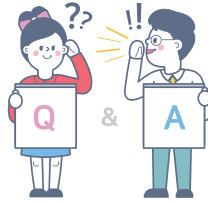




Is your labor environment safe?



A small but 

Definitive  

Guide to 
labor rights



Contingent Workers Welfare Center
in Suwon, Korea

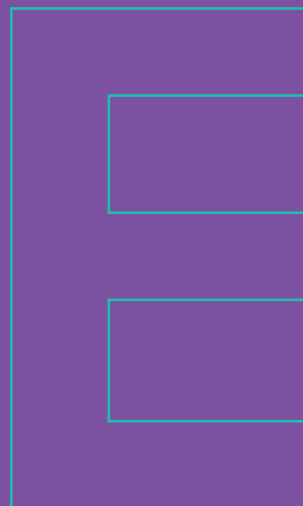
Workers' Rights Handbook

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Q1

Application of labor laws



Applies to labor law workers

You must be a worker as defined by the Labor Standards Act to be protected by labor laws (Labor Standards Act, Minimum Wage Act, etc.). Freelancers (insurance agents, couriers, tutors, etc.) are often not recognized as employees under the Labor Standards Act and are not entitled to benefits such as retirement benefits, annual paid leave, and minimum wage unless they have a separate contract with a company. However, as of July 1, 2021, freelancers have been covered by employment insurance and are eligible for unemployment benefits, and industrial accident compensation is available to them unless there are exceptions.

Differences based on the number of full-time workers

Workers in workplaces with five or more full-time employees are covered by most labor law regulations, while workers in workplaces with four or fewer employees are covered by only a few. Work contracts, minimum wage, retirement benefits, and maternity leave are covered, but annual paid leave, working hours, overtime pay, and restrictions on dismissal are not. Specific applications are shown in the table below.

Type	Specifics	Applies to 4 or fewer people
Employment contract	Specifying and issuing wages, hours of work, weekly paid holiday, and annual paid leave in writing	○
Weekly paid Holiday	1 paid vacation day for every 1 week of work	○
Limitations on termination	Can't discipline or fire workers without just cause	×
Advance notice of dismissal	Give 30 days' notice or pay 30 days' regular pay before dismissal.	○
Minimum Wage	Pay at least the minimum wage, which is set annually by minimum wage laws.	○
Retirement benefits	Pay more than 30 days of average wages for one year of continuous service	○
Maternity Leave	Grant 90 days of leave before and after the birth of a child	○
Childcare leave	one year granted to parents of children under 8 years old (2nd grade of elementary school)	○
Overtime pay	Pay 50% premium wages for overtime, night, and holiday work	×
Annual paid leave	1 day of annual paid leave per month for employees with less than 1 year of service, 15 or more days of leave per year for employees with more than 1 year of service	×
Menstrual leave	Grant one day off per month to female workers with menstrual symptoms	×
Shutdown allowances	Paying at least 70% of average wage for absences due to reasons attributable to the employer	×

Differences based on hours worked

Employees who are contracted to work less than 15 hours per week are not covered by the Labor Standards Act's weekly paid holiday, retirement benefits, or annual paid leave. Therefore, they cannot receive a weekly paid holiday (weekly holiday allowance), retirement benefits, or annual paid leave unless otherwise stipulated in their employment contract.

Q

I work as a tutor. I show up at a certain time every day, work, and get paid the same amount every month, but the school says I'm a sole proprietor, so I have to pay 3.3% income tax. And the school doesn't take out 4 major insurances for me, and it says I can't get a retirement benefit. Is this possible?



A

It a tutor can be considered a freelancer, such as a tutor who is paid in proportion to the number of students he or she teaches, or if he or she can adjust his or her own teaching hours, he or she cannot be considered an employee, so he or she may not be covered by the social insurance or paid retirement benefits. However, if you're like most workers, you should be considered an employee.



Q

Is it true that a company must have 5 or more employees to be eligible for overtime or annual paid leave?

A



Yes. That's right. The Korea's Labor Standards Act allows businesses with 4 or fewer employees to not pay extra wages (50%) for overtime, night, and holiday work. They are also not required to give annual paid leave and are relatively free to fire employees.



Q

The pool hall where I work has a total of 6 employees, but on an average day, we have about 3 employees working. Does that mean we have more than 5 employees or less than 5 employees?

A



The number of workers is calculated by averaging how many workers are working at the workplace on a given day. In billiard halls, convenience stores, etc., there are often different workers on different days of the week, so the total number of workers is more than 5, but the average number of workers on a given day can be 4 or less. In this case, these workplaces are 4 or less workplaces.



Q

So I'm not going to be able to ask for annual paid leave or overtime, then, Okay.

A



If your employment contract provides for overtime pay or annual paid leave, you may be entitled to it.



Q

Okay, Okay.



Q

I work in an establishment with 4 or fewer full-time employees, and my labor contract states that I will receive 1 day of vacation per month. How many days of vacation can I take?



A

In workplaces with 4 or fewer employees, annual paid leave under the Labor Standards Act does not apply, so you can only use the leave stipulated separately in your labor contract or employment rules. Therefore, you can only take 1 day of leave per month as per your labor contract.



Q

If I work more than 15 hours a week, I'm supposed to get a weekly paid holiday, so the place I work part-time only requires all employees to work 14 hours a week.

A



So you actually only work 14 hours a week?



Q

No, I don't think so. I think most people work about 20 hours a week.

A



Your boss is playing tricks to avoid paying you weekly paid holiday, annual paid leave, and retirement benefit. With few exceptions, if you are working more than 15 hours a week, you are considered to be working more than 15 hours a week, regardless of what your labor contract says. Therefore, you are entitled to weekly paid holiday, annual paid leave, and retirement benefits.



Q

What if I sometimes work more than 15 hours a week?

A



In such a case, you cannot receive weekly holiday allowance because it is not considered to be more than 15 hours per week. Instead, you can receive overtime pay (50%) for working more than the initially set number of hours.



Q

Okay. Thanks for the answer.

Q2

Create and issue labor contracts and written wage statement



Obligation to create/give employment contracts

Employers are required to write a labor contract and to give a copy to the worker when they enter into a labor agreement with a worker and when the terms of the labor agreement change. This is to ensure that important working conditions are clear and to prevent disputes in the future.

What should be in an employment contract?

The labor contract must cover wages (what they consist of, how they are calculated, and how they are paid), working hours, weekly paid holiday, and annual paid leave.

Labor contracts with fixed-term and short-time workers must specify not only wages, contractual work hours, weekly paid holiday, and annual paid leave, but also the duration of the labor contract, breaks, other holidays and other leave, place of employment and work, working days, and working hours per working day (for short-time workers).

Wage statement preparation/issuance obligations

Employers are required to provide wage statements to their workers. The wage slip must list the components of the wage, the method of calculation, and deductions. It must also include the worker's specific information, such as the worker's name, the date of payment, the total amount of wages, and the method of calculation for each component of the wage if the amount varies depending on the number of days or hours worked.

As a general rule, wage statements should be in writing, but they can also be emailed.

Q

When I joined the company, I was told that my monthly salary would be 2.5 million won, but when I came to payday, they told me that it included the retirement benefit. It's hard to prove that they agreed to pay me 2.5 million won because they didn't write a labor contract. Is there any way?



A

If the wage is specified in the job advertisement posted by the company, you can prove that the monthly salary is 2.5 million won based on this. In addition, you can report it to the Ministry of Employment and Labor as the employer is subject to a fine of not more than 5 million won if the labor contract is not written.



Q

I haven't been paid for several months, and I didn't sign a labor contract. Can I still report to the Department of Employment and Labor for non-payment of wages?

A

It is the employer's responsibility to provide a labor contract, and you should not suffer disadvantage for not having one. Not having an employment contract does not mean you are not entitled to your legal rights as a worker. You can report to the Department of Employment and Labor for unpaid wages.



Q

What if my boss says I've never worked for him?

A

That rarely happens, but if it does, you are able to prove your employment through bank statements, documents that show what you did, and confirmation from coworkers you worked with.



Q

My labor contract states that my contract period is from January 1, 2024, to December 31, 2024. The company says it's just a formality, but I'm worried because I feel like I'm a temporary worker. Can I be fired later because the contract is over?

A

Even if your employer has verbally stated that "the term of employment is formal" or "it's just to set wages, you are not a temporary worker," it is likely that the term of employment specified in the contract will be recognized in legal disputes. It is advisable to draw up a new contract now or have something to prove that the term of employment is only formal (confirmation, recording, etc.).



Example 1



If your company is a corporation, write the corporate name; if you're an individual business owner, write your name.

Labor contracts

Industrial (hereinafter referred to as the "Employer") and Sunhee Lee (hereinafter referred to as the "Employee") enter into a labor contract as follows.

1. Term period of contract: **September 1, 2024** to
2. Workplace: **Industrial Suwon Branch Office** If it's an indefinite position, leave it blank; if it's a term position, write the length of the contract.
3. Content of work: **office work**
4. Contractual work hours: **9:00 to 18:00** (break: **12:00 to 13:00**)
5. working days/holidays: **5** working days (or daily) every week, weekly holiday every **Sunday**
6. wages
 - Monthly (day, hour) salary: **Basic salary 2,500,000** won
 - Bonus: Yes () **Holiday bonus 2,500,000 (Lunar New Year, Chuseok)** KRW, None ()
 - Other benefits (fringe benefits, etc.) : Yes (), No ()
 - **100,000** KRW for **meals - 200,000** • KRW for **transportation subsidy**
 - **80,000** KRW for **family allowance** • KRW for
 - Paydays: **10th** of each (month) (weekly or daily) (full day pay for holidays)
 - Payment method: Direct payment to the worker (), deposit to the worker's savings account ()
7. Annual paid leave
 - Annual paid leave is granted in accordance with the Labor Standards Act.
8. Social insurance coverage (check the appropriate box)
 - Employment insurance Industrial accident compensation
 - National pension Health insurance
9. Issue an employment contract
 - The employer shall make a copy of this agreement upon conclusion of the labor contract and hand it to the employee regardless of the employee's request for a copy (implementation of Article 17 of the Labor Standards Act).
10. other
 - Anything not specified in this Agreement is governed by the Labor Standards Act.

September 1, 2024

(Business owner) Business name: **Industry** (Phone: **031-000-0000**)

Address: , -dong, **Jangan-gu, Suwon, Korea**

Representative: **Gakdong Kim** (Signature)

(Worker) Address: , -dong, **Jangan-gu, Suwon, Korea**

Contact: **010-000-0000**

Full Name: **Sunhee Lee** (Signature)

Example 2



If your company is a corporation, write the corporate name; if you're a individual business owner, write your name.

Employment contracts for hourly workers

Kim K-dong (hereinafter referred to as "Employer") and **Lee Sun-hee** (hereinafter referred to as "Employee") enter into a labor contract as follows.

1. Term period of contract: **September 1, 2024** to _____
2. workplace: **OOconvenience store OOdong store** If it's a indefinite position, leave it blank; if it's a term position, write the length of the contract.
3. content of the work: **displaying and selling goods**
4. workday and hours worked per workday

	(Mon)Day of the week	(Tue)Day of the week	(Wed)Day of the week	(Thu)Day of the week	(Fri)Day of the week	(Sat)Day of the week
Work Hours	5 hours	5 hours	5 hours	5 hours	5 hours	hours
Startup	12:00	12:00	12:00	12:00	12:00	:
End of day	17:30	17:30	17:30	17:30	17:30	:
Break time	14:00 ~ 14:30	14:00 ~ 14:30	14:00 ~ 14:30	14:00 ~ 14:30	14:00 ~ 14:30	: ~ :

- Day off : **every Sunday**
5. wages
 - **Hourly** (daily, monthly) salary : **10,000** won (check all that apply)
 - Bonus: Yes () circle, No ()
 - Other benefits (fringe benefits, etc.): Yes: **8,000**won per day for meals (breakdown), None (),
 - Overtime pay rate for overtime: **150** %
 - ※ If a short-time worker works beyond the hours agreed upon between the short-time worker and the employer, he/she will be paid an additional wage of at least 50% of the regular wage even if it is within the legal working hours.
 - Payday: **Last day of the month** (weekly or daily) (full day pay for holidays)
 - Payment method: Direct payment to the worker (), deposit to the worker's savings account ()
 6. Annual paid vacation: Annual paid vacation is granted in proportion to the number of hours worked by regular workers.
 7. Social insurance coverage (check the appropriate box)
 - Employment insurance Industrial accident compensation
 - National pension Health insurance
 8. Issue an employment contract
 - The "Employer" shall make a copy of this Agreement upon concluding the labor contract and deliver it to the "Employee" regardless of the "Employee's" request for delivery (implementation of Article 17 of the Labor Standards Act).
 9. other
 - Anything not specified in this Agreement is governed by the Labor Standards Act.

