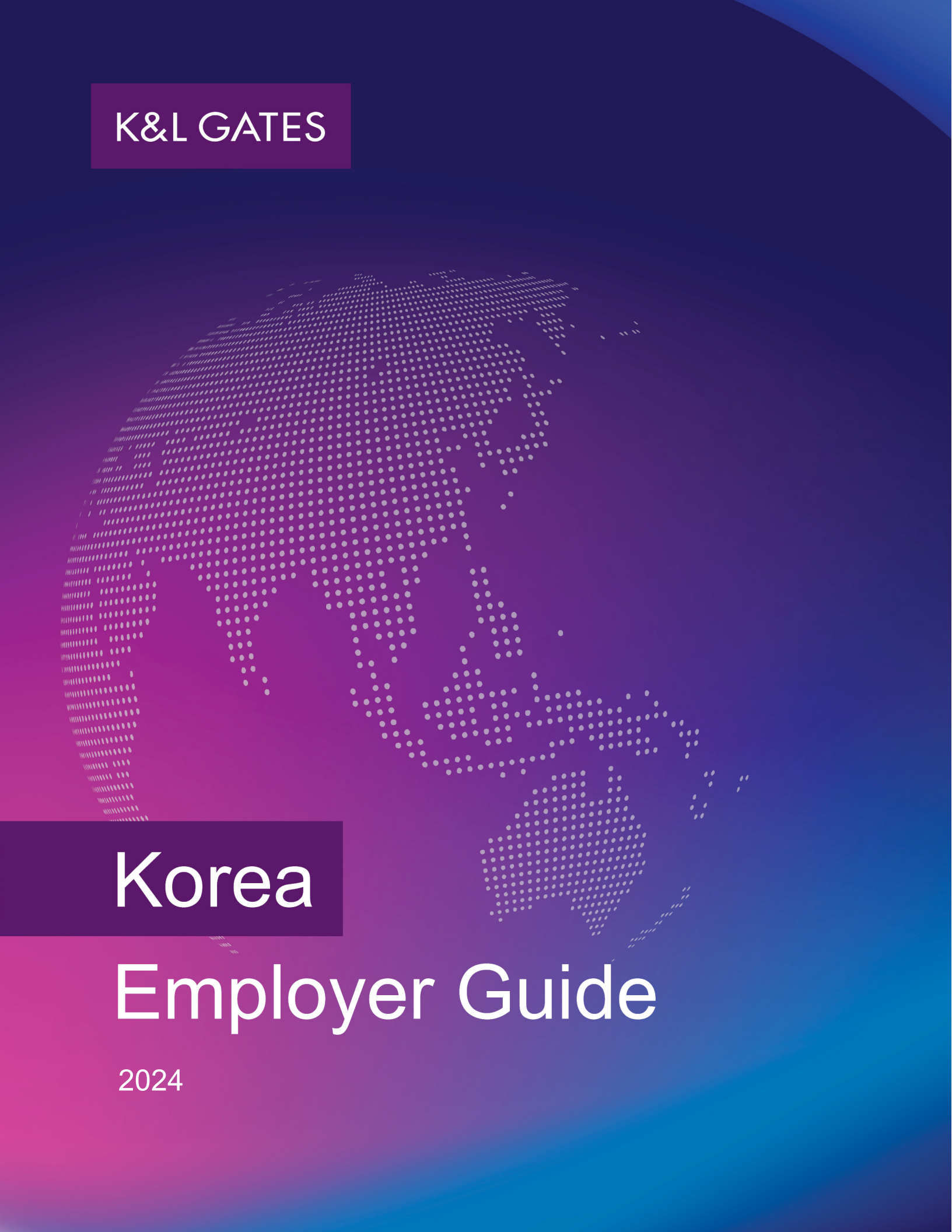


K&L GATES

Korea

Employer Guide

2024



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INTRODUCTION

In the labor and employment area, the low birth rate and aging population in Korea is a continuing issue. The Korean Ministry of Employment and Labor has been working to extend the parental leave period from one year to one year and six months and to raise the age of the child for whom parental leave may be used from 8 years old or younger to 12 years old or younger. In addition, the ministry has announced its proposal for a partial amendment of the Gender Equality in Employment and Work-Family Balance Support Act. Currently, the spouse of a pregnant employee may use his paternity leave in two installments, but one of the proposed amendments would allow the spouse to use the paternity leave in four installments. Also, an employee on a work-hour reduction program during the child care period may extend the work-hour reduction program period by the amount of any remaining parental leave, but one proposed amendment would double the remaining period of parental leave that can be used to extend the work-hour reduction program. The amendments, however, are still pending.

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EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Korea offers long-term and short-term general work visas for business-related purposes. The appropriate visa depends on the nature of the employment and type of entity with which the employee seeks work. Some of the work visas available in Korea include:

- C-4: Short-Term Employment – designed for temporary work that lasts 90 days or less.
- E-1: Professorship – required under the Higher Education Act to provide lectures or conduct research in the visa holder’s field of study at educational institutions at or beyond the college level.
- E-2: Foreign Language Instructor – allows a visa holder to teach foreign languages at schools, companies, broadcast organizations, and similar facilities. Candidates can teach only their native language and must be educated to a bachelor’s degree level at a four-year university.
- E-3: Research – for research and development in advanced technology, natural and social sciences, humanities, arts, music, and physical education.
- E-4: Technology Transfer – for individuals who are invited to Korea to provide technical expertise in the natural sciences or advanced technology fields.
- E-5: Professional Employment – for individuals who hold an international qualification for their profession that is recognized by the Korean government. Examples include law and medicine.
- E-6: Arts and Performances – for sports, music, literary, art, or fashion performances for profit.
