

Korean Supreme Court's Landmark Rulings on Ordinary Wages

On December 18, 2013, the Supreme Court of Korea ruled that bonus payments should be included in the scope of ordinary wages if such bonus payments are made on a regular, uniform and fixed basis. According to another ruling by the Supreme Court rendered on the same day, however, most welfare-related allowances may not be regarded as part of the ordinary wages.¹ The below sets forth a brief description of the issues considered under the foregoing landmark decisions of the Supreme Court and the possible consequences stemming from the said rulings.

Under Article 6 of the Enforcement Decree of the Labor Standards Act of Korea ("LSA"), the term "ordinary wage" is essentially defined as hourly wages, daily wages, weekly wages, monthly wages, or contract wages which are paid regularly and uniformly to workers for certain prescribed labor or total labor rendered. The concept of ordinary wage is important to employers in Korea because it is used as a base for the calculations of overtime, nighttime and holiday work payments (additional compensation of at least 50% of the ordinary wage is required for any overtime, nighttime or holiday work done). Ordinary wages also affect the calculation for the severance pay for retiring workers.

At issue was a part of certain collective bargaining agreement of a company that excluded bonus payments (which were regularly paid to workers) from ordinary wages, and a former employee of the company claimed that such exclusion was invalid and requested to receive the amount (of severance pay and unused annual and monthly paid leave) owed to him relating to such excluded bonus payments.

Also at issue were certain welfare-related payments (Lunar New Year and thanksgiving holiday bonuses, vacation allowance, etc.) that were paid by the company to all workers at a specific time, irrespective of whether any labor was rendered, and the former employee claimed that such welfare payments were part of the ordinary wages and requested payment by the company for the outstanding balance relating to such welfare payments.

First, regarding the bonus payments, the Supreme Court ruled that any bonus payment that has the following characteristics would be regarded as part of the ordinary wages: (i) The payment is continuously made at regular intervals (even if such regular intervals exceed one-month period), (ii) the bonus is uniformly paid to all workers or a certain group of workers that have met certain prescribed labor standards (such as making payment to workers who have been employed over a certain period of time), and (iii) the bonus is fixed in that such payment is not based on achieving any performance criteria or meeting any work targets.

Because the bonus payment for the case at hand was determined to have all such characteristics, the Supreme Court ruled that the bonus payment should have been included in the scope of ordinary wages.

However, the Supreme Court further stated that although the part of the collective bargaining agreement that excluded the bonus payment from the ordinary wages may be deemed invalid, any request of the workers to receive further payment of wages on the basis of such invalidity (while having received all other wage payments agreed under the bargaining agreement) would not be permitted because of contravention of the good-faith principles, if the workers and the employer agreed to exclude the regular bonuses from the ordinary wages (with mutual understanding that such bonus is not included in ordinary wages), and that such further wage payments could cause substantial management difficulties on the part of the employer.

Regarding the issue of whether to include welfare-related payments in the concept of ordinary wages, the Supreme Court stated that if such payment had been paid to workers only on the condition that they were working at a specific time (and thus not linking the payment to provision of any labor), then such payments should not be part of the ordinary wages even if they were paid on a regular basis. This ruling of the Supreme Court on the welfare-related payments reverses the prior position of the Court that viewed such payments as part of the ordinary wages if the payments were made on a regular basis.

In view of the above-noted rulings of the Supreme Court, the concept of the ordinary wages could be summarized as follows: In order to be ordinary wages that become the basis for payment of overtime, nighttime and holiday work, judging from the point of time when such work of providing extra labor is undertaken, all payments being paid regularly on a periodic basis for compensation of labor rendered pursuant to employment agreement, with such payments uniformly made to all workers (or a group of workers meeting certain prescribed labor standards), and also such payments fixed to be made irrespective of satisfying any performance criteria or other additional conditions, would be regarded as ordinary wages, regardless of how each such payment is named.

So, such allowances as technology allowance and employment-related allowance (e.g., allowance paid on the basis of period of employment) would be regarded as ordinary wages, as well as most regular bonus payments that are made on a periodic basis, whereas any family allowance that could be varied according to the number of family members or any bonus payments that are conditioned or varied upon the relevant company performance would not be regarded as ordinary wages.

In addition, any payments made to workers being employed only at a specific time or date (such as summer vacation pay or Lunar New Year holiday pay), rather than such payments being paid as part of compensation for any labor rendered, may not be regarded as ordinary wages, although such payments have been made more or less on a regular basis.

There is no question that the above Supreme Court rulings will have significant implications for employers in Korea that are about to enter into wage negotiations with their labor unions or employee representatives. The rulings will also have much bearing on many lawsuits pending at lower court levels between certain big Korean companies (e.g., Hyundai Motor) and their labor unions for the disputes concerning the scope of ordinary wages.

Although the general consensus is that the Supreme Court rulings have done much to clarify what constitutes ordinary wages, there are still some uncertainties associated with the contents of the rulings.

One such question is whether any bonus payment that is regularly made to workers will be deemed ordinary wages if such payment is made to workers being employed only at a certain specific time. So, there stands to be continuing debate over ordinary wages in the areas that the Supreme Court has still left unclear, or has not addressed.

¹ The Supreme Court of Korea consists of a total of 14 justices, including 1 Chief Justice. These rulings were rendered after conference by all members of the Court, which is the highest decision making mechanism at the Court.

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