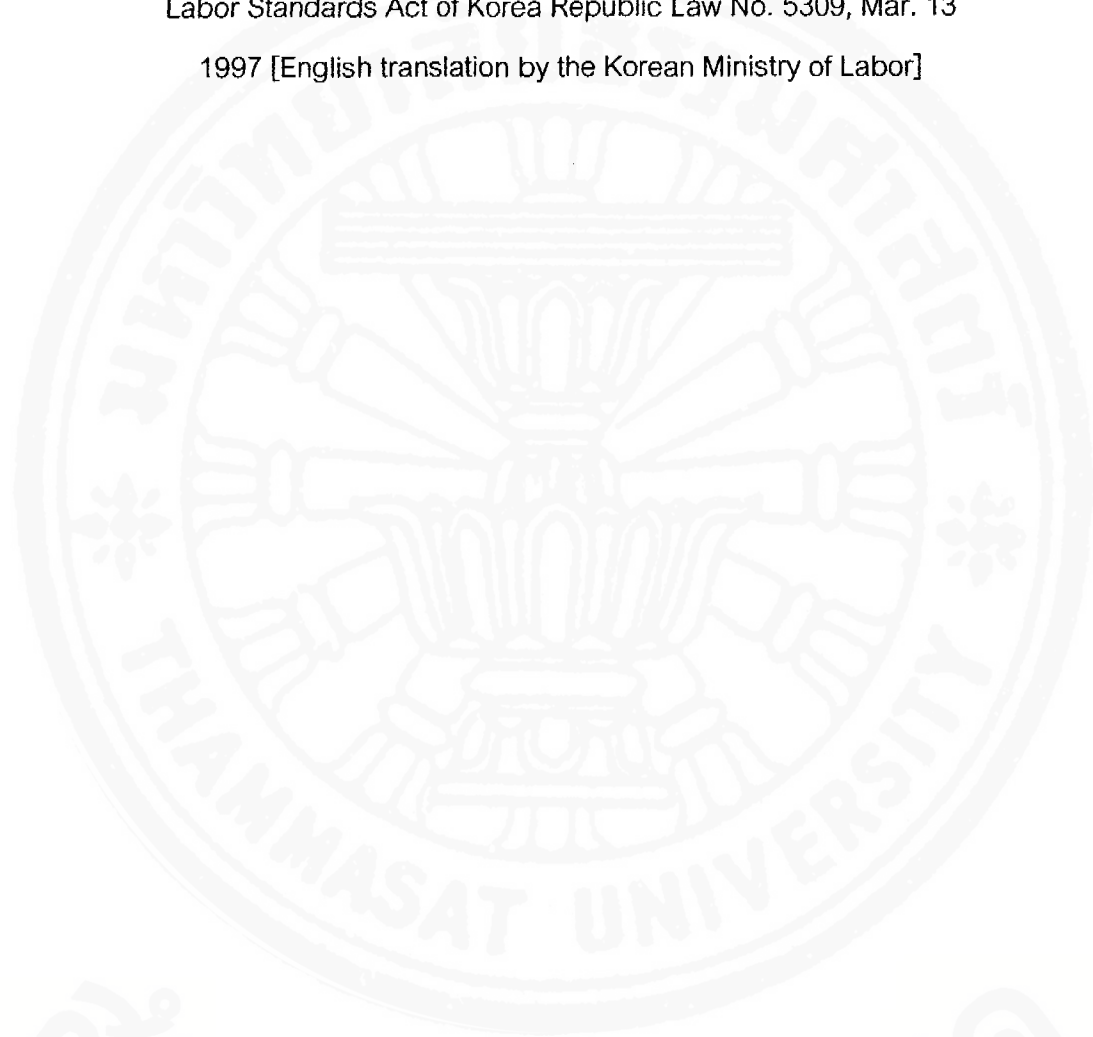


ผนวก ข

พระราชบัญญัติมาตรฐานแรงงานของประเทศเกาหลีใต้
(เฉพาะบทบัญญัติที่เกี่ยวข้องกับการหักค่าจ้าง)

Labor Standards Act of Korea Republic Law No. 5309, Mar. 13
1997 [English translation by the Korean Ministry of Labor]



Korea, Republic of

Law No. 5309, Mar. 13, 1997.- Labor Standards Act [*English translation by the Korean Ministry of Labor*]

Chapter I General Provisions

Article 1 (Purpose)

The purpose of this Act is to set the standards for the conditions of employment in conformity with the constitution, thereby securing and improving the living standards of workers and achieving a well-balanced development of the national economy.

Article 2 (Standards of Conditions of Employment)

The conditions of employment provided herein shall be the lowest standards and the parties to employment relations, therefore, shall not reduce the conditions of employment under the pretext of compliance with this Act.

Article 3 (Determination of Conditions of Employment)

The conditions of employment shall be determined based upon the mutual agreement between employers and workers, on an equal footing.

Article 4 (Observance of Conditions of Employment)

Both employers and workers shall comply with collective agreements, rules of employment, and terms of labor contracts, and each of them shall be obliged to do so in good faith.

Article 5 (Equal Treatment)

An employer shall not discriminate against workers by sex, or take discriminatory treatment in relation to the conditions of employment according to nationality, religion or social status.

