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# Employment law in the Republic of Korea – an overview

**Inside**

## Introduction

The Republic of Korea (often referred to as South Korea and in this in-brief as Korea) has one of Asia's strongest performing economies and is home to some of the world's largest brands. Despite its fast ageing population and a chronically low level of productivity, Korea continues to be popular place to invest for foreign companies.

This in-brief provides a snapshot of some of the key aspects of employment law in Korea.

Our Hong Kong office coordinates employment and immigration/global mobility support across the Asia Pacific region (including Korea).

This publication provides general guidance only: expert advice should be sought in relation to particular circumstances. Our Hong Kong office can source Korean law advice through its links with local firms in Korea.

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This inbrief has been contributed to by Yulchon, the Korean member of Ius Laboris.

## The employment law landscape

The Korean labour market is highly regulated and very employee friendly, with powerful labour unions and stringent employment protection laws. Some employment rights are even enshrined in the national constitution. In general, employees are well informed about their employment rights and often challenge dismissals. Although weakening somewhat, as in Japan, there is still a cultural expectation of career long employment with the same employer.

Korea has a civil law system although court decisions have strong precedent value, especially decisions of the Korean Supreme Court. The Labour Standards Act ("LSA") is the principal statute regulating the employment relationship and providing minimum employment standards.

## Commencing employment

Employees can be employed on a permanent basis (commonly referred to as "regular") or on a fixed-term basis which is generally limited to two years (fixed-term and part-time employees, and dispatched agency workers, are referred to as "non-regular"). An employee employed on a fixed term for more than two years may be deemed employed for an indefinite term, subject to some exceptions.

Agency-type working arrangements (known as "dispatch") are very popular, partly because the workers are employed directly by a dispatch agency and so any problems with terminating employment can be avoided. However, such arrangements are coming under continued scrutiny and are highly regulated – caution is advised. Failure to comply with dispatch regulations may result in criminal sanctions. If the dispatch arrangement is unlawful or a dispatched worker has worked for more than two years for the same company they may be deemed a company employee, subject to certain exceptions.

Employees can be engaged on a full-time or part-time basis.

## The employment contract

Since certain key terms of an employment contract (e.g. wages and working hours) must be given in writing to all employees at the start of employment, it is advisable for employment contracts to be in writing. Terms and conditions can be also implied into the contract based on a course of conduct over a period of time.

The contract does not have to be in Korean although this is generally highly recommended, especially for local employees.

Employers of 10 or more employees must prepare Rules of Employment - basically an employee handbook covering matters such as the calculation of wages, hours of work and paid leave. These must be filed with the Ministry of Employment and Labour ("MOEL"), the relevant regulatory authority. The Rules of Employment, as well as other company policies regarding the terms and conditions of employment – and even well-established workforce practices – are legally binding on the employer and override any inferior terms in an employment contract.

## Key minimum employment rights

### Annual leave

An employee who works a full year is entitled to 15 days of annual paid leave. This entitlement can rise up to a maximum of 25 days according to length of service. Eligible employees are only entitled to minimum statutory annual leave if they have at least 80% attendance during the previous year, while employees who do not meet the overall yearly requirement of 80% attendance in the previous year (including newly hired employees) must be afforded at least one day of paid annual leave for each full month of attendance.

### Sick leave

Employees are not legally entitled to time off in relation to non-work related illnesses or injuries. However, it is not an uncommon practice for employers to allow this. Practices vary widely but generally several months of unpaid leave and/or up to several weeks of paid leave is not uncommon, if the illness or injury requires it. Employers are required under the LSA to provide partially paid leave for work-related illnesses or injuries and to pay for treatment and additional compensation for any lasting disability (though workers compensation will often fully or partially relieve the employer of these obligations).

### Public holidays

Public holidays are mandatory paid days off for private employers with 300 or more employees starting from 1 January 2020. From 1 January 2021, employers with 30 to 299 employees will be required to do the same and from 1 January 2022, employers with 5-29 employees will also be required to do the same. Corporations with less than five employees are exempted from the mandatory system.

### Working time

There is a limit on working hours of 8 hours per day and 40 hours per week. Overtime of up to 12 hours per week is permissible subject to the payment of an overtime premium. Employees in managerial or supervisory positions and employees handling confidential information are not subject to the statutory limits on working hours, though these exceptions are in practice quite narrow. Additional weekend hours (up to 16) have traditionally been allowed, but following recent amendments to the LSA, hours of work done during weekly days off (generally Saturdays and Sundays) will be included in the calculation of "weekly" working hours, which means that in general employers will no longer be able to require an employee to work more than 52 hours over the seven days in the week.

This amendment has taken effect for employers with 50 or more employees—though an enforcement grace period is in effect until January 1, 2021 for those with 50 to 299 employees—and most government-invested or government-controlled employers, and will be phased in for smaller employers on July 1, 2021 (5-49 employees).

### Family leave

Pregnant employees are entitled to 90 days' maternity leave (of which the first 60 days will be paid by the employer) which can be used before and after childbirth, provided at least 45 days must be used after the birth. The government shall provide—subject to certain conditions and a cap—allowances for the remaining 30 days of unpaid maternity leave (for employers below a certain workforce-size threshold that varies by industry, the government will subsidize the entire 90 days). Additional paid leave is available in the event of multiple births. . From 1 October 2019, employers are required to guarantee 10 days of paid paternity leave. Additionally, employees will be able to request to use their paternity leave within 90 days after the delivery date and divide the leave period to take it on two separate occasions. Unpaid childcare leave and reduced hours for childcare purposes are also available in certain circumstances. Employees are also entitled to up to three days' leave for fertility treatment (of which only the first day must be paid).

