

Key HR Issues in 2013

KIM & CHANG | April 5, 2013

2013 HR Key Issues

- 1 Labor Policy of GH Park Administration
- 2 Recent Changes in the Labor Laws
- 3 Key HR Issues in 2013
 1. Ordinary wages
 2. Conversion of non-regular workers into regular workers
 3. Unfair labor practices

Labor Policy of GH Park Administration

Overview

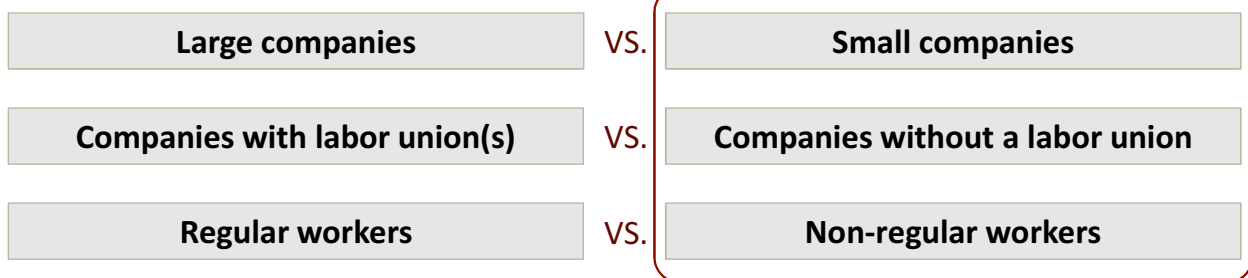
Key words
and
Key issues

- Job creation
 - ✓ Increase number of good jobs / Maintain current jobs / Change to better jobs
- Social dialogue based on “talks and compromise”
- Economic democratization
 - ✓ Protection of social minorities
 - ✓ Conversion of non-regular workers into regular workers
 - ✓ Anti-discrimination between regular workers and non-regular workers
- Job security
 - ✓ Opposition to layoffs
 - ✓ Reduction of working hours / Job sharing

Economic democratization

- **For sustainable development of the economy and job creation, benefits from the development should be shared**
 - ✓ *“Through economic democratization, benefits from the development will be appropriately shared with all the economic units.”*
 - ✓ *“The conglomerate-centered economic structure needs to be changed into an economic system where small and mid-sized businesses and consumers can grow together through establishing fair and transparent market order and providing equal opportunities and reasonable rewards”*

The new Administration will focus more on the following categories:



Non-regular workers / In-house subcontracted workers (1)

Presidential campaign pledge

- **Non-regular workers in the private sector:**
 - ✓ *“Public announcement of an employer’s employment categories”*
 - ✓ Provide labor unions with the right to request remedial action against a company’s discriminatory measures between regular workers and non-regular workers

- GH Park’s presidential campaign pledges about non-regular workers are generally same as the opposing party’s platform
- The new Administration is expected to make use of the “public announcement of an employer’s employment categories” in order to put pressure on private enterprises to convert non-regular workers into regular workers
 - ✓ *“Public announcement of an employer’s employment categories”* under the recently amended Framework Act on Employment Policy (Effective from June 19, 2013)
 - Disclosure of employment categories (e.g., regular employees, fixed-term employees, outsourced employees) on an annual basis
 - According to the pre-announcement of this legislation, an employer with 300 employees or more will be subject to this disclosure requirement
- Companies need to prepare a plan to redress discrimination against non-regular workers

Non-regular workers / In-house subcontracted workers (2)

Presidential campaign pledge

- Establishment of the “Act on the Protection of In-house Subcontracted Workers”
 - ✓ Anti-discrimination against in-house subcontracted workers whose work is the same or similar with that of regular workers of the principal company
 - ✓ Special labor inspection on the principal company which the court held engaged in illegal worker-dispatch
 - Administrative order to have the principal company directly employ such illegally dispatched workers if the same illegal worker-dispatch practice is found to exist

- “Act on the Protection of In-house Subcontracted Workers”
 - ✓ This Act will provide in-house subcontractors with the right to request remedial action against the principal company’s discriminatory measures
 - ✓ This Act runs counter to the Ministry of Employment and Labor’s previous stance (i.e., “In-house subcontractors are regular workers of the subcontractors”)
 - ✓ Under this Act, the principal company needs to appoint a person in charge of handling grievances of in-house subcontracted workers and in-house subcontracted workers can participate in the Labor-Management Council of the principal company

