

BKL HR Issue Report

BAE, KIM & LEE LLC
Labor & Employment Group



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Occupational Accident Response Team

Providing Comprehensive Legal Solutions Grounded in Practical, On-the-Ground Understanding

Work related to occupational accidents spans multiple areas, including applications for insurance (medical care) benefits under the Industrial Accident Compensation Insurance Act (the “**IACI Act**”), determinations by the Korea Workers’ Compensation and Welfare Service on whether to approve such applications, administrative appeals and re-appeals, administrative litigation, civil damage claims, workplace harassment investigations and related HR/labor measures, and compensation negotiations in cases involving serious industrial accidents.

In particular, there has recently been a significant increase in applications and disputes concerning mental health conditions such as depressive episodes, adjustment disorders, and anxiety disorders, often in connection with workplace harassment, repeated conflicts with colleagues, and excessive work-related stress, leading to a corresponding rise in demand for related legal services.

In response to these growing needs, the Occupational Accident Response Team of BKL’s Labor & Employment Group provides comprehensive advisory and practical solutions covering the entire process. Based on an initial assessment of the likelihood of recognition of an occupational accident under the IACI Act, the team supports clients in preparing and submitting materials and responses during the insurance benefit application and review stages; representing insured parties and submitting opinions in proceedings before the Korea Workers’ Compensation and Welfare Service and the Occupational Disease Judgment Committee (including attendance at hearings); handling administrative appeals, re-appeals, and administrative litigation; responding to civil damage claims; and advising on investigations and follow-up HR/labor measures in connection with workplace harassment issues.

Recognizing that a single occupational accident case often expands into broader administrative, civil, and HR/labor matters, the team goes beyond handling individual cases in isolation. Instead, it develops integrated response strategies from a comprehensive perspective, ensuring that facts, statements, evidence, and legal arguments presented at each stage remain consistent and do not conflict with one another across different proceedings.

Recent Key Representative Matters of BKL



1. Advisory on Whether Management Performance Bonuses Constitute “Wages”

The Supreme Court of Korea has recently issued a series of decisions in 2026, addressing whether management performance bonuses paid by private companies qualify as “wages.” The Court reaffirmed the established legal principles that, for such bonuses to be recognized as wages, (i) the employer must have a legal obligation to make the payment, and (ii) the payment must constitute consideration for work performed. In particular, the Court clarified that the classification depends on whether the bonus is characterized as a “post hoc distribution of management performance” or a “post hoc settlement of employee performance,” with the determination of wage status differing accordingly.

In light of these rulings, companies are increasingly focused on assessing whether their own performance bonus schemes fall within the scope of wages. BKL has developed a structured internal checklist based on the criteria set out in the four Supreme Court decisions and conducts detailed reviews of each client’s bonus system, including the legal basis for payment, payment conditions, key performance indicators, and actual operational practices. Through this analysis, we assess whether a given scheme is more akin to a “distribution of management performance” or a “settlement of employee performance,” and provide practical recommendations to mitigate wage-related risks and prepare for potential disputes.

2. Advisory on Responding to Bargaining Demands and Developing Collective Bargaining Strategies Following the Implementation of the “Yellow Envelope Act”

Since the implementation of the so-called “Yellow Envelope Act” on March 10, 2026, a growing number of labor unions across various industries have been demanding collective bargaining directly with principal contractors. At the same time, a range of disputes premised on the recognition of principal contractor status as an “employer” have emerged, including applications for corrective orders regarding failure to publicly announce bargaining demands and petitions for separation of bargaining units.



In response, BKL provides tailored advice by comprehensively considering each client's industry, business structure, the union's organizational form and demands, regulatory trends at the Ministry of Employment and Labor and the Labor Relations Commission, as well as comparable cases and industry practices. Based on this analysis, we propose the most appropriate response strategies and bargaining approaches for each specific situation.

More specifically, we offer end-to-end advisory services covering the formulation of response strategies at the initial bargaining demand stage, preparation of formal communications, review of whether and how to publicly announce bargaining demands, response to single bargaining channel procedures and requests for separation of bargaining units, representation in Labor Relations Commission corrective proceedings and remedies, assessment of criminal risks related to unfair labor practices, and support throughout the main bargaining process and any subsequent disputes. In particular, drawing on extensive hands-on experience (including direct participation as bargaining committee members) our team provides highly practical and strategic guidance. We also recognize that collective bargaining with subcontractor unions under the Yellow Envelope Act presents distinct dynamics and issues compared to traditional bargaining, and we deliver specialized strategies tailored to these new challenges.

