BKL HR Issue Report



BAE, KIM & LEE LLC

Labor & Employment Group

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Support for Collective Bargaining Between Principal Companies and Subcontractor Unions

With the amended Trade Union and Labor Relations Adjustment Act now in effect, the “employer” status of principal companies and their collective bargaining with subcontractor unions have become key labor relations issues.

A number of questions are expected to be raised, including the scope of principal companies’ bargaining obligations, procedures for establishing a single bargaining channel or separating bargaining units, approaches to occupational safety and working environment demands, and responses to industrial action.

BKL’s Labor & Employment Group has proactively advised on collective bargaining involving subcontractor unions across manufacturing, construction, retail and distribution, IT, and other industries since the amended Act took effect. We provide hands-on collective bargaining support, with our professionals participating directly in negotiations as bargaining committee members. Our advice covers every stage of the bargaining process, from reviewing procedures, analyzing and categorizing union demands, and defining the scope and strategy of negotiations to conducting negotiations and handling follow-up matters.

Our advice draws on extensive experience in conducting and supporting collective bargaining, together with a broad track record in both labor relations advisory work and litigation. In particular, our attorneys and certified public labor attorneys serve directly as management-side bargaining committee members and conduct negotiations, bringing practical, on-the-ground insight to our advice.

By working alongside clients throughout the process, from the commencement of bargaining and substantive negotiations to the conclusion and implementation

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of collective bargaining agreements, we help companies navigate the evolving bargaining environment with confidence and build stable, consistent labor relations over the long term.

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Representative Matters

1. Defending Performance Evaluations Against Allegations of Anti-Union Discrimination

Type of Claim	Unfair Labor Practice Claim
Forum / Stage	Regional Labor Relations Commission

Facts

- Union officials, including the union representative, filed an unfair labor practice claim alleging that the company had given them unfavorable performance ratings because of their union activities, including their use of paid time off for union duties. They also alleged a persistent gap in ratings between union members and non-members over the preceding three years.
- BKL demonstrated that (i) each employee's performance rating was supported by specific, work-related grounds, (ii) the union representative, who had used the most paid time off for union duties, received a rating above the average of the division, and (iii) the company had adjusted the rating of a union official to account for parental leave and had awarded additional evaluation points to other union members.
- Accepting BKL's arguments, the Gyeongbuk Regional Labor Relations Commission found that the evaluations reflected individual goal achievement and work performance, and that no causal link had been established between union activities and the ratings. It therefore concluded that the evaluations of the union officials did not constitute an unfair labor practice involving disadvantageous treatment.

Significance and Practical Implications

- The decision confirms that unfavorable ratings for certain union officials or union members using paid time off for union duties, or statistical disparities between union members and non-members, do not in themselves establish an unfair labor practice.
- It highlights the importance of maintaining objective evidence supporting individual evaluations and concrete examples demonstrating how the evaluation system operates in practice.

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2. Defending a Decision Not to Continue Employment Following Probation Due to Poor Performance

Type of Claim	Unfair Dismissal Claim
Forum / Stage	Regional Labor Relations Commission

Facts

- During a three-month probationary period, the employee was assessed on performance criteria including the recruitment of new merchants and sales generated. The company communicated monthly performance targets and conducted repeated evaluations with feedback. When the employee consistently failed to meet those targets, the company decided not to continue the employment relationship after probation, prompting the employee to file an unfair dismissal claim.
- Representing the company, BKL systematically presented the performance targets communicated in advance, the three successive evaluations, and the feedback provided after each evaluation. Through numerical comparisons with other employees' performance, BKL demonstrated that the employee had consistently fallen short despite receiving sufficient opportunities to improve through repeated evaluations and feedback.
- The Seoul Regional Labor Relations Commission found reasonable grounds for the company's decision. It noted that (i) the company had conducted three evaluations as previously communicated and provided feedback after each, (ii) the employee's performance was substantially below that of other team members, and (iii) the company had confirmed other employees' employment based on their potential for improvement, demonstrating that it had considered individual circumstances rather than applying KPI thresholds mechanically. The Commission therefore dismissed the employee's unfair dismissal claim.

