

Ordinary Wage: After the 2013 Supreme Court Decision

1. First Trial Court Decision on Employer's Good Faith Argument

On December 18, 2013, the Supreme Court of Korea made an en banc decision that ordinary wage includes regularly paid fixed bonus amounts. The Supreme Court also expressly noted that if an employer is able to prove that (i) there is an agreement between the employer and the labor union that fixed bonuses are excluded from ordinary wages and (ii) paying employees for past underpayment of overtime wages will cause a substantial detriment to the management or a major threat to the existence of the company due to the unexpected financial burden, then employees' claims for past underpayment can be denied based on the principle of good faith. However, the Supreme Court did not provide specific criteria for such denial, which caused controversy over the definite scope of application of its judgment (please refer to our newsletter of December 19, 2013 in this regard).

Recently, the Seoul Central District Court had the opportunity to review the good faith argument for the first time in rendering its decision on ordinary wage.

2. Retroactive Overtime Payment

Employees of an organization affiliated with the Ministry of Labor and Employment requested the Republic of Korea to pay the difference arising on past overtime wage payments which were allegedly wrongfully calculated; the employees argued that fixed bonuses had not been included in the scope of ordinary wage, which formed the basis for calculation of the overtime pay they had received. The Seoul Central District Court accepted the employees' claims.

- A bonus is part of ordinary wage if it is regularly paid to all employees and on a pro-rata basis to employees who retire prior to the payment date.

In this case, the bonus in question was uniformly given (50% of the basic wage) to all employees

on a monthly basis, and was also provided to those employees who joined or left midway in proportion to the number of their work days during the month. Thus, the court was convinced that the bonus satisfied the regularity, uniformity, and fixedness requirements of the definition of ordinary wage.

- Implicit agreement to exclude bonuses from the scope of ordinary wage can be assumed even if no collective bargaining agreement exists.

Unlike the facts of the Supreme Court case, the Seoul Central District Court case did not involve a collective bargaining agreement executed between the employer and employees. The scope of ordinary wage was defined by the regulations of the employing organization and the Ministry of Labor and Employment.

However, the court opined that it would be possible to assume that an implicit agreement between the employer and employees was reached regarding the exclusion of bonuses from the scope of ordinary wage, even if no collective bargaining agreement exists.

- Criteria for an employer's good faith argument.

In the Supreme Court ruling, the Court noted that employers could make a good faith argument to deny employees' claims for retroactive overtime wages and that the following factors should be taken into consideration when determining the validity of such argument: (i) the amount of financial burden that the employer will additionally bear if fixed bonuses are calculated into ordinary wages, (ii) the actual rate of wage increase from the previous year and the average rate over several years and (iii) the financial and management situation of the employer.

The Seoul Central District Court found that the monthly wage increase per employee for 2013 was approximately KRW 60,000 and the rate of wage increase compared to 2012 (using the former calculation method) was only 6.33%. As a result, the Seoul Central District Court rejected the employer's good faith argument, holding that compensating employees for past underpayment in this case would not likely cause a substantial detriment to management or major threat to the existence of the employer.

3. Further developments and trends

The Supreme Court decision established a general standard that ordinary wages shall include regular bonus payments. Since such decision, the Supreme Court and other lower courts have applied this standard in subsequent cases.

While the Supreme Court failed to clearly provide specific criteria for accepting the good faith argument of an employer, it is difficult to set uniform criteria for the application of “good faith,” since the principles of justice and equity, which are bases of the good faith argument, must essentially be applied on a case-to-case basis.

However, the recent decision of the Seoul Central District Court is still worth noting, given that litigants can expect the courts to review an employer’s argument based on the specific facts of each case. The judgment also provided detailed analysis on what factors would constitute a prima facie case for an employer’s good faith. As a result, we expect the reasoning and its outcome to have a substantial impact on future judgments in ordinary wage cases and any disputes between labor and management that are currently in progress.

Should you have any questions regarding any of the foregoing, please feel free to contact us at any time.

-
- | | | |
|-----------------|-------------------|----------------------------|
| ● Young-Seok Ki | TEL : 02 316 4021 | E-Mail: ysgi@shinkim.com |
| ● Sang-Hoon Han | TEL : 02 316 4696 | E-Mail: shhan@shinkim.com |
| ● Jong Soo Kim | TEL : 02 316 1678 | E-Mail: jsokim@shinkim.com |
| ● Philippe Shin | TEL : 02 316 4206 | E-Mail: pjshin@shinkim.com |
-

Chambers Asia-Pacific Awards 2014
South Korea Law Firm of the Year : Shin & Kim