3. Case Establishing that Voluntary Stay at the Workplace Does Not Constitute Overtime or Holiday Work

In this case, employees working at a directly operated service center of a defendant company engaged in automobile manufacturing and maintenance (i) remained at the workplace for two hours per day despite the company instructing only one hour of overtime work per day, and sought payment for an additional hour of overtime beyond what had already been paid, and (ii) remained at the workplace on a temporary public holiday (August 17, 2020) despite the company prohibiting work on that day, and claimed holiday work allowances.

BKL argued, based on the language, purpose, and intent of the Labor Standards Act provisions governing overtime and holiday work, that such work must be performed pursuant to the employer's instruction and with the employee's consent, and that an



employer does not incur an obligation to pay additional allowances merely because employees unilaterally choose to remain at the workplace or express a desire to work. The court accepted this argument and dismissed the plaintiffs' claims.

4. Case Upholding the Validity of Disciplinary Action for Violation of Corporate Card Usage Guidelines

The company provided the plaintiff, a sales employee, with a corporate card and guidelines allowing alcohol and tobacco purchases only for business entertainment purposes. After an internal investigation found that the plaintiff had used the card to purchase alcohol, tobacco, and food items near his residence, the company treated the use as corporate card misuse/embezzlement and imposed a one-month suspension.

The plaintiff argued that, given the nature of sales work, it was difficult to distinguish business use from personal use and that the company had broadly permitted purchases of entertainment-related items. Although the exact circumstances of each purchase could not be objectively verified, BKL successfully established disciplinary grounds based on circumstantial evidence, including investigation statements, investigator testimony, and testimony from personnel responsible for corporate card guidelines. The disciplinary action was upheld as valid.

This case is noteworthy in that, in many areas of HR management, it is difficult for companies to prescribe in advance detailed and individualized standards governing all employee conduct, which can give rise to disputes over allegedly unfair disciplinary measures. The decision recognized that, in assessing the legitimacy of discipline, the purpose and substance of the company's guidelines should be duly considered, and that the reasonableness of the company's investigation, conducted to an objectively appropriate extent for a private entity, rather than an investigative authority, can be sufficient to substantiate employee misconduct.



5. Case Recognizing the Validity of Dismissal for Disciplinary Reasons Due to Unauthorized Disclosure of Employees' Personal Data

The employee, who was responsible for payroll and had access to personnel and compensation data of all employees, engaged in misconduct by sharing sensitive personal information, including salary data, with a spouse working in accounting at another company on three occasions without authorization. Following disciplinary dismissal by the company, the employee filed a petition for remedy for unfair dismissal with the Labor Relations Commission.

The Labor Relations Commission found that the employee's transmission of multiple items containing sensitive personal information to a third party constituted a violation of data protection obligations, and that, given the employee's role in managing company-wide HR information, the breach was serious in nature. Accordingly, the Commission held that the disciplinary dismissal was justified in terms of grounds, proportionality, and procedure.

Representing the company, BKL provided a detailed explanation of the nature of the employee's misconduct and its impact on the company, leading to a decision dismissing the employee's claim for relief. This case is expected to serve as a meaningful precedent in light of the growing societal emphasis on the protection of personal data.

6. Case Where Workplace Harassment Was Not Recognized Despite the Use of Profanity, Based on the Overall Context of the Conversation

The plaintiff filed a civil claim for damages based on alleged tortious conduct, asserting that three supervisors had engaged in workplace harassment, including verbal abuse and profanity, disregard and ridicule, unfair work instructions, and discriminatory treatment. The plaintiff also sought damages against the employer on the basis of vicarious liability.

In connection with this case, the Korea Workers' Compensation and Welfare Service had previously recognized a causal relationship between the defendants' conduct and the plaintiff's medical condition (adjustment disorder), and had determined it to be an occupational disease. However, BKL argued that, in light of the specific



circumstances in which the statements were made, the context of the conversation, and the ordinary relationship between the parties, the statements did not exceed the scope of what is acceptable in the course of work and therefore did not constitute workplace harassment.