Significance and Practical Implications

- The decision provides useful guidance for similar disputes involving probationary employees. It illustrates how clearly communicated performance targets, documented evaluations and feedback, and objective performance data can collectively support a decision not to continue employment following probation.

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3. Securing a Ruling That Performance Bonuses Based on Revenue and Operating Profit Do Not Constitute Wages

Type of Claim	Wage Claim
Forum / Stage	Trial Court

Facts

- For approximately 17 years, the company had paid annual corporate performance bonuses under labor-management agreements using various criteria, including revenue, operating profit, productivity, and workplace accident rates. The plaintiffs filed suit, arguing that these bonuses constituted wages.
- Representing the company, BKL demonstrated that (i) neither the rules of employment nor the collective bargaining agreement specified detailed criteria for bonus payments, and separate annual labor-management agreements determined whether bonuses would be paid, when they would be paid, who would be eligible, and how the amounts would be calculated. Accordingly, the bonus payments did not constitute an established labor practice giving rise to a binding payment obligation. BKL further demonstrated that (ii) business performance indicators, such as revenue and operating profit, were influenced not only by employees' efforts but also by market conditions, the business environment for securing orders, exchange rates, management decisions, and other external factors.
- Accepting BKL's arguments, the Ulsan District Court held that the payment of bonuses over approximately 17 years did not establish a payment obligation based on labor practice and that the bonuses could not be regarded as "compensation for work performed." The court also rejected the possibility of separating the bonuses by calculation metric and treating certain components as wages, concluding that the bonuses as a whole did not constitute wages.

Significance and Practical Implications

- BKL successfully demonstrated that the "revenue" metric used to calculate performance bonuses was significantly affected by external factors due to the characteristics of the industry, thereby supporting the conclusion that the bonuses did not constitute compensation for work performed.

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4. Defending an Employer Against Vicarious Liability Claims for Alleged Workplace Harassment

Type of Claim	Damages Claim (Workplace Harassment)
Forum / Stage	Appellate Court

Facts

- The plaintiff filed a claim for damages against a group manager (the alleged tortfeasor) and the company (as the employer allegedly vicariously liable for the manager's conduct), alleging that the manager had engaged in workplace harassment by pressuring the plaintiff to delete a post concerning HR decisions from the company's anonymous bulletin board and making disparaging remarks about the plaintiff to other employees.
- Representing the company, BKL argued that the manager's request to delete the post did not amount to coercion, considering the actual conversations and the circumstances surrounding its deletion. BKL also demonstrated that there was insufficient objective evidence to substantiate the alleged disparaging remarks or other conduct. Accordingly, BKL argued that neither the manager's tort liability nor the company's vicarious liability arising from that conduct could be established.
- The court dismissed all claims, finding that the evidence submitted by the plaintiff was insufficient to establish workplace harassment or other tortious conduct.

Significance and Practical Implications

- The decision confirms that conflict between a supervisor and an employee alone is insufficient to establish an employer's vicarious liability for workplace harassment. Whether the alleged conduct constitutes a tort must be assessed based on the specific circumstances and objective evidence.

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5. Securing a Ruling That a Startup Executive Is Not an Employee Under the Labor Standards Act

Type of Claim	Unfair Dismissal Claim
Forum / Stage	Regional Labor Relations Commission

Facts

- Following removal from the positions of Chief Strategy Officer (CSO) and Vice President, the claimant filed an unfair dismissal claim, claiming to have been an employee under the Labor Standards Act who had worked for wages under the CEO's direction and supervision and had been dismissed without justifiable cause. Although not registered as a director, the claimant had signed an employment agreement and been enrolled in employment insurance. The claimant relied on these facts, together with records of reporting to and receiving work-related instructions from the CEO, to support their asserted employee status.
- Representing the company, BKL presented previous press releases and internal documents demonstrating that the claimant had exercised substantial discretion over key management functions, including fundraising and new business development, and had been recognized both internally and externally as a senior executive.
- Accepting BKL's arguments, the Seoul Regional Labor Relations Commission found that the claimant was not an employee under the Labor Standards Act. It considered that the claimant (i) had joined the company on the understanding of holding senior executive authority, (ii) had participated in company-wide management matters and exercised substantial discretion as Vice President heading the strategy division, (iii) had received a high level of compensation and benefits, and (iv) had actively participated in a dispute over management control.

