

*January 09, 2020****Legal Update***

Seoul High Court Rules That Store Owners on Reseller Agreement May Not Be Considered as Workers under the Labor Standards Act

Recently, Shin & Kim's labor & employment attorneys won a case on behalf of its client against store owners, who executed a reseller agreement to carry out manufacturing and sales of clothing and leather products, among others, and subsequently sold those products in the department store. The store owners claimed that they should be deemed as workers protected under the Labor Standards Act (the "LSA"), and that accordingly, severance pay must be provided.

Case Details:

In the court of first instance, judgment was rendered for the store owners (the "Plaintiffs").

On appeal at the Seoul High Court, our team won a judgment against the Plaintiffs; the Court reversed the trial court's decision, rejecting all of the claims made by the Plaintiffs.

Specifically, our lawyers were successful in persuading the appellate court to agree that the Plaintiffs were independent business operators, who created profit from delegated sales

activities with no specific restrictions.

Further, based on our lawyers' experience in handling multiple lawsuits related to the determination of whether such store owners within a department store may be considered as workers under LSA, the Shin & Kim team presented the Court with a detailed explanation on the operating system of such stores within a department store based on a reseller agreement. In effect, our lawyers argued that such an agreement between the Plaintiffs and our client company was a subcontract or an agency agreement, and not an employment agreement.

By thoroughly analyzing all evidence submitted during the litigation process and through an in-depth understanding of the actual operation of such businesses, our lawyers also proved that our client did not directly manage the store owners within the department store. Rather, the Plaintiffs concurrently operated stores of another company other than our client company, and that the Plaintiffs operated their stores at their discretion (e.g., without having specific working hours, free to make their own hiring decision).

Our Successful Representation:

Korean courts have recently shown a tendency to recognize the legal nature of a worker rather extensively, and the Supreme Court's 2015 decision¹ to recognize the legal nature of a worker was also a significant challenge. Nevertheless, our lawyers were successful in obtaining a favorable decision for our client by highlighting the difference between our case and the Supreme Court's previous decision.

About Shin & Kim's Labor & Employment Practice Group

Shin & Kim's Labor & Employment practice, based on deep expertise and vast experience accumulated by our professionals, has consistently achieved positive results for our clients not only in cases relating to the legal nature of a worker, but also in various HR-related litigations. Our professionals have also successfully advised clients on various labor & employment-related matters, including wages, illegal dispatch, collective labor disputes, among others.

1. See Supreme Court case number 2015Da59146, 2015Da62456.

For further information or if we can be otherwise helpful, please do not hesitate to contact our experts:

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