Both the trial court and the appellate court accepted this argument, finding that although profanity had been used, the remarks were made in the course of an extended and emotionally charged exchange in which the defendants were responding to the plaintiff's repeated assertions, that there was no evidence of habitual or similar abusive conduct beyond the isolated incident, and that the remarks appeared to relate more to the situation at issue and possible solutions rather than constituting direct personal attacks against the plaintiff. Based on these factors, the courts concluded that the conduct did not amount to workplace harassment and denied the plaintiff's damages claims.

This case is important in that it demonstrates that, even where certain problematic conduct is established, the determination of workplace harassment must be made based on a comprehensive assessment of the specific circumstances and overall context. It is expected to serve as a meaningful precedent in light of the recent increase in broadly asserted workplace harassment claims.

7. Case Securing Denial of Medical Care Benefits in a Claim Alleging an Occupational Disease Due to Workplace Harassment

In this case, an employee who had been disciplined as a perpetrator of workplace harassment and sexual harassment applied for medical care benefits, claiming that an anxiety disorder had arisen from a standby order and the subsequent investigation and disciplinary process. BKL, advising the company, successfully demonstrated that the condition did not constitute an occupational accident, resulting in a denial of the application.

BKL emphasized that the application for benefits was filed approximately one year and seven months after the underlying incident, and that the applicant had a history of repeatedly initiating multiple disputes against the company and its employees, including complaints to the labor authorities and criminal filings. Based on these



circumstances, BKL argued that the application was not driven by a genuine need for treatment but was instead an extension of ongoing disputes. In addition, BKL established that the company's standby order and investigative measures were lawful, and that the alleged mental stress arose not from the standby order itself but from the investigation and disciplinary proceedings concerning the employee's own misconduct.

This case illustrates the importance of a structured approach focusing on the absence of a causal link and the lack of medical necessity where an employee raises occupational accident claims in parallel with multiple disputes against the company.

8. Case Establishing That Information Transmission Through an MES System Does Not Constitute Binding Work Instructions and That Product Packaging Work in an In-House Subcontracting in Manufacturing Does Not Amount to Illegal Dispatch

In this case, employees who performed packaging work as employees of subcontractor Company A within the premises of a steel manufacturing company filed a lawsuit alleging illegal dispatch against the defendant steel company. In prior cases involving the same issue, both the Gwangju District Court and the Gwangju High Court had recognized illegal dispatch, and the first-instance court in this case reached the same conclusion.

In response, BKL undertook an extensive factual and legal analysis, including uncovering decades-old materials to trace the history of the subcontracting relationship, recreating actual on-site operations through video evidence, and highlighting the legal nature of information transmitted through the Manufacturing Execution System (MES), such as packaging specifications and standards. BKL further emphasized the purpose of work manuals and specifications, as well as Company A's discretion and expertise in determining work methods. After one year and six months of proceedings, the Seoul High Court accepted BKL's arguments, found the contractual relationship between the defendant and Company A to be a lawful subcontracting arrangement, reversed the first-instance judgment, and dismissed the plaintiffs' claims.



Although the Supreme Court has previously held that the transmission of work information through an MES may constitute binding work instructions (Supreme Court Decision dated July 28, 2022, Case No. 2016Da40439), leading to a perception equating “MES” with illegal dispatch, the Seoul High Court in this case expressly clarified that, even where information is transmitted through an MES, it does not necessarily amount to binding work instructions when considered in light of the nature of the work and the content of the information provided. This decision is expected to have a significant impact on future in-house subcontracting cases in the manufacturing sector.

Policy Developments



MOEL

Amended Trade Union and Labor Relations Adjustment Act Takes Effect (March 10, 2026)

The amended Trade Union and Labor Relations Adjustment Act took effect on March 10, 2026.

On the first day of implementation, it was reported that 407 subcontractor unions, branches, and chapters submitted bargaining demands to 21 principal contractor workplaces.

National Assembly Passes Bill to Enact the Labor Inspector Duties Act and to Amend the Labor Standards Act and the Employment and Industrial Accident Insurance Premium Collection Act (March 12, 2026)

On March 12, 2026, the National Assembly passed the bill to enact the Labor Inspector Duties Act, as well as bills to amend the Labor Standards Act and the Employment and Industrial Accident Insurance Premium Collection Act.

