

■ Recent Court Cases ■

## Incentives (e.g., productivity incentives and profit sharing) were found to be not wages which form the basis for the calculation of the average wages

[Case No. Suwon District Court decision 2019gadan50590 dated January 21, 2020]

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The defendant company has paid incentives to the employees every year since 1999, and paid the incentives by the name of productivity incentives and profit sharing (“Incentives”) since 2007. The defendant company did not include the Incentives when calculating the severance pay. The plaintiffs are the individuals who retired after being employed at the company, and they argued that the Incentives should be deemed to be in consideration of the employment, and thereby deemed wages, in bringing the suit.

The court held that neither productivity incentives nor profit sharing should be deemed wages which form the basis for the calculation of the average wages on the ground that it is unlikely the Incentives were continuously and regularly paid or the defendant company was under any obligation to pay these Incentives under any collective agreements, rules of employment or compensation, employment agreements or labor customs given that the Incentives were paid as the object of the work. The specific reasons for the holding are as follow:

1. The payment criteria and conditions of the Incentives depended on uncertain, external factors outside the control of the individual employees such as industry trends, overall market conditions, operating conditions, financial status and management decisions of the defendant

company. Therefore, the Incentives would not be deemed directly or closely related to the provision of services.

2. The rules of employment or compensation, or the collective agreements, provided simply that the defendant company may not pay severance pay or that the defendant company may separately determine the severance pay if necessary without providing for any criteria or conditions concerning the payment of the Incentives. Therefore, the defendant company would not be deemed to be under any obligation to pay the Incentives.
  
3. While a draft labor-management agreement in this case specifically provided for the payment criteria and rates of the Incentives, the specific payment conditions varied each year depending on the operating conditions of the defendant company. Therefore, it would not be sufficient by the existence of the draft labor-management agreement alone to deem that the payment criteria for the Incentives were established to oblige the defendant company to pay the Incentives or that there were customs established for the labor union and the management to expect the payment of the Incentives.