Bae, Kim & Lee LLC

Labor Law Updates for 2021

February 2, 2021

BKL Employment & Labor Practice Group

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1. Reduction of Working Hours

Before

- Pursuant to the administrative interpretation of the Ministry of Employment and Labor ("MOEL"), in the 5-day work week, up to 68 working hours (including 16 hours of weekend work) are allowed per week.

After

- Maximum of 52 working hours (including weekend work) per week.
  - 300 employees↑: July 1, 2018.
  - Former special cases industries 300 employees↑ : July 1, 2019.
  - 50 employees↑ : January 1, 2020.
  - **5 employees↑ : July 1, 2021.**

BKL note

- The 52-hour workweek took effect starting in July 1, 2018. Final phase-in takes effect starting this July 1, 2021.

2. Application of Public Holidays to the Private Sector

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Before

- Public holidays mean just holidays of government offices, public offices etc.

After

- Making all public holidays applicable to the private sector.
  - 300 employees↑: January 1, 2020.
  - **30 employees↑ : January 1, 2021.**
  - 5 employees↑: January 1, 2022.

BKL note

- About 11 new holidays (multiple days for Seollal and Chuseok) per year will become paid holidays.

3. Minimum Wage Increase for 2021

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2020

- Minimum wage in 2020

  Hourly: **KRW 8,590** (increased by about 2.9% compared to the preceding year)

  Monthly: **KRW 1,795,310** (on the basis of 209 working hours)

January 1, 2021

- Minimum wage in 2021

  Hourly: **KRW 8,720** (increased by about 1.5% compared to the preceding year)

  Monthly: **KRW 1,822,480** (on the basis of 209 working hours)
- Inclusion of bonuses and welfare benefits in determining minimum wage violations

BKL note

- Scope of wages to be included in minimum wage (if such amounts are paid on a monthly basis):
  - ✓ Bonuses: only amounts exceeding 15% of monthly minimum wages **(KRW 273,372)** will count towards the minimum wage
  - ✓ Welfare benefits: only amounts exceeding 3% of monthly minimum wages **(KRW 54,674)** will count towards the minimum wage
- Bonuses refer to a designated rate to be paid out per year, and an amount that will be divided and paid out on a monthly basis (e.g. 600% per year to be divided into 50% per month). Where a monthly payment is made without setting an annual rate of payment, the total amount shall be counted towards the minimum wage.
- These percentages will be progressively lowered every year until 2024 when all such regularly paid bonuses and welfare benefits will be included in the wage calculation.
- If bonuses are currently included in the monthly salary, review of possible minimum wage violations may be necessary.

4. Expansion of the Unit Period for Flexible/Selective Working Hour Systems

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Before

- Flexible Working Hour System
  - 2 weeks unit period - ROE
  - 3 months unit period - agreement
- Selective Working Hour System
  - 1 month unit period

After

- Flexible Working Hour System
  - Up to 6 months unit period
- Selective Working Hour System
  - Up to 3 months unit period (for working hour compliance purposes only – for overtime allowance, still limited to 1 month)

Effective date:

- **50 employees↑ : April 6, 2021.**
- 5 employees↑: July 1, 2021.

BKL note

- The previous flexible work hour unit-period structure had been criticized as being incompatible with the 52-hour workweek system. In response, the Economic, Social and Labor Council has established the new flexible work hour system, under which the employer may, through labor-management discussions, extend the unit period up to 6 months.

5. Amendments to the Trade Union Act

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Dismissed worker's admission to the trade union

Before

- A corporate trade union shall no longer be regarded as a trade union if it admits as its member any worker who is deemed to be "not an employee of the company".
- Therefore, any worker dismissed from a company, who is no longer an employee of the company, cannot join the company's trade union.

July 6, 2021

- A trade union may, at its discretion, prescribe the membership qualifications in accordance with its own rules.
- Any worker dismissed from a company may carry out trade-union activities within the company or its place of business to the extent that such activities do not impede the employer from operating the business efficiently.
- Provided, however, that a trade union council's delegates shall all be elected from the union members who are currently employed at the place of business.

BKL note

- Under the former Trade Union Act, any worker dismissed from a company was deemed to be "not an employee of the company" and thus was not allowed to either join the trade union or maintain his or her membership in the union.
- This stipulation, however, had been criticized as going against the provisions of the ILO Fundamental Conventions that guarantee the freedom of association (Nos 87 and 98). Accordingly, the proviso of Article 2(4)(d) of the former Trade Union Act—which was construed to restrict any dismissed worker from, among others, joining the company's trade union—is deleted from the amended Trade Union Act, whereby each trade union may, at its discretion, prescribe the membership qualifications in accordance with its own rules.