Significance and Practical Implications

- The decision provides useful guidance on assessing executives' "employee" status at startups and companies where organizational structures and job hierarchies are less formalized and senior personnel have both management responsibilities and hands-on operational work.

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6. Defending the Dismissal of an Employee for Accepting Gifts and Hospitality from Suppliers

Type of Claim	Unfair Dismissal Claim
Forum / Stage	Regional Labor Relations Commission

Facts

- An employee responsible for supplier transactions was dismissed for accepting money and gifts from a supplier and sharing them with colleagues and supplier employees, as well as accepting meals, golf outings, and other hospitality from multiple suppliers.
- The employee challenged the dismissal, arguing that (i) the money and gifts had been voluntarily returned before disciplinary action was taken, (ii) the employee had merely accepted them passively following persuasion and encouragement by a supplier's employee, and (iii) the conduct had neither caused losses to the company nor resulted in preferential treatment for suppliers.
- BKL identified specific instances in which the employee had changed their statements or attempted to minimize the misconduct during the disciplinary investigation. This evidence rebutted the employee's claim of passive involvement and demonstrated active participation in the receipt of money and gifts. BKL established the seriousness of the misconduct before the Labor Relations Commission, securing a decision upholding the dismissal.

Significance and Practical Implications

- The decision confirms that accepting money, gifts, and hospitality from suppliers can constitute serious misconduct that undermines trust and justifies the dismissal of an employee responsible for procurement or supplier transactions.
- Establishing the circumstances surrounding the conduct, the extent of the employee's involvement, and their subsequent response is important in supporting the justification for disciplinary action.

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Policy Developments



Changes to the Investigation Framework Following the Launch of the Public Prosecution Office (Effective October 2, 2026)

With the abolition of the Prosecutors' Office and the launch of the Public Prosecution Office on October 2, 2026, investigative and prosecutorial functions have been institutionally separated. Prosecutors' authority to direct investigations by labor inspectors acting as special judicial police officers has also been abolished.

Labor Office investigations will therefore shift from prosecutorial oversight to an internal Ministry of Employment and Labor ("**MOEL**") framework. The requirement to refer all cases to prosecutors remains in place. Following referral, however, prosecutors will request supplementary investigations by the Labor Office rather than conduct such investigations themselves.

These changes are expected to (i) increase the influence of the responsible labor inspector and MOEL's internal supervisory hierarchy, (ii) allow MOEL's statutory interpretations and administrative views to shape investigations more directly, particularly where case law remains unsettled, and (iii) heighten the importance of the Public Prosecution Office's independent review of the Labor Office's findings following referral.

Companies should develop and present their factual and legal positions from the outset of a Labor Office investigation. In significant cases, it is also advisable to ensure that their position is fully explained to the relevant division heads and regional office heads overseeing the investigation.

Please see the relevant BKL newsletter here.

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Guidance on Three New and Expanded Spousal Support Measures (Effective September 18, 2026)

MOEL has issued guidance on three measures taking effect on September 18, 2026 under the Equal Employment Opportunity and Work-Family Balance Assistance Act: (i) new leave and benefits following a spouse's miscarriage or stillbirth, (ii) an expanded window for taking spousal childbirth leave(paternity leave), and (iii) parental leave during a spouse's pregnancy.

