

SOUTH KOREA



Working in Korea: recent and upcoming changes

By Alice Miller

As more and more foreign workers enter South Korea and new labor laws are passed, it is imperative that all the recent changes and updates to the Labor Standards Act are understood. First and foremost, per Article 22, any conditions of an employment contract which do not meet standards as provided in the Act are void. Foreign workers should be aware that where there is no choice of law designated in employment contracts, the choice of law is the country in which the employee habitually carries out his work in performance of the contract. Article 28 states that the choice of law shall not have the result of depriving the Employee of the protection afforded to him by the mandatory rules of the law of the country in which the Employee habitually carries out his work. In summation, the foreign Employee working under contract in Korea is entitled to all the same employment protections as that of a Korean Employee.

Terms and termination of an employment contract

Article 23 states that the term of an employment contract shall not exceed one year, except in cases where there is no fixed term or where a fixed term is necessary for the completion of a specific project. Employees are classified as either Contractual Employees or Formal Employees whereby the former is not guaranteed its employment by law and the latter may not be dismissed without justifiable causes, as per Article 30. Additionally, the Korean Supreme Court (1994. 1. 1. Decision 93da17843) ruled that if a fixed contract had been renewed continuously, the Employee was deemed a Formal Employee and except in the case where there is an urgent business necessity, Employers may not dismiss these Employees without a justifiable cause. All Korean Supreme Court decisions concerning dismissal have ruled that only willful misconduct or willfully poor performance constitute a justifiable cause for dismissal. An Employer shall give the worker a notice of dismissal at least thirty days in advance of such dismissal and if the Employer fails to give such advance notice, Employer shall pay the Employee's ordinary wages for a minimum of thirty days. The exceptions for notice include a natural disaster, calamity, circumstances causing cessation of the busi-

ness or where the worker has deliberately hindered the business or inflicted any property damage.

Salary

The Korean Supreme Court has ruled that, under Article 28, because Employee salary shall be given directly to them in cash currency, any sum owed by Employees shall not be deducted from their salary without the Employees' consent. If advance or

loan given to the Employee on the condition that the Employee offers work, no payments shall be deducted from the salary.

Overtime

Article 49, which shall apply from 1st July 2007, states that working time may not exceed 40 hours per week in workplaces or businesses having 100 or more ordinary employees and in workplaces with 50 or less ordinary employees, working time may not exceed 44 hours per week. This maximum working time may be extended up to twelve (12) hours per week with the consent of the Employee,

which may be added to the employment contract. Under Article 55, regardless of what type of overtime work, including night, additional or holiday work, overtime payment shall be a minimum of time and one half.

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