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MOEL Issues Guidelines on the Subjects of Industrial Disputes, Including Performance Bonuses

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The Ministry of Employment and Labor (the "**MOEL**") recently issued the "Guidelines on the Subjects of Industrial Disputes, Including Performance Bonuses" (the "**Guidelines**").

*The original Korean version of the Guidelines is available for download here.

Earlier this year, amendments to the Trade Union and Labor Relations Adjustment Act (the "Trade Union Act"), commonly known as the "**Yellow Envelope Act**," took effect. Article 2(5) of the amended Trade Union Act expanded the scope of industrial disputes to include "disagreements over claims relating to business management decisions that affect working conditions."

Although the MOEL published the interpretive guidelines for the Yellow Envelope Act (the "**Guidelines**") in February 2026, questions remained as to whether matters such as performance bonuses and regional investment decisions could be considered subjects of industrial disputes. The MOEL explained that it had prepared the Guidelines to clarify the criteria for determining the subjects of industrial disputes under the Trade Union Act, enhance predictability in the workplace, and thereby help prevent labor-management disputes. This was particularly important since, amid the industrial transformation driven by technologies such as artificial intelligence, labor-management negotiations had increasingly involved demands for performance bonuses tied to a certain percentage of operating profits, as well as questions regarding the appropriateness of corporate strategic investment decisions.

Below, we examine the Guidelines in greater detail, focusing on their key provisions by topic.

1. Can Demands for Performance Bonuses Constitute Mandatory Subjects of Collective Bargaining? "Demands That Effectively Restrict a Company's Freedom to Conduct Business or the Interests of Third

Parties, Such as the State or Shareholders, Cannot Be Regarded as Mandatory Subjects of Collective Bargaining"

The Guidelines state that performance bonuses affecting employees' working conditions, including wages, welfare, and other benefits, constitute mandatory subjects of collective bargaining. At the same time, they explain that where a demand for performance bonuses would effectively restrict a company's freedom to conduct business or affect the interests of third parties, such as the state or shareholders, it is not appropriate for the state to afford institutional protection to such a demand by treating it as a mandatory subject of collective bargaining.

Specifically, the Guidelines provide that demands for performance bonuses tied to financial metrics such as revenue, operating profit, or net profit cannot be regarded as mandatory subjects of collective bargaining because they pose a risk of infringing upon the interests of third parties, including the state, investors, and shareholders, and unduly restrict the company's business judgment and decision-making. The Guidelines further explain that it is desirable for management performance bonuses not to be linked to corporate profits at a specific ratio, but rather to be specified as a certain percentage of annual salary or base pay, or as a fixed amount; alternatively, it is desirable for labor and management to consult and decide on the payment criteria, timing, and recipients of management performance bonuses through a method that is not linked to corporate profits at a specific ratio.

In other words, the Guidelines appear to indicate that a demand for performance bonuses may constitute a mandatory subject of collective bargaining where: (i) the bonuses are not tied to a fixed percentage of corporate profits; and (ii) they are instead sought as a specified percentage of annual or base salary, or as a fixed amount.

However, even under the interpretive criteria set out in the Guidelines, it remains unclear whether a demand for an overly excessive performance bonus—for example, 500% of annual salary or several hundred million won—would be regarded as inconsistent with the Guidelines where the demand, although not formally tied to a fixed percentage of corporate profits, is made based on the fact that the company earned enormous profit.

2. Can Management Decisions Constitute Subjects of Industrial Disputes? "The Answer Depends on the Specific Facts and Circumstances of Each Case"

The Guidelines explain that whether a management decision constitutes a subject of an industrial dispute will depend on the specific facts and circumstances of each case.

The Guidelines state that whether a business management decision constitutes a subject of an industrial dispute must be determined on a case-by-case and specific basis, striking a balance between the 'three rights of labor' and 'freedom of business,' while taking into account its impact on working conditions." The Guidelines specifically outline that, among other factors, consideration should be given to: (i) whether, while the relevant management decision has been reviewed, planned, finalized, or announced, there is only a possibility that working conditions may change; and (ii) whether

detailed implementation plans, such as workforce management plans, have been developed to the point where changes in working conditions can be objectively anticipated.

