actual subordinate relationship to the employer has existed or not.

Whether a telemarketer who is a "specially hired service provider" is an employee or not is decided by how much of a subordinate relationship exists between the employer and the at-home telemarketer at the place of work. Telemarketers are usually engaged in business such as selling insurance, selling targeted real estate, distance sales, etc. Unlike a person working at a call-center, his/her main earnings are determined by their individual sales performance, so it is not entirely accurate to call such a person an employee. I would like to look into the employee characteristics of an at-home telemarketer and some typical related labor cases.

## II. Criteria for Determining "Employee" Status

1. The Ministry of Labor guidelines and judicial rulings use the same criteria for determining "employee status" for a telemarketer. That is, whether or not someone is an employee shall be estimated by whether a subordinate relationship with the employer exists for the person providing the labor service. Some difference is that the administrative guidelines are inclined to consider related factors (refer to the 9 categories of judicial rulings) with equal weight, while the judicial rulings tend to focus on the actual subordinate relationship in work details rather than related factors, in light of the employer's economically superior status.

2. Judicial rulings on the criteria to determine employee status is based upon the following judgment principle.[52] "Whether a person is considered an employee under the Labor Standards Act shall be decided by whether that person offers work to the employer as a subordinate of the employer in a business or workplace to earn wages in actual practice,

[52] Supreme Court ruling on Sep 7, 2007, 2006 do 777

regardless of whether the type of contract is an employment contract or service agreement under Civil Law. Whether a subordinate relationship with the employer exists or not shall be determined by collectively considering: 1) whether the Rules of Employment or service regulations apply to a person whose duties are decided by the employer, and whether the person has been supervised or directed during his/her work performance specifically and individually by the employer; 2) whether his/her working hours and workplaces were designated and restricted by the employer; 3) who owns the equipment, raw material, or working tools; 4) whether the person can hire a third party to replace him/her and operate his/her own business independently, 5) whether the person is willing to take the opportunity and risk to earn money or lose it; 6) whether payment is remuneration for work and 7) whether basic wage or fixed wage is determined in advance; 8) whether the person pays income tax or not (including subscription to the four social security insurances) and 9) whether work provision is continuous and exclusive to the employer. However, whether basic wage or fixed wage is determined in advance, whether income tax is withheld, and whether the person is recognized as an employee eligible for social security insurance are factors that could be determined arbitrarily by the employer's superior economic status. Therefore, just because those mentioned factors were rejected, it is hard to deny that employee characteristics exist."

## III. A Case Where "Employee Status" was Determined to Exist (Dismissal of a Distance Sale Telemarketer)[53]

### 1. Summary

(1) A Social Welfare Corporation (hereinafter referred to as "the company") employed 30 people and used them as telemarketers for distance sale operations. Since November 11, 2003, the applicant had worked as a telemarketer. The company had proposed a new 'commission agreement' to the applicant, and when she refused to sign the agreement, the company terminated her employment on October 19, 2006. The applicant then applied for remedy from the Labor Commission, but it was rejected after she was determined not to be an employee, and therefore ineligible. Her appeal with the National Labor Commission was also rejected. The applicant then appealed to the Administrative Court.

### 2. Job Description

(1) The telemarketers the applicant worked with had sold, over the phone, a monthly magazine published by the company. (2) The applicant worked from 10 am to 5 pm during the workweek at a partitioned booth in the company's telemarketing room, and received 22% of each total sale as commission, in addition to an "attendance allowance" of 10,000 won per day, plus 100,000 won per month if they were never absent during each month. This was in lieu of a monthly wage. (3) The company provided a desk, telephone, and other office items

[53] Seoul Administrative Court ruling on Mar 21, 2008, 2007guhap19539

necessary to do business, supervised the telemarketers and decided in advance the contents of the letters to be sent to sponsors. (4) The company proposed a minimum requirement of 1000 phone calls per month and urged telemarketers to reach that goal, but did not discipline those who did not. (5) The company had all telemarketers report in writing the details of their consultations with potential subscribers and their contact information before leaving the office every day. (6) The company gave the telemarketers new instructions and other necessary information at regular monthly meetings, as well as irregular meetings presided over by the operational manager. (7) The company kept attendance records, and treated two instances of leaving the office early as one day's absence.

### 3. Administrative Court Judgment

(1) The company stipulated most of the working methods by providing personal information regarding potential sponsors, defining working methods, and supervising and controlling the content of the letters, but did not make concrete calling targets or dictate the content of the calls. (2) The working conditions defined in the Rules of Employment did not apply to the applicant, but application of the company's Rules of Employment can be determined arbitrarily and entirely at the employer's discretion, from a position of superior status. (3) The company informed the applicant of work-related directions and information and provided training on working methods through frequent meetings, and received concrete work performance results from the applicant. (4) The company determined the applicant's working hours and workplace, and monitored total working hours by keeping attendance and giving allowances for that attendance. (5) The company provided the applicant basic office items necessary for work, including payment of the telephone bills. (6) As the company always paid 400,000 won in attendance allowances every month, this reflects the characteristics of a basic salary. (7) The applicant did not pay personal income tax, but did pay corporate tax, and was not subscribed to the social security insurances, something unilaterally determined by the company from its superior status. (8) As the employee had worked for three years as a telemarketer for the company, this provision of work by the applicant can be considered as provision of continuous and exclusive labor service for the company. (9) Accordingly, the applicant falls under the status of "employee" according to the Labor Standards Act, and termination of this employment shall be considered a unilateral cancellation of employment by the employer.

