LABOUR & EMPLOYMENT

South Korea

LEXOLOGY
Getting The Deal Through

Consulting editor
Morgan, Lewis & Bockius LLP

Labour & Employment

Consulting editors

Matthew Howse, K Lesli Ligorner, Walter Ahrens, Michael D Schlemmer, Sabine Smith-Vidal

Morgan, Lewis & Bockius LLP

Quick reference guide enabling side-by-side comparison of local insights, including legislation, protected employee categories and enforcement agencies; worker representation; checks on applicants; terms of employment; rules on foreign workers; post-employment restrictive covenants; liability for acts of employees; taxation of employees; employee-created IP; data protection; business transfers; termination of employment; dispute resolution; and recent trends.

Generated 28 April 2023

Table of contents

UPDATE AND TRENDS

Contributors

South Korea

Bernard Ham
hambk@jipyong.com
JIPYONG LLC

Young Hwan Kwon
yhkwon@jipyong.com
JIPYONG LLC

Marc Kyuha Baek
khbaek@jipyong.com
JIPYONG LLC

LEGISLATION AND AGENCIES

Primary and secondary legislation

What are the main statutes and regulations relating to employment?

The Labour Standards Act (LSA), the Act on the Guarantee of Employees' Retirement Benefits and the Minimum Wage Act are the main statutes relating to individual employment relationships. The Trade Union and Labour Relations Adjustment Act and the Act on the Promotion of Workers' Participation and Cooperation are the key statutes relating to employer–employee relationships.

Law stated - 02 March 2023

Protected employee categories

Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Discrimination based on gender, nationality, religion or social status is expressly prohibited under article 6 of the LSA.

The Equal Employment Opportunity and Work–Family Balance Assistance Act prohibits discrimination based on gender, marital status or maternity in its articles 2(1) and 7–11.

All forms of age discrimination in the workplace are prohibited under the Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion (specifically, in article 4-4).

The Protection of Temporary Agency Workers Act and the Protection of Fixed-Term and Part-Time Workers Act prohibit discrimination against non-regular workers (specifically, in article 8).

Articles 4 and 6 of the Act on Prohibition of Discrimination against Persons with Disabilities , and the Employment Promotion and Vocational Rehabilitation of Disabled Persons Act , prohibit discrimination based on disability and impose an obligation on the employer to provide all appropriate facilities and resources.

Law stated - 02 March 2023

Enforcement agencies

What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Ministry of Employment and Labour is the primary government agency that administers employment policies, labour standards and labour relationships. As at March 2023, the Ministry of Employment and Labour has six regional employment and labour administrations, 40 branch offices and two field offices. Labour supervisors affiliated with regional employment and labour administrations (who also act as judicial police officers) oversee compliance with employment laws.

The National Labour Relations Commission is a quasi-judicial administrative body responsible for coordinating and granting remedies for the violation of certain private rights in labour disputes, such as dismissals and salary payments.

Law stated - 02 March 2023

WORKER REPRESENTATION

Legal basis

Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

Under the Act on the Promotion of Workers' Participation and Cooperation (the PWPC Act), a business or workplace regularly employing 30 or more employees must establish a labour management council (LMC), which must meet with the employees' representative every three months to discuss and resolve certain labour-related matters.

Under the Labour Standards Act, when dismissing employees for business reasons, or when introducing a working hours system that is different to and more flexible than the previous system, an employer must consult or obtain the consent of the trade union (which must be composed of the majority of the employees) or, if no such union exists, the consent of the employees' representative (who represents the majority of the employees).

Law stated - 02 March 2023

Powers of representatives

What are their powers?

According to the PWPC Act, certain matters are required to be decided by, consulted upon with or reported to the LMC. An employer must strictly adhere to the decisions of the LMC. Failure to comply with LMC decisions without justifiable grounds may lead to criminal liability or charges.

According to article 21 of the PWPC Act, matters requiring an ordinary resolution of the LMC are:

- the establishment of:
  - a basic plan for the education, training and development of workers;
  - welfare facilities, as well as the management thereof;
  - an in-house employee welfare fund; and
  - various labour management joint committees; and
- matters unresolved by the grievance handling committee.

According to article 20 of the PWPC Act, matters requiring consultation are:

- the improvement of productivity and distribution of results achieved;
- the recruitment, placement, education and training of workers;
- the settlement of workers' grievances;
- the health, safety and improvement of the working environment, and the promotion of workers' health;
- the improvement of personnel and labour management systems;
- the general principle of employment adjustment, such as workforce transposition, retraining and dismissal owing to managerial or technological reasons;
- the administration of working and recess hours;
- the improvement of payment systems and remuneration structures;
- the introduction of new machinery and technologies or improvement of work processes;
- the establishment or amendment of work rules;
- the employee stock ownership plan and support to enhance workers' assets;

- the remuneration for employee inventions;
- the improvement of workers' welfare;
- the installation of surveillance equipment within a workplace
- the protection of motherhood and matters relating to work–life balance; and
- under the Equal Employment Opportunity and Work–Family Balance Assistance Act, the prevention of sexual harassment in the workplace (article 2) and sexual harassment by clients (article 14-2).

