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KOREAN EMPLOYERS FACE TOUGH TASK OF RESTRUCTURING SALARY SCHEME

These days, in addition to focusing on overcoming the global recession, many Korean employers are facing an additional dilemma: How are they supposed to deal with potential increases in labor costs incurred without any increase in their financial capability, productivity or profitability?

In December 2013, the Supreme Court of Korea ruled that fixed bonuses and allowances paid to employees on a regular basis must be included when computing the ordinary wages of employees. The decision will impact all employers in Korea, as ordinary wages are used to calculate payment for overtime, holiday and nighttime work and compensation for unused annual leave.

Prior to the Court's decision, the Ministry of Labor provided guidelines which recognized base salary and certain fixed allowances paid monthly as being included in ordinary wages. Pursuant to such guidelines, in calculating overtime payment based on ordinary wages, most Korean companies have excluded fixed bonuses which were paid every two months, quarterly or bi-annually.

However, according to the Court's decision, fixed payments that are provided to all employees on a regular basis must now be included when calculating ordinary wages. Furthermore, any collective bargaining agreement or employment agreement excluding such regular payments from ordinary wage is void for being in violation of the mandatory provisions of Korean labor law.

As a result of the Court's decision, Korean employers will need to ensure that ordinary wages are accurately calculated and that payments for overtime are adequately made. The employers are exposed to potential claims in relation to overtime and compensation for annual leave not having been calculated accurately and underpaid in the past three years.

Most employers are expected to face tough challenges as their financial forecasts and future budgets have already been determined under the assumption that fixed bonuses are excluded from ordinary wages. The unexpected increase in labor costs will require employers to compromise and adjust any future financial forecasts already made.

Employers may be subject to even greater labor costs if the Supreme Court renders a decision requiring employers to pay employees working on holidays at the rate of 200% of ordinary wage. Pursuant to

the guidelines of the Minister of Labor, most Korean employers have typically compensated their employees at the rate of 150% of ordinary wage for each hour of holiday work performed. However, certain employees have raised claim that such rate is not compliant with the law because they should be entitled to a rate of 200% of ordinary wage as holiday work constitutes both holiday work and overtime work. The case is currently under review by the Supreme Court and a ruling is likely to be issued in the near future.

In addition to court rulings, new legislation is also expected to impact many employers in Korea. The National Assembly of Korea is currently deliberating a draft bill which will prescribe the maximum number of working hours in one week (i.e., 7 days) to 52 hours and provide employees who work on holidays with compensation for both holiday work and overtime work (i.e., employees who exceed 40 working hours in one week).

Furthermore, the National Assembly recently enacted a law setting the mandatory retirement age of employees at 60 years old with effect from 2016. This is expected to have a ripple effect as employers that previously determined their own retirement age through the company's internal rules or collective bargaining agreement will be required to set their mandatory retirement age at 60. Given that employees will enjoy an extended term of employment, most employers will need to revisit their salary schemes and work out how to control labor costs and maximize work efficiency under the new mandatory retirement age.

In light of the above, every employer in Korea is likely to go through some form of wage reform to cope with the increase in labor costs. To minimize any financial impact on business, employers should introduce various salary schemes which will adequately reflect the roles and responsibilities of each job and evaluate the performance of its employees. However, it is not easy to restructure a company's wage system under Korean law because the employer, in general, must obtain the consent of (i) the labor union (if there is a union comprised of majority of subject employees) or (ii) majority of employees (if there is no such union) if it wishes to change any terms to the disadvantage of its employees. Employers will likely encounter tough negotiations with its labor unions and employees since employees will feel empowered and protected by the Court's decision and new laws. As a result, Korean employers face the tough task of restructuring their salary schemes whilst maintaining and operating their business in a financially sound manner.

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