

## Contents

### ■ Labor Column ■

- Broad Recognition of Illegal Dispatch in Non-Manufacturing Sectors .....3

### ■ Case Highlights ■

- Successful representation of an employer in a claim for confirmation of invalidity of dismissal filed by a former employee of a broadcasting company .....11
- Successful representation of an employer in a case involving legitimacy of a new personnel system entailing wage cuts for former managers .....12
- Successfully cleared the perjury charge of a witness who testified in a claim for revocation of re-trial decision on remedies for unfair dismissal .....13
- Successful representation of a company in a claim for deferred performance pay filed by a retired employee .....14
- Successful representation of a company against a female employee who was dismissed on account of assault and abuse of authority, etc. ....16
- Successful representation of a company in a case involving dismissal of an employee for whom the contract was renewed through improper solicitation .....17

### ■ Recent Court Case ■

- Collective agreement clause providing for reduction of performance pay in case of lawsuits against the company found to be invalid .....19
- Resolution of shareholders' meeting is necessary for interim severance payment to executives .....21



- 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.....23
- An employer’s action to selectively sell a business division with numerous labor union workers and lay off employees in the business is both an unfair dismissal and an unfair labor practice.....25

■ Labor Column ■

## Broad Recognition of Illegal Dispatch in Non-Manufacturing Sectors

### 1. Introduction

Illegal dispatch is one of the most frequently disputed labor issues in South Korea. From 2012 until 2016, there have been a total of 1,045 investigated cases in connection with violation of the Act on the Protection, etc. of Temporary Agency Workers (the “**Temporary Agency Worker Act**”), and these figures have steadily increased from 201 cases in 2012 to 303 cases in 2016.

One of the reasons why illegal dispatch is an issue is because it is difficult to make the legal distinction between illegal dispatch and lawful contracting. Under the Temporary Agency Worker Act, “temporary placement of workers” is defined as “engaging a worker employed by a temporary work agency to work for, and under the direction and supervision of, a user company in accordance with the terms and conditions of a contract on temporary placement of workers, while maintaining his/her employment relationship with the temporary work agency” (Article 2, Subparagraph 1 of the Temporary Agency Worker Act). In the meantime, “contracting” is established when “one of the parties has agreed to perform a certain job and the other has agreed to pay remuneration for the result of such work” (Article 664 of the Civil Act). Due to such ambiguity in the criteria for determination between illegal dispatch and lawful contracting, even the court is apt to render inconsistent decisions between them.

We will hereinafter review the tendency, criteria for judgment and decisions related to illegal dispatch in non-manufacturing sectors, which is recently becoming an issue.

## 2. Broad Recognition of Illegal Dispatch in the Non-Manufacturing Sectors

In January 2019, the Seoul Southern District Court sentenced the representative director of a large retailer to imprisonment (for 10 months, with a two years' stay of execution) for violation of the Temporary Agency Worker Act (Seoul Southern District Court 2018Godan 1654 dated Jan. 31, 2019)<sup>1</sup> because workers dispatched by an unlicensed agency, which was re-subcontracted by the contractor, worked on cashiering, display, and finishing at the retail store.

Illegal dispatch is recognized, even if it takes the form of a contracting for work or a service agreement, if it entails, in substance, temporary placement of workers in violation of the Temporary Agency Worker Act. Illegal dispatch has been recognized mostly in the manufacturing sector,<sup>2</sup> many of such cases subject to criminal liabilities.<sup>3</sup> In the above large retailer decision, the criminal liabilities for illegal dispatch were recognized in the distribution/service sectors. Illegal dispatch was also recognized in other lower instance cases involving expressway toll collectors and safety patrols, and the Ministry of Employment and Labor also recognized illegal dispatch in a case involving bakers. We will hereinafter review major illegal dispatch cases in the non-manufacturing sectors, given such broadening recognition of illegal dispatch in the relevant sectors.

## 3. Criteria for Judgment in the Precedents

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<sup>1</sup> An appeal by the accused (Seoul Southern District Court 2019No364) is currently pending.

<sup>2</sup> Supreme Court decision 2010Da106436 dated Feb. 26, 2015; Supreme Court decision 2010Da93707 dated Feb. 26, 2015; and Supreme Court decision 2015Da32905 dated Dec. 22, 2017, etc.