September 1, 2024

(Business owner) Business name: **OOConvenience store OODong store**

(Phone: **031-000-0000**)

Address: **OO, OO-dong, Jangan-gu, Suwon, Korea**

Representative: **Gakdong Kim** (Signature)

(Worker) Address: **OO, OO-dong, Jangan-gu, Suwon, Korea**

Contact: **010-000-0000**

Full Name: **Sunhee Lee** (Signature)

Q3

Minimum Wage



2023/2024 Minimum Wage

Category	2023	2024	Remarks
Hourly rate	9,620 KRW	9,860 KRW	
Monthly salary	2,010,580 KRW	2,060,740 KRW	Based on a 40-hour work week

※ Applies to all businesses that use workers

Minimum wage calculation range

Until 2018, only work-related wages paid at least once a month, such as base salary, job and position pay, counted toward the minimum wage, but starting in 2019, bonuses and benefits paid at least once a month counted toward the minimum wage. Starting in 2024, all bonuses paid at least once a month and benefits will be included in the minimum wage calculation.



Q

I earn a basic wage of 2 million won plus 100,000 won for food, totaling 2.1 million won. I work 8 hours a day, 5 days a week, from Monday to Friday. I know that the minimum wage is over 2 million won this year, but am I not earning even the minimum wage?



A

Beginning in 2024, the full amount of your benefits is included in the minimum wage calculation. Therefore, the 100,000 KRW of your wages for food is treated the same as your basic wage for minimum wage calculations. Therefore, the 2.1 million KRW you are paid is more than the 2024 minimum wage of 2,060,740 KRW, so you are being paid more than the minimum wage.

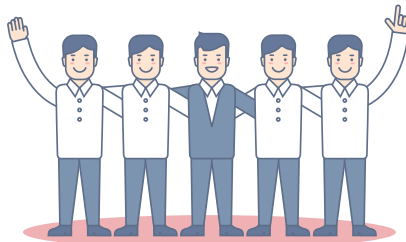
Q

I am a student working part-time in a restaurant. Am I eligible for minimum wage?



A

Students who work part-time at convenience stores, gas stations, restaurants, etc. are workers under the Labor Standards Act and the Minimum Wage Act. In addition, the minimum wage applies to all businesses regardless of the size of the business (number of workers, etc.). Therefore, you have the right to be paid at least the minimum wage set by the Minimum Wage Act.





Q

I am a laborer who works 6 hours every day, Monday through Friday. Will I be eligible for the minimum wage of 2,060,740 won in 2024?

A



The minimum wage of KRW 2,060,740 as a monthly salary in 2024 is based on a 40-hour workweek (209 hours per month). Therefore, a worker who works 30 hours per week, like you, will naturally earn less than KRW 2,060,740.



Q

So what will my minimum wage be in 2024?

A



Your 2024 minimum wage is $(2,060,740\text{KRW} \times 30\text{hours} \div 40\text{hours})=1,545,560\text{KRW}$.

Q

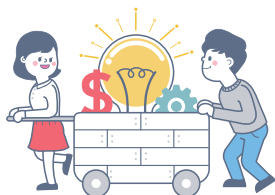
I recently joined a small business. My labor contract says that I will be paid 90% of the minimum wage for my three-month probationary period, but isn't this a violation of the Minimum Wage Act?



A



It is not illegal to be paid 90% of the minimum wage for a three-month probationary period if your contract of employment is for one year or more. However, if your contract of employment is for less than one year (e.g., 11 months), you must be paid the full minimum wage.



Q4

Extended, night, and holiday work



What are extended work, night work, and holiday work (pay)?

Workplaces with 5 or more employees must pay wages for extended work, holiday work, and night work by adding at least 50% of the regular wage. Each is called extended work, holiday work, and night work, and collectively referred to as overtime wages.

Extended work Working more than the legal working hours (8 hours per day, 40 hours per week) or prescribed working hours (the number of hours the employer and worker agree to work in the labor contract).

Holiday Work Working on holidays (weekly paid holiday, Labor Day, national holidays, and holidays contractually set by employers and workers)

Night work Working between 10 p.m. and 6 a.m. the next day

Calculating overtime wages

Employers must pay at least 1.5 times the regular wage for extended work, holiday work, and night work.

When extended work, holidays, and night work overlap, each must be paid.

Example (10,000 won per hour)	Calculate	overtime pay
If you work 4 hours of overtime	$10,000 \text{ won} \times 4 \text{ hours} \times 1.5$	overtime 60,000 won
If you work 4 hours of overtime between 10pm and 6am.	$10,000 \text{ won} \times 4 \text{ hours} \times 2.0$	overtime – 80,000 won for night shift work
If you work 4 hours on a holiday	$10,000 \text{ won} \times 4 \text{ hours} \times 1.5$	holiday pay 60,000 won
If you work 12 hours of holiday work in a day	$(10,000 \text{ won} \times 8 \text{ hours} \times 1.5)$ $+ (10,000 \text{ won} \times 4 \text{ hours} \times 2.0)$	Holiday and overtime pay 200,000 won
If you work 12 hours (8 hours + 4 hours) on two days of holiday work	$(10,000 \text{ won} \times 8 \text{ hours} \times 1.5)$ $+ (10,000 \text{ won} \times 4 \text{ hours} \times 1.5)$	180,000 won for holiday pay
if you work 12 hours of holiday work in a day (including 2 hours of night work)	$(10,000 \text{ won} \times 8 \text{ hours} \times 1.5)$ $+ (10,000 \text{ won} \times 4 \text{ hours} \times 2.0)$ $+ (10,000 \text{ won} \times 2 \text{ hours} \times 0.5)$	Holiday and extended pay 200,000 won 10,000 won for night work

Inclusive wage agreements (fixed overtime)

In principle, overtime wages are paid after the fact according to the actual number of overtime hours worked, but it is also permissible to set a fixed number of overtime hours and allowances for each month at the time of the labor contract and pay them accordingly. However, it is only allowed as an exception if it is difficult to calculate the working hours, so if it is not difficult to calculate the working hours, the agreement between the employee and the employer is invalid.



Q

I worked eight hours of overtime this month. When payday comes around, my employer says the company is in difficulty and instead of paying me overtime, the employer wants me to take a day off, is this okay?

A

The Labor Standards Act allows employers to grant compensatory time off instead of paying overtime. However, this compensatory leave system requires a written agreement with the labor representative, so if he or she does not have this written agreement, the employer must pay overtime.



Q

I'm not sure if we have a written agreement with the labor representative.

A

If you have a works council or a labor union, you might want to check to see if they have an agreement. If they don't have an agreement, and the workers haven't elected representatives, it's unlikely that they do. If they do, you're entitled to overtime pay.

Even if compensatory time off is granted, it must be added to the employee's overtime hours by at least 50%. Therefore, the amount of compensatory time off you are entitled to is 12 hours, which is $8 \text{ hours} \times 1.5$. But your company only asked you to take one day off, so that's a problem too.



Q

From what you've said, it sounds like I've got a lot going on, and I'll get back to you on that.



Q

I work at a small gas station, and there are four workers a day, not including the boss. Is it true that I can't get overtime pay at a workplace with 4 or fewer employees?



A

Workplaces with 4 or fewer full-time employees are not entitled to overtime wages for extended work, night work, or holiday work. However, if a worker works more than the original contracted hours, he or she can receive regular wages for the extra hours. For example, if a worker is paid KRW 10,000 per hour and agrees to work 8 hours per day (Monday through Friday) and works 30 hours of overtime in a month, they can be paid KRW 300,000 in addition to their original wage.

Q

My company does not pay overtime at 50% of the regular wage for overtime, holiday work, and night work, but pays overtime uniformly at 10,000 won per hour to all employees.



A

According to the Labor Standards Act, overtime wages must be paid at a rate of at least 50% of the regular wage. If the overtime wage under a separate method set by the company is more than 50% of the regular wage, it can be paid under a separate method. However, if it is less than 50% of the regular wage, you can be paid extra 50% of the regular wage as overtime. Since the minimum wage in 2024 is 9,860 won, the overtime pay will be at least 9,860 won x 1.5, or 14,790 won.





Q5

Weekly paid Holiday / Weekly holiday allowance

What is Weekly
paid Holiday

/ Weekly holiday
allowance?

When a worker has worked a week's worth of scheduled workdays, the employer must give the worker one day's wages to rest, which is called a weekly paid holiday or weekly holiday allowance. For example, if a worker who was initially paid 10,000 won per hour and agreed to work 3 hours a day, Monday through Friday, comes to work, the worker is entitled to 150,000 won (10,000 won x 3 hours x 5 days) in wages (weekly salary), as well as 30,000 won (10,000 won x 3 hours) in weekly holiday allowance, and is guaranteed one day off.

How do I
calculate weekly
holiday
allowance?

Weekly holiday allowance is one day's worth of contractual working hours (the number of hours you agreed to work within the statutory working hours in your original employment contract), not the number of hours you actually worked.

A worker who agrees to work 5 days of 8 hours per day (40 hours per week) has a weekly holiday allowance of "8 hours x hourly wage".

A worker who works less than 40 hours in a week is entitled to a weekly rest period equal to '8 hours x 1 weekly contractual work hours ÷ 40 hours'. For example, a worker scheduled to work two days of 8 hours on Saturday and 8 hours on Sunday is entitled to 3.2 hours of weekly holiday allowance: '8 hours x 16 hours ÷ 40 hours'.

Are some
workers not
eligible for
weekly holiday
allowance?

A worker who works less than 15 hours a week is not entitled to weekly holiday allowance. Since the payment of weekly rest is based on the prescribed working hours, even if the actual working hours are more than 15 hours, if the prescribed working hours do not reach 15 hours, the worker cannot receive weekly holiday allowance. However, if the actual working hours are repeated more than 15 hours, it can be seen that the employer has set the prescribed working hours to be less than 15 hours for the purpose of not paying weekly holiday allowance, so the worker can receive it.

Q

I work part-time at a convenience store for 4 hours from Monday to Friday. My labor contract states that my hourly wage is 10,000 won (including weekly holiday allowance), but am I not entitled to weekly holiday allowance?



A

The Ministry of Employment and Labor believes that a comprehensive wage contract, including weekly holiday allowance, can be made if it is specified in the labor contract. However, it must be higher than the minimum wage. If you calculate your weekly wage including weekly holiday allowance at the minimum wage of 9,860 won in 2024, $9,860 \text{ won} \times 24 \text{ hours (20 hours of work} + 4 \text{ hours of weekly rest)} = 236,640 \text{ won}$. However, you were paid $10,000 \text{ won} \times 20 \text{ hours} = 200,000 \text{ won}$ each week, so you were paid 36,640 won less each week.



Q

I was absent without leave this month and the company said they would deduct two days' wages which includes the one day I missed and one day's weekly holiday allowance. Is that fair?

A

Weekly holiday allowance is due when you work a full week of scheduled work, so it is legal to deduct one day of weekly holiday allowance if you are absent from work due to unauthorized absence. But did you treat the unauthorized absence as annual paid leave?



Q

They said I was absent without leave and refused to give me annual paid leave.

A

Then there's nothing I can do. If you use annual paid leave, you are considered to have worked when you are late or leave early, but that's not the case, so I can't help you.



Q

Okay. Okay.



Q

I've been working for a company for about a year and a half and I'm leaving this Friday, so will I get paid for my last week of work?

A



If you submit your resignation with the following Monday as your last day of work, you will be entitled to weekly paid holiday because the employment relationship will be considered to have lasted until Sunday (a weekly paid holiday). However, if you submit your resignation with Saturday as your last day of work, you will not be entitled to weekly paid holiday because you will leave before the weekly paid holiday.

Q

I am a monthly salaried laborer who works for a basic salary of 2 million won every month. Can I receive weekly holiday allowance in addition to my basic salary?



A

Since the monthly salaried employee is scheduled to work continuously for one month, we assume that the weekly paid holiday is included in their base salary. Therefore, they are not entitled to a separate weekly paid holiday.



Q

I work as a day laborer in construction. Am I eligible for weekly holiday allowance?

A



Did you work almost every day? Or did you go out and work whenever the field called you?