- E-7: Special Occupations – designed for specific types of work. Common examples are as follows:
 - Management and Professional Work:
 - Management Work: corporate executives, insurance and finance managers, sales managers, transportation service managers, food service managers.
 - Professional Work: nurses, architects, metal or materials science engineers, finance and insurance specialists, mechanical engineers, college lecturers, data experts, designers, translators or interpreters, legal experts in laws of non-Korean jurisdictions.
 - Semi-Professional Work: sales personnel at duty-free stores, medical service coordinators for non-Korean patients, tour guides that provide interpreter services.
 - General Technician Work: animal trainers, zookeepers, musical instrument makers or tuners, aircraft mechanics.
 - Skilled Work: skilled agricultural and fisheries workers, persons with skills essential to manufacturing or construction companies and who can supervise personnel.
- E-8: Seasonal Worker – for individuals who are invited to Korea to work in farming and fishing villages.
- H-1: Working Holiday – for citizens of countries that have entered into a memorandum of understanding or an agreement on working holidays with Korea. It is a short-term visa allowing the visa holder to earn money to cover traveling expenses. Visa holders are allowed to live in Korea for the period of stay prescribed in the foregoing memorandum of understanding or agreement on working holidays.

Reference/Background Checks

Background screening is allowed in Korea.

Under the Personal Information Protection Act, consent must be obtained from the applicant for background checks that go beyond the scope generally required to enter into an employment agreement.

Police and Other Checks

An employee's consent is required for an employer to obtain an employee's criminal records.

Medical Examinations

An employee's consent is required for an employer to obtain an employee's health information.

Minimum Qualifications

Businesses may ask for minimum qualifications to ascertain an applicant's suitability for a role.

II. TYPES OF RELATIONSHIPS

Employee

Under the Labor Standards Act, employees can be categorized as permanent employees, fixed-term employees, and part-time employees.

Under the Act on the Protection of Fixed-Term and Part-Time Workers, fixed-term employees are employed for a maximum period of two years. A fixed-term employee is deemed to be a permanent employee if employed for longer than two years.

Part-time employees are entitled to the same working rights as full-time employees in accordance with the proportion of hours worked.