5. Amendments to the Trade Union Act

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Prohibition against payment of wages to full-time trade union officers deleted

Before

- The payment by an employer of wages to the full-time trade union officers was prohibited as an unfair labor practice.

July 6, 2021

- The clause prohibiting any employer from paying wages to the full-time trade union officers is deleted.
- Time-off system may continue to be utilized separately. If the employer pays a worker wages in excess of the limit, such excessive payment is now explicitly stated as an unfair labor practice.

BKL note

- Since 2009, when the payment by an employer of wages to the trade union's full-time officers was prohibited, a majority of the trade unions have changed the way of operating their full-time officer system from having the company directly pay wages to the full-time officers to exempting those officers from the duty to provide labor by way of the time-off system.
- The prohibition on the payment of wages to full-time trade union officers is deleted from the amended Trade Union Act—which leaves room for the law to be construed to permit a trade union to have full-time officers as in the case of the time-off system.

5. Amendments to the Trade Union Act

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◆ Extension of a collective agreement's effective term (2 → 3 years)

Before	July 6, 2021
• No collective agreement shall provide for an effective term exceeding 2 years.	• A collective agreement may, by labor-management agreement, have an effective term that does not exceed 3 years.

BKL note

- Previously, the maximum effective term of a collective agreement was 2 years, but under the amended Trade Union Act, a collective agreement may have an effective term of up to 3 years as agreed between labor and management.

6. Amendment to the Equal Employment Opportunity and Work-Family Balance Assistance Act

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Before

- Divided use of childcare leave
  - The total period of the childcare may be divided once to be used on two occasions.

After

- Divided use of childcare leave
  - The total period of the childcare may be divided twice to be used on three occasions.
- Reduction of working hours for family care
  - 300 employees↑: January 1, 2020.
  - **30 employees↑ : January 1, 2021.**
  - 5 employees↑: January 1, 2022.

BKL note

- Childcare leave: An employee with a child aged 8 or younger or a child in the second or lower grade of elementary school may use a childcare leave for up to 1 year per child and may take such a leave on three occasions by dividing the total period into three.
- Reduction of working hours for family care, etc.: The working hour reduction system enables an employee to reduce the workweek to 15 to 30 hours for up to 3 years on account of family care, health issue, study, preparation for retirement, etc.

II. New Law Alert: Punishment of Grave Industrial Accidents and Public Safety Disasters

1. Overview
2. Main Points
3. Comparison with the Occupational Safety and Health Act

Intent of 「the Act on the Punishment of Grave Accidents, Etc.」

- The newly enacted law has regulations that impose upon, among others, executive officers responsibilities that are heavier than the Occupational Safety and Health Act to the extent of holding them criminally liable.
- The bill on the enactment of the law passed the National Assembly's plenary session on January 8, 2021, and the law is to come into effect 1 year (or 3 years for a company or place of business with less than 50 employees) from the date of its promulgation.

Background of the enactment

- The bill states as the reason for proposal the voices urging the resolution of the societal problems of deaths caused by industrial accidents—e.g., the argon gas-caused suffocation accident in Hyundai Heavy Industries, the conveyor belt-related fatal accident in Taean Thermal Power Plant, and a fire accident in a logistics warehouse construction site—and deaths caused by public safety hazards/disasters—e.g., the humidifier disinfectant related accidents, and the April 16 Sewol ferry sinking.

Main Points

- The terms "grave industrial accident/grave civil accident" are defined.
- In the event of a grave accident, the responsibility shall fall on, among others, the business owner or executive officer.
- In the event of a grave accident, those held responsible may be subject to a criminal punishment (in which case the business owner or executive officer may be sentenced to, among others, 1-year or longer imprisonment or a fine of KRW 1 billion or lower.)
- A company in which a serious accident has occurred may be subject to punitive damages.

Definition of "grave industrial accident"

(Article 2(2)) The term "grave industrial accident" refers to (i) the death of one person or more, (ii) the situation where two or more people are injured by the same accident to the extent of requiring medical treatment for six months or longer or (iii) the situation where three or more people contract any occupational disease prescribed by Presidential Decree, such as acute intoxication, due to the same harmful factor within 1 year.

BKL Note.

- A grave accident is classified into two types: "grave industrial accident" and "grave civil accident."

Scope of Applicability

(Article 3) The regulations of this Chapter shall not apply to, among others, any person who owns a company or place of business with less than 5 regular workers (applicable only to private business owners and the same hereinafter) or any person who is in charge of managing such scale of business.