<sup>3</sup> Supreme Court decision 2011Do34 dated Feb. 28, 2013; Gwangju High Court decision 2010No366 dated Feb. 17, 2012.

Under the principle that the decision shall be rendered based on the substance of the employment relationship, without regard to the title or form of the contract, the Korean Supreme Court rules on illegal dispatch, without distinction between manufacturing and non-manufacturing sectors, based on (i) substantial command/direction of original contractor; (ii) substantial incorporation into original contractor's business; (iii) independent personnel management by original contractor; (iv) limited distinction and expertise/technicality of contracted work; and (v) independent organization or facilities.<sup>4</sup> We will take a look at major cases falling under each category.

#### **4. Major Cases based on Criteria for Judgement**

##### **A. Substantial command/direction of original contractor**

###### **(1) Field representative**

The court recognized illegal dispatch if there was no field representative permanently stationed at the workplace of the subcontracted workers,<sup>5</sup> if the field representative merely delivers the decisions made by the original contractor<sup>6</sup>, or if the main duty of the field representative is not command/direction but engagement in field work just like the other workers.<sup>7</sup> On the other hand, illegal dispatch was not recognized if a field representative

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<sup>4</sup> Supreme Court decision 2010Da106436 dated Feb. 26, 2015; Supreme Court decision 2015Da232859 dated Mar. 22, 2017; and Supreme Court decision 2016Da240406 dated Dec. 13, 2018, etc.

<sup>5</sup> Supreme Court decision 2016Da13741 dated June 23, 2016; and Supreme Court decision 2015Da232859 dated Mar. 22, 2017, etc.

<sup>6</sup> Supreme Court decision 2015Da32905 dated Dec. 22, 2017; and Seoul High Court decision 2014Na2036786 dated June 24, 2016 (final appeal pending as Supreme Court case 2016Da239024), etc.

<sup>7</sup> Supreme Court decision 2015Da232859 dated Mar. 22, 2017; and Seoul Eastern District Court decision 2016Gahap102687 dated Aug. 17, 2017 (decision became final and conclusive as of Sept. 9, 2017 upon the employer's withdrawal of appeal)

was stationed permanently at the workplace and substantially commanded and directed the works, including exercise of right to assign duties.<sup>8</sup>

### **(2) Operating manual, rules of operation, etc.**

Illegal dispatch was recognized if the original contractor gave directions for the work by providing an operating manual to the subcontracted workers<sup>9</sup> or through bulletin board,<sup>10</sup> or required them to work in accordance with the regulations/rules of operation.<sup>11</sup> On the other hand, substantial command/direction of original contractor was not recognized, despite the operating manual, if the original contractor gave instructions for the work through the subcontractor's field representative.<sup>12</sup>

### **(3) Regular reports**

Illegal dispatch was clearly recognized if the subcontracted workers were required to regularly report to or obtain confirmation on the deliverables (work log, etc.) from the original contractor.<sup>13</sup>

## **B. Substantial incorporation into original contractor's business**

### **(1) Mixed work**

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<sup>8</sup> Supreme Court decision 2014Da211619 dated Jan. 25, 2017; and Supreme Court decision 2014Da61401 dated Nov. 27, 2014.

<sup>9</sup> Seoul High Court decision 2015Da2006676 dated Feb. 3, 2017 (final appeal pending as Supreme Court case 2017Da219249).

<sup>10</sup> Supreme Court decision 2012Da17806 dated Jan. 28, 2016.

<sup>11</sup> Seoul High Court decision 2015Da2006676 dated Feb. 3, 2017; Uijeongbu District Court (Goyang Branch) decision 2015Gahap 71412 dated July 14, 2017 (agreement on mediation reached during the appeal)

<sup>12</sup> Supreme Court decision 2014Da211619 dated Jan. 25, 2017.

<sup>13</sup> Supreme Court decision 2015Da232859 dated Mar. 22, 2017; and Supreme Court decision 2014Da222794 dated July 22, 2016, etc.

Substantial incorporation into original contractor's business was recognized when the subcontracted workers carried out virtually the same work together with the original contractor's employees,<sup>14</sup> or carried out the business in the same manner while maintaining the same reporting or cooperation system with the original contractor's employees even if they did not work together.<sup>15</sup> On the other hand, substantial incorporation into original contractor's business was not recognized, even if they worked at the same place, if the duties of the original contractor's employees and those of the subcontracted workers were clearly distinguished.<sup>16</sup>

**(2) Use of the same uniform, and logos, etc.**

Substantial incorporation into original contractor's business was recognized when the subcontracted workers wore uniforms or name tags that were the same as those of the original contractor's employees, or if they used them together with the original contractor's logo.