Employees are entitled to statutory employment rights, such as statutory severance pay and paid annual leave.

Independent Contractor

Independent contractors may be engaged. The primary factor that distinguishes employees from independent contractors is the degree of supervision and control exerted over the individual.

Independent contractors are not entitled to statutory employment rights.

Labor Hire (Agency Worker)

Under the Act on the Protection of Temporary Agency Workers, agency workers are employed by a temporary work agency, which provides services for a user company. While the employment relationship is with a temporary work agency, the agency workers are employed in accordance with the terms and conditions of a contract executed between the temporary work agency and the user company.

The user company can employ agency workers for a maximum period of two years. After this time, the user company is required to employ the agency worker as a permanent or fixed-term employee.

Agency workers are entitled to statutory employment rights, such as statutory severance pay and paid annual leave.

III. ENTITLEMENTS

Minimum Employment Rights

Working Hours and Recess

Under Article 50 of the Labor Standards Act, working hours are not to exceed 40 hours per week, and daily working hours are not to exceed eight hours per day.

Employees in managerial or supervisory positions, as well as those employees handling confidential information, are not subject to the statutory limitation on working hours.

A flexible working-hour system has been implemented in the Labor Standards Act to allow an employer to have an employee work in excess of the statutory working hours, provided the company obtains the consent of the affected employee.

An employee is eligible for a 30-minute recess period for a four-hour shift and an hour for a standard working day of eight hours.

Wages

The minimum wage is determined by the Ministry of Employment and Labor based on recommendations from the Minimum Wage Council. The minimum wage can be fixed on an hourly, daily, weekly, or monthly basis. The minimum wage for all workers is KRW9,620 per hour as of 1 January 2023.

The minimum wage incorporates fixed allowances to basic pay but does not include discretionary bonuses, overtime, or other fringe benefits.

Overtime

Overtime is limited to 12 hours per week paid at 150% or more of the employee's ordinary wage. A seven-day week is counted inclusive of holidays.

Overtime includes extended work, night work (between the hours of 10:00 PM and 6:00 AM), or holiday work.

Paid Time Off for Work-Related Injuries

Under the Labor Standards Act, employers are required to provide paid leave for work-related injuries and illnesses.

Employers are required to compensate an employee for any work-related injury, disease, or death by compensating for medical expenses, survivor's compensation, and funeral expenses.

Annual Leave

Under the Labor Standards Act, an employee is entitled to one paid day off per week. Of the two days each weekend (i.e., Saturday and Sunday), one of the days is legally considered to be a paid day off, while the other is considered to be an unpaid day off.

Fifteen days of paid annual leave must be provided to an employee who has been employed with the company for one year and has at least 80% attendance during the year.

An additional day is provided for every two years of service thereafter, which is capped at 25 days.

Public Holidays

Labor Day (1 May) and holidays under the Regulations on Holidays of Government Offices are mandatory paid holidays for employees under the establishment of the Labor Standards Act.

Maternity/Paternity Leave and Pay

Under Article 74 of the Labor Standards Act, an employer must grant a pregnant female employee a total of 90 days, or 120 days if pregnant with two or more babies, of paid maternity leave to be used before or after childbirth. Forty-five days, or 60 days if pregnant with two or more babies, of maternity leave must be allocated after childbirth. The first 60 days, or 75 days if pregnant with two or more

babies, of leave are to be paid by the employer, and the remaining 30 days, or 45 days if pregnant with two or more babies, are to be paid from the Employment Insurance Fund.

Maternity leave must be allowed for premature births, miscarriages, and stillbirths.

Under the Gender Equality Employment and Work-Family Balance Support Act, male employees are entitled to 10 days of paid leave within 90 days of a child's birth.

Caregiver's Leave

Employers are required to provide a minimum of 30 days' and a maximum of 90 days' family care leave per year for an employee with sick, injured, or elderly family members who require the employee's care.