Q

I only worked on an ad hoc basis when there was work in the field, and I think I worked Monday through Friday about three or four times in a total of two months.

A



Then it is difficult for you to receive weekly paid holiday allowance. Since day laborers are contracted on a daily basis, it is difficult to calculate the number of working days in a week, so even if you accidentally work Monday through Friday for several weeks, you cannot be considered to have accrued weekly paid holiday. Conversely, if you're formally a gig worker, but in reality you went to work every day and were not different from a regular salaried worker, you'd be entitled to weekly holiday allowance.



Q

Okay. I see.

Q6

Public holiday



Legalize holidays

A public holiday is a day when government offices are closed, as defined by the Regulations on Public Holidays for Government Offices. The following holidays are Sundays, Independence Movement Day, Liberation Day, Chuseok, Hangeul Day, January 1, Lunar New Year's Eve, Lunar New Year's Day, Lunar New Year's Day, Lunar New Year's Day, Buddha's Day, Children's Day, Memorial Day, Chuseok, Chuseok Day, Chuseok Day, Christian New Year's Day, election days under the Public Offices Election Act, days designated by the government, and alternative holidays. Until the Labor Standards Act was amended, national holidays were not legal holidays, meaning that workers were not legally allowed to take a day off unless their labor contract or employment rules stipulated otherwise. However, on March 20, 2018, the Labor Standards Act was amended to allow workers to take national holidays off.



Who does it apply to?

As of 2024, public holidays are legal holidays in workplaces with 5 or more full-time workers. However, workers at workplaces with 4 or fewer employees do not have the right to rest on public holidays unless otherwise stipulated in the employment contract or employment rules.



Q

My company is replacing public holidays with annual paid leave, so I can't actually take any time off except for on a public holiday. Is this okay?

A



Some businesses took advantage of the fact that public holidays are not statutory holidays and replaced breaks on public holidays with annual leave. However, in workplaces with 5 or more employees, public holidays have become legal holidays and cannot be replaced with annual leave.



Q7

Retirement benefits



What are retirement benefits?

Retirement benefit is a system that rewards employees for working for a company for a long period of time by paying them more than one month's wages. Since it is paid to workers who have worked for more than one year, you cannot receive retirement benefits unless you have worked for more than one year. On the other hand, workers who work less than 15 hours a week have no legal right to retirement benefits.

Calculate retirement benefit

$$\text{Benefit} = \text{Average Wage} \times 30 \text{ days} \times \text{Days of Service} / 365 \text{ days}$$

Average wage = number of days in 3 months prior to retirement date / wages in 3 months prior to retirement date
The Department of Labor's retirement benefit calculation page (<http://www.moel.go.kr/retirementpayCal.do>) to easily calculate it.



Q

In addition to my monthly wages, I have been paid bonuses and annual leave allowance every year. Do I need to include my bonuses and annual leave allowance to calculate my retirement benefits?



A

When calculating retirement benefit, bonus and annual leave allowance are combined. However, since the bonus and annual leave allowance are paid on a yearly basis, only three months' worth should be added. Therefore, add the total amount of bonus and annual leave allowance paid in the past year by only $\frac{3}{12}$ ($\frac{1}{4}$).

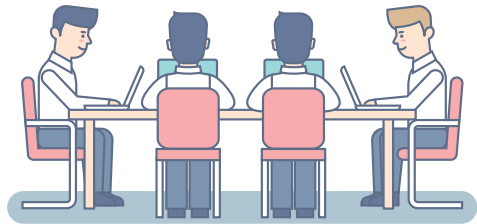
Q

I've been working for 1 year and 10 days, and my company says they will only pay me one year's retirement benefit (about a month's worth).



A

Retirement benefit is calculated on a calendar day basis and is based on the number of "days" worked, so if you worked 1 year and 10 days, you would be entitled to 10 days ($\frac{10}{365}$) of retirement benefit, not just 1 year.





Q

I was suddenly and unilaterally terminated from my job 10 days before my one-year anniversary. It seems like the company wanted to avoid giving me retirement benefits, but is there anything I can do to get it?

A

You must have at least one year of continuous service to be eligible for retirement benefit, so you must have your termination declared illegal and invalid to receive retirement benefit. If you pursue legal remedies against your termination with the Labor Relations Commission and receive a finding of unfair termination, you may be entitled to retirement benefit.



Q

I'm hesitant to go to the Labor Relations Commission to fight my termination for a month's pay.

A

If you are found to have been unfairly terminated, you may be entitled to back pay for the time you were terminated in addition to retirement benefit.



Q

If I am found to have been unfairly terminated, does this mean that in addition to retirement benefit, I will receive a salary for the duration of my termination?

A

Yes. That's right. Even if the worker failed to provide the labor, the failure to fulfill the contractual obligation was due to the company, the company is required to pay the wages promised under the contract. In addition, if you were laid off without 30 days' notice, you may be able to file a claim with the Ministry of Employment and Labor's Office of Unfair Labor Practice. Notice of dismissal allowance is the equivalent of 30 days' regular pay if the company fails to give 30 days' notice of termination, whether or not the termination is justified.



Q8

Shutdown allowances



What are shutdown allowances?

When a business is closed for reasons attributable to the employer, the employer must pay workers at least 70% of the average wage, which is called shutdown allowances.

Employer attribution means

If a worker is suspended, suspended from work, or ordered to take a leave of absence due to his or her own fault, the employer is not obligated to pay him or her a leave of absence. If , the employer is forced to take a leave of absence due to a natural disaster, , the employer is also not obligated to pay him or her a leave of absence.

On the other hand, closures due to poor sales, lack of funds, shortage of raw materials, production cuts, factory relocation, collapse, epidemic prevention, etc. are attributable to the employer so shutdown allowances should be paid.

Amount of shutdown allowance

The shutdown allowance must be at least 70% of the average wage (or the prevailing wage if it exceeds the prevailing wage). However, the employer can pay less if he or she get approval from the Labor Relations Commission.



Q

I work in a social welfare facility, but due to the coronavirus, the number of users has decreased, and the facility is closed except for essential personnel to prevent the outbreak of coronavirus patients in the facility. So I am asked to take a day off. Can I get a shutdown allowance?

A



If a coworker or facility user is diagnosed with COVID-19 and the facility is forced to close due to a government order, the employer is not obligated to pay shutdown allowance, as this cannot be attributed to him or her.

However, closing the business for prevention, even if there are no cases, as in your case, constitutes an employer-attributable reason for paying termination allowance. Therefore, the employer must pay 70% of the average wage as a shutdown allowance unless he or she gets approval from the Labor Relation Commission.



Q

I work as a production worker, but my employer told me that the company's situation is difficult and that I should work only 4 hours a day from this month. Am I entitled to a shutdown allowance?

A



Shutdown allowance doesn't necessarily apply to full daily, weekly, or monthly furloughs, but to partial furloughs that reduce hours worked, so you're eligible for shutdown allowance for the four hours you worked.



Q

My company is asking me to sign an unpaid leave of absence agreement. I understand that the company is in a difficult situation, but since the government is offering to cover some of the shutdown allowance, I think the company asked me too much. If I sign the agreement, will I not be eligible for shutdown allowance?

A



If you sign an unpaid leave of absence agreement, you will not be eligible for shutdown allowance unless you can prove that your signature was coerced or intimidated. Therefore, do not sign the agreement and request shutdown allowance.

Q9

How to resolve wage arrears 1 : Reporting to the Ministry of Employment and Labor

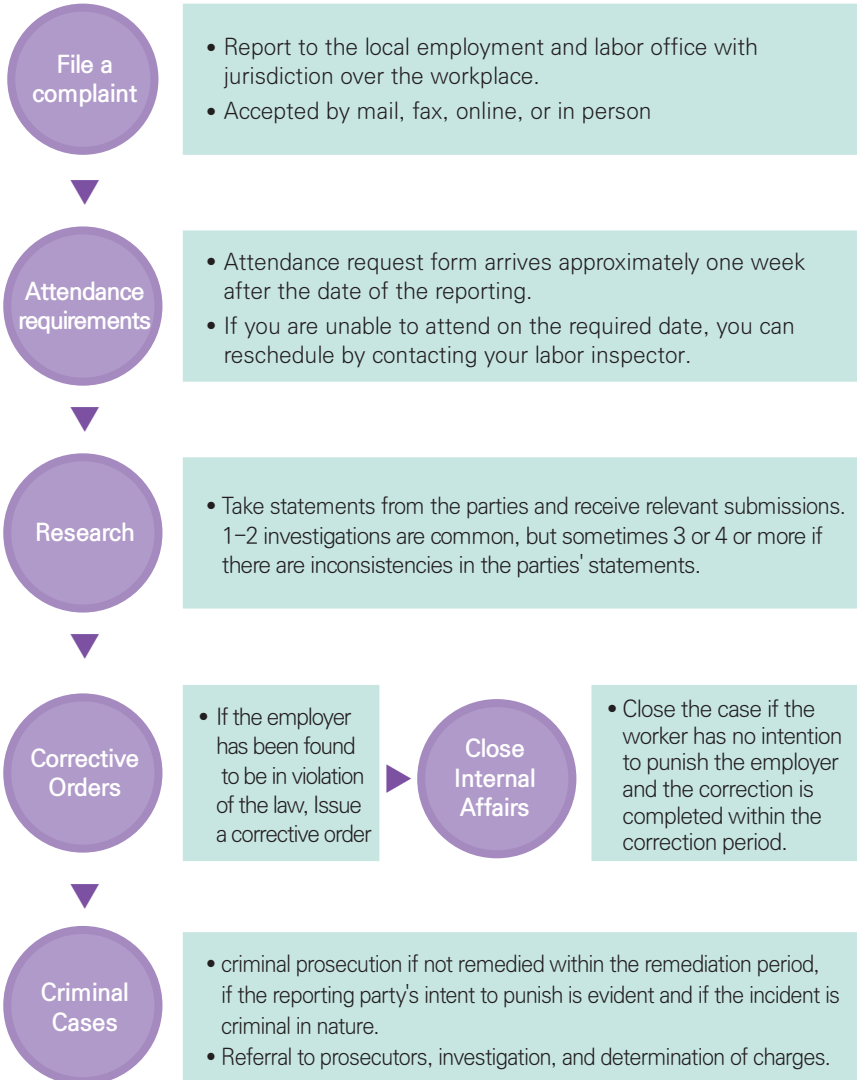


What is a Reporting to the Ministry of Employment and Labor?

The easiest thing to do if you don't receive wages or retirement benefits is to report to the Ministry of Employment and Labor. When you report for back wages, you're saying, "I haven't been paid, and I want the Department of Employment and Labor to investigate the facts and issue an administrative order for the employer to pay me." You can report for not only non-payment of wages, but also for violating labor laws, such as the Labor Standards Act, which is subject to criminal penalties.

A labor inspector from the Ministry of Employment and Labor can order an employer to correct illegal behavior. If the employer does not improve after the correction order, the labor inspector will file a criminal complaint against the employer and send the case to the prosecutor's office. The prosecutor's office will then prosecute the employer. The detailed procedure is as follows.

The report process





Q

My employer is not paying wages even though the Department of Labor's labor inspector has issued a wage arrears correction order. What should I do?

A



If the labor inspector investigates and confirms that you are owed wages, you may be issued an Confirmation of non-payment of Wages. You can apply to the Korea Workers' Compensation and Welfare Service for a substitute payment with this certificate, and you may be able to receive a large portion of the back wages first. If the amount of unpaid wages is greater than the amount of substitute payment and you have not been paid in full, you can apply for legal aid from the Korea Legal Aid Corporation to get a free lawyer to file a civil lawsuit and then enforce the company's property.



Q

How long will it take?

A



You can file for back pay with the Korea Workers' Compensation and Welfare Service and receive it in about a month. If you have to go to court, it depends on the case, but if the employer doesn't object, it will take about 2-3 months. After that, if you need to foreclose the company's property, it depends a lot on the type of property.

Q

I have received all my salary and retirement benefit, but I have not received overtime and annual paid leave pay. Can I file report to or sue with the Ministry of Employment and Labor in this case?



A

You can report to the Ministry of Employment and Labor for all debts arising from the employment relationship, so you can report not only for not receiving your monthly fixed wages, but also for overtime pay for overtime work, annual paid leave allowance for not using annual paid leave, and golden handshake.





