

■ Recent Court Cases ■

When calculating agreed number of work hours to be included in total number of work hours for converting fixed allowances into hourly wages, the number of work hours actually agreed by the employees shall be added, unless otherwise agreed

[Case No. Supreme Court decision 2015da73067 dated January 22, 2020]

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The plaintiffs worked for an agreed number of work hours per work day, which were in excess of the standard work hours under the Labor Standards Act (i.e., for eight standard work hours and five overtime hours, 30 minutes of which was nighttime hours). The plaintiffs were paid, in consideration of the agreed number of work hours, various fixed allowances in the form of monthly or daily salaries in addition to the ordinary wages per month. The plaintiffs argued that various fixed allowances (e.g., allowances for continued service, driving, new year, drivers' association fees, meals and bonuses) which the company excluded from the ordinary wages should be included in the ordinary wages in seeking additional amounts of overtime allowances which were re-calculated based on the higher ordinary wages.

The key issue in this case was how to calculate the total number of work hours, which would form the basis for converting the fixed allowances into the ordinary wages per hour if the court were to conclude that the fixed allowances have the characteristics of the ordinary wages. The employees had already been paid, as the wages for the agreed number of work hours exceeding the standard work hours under the Labor Standards Act (i.e., eight hours per day and 40 hours per week), the fixed allowances in the

form of monthly or daily salaries, which have characteristics of the ordinary wages. The employer had already excluded the fixed allowances from the ordinary wages.

The Supreme Court had held in the past, if the employees were paid fixed allowances per month as the wages for the agreed number of work hours exceeding the standard number of work hours under Article 50 of the Labor Standards Act, the rate for calculating the additional allowances should be considered in calculating the number of overtime and nighttime work hours out of the agreed number of work hours which were included in the total number of work hours. In accordance with this decision by the Supreme Court, the lower court had included both the overtime work hours, by applying the rate of 150%, and the overtime and nighttime work hours, by applying the rate of 200%, in the total number of work hours for calculating the hourly wages.

In this case, however, the Supreme Court held that, in case of converting the fixed allowances, which were paid in the form of monthly salaries as the wages for the agreed number of work hours exceeding the standard number of work hours under the Labor Standards Act, to the ordinary wages per hour, the agreed number of work hours to be included in the total number of work hours shall be calculated by adding the number of work hours actually agreed by the employees, unless provided otherwise.

That is, the Supreme Court overturned the precedent which had calculated the agreed number of work hours by adding the number of overtime and nighttime work hours considering the applicable rates.