- **New leave for a spouse's miscarriage or stillbirth**: Employees may request up to five days of leave, with the first three days paid. Leave must be requested within 20 days of the miscarriage or stillbirth. Failure to grant the leave or provide the required paid days may result in an administrative fine of up to KRW 5 million. Dismissal or other unfavorable treatment for taking the leave may result in imprisonment for up to three years or a criminal fine of up to KRW 30 million.
- **Expanded window for spousal childbirth leave (paternity leave)**: The period for taking paternity leave has been expanded from "within 120 days after childbirth" to "from 50 days before the expected delivery date until 120 days after childbirth." The leave has been officially renamed "spousal prenatal and postnatal leave," and its permitted purpose now covers both pregnancy and childbirth.
- **Parental leave during a spouse's pregnancy**: Male employees may take parental leave before their child's birth where their pregnant spouse is at risk of miscarriage or premature birth due to one of the 19 high-risk pregnancy conditions listed in Annex 3 to the Act's Enforcement Rule. The leave counts toward the employee's total parental leave entitlement but does not count toward the limit on the number of separate leave periods. Parental leave benefits are available where the leave lasts at least 30 days.

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Targeted Labor Inspections of Misuse of Comprehensive Wage and Fixed Overtime Arrangements (September 15, 2026)

Beginning September 15, 2026, MOEL will conduct approximately two months of targeted labor inspections into the misuse of comprehensive wage and fixed overtime arrangements.

The inspections will focus on sectors that attracted a high volume of reports through MOEL's "anonymous reporting center" between January and August this year, including manufacturing, information and communications, and professional, scientific, and technical services.

MOEL will primarily examine whether employers have failed to pay allowances for actual overtime, night work, or holiday work on the grounds that these are covered by a comprehensive wage or fixed overtime arrangement. It will also review whether employers properly record and manage working hours, including overtime, night work, and holiday work, used to calculate wages. Violations may result in corrective orders or criminal enforcement action.

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Guidance on Short-Term Parental Leave (Effective August 20, 2026)

MOEL has issued guidance on the short-term parental leave scheme introduced on August 20, 2026 under the amended Equal Employment Opportunity and Work-Family Balance Assistance Act. The scheme addresses urgent childcare needs arising from school or childcare facility closures, school holidays, hospitalization, or quarantine due to infectious disease.

- **Eligibility and duration**: Employees with a child aged eight or younger or in the second grade of elementary school or below may take leave for (i) emergency school or childcare facility closures, (ii) school holidays, (iii) hospitalization due to illness or injury, or (iv) quarantine or suspension of school attendance due to infectious disease. Leave may be taken once per year per child, for either one or two weeks. It counts toward the employee's total parental leave entitlement of one year or 18 months, as applicable, but does not count toward the limit on the number of separate leave periods.
- **Parental leave benefits from the government**: Benefits are calculated on a daily, prorated basis under the ordinary parental leave benefit rules. Employees taking 7 or 14 days of short-term parental leave are eligible for benefits covering those days. Where short-term leave is combined with an ordinary parental leave period of less than 30 days and the combined duration reaches at least 30 days, benefits are payable for the entire period.
- **Employer's right to reschedule and employee protections**: For leave taken during school holidays, employers may reschedule the leave if it would seriously disrupt business operations. Existing parental leave protections, including the prohibition on unfavorable treatment for taking leave, apply equally to short-term parental leave.

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Recent Decisions

1. Court Finds That the Remark "the Pretty One Should Sit Next to the President" Constitutes Workplace Sexual Harassment and Upholds a One-Month Pay Reduction

The Seoul Administrative Court upheld a one-month disciplinary pay reduction imposed on the head of planning at an arts organization affiliated with a public institution for a remark "the pretty one should sit next to the president" made to a subordinate. The court found that the remark constituted workplace sexual harassment and that the disciplinary measure was proportionate (Seoul Administrative Court, July 16, 2026, Case No. 2025Guhap55335).

Applying the principle that sexual harassment does not require sexual motivation or intent, the court considered that (i) the remark was made during a meal with the male president, (ii) it was followed by a direction or suggestion concerning seating arrangements, and (iii) the employee could reasonably have understood it as an instruction. In this context, the court found that the remark constituted workplace sexual harassment.

In assessing the level of the discipline, the court noted that (i) the applicable disciplinary rules prohibited mitigation for sexual harassment and specified a reprimand or pay reduction, (ii) the plaintiff had shown no remorse, and (iii) employees of public institutions are expected to demonstrate a high level of gender sensitivity. It therefore concluded that a one-month pay reduction was not excessive.