With the enactment of the Labor Inspector Duties Act, the title “work inspector” will be changed to “labor inspector;” a unified legal basis will be established to govern inspectors’ duties and authority, and certain workplace inspection powers may be delegated to local governments. The amendment to the Labor Standards Act will require amounts corresponding to wages to be separately paid out of subcontracting fees, with the aim of preventing unpaid wages in subcontracting structures, and will increase the penalties for employers responsible for wage arrears to imprisonment of up to five years or a criminal fine of up to KRW 50 million. The amendment to the Employment and Industrial Accident Insurance Premium Collection Act will allow previously reduced industrial accident insurance premiums to be recalculated and imposed where a serious accident occurs at a workplace that had received such premium reductions, thereby strengthening employers’ responsibility for accident prevention.

Recent Supreme Court Decisions on ‘Management Performance Bonuses’



1. Supreme Court: Company A’s “Performance Incentive (PS)” Not Considered Wages, but “Target Incentive (PI)” Recognized as Wages

The Supreme Court held that Company A’s “Performance Incentive (PS),” funded based on EVA, does not constitute wages because it reflects factors beyond employees’ labor, including capital structure, costs, market conditions, and managerial decisions. It was therefore characterized as a post hoc distribution of management performance rather than compensation for work. (Supreme Court Decisions, January 29, 2026, Case Nos. 2021Da249506 (Company A Case))

The Court found that Company A’s “Target Incentive (PI),” which was relatively fixed in advance and determined based on the achievement of financial performance and strategic tasks at the business-unit level, constituted a post hoc settlement of employee performance and qualified as wages, and therefore reversed and remanded the lower court’s decision.

This decision is significant in that the Supreme Court reaffirmed the established legal principles on what constitutes wages and clarified that the determination depends on whether the bonus is characterized as a “distribution of management performance” or a “post hoc settlement of employee performance” directly or closely related to the provision of labor.

For further details on the above decision, as well as the decision rendered on the same day in the Company B case, in which the wage nature of the relevant payment was denied, please refer to the following [link](#).

2. Supreme Court: Company C’s “Productivity Incentive (PI)” and “Profit-Sharing Bonus (PS),” and Company D’s “Performance Bonus” Not Considered Wages

Following its January 29, 2026 decision, the Supreme Court issued subsequent decisions holding that Company C’s PI and PS, as well as Company D’s Performance Bonus, do not constitute wages. Notably, although Company C’s PI was paid on an individual basis and appeared similar in form to Company A’s PI, the Court denied wage status. (Supreme Court Decisions, February 12, 2026, Case Nos. 2021Da219994 (Company C Case), 2021Da262592, and 2021Da265102 (Company D Case))



The Court emphasized that the payment criteria were not predetermined in employment or compensation rules, but newly agreed each year through labor-management negotiations, and that payment depended on factors beyond employees' control, such as operating profit and overall business conditions. It further held that Company C's PS and Company D's bonus were based on EVA, net income, and other management performance indicators significantly affected by external factors, and therefore constituted post hoc distributions of management performance rather than compensation for labor.

This decision is meaningful in clarifying that even if a bonus scheme appears to use labor-related metrics (e.g., productivity indicators), wage status may still be denied if the actual payment depends on factors beyond employees' control. It also confirms that if the payment criteria are linked to indicators not closely related to the provision of labor (such as net income), the element of compensation for work may not be recognized.

3. Supreme Court: Company E's Management Performance Bonus Linked to Net Income Not Considered Wages

The Supreme Court held that Company E's management performance bonus linked to net income does not constitute wages. Although the bonus had been paid for 16 years, the Court denied any payment obligation based on established labor practice, noting the absence of express provisions in employment or wage rules and the fact that the payment criteria were set on a year-by-year basis and changed multiple times. (Supreme Court Decision, February 26, 2026, Case No. 2022Da215715)

The Court reiterated that long-term payment alone is insufficient to establish a binding labor practice. In particular, where the payment and payment criteria for management performance bonuses are newly determined each year, it is difficult to find that a normative expectation that such bonuses would continue to be paid in the same manner in the future had been established between employers and employees.