Parental Leave

The Gender Equality Employment and Work-Family Balance Support Act entitles employees to a one-year leave of absence for maternity protection for a pregnant female employee or for child care for any male or female employee with a child 8 years old or younger or in second grade or lower in elementary school.

An employee with a child 8 years old or younger or in second grade or lower in elementary school is also allowed to use the "work-hour reduction system" for up to one year, subject to exceptions, and an employee who chooses to use the "work-hour reduction system" in lieu of parental leave may use the system for up to two years. This system allows the employee to work 15–35 hours per week without the employer being able to dismiss or take any adverse action measures against the employee as a result of these reduced working hours for child care. Following the period of reduced working hours, the employer is obligated to restore the employee back to the same level job at the same pay level.

An employee can choose from a variety of methods when utilizing his or her child care leave. This includes a one-time or multiple-time use of leave, a one-time or multiple-time use of work-hour reductions, or a combination of child care leave and work-hour reductions.

Discretionary Benefits

Sick Leave and Pay

There is no legal requirement for employers to provide paid leave to employees for non-work-related illnesses or injuries. While employees generally use their annual leave payment for personal sick days, it is not uncommon for companies to provide paid sick leave for non-work-related injuries and illnesses.

Overtime

An employer may grant leave to the employee in lieu of paying additional wages for extended, night, and holiday work if a written agreement is entered into with the employee.

Bonuses

There are no restrictions or guidelines that govern the payment of bonuses apart from any that may be contained in the company's rules of employment (Rules of Employment), the applicable collective bargaining agreement, or the individual employee's employment contract. However, it is common practice in Korea for employers to grant employees some form of bonus, whether it is a fixed bonus or a discretionary bonus based on an employee's individual performance.

Rest Facilities

The employer of (i) a place of business that employs 20 or more employees on a regular basis (for construction, a place of business with total construction cost (including those of related parties) for the relevant construction project of KRW2 billion or more), or (ii) a place of business that employs at least 10 employees but less than 20 employees on a regular basis and employs at least two employees that perform certain specified duties (e.g., telemarketer, delivery personnel, janitor, security guard) is required to install rest facilities.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Terminations are often implemented through mutual agreements.

Under Article 23 of the Labor Standards Act, an employee cannot be dismissed without justifiable reasons. However, while justifiable reasons are not defined in the act, the courts have generally held that such reasons exist only in limited circumstances and can include continuous unsatisfactory performance on the part of the employee, criminal acts, and grave misconduct, as well as improper relationships with other employees. Employees on sick leave due to employment-related illnesses or injuries or employees on maternity leave cannot be dismissed during their period of absence or within 30 days after their return to work.

II. MINIMUM ENTITLEMENTS

Payments/Notice

An employer must give 30 days' advance notice of dismissal to an employee or provide the employee with 30 days' ordinary wages in lieu of notice in specific instances.

Notice of termination of employment must be given in writing and specify the reason for the termination and the effective date.

A termination will be invalid if the employee has not been given the opportunity to defend himself or herself, no matter how serious the employee's conduct has been.

Under Article 26 of the Labor Standards Act, advance notice of dismissal is not required in specific circumstances, such as a worker employed for less than three consecutive months; an employer being unable to continue with its business operations due to natural disaster, war, or other unavoidable circumstances; or certain cases in which a worker has intentionally caused a substantial interference with, or loss of, the employer's business or assets.

Statutory Entitlements

The statutory severance pay system entitles employees who have been employed for at least one year a severance payment of 30 days' average wages for each year of continuous service. This applies to those employees who are terminated for any reason, including an employee's decision to resign.

III. REDUNDANCY

Genuine Redundancy

Redundancies are permitted under Article 24 of the Labor Standards Act. Redundancies are permitted during times of urgent managerial necessity subject to certain procedural requirements.

An employer must make every effort to avoid redundancies. The Korean courts have interpreted this requirement to include the exhaustion of other options, such as early retirement packages, a hiring or wage freeze, the reduction of work hours, transferring employees to other departments, and any other reasonable measures according to the circumstances. An employer must establish rational and fair criteria for dismissing employees.