Q10

Unpaid wages Solution 2 : Claim of substitute payment

The government-run Korea Workers' Compensation and Welfare Service pays workers on behalf of employers when employers fail to pay wages and retire benefit to workers. The Korea Workers' Compensation and Welfare Service pays wages and retirement benefit to the workers first, and then exercises its right of recovery against the employer. These payments are categorized into simple payments and bankruptcy payments. The simple payment is a payment of up to 10 million won, regardless of whether the company is operating or not, once the investigation by the Ministry of Employment and Labor is completed or a final judgment is received from the court.

A bankruptcy payment is a payment of up to 21 million won when a company is not operating for reasons such as bankruptcy. Previously, this payment (back pay) was only applicable to retired workers, but a recent change in the law allows it to be applied to active workers (limited to one time at one workplace).

Comparison of Simple substitute Payment and Bankruptcy substitute Payment (for retirees)

	Simple substitute Payment	Bankruptcy substitute Payment
Target	Apply whether your company is bankrupt or not	Apply when the company is bankrupt (declared bankrupt, decided to start rehabilitation proceedings, de facto bankrupt)
Requirements	<ul style="list-style-type: none"> • Laborer requirements <ol style="list-style-type: none"> 1. file a lawsuit within two years of your retirement date • Employer requirements <ol style="list-style-type: none"> 1. workplaces covered by the Industrial accident compensation Act 2. have been in business for at least 6 months since industrial accident compensation coverage began 	<ul style="list-style-type: none"> • Laborer requirements <ol style="list-style-type: none"> 1. retire within three years after the date that is one year prior to your retirement date 2. file for bankruptcy within one year of retirement • Employer requirements <ol style="list-style-type: none"> 1. workplaces covered by the Industrial accident compensation Act 2. have been in business for at least 6 months since industrial accident compensation coverage began



	Simple substitute Payment	Bankruptcy substitute Payment
Application process	Confirmation of back wages from the Ministry of Employment and Labor or a court decision → Apply for a simple substitute payment from the Labor and Welfare Service → Receive a simple substitute payment	Confirmation of back wages from the Ministry of Employment and Labor → Application for recognition of bankruptcy → Submit an application for bankruptcy substitute payment to the Labor and Welfare Service → Receive bankruptcy substitute payment
Payment amount	Up to KRW 10 million in total back wages (KRW 7 million for each item, separated into wages, shutdown allowance, and retire benefit)	Payments are capped by age group, up to a maximum of 21 million won

Payment for in-service workers

If an in-service worker does not receive wages, shutdown allowances, etc., they can report to the Ministry of Employment and Labor or file a lawsuit in court and receive a judgment. Three months of wages, etc. are paid as of the date of filing the lawsuit or report

Public defender support

You can get a labor attorney to represent you in a payment application for free. However, labor attorney is only available for substitute payment of acknowledgment of a fact of bankruptcy that are filed when a company is bankrupt and are not applicable to businesses that have been declared bankrupt by a court or businesses that have received a decision to start a rehabilitation. Acknowledgment of a fact of bankruptcy is when a court confirms that a company has not been formally declared bankrupt or otherwise declared bankrupt but has effectively ceased operations and is unable to pay its workers.

Q
My company refused to pay my wages and retirement benefit, so I reported to the Ministry of Labor and won a civil lawsuit, but in the meantime, the company went out of business, and I don't have any property to put up for auction. Is there any way to get my money?



A
If the company is bankrupt and unable to pay wages, retirement benefit, etc. to its workers, or if it has company property but is unable to cash it in due to foreclosure, etc. and it is expected to take a long time, you may be eligible for the substitute payment. In order to receive the payment, you must first report to the Ministry of Employment and Labor, and since you have already reported to the Ministry of Employment and Labor, the next step is to apply for acknowledgment of a fact of bankruptcy, and once the bankruptcy is confirmed, you can apply for the payment.

Q11

Annual paid leave



What is annual paid leave?

To ensure workers' rest and healthy lives, it refers to giving workers who have worked for less than a year one day of vacation per month, and at least 15 days of vacation for workers who have worked for more than a year.

Calculating annual paid leave

Tenure	Number of annual paid leave days																
Less than 1 year	<p>Accrue 1 day of vacation for every month worked</p> <ul style="list-style-type: none"> • Accrue 15 days of vacation for attending 80% or more of your scheduled workdays in a calendar year • 1 day of vacation for each month worked less than 80% of the time in a calendar year • Accrue 1 additional day of vacation every 2 years after the 3-year mark 																
1 year or more	<table border="1"> <thead> <tr> <th>mark</th> <th>3 years and</th> <th>4 years and</th> <th>5 years and</th> <th>9 years and</th> <th>15 years and</th> <th>19 years and</th> <th>21 years and</th> </tr> </thead> <tbody> <tr> <td>Vacation days</td> <td>16 days</td> <td>16 days</td> <td>17 days</td> <td>19 days</td> <td>22 days</td> <td>24 days</td> <td>25 days</td> </tr> </tbody> </table>	mark	3 years and	4 years and	5 years and	9 years and	15 years and	19 years and	21 years and	Vacation days	16 days	16 days	17 days	19 days	22 days	24 days	25 days
mark	3 years and	4 years and	5 years and	9 years and	15 years and	19 years and	21 years and										
Vacation days	16 days	16 days	17 days	19 days	22 days	24 days	25 days										

※ Even if you're late or leave early, you are counted as worked



Using annual paid leave for employees with less than one year of continuous service

Workers who have been employed for less than one year can take annual paid leave until they reach the one-year anniversary of their date of employment and receive annual paid leave allowances for any unused annual paid leave.

Using annual paid leave for employees with at least one year of continuous service.

You have one year to use it from the date it accrues. For example, if you were hired on January 1, 2023, and worked at least 80% of your scheduled days in a year, you would accrue a total of 15 days of annual paid leave on January 1, 2024, which you could use by December 31, 2024. Any unused annual paid leave by December 31, 2024 will be eligible for annual paid leave pay on or after January 1, 2025.

Annual paid leave allowance

Annual paid leave allowance is one day's regular or average wage. The statute of limitations for annual paid leave pay is three years, just like other wage debts, so you have three years from the date you become entitled to it (the day after the last day you can take annual paid leave) to claim it.

Q
Is annual paid leave calculated with holidays (Saturdays, Sundays) in between?



A
Annual paid leave is calculated excluding holidays. For example, if a worker works Monday through Friday and has Saturday and Sunday off, and then takes Monday through the following Sunday off, they have 5 days of annual paid leave.

Q
My company's policy states that I cannot take more than five days of annual paid leave. I'd like to travel abroad for two weeks this summer, but I can't use my annual paid leave to go?



A
Annual paid leave can be taken by employees whenever they want and for an unlimited number of consecutive days. However, an employer may only change the timing of the leave if it would significantly disrupt business operations. For this purpose, a business interruption means that the employee must show that "work during the requested leave period is essential to the organization's business, including your job responsibilities, and that it would be difficult to secure a replacement." If your work can be covered by another worker on the days you want to take, your company can't prevent you from taking the leave.



Q

Can I take annual paid leave after taking maternity and childcare leave?

A

The period of maternity and childcare leave is considered as working when calculating annual paid leave. Therefore, you can use annual paid leave as normal after maternity and childcare leave.



Q

Does this mean that I can take more than 15 days of annual paid leave after returning from childcare leave?

A

Yes. Yes, you can use annual paid leave, assuming you've been working normally and not using maternity or childcare leave.



Q

I work for a small business. There are three of us, not including the owner, can I use my annual paid leave?

A

Is there anything about annual paid leave in your labor contract or by rules of employment?



Q

As a small company, we don't have a company policy, and the labor contract only says "in accordance with the Labor Standards Act".

A

Since annual paid leave is only mandatory for workplaces with 5 or more employees, you cannot take annual paid leave unless you have a separate annual paid leave provision in your labor contract. If you are "subject to the Labor Standards Act" as in your employment contract, you probably don't have the right to take annual paid leave because there is no annual paid leave in businesses with 4 or fewer employees.



Q12

Maternity Leave / miscarriage and stillbirth Leave / Paternity Leave

What is maternity / miscarriage and stillbirth Leave?

Leave is granted to female workers who give birth or have a miscarriage or stillbirth to help ensure a safe delivery and support the worker's health. Female workers who have given birth are entitled to 90 days of leave before and after giving birth (with 45 days of postpartum leave), and workers who have miscarried or had a stillborn of 16 weeks or more are entitled to 30 to 90 days of leave, depending on the gestation period. (16 to 21 weeks of pregnancy: 30 days; 22 to 27 weeks: 60 days; 28 weeks or more: 90 days)

Calculating vacation

For the first 60 days of maternity leave, the employer must pay at least the regular wage, and for the remaining 30 days, the government pays up to KRW 2.1 million. However, employees of priority support companies receive 4.2 million won for the first 60 days, and only the difference between the regular wage and the maternity leave benefits needs to be paid by the company.

※ Priority companies : · 500 or fewer employees in manufacturing; · 300 or fewer employees in mining, construction, transportation and warehousing, information and communication, business facility management, business support and leasing services, professional, scientific and technical services, and health and social services; · 200 or fewer employees in wholesale and retail trade, accommodation and restaurants, finance and insurance, arts, sports and leisure services; and · 100 or fewer employees in other industries.

Paternity Leave

Male workers whose spouses give birth are entitled to 10 days of paid leave within 90 days of the birth, which can be taken in one installment. If you work for a priority company, you will receive 5 days of paid leave as spousal maternity leave benefits.

Subfertility Treatment Leave

If your spouse undergoes subfertility treatment, such as artificial insemination or in vitro fertilization, you may take up to three days of leave per year, with the first day paid.

Q

A worker wants to take only 60 days of maternity leave and then return to work. It seems like she knows the company is busy, and since it's what she wants, shouldn't we let her?



A

Regardless of the worker's application or agreement, an employer must give a worker who has given birth a total of 90 days of leave (120 days for multiple births). An employer who reinstates a worker who has not used all the statutory leave days because the worker has applied for it shall be punished by imprisonment for not more than two years or a fine of not more than 10 million won.



Q

I am a 43-year-old pregnant woman. Because of my advanced pregnancy, I used all my 90 days of Maternity Leave before giving birth. Will I not be able to take any maternity leave?

A

You can take 45 days of leave after the birth of your child, even if you used up all your maternity leave.



Q

What about the maternity leave benefits?

A

Maternity leave benefits from your employer or the government are only paid for up to 90 days (120 days for multiple births), so you will not be paid wages or salary for the 45 days of leave you take after the birth.



Q

We are a couple having twins. I heard that parents of twins are entitled to more Maternity Leave, is this true?



A

A mother of multiple births is entitled to 120 days of maternity leave and 60 days of postpartum leave, even if she used more than 60 days of maternity leave before the birth. The first 75 days of maternity leave are paid by the company, and the remaining 45 days are paid by the government.



Q

My labor contract expired during my maternity leave. Will I not be able to receive maternity leave benefits from my company or the government?

A

Previously, you could not receive maternity leave benefits when your contract expired, but the Employment Insurance Act was recently amended to allow you to receive benefits up to the end date of your maternity leave even if your contract expires during your maternity leave period.





Q13

Childcare leave / Reduced Working Hours During Childcare leave

Childcare leave

Workers who are pregnant or who have a child under the age of 8 or in the second grade of elementary school may take a leave of absence to care for the child within a one-year period, known as childcare leave. However, an employer may deny this leave to a worker who has less than six months of service.

Childcare leave Benefits

During your childcare leave, you're entitled to childcare leave benefits from Employment Insurance. You can receive 80% of your regular wage (minimum 700,000 won, maximum 1.5 million won) for the first three months and 50% of your regular wage (minimum 700,000 won, maximum 1.2 million won) for the rest of the period. However, 25% of the childcare leave benefits will be paid in a lump sum after you return to work and work for at least 6 months (post-payment system).

In order to increase the use of childcare leave by male workers, the government recently implemented the '3+3 Childcare leave System', which provides 100% of regular wages (with an upper limit of KRW 2 million per month to KRW 3 million per month, depending on the number of months used) as a childcare leave benefit when parents take childcare leave in sequence. The '3+3 Childcare leave System' does not apply the post-payment system, so 100% of the childcare leave benefit is paid immediately after the childcare leave.

Reduced hours during childcare leave

Instead of taking childcare leave, you can work at least 15 hours and no more than 35 hours a week to care for your child. However, unlike childcare leave, your employer can deny your request if they have difficulty finding a replacement.

Childcare leave can be used for a period of no more than one year (up to two years if you add up unused childcare leave) and can be used in installments with no limit on the number of times. However, each use must be for at least three months.