**C. Independent personnel management by original contractor**

Illegal dispatch was recognized if the subcontractor prepared a duty roster and reported the same to the original contractor,<sup>17</sup> if the original contractor provided job training directly to

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<sup>14</sup> Supreme Court decision 2012Da17806 dated Jan. 28, 2016; Supreme Court decision 2015Da232859 dated Mar. 22, 2017.

<sup>15</sup> Seoul High Court decision 2014Na2036786 dated June 24, 2016.

<sup>16</sup> Supreme Court decision 2011Da78316 dated Feb. 26, 2015; and Supreme Court decision 2014Da211619 dated Jan. 25, 2017.

<sup>17</sup> Seoul High Court decision 2014Na2036786 dated June 24, 2016; and Uijeongbu District Court (Goyang Branch) decision 2015Gahap71412 dated July 14, 2017.

the subcontracted workers,<sup>18</sup> or if the training was provided by the subcontractor but was merely a repetition of the standard established by the original contractor.<sup>19</sup> The subcontractor's independent personnel management was not recognized otherwise if the original contractor got involved in the recruiting procedure (interview),<sup>20</sup> subcontracted workers were required to go on a leave with approval from the original contractor's manager,<sup>21</sup> or if the original contractor decided the personnel placement.<sup>22</sup> On the other hand, illegal dispatch was not recognized if the subcontractor had the authority to recruit or to take disciplinary actions, exercised the right to assign duties, and independently managed personnel records such as early leave or vacations.<sup>23</sup>

#### **D. Limited distinguishment and expertise/technicality of contract work**

Illegal dispatch was recognized if the contracted works were defined comprehensively without specification,<sup>24</sup> or if the price were calculated based on the labor cost incurred (e.g. labor rate subcontracting method).<sup>25</sup> However, illegal dispatch was not recognized if the contracted works were limited to the scope set forth in the subcontract agreement, and no additional work was carried out at the demand of the original contractor, even when the subcontract price was calculated based on the labor cost.<sup>26</sup>

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<sup>18</sup> Supreme Court decision 2013Da14965 dated Nov. 26, 2015; and Supreme Court decision 2016Da13741 dated June 23, 2016.

<sup>19</sup> Uijeongbu District Court (Goyang Branch) decision 2015Gahap71412 dated July 14, 2017.

<sup>20</sup> Supreme Court decision 2015Da232859 dated Mar. 22, 2017; and Seoul High Court decision 2017Na2029727 dated May 28, 2019 (final appeal pending as Supreme Court case 2019Da245266).

<sup>21</sup> Supreme Court decision 2016Da13741 dated June 23, 2016.

<sup>22</sup> Supreme Court decision 2014Da222794 dated July 22, 2016.

<sup>23</sup> Supreme Court decision 2014Da211619 dated Jan. 25, 2017.

<sup>24</sup> Supreme Court decision 2015Da232859 dated Mar. 22, 2017.

<sup>25</sup> Seoul High Court decision 2014Na2036786 dated June 24, 2016.

<sup>26</sup> Supreme Court decision 2014Da211619 dated Jan. 25, 2017.



Illegal dispatch was recognized if it involved simple repetitive work and the subcontracted workers carried out the normal duties of the original contractor.<sup>27</sup> On the other hand, illegal dispatch was not recognized if the works carried out by the subcontracted workers required certain experience and qualifications.<sup>28</sup>

#### E. Independent organization or facilities

Illegal dispatch was recognized if the original contractor provided free-of-charge the equipment, office, furnishings and supplies necessary for the performance of works.<sup>29</sup> On the other hand, it was not recognized as illegal dispatch if the subcontractor had independent organization or facilities,<sup>30</sup> or if the subcontractor had substantial business organization and carried out the contracted works at a number of workplaces.<sup>31</sup>

### 5. Conclusion

Recently, the court and the Ministry of Employment and Labor have been broadly recognizing illegal dispatch in non-manufacturing sectors as well as the manufacturing sector. Therefore, it would be desirable for each company to check and ensure in advance that the contracted works in non-manufacturing sectors are being carried out lawfully.

