

■ Recent Court Cases ■

Employee transfer between affiliates involving company deemed to be in business of temporary placement of workers may be subject to Temporary Agency Workers Act

[Case No. Seoul High Court decision 2019na2001310 dated November 12, 2019]

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The defendant company in carrying out a new project had certain employees who were qualified in connection with the new project transfer from the affiliates of the defendant company. The plaintiffs were the employees transferred to the defendant company. They filed a lawsuit seeking a declaratory judgment on the employee status, arguing that the defendant company had the duty to directly employ because they were under the relationship of temporary placement of workers with the defendant company and the affiliate had not obtained the permit for temporary work agency business.

The court held that the temporary placement of workers by the temporary work agency in the business of temporary placement of workers is deemed temporary placement of workers under the Temporary Agency Workers Act and thereby subject to the Temporary Agency Workers Act and that once it is recognized that a company engaged in temporary placement of workers is in the business of temporary placement of workers, the transfer between the affiliates is not excluded from the scope of application of the Temporary Agency Workers Act. Whether a company was in the business of temporary placement of workers was to be determined by considering (1) the totality of the circumstances surrounding the temporary placement and (2) whether the temporary placement was repeated and continuous as well as (3) the size, number of times, duration and nature of business in accordance with the societal norms. The determination would not necessarily require the element of profit motive.

The court found based on the above criteria that the defendant had a duty to express intent of employment to the plaintiffs pursuant to the Temporary Agency Workers Act because the affiliates' transfer of the plaintiffs would practically be deemed temporary placement of workers and there was no evidence that the affiliates obtained the permit for temporary work agency business. This case is currently under appeal by the defendant company and pending review by the Supreme Court.