Any other matters relating to LMC cooperation are also matters for consultation. Under article 22 of the PWPC Act, matters to be reported are:

- overall management plans and actual results;
- quarterly production plans and actual results;
- workforce plans; and
- the economic and financial conditions of the company.

Law stated - 02 March 2023

BACKGROUND INFORMATION ON APPLICANTS

Background checks

Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

When background checks involve collecting personal information (ie, information relating to a person that makes it possible to identify the person), an employer must obtain the prior consent of the applicant under article 15(1) of the Personal Information Protection Act (PIPA). Additionally, separate consent must be obtained where sensitive information (ie, information relating to ideologies, beliefs, admission to or withdrawal from a trade union or political party, political opinions, health, sexual life, DNA records obtained from DNA test results and criminal records) is being collected under article 23(1) of the PIPA.

Subject to obtaining prior consent, an employer may access criminal and investigation records of an applicant only in limited circumstances provided by articles 6(1) and 6(3) of the Act on the Lapse of Criminal Sentences , such as when a child welfare agency employs an applicant.

Where an employer intends to hire a third party to conduct background checks on an applicant's credit information, it must first obtain consent from the applicant under article 32(1) of the Credit Information Use and Protection Act . In principle, all costs related to this must be borne by the employer under article 9 of the Fair Hiring Procedure Act.

Law stated - 02 March 2023

Medical examinations

Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

There is no legislation specifically restricting or prohibiting the requirement of a medical examination as a condition of employment. However, because information relating to an applicant's health constitutes sensitive information under the PIPA, consent must be obtained prior to collecting such information. Before obtaining consent, the employer will

need to inform the applicant of:

- the purpose of collection and use;
- the category of information required;
- the period of use and retention; and
- the right of the applicant to refuse collection and the disadvantages (if any) that the applicant may suffer if they were to refuse.

If an employer conducts a medical examination upon employment, the costs must be borne by the employer under article 9 of the Fair Hiring Procedure Act .

An applicant's failure to submit medical examination data will alone not justify an employer's refusal to employ the applicant. The National Human Rights Commission of Korea Act empowers the National Human Rights Commission of Korea (NHRCK) to provide relief where an applicant has been discriminated against in the recruitment process based purely on the grounds of medical history. It is not uncommon for applicants to file complaints with the NHRCK in such instances, although the NHRCK can only provide a non-compulsory recommendation to the employer.

Law stated - 02 March 2023

Drug and alcohol testing

Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There is no legislation specifically restricting or prohibiting the requirement for drug and alcohol testing as a condition of employment. However, because information relating to an applicant's health constitutes sensitive information under the PIPA, consent must be obtained prior to collecting such information. Before obtaining consent, the employer will need to inform the applicant of:

- the purpose of collection and use;
- the category of information required;
- the period of use and retention; and
- the right of the applicant to refuse collection and the disadvantages (if any) that the applicant may suffer if they were to refuse.

An applicant's failure to submit drug and alcohol testing results will alone not justify an employer's refusal to employ the applicant. The National Human Rights Commission of Korea Act empowers the NHRCK to provide relief where an applicant has been discriminated against in the recruitment process based purely on the grounds of medical history. It is not uncommon for applicants to file complaints with the NHRCK in such instances, although the NHRCK can only provide a non-compulsory recommendation to the employer.

Law stated - 02 March 2023

HIRING OF EMPLOYEES

Preference and discrimination

Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

The National Human Rights Commission of Korea Act stipulates that preferential treatment, exclusion, discrimination or disadvantageous treatment of specific persons based on gender, religion, disability, age, social status, region or country of origin, ethnic origin, physical appearance, marital status, maternity, family background, race, skin colour, ideology or political opinion, criminal record, sexual orientation, academic career or medical history without just cause shall constitute a 'discriminatory act violating the equal right' (article 2(3)).

However, the preferential treatment of certain groups of persons – such as men of national merit, disabled persons, women in companies where the number of female workers is disproportionate to the number of male workers, senior citizens aged at least 55, and young people aged between 15 and 29 – is excluded from the above.