BKL Note.

- Originally, the Act on Punishment of Grave Accidents was intended to apply to all businesses; however, with the business communities' opinion accepted, businesses with less than 5 employees were excluded for grave industrial accidents.

Business owner/executive officer's duty

(Article 4) A business owner, executive officer, etc. shall take the following measures to ensure that in the place of business under their substantial control, operation and management, there will not occur any event harmful or hazardous to the safety and health of workers:

- Measures for establishing and implementing a safety and health management system, such as by securing manpower and budget required for accident prevention purposes;
- Measures for establishing and implementing a plan for preventing the recurrence of the same accident;
- Measures for performing an order imposed by a central administrative agency or local government in accordance with the applicable laws and regulations, such as improvement order and rectification order;
- Managerial measures for performing the duties under the applicable safety- and health-related laws and regulations.

BKL Note.

- A business owner, executive officer, etc. are required to perform the same duty to ensure the safety and health of all workers, regardless of whether they operate the business (i) on their own (Article 4(1) of the Act) or (ii) with the labor provided from others through, among others, subcontracting, provision of service, or assignment (Article 5 of the Act; provided, however, there is actual control, operations and management of the facilities, equipment, place of work.) The details of the measures set forth in subparagraphs 1 through 4 will be prescribed by the Presidential Decrees.

◆ Criminal punishment for grave industrial accidents

(Article 6) If a grave industrial accident occurs in a place of business as a result of the breach of duty to ensure the safety and health of all workers under the Act, the business owner, executive officer, etc. shall be criminally punished as follows:

- 1. The business owner, executive manager, etc. responsible for the grave industrial accident causing a death shall be sentenced to 1-year or longer imprisonment or a fine of **KRW 1 billion** or lower (Both punishments may be imposed simultaneously.)
- 2. The business owner, executive manager, etc. responsible for the grave industrial accident causing an injury shall be sentenced to 7-year or shorter imprisonment or a fine of **KRW 100 million** or lower.
- 3. If the business owner, executive manager, etc. found guilty of one of the above crimes commit the same again within 5 years after the conviction becomes final, the punishment for them shall be aggravated by up to 1/2 of the punishment set forth in the applicable one of the above subparagraphs.

BKL Note.

- The Act not only stipulates, like the Occupational Safety and Health Act, that in the event of a grave industrial accident as a result of the absence of a safety measure, the business owner, executive officer, etc. shall be punished accordingly, but also prescribes different punishments for a fatal grave industrial accident and non-fatal grave industrial accident.

◆ Joint penal provision

(Article 7) A corporation or organization in which a grave industrial accident has occurred shall be punished by a fine prescribed in this Article; provided, however, that this shall not apply where the corporation has not neglected to give due attention and supervision to prevent such accident:

- 1. A corporation in which a grave accident has occurred, causing a death: a fine of KRW 5 billion or lower
- 2. A corporation in which a grave accident has occurred, causing an injury: a fine of KRW 1 billion or lower

BKL Note.

- A corporation in which a grave accident has occurred is subject to a fine as prescribed in the joint penal provision—but the provision does not apply where such corporation proves that it has not neglected to give due attention and supervision to prevent the relevant accident.

Punitive damages

(Article 15) Where the business owner, executive officer, etc. cause a grave accident intentionally or by gross negligence, they shall compensate the victim for a loss to the extent that the damages do not exceed 5 times the loss—in which case a definite amount of damages shall be determined by taking account of the following matters:

- The degree of intention or gross negligence ;
- The type and content of the statutory duty breach;
- The scale of the damage caused by the breach;
- The economic benefit gained by the business owner or the relevant corporation or organization as a result of the breach;
- The period, frequency, etc. during which the breach has occurred;
- The financial status of the business owner or the relevant corporation or organization; and
- The degree of efforts made by the business owner or the relevant corporation or organization to remedy the damage or prevent the recurrence of the same accident.

BKL Note.

- If a grave accident occurs in a place of business as a result of the breach of the duty to ensure the safety and health of all employees under the Act, the business owner and the relevant corporation shall compensate the victim for a loss to the extent that the damages do not exceed 5 times the loss.
- In such cases, the corporation may not be subject to punitive damages if it succeeds in proving that it has not neglected to give due attention and supervision to prevent the relevant accident—note, however, that there is concern about the difficulty of producing such proof.

Joint penal provision

(Article 13) The Minister of Employment and Labor may publicly announce the facts concerning the occurrence of a grave industrial accident, including the name of the relevant place of business, and the date, location, circumstances and cause of such accident.

