

BKL HR Issue Report

BAE, KIM & LEE LLC
Labor & Employment Group



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Integrated Advisory on HR/Labor Issues for Global Companies' Operations in Korea

When global companies operate businesses in Korea, various HR and labor issues arise as the headquarters' global HR/compliance policies, local labor laws and regulations, and labor-management relations practices intersect. In particular, key HR decisions, including recruitment, performance evaluation, compensation, discipline/dismissal, etc. must be managed consistently in accordance with global standards while simultaneously satisfying the procedures and criteria required under Korean labor laws.

Global HR Team of BKL's Labor and Employment Group provides comprehensive advisory services on HR and labor issues faced by global companies operating businesses in Korea. The team analyzes issues arising at the intersection of the company's policies and Korean labor laws and regulations, and proposes practical solutions to ensure that the Korean subsidiary's HR/labor operations comply with Korean labor laws. The team also supports communication among headquarters, regional headquarters and the Korean subsidiary, so that legal issues and risks are clearly conveyed, taking into account the decision-making structure and internal reporting systems of global companies.

HR issues of global companies cannot be resolved simply by determining whether Korean local laws apply. Rather than addressing individual matters in a fragmented manner, it is important for companies to proactively identify risks and establish a consistent response strategy that harmonizes the procedures required under local laws with the operating standards of a global enterprise.

Global HR Team possesses substantial expertise particularly in: (i) review of the local applicability and legal risks of global headquarters' HR policies, (ii) advisory on discipline, dismissal, voluntary resignation, organizational restructuring and workforce reduction, (iii) response to internal reports and investigations involving workplace harassment,

discrimination, and personnel disadvantages, (iv) response to collective labor-management relations issues such as labor unions and labor-management councils and (v) advisory on global headquarters reporting, internal review materials, and employee communications.

Global HR Team is led by Partner Attorneys [Wookrae Lee](#), [Seongsoo Kim](#), and [Ben Gyowoong Gu](#), Senior Foreign Attorney [Bochan Kim](#), and Attorney [Soowan Kang](#) overseeing key practice areas. Foreign Attorney [George Hyojin Lee](#) and Certified Public Labor Attorney [Jihyun Baik](#) also participate as core members, providing practical advisory services on local HR and labor issues for global companies. For Japanese companies, Partner Attorneys [Jae Gu Kim](#), and [Jinwoo Lee](#), Senior Certified Public Labor Attorney [Youngmin Kim](#), and Certified Public Labor Attorney [Bokyung Kim](#) provide advisory services reflecting each country's characteristics, while for Chinese companies, Senior Foreign Attorneys [Yongquan Chi](#) and [Yingjie Jin](#) handle advisory matters.

Attorney [Soowan Kang](#), a core member of Global HR Team who is admitted to the New York State Bar and has experience working at a global law firm, stated "For HR issues of global companies, it is important to accurately understand the intersection between headquarters' policies and Korean labor laws and regulations, and to present implementation measures suited to local practices." Foreign Attorney [George Hyojin Lee](#) noted "We provide practical advisory services so that the Korean subsidiary can respond to HR issues in a stable manner, taking into account the decision-making structure and communication methods of global companies." Additionally, Certified Public Labor Attorney [Jihyun Baik](#) stated "The HR and labor issues that global companies face in Korea require responses that go beyond simple legal review and consider the decision-making process between headquarters and the Korean subsidiary, the application of internal policies, and employee communications."

Recent Key Representative Matters by BKL



1. Supreme Court En Banc Decision Denying Principal Employer's Bargaining Obligation

A labor union organized by subcontractor workers argued that the principal employer bore a collective bargaining obligation under the former Trade Union Act, even in the absence of an employment contract relationship, based on its alleged "substantial control" over working conditions.

BKL represented the principal employer from the first instance through the Supreme Court en banc, consistently arguing that the collective bargaining obligation under the former Trade Union Act was limited to parties in an employment contract relationship, and that strict interpretation was required given the criminal penalties for refusal to bargain.