Privileged and Confidential

7

Restriction on layoffs

Presidential campaign pledge

- Policies to ensure job security are needed since there is a higher risk of employment instability (e.g., workforce reduction through layoffs) due to a long-term economic downturn
- Companies may downsize the workforce in case they suffer from business difficulties but should minimize layoffs which threaten the employees’ livelihood
- Strengthening of management’s obligation to make efforts to avoid layoffs (e.g., rearrangement of jobs before layoffs, unpaid leave, reduction of working hours)
- Declaration of “Employment Crisis Zone” when massive layoffs occur + Minimization of negative effects of massive layoffs by providing government support (i.e., special budget)

- Restructuring (i.e., workforce reduction) may become more difficult to some extent due to the government’s strict enforcement of layoff-related laws
- While massive layoffs like those experienced in 1998 are not expected, layoffs in certain industries/companies are very likely to occur.

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8

Reduction in working hours

Presidential campaign pledge

- **“Long hours at work” lowers the quality of life and makes it difficult to create new jobs**
- **Reduction of annual average working hours in Korea to those in OECD countries (i.e., 1,749 hours per person) by 2020:** As of 2010: 2,193 hours per year
- **Work-share program that links reduction in working hours with job creation for youth in large businesses and the public sector**
- **Strengthening of labor inspections**
 - ✓ Strong enforcement of the legal limits on overtime hours
- **Revision of the LSA**
 - ✓ Inclusion of holiday working hours in overtime hours
 - ✓ Reduction in the types of businesses exempt from the legal limits on overtime work
 - ✓ Improvement of the shift work system currently forcing workers to work longer hours

- Revision of the LSA to reduce working hours (e.g., inclusion of holiday working hours in overtime hours) may create a conflict
- It is expected that the issue of reducing working hours will become one of the hottest issues in the first half of 2013 if such issue is linked with improvement of the shift work system

Extension of retirement age

Presidential campaign pledge

- **Extension of workers’ retirement age to 60**
- **Make the “extension of retirement age” a social issue among labor, management, and the government.**
- **Phase in extension of the retirement age linked with the wage peak system from 2017**

- The Ministry of Employment and Labor (MOEL) plans to amend the Act on Prohibition of Age Discrimination in Employment and Aged Employment Promotion (“Anti-Age Discrimination Act”) to implement a mandatory retirement age of 60 years old
 - ✓ Currently there is no mandatory retirement age prescribed by Korean law
 - ✓ The MOEL mentioned that the provisions related to the mandatory retirement age under the new Anti-Age Discrimination Act will be effective from 2017 after a three-year grace period.
- HR policy regarding the retirement age may result in less employment flexibility in the Korean labor market

Recent Changes in the Labor Laws

Recent changes in the labor laws

Restriction on Interim Payouts of Statutory Separation Pay

- From July 26, 2012, interim payouts of statutory separation pay may be allowed only under special circumstances, such as purchasing a house, as prescribed by the Presidential Decree.

Illegally Dispatched Workers Entitled to Immediate Employment by Service Recipient Company

- From August 2, 2012, if a service recipient company uses dispatched workers for jobs not included in the 32 permitted categories, or uses dispatched workers from a labor supply agency which is not properly licensed, such workers will be entitled to immediate employment directly with the service recipient company.

Redress of Discriminatory Treatment against Non-Regular Workers

- From August 2, 2012, if a local labor authority discovers discriminatory treatment against non-regular workers *sua sponte* when inspecting a workplace, the local labor authority can directly demand a redress of such discriminatory treatment from the employer without a prior filing of a complaint. If the employer fails to comply with the demand, the Labor Relations Commission will examine the case.

Recent changes in the labor laws

Paternity Leave

- From August 2, 2012, an employer with 300 or more employees has been required to provide at least three days of paid paternity leave to fathers and may provide them with up to an additional 2 days of unpaid paternity leave.
- From February 2, 2013, employers with less than 300 employees also have become required to provide three days of paid paternity leave and may provide up to an additional 2 days of unpaid paternity leave

Leave for Family-care

- From August 2, 2012, an employer is required to grant unpaid family-care leave of up to 90 days per year if an employee requests family-care leave to take care of his/her family members on account of their illness, accident, old age, etc.
- The employer may refuse to grant family-care leave only if there are reasons prescribed by the Presidential Decree of the Gender Equality Employment and Work-Family Balance Support Act (e.g., if it is impossible to hire a substitute worker).

