

■ Recent Court Cases ■

The rules of employment applicable to permanent employees were to apply to the employees transitioned from fixed-term employees to indefinite-term contract employees while performing the same or similar services

[Case No. Supreme Court decision 2015da254873 dated December 24, 2019]

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The plaintiffs were hired as fixed-term employees and transitioned to indefinite-term contract employees. Even after the transition to indefinite-term contract employees, they were not subject under the rules of employment applicable to the permanent employees. Instead they entered into the employment agreements in the same form as they did when they were fixed-term employees. As a result, they were paid 80% of the ordinary wages and bonuses and KRW 100,000 less in vehicle support compared to the permanent employees. They were provided neither continuous service pay nor regular promotion. On the other hand, there was not a lot of difference in the terms and scopes of services or the quality and quantity of the services when compared to the permanent employees in the same departments with the same responsibilities providing the same services as the plaintiffs.

The Supreme Court held, in the event there are indefinite-term contract employees and permanent employees performing the same or similar services at the business (or place of business), the rules of employment applicable to the permanent employees shall apply on the indefinite-term contract employees, unless otherwise provided, for the following reasons.

1. While Article 8 Paragraph 1 of the Act on the Protection, Etc. of Fixed-Term and Part-Time

Employees in principle simply prohibits discriminatory treatments against fixed-term employees, these provisions, in view of the intent and the concept of fairness, are to be interpreted as providing indefinite-term contract employees the working conditions no less favorable than the working conditions for the permanent employees providing the same or similar services, unless there are any other special circumstances.

2. Considering the purpose, structure, legislative intent and circumstances surrounding the drafting of the Act on the Protection, Etc. of Fixed-Term and Part-Time Employees, if there are permanent employees providing the same or similar services at the business (or place of business), this Act shall be interpreted as providing for the working conditions applicable to the permanent employees to apply in the same manner as to the indefinite-term contract employees, unless there are any special circumstances providing otherwise.

Furthermore, the Supreme Court held that (1) any parts of the employment agreements setting out the working conditions which are below the standards set forth under the rules of employment of the defendant should be invalidated and that (2) these parts should be made subject to the standards set forth under the rules of employment, thereby providing for ordinary wages, bonuses, continuous service pay and vehicle support according to the standards set forth under the rules of employment of the defendant, as well as regular promotion, for the plaintiffs.