The Supreme Court en banc accepted BKL's arguments, holding that a principal employer without an express or implied employment contract relationship does not bear a collective bargaining obligation under the former Trade Union Act. This decision clarified the prior jurisprudence recognizing such obligation based on "substantial control" and is expected to serve as an important reference for future determinations under the amended Trade Union Act.

2. Supreme Court Decision Denying Wage Nature of "Out-of-Town Work" Allowance as a Reimbursement of Actual Expenses

The plaintiffs claimed underpayment of statutory allowances and sought unpaid amounts and severance pay differences, arguing that an "out-of-town work" allowance should be included in average wages and that 20% annual delay interest under the Labor Standards Act should apply to interim settlement of severance pay.

BKL demonstrated that the allowance was a reimbursement-type payment for additional housing/rental costs, paid upon submission of supporting documents and internal review, rather than wages, and that the statutory 20% delay interest did not apply to interim settlement of severance pay.

The Seoul High Court and the Supreme Court accepted BKL's arguments, holding that the "out-of-town work" allowance constituted a reimbursement-type payment and could not be regarded as wages, and that delay interest under the Labor Standards



Act did not apply to interim settlement of severance pay.

This decision is significant in confirming, at the Supreme Court level, the “wage” analysis for reimbursement-type payments and the non-application of the high statutory delay interest rate to interim settlement of severance pay.

3. Successful Defense against Cumulative Annual Salary System

The defendant company introduced a “cumulative annual salary system” in 2017, under which annual salary increases or decreases cumulatively based on performance evaluations. A former employee challenged the system as an invalid disadvantageous amendment to the rules of employment.

The core issue was whether the consent procedure under Article 94(1) of the Labor Standards Act had been satisfied, given that the initial agreement in 2015 with a then non-majority union did not include specific implementation methods.

BKL argued that the system was validly introduced only when a majority union consented to the revised implementation guidelines on December 21, 2016, and that the agreement in 2015 alone could not have been implemented. The first instance court accepted BKL’s arguments and rejected all of the plaintiff’s claims, and the appellate court upheld the judgment.

4. Rejection of Renewal Expectation for Post-Retirement Fixed-Term Contract

A company converted a post-retirement worker’s open-ended employment contract into a three-month fixed-term contract by mutual agreement. Upon expiration of the contract, the worker filed for unfair dismissal, claiming that the conversion was involuntary and that an “expectation of renewal” had arisen based on an alleged promise of extension upon patent filing.

BKL demonstrated that the worker had voluntarily consented to the conversion, that the patent filing request was incidental to the worker’s ordinary duties rather than a renewal condition, and that the worker’s failure to file a patent provided reasonable grounds for non-renewal.

The Labor Relations Commission accepted BKL’s arguments and determined that



the fixed-term contract naturally expired, with no dismissal having occurred. This confirmed that conversion to fixed-term employment may be recognized where the worker's clear intent is established, and that an expectation of renewal is not automatically established based on mere assertions.

5. No Violation Found in Childcare Leave Reinstatement Dispute

An airline cabin crew member returning from childcare leave was required to undergo retraining before reinstatement due to mandatory flight qualification requirements. The company proposed a temporary assignment pending retraining, but the worker refused and claimed violations including disadvantageous treatment for using childcare leave, breach of the reinstatement obligation, and unpaid wages.

BKL argued that the temporary measures were necessitated by mandatory qualification requirements and constituted a legitimate exercise of personnel management authority, not disadvantageous treatment based on the use of childcare leave.

BKL successfully demonstrated that the claims related to temporary personnel management measures prior to retraining, and that the company had not refused the worker's return or taken measures premised on termination. The labor office accepted BKL's position and closed the matter with no violation found.

6. Validity of Disciplinary Dismissal and Criminal Referral Secured for Accepting Money from Job-related Persons, Filing False Business Trips, etc.