Childcare leave benefits

Employment insurance covers more than 80% of the reduced wage due to a reduction in working hours. For example, if a worker earns a regular wage of 2.5 million won in January and works 40 hours a week, and reduces his or her hours to 20 hours a week, the worker will lose 1.25 million won in regular wages. However, since employment insurance covers 1,062,500 won (100% for the first 5 hours and 80% for the remaining 15 hours), the worker will only lose 187,500 won in wages.

Apply for, change, or withdraw childcare leave

Employees who wish to take childcare leave or reduced working hours during the childbearing period (hereinafter referred to as "childcare leave, etc.") must apply for childcare leave or reduced working hours during the childbearing period, along with documents proving the child's age, to their department head 30 days before the scheduled start date of the leave. However, if the child was born before the scheduled date, or if there are reasons such as the death, injury, disability, or divorce of the spouse, it is okay to apply 7 days in advance.

If an infant or child dies, an adoption is canceled, or an employee becomes unable to raise an infant or child due to injury, illness, disability, divorce, etc., the employee may withdraw from childcare leave or return to work before the scheduled end date, and the company may not refuse to do so. However, if the employee applies for withdrawal or change for arbitrary reasons without such reasons, the company may refuse the application and make the application as it was before the change or withdrawal.

You can also extend your childcare leave. If the total duration of the childcare leave is one year or less, the employer cannot deny the request, but if the duration of the childcare leave exceeds one year or has been extended one or more times, the employer can deny the extension request.

Q

My company is trying to discourage me from taking paternity leave. Despite the company atmosphere, I really want to take paternity leave. Does the company have to approve it?



A

If an employee applies for childcare leave, the employer must grant it unless the employee has been employed for less than six months. You can apply for childcare leave at least 30 days before the date you want to start your leave, and even if your employer does not approve it, you can still not come to work.



Q

I would like to take reduced hours instead of paternity leave, is this possible?

A

Yes, you can. You can work between 15 and 35 hours per week and receive at least 80% of your reduced wages from the government.



Q

How long can I use it for?

A

You can take up to two years of reduced hours without taking childcare leave. You can also alternate between taking childcare leave and reducing your hours, in which case you can reduce your hours by adding up the periods you did not take childcare leave. For example, if you're on childcare leave for 3 months and want to reduce your hours for the rest of the year, you can work 9 months + 9 months, or 18 months on reduced hours.



Q

Is the period of my childcare leave eligible for retirement benefit?

A

Childcare leave periods count as continuous service for purposes of calculating retirement benefit. For example, if you had a total of four years of service from the date you were hired to the date you left, and one year of childcare leave was included, you would still be eligible for retirement benefit for the full four years of service.



Q14

Advance notice of Dismissal (allowance)



What is advance notice of dismissal (allowance)?

When the employer fires a worker, he or she must give them 30 days' notice or pay them at least 30 days' regular wages. However, this does not apply to workers who have been working for less than three months, so the employer can fire them without notice.

Justification and notice of dismissal

Giving a 30-day notice doesn't mean the employer can fire a worker. To fire a worker, the employer needs to have a fair reason, regardless of whether the employer gave them a 30-day notice, such as the worker has done something wrong that he or she can no longer continue the working relationship, or your business is in such a bad shape that you need to lay them off. Giving a notice or paying them retirement benefit doesn't mean an employer won't have problems firing them.

Q

I was given 15 days' notice of my termination date. Since I was not given 30 days' notice, am I entitled to 30 days' regular wages as retirement benefit? Or am I entitled to 15 days' regular wages as retirement benefit?



A

If you did not receive an advance notice, you are entitled to 30 days' regular pay as Advance notice of Dismissal allowance. The employer giving 15 days' notice doesn't mean he or she has to pay only 15 days' regular wages as advance notice of dismissal allowance.



Q

As I know, I am entitled to three months' worth of retirement benefit if I am unfairly terminated. How can I get it?

A

Damages (equivalent to wages for the period of dismissal) and advance notice of dismissal allowance are two different types of compensation for dismissal. The advance notice of dismissal allowance is a benefit that can be received if an employer does not give 30 days' notice before the date of dismissal, regardless of whether the dismissal is fair or unfair, while the equivalent of wages during the dismissal period is the amount of damages that arise because an employer unfairly infringes on the provision of labor in the case of unfair dismissal.



Q

So I just have to choose one or the other and take legal action?

A

The Remedy in Labor Relations Commission for unfair dismissal to receive back pay and the report to Department of Employment to receive advance notice of dismissal allowance are separate, so you don't have to choose one or the other. So you can file both if they apply to you.



Q

By the way, when you say wage equivalency for the termination period, do you mean 3 months' wages?

A

That's not true. Korean law doesn't say you can be paid three months' wages for unfair dismissal. If it takes a month to get reinstated, you get one month's wages, if it takes three years, you get three years' wages.



Q

So there's no legal basis for three months' wages at all?

A

Yes. Sometimes companies give three months' worth of wages as a settlement in exchange for a worker's resignation. And I think that's why the three months' worth of wages is being talked about.



Q15

Discipline/Dismissal



Justification for discipline/firing

Article 23 of the Labor Standards Act states that employers must have a fair reason for disciplining or dismissing workers. There is no uniform definition of what constitutes a fair reason, but the most important thing is that the discipline must be commensurate with the degree of the worker's misconduct and cannot be severe, such as dismissal for a minor offense. Firing is the most severe of the disciplinary actions, so the employee must have done something so egregious that they can't continue working for the company.

Written notice of dismissal obligations

The Labor Standards Act does not specify any disciplinary procedures, but only requires employers to provide written notice for dismissals. When an employer dismisses an employee, he or she must notify the employee in writing of the reasons for the dismissal and when. Failure to do so renders the dismissal invalid.

If a company's employment rules (bylaws), collective bargaining agreement with a labor union, or labor contract specify a disciplinary procedure, the employer is obligated to follow it. For example, if a company's rules state that a disciplinary committee must be held to discipline a worker, but the company dismisses the worker without actually holding a disciplinary committee, the dismissal is unfair.

Q

One of the employees unilaterally requested annual paid leave saying she was going on a trip and didn't show up for work for three days. Can I fire her for absenteeism?



A

Annual paid leave can be taken whenever the employee wishes, and the employer can change the timing if it causes a significant disruption to business operations. If the employee's work is not such that it would be difficult for another worker to replace the employee's work, it is unlikely that there would be a significant disruption to business operations. Therefore, the employee has legitimately taken his or her guaranteed annual paid leave and cannot be disciplined for doing so.

If an employee takes annual paid leave and it causes a significant disruption to your business, then the leave is absent without leave, and you can discipline the employee for absenteeism. However, you probably shouldn't fire the employee, which is the most severe form of discipline. You can only fire someone if they've done something so wrong that they can't continue working for you, and three days of AWOL doesn't seem to qualify as that.



Q

I've been with the company for about six months, and one day the chairman of the board says he doesn't like what I'm doing and wants me to leave. I haven't done anything wrong, can this happen?

A



How many people do you work with in total?



Q

There are five members, including the chairman. It's a local government funded organization.

A



Article 23 of the Labor Standards Act, which states that an employer may not dismiss a worker without just cause, does not apply to workplaces with 4 or fewer employees. Also, Article 27 of the Labor Standards Act, which states that an employee must be notified in writing of the reason and time of dismissal, does not apply. Therefore, you cannot legally dispute the employer's dismissal. However, if you work in a local government-funded organization, there might be employment rules or regulations regardless of the number of employees. Are there any specific reasons for dismissal stated in the employment rules?



Q

Yes. The company's HR policy specifies the reasons for dismissal, and there is something similar in my labor contract.

A



If so, the employer is obligated to comply with the labor contract or employment rules and can only dismiss the employee for the stated reasons.

If you work for a company with 4 or fewer employees, you are not allowed to file for relief with the Labor Relation Commission, so you must file an invalidation of dismissal lawsuit in court.

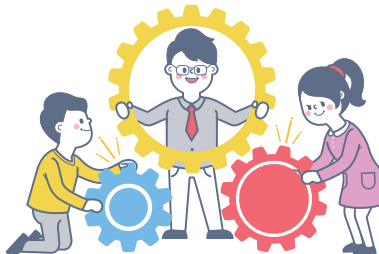
Q

I work at a well-known franchise fast food restaurant with more than 10 employees. One day, my boss sent me a text saying, "I'm firing you for poor performance, so please don't come to work tomorrow." Can I apply for relief from unfair dismissal?



A

When an employer dismisses a worker, the employer must notify the worker in writing (a paper document) specifying the reason and timing of the dismissal, and if the employer fails to do so, the dismissal is unfair regardless of the reason for the dismissal. However, a text message is not a written document as defined by law. Therefore, it is unfair regardless of whether there is a legitimate reason for the dismissal. Workplaces with 5 or more employees can apply for relief from unfair dismissal to the Labor Relations Commission, so please apply for relief to the local office of labor relations commission that has jurisdiction over your workplace.



Q16

Resignation



Resignations and departures

When an employer unilaterally ends an employment relationship, it's called a dismissal, while when an employee unilaterally ends an employment relationship, it's called a resignation. This is usually done by giving a verbal notice or submitting a resignation letter.

If you give notice of your resignation and your employer accepts it, your employment ends. If the employer does not accept the resignation, the resignation is effective when one month has passed since the date of the resignation. However, if the remuneration is determined by a period such as a monthly salary system, one month must elapse after the current month. For example, if a worker who receives wages from the first to the last day of each month is paid on the 10th of the following month and submits a letter of resignation on September 10, the resignation will be effective on November 1.



Unilateral resignation and liability

If you don't report to work before your resignation is effective, you're absent without leave. Periods of AWOL are included in the average wage calculation for retirement benefit purposes, which can reduce your retirement benefit.

In addition, if the employee unilaterally resigns before the effective date of the resignation and the company suffers damages as a result, liability for damages may arise. However, there are not many cases where liability for damages is recognized, as the employer must prove that the damage suffered by the company was caused by the employee's unilateral resignation.

Submitting a resignation under duress

Employees often resign even though they have no intention of resigning because their employer pressured or encouraged them to do so. Even if the employer pressured or encouraged you to resign, it is likely to be determined that you left the company of your own free will. Therefore, it is difficult to be recognized as an unfair dismissal, and you cannot receive financial compensation for unfair dismissal. In addition, since it is not a dismissal, the employer is not obligated to give you 30 days' notice or pay you advance notice of Dismissal allowance. If your company recommends that you resign, you can refuse to submit a resignation letter and ask for written notice of the reason and timing of your dismissal.



Q

I'm resigning because I'm taking a job with another company, how long do I have to give my notice?

A

Is there anything in the labor contract or employment rules about when to submit a resignation? Are you a salaried employee?





Q

Right, I don't think there are any special rules, and it's a salaried position.

A



If there is no special agreement between the employee and the employer, the resignation will not be effective until the first wage payment period of the current month after the date of submission of the resignation. The term "first wage payment of the current month" may be a little difficult to understand. Assuming that the wage calculation period is from the first to the last day of the month, if the resignation is submitted on September 10, the current month is from September 1 to September 30, and the next wage payment period is from October 1 to the last day of October. Therefore, the resignation will not be effective until November 1 after the period has passed.



Q

Ah! I looked at the company rules and it says I have to give a month's notice to resign, so does that mean I only have to give a month's notice?

A



Ah! I looked at the company rules and it says I have to give a month's notice to resign, so does that mean I only have to give a month's notice?

Q

My managing director asked me to resign, and I wrote "I am resigning due to unfair treatment and dismissal by the managing director" in my resignation letter. Even if resigning is not a dismissal, can this kind of resignation letter be considered as a dismissal?



A

No matter what you write in your resignation letter, it's still saying that I'm quitting for this reason or that reason, so it's likely to be judged as a resignation, not a dismissal. If it's not a dismissal, unfairness of it cannot be judged, so it's unlikely to be recognized as an unfair dismissal.



Q17

Layoffs



What is a layoff?

dismissal for managerial reasons (also known as a layoff) is when a company has business difficulties and lays off workers as a way out of those difficulties. While a disciplinary dismissal is a dismissal due to the employee's fault, a layoff is a dismissal due to the employer's fault. Because a company's management difficulties are fundamentally the fault of the employer, the Labor Standards Act strictly establishes four requirements that employers must meet in order to make layoffs, and failure to comply with these requirements results in unfair dismissal.

The 4 requirements for layoffs

- **Urgent business need** In order to make layoffs, the company must be in a state of financial distress, including when it is objectively reasonable to make reductions in force in order to prepare for a possible future crisis.

