

■ Recent Court Case ■

Employer's ordering an employee to a long-term unpaid leave without pay due to an indictment brought against the employee for an incident occurred at a prior workplace is invalid

[Seoul Administrative Court Decision 2018Kuhap71601 decided on June 20, 2019]

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The Seoul Administration Court decided that an employer should not put an employee on unpaid leave without pay for being prosecuted for an alleged wrongdoing at his previous job.

The company A imports and sells medicine and medical supplies, and employee B joined the company A on January 12, 2015, to be in charge of a department. Later it was suspected that the company the employee B had previously worked for provided illegal rebates to doctors in connection with drug products, and employee B was indicted by prosecutors in August 2016, because he was a department head at the previous company at the time such rebates were being given. The company A ordered employee B to be on unpaid leave on November 1, 2017 for being prosecuted for violating the Pharmaceutical Affairs Act

The court first stated that considering the purpose of Article 23(1) of the Labor Standards Act, which restricts an employer from putting an employee on leave of absence without a just cause, an employer shall have a just cause only when it can be recognized that the employee cannot provide work for a considerable period or is very unsuitable for providing the work, even when the employer's rule of employment or a collective bargaining agreement gives the employer a power to order a leave of absence when a certain cause arises.

In addition, the court recognized that employee B was being indicted for an incident occurred at the previous workplace, and that the company A could not find any problems when it conducted an internal investigation to check if worker B had done any illegal rebate acts after he joined the company A. Also, considering the indictment seemed to have had no influence over their clients, the court ruled that it was difficult to argue that employee B could not provide his work as a department head only because he was being indicted for an incident happened at a prior workplace.