BKL Note.

- While the Occupational Safety and Health Act stipulates in Article 10 that the Minister of Employment and Labor may publish a list of places of business in which a serious accident occurs frequently, the Act allows the minister to publicly announce any place of business in which a grave accident has occurred, regardless of the frequency of such accidents.

3. Comparison with the Occupational Safety and Health Act

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The Act on Punishment of Grave Accidents Etc. vs The Occupational Safety and Health Act

The Act on Punishment of Grave Accidents Etc.

To impose on executive officers responsibilities for grave accidents

① **Who to protect:** Workers (grave industrial accidents) and users (public safety hazards).

② **Who to punish:** Executives / Company

③ **What punishment:** In the case of a fatal grave accident, 1-year or longer imprisonment or a fine of KRW 1 billion or lower (both punishments may be imposed simultaneously); and in the case of a non-fatal serious accident, 7-year or shorter imprisonment or a fine of KRW 100 million or lower.

The Occupational Safety and Health Act

To prevent any industrial accident and create a comfortable working environment

① **Who to protect:** Employees and labor providers.

② **Who to punish criminally:** Responsible actors / Company

③ **What punishment:** In the case of a fatal serious accident, 7-year or shorter imprisonment or a fine of KRW 100 million or lower; and in the case of a breach of the duty to take measures to ensure the safety and health of all employees, 5-year or shorter imprisonment or a fine of KRW 50 million or lower.

III. Government Outlook: Major Employment & Labor Policies

Making preparations necessary to ratify the ILO Fundamental Conventions

Background

- Currently, Korea has not ratified the conventions guaranteeing the freedom of association (No. 87 and No. 98) among the ILO Fundamental Conventions, international norms, and in order to ratify them, it is required to amend the Trade Union and Labor Relations Adjustment Act (the "Trade Union Act").
- The ILO Fundamental Conventions have been ratified by a majority of the ILO members, and as the KOR-EU FTA dispute settlement proceedings are underway on the grounds of failure to ratify the ILO Fundamental Conventions (from December 2018), and therefore, it is necessary to ratify the above conventions.

Progress

- The government engaged in negotiations for amendment of the labor-related laws through the Economic, Social and Labor Council, a presidential panel, but the negotiations broke down on May 20, 2019 due to disagreements between the labor and management, and the government announced on May 22, 2019 its position to promote the ratification based on the proposal presented by the public interest committee.
- The government bill was submitted on June 30, 2020 and passed on December 9, 2020 by the 21st session of the National Assembly.
- The amended Trade Union Act was promulgated on January 5, 2021 and comes into effect on July 6, 2021.

Main substance

- Allowing laid-off workers to join the company's labor union
- Deletion of unfair labor practices relating to overpayment to full-time union officials
- Extension of the period of validity of a collective agreement to three years
- Prohibition on acts of disputes that may obstruct the normal business

Government Outlook: Stability of the 52-Hour Workweek

Endeavoring to have the 52-hour workweek system stably established in workplaces

Background

- In order to improve the long-hour work practices, the Labor Standard Act was amended in March 2018 to introduce the 52-hour work week system, which is being implemented in stages in view of difficulties of medium- and small-sized enterprises, but the government is planning to supplement the system, such as by expanding the scope of reasons for authorizing special overtime work, in parallel with promoting various activities to support workplaces so that the system will be well established there.

Main substance

- Provision of a grace period (July 2018 to March 2019 (9 months) for companies with 300 employees or more, and January 2020 to December 2020 (1 year) for those with 50 to 299 employees) after the enforcement of the 52-hour work week system to ensure a soft landing thereof
- Provision of assistance through consulting from the Support Group for Shortening of Working Hours
- Supplementation of the system, including special overtime work and discretionary work-hour system
  - Special overtime work: addition of ① unexpected situation other than disasters and calamities; ② unexpected rapid rise in workload; and ③ research and development for enhancement of national competitiveness to the causes for authorization of special overtime work
  - Discretionary work-hour system: addition of analysts and fund managers to the occupations subject to the system based on the opinion form work sites and cases in foreign countries (notified on July 31, 2019)
- Improvement of the flexible work-hour system
  - An amendment to the Labor Standard Act specifying the extension of the unit period for the flexible work-hour system up to six months based on the tripartite agreement of the Economic, Social and Labor Council was passed and will become effective from April 6, 2021.

Future plans

- Continue to provide close assistance in order for the 52-hour work week system to be well established at workplaces based on the result of inspection on specific hours actually worked
- Supplement defects in the operation of the special overtime work system in view of the result of inspection on the actual condition thereof.