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<sup>27</sup> Seoul High Court decision 2018Na2062905 dated May 28, 2019 (decision became final and conclusive as of June 14, 2019 as neither party appealed).

<sup>28</sup> Seoul High Court decision 2016Na11051 dated Apr. 7, 2017 (final appeal pending as Supreme Court case 2017Da17955).

<sup>29</sup> Supreme Court decision 2013Da14965 dated Nov. 26, 2015; and Supreme Court decision 2012Da17806 dated Jan. 28, 2016, etc.

<sup>30</sup> Seoul High Court 2016Na11051 dated Apr. 7, 2017.

<sup>31</sup> Supreme Court decision 2014Da211619 dated Jan. 25, 2017.

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■ Case Highlights ■

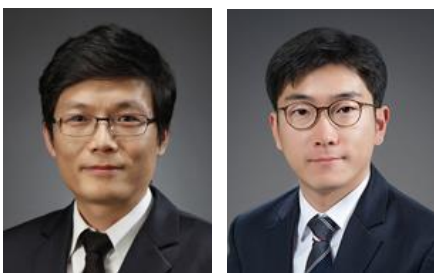
## Successful representation of an employer in a claim for confirmation of invalidity of dismissal filed by a former employee of a broadcasting company

A camera reporter was subjected to disciplinary dismissal by a broadcasting company on account of the blacklist in which he classified reporter colleagues based on their tendencies, and passed on to his superiors including the one in charge of personnel matters. He filed the claim for confirmation of invalidity of dismissal, asserting that there was no ground for disciplinary action.

JIPYONG successfully asserted and demonstrated on behalf of the employer that the plaintiff clearly had the grounds for disciplinary action, which constitute serious violation that is liable to disturb the hierarchical order of an enterprise, and that the level of disciplinary action was also appropriate.

The court accepted the employer's assertion and dismissed all of the claims of the employee.

### [Main Contact]



**Jeong Kyu CHOE** Partner  
**Young Hwan KWON** Associate

■ Case Highlights ■

## Successful representation of an employer in a case involving legitimacy of a new personnel system entailing wage cuts for former managers

Upon being criticized for careless management from the government, a public institution adopted, with majority consent of the labor union, a new personnel system which applied to former manager-level employees, resulting in wage reduction. The employees thus affected claimed for confirmation of invalidity of such personnel appointments and for differences with the wages they would otherwise have received had there not been such changes in position.

JIPYONG successfully asserted and demonstrated on behalf of the employer that the reduction in the plaintiffs' wages was caused by changes in the personnel system, which was necessary for sound operation of the public institution, was valid since the majority consent of the labor union was obtained, and the level of wage reduction did not exceed the level ordinarily expected to be borne by the plaintiffs.

The first-instance court accepted the employer's assertion and dismissed all of the employees' claims on the ground that the changes in position of the employees are justified as they resulted from changes in the personnel system, which was likewise recognized and dismissed by the appellate court.

### [Main Contact]



**Young Hwan KWON**  
Associate

■ Case Highlights ■

## Successfully cleared the perjury charge of a witness who testified in a claim for revocation of re-trial decision on remedies for unfair dismissal

A dismissed employee accused a witness for the company of perjury with a plot to do harm in a claim for revocation of re-trial decision on remedies for unfair dismissal. The police forwarded the case to the prosecutors' office for prosecution based on the two remarks of the witness.

JIPYONG defended the witness that he did not make false statements, he had stated the truth as far as he remembered, and he did not have any intention to commit perjury.

The prosecutors cleared the witness of suspicion, contrary to the opinion of the police.

### [Main Contact]



**Young Hwan KWON**  
Associate

■ Case Highlights ■

## Successful representation of a company in a claim for deferred performance pay filed by a retired employee

The Financial Supervisory Service prepared model criteria for performance-based compensation system for financial investment companies in order to establish a reasonable compensation system, upon being criticized in 2010 that one of the causes of the financial crisis was the financial companies' compensation system based on short-term performance. Specifically, the model criteria provided for tying of compensation with risks, i.e., each securities company was required to consecutively pay considerable part of the compensation to the management and certain employees as floating compensation (performance-linked compensation), considerable part of which was to be deferred in view of the period of duration of risks, and considerable other part of which was to be paid in a form linked with the long-term performance of the company, such as stocks or equity-linked products, and in the event of under-achievement or loss during the period of deferred payment of floating compensation, the floating compensation payable in future shall be reduced. The company established the Regulations on Performance-based Compensation (the "Regulations") based on the above model criteria.