## IV. Cases Where"Employee"Status was Determined to Not Exist

### 1. Telemarketer Selling Insurance[54]

#### (1) Job description

① The telemarketer's job was to call and sell the company's insurance products to customers, and received training from the company manager on the products, selling techniques, and other matters necessary to sell successfully. ② The company's Rules of

[54] Administrative Guideline: Nojo 68107-874, Aug 2, 2001

Employment did not apply to the telemarketer, but the company's service regulations related to sales had to be followed. ③ In the mornings, the telemarketer went to the office provided by the company, and every day carried out the assigned work according to the hours scheduled by the company, leaving the office after completing the assigned working hours in the afternoon. ④ There was no restriction on the telemarketer getting another job, but it was in reality impossible to carry out other business. ⑤ For the purposes of work, the telemarketer received a workspace, desk, computer, telephone, etc. ⑥ The company paid an activity allowance characteristic of a basic salary, and an incentive bonus in accordance with individual sales performance. ⑦The telemarketer just paid corporate tax due to being considered self-employed, and so did not pay income tax or premiums for the four social security insurances.

**(2) Judgment of the Ministry of Labor**

The matters considered not to be characteristics of an employee were: ① The contract that the company made with the telemarketer was not an employment contract, but a "commission contract" under Article 689 of the Civil Act. ② Even though the telemarketer used the communication equipment provided by the company in carrying out commissioned work for insurance sales, the telemarketer sold insurance simply at his own discretion and according to his capabilities. ③ There was no allowance without generation of business, and even the activity allowance (600,000 won per month) claimed as a basic salary by the telemarketer was only paid in cases where the telemarketer sold at least 10 insurance contracts per month. All insurances and incentive bonuses were paid according to individual performance. ④ Company regulations such as the Rules of Employment were not applicable, and no disciplinary action (such as reducing allowances) was taken for arriving late, leaving early, or being absent. ⑤ The telemarketer does not have to call the list of customers provided by the company, and no disciplinary action is taken if they are not called. In consideration of the above-mentioned items, this insurance sales telemarketer cannot be considered an employee.

**2. Targeted Real Estate Telemarketer[55]**

**(1) Job description**

① The job is to sell real estate for the company to random people over the phone or after consultation at the designated workplace.

②The monthly fixed income that the telemarketer received from the company was 800,000 to 1.2 million won, with 50,000 won deducted for each day of absence. ③ The telemarketer was responsible for consulting with potential customers, carrying out on-site surveys, and concluding contracts. A commission of 8 to 10% of the sale was given. ④The telemarketer worked five days per week and 8 hours per day at a specified location.

[55] Administrative Guideline: Application-6107, Dec 12, 2006

**(2) Judgment of the Ministry of Labor**

The telemarketer for the targeted real estate company sold land over the phone or through consultations. ① Even though the workplace and working hours were stipulated, this was designed to promote effective sales in accordance with different requirements of telemarketing. ② The telemarketer dealt with people at his own discretion, from attracting potential buyers to completing the contract, and did not receive any concrete or individual supervision or control by the company. ③ What the telemarketer received as a fixed allowance is a kind of sales activity allowance. ④ Income tax was reported. ⑤ The main income was the very high commission received in return for selling the real estate. It is therefore estimated that the telemarketer cannot be regarded as an employee providing labor service under an employer's supervision and direction.

## IV. Conclusion

According to the changing business structures, companies use telemarketers for various fields. In the beginning, telemarketers were handled as outsourced or commissioned labor, and no real problems existed. However, companies have gradually been using telemarketers to directly increase operational profit. In this process the company comes to supervise the telemarketer directly, which affects the telemarketer's status as a commissioned service provider under the Civil Act to that more like an employee to which the labor laws apply. As the telemarketer's status changes this way, employers need to handle dismissals carefully, deal with severance pay, annual leave, social security insurances, and other protections granted by Korean Labor Law. Accordingly, employers need to recognize that telemarketers' status can change from commissioned service provider (under the Civil Law) to an employee (under Labor Law) according to the degree of employer involvement in the telemarketer's work. When using telemarketers, it is necessary to consider in advance whether the telemarketer shall be considered self-employed or an employee exclusively supervised and directed.