Law stated - 02 March 2023

Written contracts

Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

According to article 17(1) of the Labour Standards Act (LSA), terms relating to the calculation and payment of wages, working hours, holidays, and paid annual leave must be clearly stated in writing. Failure to do so could result in a criminal fine of up to 5 million won under article 114(1) of the LSA. Therefore, in South Korea, employers should enter into written employment contracts that clearly set out these matters.

Law stated - 02 March 2023

Fixed-term contracts

To what extent are fixed-term employment contracts permissible?

In principle, the term of fixed-term employment contracts cannot exceed two years; otherwise, the employee will be considered to have entered into an indefinite-term employment contract. However, in certain cases (such as where a fixed-term contract is with a senior citizen, or is concluded for the completion of a discrete project or a particular task), the term of the fixed-term contract may exceed two years, as established by article 4 of the Protection of Fixed-Term and Part-Time Workers Act (the PFPW Act).

Law stated - 02 March 2023

Probationary period

What is the maximum probationary period permitted by law?

Korean law does not provide for a maximum probationary period. However, based on article 4 of the PFPW Act, which limits the term of a fixed-term contract to two years, the maximum probationary period may be considered to be two years. In practice, probationary periods usually last for between three and six months.

Although the courts may be more accepting in cases where an employer refuses to extend a new employee's employment contract beyond its probationary period than they would be in dismissal cases, an employer will still need to show that it had an objectively reasonable cause for refusing to extend the contract.

Law stated - 02 March 2023

Classification as contractor or employee

What are the primary factors that distinguish an independent contractor from an employee?

According to case law, Korean courts will consider the substance of the relationship between the employer and the person as well as the form of the contract (eg, employment contract, subcontract or delegation contract). The courts will consider a variety of factors in a comprehensive manner. Some key considerations include whether:

- wages are paid for the person's labour;
- a basic or fixed rate has been established; and
- there is a subordinate relationship between the person and the employer (ie, whether the employer decides the nature of the work to be performed, whether the relationship is subject to employment rules, the extent and degree of the employer's supervision over the work performed and the process related to it, and whether the employer has specified the working hours and place – in such cases, the person would likely be considered an employee).

A person would likely be considered an independent contractor if they:

- independently possesses equipment, raw materials or tools;
- can or do engage third parties to perform the work;
- can or do manage their business independently;
- undertakes the risk of profit and loss;
- earns remuneration for work performed rather than their labour; and
- withholds business income tax.

Law stated - 02 March 2023

Temporary agency staffing

Is there any legislation governing temporary staffing through recruitment agencies?

The Employment Security Act governs the business of recruitment services and certain conditions must be satisfied to undertake such business. Temporary staffing through recruitment agencies is possible provided that the employer complies with the PFPW Act.

Law stated - 02 March 2023

FOREIGN WORKERS

Visas

Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There are no specific numerical limitations on the short-term business visitor (C-3) visa, which permits a person to stay in South Korea for business reasons for up to 90 days. The C-3 visa, which is subdivided into various categories, may be issued on a single- or multiple-entry basis depending on the nature of the person's business and eligibility. However,

if a person is seeking to conduct a profit-making business in South Korea (ie, if they receive compensation for work performed or services provided), the person must obtain a different form of visa from the Korean immigration office.

Visas are available for the following employees when transferring from a corporate entity in one jurisdiction to a related entity in another jurisdiction:

- a journalist dispatched to South Korea from a foreign press agency, under a contract with a foreign press agency while staying in South Korea or dispatched by a foreign press agency that has a branch office in South Korea must obtain a D-5 visa (or a C-1 visa, if the stay is short);
- a religious worker dispatched to related Korean religious organisations or branches by a foreign religious body or social welfare organisation, or intending to engage in religious activities conducted by Korean religious organisations while being dispatched from a foreign religious organisation or social service agency, must obtain a D-6 visa; and
- an employee who has worked for more than one year at a foreign public institution, group or company and is being dispatched as essential skilled personnel to an affiliated company, subsidiary, branch or office located in South Korea, or who has worked for more than one year at a foreign subsidiary or branch of a Korean listed company or public institution and is being dispatched to the Korean head office to acquire specialist skills or knowledge, must obtain a D-7 visa.

Law stated - 02 March 2023

Spouses

Are spouses of authorised workers entitled to work?

Spouses of foreigners who hold any visa from D-1 to E-7 inclusive will automatically be granted dependent family (F-3) visas. However, under article 23 of the Enforcement Decree of the Immigration Act , an F-3 visa alone will not allow such a spouse to work. A spouse who intends to work in South Korea must obtain a separate work visa.

Law stated - 02 March 2023

General rules

What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?