According to the Regulations, the performance-based compensation for the management and employees responsible for financial investment to whom the Regulations apply is postponed for a certain period. An employee who used to be in charge of financial investment at the company filed the lawsuit in question, after leaving the company, for payment of deferred performance pay.

JIPYONG successfully defended the company that it was not obligated under the Regulations to make the deferred performance payment after an employee left the company, and also raised related labor law issues from various perspectives.

The court accepted the company's assertion and dismissed the employee's claim, finding that the relevant provisions of the Regulations did not violate Article 7 of the Labor Standards Act and Article 103 of the Civil Act.

**[Main Contact]**



**Sung Kook KANG**  
Partner



**Hyun Jin JANG**  
Associate

■ Case Highlights ■

## Successful representation of a company against a female employee who was dismissed on account of assault and abuse of authority, etc.

A complaint against a female employee was filed through an internal reporting channel of a company on account of her assault, abuse of authority and inappropriate behavior. The company subjected her to disciplinary dismissal after internal investigation and disciplinary committee. The employee filed an application for remedies against unfair dismissal, arguing that considerable part of the charges were not true, which had been accepted contrary to her intention. JIPYONG represented the company from the proceedings at the level of the local labor relations commission, which accepted the company's assertion and found the disciplinary dismissal to be reasonable. The employee then filed for review of the decision made by the local labor relations commission.

JIPYONG pointed out that (i) the employee's conduct constituted serious violation, (ii) the people affected by her conducts were subordinate to her, and thus such conducts shall be taken more seriously, and (ii) dismissal in question was unavoidable in order to protect the victims, to prevent further damage, and to restore order in the workplace, given the corporate culture of the company. JIPYONG also effectively rebutted the issues newly raised by the employee during the decision review proceeding and pointed out the relevant problems. As a result, the review proceeding was closed through settlement, which was virtually a win for the company.

### [Main Contact]



**Hyun Jin JANG**  
Associate



■ Case Highlights ■

## Successful representation of a company in a case involving dismissal of an employee for whom the contract was renewed through improper solicitation

There was media report on solicitation for a job through a former president of a company, who was a well-known figure in the financial world. The audit bureau of the company confirmed through an internal investigation that an employee renewed his contract through improper solicitation for a job. The code of ethics of the company provided that the “officers/employees of the company shall not cause a third party to make improper solicitations to the person in charge of personnel matters with the intent to have undue influence on his/her job”, and breach thereof is a cause for disciplinary action. The company dismissed the relevant employee through the personnel committee.

The employee denied the solicitation charge, and filed for remedies against unfair dismissal before the local labor relations commission, arguing that even if there were indeed such solicitation, the level of disciplinary action (dismissal) was too excessive. JIPYONG represented the company from the proceedings at the level of the local labor relations commission, which accepted the company’s assertion and found the disciplinary dismissal to be reasonable. The employee then filed for review of the decision made by the local labor relations commission.

JIPYONG asserted on behalf of the company that (i) the solicitation in question is sufficiently demonstrated, (ii) the company’s reputation was seriously damaged due to the media coverage of the solicitation, and (iii) the case calls for strictly fair measures on the part of the company which has suffered a serious blow to its fairness and reliability, given the nature of its business. JIPYONG also effectively rebutted the issues emphasized by the employee during the decision review proceeding. As a result, the review proceeding was closed through settlement, which was virtually a win for the company.

[Main Contact]



**Jeong Kyu CHOE**  
Partner



**Hyun Jin JANG**  
Associate

■ Recent Court Case ■

## Collective agreement clause providing for reduction of performance pay in case of lawsuits against the company found to be invalid

**[Case No. Daegu District Court 2018Na319922 decision dated July 10, 2019]**

Daegu District Court recently issued a decision finding a clause in a collective agreement providing for reduction of performance pay or non-payment of incentives to employees who filed lawsuits against the company to be invalid.