# The Penal Provisions of the Labor Standards Act

| | | |
|---|---|---|
| **Labor Contract (Employment Contract) / Working Conditions** | | |
| Article 17 | Statement & issuance of Working Conditions | Max. 5 million won |
| **Employment rules** | | |
| Article 93 | Preparation and Filing of Rules of Employment | Max. 5 million won |
| Article 14 | Publicity of employment rules | Max. 5 million won |
| Article 94 | Procedures for Preparation of/and Amendment to Rules of Employment | Max. 5 million won |
| **Protection of employment relationship** | | |
| Article 6 | Equal Treatment | Max. 5 million won |
| Article 7 | Prohibition of Forced Labor | Up to 5 years / Max. 30 mil. Won |
| Article 8 | Prohibition of Violence | Up to 5 years / Max. 30 mil. Won |
| Article 9 | Elimination of Intermediary Exploitation | Up to 5 years / Max. 30 mil. Won |
| Article 40 | Prohibition of Interference with Employment | Up to 5 years / Max. 30 mil. Won |
| Article 20 | Prohibition of Predetermination of Nonobservance | Max. 5 million won |
| Article 21 | Prohibition of Offsetting Wages against Advances | Max. 5 million won |
| Article 22 | Prohibition of Compulsory Saving | Max. 5 million won |
| **Remunerations (Wages)** | | |
| Article 43 | Payment of Wages | Up to 3 years / Max. 20 mil. Won |
| Article 56 | Premium payment for Extended Work, Night Work and Holiday Work | Up to 3 years / Max. 20 mil. Won |
| Article 45 | Emergency Payment | Max. 100 million won |
| Article 46 | Allowances during Business Suspension | Up to 3 years / Max. 20 mil. Won |
| Article 79 | Compensation for Suspension of Work | Up to 2 years / Max. 10 mil. Won |
| **Working/Recess Hours** | | |
| Article 50 | 40 Working Hours principle | Up to 2 years / Max. 10 mil. Won |
| Article 53 | Restriction on Extended Work | Up to 2 years / Max. 10 mil. Won |
| Article 54 | Recess Hours | Up to 2 years / Max. 10 mil. Won |
| Article 70 | Restrictions on Night Work and Holiday Work | Up to 2 years / Max. 10 mil. Won |
| Article 71 | Overtime Work | Up to 2 years / Max. 10 mil. Won |
| **Holiday and Annual Paid Leave** | | |
| Article 55 | Holidays | Up to 2 years / Max. 10 mil. Won |
| Article 60 | Annual Paid Leave | Up to 2 years / Max. 10 mil. Won |
| **Restrictions on Dismissal, punitive measures etc** | | |
| Article 23 | Restrictions on Dismissal, etc | Up to 5 years / Max. 30 mil. Won |
| Article 26 | Advance Notice of Dismissal | Up to 2 years / Max. 10 mil. Won |

| | | |
|---|---|---|
| Article 27 | Written Notification of Reasons for Dismissal | Up to 3 years / Max. 20 mil. Won |
| Article 95 | Limitation on Punitive Provisions | Max. 5 million won |
| Article 31 | Confirmation of **Remedy Order,** etc. | Up to 1 years / Max. 10 mil. Won |
| **SeverancePpay and Post retirement Protection** | | |
| Article 36 | Payment of Severance pay and others | Up to 3 years / Max. 20 mil. Won |
| Article 39 | Certificate of Employment | Max. 5 million won |
| Article 40 | Prohibition of Interference with Employment | Up to 5 years / Max. 30 mil. Won |
| **Other Statutory Duties of Employer** | | |
| Article 10 | Guarantee of Exercise of Civil Rights | Up to 2 years / Max. 10 mil. Won |
| Article 41 | Registry of Workers | Max. 5 million won |
| Article 42 | Preservation of Documents regarding Contracts | Max. 5 million won |
| Article 48 | Wage Ledger | Max. 5 million won |
| Article 64 | Minimum Age and Employment Permit | Up to 2 years / Max. 10 mil. Won |
| Article 65 | Prohibition of Employment of pregnant female and minors ( less than 18 years old) and so on | Max. 20 million won |
| Article 66 | Minor Certificate | Max. 5 million won |
| Article 74 | Protection of Pregnant Women | Up to 2 years / Max. 10 mil. Won |
| Article 75 | Nursing Hours | Up to 2 years / Max. 10 mil. Won |
| Article 78 | Medical Treatment Compensation | Up to 2 years / Max. 10 mil. Won |
| Article 80 | Compensation for Disability | Up to 2 years / Max. 10 mil. Won |
| Article 82 | Compensation for Survivors | Up to 2 years / Max. 10 mil. Won |
| Article 83 | Funeral Expenses | Up to 2 years / Max. 10 mil. Won |
| Article 91 | Keeping of Documents | Max. 5 million won |
| Article 98 | Protection of Dormitory Life | Max. 5 million won |
| Article 99 | Preparation of/and Amendment to Dormitory Rules | Max. 5 million won |
| Article 100 | Measures for Safety and Health | Max. 5 million won |
| Article 104 | Report to Supervisory Authorities | Up to 2 years / Max. 10 mil. Won |