

Conducting layoffs under Korean law



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As the worldwide recession continues to linger on, many companies are forced to reduce costs and consider layoffs. In Korea, layoffs must be exercised with extreme care as the *Labor Standards Act* (the LSA) and other current laws and regulations impose very strict guidelines – in the event that the necessary conditions and procedures are not followed properly, Korean courts may deem a layoff void. As such, it will be important for any company wishing to conduct layoffs in Korea to proceed carefully and abide by all pertinent laws and regulations.

General requirements for layoffs

Under Korean law, certain requirements must be met in order to conduct layoffs. First, in order for such action to be permitted, the company must be in a difficult situation where, but for the layoffs, the company's business would be exposed to serious risk. In this regard, prior case law set the standard of serious risk to situations close to bankruptcy. Later cases, however, have lowered this standard to "situations where the necessity of business rationalisation is recognised." In all cases, the company bears the burden of proving this requirement.

Next, despite the company's distressful condition, dismissal of employees must be the last resort. Specifically, the company bears the burden of proving that it exerted all of its efforts to prevent a layoff. If the company dismisses an employee without exerting the foregoing efforts to avoid a layoff, the action will be void.

Once the foregoing requirements have been satisfied, a company must apply fair and reasonable standards for the selection of employees to be laid off. Although other standards may be acceptable, the Korean Supreme Court has held that the following criteria are deemed to be fair and reasonable: (i) service period at the company (those with the shortest service period laid off first); (ii) age (the youngest laid off first); (iii) performance record (those with the worst performance record laid off first);

and (iv) technical skill levels (those with the lowest skill level to be laid off first). These criteria are not intended to be determinative however, and other considerations may be valid.

Lastly, the company is required to inform and consult in good faith its employees, explaining why the layoffs are necessary at least fifty days before the date of the layoffs. In addition, the company must provide the employees with thirty days of prior notice of dismissal. If the company does not provide the stipulated dismissal notice, it must pay the employees standard wages for a thirty day period, exclusive of any bonuses, as compensation for dismissal.

Inducement of voluntary retirement

As a result of the strict standards set forth in the LSA, some companies may find that they may not satisfy the necessary requirements for a layoff. In these cases, many companies resort to the inducement of voluntary retirement. Under the LSA, inducement of voluntary retirement is permitted as long as the employee choosing to exercise this right has done so purely voluntarily. Voluntary retirement is generally induced by providing financial or other incentives to the employees.

The most common form of voluntary retirement is where the employer offers a fixed amount of compensation to the voluntary retiree. Additionally, offering a fixed-amount compensation package during a layoff process (as opposed to voluntary retirements that do not occur during a layoff) may be considered a valid "measure to avoid layoffs." Therefore, firms often discuss plans to offer such packages with the labor union or employee representative to help fulfill the requirements and procedures leading to a layoff.

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