- **Layoff avoidance efforts** Even after a significant period of layoff avoidance efforts, it must be recognized that layoffs are inevitable. e.g.) No new hires, reduced office size, reduced overtime, reduced wages, redeployment, etc.
- **Selecting fair and reasonable layoffs** You must not discriminate on the basis of gender, and fairness and reasonableness must be recognized in the selection of dismissal candidates according to social norms.
- **50-day notice and consultation with worker representatives** Workers' representatives (majority trade union or majority representative of workers) must be notified and consulted in good faith at least 50 days before dismissal.

Q My company says it's in trouble and wants to lay off 10% of its employees. It's true that the company's sales are down this year, but it was consistently profitable until last year.

A Without specific information about the company's business situation, it is difficult to accurately determine whether there is a pressing business need for layoffs. However, if the company was consistently profitable until last year, and sales are down slightly this year, it is unlikely that the company is in such dire straits that layoffs are necessary. Were there any other measures that could have reduced costs? Things like wage freezes, honorary retirements, selling off company property, limiting overtime, etc.

Q There was no such thing, but rather hired new employees recently.

A If so, it sounds like the company is trying to restructure under the pretext of difficult business conditions, and if you can prove it well, you may be able to get an unfair dismissal award.



Q

My company laid off several employees, including me, citing difficulties, and one day I found a job posting on a job board looking for new employees. I feel very unfair, as I worked hard for the company for nearly 10 years. Can I be compensated?



A

If a company lays off workers because of difficulties, but then hires new workers to replace them, that is not a fair dismissal. Employers are required to make every effort to do something other than layoffs when they make layoffs, and hiring new workers is a direct violation of that requirement. You should consider seeking an unfair dismissal determination and receiving compensation for the time you were laid off.



Q

I'm a fixed-term employee, and when my company did layoffs, they prioritized term employees first. I've been working paid less than non-fixed term employees, but I'm the first one to be laid off. I think it's unfair.



A

Prioritizing employees for dismissal because they are fixed-term workers (seasonal, short-term, temporary, etc.) is likely to be recognized as discrimination against non-fixed term workers, especially if they have been working for the company for a long period of time, because it means fixed-term is only a formality. However, if a certain number of points are added to the list of terminated employees based on the length of service, and the number of terminated employees increases as a result of the shorter length of service, it cannot be said that it is unfair, because the selection of terminated employees based on their contribution to the company is a fair and reasonable standard.



Q18

Request for remedy for dismissal from Labor Relations Commission



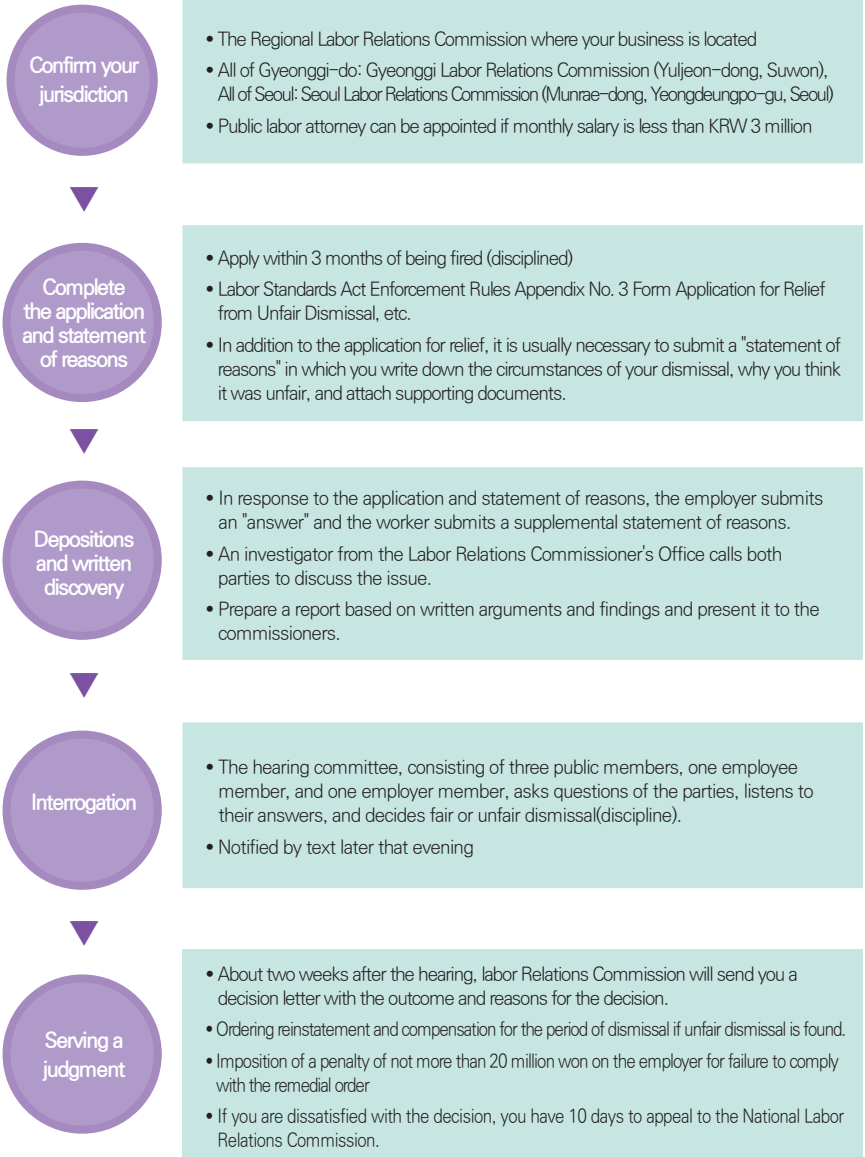
Types of Unfair Dismissal (Disciplinary) Legal Remedies

When a worker is unfairly fired (disciplined) by a company, they can assert their rights in three ways

Agency	remedies	pros and cons
Labor Relations Commission	Request for remedy	<ul style="list-style-type: none">• Quasi-judicial, fair and affordable, the most common remedy for dismissal (discipline)• Only available for businesses with 5 or more employees• Impose enforcement penalties on employers who fail to comply with a relief order
Ministry of employment and labor	Report	<ul style="list-style-type: none">• only possible when you are fired during maternity leave and time off due to a work-related injury (including the 30 days thereafter).• Criminal penalties for failing to comply with a corrective order
Court	Civil litigation	<ul style="list-style-type: none">• Compared to other remedies, it takes longer, costs more, and requires knowledge of legal procedures, but it is the most reliable remedy once a judgment is obtained.



The procedure of request for remedy from Labor Relations Commission





Q

I was fired from my job and applied for unfair dismissal relief from the Labor Relations Commission and was reinstated. The Labor Relations Commission said that even though there was a reason for the discipline, the dismissal was excessive discipline. Now that I've been reinstated, the company says they're going to suspend me again because they admit I was at fault. Is this okay?

A



If the Labor Relations Commission found you unfairly dismissed while admitting the reason for the discipline, then after you are reinstated, you can be disciplined other than dismissal. However, the new disciplinary action (suspension) can be contested legally again. This is because suspension is a severe disciplinary action, and you cannot be suspended for a minor offense.



Q

I received retirement benefit after I was advised to resign, and I am also receiving unemployment benefits. I accepted the advisory resignation without any complaints because I thought I would be able to find a job soon. However, it is not as easy as I thought. Can I apply for unfair dismissal relief now? I did not give a letter of resignation.

A



When a company advises a worker to resign, it is usually called an advisory resignation, and it is often unclear whether it is a dismissal or a voluntary resignation. If the worker does not express that the advisory resignation is unfair and receives retirement benefit or unemployment benefits without any objection, it is believed that the worker left the company of his or her own free will. Even if they do apply for relief, it seems likely that it will be dismissed.



Q

What is the monetary benefit to me if I am found to have been unfairly terminated?

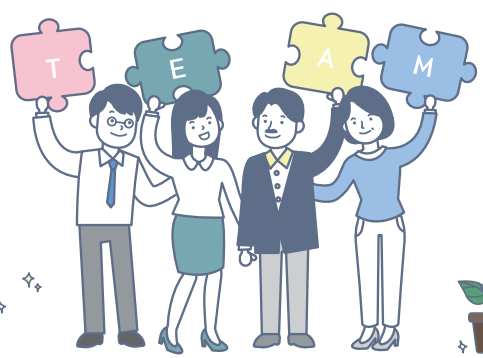


A



When an employer dismisses a worker without fair cause, it deprives the worker of the opportunity to earn wages through the provision of labor. Therefore, the worker is entitled to the full amount of wages he or she would have earned if he or she had worked normally during the period of dismissal. For example, if a worker earns 3 million won per month and it takes 6 months from the time they are fired to the day they are reinstated, they are entitled to 18 million won (3 million won X 6 months) in wage equivalents.

If the worker was employed by another company and earned other income, the employer can deduct it, but it cannot be more than 30% of the average wage. For example, if the worker was employed by another company for 6 months and earned a monthly wage of 2 million won, the wage equivalent that the worker can receive after reinstatement is 12.6 million won (3 million won X 6 months X 70%).





Q19

Industrial accident compensation

Industrial accidents and their compensation

When a worker is injured or becomes ill because of their job, it's called an industrial accident or occupational accident. If a worker suffers from an industrial accident, the employer must compensate the worker for various damages (such as medical expenses, lost time off work, and loss of labor due to disability). Furthermore, in order to provide stable compensation regardless of the employer's economic ability, the government collects insurance premiums from employers and operates the Korea Workers' Compensation and Welfare Service. In the event of an accident, industrial accident compensation insurance is prioritized for compensation through the Korea Workers' Compensation and Welfare Service, and if industrial accident compensation insurance is not available or is insufficient, the employer must compensate for damages under the Labor Standards Act or civil law.

Benefits for industrial accident compensation insurance (as of 2023)

Type	Payout Requirements	Payout Level and Duration
Medical Care Benefits	<ul style="list-style-type: none"> • Paid if you need care for more than 4 days 	Treatment at an insured facility or designated health care provider
Temporary Layoff benefits	<ul style="list-style-type: none"> • Paid while you are unable to work due to medical treatment • Payment of a Injury and disease compensation pensions if the period of convalescence is more than two years 	Pay 70% of average wage Maximum compensation: 246,036 won per day Minimum compensation: 76,960 won per day
Disability Benefits	<ul style="list-style-type: none"> • Paid if disability remains at the end of treatment 	Pension: Tier 1 (329 days) to Tier 7 (138 days) Lump sum: Tier 1 (1,474 days) to Tier 14 (55 days) Based on average wage
Nursing Benefits	<ul style="list-style-type: none"> • Pays for care needs after treatment ends 	Full-time care: 44,760 won for professional caregivers, 41,170 won for family and other caregivers Hours of care: 29,840 won for professional caregivers, 27,450 won for family and other caregivers
Vocational Rehabilitation Benefits	<ul style="list-style-type: none"> • Payments to Level 1 through Level 12 disability beneficiaries 	Vocational Training : 6,000,000 KRW Return to Work Subsidy : KRW 450,000/month-800,000/month Workplace adaptation training fee: 450,000 won/month Rehabilitation fee: 150,000 won/month

Survivor Benefits	<ul style="list-style-type: none"> • Payments to survivors of deceased workers 	Pension: 52% to 67% of salary base (average wage) Lump sum: 1,300 days of average wages
Funeral Expenses	<ul style="list-style-type: none"> • Payment to the person who did the actual dedication 	120 days of average wages Minimum Reward 12,460,160 KRW Maximum reward 17,241,680 KRW

Q
I was injured on the job and my employer does not have industrial accident compensation insurance, can I file for industrial accident compensation?



A
Industrial accident compensation is available even if the employer does not have industrial accident compensation insurance. Industrial accident compensation insurance is different from general private insurance, so employers are required to enroll in it, and even if they don't, they still pay benefits to workers who are injured. However, employers are required to pay retroactive premiums, as well as pay 50% of the insurance benefits paid to workers for one year.

Q
I was injured while working on a home renovation project of about 20 square meters. Can I file for industrial accident compensation?

A
From July 1, 2018, you can receive industrial accident compensation under the Industrial accident compensation Insurance Act, regardless of the area or amount of construction. Until then, workers who were injured in small-scale construction projects were not covered by industrial accident compensation insurance, so it is good news that the law has been revised so that many workers can receive industrial accident compensation benefits.

Q
My brother fell to his death at a construction site, and there were no safety facilities at the site. Can I file a separate claim for damages against the employer in addition to industrial accident compensation benefits?



