

Greater Labor Protections for Non-regular Employees

On September 19, 2014, the Act on Protection of Fixed-Term and Part-time Workers (“Temporary Workers Act”) and the Act on Protection of Dispatch Workers (“Dispatch Workers Act”) were amended to offer greater protections to non-regular workers. In particular, (i) employers will be subject to greater economic implications if they receive a corrective order for discriminatory treatment of non-regular workers and (ii) part-time workers will be entitled to receive compensation for any overtime work performed.

1. Extra bite for corrective orders for discriminatory treatment

If a non-regular worker believes he or she is being discriminated in terms of employment working conditions or welfare benefits, such non-regular worker may request the Labor Relations Commission to investigate and issue a corrective order against the employer for discrimination under the Temporary Workers Act and the Dispatch Workers Act. In the past, if an employer was found liable for discriminating against a non-regular worker and a correction order was issued, it was widely recognized that the corrective order only applied to the non-regular employee who raised the discrimination claim. As a result, the receipt of a corrective order was not significant from an overall business perspective as the employer was only expected to correct the individual claim raised by the non-regular worker.

However, under the newly amended Temporary Workers Act and Dispatch Workers Act, if an employer receives a corrective order for discriminatory treatment, the Minister of Employment and Labor may review the employer’s circumstances and request that the employer apply the corrective order to all non-regular workers that qualify. If such employer fails to accept the Minister’s request, the Labor Relations Commission has the authority to issue another corrective order.

In addition, the Labor Relations Commission has the authority to issue a corrective order in the form of an “Order to Improve the Employment Rules and Collective Bargaining Agreement” to

change the overall employment conditions of an employer. Through such measures, if an employer is responsible for discriminating against a single non-regular worker, the relevant corrective order could automatically apply to all qualified non-regular workers. As a result, under the new amendments, the consequences of discriminating against a non-regular worker could be significant depending on the number of subject workers.

2. Punitive damages

In the past, if an employer was found liable for discriminating against a non-regular worker, typically, the employer would only be responsible for direct, actual damages the non-regular worker incurred as a result of discrimination.

However, under the newly amended Temporary Workers Act, an employer that is responsible for intentional or repeated discrimination of a non-regular employee may be subject to a maximum penalty of treble damages by the Labor Relations Commission (Article 13(2) of the amended Temporary Workers Act). The imposition of punitive damages on repeat or intentional offenders is to mainly reform and deter other employers from engaging in conduct similar to that which formed the basis of the discriminatory act.

3. Compensation for overtime work performed by part-time workers

Previously, if a part-time worker was required to perform overtime work that was outside his or her fixed working hours and the total work hours performed by such worker (including overtime work) did not exceed the standard working hours provided under the Labor Standards Act (i.e., 8 hours per day or 40 hours per week), the employer was not required to provide any overtime payments to the part-time worker.

However, under the amended Temporary Workers Act, an employer must compensate a part-time worker for any overtime work performed in addition to his or her fixed working hours even in the case where such worker's total working hours do not exceed 8 hours per day or 40 hours per week. The employer must provide overtime pay equal to at least 150% of the worker's ordinary wage. Recognizing that many part-time workers were being forced to work outside of their fixed working hours on a regular basis, the amendments were passed into law to discourage and deter employers from continuing such employment practices.

4. Aftermath and potential solutions for employers

Recent amendments to the Temporary Workers Act and Dispatch Workers Act have expanded the

scope of corrective orders for discrimination to the extent that employers may now face substantial financial implications if they are found guilty for discriminating against non-regular workers without justifiable reasonable. Accordingly, we recommend that employers thoroughly review their worker employment conditions and welfare benefits to determine whether there are any conditions or benefits that are different or being unreasonably withheld from non-regular workers. If there are, we recommend that employers take a proactive approach and voluntarily address any inconsistencies that may be interpreted as discriminatory treatment.

Employers that traditionally use a large number of part-time workers (e.g., restaurant and distribution industries) should expect their personnel costs to increase as a result of the amended laws. In order to minimize or effectively budget for such overtime costs, we believe employers should regularly evaluate the general working hours and total work hours of all part-time workers and determine whether additional workers should be hired or a more effective work shift system needs to be developed.

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

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| ● Young-Seok Ki(Partner) | TEL : 02 316 4021 | E-Mail: ysg@shinkim.com |
| ● Dong-Wook Kim(Partner) | TEL : 02 316 4696 | E-Mail: shhan@shinkim.com |
| ● Jong Soo Kim(Associate) | TEL : 02 316 1678 | E-Mail: jsokim@shinkim.com |
| ● Chin Hyock Choi (Foreign Attorney) | TEL : 02 316 1690 | E-Mail: chchoi@shinkim.com |
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