An employer must file a report with the Minister of Employment and Labor at least 30 days before the effective date of redundancy where (i) the employer has between 100 and 999 full-time employees

and will dismiss 10% or more of the total number of employees, or (ii) the employer has 1,000 or more full-time employees and will dismiss 100 or employees. If the employer decides to reinstate the same job from which an employee was dismissed within three years of the dismissal, the employer must first offer the job to the previously dismissed employee before hiring a new employee for the role.

Payment

The employer must pay statutory separation pay to departing employees who have worked in the company for at least a year, irrespective of whether their departure was voluntary or involuntary. The employer is obligated to pay the employee 30 days' "average wage" for each consecutive year of service. "Average wage" includes all wages paid by the employer to the employee for the three-month period before the redundancy divided by the total number of working days in the three-month period.

The statutory separation pay must be paid to the employee within 14 days of the employee's redundancy.

No other benefits are required to be provided an employee who is made redundant; however, as a matter of practice, additional payments are often made in exchange for the employee's resignation.

IV. REMEDIES

Dismissal Action

If an employer dismisses an employee unfairly, the worker may apply for remedy to the Regional Labor Relations Commission. The commission will conduct the necessary investigations and is governed by the Labor Relations Commission Act. The commission may offer reinstatement with back pay, or a lump-sum payment may be granted where the employee does not wish to be reinstated.

When an employee is dismissed without cause, he or she may initiate civil proceedings in the district court.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

In the event of a business transfer, employees automatically adopt the working terms, conditions, and liabilities of the transferor, unless the employees agree otherwise.

Employees will be protected against dismissal in the event of a business transfer, unless there is just cause to dismiss an employee.

II. RESTRUCTURING

Notification

Where an employment agreement contemplates that the employer can change an employee's work duties or place of work, a notice to the employee about the change becomes effective upon the employee's receipt of the notice, regardless of the timing or method of such notice.

In order to change the terms and conditions of employment, the employer must notify the employee of such changes.

When an employer makes any changes to the components of payroll, how wages are calculated, how payment will be made, work hours, holidays, or annual paid leave, employees must be clearly notified of the changes in writing.

Consultation

A change of work duties or the place of work does not require consultation with an employee (i.e., a unilateral decision by the employer is permitted). However, if such a change is substantially unfavorable to the employee, it could be considered an abuse of the employer's power and invalidated.

Under Article 657, paragraph 1 of the Civil Act, the transfer of an employee (from the original employer to another employer) requires the employee's consent.

Such transfer may be permitted without the employee's consent if:

- There was an implied consent given by the employee.
- The transfer is to certain entities that were previously identified in an employment agreement and there was a comprehensive consent provision agreeing to the transfer of employees to those entities contained within the employment agreement.
- Such transfer is a customary practice.

Under Article 94 of the Labor Standards Act, in order for an employer to change the Rules of Employment, the employer must first solicit the opinions of a labor union comprised of a majority of the employees, or, if there is no labor union comprised of a majority of the employees, the employer must first solicit the opinions of a majority of the employees. If the Rules of Employment are to be amended in such a way that results in a disadvantage to the employees, the employer must first obtain consent of the employees.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

The company owns all intellectual property rights that are created by an employee in the course of his or her employment, provided that proper notification is provided and reasonable compensation is provided to the employee.

Confidential information and trade secrets are protected either by the contract of employment or under the Unfair Competition Prevention and Trade Secret Protection Act.

While confidentiality provisions are generally included in employment contracts or work rules, there also is an implied duty of loyalty and confidentiality between employer and employee.

II. CONTRACTUAL RESTRAINTS AND NON-COMPETES

Non-competes are binding and enforceable in Korea if they are reasonable for the type of employment concerned. Generally, Korean courts tend to limit the period of a non-compete to between six and 12 months.

