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STATUTORY PRESUMPTION OF EMPLOYEE STATUS: PROPOSED LEGISLATION TARGETED FOR YEAR-END

- Implications for Businesses Engaging Independent Contractors

I. OVERVIEW OF THE PROPOSED REGIME¹

The Korean government has renewed its efforts to introduce a statutory presumption that certain individuals who provide services to a business are employees for purposes of Korea's Labor Standards Act (the "**LSA**"). The government had initially sought to advance the legislation by May 1, 2026 (Labor Day in Korea), but the legislative process slowed following opposition from business groups and small business owners. However, on August 12, 2026, Minister of Employment and Labor Young-hoon Kim stated during a National Assembly committee briefing that the government intends to pursue legislation introducing the presumption by the end of this year.

Under current Korean law, whether an individual qualifies as an "employee" under the LSA depends on the substance of the working relationship rather than the title or form of the parties' contract. Courts consider a range of factors in determining whether an individual provides services in a subordinate relationship for wages, including the nature of the work and how it is performed, the degree to which the individual is bound by specified working hours and work locations, the nature of the compensation, and whether the individual operates an independent business on their own account. Under the current framework, an individual seeking protection as an employee under the LSA generally bears the burden of establishing employee status.

The core of the proposed legislation (the "**Proposed Legislation**") now under discussion is *the reallocation of that burden of proof*. Under the proposal, individuals who personally provide services for another's business—including freelancers, platform workers and certain other categories of independent service providers (collectively, "**Service Providers**")—would be presumed to be employees, and the business or other party engaging the Service Provider (the "**Engaging Entity**") would bear the burden of rebutting the presumption and establishing that the individual is not an employee.

II. POTENTIAL IMPACT OF THE PROPOSED LEGISLATION

Where a Service Provider is found to be an employee under the LSA, rights and protections under Korea's employment laws that generally do not apply to Service Providers may become applicable. As a result, the Engaging Entity may become liable for statutory severance pay,

¹ For further background on the proposed presumption of employee status and the key provisions of the legislative proposal, please see our previous Legal Update [<Link>](#).

compensation for overtime, nighttime, and holiday work, and compensation for unused annual leave. The Engaging Entity may also be required to manage the Service Provider's working hours and rest periods and provide annual leave in accordance with the requirements of the LSA.

To date, when Service Providers have sought to assert rights afforded to employees, they have rarely asserted their employee status during the course of their contractual relationship with the Engaging Entity. Instead, such claims have generally been brought after the contractual relationship has ended, most commonly in the form of claims for statutory severance pay. This practice has been criticized on the ground that Service Providers effectively rely on different legal characterizations of the same relationship at different stages—operating as independent contractors and enjoying the associated flexibility during the contractual relationship, while subsequently asserting employee status after the relationship ends to claim statutory employment-related entitlements, particularly severance pay.

Although claims for statutory severance pay are likely to remain the primary form of employee status claims if the Proposed Legislation is enacted, the removal of the Service Provider's burden to establish employee status could create greater incentives for Service Providers to assert employee status and seek statutory employment-related entitlements. In particular, because Service Providers would be presumed to be employees unless the Engaging Entity can rebut the presumption with sufficient evidence demonstrating that they do not qualify as employees under the LSA, Service Providers may be more inclined to bring such claims even where their employee status is not clear-cut. If the Engaging Entity is unable to rebut the presumption, the Service Provider may prevail and obtain the corresponding statutory entitlements. The Proposed Legislation could therefore lower the practical threshold for bringing employee status claims and result in an increase in related disputes and claims for statutory employment-related entitlements.

III. PRACTICAL CONSIDERATIONS FOR BUSINESSES

Accordingly, even before the Proposed Legislation is finalized, businesses may wish to review their contractual arrangements with Service Providers, as well as how those relationships operate in practice, and assess in advance the potential impact of the proposed regime. In particular, businesses may wish to consider factors relevant to employee status under Korean law, including the degree of direction and supervision exercised over the individual, control over working hours and location, the manner in which compensation is determined, the individual's ability to provide services to other businesses, and the degree of discretion the individual has in performing the services.

Although the government has stated that it intends to pursue legislation by the end of 2026, key elements of the proposed regime have not yet been settled, including (i) the specific circumstances that would trigger the presumption of employee status, (ii) the standard that the Engaging Entity would need to meet to rebut the presumption, and (iii) the categories of Service Providers that would be covered by, or excluded from, the regime. These matters are expected to be addressed as the legislative process progresses, and businesses will therefore

want to continue monitoring developments. We will continue to follow the legislative process and provide updates as further details emerge.

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