An employee with a child who is eight years old or younger, or who is in the second grade or below in elementary school, is entitled to one year of childcare leave and/or reduced working hours, combined, and an additional one year of reduced working hours (not leave) for childcare..

Childcare leave can be split into two uses, while reduced working hours can be split into multiple uses of at least 30 days each.

Effective from 1 January, 2020, the scope of statutory family-care leave has been expanded. Employees can apply for family care leave if necessary to care for a sick or elderly parent, grandparent, spouse, spouse's parent, child, or grandchild. Family-care leave is up to 90 days per year, usable in periods of at least 30 days; however, effective from 1 January 2020, ten of those days (subject to limited extension) can be used individually for family care purposes, or for 'taking care of children' (e.g., attending school events). Subject to a phase-in period, employees are also now able to apply for reduced working hours for certain reasons such as taking care of a family member or preparing for retirement at or after the age of 55, etc. Under the phase-in schedule, employers with 300 or more employees become subject to this obligation on 1 January, 2020, employers with 30-299 employees on 1 January 2021, and employers with less than 30 employees on 1 January, 2022.

### Wages and social insurance

A minimum wage applies to all employees with some exceptions. However, a recent amendment to the Minimum Wage Act, effective as of March 20, 2018, has narrowed the scope of these exceptions. Employees in their probationary period (up to three months) can be paid a lower wage; however, the amended Minimum Wage Act no longer allows the application of this exception to unskilled labourers within a scope defined by regulation. The exception for "surveillance or intermittent" work has also been eliminated. The minimum hourly wage rate for 2019 was KWR 8,530 and the 2020 minimum wage is KR 8,590.

Employers must contribute to mandatory social security schemes such as the National Pension, the National Health Insurance, the Unemployment Insurance and the Industrial Accident Compensation Insurance.

## Terminating employment

Unfair dismissal laws only apply to employers with five or more employees, who are prohibited from dismissing an employee without a "just cause". The courts have generally held that just cause only exists in very limited circumstances and it is exceedingly difficult to terminate employment lawfully. Behaviour that would often be taken as a given for justifying termination in other countries often will not amount to just cause in Korea. For example, in performance cases, an employee's poor performance must be well documented and severe, and an employer must give the employee an opportunity to rectify it or risk having the dismissal overturned.

A very high threshold must be met in order to justify redundancies: there must be an "urgent business necessity" to make the redundancies and certain other procedural requirements must be met. An employer must generally demonstrate financial losses over a period of time, although certain other causes such as adoption of new technology can also constitute an urgent business necessity. In the case of collective redundancies (generally if 10% or more of the workforce will be made redundant), an employer must file a report to the MOEL.

Employers must provide at least 30 days' written notice or pay in lieu of notice, with some exceptions. Employers must also make a statutory severance payment to any employee with at least one year's service, equating broadly to 30 days' pay for each year of employment. This must be

paid regardless of the reason for termination and whether it was voluntary or for cause. Maintenance of a qualifying severance pension plan with respect to an employee can satisfy the obligation to pay severance.

## Discrimination

Discrimination against employees on the grounds of sex, age, disability, nationality, religion or social status is prohibited. Employers are obliged to protect employees from sexual harassment in the workplace, and there are mandatory requirements related to the investigation of complaints and the provision of training to staff. Employers are also prohibited from dismissing or causing detriment to a victim of sexual harassment or another employee who reported the harassment. Foreign workers and non-regular employees are also given statutory protection from discrimination. From 16 July 2019, the LSA also requires most organisations to address non-sexual workplace bullying and harassment in their Rules of Employment (workforce rules) and impose various obligations regarding how to respond to allegations of non-sexual workplace bullying and harassment. Employees are able to claim before the courts and the Labour Relations Commission, a quasi-judicial body set up by statute, as well as the National Human Rights Commission.

## Protecting the business

The courts generally enforce restrictive covenants if they are reasonable and do not unreasonably interfere with an employee's freedom to work. Courts have broad discretion to reduce the scope of restrictive covenants based on individual circumstances.

## Business transfers

On a business transfer, the employment relationship transfers unless employees decide otherwise. The transferee assumes the employment of the transferring employees under the same terms and conditions as applied before the transfer. Employees are protected against dismissal (before or after the transfer) unless there is just cause.

## Resolving disputes

Employees can bring unfair dismissal claims before the relevant Regional Labour Relations Commission. Employees dismissed without cause may also initiate civil proceedings in the District Court. Courts and the Labor Relations Commission will routinely order reinstatement of unfairly dismissed employees (along with back pay).

## Employee representation

Employees are free to form a labour union that may negotiate a collective bargaining agreement with the employer. Generally, the agreement applies only to union members, but it may also apply to other employees if the union represents at least one half of the employees of the same kind. Each workplace with 30 or more employees must have a Labour Management Council to discuss workplace matters, made up of an equal number of members representing employers and workers..

## Data protection

Korea has a well-developed data protection regime. Under the Personal Information Protection Act, an employee may inspect, ask for correction of and suspend any use of any of their personal information handled by the employer. In addition, the employer must generally obtain the consent of the employee to collect, process, manage or transfer to a third party any of the employee's personal information.

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