

■ 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]

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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.