



Supreme Court decision changes criteria for ordinary wages.

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1. Introduction

On December 19, 2024, in cases concerning a life insurance company and an automobile company, the Supreme Court issued new rulings through its *en banc* judgment where the Supreme Court excluded “payment on fixed basis” or “fixedness” as one of the criteria for determining ordinary wages (Case No. 2020Da247190 and Case No. 2023Da302838) (hereinafter referred to as “2024 Supreme Court Rulings”).

This overturns established precedent dating from December 18, 2013 (Case No. 2012Da89399), where the Supreme Court, through its *en banc* judgment, ruled that certain bonus payments that are paid only to employees employed on a specific payment date, etc. do not qualify as ordinary wages because such payments cannot be deemed to be paid “as consideration for the employees’ prescribed work” and “on a fixed basis”. The Supreme Court further confirmed this ruling in another court case on September 26, 2017. However, these prior cases have now been overturned by the 2024 Supreme Court Rulings.

2. Summary of 2024 Supreme Court Rulings

A. “Fixedness” is no longer one of the criteria for determining ordinary wages

The Supreme Court excluded “fixedness” as one of the criteria for determining ordinary wages based on the following five reasons:

(1) **Concept of “fixedness” has no statutory basis:** The legal concept of ordinary wages cannot be modified by the parties without a statutory basis. However, there is no statutory basis to require “fixedness” as one of the criteria for determining ordinary wages, even in the definition of ordinary wages under the Labor Standards Act. If we allow the parties to require “fixedness” as one of the criteria for determining ordinary wages, then it results in unfairly narrowing the scope of ordinary wages.

(2) Circumvents the “mandatory” nature of ordinary wages: Requiring “fixedness” can allow the parties to easily circumvent the “mandatory” nature of ordinary wages by adding certain conditions such as continued employment as of the payment date.

(3) Excluding certain bonus payments by using “fixedness” concept does not fully reflect the true value of the prescribed work: The concept of ordinary wages is to evaluate the true value of the prescribed work of each employee and therefore must reflect the total value of such work.

(4) Difficulty in calculating ordinary wages in advance: Ordinary wages should be calculable in advance of providing extended work (overtime, nighttime and holiday work), as they serve as a tool to determine statutory allowances for such extended work. As such, it should exclude any future factors not fixable in advance and follow faithfully its prerequisite concept of providing the prescribed work in full. In light of this, the Supreme Court states that certain bonus payments that are conditioned on a certain number of working days which is within the normal working days of the employee’s prescribed work can be qualified as ordinary wages assuming they also satisfy the other requirements of regularity and uniformity. To the contrary, wages that are conditioned on a certain number of working days that is in excess of the normal working days of the employee’s prescribed work should not be considered as ordinary wages.

(5) Does not align with policy goals of limiting overtime work: The concept of ordinary wages must align with the goal of the Labor Standards Act, which aims to limit extended work and give employees compensation corresponding to such work. The requirement of “fixedness” undermines this policy goal by unfairly narrowing the scope of ordinary wages.

B. Redefining Ordinary Wages

In the 2024 Supreme Court Rulings, the Supreme Court removed “fixedness” as one of the criteria for determining ordinary wages. Therefore, ordinary wages now refers to payments that are paid regularly and uniformly as compensation for the employee’s prescribed work. In other words, certain bonus payments that are paid regularly and uniformly, regardless of the conditions attached thereto or possibility of their fulfillment, will qualify as ordinary wages.

More specifically:

(1) Certain bonus payments conditioned on continued employment should no longer be excluded from ordinary wages.

(2) Certain bonus payments conditioned on a certain number of working days should no longer be excluded from ordinary wages if such number of working days is within the normal number of working days of the employee’s prescribed work. However, if such number of working days is in excess of the normal number of working days of the employee’s prescribed work it should remain excluded from ordinary wages.

(3) Even under the new criteria of determining ordinary wages, performance bonuses, which depend on specific work performance or evaluations, generally do not qualify as ordinary wages. However, if there is a minimum amount paid as a performance bonus regardless of the employee’s actual performance, then such an amount should be included as ordinary wages.

C. Limitation of the scope of the 2024 Supreme Court Rulings

The Supreme Court stated that since the 2024 Supreme Court Rulings have a significant impact on collective relations between the employer and the employee involving ordinary wages, the new criteria should not be applied retroactively in order to ensure and protect legal stability and trust established prior to the 2024 Supreme Court Rulings. Therefore, the new criteria under the 2024 Supreme Court Rulings should only be applied to the calculation of ordinary wages to be made after the date of the ruling (December 19, 2024).

However, the Supreme Court made it clear that the new criteria under the 2024 Supreme Court Rulings shall apply to the relevant ordinary wages cases in progress and still pending in the relevant courts.

3. Significance and implications of the 2024 Supreme Court Rulings

The 2024 Supreme Court Rulings drastically change the concept of ordinary wages from established precedents, and are expected to cause great confusion in the wage system, labor-management agreements, and practices that were formed based on such prior precedents from 2013. Accordingly, depending on the existing practices, the economic burden on each workplace may increase significantly, and may require a major reorganization of the wage system.

In consideration of these points, businesses should analyze the impact of the 2024 Supreme Court Rulings and, if necessary, make any relevant changes to their existing wage system.

Receiving professional advice from experts will be crucial to understand and address the impact of the 2024 Supreme Court Rulings. Shin & Kim LLC is a recognized leader (Chambers Tier 1) for labor and employment issues and has decades of knowledge and experience in consulting and litigating cases related to ordinary wages and reorganization of wage systems. If you would like assistance on these matters, please contact Shin & Kim LLC.

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