III. PRIVACY OBLIGATIONS

Under the Personal Information Protection Act, an employee is entitled to request access to his or her own personal information in the employer's personnel files for the purpose of updating or deleting that personal information.

Under the Labor Standards Act, an employer should preserve important documents regarding a specific employment contract for a period of three years.

The Personal Information Protection Act also restrains an employer from providing an employee's personal information to a third party without the consent of the employee.

Internal policies and plans to manage all employees' personal information must be implemented.

IV. WORKPLACE SURVEILLANCE

An employer must obtain express consent from employees to monitor emails. Notice of monitoring is insufficient.

According to the Act on the Promotion of Workers' Participation and Cooperation, any business having 30 or more employees should establish a labor management council to consult on labor matters, such as installation of surveillance equipment in the workplace.

Article 93 of the Labor Standards Act requires an employer of 10 or more employees to prepare Rules of Employment, including a code of conduct and working conditions that are applicable to all employees. If there is a provision relating to workplace investigations in the Rules of Employment, the employer should comply with it.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCTS

If employee performance and conduct are covered under the company's Rules of Employment, the management of employees' performance and conduct is governed by those rules. In practice, companies generally establish personnel management guidelines and follow the guidelines.

II. BULLYING AND HARASSMENT

Bullying

Under Article 76-2 of the Labor Standards Act, workplace bullying is prohibited. An employer that becomes aware of workplace bullying or receives a complaint about workplace bullying is required to conduct an investigation into the matter. If workplace bullying is confirmed, the employer is required, at the request of the victim, to take appropriate steps, such as reassignment of the victim, change of the victim's work location, or paid leave, and the employer should also take appropriate steps against the wrongdoer, such as disciplinary action or change of work location.

Harassment

The Gender Equality Employment and Work-Family Balance Support Act strictly prohibits sexual harassment in the workplace.

III. DISCRIMINATION

Under Article 6 of the Labor Standards Act, an employer is prohibited from discriminating against an employee on the basis of gender, nationality, religion, or social status. Age discrimination is also prohibited.

Discrimination is also prohibited against disabled employees, female employees, foreign workers, and non-regular workers.

An employee who has been discriminated against can bring a claim before the National Human Rights Commission. The commission can make a recommendation for the discriminatory behavior to cease or award damages.

IV. UNIONS

Representation

Under Article 33 of the Constitution of the Republic of Korea, employees have the right to freedom of association, collective bargaining, and collective action.

An employee has a right to establish, operate, or join a trade union. Collective bargaining will have a binding effect.

The Trade Union and Labor Relations Adjustment Act regulates the formation of trade unions and collective bargaining.

Industrial Disputation

Labor unions retain the right to bargain with and take industrial action against the employer under certain circumstances.

Under Article 45 of the Trade Union and Labor Relations Adjustment Act, mediation must be conducted before industrial action is taken.

V. REMOTE/HYBRID WORK

Korea does not have statutory regulations on remote/hybrid work, but the Korean Ministry of Employment and Labor has announced a guideline on the arrangement. A high-level summary of the guideline is as follows:

- An employer that intends to instruct its employees to work from home should in principle obtain the consent of each employee. However, no such consent would be necessary if the collective bargaining agreement, employment rules, employment agreement, or other policies of the employer include the basis for the employer's authority to give such instruction.
- The cost of office supplies and other costs arising from the work-from-home arrangement should in principle be borne by the employer. However, the employer can instead pay a fixed allowance each month through consultation with the employee.
- The rules on working hours and recess under the Labor Standards Act and the collective bargaining agreement, employment rules, and other policies and rules of the employer would continue to apply without a change to employees working from home. However, to prevent unnecessary disputes over overtime work, it would be advisable for the employer to adopt a policy on deemed working hours, under which employees working from home would be deemed to have worked a certain predetermined number of working hours.
- Any work-related illness or injury suffered by an employee while working from home would qualify as a work-related accident. However, the employee would have the burden of proving that the illness or injury was work-related.

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