A
The amount of compensation from industrial accident compensation is different from civil damages because it is set at a certain level based on the worker's salary. Industrial accident compensation benefits can be higher or lower than civil damages. However, if the worker is younger and less at fault for the accident, the amount of damages is often much higher. You should first compare the amount of civil damages with the amount of benefits from industrial accident compensation insurance to see if it is worthwhile to file a claim. If the amount of damages you can receive is higher than the amount of benefits, you can file a claim in court or negotiate with the company for compensation.

Q20

Recognition of Industrial accident compensation



Accident on duty

Type	Recognition requirements
On-the-job accidents	<ul style="list-style-type: none"> Performing work, performing physiological needs in the course of performing work, or preparing for or completing work.
Accidents while traveling	<ul style="list-style-type: none"> Accidents that occur while performing work away from the workplace, such as performing his or her duties outside the workplace. However, it is not recognized as an industrial accident when specific instructions are violated, private acts are performed, or normal business travel routes are deviated from.
Accidents during breaks	<ul style="list-style-type: none"> Accidents that occur while using company facilities or preparing for an event, even during breaks, are recognized as industrial accident compensation. Lunch outside the workplace is compensable as long as it is socially acceptable.
Accidents due to facility defects	<ul style="list-style-type: none"> Accidents that occurred due to defects or negligence in the facilities provided by the employer while using the facilities, etc.
Incidents during events	<ul style="list-style-type: none"> Accidents occurring at events that count as hours worked, or at events where your employer has directed or authorized him or her to participate.
Accidents during care	<ul style="list-style-type: none"> A worker on industrial accident compensation is involved in a medical incident.
Car accident while commuting	<ul style="list-style-type: none"> An accident while using transportation provided by your employer for commuting to work. Accidents that occurred while you were traveling to and from work in your usual route and manner, even if you were not using employer-provided transportation (e.g., shopping for daily necessities, attending school or vocational training, elections, medical appointments, caring for a family member).
Self-injurious behavior	<ul style="list-style-type: none"> Self-harming behavior while mentally deranged due to an industrial accident. Your work has caused you to become mentally ill and engage in self-harming behaviors.

Recognition of work-related illnesses as industrial accident compensation

Type	Prerequisites
Cerebrovascular or heart disease	<ul style="list-style-type: none"> Intracerebral hemorrhage, subarachnoid hemorrhage, cerebral infarction, myocardial infarction, or dissecting aortic aneurysm due to physical or mental overexertion. According to the Ministry of Employment and Labor, chronic overwork requires an average weekly workload of more than 52 hours during the 12 weeks preceding the onset of illness, and acute overwork requires a 30% or more increase in the amount or duration of work within one week preceding the onset of illness compared to the 12-week period.
Musculoskeletal disorders	<ul style="list-style-type: none"> A worker with a musculoskeletal strain (repetitive motion, excessive force, improper posture, vibration, etc). Even if it's a degenerative disease, if it's proven that it was accelerated by the work, it's an industrial accident.
Cancer	<ul style="list-style-type: none"> caused by exposure to carcinogens



Q

I was in a car accident while driving to work in my own vehicle. Can I file for industrial accident compensation?

A

The Industrial accident compensation Insurance Act has been amended to recognize accidents that occur while commuting to and from work in the usual route and manner as work accidents since January 1, 2018. Where did you stop before reaching home after work?



Q

I was on my way to the grocery store to pick up my child from daycare.

A

Purchasing daily necessities, attending school or vocational training, voting in elections and elections, visiting daycare, going to the doctor, and caring for a sick family member may qualify as work-related injuries because they are in the ordinary course and manner.



Q

My brother-in-law died suddenly of a myocardial infarction. He had no medical conditions and was in good health, but he had a lot of work and came home at 12 o'clock almost every day. Will this be recognized as a work-related accident?



A

The Ministry of Employment and Labor's notification on whether to recognize a worker's illness as an occupational disease has recently been revised. According to the previous notification, in order to recognize a worker's illness as an occupational disease due to chronic overwork, the worker had to work an average of 60 hours or more per week, but the revised notification (No. 2017-117, "Matters necessary for determining whether to recognize cerebrovascular disease or heart disease and musculoskeletal disease as occupational diseases") considers that the connection between work and illness increases if the worker works 52 hours or more per week. In addition, if the work schedule is 1) unpredictable, 2) shift-based, 3) lacking in vacation days, 4) exposed to harmful work environments, 5) physically demanding, 6) involving frequent travel across time zones, or 7) subject to mental strain, the connection between work and disease is strong.

First, we recommend that you calculate the number of hours the deceased worked by obtaining various documents that can confirm the number of hours the deceased worked (computer time and attendance records, transportation card usage, high pass records, etc.). In addition, we recommend that you investigate whether there was a sudden increase in workload recently, and whether there were any stressful circumstances, and file a claim for survivor benefits with the Labor Welfare Service.



Q21

Workplace harassment

Workplace harassment is defined as

Workplace harassment is when an employer or coworker uses their position or dominance in the workplace to cause physical or mental distress to another worker or worsen the working environment beyond what is appropriate for the job. Examples include insulting remarks, intentional bullying, not giving work or giving too much work, forcing performance, and constant criticism. Especially in Korea, workplace bullying is often used to force dismissal or resignation, but until now, it was difficult to protect workers who were bullied due to the lack of relevant laws. The Labor Standards Act was recently amended to prohibit workplace harassment and introduce worker protection measures, which is a long overdue relief.

Employer obligations to take action

In the case of workplace harassment, not only the harassed worker, but also third parties can report it to the employer. So, if your company has a labor union, you can report it to the union, or if your company has a labor-management council, you can report it to a labor-management council members.

When a report of workplace harassment is received, the employer must investigate to determine the facts and take measures to protect the harassed worker (change of workplace, paid leave, etc.). The employer must also take measures against the harasser, such as discipline, change of workplace, etc.

If an employer fires or otherwise adversely treats a worker who reports workplace harassment, a worker who is harassed, or a worker who testifies about harassment, the employer may be punished by imprisonment for up to three years or a fine of up to 30 million won.



Q

I work as a salesperson in a call center for an insurance company. My team leader publicly humiliates me in front of other employees and won't let me leave the office until I make up my quota. Is this harassment?



A

A team leader has the authority to direct and supervise the work of team members on behalf of the employer. However, the scope of the authority must be within the scope of the law and social norms, and it constitutes workplace harassment to cause mental or physical pain to team members or to worsen the working environment. Public embarrassment or forcing team members to work overtime may also constitute workplace harassment that goes beyond what is appropriate and may constitute forced labor. Please report this as workplace harassment to your Human Resources team and ask for remediation.



Q

My company recently advised me to resign. When I refused, they treated me badly: they said they'd transfer me to a regional office, gave my work to another team member, and intentionally excluded me from meetings. What should I do?

A



This is typical workplace harassment behavior. The Labor Standards Act was recently amended to prohibit workplace harassment. You can report workplace harassment to your employer, who is required to investigate and take action. We recommend that you report the incident to your employer and ask them to make changes.



Q

I want my team leader and employer to face criminal charges, is that possible?

A



A fine of not more than 10 million won may be imposed if an employer and his or her relatives employed by him or her engages in workplace harassment. The penalty provision for perpetrators of workplace harassment has been recently established, and it is expected to have a greater effect in preventing workplace harassment.



Q

I don't know if my boss would discipline the team leader if I asked him to, because it's tacit within the company.

A



The Labor Standards Act requires employers to investigate and take action when a report of workplace harassment is made. For example, they may need to discipline the perpetrator, transfer the perpetrator to separate them from the victim, give the victim paid leave, reassign them, etc. We recommend that you make these requests first.



Q

What if my boss doesn't take such action?

A



Unfortunately, there is no provision to punish employers for failing to take such measures, which is unfortunate, as the effectiveness of the anti-workplace harassment system will continue to be an issue. However, if an employer dismisses or otherwise disadvantages a worker for reporting workplace harassment, the employer is subject to imprisonment for up to three years or a fine of up to 30 million won.

A



In addition, the Industrial accident compensation Insurance Act has been amended to recognize physical and mental illnesses caused by workplace harassment as occupational accidents. If you are receiving psychiatric treatment due to workplace harassment, you may want to consider applying for industrial accident compensation and taking a leave of absence.



Q

Okay. Thank you.



Q22

Sexual harassment in the workplace



What is sexual harassment in the workplace?

Workplace sexual harassment is when an employer, a supervisor, or coworker takes advantage of his position in the workplace or uses his or her work to make sexually humiliating or offensive comments.

Judgment Criteria

To constitute workplace sexual harassment, the sexual comments and behavior must have caused the victim to feel sexually humiliated or offended or to suffer an adverse employment action. Sexual humiliation or offense varies from worker to worker, so just because the victim felt it doesn't mean it's true. The victim must have felt sexually humiliated or offended in the eyes of a normal person.

The second is that the sexual comments and behavior must take advantage of position at work or be work-related. While conduct outside of the workplace by an employer, supervisor, coworker, etc. may be viewed as taking advantage of his position at work or work-related, comments and behavior by someone not associated with the workplace, such as the employer's husband, may not constitute workplace sexual harassment.

Employer Responsibilities

If an employer learns of sexual harassment in the workplace, he or she must investigate the facts, including listening to the opinions of the victimized worker, without delay, and discipline the perpetrator or take equivalent measures. In addition, if the victim of sexual harassment requests a change in assignment, he or she must take appropriate measures such as a change in assignment or paid leave. If the employer fails to investigate or take such measures, he or she is subject to a fine of not more than 5 million won, and if he or she dismisses or takes adverse measures against the victimized worker, he or she is punishable by imprisonment for not more than three years or a fine of not more than 30 million won.

Sexual Harassment Prevention Training

Employers must conduct sexual harassment prevention training at least once a year. Sexual harassment prevention education must be conducted through training, inquiries, meetings, cyber training, etc. However, if the business employs fewer than 10 workers at any given time, or if the employer and workers are all of the same gender, posting or distributing educational materials or publications may be substituted.




Q

An important client of my company often makes sexual jokes to me, and I'm having a hard time dealing with it. I've talked to my boss, but he says I should put up with it because he is an important client. What should I do?

A




Technically, sexual harassment by a customer of the company cannot be considered workplace sexual harassment, but our law requires the employer to take appropriate action if you are sexually harassed by a customer in the workplace, such as changing your workplace, transferring you to a different department, or giving you paid leave. We recommend that you ask the employer to take these actions.




Q23

Non-discrimination against contingent workers



What is Non-discrimination against contingent workers?

The Korean Labor Relations Act prohibits discrimination based on employment type. First of all, Article 6 (Equal Treatment) of the Labor Standards Act prohibits discriminatory treatment of working conditions based on social status, and some court cases have ruled that the type of employment falls under social status and therefore cannot discriminate between fixed-term and regular employees. The Act on Protection of Fixed-term and Part-time Employees Workers prohibits discrimination against fixed-term or part-time workers in working conditions without reasonable cause, and the Act on The Protection, etc. of Temporary Agency Workers prohibits discrimination against temporary agency workers.



Recognizing discrimination

This does not mean that all contingent and regular workers must be equal in all working conditions. Discrimination is recognized when a regular worker performs work that is similar to that of a fixed-term worker. The work of regular and fixed-term workers does not have to be exactly the same to be recognized as similar work, but it is recognized as similar work if there are no essential differences in key factors such as work content and working conditions.

Second, the working conditions that are subject to discriminatory treatment do not necessarily have to be related to the provision of labor, but include all payments made as a result of the labor relationship. For example, welfare benefits paid to workers for their livelihood security are not directly related to the provision of labor, but they are paid as a result of the labor relationship and are subject to the prohibition of discrimination.

Third, an employer can discriminate in terms and conditions of employment if he has a legitimate reason to do so. If a regular employee and a fixed-term employee have similar job duties but different responsibilities and authority, the difference in working conditions is recognized.



Application for Correction of Discriminatory Treatment

If you are a seasonal, part-time, or temporary worker, you may apply for correction of discriminatory treatment with the Labor Relations Commission. It must be filed within three months of the date of the discriminatory treatment (or the date of its termination in the case of continuing discrimination), and the employer must prove that the treatment was not discriminatory. The remedy procedure is the same as that described above in "Labor Relations Commission Unfair Dismissal (Disciplinary) Remedy Procedure" (p.55).



Q

I am a temporary worker working as a parking attendant in a public parking lot. The company does not pay holiday pay, family allowance, and fixed meal allowance to non-regular workers.