An employer who wishes to hire a foreign worker must obtain an employment permit or a certificate of exceptionally permissible employment from an employment security office under articles 8(1) and 12 of the Act on the Employment of Foreign Workers (EFWA) unless the foreign worker holds a visa that makes them eligible for employment. Under article 18(1) of the EFWA and article 2 of the Enforcement Decree of the EFWA , such visas are for:

- short-term employment (C-4);
- professors, and long-term stays to teach a foreign language; to conduct research; to give technological guidance; to practise a profession, culture or art; and to undertake specially designated activities (E-1 to E-7); and
- working holidays (H-1).

An employer employing such a foreign worker must report the employment arrangement and any changes thereof to

the relevant government agency under article 19 of the Immigration Act. Failure to do so may result in an administrative fine of up to 2 million won under article 100(1)-1 of the Immigration Act.

Under article 21 of the Immigration Act, a foreign worker who holds any of the above-mentioned visas must either obtain the prior approval of the relevant government agency if they intend to change their workplace or file a report after changing their workplace, depending on the type of visa. Failure to do so may result in:

- where the obligation is to obtain prior approval, expulsion, up to one year's imprisonment or a fine of up to 10 million won under articles 46(1)-9 and 95(6) of the Immigration Act; or
- where the obligation is to file a report, an administrative fine of up to 2 million won under article 100(1)-3 of the Immigration Act.

In some cases, the foreign worker will be punished with imprisonment and the applicable fine. An employer that employs a foreign worker who has failed to obtain prior approval to change their workplace may be subject to up to one year's imprisonment or a fine of up to 10 million won, or both, under article 95(6) of the Immigration Act.

The employment of any person who does not hold an appropriate work visa is prohibited by article 18(3) of the Immigration Act. An employer that violates this provision may be sentenced to up to three years' imprisonment or fined up to 30 million won under article 94(9) of the Immigration Act.

Law stated - 02 March 2023

Resident labour market test

Is a labour market test required as a precursor to a short or long-term visa?

When an employer intends to employ a foreign worker for a non-professional position through an E-9 visa or on a working visit through an H-2 visa, the employer must first file an application to recruit Korean nationals through an employment security office and may only apply for consent to employ foreign workers where it has failed to hire a Korean national despite the employment security office's referral efforts, according to articles 6 and 8 of the EFWA.

Certain employers in the construction, services, manufacturing, agriculture and fishery industries that hold a certificate of exceptionally permissible employment may not require the consent of an employment security office to employ foreign workers, according to article 12(1) of the EFWA.

Law stated - 02 March 2023

TERMS OF EMPLOYMENT

Working hours

Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

In principle, working hours are limited to 40 hours per week or eight hours per day, but the employer and the employee may agree to extend the employee's working hours by up to 12 additional hours per week. The maximum working hours are 52 hours per week, as set forth by articles 50 and 53 of the Labour Standards Act (LSA). Even if the employee agrees to work beyond the maximum 52 hours per week, it is not legally permissible.

Under the LSA, the above restriction does not apply to certain industries, such as the agriculture and fishery industries (article 63). In the cases of some transportation and medical services, overtime of more than 12 hours per week is

possible if there is a written agreement between the employer and the employees' representative. In this case, the employer must give the employee at least 11 consecutive hours' break between the end of one working day and the start of the following working day (article 59(2)).

Under certain conditions, employers may adopt:

- a flexible working hours system within six months that has employees working more than 40 hours in a certain week or more than eight hours on a certain day, provided by article 51 and 51-2 of the LSA; or
- a selective working hours system through which employees may choose their working hours, provided by article 52 of the LSA.

In a workplace where employees work independently, an employer may adopt the discretionary working hours system provided by article 58(3) of the LSA to opt out of these working hours limits.

Law stated - 02 March 2023

Overtime pay – entitlement and calculation

What categories of workers are entitled to overtime pay and how is it calculated?

At least 50 per cent of ordinary wages is additionally payable for work performed beyond the 40-hour week and eight-hour day (ie, extended work or overtime), night duty (from 10pm to 6am) or holiday work, as set forth by article 56 of the LSA. 'Ordinary wages', for these purposes, means wages, salary and any other kind of consideration that the employer pays to the employee as remuneration for the employee's work. The actual scope of ordinary wages, however, is a common matter of dispute.

Additional payments for extended, night and holiday work may be calculated and made on an aggregate (and duplicate) basis. However, an employee who has worked for less than eight hours on a public holiday will only be eligible to claim for one instance of overtime pay (ie, 50 per cent of ordinary wages only). An employee who has worked for more than eight hours on a public holiday will be eligible to claim overtime pay for both extended and holiday work on an aggregate (and duplicate) basis (ie, 100 per cent of ordinary wages).

