Significant Upcoming Employment-Law Changes in Korea

Minimum wage set at KRW9,160/hour for 2022

On July 19, 2021 the government announced the 2022 minimum wage as KRW9,160 (approx. US$7.92) per hour. This is a KRW440 increase (roughly 5%) from the 2021 minimum wage of KRW8,720 per hour.

The announced 2022 hourly minimum wage corresponds to a monthly minimum wage of KRW1,914,440 assuming a standard 40-hour work week with 8 hours of paid weekly time off (totaling 209 hours a month).

New penalties for failure to adequately handle workplace harassment (effective October 14, 2021)

The Labor Standards Act already requires an employer to promptly investigate reports of (non-sexual) workplace harassment; take appropriate measures (if any) to protect the alleged victim, such as relocation; and take appropriate action against the offender if harassment occurred. However, there are currently no specific penalties for failure to do so.

Effective October 14, 2021 employers’ obligations will be expanded and new penalties introduced.

- The investigation of reported workplace harassment will be expressly required to be not only prompt, but “objective.”
- In addition, those involved with the investigation will be required to protect information about the occurrence of harassment that a victim does not wish to disclose (with exceptions for reporting to the employer or authorities to seek assistance).
• There will be a new administrative penalty of up to KRW10 million for an employer or relative (by blood or affinity to the fourth degree) of an employer who commits workplace harassment.

• There will be a new administrative penalty of up to KRW5 million for an employer that (i) fails to promptly and objectively investigate a report of workplace harassment; or (ii) if harassment is found to have occurred, fails to take any necessary protective measures for the victim, or appropriate disciplinary or other action against the offender. And there will also be an administrative penalty of up to KRW5 million for an individual involved in an investigation of workplace harassment who improperly divulges secrets learned during the investigation.

Employers should evaluate whether they have the right policies and processes in place to both prevent workplace harassment, and objectively and promptly investigate any instances that occur and take appropriate action.

**New claim procedure and remedies for gender-discrimination and sexual-harassment claims (effective May 19, 2022)**

The Equal Employment Opportunity and Work-Family Balance Assistance Act already provides penalties for acts of gender discrimination in employment, and workplace sexual-harassment violations. Employees can file discrimination or sexual-harassment complaints with the labor office, which can investigate, issue corrective orders, and impose administrative fines or refer matters for criminal prosecution in certain circumstances (e.g., for retaliation).

However, effective May 19, 2022, for the first time employees will be able to petition the Labor Relations Commission for relief in gender-discrimination and sexual-harassment cases, and the available remedies will include damages. Compensation for an employee victim has only been available via civil lawsuit until now.

If the Labor Relations Commission finds that gender discrimination in employment occurred, it may issue a corrective order, and require the employer to pay compensation of up to three times the actual damages of the employee. Any such corrective order may also be applied to other employees who have been discriminated against. The Labor Relations Commission will also be empowered to issue corrective orders and award up to treble damages where an employer has failed to take required measures with respect to a sexual-harassment victim or harasser, or in the case of any retaliation.

---

1) The Labor Standards Act defines an “employer” as “a business owner, or a person responsible for the management of a business or a person who acts on behalf of a business owner with respect to matters relating to employees.” This can essentially encompass a legal entity or sole proprietor that legally employs people, as well as certain senior executives. However, an “employer” who commits workplace harassment will be an individual who actually commits the harassment.
Use of childcare leave during pregnancy (effective November 19, 2021)

Up to a year of unpaid (government subsidized) childcare leave under the Equal Employment Opportunity and Work-Family Balance Assistance Act is currently available to parents with a child who is aged 8 or under, or in the second grade of elementary school or below. Effective November 19, 2021, pregnant female employees who are at medical risk of miscarriage/stillbirth will be allowed to use some of that year of childcare leave while still pregnant. The total childcare leave period per eligible child, including any childcare leave used during pregnancy, will still be one year.

The use of childcare leave during pregnancy is in addition to statutory maternity leave to which pregnant employees are already entitled. After taking childcare leave during pregnancy, the remaining childcare leave can be used after childbirth as normal, and can still be divided and used in two different periods after childbirth.

Right to request working-hours adjustment during pregnancy (effective November 19, 2021)

Effective November 19, 2021, the Labor Standards Act will provide pregnant female employees with a right to change their start and end times. Pregnant employees in their 12th week or below or 36th week and above, are already entitled to work reduced hours. This will provide an additional right to pregnant employees at any point in their pregnancy, to alter their start and stop times to better suit their needs. The employer may only refuse the request for certain reasons prescribed by regulation, such as where the changed hours would seriously interfere with the normal operation of the business.