Recent changes in the labor laws

Specification of Scope of Non-Discrimination against Non-Regular Workers

- On February 26, 2013, both the Act on Protection, etc. of Fixed-Term and Part-Time Workers and the Dispatched Workers' Act have been amended.
- Prior to the aforementioned amendment, the scope of non-discriminatory treatment was broadly defined (i.e., "wages and other working conditions")
- However, pursuant to the amendment, the scope of non-discriminatory treatment is specified to include "(i) wages, (ii) bonus provided on a regular basis such as a regular bonus, holiday bonus, etc., (iii) bonus due to the company's business results and (iv) other working conditions and welfare benefits"

Revision of the Personal Income Tax Law

- Under the revised Personal Income Tax Law and its Presidential Decree, "income borne by the employer that is paid on account of actual retirement" shall be deemed retirement income.
- Accordingly, retirement bonus payments, including a payment made to certain specified employees under an early retirement program ("ERP") or in the course of solicited resignation, will also likely be deemed as retirement income.

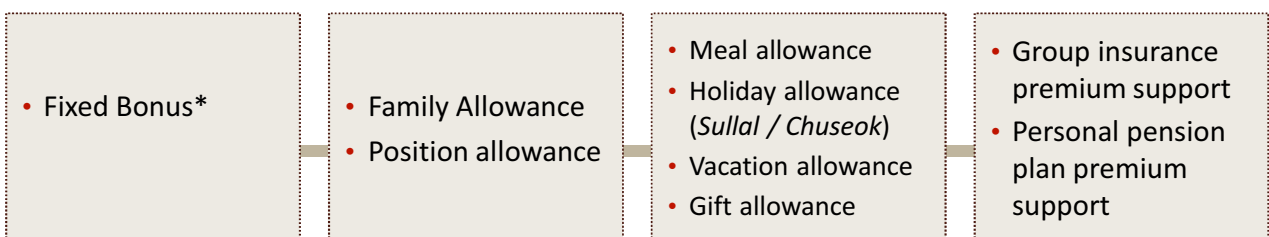
Key HR Issues in 2013

1. Ordinary wages

Definition of Ordinary wages

- “Ordinary wages” means hourly wages, daily wages, weekly wages, monthly wages, or contract wages that are determined to be paid **regularly** and **uniformly** and **on a fixed basis** to a worker for his/her prescribed labor or whole labor