Employees in South Korea are generally entitled to overtime pay unless they are engaged in agriculture, fishery, surveillance or intermittent work. Further, where a business or workplace ordinarily employs four or fewer employees, there is no duty on the employer to make overtime payments.

Law stated - 02 March 2023

Overtime pay – contractual waiver

Can employees contractually waive the right to overtime pay?

An agreement in which the employee agrees to waive all rights to future overtime pay before the accrual of overtime hours will violate the LSA and will, therefore, be invalid. However, an employee may waive their right to overtime pay by not making a demand for such pay after they have accrued overtime hours.

Law stated - 02 March 2023

Vacation and holidays

Is there any legislation establishing the right to annual vacation and holidays?

Under article 55(1) of the LSA, an employer must grant its employees at least one paid holiday per week worked.

As designated by the Korean government, Labour Day falls on 1 May each year and is a paid public holiday. Any business or workplace that regularly employs at least five employees must guarantee its employees paid leave on national public or substitute holidays. As an exception provided by article 55(2) of the LSA, where the employees' representative and the employer have agreed in writing, such paid public holidays may be substituted for a specific working day.

An employee who has been in continuous service for more than one year but less than three years and who has worked 80 per cent or more of one working year is entitled to 15 paid annual leave days in the following year. An employee in their third year of continuous service will be entitled to 16 paid annual leave days. Thereafter, an employee's annual leave entitlement should be increased by one day for every two years of continuous service, up to a maximum of 25 days per year. Under article 60 of the LSA, an employee who has worked for less than one year or less than 80 per cent of a given year shall be entitled to one paid annual leave day in the following year for every one month of continuous service.

Law stated - 02 March 2023

Sick leave and sick pay

Is there any legislation establishing the right to sick leave or sick pay?

Employees are not legally entitled to sick leave for illness or injury unrelated to work. However, it is not uncommon for Korean companies to grant unpaid leave for illness or injury unrelated to work.

Where an illness or injury is work-related, the affected employee shall be compensated through industrial accident compensation insurance, which is a mandatory form of insurance.

Law stated - 02 March 2023

Leave of absence

In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

Female employees may take maternity leave for 90 days, 60 of which are paid.

Employees with children who are under eight years of age or in the second year of primary school may take childcare leave for up to one year. Employers have no legal obligation to pay employees during childcare leave, but employees can receive 80 per cent of their ordinary wages from employment insurance (up to a limit of 1.5 million won) the first time that they take childcare leave.

Employees may take up to 90 days of leave to take care of family members who need assistance due to disease, accident or senility.

Law stated - 02 March 2023

Mandatory employee benefits

What employee benefits are prescribed by law?

An employee who has been in the service of their employer for one year or more is legally entitled to receive retirement benefits. Employees are automatically subscribed to types of national insurance that cover pensions, health, industrial accident compensation and employment.

Law stated - 02 March 2023

Part-time and fixed-term employees

Are there any special rules relating to part-time or fixed-term employees?

The relevant rules are found in the Protection of Fixed-Term and Part-Time Workers Act.

The term of fixed-term employment contracts cannot exceed two years; otherwise, the employee will be considered to have entered into an indefinite-term employment contract.

Where non-regular employees undertake work that is the same as or similar to work performed by regular employees, such employees cannot be treated differently (eg, in terms of salaries and benefits) without justifiable grounds. Korean courts have held that, in certain cases, a non-regular employee may have the right to renew the term of a fixed-term contract after its expiry, in which case their employer could not refuse the renewal without justifiable grounds.

Law stated - 02 March 2023

Public disclosures

Must employers publish information on pay or other details about employees or the general workforce?

Companies that are required to publish their annual reports, such as public companies, are required to publish each executive's remuneration and the basis for calculation thereof under article 159(2)-3 of the Financial Investment Services and Capital Markets Act . Under article 159(2)-3-2 of the same Act, such companies also need to disclose the remuneration and the basis for calculation thereof for their top five highest-earning persons, even if such persons are not executives. Also, the annual report should include the average salary per person; therefore, for listed companies, the average salary level of general employees is disclosed under article 9-1-2 of the Financial Supervisory Service's Financial Reporting Standards.

Law stated - 02 March 2023

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

The Supreme Court has held that post-termination covenants that excessively restrict a worker's professional freedom, right to work or free competition are invalid. When deciding the validity of such covenants, the Supreme Court will consider the following:

- whether the employer's interests are worthy of protection;
- the employee's status before their retirement or resignation;
- the period, territory, target and job position subject to the restriction;
- whether the former employee will be compensated;
- the circumstances surrounding the employee's resignation;
- public interest; and
- any other relevant matters.

