



The Republic of Korea's Policy Response to the Covid-19 epidemic in the field of employment and labour relations

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The Republic of Korea witnessed its first case, a 35-year-old woman from Wuhan, China who tested positive for Covid-19 on 20 January 2020¹. The number of cases has since grown sharply and peaked at 600 per day in early March, after which the number of newly reported cases has dwindled and currently remains at under 100 cases per day². While committed to containing a snowballing coronavirus outbreak without locking down any cities or regions, South Korea has also been endeavouring to tackle the economic and social impacts of this pandemic. This piece focuses on the latter and seeks to provide a brief of Korea's major policy measures in the sphere of employment and labour relations.

It is fair to say that the basic approach so far taken by Korea to these employment and labour policies has been to make a full use of what is already available under the current legal framework rather than inventing a new one. That is, the key strategy is for the administration to exercise its power to the maximum extent in interpreting the law and spending the budget (which was urgently arranged by the National Assembly's revised supplementary budget) in a manner that favours the State's intervention for employment promotion. The government fine-tunes those measures further to maintain their aim at the constantly moving target. The overall trend has been largely to expand the scope of targets for support and escalate the level of that support. Therefore, it is too early at this stage to confirm what is being undertaken and assess the efficacy of such policy responses. In this regard, what follows would be more of a snapshot of Korea's ongoing efforts rather than a comprehensive and complete picture of them.

With this in mind, this paper overviews first the list of more immediately relevant responses and later more general legal framework of labour law.

1. Regulation with Employment Implication under the *Infectious Disease Control and Prevention Act*

1.1. Employers' obligation to grant patients and/or suspect employees additional paid leave to regular paid annual leave when subsidised and to treat them no less favourably

A patient with an infectious disease such as Coronavirus or a person suspected of being as such may be ordered to be hospitalised or isolated under the *Infectious Disease Control and Prevention Act*. Where such persons are his/her employees, the relevant employer may grant them a paid leave

¹ <https://www.cdc.go.kr/board/board.es?mid=a30402000000&bid=0030>.

² *Ibid.* South Korea maintains the country's alert level at the highest.

during the period of such hospitalization or isolation, in addition to the paid leave provided for in Article 60 of the *Labor Standards Act*. In such cases, if the cost of granting a paid leave is subsidised by the State, the employer shall provide the paid leave³. Furthermore, no employer shall dismiss, or otherwise treat unfavourably, an employee on the reason of such a paid leave⁴.

1.2. Employers' risk of business (place) being temporarily closed or suspended, employees' risk of wage loss and compensation

For the purpose of epidemic control, disinfection or preventive measures listed under the *Act*, a business owner may be ordered to close and/or suspend his/her place of business for a specified period of up to six months⁵. The losses of such business owners brought about by such orders may be compensated subject to a favourable resolution by the relevant Compensation Deliberation Committee⁶. As this is not a shut-down due to a cause attributable to employers, employers are not required in principle to pay the employees concerned allowances of not less than 70 percent of their average wages⁷. Nevertheless, in the cases in which they do, part of such wage losses may be offset by State's funding for employee retention as will be noted below.

2. Subsidies for Employee Retention

In this context, another measure of relevance is the scheme of 'subsidies for employee retention', which has been in place since 1995⁸. The purpose of this scheme is to provide financial support for an employer ('a business owner') who finds it unavoidable to make adjustments in employment and yet seeks to avoid such an outcome. Where, instead, taking measures such as reducing the working hours, restructuring work shifts, or granting affected employees paid leave or shutdown allowances during the suspension of business or layoff, such an employer will be eligible for 'subsidies for employee retention'.

What is noteworthy in regard to this scheme as an emergency response to the Covid-19 outbreak is firstly the significantly relaxed condition for eligibility. Prior to the epidemic, it was the norm that applicants had to demonstrate that their business case fell within any of the enumerated requirements such as a 15 percent minimum drop in production or sales relative to the previous month⁹. Since the announcement of the Ministry of Employment and Labor on 10 February 2020¹⁰, however, virtually all applicants whose operation is affected by Covid-19 have been counted as 'business owners in need of unavoidable employment adjustment'¹¹. This is because responsible local authorities actively exercise their leeway conferred on under the *Enforcement Rule of the Employment Insurance Act*.

Secondly, the coverage rate of subsidies for total retention costs has surged. Depending upon the number of regular workforce and the type of industry, an amount equivalent to 2/3 or half of the money and valuables was provided by the business owner to compensate for the lost wages of the employees concerned¹². However, as per the amendment for the *Enforcement Decree of the*

³ [Infectious Disease Control and Prevention Act](#), Art. 41-2.1.

⁴ *Ibid.*, Art. 41-2.2.

⁵ *Ibid.*, Arts. 47, 48, 49 and 59.1.

⁶ *Ibid.*, Art. 70.1.

⁷ [Labor Standards Act](#), Art. 46.1.

⁸ [Enforcement Decree of the Employment Insurance Act](#), Art. 19.

⁹ [Enforcement Rule of the Employment Insurance Act](#), Arts. 24.2 and 24.3.

¹⁰ [신종코로나바이러스 피해기업 고용유지지원금 지원](#).