Furthermore, consistent with its earlier decisions, the Court reaffirmed that where the payment and amount of bonuses are determined based on management performance indicators such as net income, and where there is significant variability in payment levels, such bonuses are more akin to profit-sharing in nature. As a result, it is difficult to recognize them as compensation for labor.



4. Supreme Court: Company F’s “Special Performance Bonus,” Company G’s “Management Performance Bonus,” and Company H’s “Performance Bonus” All Not Considered Wages

The Supreme Court held that Company F’s Special Performance Bonus, Company G’s Management Performance Bonus, and Company H’s Performance Bonus do not constitute wages. The Court reasoned that where the key indicators determining the source or payment of bonuses are net income, operating profit, or similar metrics, such indicators are influenced by external factors beyond employees’ labor, including capital structure, cost levels, market conditions, and managerial decisions. (Supreme Court Decisions, March 12, 2026, Case Nos. 2021Da285182 and 2023Da269641, 2023Da269658 (Company F), 2025Da210219 (Company G), and 2023Da249906 (Company H)).

Notably, in the Company F case, the Court acknowledged that the employer had a payment obligation once predefined criteria were met and that the bonus had been paid annually. Nevertheless, it denied wage status because the bonus lacked the element of compensation for labor. This reaffirms that a payment obligation alone is insufficient, and that compensation for labor must also be established for a bonus to qualify as wages.

Labor & Employment Group News



Webinar on “The Yellow Envelope Act and Collective Bargaining Practice”

The Labor & Employment Group hosted a webinar on March 4, 2026 under the theme “The Yellow Envelope Act and Collective Bargaining Practice.” The webinar was organized in anticipation of the implementation of the Yellow Envelope Act, with the aim of comprehensively reviewing the Ministry of Employment and Labor’s manuals and guidelines, and outlining key issues expected to arise in practice along with appropriate corporate response strategies.

The webinar was moderated by Soowan Kang (Attorney) and consisted of three sessions. In Session 1, Youngmin Kim (Senior CPLA) presented on “Pre-Bargaining Response Strategies”; in Session 2, Ben Gyowoong Gu (Partner) covered “Post-Commencement Bargaining Strategies”; and in Session 3, Sangmin Kim (Head of the Group) addressed “Dispute Resolution in Collective Bargaining.” Each session examined key issues that companies may encounter following the implementation of the Yellow Envelope Act, breaking them down by stage and providing practical guidance and key considerations.

The webinar attracted over 1,000 registrants and concluded successfully, receiving strong interest and positive feedback from HR professionals and in-house legal teams.

Team News: New Additions to the Labor & Employment Group – Dongjun Ma (Senior CPLA), Kugil Song (Senior Advisor), and Seohyun Park (Attorney)

Dongjun Ma (Senior CPLA) joined BKL's Labor & Employment Group in January 2026. Mr. Ma brings approximately 36 years of experience, having served in regional labor offices of the Ministry of Employment and Labor in Busan, Ulsan, and Gyeongnam, as well as at the Busan Regional Labor Relations Commission. He possesses extensive expertise and practical experience in industrial accidents and occupational safety. Upon joining BKL, Mr. Ma stated: "Drawing on my field-based experience at the Ministry of Employment and Labor, I aim to bridge legal theory and workplace realities, and to provide practical solutions and response strategies."

Kugil Song (Senior Advisor) joined the group in April 2026. Mr. Song previously worked at SK Chemicals, where he was involved in the design and construction of petrochemical plants, and later at the Korea Occupational Safety and Health Agency, where he served as Head of the Special Investigation Team for Serious Accidents and subsequently as Head of the Central Accident Investigation Unit, leading investigations into major and high-profile incidents. He commented: "Based on my years of hands-on experience at KOSHA, I will provide practical and sophisticated support in industrial accident response, occupational safety and health management system reviews, response to regulatory authorities, and various disputes."

Seohyun Park (Attorney) joined the group in March 2026. Mr. Park graduated from Korea University and Hanyang University Law School, passed the Korean Bar Examination in 2023, and gained practical experience at law firms including Majung and D&A LLC. He stated: "I am very pleased to join BKL's Labor & Employment Group. Building on my experience in labor and occupational safety matters, I will strive to deliver legal services that provide meaningful and practical value to our clients."

BKL stood out as being client-focused, service-minded, and professional with deep expertise and solid teamwork.

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