The courts may give only partial effect to a restrictive covenant if they determine that the period of a restriction is excessive. The courts have previously accepted restriction periods of one year and three years, but each case will be judged differently on its own merits. Usually, such restrictions with terms of up to one year are accepted. Also, the courts may reduce the amount of damages payable following a breach of a restrictive covenant if the contractually specified amount is deemed excessive.

Law stated - 02 March 2023

Post-employment payments

Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

There is no legal requirement obliging an employer to pay a former employee while they are subject to a post-employment restrictive covenant. However, the existence of a compensation right is an important positive factor considered by the courts when determining the validity of such a covenant.

Law stated - 02 March 2023

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

In which circumstances may an employer be held liable for the acts or conduct of its employees?

An employer may be held liable to a third party for damages incurred by the acts or conduct of its employees. If the employer can prove that it was extremely cautious and diligent in hiring and supervising its employees, the employer may be exempt from this liability; however, satisfying the burden of proof in such cases is very difficult.

Law stated - 02 March 2023

TAXATION OF EMPLOYEES

Applicable taxes

What employment-related taxes are prescribed by law?

Income taxes (including local taxes) are imposed on salaries. Employers must withhold taxes on remuneration paid to employees. Also, although not strictly considered taxes, both the employer and employee must pay national pension, health insurance and employment insurance contributions. The employer must also pay industrial accident compensation insurance contributions.

Law stated - 02 March 2023

EMPLOYEE-CREATED IP AND CONFIDENTIAL BUSINESS INFORMATION

Ownership rights

Is there any legislation addressing the parties' rights with respect to employee inventions?

The Invention Promotion Act regulates the treatment of employee inventions, which are inventions related to an employee's work that, by their nature, fall within the scope of their employer's business and are derived from the acts of the employee in their current or past position.

Unless the employer contractually agrees with its employees in advance, or establishes a set of employment regulations (upon prior consultation with its employees) stating that all employees must grant the employer an exclusive licence to employee inventions and related patents, the employer will have a non-exclusive licence only to employee inventions.

Law stated - 02 March 2023

Trade secrets and confidential information

Is there any legislation protecting trade secrets and other confidential business information?

The Unfair Competition Prevention and Trade Secret Protection Act serves to protect trade secrets and other confidential business information. Under this statute, some of the prohibited actions are:

- the acquisition of trade secrets by unfair means and use or disclosure thereof;
- using or disclosing trade secrets after acquiring them, with knowledge of the fact that an act of improper acquisition of the trade secrets has occurred or without such knowledge due to gross negligence; and
- using or disclosing trade secrets to obtain improper benefits or to cause damage to the owner of the trade secrets while under a contractual or other duty to maintain the secrecy of the trade secrets.

Additionally, the Act on Prevention of Divulgence and Protection of Industrial Technology and the Defence Technology Security Act were enacted respectively in 2006 and 2016 to protect technology.

Law stated - 02 March 2023

DATA PROTECTION

Rules and employer obligations

Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

Information relating to a living person that makes it possible to identify the person by their full name, resident registration number and image (ie, personal information) is protected under the Personal Information Protection Act (PIPA). Unless certain unavoidable circumstances recognised by law or regulations exist, employers must obtain the prior consent of their employees to collect and use the personal information of employees.

Law stated - 02 March 2023

Privacy notices

Do employers need to provide privacy notices or similar information notices to employees and candidates?

No such provisions exist in respect of employment relationships; however, the PIPA applies.

When collecting an employee's personal information, an employer, as a personal information controller under the PIPA, must inform the employee of:

- the purpose and intended use of the personal information;
- the particulars of the personal information to be collected;
- the period of retention and use of the personal information;
- the fact that the employee is entitled to deny the collection of the personal information; and
- the disadvantages (if any) to which the employee may be subject as a result of denial.

Further, under article 15(2) of the PIPA, should there be any changes to any of the above matters, the employer must inform the employee and obtain their consent.

Under the PIPA, the employer must also obtain the employee's consent when providing the employee's personal information to a third party outside of the original personal information collection purposes (article 17) and, where any personal information is divulged in breach of this provision, the employer must immediately inform the relevant employee of it (article 34).

Law stated - 02 March 2023

Employee data privacy rights

What data privacy rights can employees exercise against employers?

Although not specific to employment relationships, under the PIPA, an employee is entitled to request access to their own personal information (article 35) and to request a correction or erasure of such personal information unless such information is collected under another law (article 36).

Law stated - 02 March 2023

BUSINESS TRANSFERS

Employee protections

Is there any legislation to protect employees in the event of a business transfer?