¹¹ [Enforcement Rule of the Employment Insurance Act](#), Art. 24.2 and 24.3.

¹² There is an exception to this rule. Where a business in question is designated as 'activities that are necessary for special assistance for employment', a more generous package of benefits such as a higher coverage rate, an increase in the amount of allowances for job education and training, and extra postponement of social insurance fees, will be

Employment Insurance Act made on 6 April 2020, the coverage rate can now be as high as 90 percent¹³.

3. Mitigation and Payment Deferment of Fees for (Employment-related) Social Insurance Schemes¹⁴

In April, the introduction of a 30 percent reduction in contribution to employment insurance and industrial accident compensation insurance during the period of 6 months (from March to August 2020) was notified¹⁵. This newly introduced measure only applies to small businesses, namely employers with a regular workforce of 29 or fewer employees, self-employed workers without employees, or business owners hiring ‘persons in special types of employment’¹⁶. In South Korea, employers/business owners are entirely responsible to pay industrial accident compensation insurance fees. There is an exception to this rule that unless opting-out of the insurance scheme, ‘persons in special types of employment’ need to bear half of the contribution¹⁷. In the case of employment insurance, the norm is that employers and employees share the responsibility for the payment of employment insurance fees. The government also began to allow the same group of people to defer their fee payment for three months between March and May 2020.

4. Other Specific Measures

There are also many other programmes run by various governmental departments and public or private organisations to support those who seem to disproportionately suffer from the economic impact caused by Covid-19. Examples include the introduction of emergency loan programmes for workers and small businesses, the lowering of the eligibility threshold of employment promotion allowances for ‘persons in special types of employment’ and freelancers as well as young job-seekers and seniors, and the provision of a subsistence allowance for the unemployed and those laid off.

5. Teleworking

There are no statutory rules in labour legislation and regulations in Korea that give rise to any substantive rights or obligations relating to teleworking. The issue of teleworking currently is wholly left to the autonomy of parties to employment and labour relations. It is therefore normally collective agreements, rules of employment, and/or employment contracts that provide a legal ground for a right of either party to teleworking. Without such agreement a party cannot unilaterally request the other to (permit to) work at home or any other places decided by him/herself. However, Korea has some legal frameworks that enable the State to provide financial assistance to a business owner who seeks to arrange necessary equipment for teleworking. The goal of this subsidy is to promote a more family-friendly environment in the workplace¹⁸. This system would happen to be of

granted. On 16 March 2020, the Ministry of Employment and Labor issued a public notice to include within ‘activities necessary for special assistance for employment’ several activities and businesses such as travel (agencies, tour operators and tourist assistance), hospitality (hotel and resort), and transport (airlines).

¹³ There are also many elements of the scheme that stand unchanged. The benefit-period (180 days at the longest) and the upper limit amount of subsidies per day (66,000 Korean won per day) are such examples. 66,000 South Korean won (KRW) is approximately equivalent to \$53 (USD) when applying the currency exchange rate on 6 April 2020, 1 USD = 1,236.80 KRW.

¹⁴ <https://www.kcomwel.or.kr/kcomwel/noti/noti.jsp>.

¹⁵ *Act on the Collection, etc. of Premiums for Employment Insurance and Industrial Accident Compensation Insurance*, Arts. 13 and 14.

¹⁶ *Industrial Accident Compensation Insurance Act*, Art. 125.

¹⁷ *Act on the Collection, etc. of Premiums for Employment Insurance and Industrial Accident Compensation Insurance*, Art. 49-3.2.

¹⁸ [고용창출장려금·고용안정장려금의 신청 및 지급에 관한 규정\(고용노동부 고시 제2020-76호\)](#).

particular use in the time of the Covid-19 epidemic when the need and demand for teleworking is higher than ever.

6. Dismissal protection

The rule of protection from unfair dismissal is prescribed by Article 23 of the *Labor Standards Act* stipulating that an employer shall not, without justifiable cause, dismiss, lay off, suspend, or transfer an employee, reduce his/her wages, or take other punitive measures against him/her. As an exception to the norm, however, the following article, Article 24, sets out certain conditions for a dismissal based on business reasons to be considered as lawful. Such requirements or, more correctly, elements involve (1) the presence of an urgent managerial necessity, (2) exhaustion of every effort to avoid dismissal, (3) establishment of reasonable and fair criteria for the selection of those persons subject to dismissal, (4) a notice of the intention to dismiss (in workplaces where there is an organized trade union representing more than half of the employees), and (5) a consultation with the union.

Under this general framework and in the context of Coronavirus outbreak, a business whose operation is severely interrupted by either public health or economic shocks may successfully proceed with quantitative restructuring under Article 24. This is why the government strives, for instance through the scheme of subsidies for employee retention, to induce employers to take business suspension or shut-downs instead. Against this legal background, the organised labour circle has recently argued for the incorporation of regulation that comprehensively prohibits dismissal of any kind, at least during the epidemic of Covid-19¹⁹.

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¹⁹ For the Korea Confederation of Trade Unions, see <http://worknworld.kctu.org/news/articleView.html?idxno=400406>; For the Federation of Korean Trade Unions, see http://inochong.org/index.php?mid=poster&category=249&document_srl=247662.