A worker responsible for managing association assets was disciplinarily dismissed for misconduct, including unlawful fund lending in violation of association regulations and accepting money from project-related persons between July 2020 and February 2024. The Seoul Regional Labor Relations Commission initially recognized only two of the 13 disciplinary grounds and found the dismissal excessive.

BKL took over the matter at the National Labor Relations Commission re-examination stage, secured recognition of three disciplinary grounds and a finding that the



dismissal was lawful, and successfully defended that determination before the Seoul Administrative Court.

In parallel, BKL represented the association in filing a criminal complaint for breach of trust and violation of the Improper Solicitation and Graft Act, securing a referral for prosecution with a recommendation to indict.

7. No Wage Payment Obligation for Rolling Strike at Conveyor Belt Production Site

At a manufacturer using conveyor belt production lines, the labor union conducted a rolling strike by intermittently halting certain processes and claimed wages for departments not directly participating in the strike. BKL argued that, due to the interconnected nature of the conveyor belt production process, the stoppage of one operation inevitably halted connected operations as well.

The labor office accepted this argument and closed the matter with no violation found, determining that the company had no obligation to pay wages or shutdown allowance.

Given the limited precedents regarding the application of the “no-work-no-pay” principle during strike periods, this determination is expected to serve as an important reference for future disputes over wage payment obligations during strikes.

8. Supreme Court Reversal Recognizing Lawful In-House Subcontracting

Employees of Company A, which performed steel packaging work at a steel mill under a contracting agreement, sued the principal employer, claiming illegal dispatch under the Act on the Protection, etc. of Dispatched Workers. The lower courts recognized a worker dispatch relationship. Company A, a listed company with approximately KRW 340 billion in revenues, faced significant business risk if that finding were upheld.

BKL traced Company A's history from 1976, emphasized its independent expertise in steel packaging work, and highlighted that the principal employer had never directly performed such work.



The Supreme Court accepted BKL's arguments, reversed the appellate court's judgment for misapprehending the legal principles on worker dispatch, and remanded the case to the Gwangju High Court.

9. Dismissal of Bargaining Unit Separation Application

Under the amended Trade Union Act, the applicant union at a refinery/plant workplace filed for separation from the overall subcontractor bargaining unit, primarily arguing differences in interests between unions affiliated with different upper-level organizations.

BKL represented the company and argued that there were no marked differences in working conditions, employment types, or bargaining practices, and that mere affiliation with different upper-level organizations did not warrant bargaining unit separation.

BKL further argued that the representative bargaining union's duty of fair representation adequately protected the interests of all unions, and that separation could intensify inter-union conflicts. The Ulsan Regional Labor Relations Commission rejected the separation application.

10. Rejection of Unfair Labor Practice Claim over Contract Non-Renewal

After a labor union was established at a delivery hub and collective bargaining procedures were underway, a company refused to renew the consignment contract with the hub. The established union claimed that the non-renewal constituted an unfair labor practice of domination or interference, intended to suppress union activities and affect the status of the representative bargaining union.

BKL demonstrated that the non-renewal was based on independent contractual grounds, including delivery disruptions, contract violations, and loss of trust, rather than union activities, and that there was no intent to interfere with the union.

The Labor Relations Commission dismissed the union's petition, confirming that non-renewal based on reasonable contractual grounds does not automatically constitute an unfair labor practice merely because a labor union had been established.

Policy Developments



MOEL

Guidelines for Prevention of Comprehensive Wage Abuse Implemented (April 9, 2026)

On April 9, 2026, the Ministry of Employment and Labor announced the implementation of the “Guidelines for Prevention of Comprehensive Wage Abuse to Eliminate Unpaid Labor” (the “**Guidelines**”) to improve the widespread practice of abusing Comprehensive Wage arrangements in the field.

The Guidelines were prepared based on the agreement reached in December of last year by the “Actual Working Hours Reduction Roadmap Task Force,” a consultative body comprising labor, management, government, and experts. The guidelines specify the standards that employers must observe when operating Comprehensive Wage/ fixed overtime arrangements, reflecting the current Labor Standards Act and related case law.