The Supreme Court has held that, where an organisation's assets are transferred (with their identity intact) for certain business objectives, the relevant employee's employment relations are also transferred to the acquirer of the business. However, where an employee opposes such a business transfer, the relevant employment relationship remains with the party disposing of the business.

Although there is no legislation or case law regulating the position regarding equity transfers, there have been instances where collective agreements have been executed to provide job security in such scenarios.

Law stated - 02 March 2023

TERMINATION OF EMPLOYMENT

Grounds for termination

May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

An employer cannot dismiss an employee without justifiable grounds, as set forth by article 23 of the Labour Standards Act (LSA). The Supreme Court has held that justifiable grounds may be established where an employee's liability is such that an employment relationship cannot be maintained given social norms. Because there is no set rule as to what constitutes justifiable grounds, relevant case law must be reviewed to determine if a specific situation can be considered to provide justifiable grounds.

Law stated - 02 March 2023

Notice requirements

Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

An employer must give 30 days of advance notice of dismissal. Should the employer dismiss an employee without giving the requisite notice, it must pay the employee their wages in lieu for not less than 30 days (ie, an allowance for dismissal).

Law stated - 02 March 2023

Dismissal without notice

In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

An employer may be exempt from the legal requirement to give prior notice of dismissal or payment in lieu in cases of natural calamity, other unavoidable circumstances that make it impossible to continue the business, or where an employee has wilfully caused damage to the business or its assets.

Law stated - 02 March 2023

Severance pay

Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Under the Act on the Guarantee of Employees' Retirement Benefits, an employer may sign up to a retirement pension plan or may give an outgoing employee severance pay. An employer that signs up to a retirement pension plan and pays its contributions is not obliged to separately give an outgoing employee severance pay. Where an employer elects to pay a lump sum of severance pay to an outgoing employee, such severance pay is calculated through the following formula: average daily wage for the past three months multiplied by 30 (days) multiplied by the employee's number of years of service. This must be paid within 14 days of the employee's resignation.

A business that is newly established after 26 July 2012 (excluding new businesses resulting from mergers or divisions)

must establish a defined benefit or contribution plan within one year of its establishment after seeking the opinion of the employees' representative. This provision is set forth in article 5 of the Act on the Guarantee of Employees' Retirement Benefits.

Law stated - 02 March 2023

Procedure

Are there any procedural requirements for dismissing an employee?

Notice for dismissal must be in writing and must detail the reasons for dismissal. Where an employer has already provided the employee with 30 days of advance notice of dismissal stating the reasons and expected timing of the dismissal, no further written notice is required under the LSA.

An employer must also comply with the dismissal procedures outlined in any applicable collective agreement or employment regulations (eg, the Rules of Employment).

Law stated - 02 March 2023

Employee protections

In what circumstances are employees protected from dismissal?

An employee's dismissal will be deemed to be invalid if it was:

- without justifiable grounds; or
- in breach of procedures outlined in the LSA, or any applicable collective agreements or employment regulations.

Under article 23(2) of the LSA, if an employee's employment contract has been suspended due to medical treatment for an occupational injury or childbirth, the employer may not dismiss the employee during the period of suspension or for 30 days immediately thereafter, unless the employer has provided the employee with a compensatory lump sum equivalent to the employee's average wages for 1,340 days.

Law stated - 02 March 2023

Mass terminations and collective dismissals

Are there special rules for mass terminations or collective dismissals?

Under article 24 of the LSA, an employer may collectively dismiss employees for business reasons subject to satisfaction of the following conditions:

- an urgent managerial necessity exists;
- every effort to avoid dismissal has been made;
- the employees to be dismissed have been selected based on reasonable and fair criteria; and
- the employer notifies the employees' representative or trade union (as applicable) at least 50 days before the expected date of dismissal and consulted with them in good faith.

Where the number of employees to be collectively dismissed exceeds a certain threshold proportionate to the size of

the employer, the employer must also report to the Ministry of Employment and Labour.

Law stated - 02 March 2023

Class and collective actions

Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Generally, employees may assert labour and employment claims on an individual basis. Although it is procedurally possible for multiple employees to bring a claim against an employer and to undergo the same claims process together, each claim will be decided on an individual basis.

Law stated - 02 March 2023

Mandatory retirement age

Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Generally, employers may establish their own retirement policy, provided that the mandatory retirement age imposed therein is 60 years of age or older. Any age below 60 will be deemed invalid and, in such cases, 60 will be the minimum mandatory retirement age regardless of what is stated in the employer's own retirement policy.

Law stated - 02 March 2023

DISPUTE RESOLUTION

Arbitration

May the parties agree to private arbitration of employment disputes?

Yes.

Law stated - 02 March 2023

Employee waiver of rights

May an employee agree to waive statutory and contractual rights to potential employment claims?