Pursuing to take measures for protecting essential workers

Background

- An "essential worker" refers to someone who, despite his or her increased occupational risks because of the COVID-19 Pandemic, is required to perform a face-to-face service without suspension to protect the public's life and safety and ensure the society to function continually and consequently is exposed to the risk of infections or accidents.
- A majority of face-to-face services provided by essential workers had been notorious for poor working conditions (low wages, long working hours, frequent industrial accidents, etc.) and low employment stability.
- To tackle this problem, on October 6, 2020, the government established and announced the "Measures for Reinforcing Safety and Projection for Essential Workers," including provision of disinfection services, support for health and hygiene management, and prevention of overwork.

Main substance

- To reinforce safety and health protection
  - Inspect the disinfection status; help manage occupational diseases and take care of health; and expand the scope of special-employment workers coverable by occupational health and safety insurance.
- To prevent overwork and improving working conditions
  - Reinforce the inspection and supervision of whether the labor laws are followed in the workplaces with poorer working conditions and lower employment stability—such as distribution companies, a workplace of watch workers, and a place of business with approval for special overtime works; and reinforce employment services.
- To ensure fair remuneration and expanding the safety net
  - Reinforce the inspection and supervision of whether the labor laws are followed in the workplaces with poorer working conditions and lower employment stability—such as distribution companies, a workplace of watch workers, and a place of business with approval for special overtime works; and reinforce employment services.
- To provide field-specific customized support
  - Prepare measures for providing support to health care professionals, home care workers, parcel service truck drivers, delivery service workers, and street cleaners.

Future Plans

- Check the actual working conditions and difficulties of essential workers in various fields, and establish a government-wide system for implementing customized measures
- Operate the field-specific working groups under the task force to have the groups carry out the tasks necessary to find problems to resolve to better protect and support workers in the relevant field, check their current working status, and listen to their difficulties, such as by visiting their workplaces and holding discussions with them.

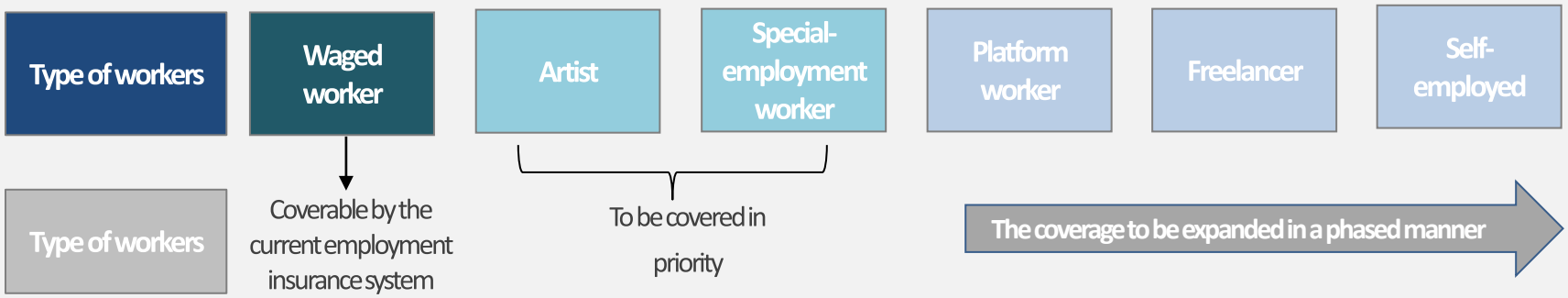
Reinforcing the employment safety net for special-employment workers (the national employment insurance roadmap)

Background

- The current employment insurance system is focused on waged workers and has a limit in protecting all different types of workers in need of protection under the employment safety net.
- Also, considering fast spread of new employment caused by, among others, the fourth industrial revolution, it is necessary to break away from the dichotomous approach of classifying the working people only into employed workers and self-employed workers to have a broader perspective that helps enlarge the institutional protection to cover different types of workers.

Main substance

- Plan for phased expansion of the scope of workers covered by the employment insurance system



- Following the amendment to the Employment Insurance Act, the scope of workers for whom the employment insurance shall be obtained mandatorily extends to artists (effective as of December 10, 2020) and special-employment workers (effective as of July 1, 2021)—after which, through phased expansion, all citizens will be eligible to take out a policy under the employment insurance system until 2025.

Future plans

- Support the efforts to create and discuss conditions for ensuring special-employment workers to be covered by the employment insurance system.
- Carry out nation-wide promotional activities for raising public awareness of the need for expanding the coverage of the employment insurance system to special-employment workers.

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Thank You!