



# Court Rules that Performance Bonuses are not Categorized as Wages

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The Daegu Appellate Court recently ruled in favor of an automotive parts manufacturing company (“Company”) in a case where Shin & Kim represented the Company to state that performance bonuses should not be included as wages. The Court’s decision is notable because it overturned the District Court’s decision that such performance bonuses should qualify as wages.

An intense debate is currently ongoing in Korea about whether performance bonuses should fall within the category of wages, which form the basis for calculations of severance pay, retirement pension contribution and other statutory payments. The lower courts’ judgements have conflicted on this matter.

The Company had been paying performance bonuses in an amount totaling 25% of net income each year pursuant to its collective bargaining agreement with the labor union. The District Court previously ruled that performance bonuses should be considered as wages for the following reasons: (i) the conditions and standards of payment were specified in the collective bargaining agreement, (ii) the Company had continuously paid performance bonuses to employees since 2010, and (iii) the performance bonuses accounted for a considerable portion of employees’ total income.

Shin & Kim represented the Company in the Appellate Court proceedings. Shin & Kim argued that the performance bonuses were not paid as compensation for the employees’ labor because a positive net income is the prerequisite for the Company’s payment of performance bonuses, which depends on various factors unrelated to employees’ service (e.g., prices of raw materials, financial situation of the company, market conditions, etc.). Shin & Kim further emphasized that the union and the Company had reached a mutual agreement that these payments were a distribution of excess profits and would not qualify as wages.

The Appellate Court ruled that these performance bonuses were not categorized as wages, which reversed the District Court’s arguments and dismissed most employees’ claims.

This judgement clarifies that performance bonuses that are distributed as an excess of profits will not qualify as wages, even when the standards for payment are predetermined. This judgment is significant because it shows that the nature of performance bonuses should be considered in determining its qualification as wages, amidst conflicting court judgments on this matter.

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