For a waiver regarding an employee's rights to be valid and effective, such a waiver:

- must not have been agreed upon by one party taking advantage of the other party's distress, carelessness or lack of experience;
- must address a situation that could be foreseen at the time of execution of the agreement; and
- must relate to rights that can be freely disposed of by the parties and other specific rights.

The Supreme Court has held that a waiver of an employee's right to severance pay (to the extent that the waiver was obtained before an employee's exit) is in violation of mandatory law and cannot be effective.

Law stated - 02 March 2023

Limitation period

What are the limitation periods for bringing employment claims?

Under article 29 of the LSA, claims for unpaid wages must be brought within three years of the date on which those wages were due.

Under article 28(2) of the LSA, claims to the National Labour Relations Commission for unfair dismissal must be brought within three months of the date of dismissal.

There is no specific limitation period applicable for an employee filing a claim in court to request that their dismissal be nullified. However, the relevant court may reject such a claim if it is filed after a significant amount of time has passed on the basis that the filing goes against the principle of good faith.

Law stated - 02 March 2023

UPDATE AND TRENDS

Key developments and emerging trends

Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

In 2022, a lawsuit was brought by retired employees challenging the wage peak system, which some companies have adopted to reduce the salaries of senior employees aged 55 or older while maintaining their employment relationships. The affected employees argued that the wage peak system is a form of discrimination against senior employees that violates the Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion , and therefore is null and void. The Supreme Court accepted their argument in this case and decided that the wage peak system is void. A series of lawsuits followed this precedent, but not all wage peak systems were found void. Generally, in cases where employers adopted such a system while extending the retirement age, the system was found to be legal.

Also, the Serious Accidents Punishment Act , which came into force in January 2022, has been garnering significant attention in South Korea. The Serious Accidents Punishment Act holds business owners or persons responsible for the management of a business criminally accountable when any serious accident (ie, an accident that results in one or more deaths) occurs and such persons have failed to observe their legal responsibilities. A failure to follow the Serious Accidents Punishment Act may result in one year or more of imprisonment or a criminal fine of up to 1 billion won, or both, for business owners or persons responsible for the management of a business. As at March 2023, 11 business owners have been prosecuted under these provisions, but no cases have been concluded yet at court. The Serious Accidents Punishment Act is undergoing a constitutional review by the Constitutional Court.

Finally, the Korean government is planning in 2023 to propose a revision of the Labour Standards Act to adopt the working time account system, similar to that found in Germany, for more flexible employee time management.

Law stated - 02 March 2023

Jurisdictions

Angola	FTL Advogados
Australia	People + Culture Strategies
Austria	Schindler Attorneys
Belgium	Van Olmen & Wynant
Bermuda	MJM Barristers & Attorneys
Brazil	Cescon, Barrieu, Flesch & Barreto Advogados
Canada	KPMG Law
Chile	SCR Abogados
China	Morgan, Lewis & Bockius LLP
Colombia	Holland & Knight LLP
Egypt	Eldib Advocates
Finland	Kalliolaw Asianajotoimisto Oy
France	Morgan, Lewis & Bockius LLP
Germany	Morgan, Lewis & Bockius LLP
Hong Kong	Morgan, Lewis & Bockius LLP
Hungary	VJT & Partners
India	AZB & Partners
Indonesia	SSEK Law Firm
Iran	Dadflamingo
Israel	Barnea Jaffa Lande
Italy	Zambelli & Partners
Japan	TMI Associates
Kazakhstan	Morgan, Lewis & Bockius LLP
Luxembourg	Castegnaro
Malaysia	SKRINE

Mauritius	Orison Legal
Mexico	Morgan, Lewis & Bockius LLP
Netherlands	CLINT | Littler
Nigeria	Bloomfield Law
Norway	Homble Olsby | Littler
Pakistan	Axis Law Chambers
Panama	Icaza González-Ruiz & Alemán
Philippines	SyCip Salazar Hernandez & Gatmaitan
Puerto Rico	Morgan, Lewis & Bockius LLP
Romania	Mușat & Asociaţii
Singapore	Morgan Lewis Stamford LLC
Slovenia	Law firm Šafar & Partners
South Korea	JIPYONG LLC
Sweden	Advokatfirman Cederquist KB
Switzerland	Wenger Plattner
Taiwan	Brain Trust International Law Firm
Thailand	Pisut & Partners
Turkey	Bozoğlu Izgi Attorney Partnership
United Arab Emirates	Morgan, Lewis & Bockius LLP
United Kingdom	Morgan, Lewis & Bockius LLP
USA	Morgan, Lewis & Bockius LLP