The decision illustrates that even a one-off remark without clear sexual intent may constitute workplace sexual harassment where a supervisor comments on a subordinate's appearance and directs or encourages them to sit in a particular place. It also provides a useful reference for assessing the proportionality of disciplinary measures.

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2. Court Finds That Lowest-Tier Performance Rating, Pay Freeze, Removal from Position, and Dismissal of Sexual Harassment Victim Constitute Unlawful Unfavorable Treatment

The Seoul Central District Court considered a case in which an employee who had filed a criminal complaint and reported workplace sexual harassment after being subjected to forcible indecent assault by the employer subsequently received the lowest performance rating, a pay freeze, removal from her position, and dismissal. The court held that each measure constituted unfavorable treatment of a victim of workplace sexual harassment prohibited under the Equal Employment Opportunity and Work-Family Balance Assistance Act and amounted to tortious conduct (Seoul Central District Court, August 26, 2026, Case No. 2025Gadan108423).

The court found that the performance rating and pay freeze constituted prohibited unfavorable treatment because there was no objective evidence supporting the lowest-tier rating, the evaluation criteria were not sufficiently clear to establish fairness and reasonableness, and at the time the pay increase was determined, there was no applicable rule permitting performance ratings to serve as a basis for determining pay increases.

The court also found that the removal from position and dismissal constituted prohibited unfavorable treatment. It noted the disproportionate severity of the disciplinary measures, the lack of justification for relying on instances of lateness in 2020 and 2021 as grounds for dismissal in 2024, and the sequence of adverse measures following the sexual harassment report, from the performance rating and pay freeze to removal from position and dismissal.

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3. Court Finds That Regular Bonuses, Household Allowances, and Work Support Allowances Constitute Ordinary Wages, While Management Performance Bonuses and Welfare Points Do Not

The Busan District Court considered claims by Busan Transportation Corporation employees for additional statutory allowances and retirement benefits recalculated to include various payments in ordinary wages. The court held that regular bonuses, household allowances, and work support allowances constituted ordinary wages, while management performance bonuses and welfare points did not (Busan District Court, August 27, 2026, Case No. 2019Gahap52153).

The court found that (i) regular bonuses totaling 400% of monthly base pay annually constituted ordinary wages because they were paid uniformly without additional conditions, such as management performance results or continued employment, (ii) household allowances constituted ordinary wages because all employees received a fixed monthly amount, notwithstanding wording that payment was "subject to budget availability", and (iii) work support allowances were fully includable in ordinary wages because differences in payment rates by work arrangement reflected the quality of the prescribed work, and the requirement to work at least 10 days per month fell within the prescribed working days.

By contrast, management performance bonuses did not constitute ordinary wages because payment depended on management evaluation results and no minimum payment rate was guaranteed. Welfare points fell outside ordinary wages because they could not be regarded as wages paid in return for work.

The decision is significant in applying the Supreme Court's en banc ruling on ordinary wages to include the full amount of an allowance subject to a minimum working-day requirement. It also confirms that an allowance stated to be "subject to budget availability" may qualify as ordinary wages based on actual payment practices.

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Jaehang Ham (Associate) Returns from Overseas Study and Yeri Jo (Associate) Joins BKL

Jaehang Ham (Associate) returned to BKL's Labor & Employment Group in August 2026 after a year of overseas study, during which he completed an LL.M. at Columbia Law School. Drawing on his broader understanding of international legal and employment practices and his prior advisory experience, he advises domestic and international clients on employment and labor relations matters. Commenting on his return, Jaehang said, "I look forward to drawing on my experience abroad to provide clients with practical, well-rounded solutions."

Yeri Jo (Associate) joined BKL's Labor & Employment Group in September 2026. With experience in labor and employment matters and insolvency and corporate restructuring, she will focus on employment and HR advisory work and litigation. Her arrival strengthens the group's ability to support clients across a broader range of employment issues and labor disputes. Commenting on joining the group, Yeri said, "I look forward to building on my experience and further developing my expertise alongside my colleagues at BKL, while providing practical solutions to the diverse employment and HR challenges our clients face."

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