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## RULING ON THE APPLICATION OF THE LABOR STANDARDS ACT TO A FOREIGN ENTITY & RETALIATORY DISMISSAL CLAIM

*Key Takeaways: Foreign Companies seeking to establish a small (less than 5 employees locally) local Korean branch or an office are exempt from certain restrictions under the stringent Korean Labor Standard Act ("**LSA**"). Clear and precise employment contracts are also essential to avoid unintended application of broader LSA restrictions.*

In a recent case, the Seoul Central District Court ruled in favor of BKL's argument, holding that the 'number of regular employees' used to determine the applicability of the LSA to Korean branches of foreign-invested companies does not include overseas employees at the headquarters. As a result, the court found that the restrictions on dismissal and workplace harassment under the LSA did not apply to the Korean branch of a foreign-invested company with fewer than five employees in Korea.

Additionally, the court determined that an employee's dismissal was not retaliatory, despite occurring shortly after the employee filed a sexual harassment complaint under the Equal Employment Opportunity and Work-Family Balance Assistance Act, as the employer had followed legal procedures and had valid grounds for termination.

### I. BACKGROUND OF THE CASE

The defendant, the Korean branch of a foreign investment company (the "**Company**"), operates a local office in Korea and employed the plaintiff (the "**Employee**") under an employment contract.

The Employee alleged sexual and workplace harassment by the representative director (the "**Representative Director**") of the Company and reported this to the headquarters. In response, the headquarters engaged BKL to investigate, in which BKL concluded that the reported behavior did not meet the legal criteria for 'workplace harassment' under the relevant laws but identified certain inappropriate conduct, which led the Company to issue a verbal warning to the Representative Director.

Following BKL's advice, the Company took immediate action to accommodate the Employee by allowing remote work and offered an opportunity for internal assessments for a potential transfer to the headquarters, though this transfer ultimately did not take place. However, the Employee subsequently failed to perform assigned duties and refused legitimate instructions from the Representative Director, repeatedly asserting harassment allegations. As a result, the Company dismissed the Employee on the grounds of non-performance of duties. The Employee subsequently filed a legal claim challenging the dismissal's validity, seeking unpaid wages and damages.

## II. KEY POINTS OF THE COURT'S DECISION

### A. Criteria for Determining "Five or More Regular Employees"

The Employee argued that the total employee count of the Company includes overseas employees and the restrictions against dismissal and workplace harassment under the LSA are fully applicable.

The Company, represented by BKL, argued based on recent Supreme Court precedents (refer to Supreme Court Decisions 2023Du37391 and 2023Du46074, both rendered on October 25, 2024), that in international employment relationships where a foreign company establishes a corporation, branch, or a workplace in Korea and employs workers, the determination of whether such an entity qualifies as a "business or workplace employing at least five employees on a regular basis" should, in principle, be based on the number of employees working in Korea.

The court upheld the Company's position, noting the Korean branch employed only three regular employees, thus the restrictions on dismissal and workplace harassment under the LSA were not applicable.

### B. Valid Grounds for Dismissal

The Employee argued that since the employment contract stipulated that dismissal was permitted "in cases where just cause exists," the restrictions on dismissal under Article 23(1) of the LSA which allows dismissal only for 'justifiable cause' should apply to Employee under the contractual terms.

The Company, however, argued that the employment contract explicitly referred to "just cause as set forth in the Rules of Employment and Company regulations" and that, under the contract, there was no specific reason to apply the 'justifiable cause' standard set forth in the LSA. The court agreed with BKL's argument, concluding that the Employee's sustained refusal to perform assigned tasks violated company policy and justified dismissal under the employment contract without applying the LSA's restrictions.

### C. Evaluation of Retaliatory Dismissal Claims

The Employee claimed that the dismissal was the Company's retaliation for reporting harassment. In response, the Company emphasized that, based on the following factual grounds, the dismissal was a legitimate disciplinary measure rather than retaliation:

- Immediate engagement of a law firm (BKL) for a thorough investigation and subsequent issuance of a verbal warning to the Representative Director;
- Practical limitations within the small workplace, necessitating the Employee's continued interaction with and receipt of directions from the Representative Director unless the sexual harassment allegation was substantiated; and
- Legitimate dismissal based on the Employee's repeated refusal to follow legitimate work directives within the Employee's job scope, unrelated to the harassment complaint.

The court accepted the Company's arguments, deciding that the dismissal was not retaliatory, and dismissed the Employee's claim for damages based on workplace sexual harassment or workplace harassment.

### III. IMPLICATIONS

This decision applies recent Supreme Court precedents on counting regular employees in foreign-invested companies under Korean labor law, clarifying exemptions from the LSA's restrictions on dismissal and workplace harassment for small workplaces with fewer than five employees. This may incentivize foreign companies to establish smaller-scale operations in Korea to reduce regulatory burdens. However, companies must carefully assess employee counts, including the legal status of executives (i.e., whether they qualify as employees) and unexpected fluctuations in workforce size. Clear and precise employment contracts are also essential to avoid unintended application of broader LSA restrictions.

Furthermore, this decision is significant in clarifying standards for retaliatory dismissal claims following harassment reports. It confirms that filing a harassment complaint does not automatically shield employees from legitimate disciplinary action. To mitigate risks associated with retaliation claims, companies should implement thorough procedures for handling harassment complaints and disciplinary actions.

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BKL has extensive experience advising multinational corporations and foreign-invested companies on complex employment and labor law matters in Korea. Our Employment and Labor Group provides strategic guidance on regulatory compliance, workplace policies, employee disputes, and corporate restructuring, helping clients navigate Korea's evolving labor landscape while mitigating legal risks. Please feel free to contact our professionals with any inquiries.

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