The guidelines include requirements to: (i) separately itemize base pay and various allowances in books and payslips, (ii) calculate and pay overtime, night, and holiday work allowances commensurate with actual working hours, and (iii) restrict the practice of paying statutory allowances in a lump-sum or fixed-amount format.

Additionally, the Ministry of Employment and Labor announced that it will strengthen field inspections by operating an anonymous reporting center for Comprehensive Wage/ fixed overtime abuse, conducting planned inspections targeting Comprehensive Wage abuse, and conducting planned inspections of basic labor standards.

Yellow Envelope Law: “One-Month from Implementation” Status Report (April 10, 2026)

The Ministry of Employment and Labor reviewed the implementation status for the one-month period following the effective date of the Yellow Envelope Law on March 10, 2026, and announced the status of bargaining demands and bargaining procedures by subcontractor labor unions against principal employer workplaces.

According to the announcement, during the one month following implementation, a total of 1,011 subcontractor unions/branches/chapters (approximately 146,000

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members) demanded bargaining against 372 principal employer workplaces. In the private sector, 616 subcontractor unions demanded bargaining against 216 principal employer workplaces, while in the public sector, 395 subcontractor unions demanded bargaining against 156 principal employer workplaces. By upper-level organization affiliation, bargaining demands were made at 356 workplaces affiliated with the Korean Confederation of Trade Unions (KCTU), 344 workplaces affiliated with the Federation of Korean Trade Unions (FKTU), and 52 unaffiliated workplaces.

A total of 33 principal employer workplaces had posted public notices of bargaining demands from subcontractor unions, of which 19 had proceeded to the public notice confirming the demanding labor unions. Among these, Handong University held an initial meeting with the subcontractor union on April 9, 2026, confirming a case where actual principal-subcontractor bargaining had commenced.

The Ministry of Employment and Labor assessed that the bargaining framework is being formed around Labor Relations Commission procedures in the early stages of the Yellow Envelope Law's implementation, and stated that it plans to continue supporting the operation of the system while monitoring field inquiries and difficulties.

Legislative Trends

Four Labor-Related Bills under Ministry of Employment and Labor Jurisdiction Passed by National Assembly Plenary Session (May 7, 2026)

On May 7, 2026, the National Assembly plenary session passed amendment bills for four laws under the jurisdiction of the Ministry of Employment and Labor: Labor Standards Act, the Act on the Employment, etc. of Foreign Workers, the Employment Security Act, and the Social Enterprise Promotion Act.

The key amendments to each law are as follows:

- **Labor Standards Act:** (i) Establishment of an option allowing workers to leave work immediately without a break period upon request when working 4 hours, (ii) establishment of a legal basis for using annual leave in hourly units, (iii) prohibition of wage reductions or personnel disadvantages based on annual leave usage.
- **Act on the Employment, etc. of Foreign Workers:** (i) Prohibition of providing illegal

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temporary structures as housing for foreign workers, (ii) establishment of a basis for government support for local government housing environment improvement projects.

- **Employment Security Act:** (i) Display of whether a workplace has been publicly listed for industrial accident occurrence in job advertisements, (ii) introduction of a system for monitoring and ordering suspension/deletion of false or exaggerated job advertisements.
- **Social Enterprise Promotion Act:** (i) Establishment of a legal basis for the creation of social enterprise associations and operation of mutual aid programs, (ii) partial relaxation of the obligation to submit business reports.

Equal Employment Opportunity and Work-Family Balance Assistance Act and Employment Insurance Act Amendments Passed by National Assembly Plenary Session (April 23, 2026)

On April 23, 2026, the National Assembly plenary session passed amendment bills for the Equal Employment Opportunity and Work-Family Balance Assistance Act and the Employment Insurance Act.

