
COVID-19 and Labour Law: Republic of Korea

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Abstract

Under the emphasis on maintaining employment relations as a priority to tackle with rising labor issues by COVID-19, measures targeted for small and medium sized enterprises, self-employed persons and working parents have been addressed by legislative revision alongside with social dialogue, with some challenges still left behind.

Keywords: Covid-19; Labour law; Employment maintenance allowance; VAT and tax relieve; Health and safety.

The first case of COVID-19 in Korea was confirmed in late January 2020, upon which the Korean Government announced that the country is in a state of emergency. Although not in a lockdown, it was highly recommended to close crowded place, such as religious buildings, especially for as long as measures on social distancing apply. Korea also applied massive testing, including people that showed mild symptoms. Mid-February over 10,000 people were tested positive for the COVID-19 virus. Since then the number of newly infected persons showed a drastic decrease to less than 50 people per day as of April 10th.

In the field of labour, the foremost priority of the government measures has been emphasized on maintaining employment relations¹. In this report I will address the measures that are most relevant for employment relations and working conditions. I will also describe how these measures were designed, with special attention to what extent social partners have been involved. Lastly, I will discuss some remaining challenges not adequately covered by measures (yet).

The Korean Government has provided a special allowance to support the maintenance of the employment relationship. An allowance is provided when the employer is unable to carry on the business due to financial burdens but maintains the employment relations, either by putting his workers on paid leave or paid suspension. On 25 March 2020 the Ministry of Employment and Labor (MEL) announced that the legislation providing for the allowance, the Enforcement Decree of the Employment Insurance Act, will be revised. The main points of revision are an increase of the allowance from 75% to 90% of wages

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¹ Ministry of Employment and Labor (MEL), <http://www.moel.go.kr/skin/doc.html?fn=20200409175541cf075783e69d4067b1ffb7a619be97b3.hwp&rs=/viewer/ENEWS/2020/> accessed 10 April 2020.

and a broadening of the personal scope making all the sectors in small and medium sized enterprises eligible for the allowance. Such a broad scope is unique in the history of Korea².

Another measure of relevance to mention here is a revision of the Restriction of Special Taxation Act, which has been approved by the parliament. It is a temporary revision by which the Korean Government aims to alleviate the financial burden of self-employed persons through a reduction of the VAT and taxes for medium sized enterprises in the region that has been designated as a disaster zone³.

In the context of occupational safety and health the MEL has issued a guideline on teleworking with regard to areas such as working hours, extended working hours, service provision and industrial accident⁴. For example, extended and night-time working hours shall be paid as overtime pay and injury or disease that has occurred upon teleworking falls under occupational accident⁵. In addition, with the indefinite suspension of daycare centers, kindergartens, and schools, which have transformed to remote teaching families are facing challenges combining work and care responsibilities. Therefore, the government's allowance support for short-term family care leave, has been extended from five to ten days.

The first tripartite declaration to seek cooperation to overcome the COVID-19 crisis was concluded by the Economic, Social and Labour Council (ESLC), which is a presidential advisory body specifically for social dialogue. Additionally, the Healthcare Sector Committee, which is part of the ESLC, released a statement on the protection of healthcare workers.⁶ Social partners were also involved in an urgent policy discussion which was initiated by the ruling party on the revision of legislation to support small and medium sized enterprises and self-employed workers⁷. The employer's representative called for measures on economic promotion and the worker's representative addressed issues on labour rights for vulnerable groups and emphasized stable employment.

² MEL, <http://www.moel.go.kr/news/enews/report/enewsView.do?news_seq=10822> accessed 10 April 2020.

³ 차지연 & 홍규빈, '기재위, 코로나세법 의결... 영세 자영업자 부가세 한시적 감면' 연합뉴스 (Seoul, 17 March 2020).

⁴ MEL, <<https://www.moel.go.kr/skin/doc.html?fn=20200402173357bedd41e7ff9e4282ac793605caffc407.hwp&rs=/viewer/ENEWS/2020/>> accessed 12 April 2020.

⁵ Individual cases are determined by the Korea Workers' Compensation & welfare Service.

⁶ The main statements are on i) creating a labor environment which can ensure the safety of healthcare service, ii) improving job security and treatment for healthcare workers, iii) coping with the shortage of medical supplies and building a sustainable healthcare system, and iv) enhancing public healthcare capabilities and collaboration with the private healthcare sector. The agreement was reached by means of paper-based decision-making amid the outbreak. For the agreements, see:

<http://english.eslc.go.kr/bbs/data/list.do?menu_idx=2102> accessed 12 April 2020.

⁷ 이보배, '민주, 코로나19 피해 자영업 지원법 다음 임시국회서 추진키로' 연합뉴스 (Seoul, 25 March 2020).

Amid these law revisions and countermeasures, grey areas need to be tackled in employment relations and working conditions. The Labor Standards Act (LSA) establishes the terms and condition of employment of workers, by its provision on minimum wage, collection of insurance premiums, employment insurance and industrial accident compensation insurance. However, workers such as platform workers, self-employed persons, domestic workers and workers in the special type of employment whose status are between employee and self-employed are excluded from the scope of LSA and its protections. Furthermore, Article 46 LSA states that the obligation to provide shutdown allowances by the employer arises if the cause of the shutdown of a business is attributable to him/ her. Therefore, if the outbreak is recognized as force majeure, employees under LSA such as sub-contracted workers and fixed-term workers at schools, are also left vulnerable.

With regard to general health and safety issues, the Korean Government has introduced a public rationing system to deal with the limited supply of and soaring demand for face masks. However, this system is out of reach for migrant workers who reside in Korea for less than 6 months or who are working at an unregistered workplace and consequently are not covered by the National Health Insurance Act. They may receive support in other ways, but the threshold in the law deters them from the publicly provided masks in times of (a health) crisis. Lastly, although Article 50 ALS prescribes that an additional benefit, such as sickness allowance, may be provided, it is known to be non-existent in practice. This is a consequence from the fact that the enforcement decree to the ALS does not extend to the sickness allowance. Even when it is possible to rely on such an allowance, because such has been agreed upon in a collective labour agreement, in general the period is (too) short and workers face practical difficulties claiming it for non-work related sickness. Therefore, as alternative, employees may rely on annual leave or unpaid leave instead⁸. These precarious situations need further legislative attention.

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⁸ 서한기, '아프면 쉬다' 직장 소득보전 가능할까..."아직 현실과 먼 얘기" 연합뉴스 (Seoul, 23rd March 2020).