A

No difference in base pay?



Q

There's about a 30% difference in base pay.

A

Are both regular and non-regular employees doing the same parking management?



Q

A parking lot with many vehicles is staffed by full-time employees, while a parking lot with fewer vehicles is staffed by temporary workers.

A

First of all, it would be difficult to see a 30% difference in base salary as discrimination, because the parking lot where the regular employee works has relatively more vehicles entering and exiting, and if the labor intensity is high, the difference in wages due to this can be seen as a reasonable difference.

However, differences in holiday pay, family allowances, and fixed meal allowances can be considered discrimination. This is because welfare allowances are paid to support the lives of workers regardless of the content of their work or the intensity of their labor, so it is difficult to see a rational reason for not paying them.



Q What should I do then?

A Identify a comparable worker and file a discrimination complaint with the Labor Relations Commission.

Q My company has a mix of civil servants and fixed-term employees, and while there are no major differences in work, there are differences in wages and benefits. Isn't civil servants receiving benefits discrimination?



A It can be discriminatory even if a worker who is doing the same or similar work is a civil servant. This is because if you exclude civil servants as a comparison for discrimination, workers who work only with civil servants will have no comparison and will have to endure any discrimination.

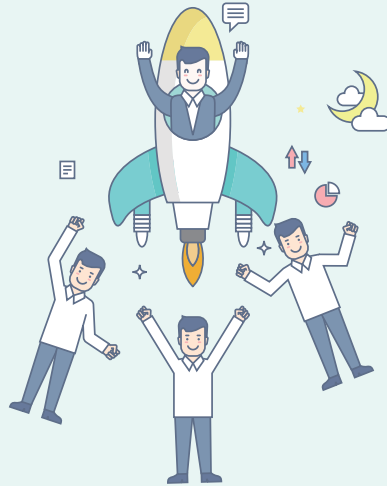
Q My company pays 1 million won a year for optional welfare points, but only for regular employees. The collective bargaining agreement states that the optional welfare points do not apply to fixed-term workers. Is this discrimination?



A If a company's benefits program is only available to regular employees and not to non-regular employees, even if it is stipulated in a collective bargaining agreement, this constitutes discrimination prohibited by the Act on the Protection of Fixed-term and Part-time Workers, etc.

Q24

Continued employment of temporary workers



Convert to regular workers after 2+ years of employment

Employers are required to convert fixed-term workers to regular employees (indefinite-term employees) if they continue to employ them for more than two years. In principle, fixed-term employees are used for temporary and intermittent work, so if you continue to employ them for more than two years, you are obligated to convert them to regular employees.

However, an employer is not obligated to convert to a regular employee (indefinite contract employee) in the following cases: 1) if an employer sets a period of time necessary for the completion of a business or a specific task, 2) if an employee is a replacement worker for a leave of absence or dispatch, 3) if an employer sets a period of time necessary for study or vocational training, 4) if an employee is over the age of 55, 5) if an employee needs to utilize specialized knowledge and skills, and jobs under government welfare policies and unemployment measures.



Rights of expectation of contract renewal

If a worker who has not worked for more than two years is notified of the expiration of his or her contract, it is not considered a dismissal in principle, but if the worker can be considered to have formed the right of expectation of contract renewal, the notice of contract expiration is a dismissal. The rights of expectation of contract renewal are formed when 1) there is a provision for contract renewal in the employment rules or labor contract, 2) there is a trust that the contract will be renewed, 3) there are cases of renewal by other workers, and 4) there are a large number of contract renewals.

Effects of converting to regular workers

This does not mean that the working conditions, including wages, will be the same as those of a regular employee, as the law only requires that a worker cannot be dismissed because the contract period has ended, not that the working conditions of a non-regular worker will be the same as a regular employee.

Q

The company I work for hires a fixed-term laborer for two years, gives them notice that their contract is up, hires another fixed-term laborer in their place, and then fires them again after two years. It is replacing the fixed-term laborers every two years. Is this acceptable?



A

According to The Act on Protection of Fixed-term and Part-time Employees, a worker must work continuously for at least two years before he or she has the right to be converted to a regular employee. There is no legal problem if a company replaces a fixed-term worker every two years. However, if a worker whose contract has expired can be considered to have formed an expectation of contract renewal, the company may not be able to dismiss the fixed-term worker without just cause, so it is necessary to determine whether this is the case. (See Rights of Expectation of Contract Renewal above.)



Q25

Unemployment Benefits



Reasons for receiving unemployment benefits

Unemployment benefits (job-seeking benefits) are paid when a worker with 180 or more days of insured units in the 18 months preceding the date of separation actively searches for a job if he or she leaves for involuntary reasons.

- **Insured Unit Period of 180 days or more There are 180 or more days of remuneration** (excluding unpaid holidays) during the period of employment insurance.
- **leave for involuntary reasons** resignation, reduction in force, business relocation, health reasons, unpaid wages, retirement age, contract expiration, etc.
- **Report that you've been actively seeking reemployment**

Job-seeking benefits amount

Age and subscription duration	Less than 1 year	More than 1 year Less than 3 years	More than 3 years Less than 5 years	More than 5 years Less than 10 years	10 years or more
Under 50	120 days	150 days	180 days	210 days	240 days
Age 50 and older and people with disabilities	120 days	180 days	210 days	240 days	270 days

※ 1-day job search benefit: 50% of the average wage under the Labor Standards Act (As of 2024, the lower limit is 63,104 won per day and the upper limit is 66,000 won per day)

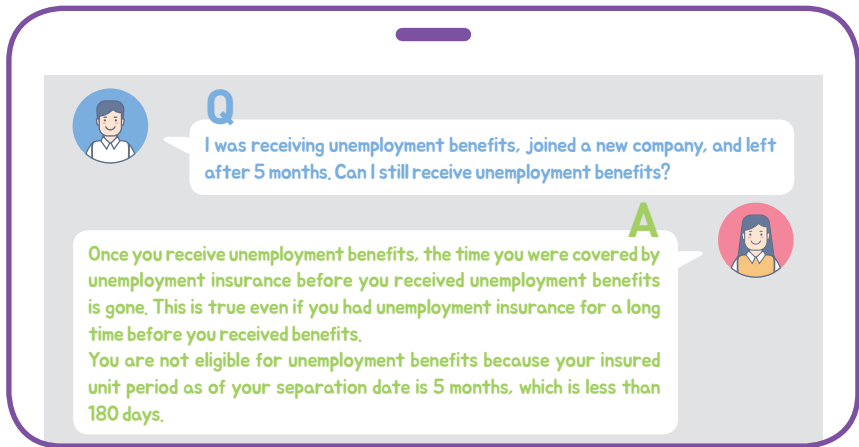
※ Based on 40 hours per week


Unemployment benefit fraud


Up to twice of the unemployment benefits paid to a worker is collected if a worker receives unemployment benefits through fraudulent means. (e.g., reporting an involuntary separation from employment even though it was a voluntary separation, reporting retirement even if he didn't retire, not reporting employment even if he was employed, reporting job search activity even if he didn't do job search activity)

If the employer is responsible for the fraudulent payment, the

employer will be held jointly and severally liable, and there is also a reward system for reporting fraudulent payment of unemployment benefits.



Q  I was receiving unemployment benefits, joined a new company, and left after 5 months. Can I still receive unemployment benefits?

A  Once you receive unemployment benefits, the time you were covered by unemployment insurance before you received unemployment benefits is gone. This is true even if you had unemployment insurance for a long time before you received benefits. You are not eligible for unemployment benefits because your insured unit period as of your separation date is 5 months, which is less than 180 days.

Q I was enrolled in employment insurance for 181 days from January 1, 2018 to June 30, 2018, but when I applied for unemployment benefits, I was told that I could not receive unemployment benefits because my insured unit period did not reach 180 days. If I was enrolled for 181 days, why did it not reach 180 days?



A The insured unit period for determining eligibility for job search benefits is calculated by adding up the days on which remuneration is paid. The days on which remuneration is based include actual working days and paid holidays, but do not include unpaid holidays. Based on workers who work five days a week from Monday to Friday, Saturdays are often unpaid holidays, so the days on which remuneration is based usually exclude Saturdays. In such cases, the worker must have been enrolled in employment insurance for at least 180 days, excluding Saturdays.

Q My company gave me an advisory resignation. Can I not receive unemployment benefits if I write a letter of resignation?



A You may be eligible for unemployment benefits unless you resigned for cause, which is a disqualifying reason for unemployment benefits. However, if you resign for "personal reasons," you may have to prove that your termination was involuntary. Therefore, it is recommended that you indicate in your resignation letter that you are leaving due to the company's recommendation.



Good cause for separation that doesn't limit eligibility

- 1 If any of the following occurred for more than two months within the one-year period preceding the date of separation from employment**
 - A. The actual working conditions are lower than the working conditions offered at the time of recruitment or the working conditions generally applied after recruitment.
 - B. If you have wage arrears
 - C. If the wage paid for the prescribed work falls below the minimum wage under the Minimum Wage Act.
 - D. "Violation of restrictions on overtime work under Article 53 of the Labor Standards Act
 - E. If you were paid less than 70 percent of your pre-shutdown average wage due to the shutdown of your place of business.
 - 2 You were subjected to unreasonable discrimination in the workplace based on religion, gender, physical disability, union activity, etc.**
 - 3-1 You were subjected to sexual harassment, sexual violence, or other sexual harassment against your will in the workplace.**
 - 3-2 In case of workplace harassment under Article 76(2) of the Labor Standards Act**
 - 4 If the business are going out of business, or the employer is planning a large number of layoffs.**
 - 5 If you are advised to retire by your employer due to any of the following circumstances, or if you are transferred to a new job due to a recruitment of retirees conducted under an employment adjustment plan due to an inevitable reduction in personnel**
 - A. Sale, acquisition, or merger of a business
 - B. Closing or converting some of our businesses
 - C. Elimination or reduction of organizations due to reorganization
 - D. Changes in work patterns due to the introduction of new technologies, technological innovation, etc.
 - E. In case of deterioration of management, inadequate personnel, or other similar reasons.
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- 6 The employee has become unable to commute to work due to any of the following reasons (defined as the time required to travel to and from the workplace by the usual means of transportation available to the employee is three hours or more).
 - A. Relocating your business
 - B. Transfer to a different geographic location
 - C. Relocating to live with a spouse or dependent relative
 - D. You are unable to commute for other unavoidable reasons.
 - 7 You left your job because you were not allowed to take a vacation or leave of absence due to the company's circumstances during a period of 30 days or more when you had to take care of a parent or domestic relative due to illness or injury.
 - 8 If a "major accident" under Article 2 (7) of the Occupational Safety and Health Act has occurred and the workplace has received a safety and health correction order from the Minister of Employment and Labor related to the accident, but has not corrected it by the correction period and is exposed to the risk of the same accident.
 - 9 When it is difficult for the insured to perform your assigned duties due to lack of physical strength, mental or physical disability, illness, injury, or loss of vision, hearing, or sense of touch, and it is objectively recognized based on a doctor's opinion, employer's opinion, etc. that the insured has left the company because the company's circumstances do not permit a change in job type or leave of absence.
 - 10 Pregnancy, childbirth, or care of a child (including an adopted child) under the age of 8 or in the second grade, "You left your job because your employer did not allow you to take a leave of absence or leave of absence because you were unable to continue to perform your duties due to compulsory service under the Military Service Act.
 - 11 If the business content of the employer becomes illegal due to the enactment or amendment of laws and regulations, or if the employer manufactures or sells goods or services prohibited by laws and regulations differently than at the time of employment.
 - 12 You are unable to continue working for the company due to reaching retirement age or expiration of your contract.
 - 13 If it is objectively recognized that other employees would have quit under such circumstances based on the circumstances of the insured and the workplace, etc.
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About the Suwon City Contingent Workers Welfare Center

The Suwon City Contingent Workers Welfare Center was established to protect the rights of irregular workers and improve the welfare of Suwon citizens by improving their working conditions in accordance with the "Ordinance on the Establishment and Operation of the Suwon Contingent Workers Welfare Center". We are working for a happy change where the value of labor is respected, and citizens become the owners. Together with workers and citizens, we will strive to realize a "New, Shining, Suwon".



If you need labor consultation, please contact the Suwon City Welfare Center.

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Directions



Workers' Rights Handbook



Published December 2023

Printed December 2023

Publisher Heewon Lee

Published by Suwon City Contingent Workers Welfare Center

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"1:1 free consultation when labor counseling is needed"



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