The key amendments to each law are as follows:

- **Equal Employment Opportunity and Work-Family Balance Assistance Act:** (i) Expansion of paid infertility treatment leave from the existing 2 days to 4 days, (ii) explicit inclusion of corporate representatives in the scope of application of workplace sexual harassment prohibition provisions, (iii) expansion of the scope of administrative fine imposition.
- **Employment Insurance Act:** Expansion of the period of government support for priority support enterprises.
- **Act on the Protection, etc. of Dispatched Workers:** Explicit provision of the basis for applying the General Act of Public Administration when issuing closure orders against unlawful dispatch businesses.

Recent Court Decisions



1. Supreme Court: No wage claim for periods without actual work despite employment contract

The Supreme Court held that an employment contract is a bilateral contract in which the worker provides labor and the employer pays wages in return, and that a worker who has not provided labor does not have a wage claim (Supreme Court Decision 2025Da219113, April 9, 2026).

The plaintiff had prepared a long-term employment contract but provided virtually no actual labor, and subsequently claimed wage payment based solely on the contract period.

This decision is significant in reaffirming the legal principles regarding the legal nature of a worker's wage claim and clearly establishing that an employment contract alone does not give rise to a worker's wage claim.

2. Safety protection facilities at semiconductor manufacturing plants must be maintained and operated at the same level as normal times during industrial action

The Suwon District Court held that 'normal maintenance and operation' of 'safety protection facilities' under Article 42(2) of the Trade Union Act requires the same level of manpower, operating hours, and scale as normal times during industrial action, even if the facilities also serve production functions.

The court further held that security work under Article 38(2) is not excluded merely because work is production-related, and if halting the work would likely cause facility damage or material deterioration, it qualifies as security work (Suwon District Court Order 2026KaHap10237, May 18, 2026).

This decision is noteworthy for future industrial action responses at manufacturing workplaces in that it specifically determined the meaning of 'normal maintenance and operation' under the Trade Union Act and the scope and nature of safety protection facilities, presenting relevant legal principles.



3. Non-payment for labor-management meeting attendance constitutes unfair labor practice

The Seoul Administrative Court held that an employer's treatment of labor-management meeting attendance time as unpaid industrial action time, thereby reducing wages, constitutes an unfair labor practice of disadvantageous treatment under Article 81(1)(i) of the Trade Union Act (Seoul Administrative Court Decision 2024GuHap82374, February 13, 2026).

The court reasoned that since the employer itself had requested the meeting and designated the time, the company had tacitly consented to treating attendance as paid, and making it unpaid had a greater effect of chilling legitimate union activities than preventing business losses.

This decision is noteworthy in that it held that if an employer initiates a labor-management consultation and treats it as paid, it is regarded as paid union activity, and wages must be paid for such activity regardless of any ongoing industrial action.

4. Non-payment of bonuses, year-end performance pay, and holiday gift certificates to part-time workers constitutes unreasonable discrimination

The Seoul Central District Court held that non-payment of bonuses, year-end performance pay, and holiday gift certificates to part-time workers constitutes discriminatory treatment without reasonable grounds, and recognized the employer's tort liability for damages (Seoul Central District Court Decision 2024Na29832, October 23, 2025).

The court found no essential difference in the main duties performed by part-time and full-time workers, and held that such discrimination constitutes a wrongful act giving rise to tort liability.

This decision is noteworthy in that, going beyond confirming existing legal principles on discriminatory treatment of part-time workers, it established that discriminatory treatment of part-time workers may give rise to liability for damages based on tort.

Labor & Employment Group News



Attorney Jiwon Bae Joins the Group

Jiwon Bae (Attorney) joined the BKL Labor and Employment Group as an associate attorney in May 2026. Jiwon graduated from Korea University and Ewha Womans University Law School, passed the 12th Korean Bar Examination, and subsequently served as a judicial research official at the Seoul High Court.

Jiwon shared her thoughts on joining the BKL Labor and Employment Group: "It still feels like a dream to have joined BKL's Labor and Employment Group. Having boarded a fast-moving train, I want to learn extensively from my seniors and diligently accumulate experience to contribute to the group and the firm. I will strive to incorporate the diverse experiences I gained while handling various cases as a judicial research official into my future work."

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

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