Controversial items in lawsuits



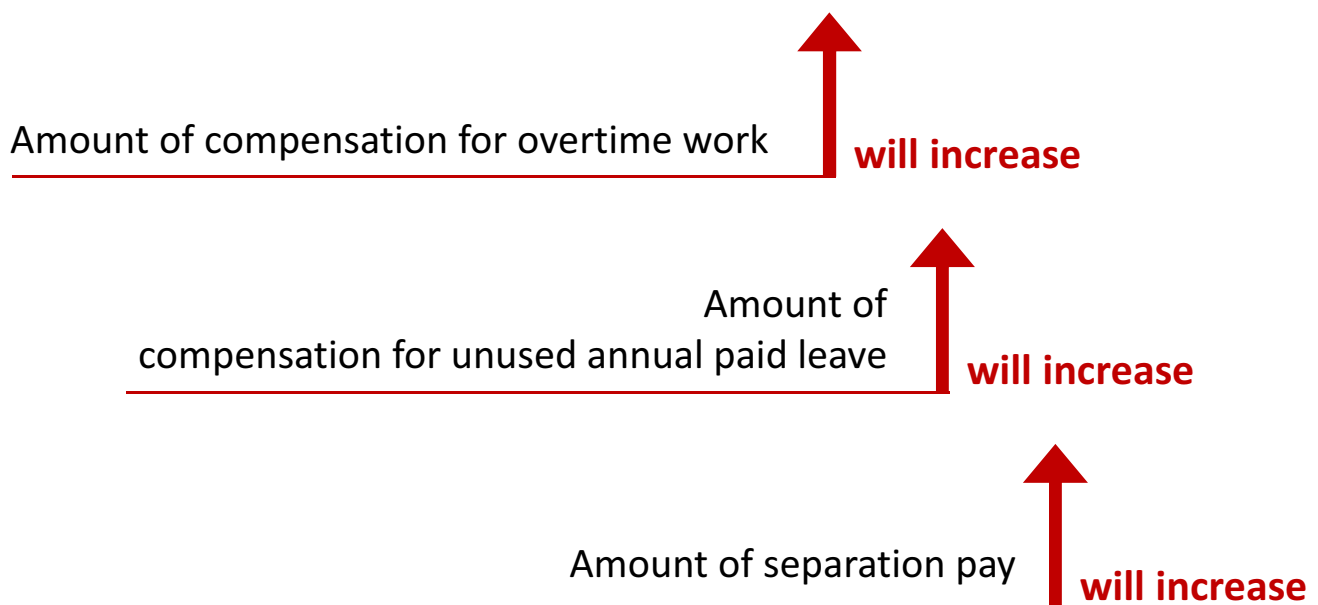
1. Ordinary wages

Supreme Court Case (March 29, 2012)

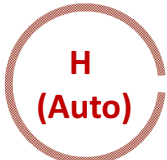
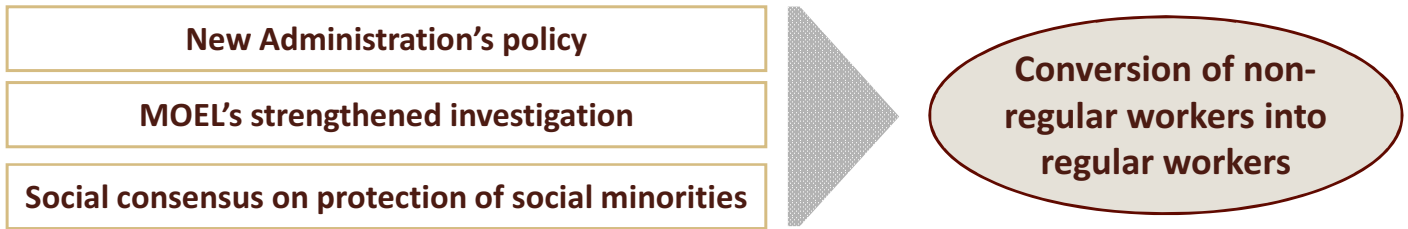
- The Supreme Court ruled that “**fixed bonuses**” should be included for purposes of calculating “ordinary wages.”
 - According to the Court’s rationale, (i) the fact that the fixed bonus was being paid every quarter alone does not automatically exclude it from ordinary wages and (ii) if the collective bargaining agreement intended to give a pro-rata payment to the employees who leave the company during employment, the payment was a fixed wage which was determined to be paid periodically and uniformly and may be included in ordinary wages.
- Therefore, if a company’s compensation structure includes elements other than the base salary (such as fixed bonuses), the company may need to revisit its current practices to confirm whether or not this recent Supreme Court case will result in unanticipated higher employment costs.
- Since the statute of limitations on a wage claim is three years, it is possible that employees may file a suit claiming their unpaid statutory benefits unpaid for those past three years.

1. Ordinary wages

Monetary effect: (Past 3 years + Future)



2. Conversion of non-regular workers into regular workers



- **Subcontracted workers → Regular permanent employees**
- 1,750 subcontracted workers
- Within 2013



- **Fixed-term employees → Regular permanent employees**
- 1,900 fixed-term employees
- As of Mar. 1, 2013



- **Subcontracted workers → Regular permanent employees**
- Approx. 10,000 subcontracted workers
- As of Apr. 1, 2013

3. Unfair labor practices

Unfair Labor Practices (Article 81 of the Labor Union and Labor Relations Adjustment Act)

- taking disadvantageous measures against employees in connection with legitimate labor union activities including filing a petition for relief of unfair labor practices;
- anti-union contracts or so-called "yellow dog" contracts;
- rejecting or neglecting collective bargaining without just cause; or
- controlling or interfering with the formation and operation of labor unions and subsidizing

An employer who has committed an unfair labor practice is punishable by a fine of up to KRW 20 mil. or imprisonment for up to 2 years

The MOEL plans to take sterner measures against employers' unfair labor practices

Thank you

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