The Guidelines provide the following examples to illustrate how to determine whether a matter constitutes a mandatory subject of collective bargaining:

Management Decision	NOT a Mandatory Subject of Collective Bargaining	Mandatory Subject of Collective Bargaining
Corporate Investments, Such as Establishment or Relocation of a Plant	The decision to make corporate investments, such as establishing or relocating a plant	Where a workforce management plan or similar implementation plan is being developed or has been finalized and confirmed or announced, which includes employee reassignment to a newly constructed plant resulting from restructuring, changes in workplace, job duties, or work arrangements, and relocation-related support measures (e.g., allowances and commuting or relocation expenses), etc.
Sale and Acquisition of a Business	The decision to sell or acquire a business	Succession of employment, measures to avoid redundancies and ensure employment stability, and the maintenance of existing working conditions, etc.
Introduction of New Technologies, Including Artificial Intelligence	The decision to introduce new technologies	Reassignment resulting from restructuring, measures to ensure employment stability, adjustments to working hours, and health and safety measures relating to changes in work methods, etc.
Other Matters	Opposition to the appointment of management personnel and demands for management replacement; voting in favor of or against resolutions of the board of directors or shareholders' meeting; and demands concerning the participation of a particular shareholder or investor or changes to the company's shareholder structure	—

Thus, the Guidelines provide that management decisions, such as decisions to make corporate investments (including

establishing or relocating a plant), sell or acquire a business, or introduce new technologies, are not mandatory subjects of collective bargaining, even if they may ultimately affect employees' working conditions.

However, the Guidelines take the position that matters relating to working conditions affected by management decisions may become subjects of collective bargaining once workforce management plans or similar implementation plans have been announced, or, during the implementation process, such plans have been sufficiently developed that changes to working conditions can be objectively anticipated.

For example, where, in connection with the announcement of a plant relocation or construction, a workforce restructuring or employee reassignment plan is announced such that changes to working conditions can be objectively anticipated, the following matters may constitute subjects of collective bargaining: reassignment to a newly established plant; changes in workplace, job duties, or work arrangements; and relocation-related support measures, such as allowances and commuting or relocation expenses.

In practice, however, such management decisions are highly likely to result in workforce restructuring or employee reassignments. Labor unions may therefore oppose those decisions at a later stage by demanding collective bargaining or initiating industrial action. As a result, companies may find it more difficult to implement the decisions as originally planned, suggesting that the Guidelines may ultimately do little more than postpone the timing of bargaining demands or industrial action.

3. Implications

The Guidelines constitute administrative guidance setting out general interpretive criteria for determining whether performance bonuses and management decisions qualify as mandatory subjects of collective bargaining. In practice, however, the issues that labor unions seek to raise in collective bargaining are likely to be considerably more varied and complex than the matters addressed or illustrated in the Guidelines. This is particularly so because labor unions may frame their bargaining demands in a manner intended to avoid or circumvent the interpretive framework set out in the Guidelines.

Accordingly, it will be important to monitor future decisions of the Labor Relations Commission and the courts regarding the scope of industrial disputes, particularly as they relate to performance bonuses and management decisions. In addition, given that the Trade Union Act provides that an unjustified refusal to bargain constitutes an unfair labor practice, and because labor unions may lawfully initiate industrial action over the relevant matters, companies should not automatically reject a union's request for collective bargaining solely on the ground that it is inconsistent with the Guidelines. Instead, companies should carefully assess how to respond in light of the specific circumstances, ideally with the advice of experienced counsel.

Shin & Kim's Yellow Envelope Act Task Force closely monitors legislative, regulatory, and judicial developments relating to the Act and advises clients on their practical implications. Drawing on this expertise, we advise companies on a broad range of labor law issues and support clients in responding to collective bargaining through our Collective Bargaining

Support Center. For further information regarding the Guidelines or advice on labor-management issues arising in connection with the Guidelines, please contact any of the attorneys listed above.

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