The defendant company had been making performance payment to its employees since 2010. On January 24, 2014, the defendant company executed with the defendant labor union an addendum to the collective agreement, providing for reduction of performance pay to 'any person who has filed a petition, complaint or lawsuit claiming payment of money and valuables against the company' (the 'first agreement'). In addition, they also reached an agreement to 'exclude any person, who has filed a complaint, etc. such as a lawsuit against the company or its representative within one year from the date of payment, from incentive payment, irrespective of the result or withdrawal, etc. of such complaint' (the 'second agreement').

In September and October, 2013, the plaintiffs who were employees of the defendant company filed lawsuits against the defendant company, claiming for unpaid and outstanding statutory allowances on the ground that the regular bonus, etc. were omitted from ordinary wages, some of which were pending at the Supreme Court. In October 2014, December 2016, and January 2017, the plaintiffs brought overdue wage and unfair labor practice charges against the defendant company et al. before the Western Branch of Daegu District Prosecutors' Office, but they were all acquitted.

First of all, the court recognized considerable discretion on the part of the company in determining the criteria for making performance payment, etc. However, the court found that the parts of the first and second agreements which provide for reduction of performance pay and non-payment of incentives on account of filing of lawsuits, etc. constituted conspicuous infringement on the plaintiffs' right to trial guaranteed under the Constitution, which are thus invalid because they do not serve the purpose of the labor union, and because the substance or motive of the legal act violates the morality or other social order.

■ Recent Court Case ■

## Resolution of shareholders' meeting is necessary for interim severance payment to executives

[Case No. Supreme Court decision 2017Da17436 dated July 4, 2019]

The Supreme Court issued a decision that the resolution of the shareholders' meeting is necessary for interim severance payment to executives.

Upon amendment of the articles of incorporation increasing the severance pay for executives to 'double the number of years served', the representative director of the company received interim severance payment based on the regulations on severance payment for executives established by the board of directors. However, the company filed a lawsuit for refund thereof on account of unjust enrichment against the former representative director, who now serves as a director, on the ground that the "interim severance pay (and bonus, etc.) which was made while he was serving as the representative director was paid not according to the articles of incorporation or without resolution of the shareholders' meeting".

Article 388 of the Commercial Act provides that if the amount of remuneration to be received by directors has not been determined by the articles of incorporation, such amount shall be determined by resolution at the general meeting of shareholders.

The Supreme Court found that the severance pay for directors is included in the remuneration under Article 388 of the Commercial Act, and the interim severance pay which is settled and paid in advance is the same, in its nature, as the severance pay. Therefore, the court ruled that if the articles of incorporation, etc. prescribed only the amount of severance pay, and provided that the severance pay

of directors shall be determined by resolution at the shareholders' meeting, a director shall not be entitled to claim for interim severance payment, unless there is evidence that a resolution on interim severance payment was adopted at the shareholders' meeting.

■ 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]**

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.



■ Recent Court Case ■

## **An employer's action to selectively sell a business division with numerous labor union workers and lay off employees in the business is both an unfair dismissal and an unfair labor practice**

**[Seoul Administrative Court 2018Kuhap85204 decided on June 20, 2019]**

The Seoul Administration Court ruled that selectively selling a business division which had numerous labor union members and laying off the workers is an unfair dismissal and also an unfair labor practice.

Company Y was founded in 2012, and it ran H hotel with 250 rooms. It had a food & beverage team and a culinary team, and workers of those teams provided work such as cooking and serving at the hotel restaurant bar and buffets. But H hotel signed a contract selling its food & beverage and culinary business division to another company, due to low profitability. And the hotel gave 'dismissal for managerial reasons' notices to workers working in those business division, including worker A.

In this court decision, the issue was whether the dismissal of worker A satisfied criteria required by Article 24 of the Labor Standards Act, and also whether it was an unfair labor practice.

The court decided that the dismissal of the workers including worker A was an unfair dismissal that did not satisfy the criteria of Article 24 of the Labor Standards Act. The court first stated that the execution of the business sale contract did not appear to be an unavoidable contract for the company Y, and that there was not an urgent managerial necessity for the transfer of the business in order to prevent managerial deterioration, which was required by above article. Also considering the fact that the company Y hired a new cook even after passing of shareholder and board resolutions to sell the

food & beverage and culinary business division, the court recognized that the company Y did not put its best effort to avoid the layoff.

In relation to the unfair labor practice, the court decided it was an unfair labor practice under Article 81 (1) and (4) of the Labor Union Act that the company Y sold food & beverage and culinary business division where numerous pro-labor union workers were working.