Article 6 (Prohibition of Forced Labor)

An employer shall not force a worker to work against his own free will through the use of violence, intimidation, confinement or by any other means which unjustly restrict mental or physical freedom.

Article 7 (Prohibition of Violence)

An employer shall not resort to violence or batter a worker for the occurrence of accidents or for any other reason.

Article 8 (Elimination of Intermediary Exploitation)

Anyone shall neither intervene in the employment of other person for the purpose of making a profit, nor gain benefit as an intermediary unless otherwise provided by law.

Article 9 (Guarantee of Exercise of Civil Rights)

An employer shall not reject a request from a worker to grant time necessary to exercise franchise or other civil rights, or to perform official duties during his working hours; however, the time requested may be changed, unless such change impedes the exercise of those rights or performance of those civil duties.

Article 10 (Scope of Application)

- (1) This Act shall apply to all businesses or workplaces in which more than 5 workers are ordinarily employed. This Act, however, shall not apply to any business or workplace which employs only relatives living together, and to a worker who is hired for domestic works.
- (2) With respect to a business or workplace which ordinarily employs less than 4 workers, some of the provisions of this Act may be applicable as prescribed by the Presidential Decree.

Article 11 (Scope of Application)

This Act and the Presidential Decree issued in accordance with this Act shall apply to the government, Seoul Special City, metropolitan cities, Provinces, Shi, Kun, Ku, Eup, Myon, Dong, or other equivalents.

Article 12 (Duty to Report and Attend)

An employer or a worker shall, without delay, report on matters required, or shall present himself, if the Minister of Labor, a Labor Relations Commission or a Labor Inspector requests to do so in relation to the enforcement of this Act.

Article 13 (Publicity of Law and Decree, etc.)

(1)An employer shall keep workers informed of the main points of this Act, and of the Presidential Decree promulgated pursuant hereto, and the rules of employment by posting or keeping them at each workplace at all times.

(2)An employer shall post or keep the provisions and regulations regarding dormitory, among the provisions and regulations referred to in paragraph (1), at dormitory concerned, thereby keeping workers informed thereof.

Article 14 (Definition of Worker)

The term "worker" in this Act means a person engaged in whatever occupation offering work to a business or workplace (hereinafter referred to as "business") for the purpose of earning wages.

Article 15 (Definition of Employer)

The term "employer" in this Act means a business owner, or a person responsible for management of a business or a person who works on behalf of a business owner with respect to matters relating to workers.

Article 16 (Definition of Work)

The term "work" in this Act means both mental and physical work.

Article 17 (Definition of Labor Contract)

The term "labor contract" in this Act means a contract which is entered into in order that a worker offers work for which an employer pays its corresponding wages.

Article 18 (Definition of Wages)

The term "wages" in this Act means wages, salary, and any other payment to a worker from an employer as remuneration for work, regardless of the designation by which such payment is called. .

Article 19 (Definition of Average Wages)

- (1)The term "average wages" in this Act means the amount calculated by dividing the total amount of wages paid to the relevant worker during three calender months prior to the date on which the event necessitating such calculation occurred by the total number of calender days during those three calender months. This shall also apply mutatis mutandis to the employment of less than three months.

- (2) If the amount calculated pursuant to the provisions of paragraph (1) is lower than the ordinary wages of the worker concerned, the amount of the ordinary wages shall be deemed the average wages.

Article 20 (Definition of Contractual Working Hours)

The term "contractual working hours" in this Act means working hours on which workers and employers have made an agreement within the limit of working hours under Article 49 or the text of Article 67, or Article 46 of the Industrial Safety and Health Act.

Article 21 (Definition of Part-Time Worker)

The term "part-time worker" in this act means an employee whose contractual working hours per week are shorter than those of full-time worker engaged in the same kind of job at the pertinent workplace.

Chapter II Labor Contract

Article 22 (Labor Contract contrary to This Act)

- (1) A labor contract which establishes conditions of employment which do not meet the standards provided for in this Act shall be null and void to that extent.
- (2) Those conditions invalidated in accordance with the provisions of paragraph (1) shall be governed by the standards provided herein.

Article 23 (Term of Contract)

The term of a labor contract shall not exceed one year, except in cases where there is no term fixed or a term is fixed as necessary for the completion of a certain project.

Article 24 (Statement of Terms of Employment)

An employer shall clearly state remuneration, working hours, and other terms of employment to a worker at a time when a contract of employment is concluded. In this case, matters as to each constituent item of remuneration, and the methods of calculation and payment shall be specified according to the methods prescribed by the Presidential Decree.

Article 25 (Working Conditions for Part-time Worker)

- (1) Working conditions for part-time workers shall be determined on the basis of relative ratio computed in comparison of their working hours with those of full-time workers engaged in the same kind of job at the pertinent workplace.

- (2)The criteria or other matters to be considered for the determination of working conditions under paragraph (1) shall be prescribed in the Presidential Decree.
- (3)With respect to part-time workers with considerably short contractual working hours per week as specified by the Presidential Decree, some provisions of this Act may not apply as provided for in the Presidential Decree.

Article 26 (Violation of Conditions of Employment)

- (1)If any of the conditions of employment set forth in accordance with Article 24 is found to be inconsistent with the actual conditions, the worker concerned shall be entitled to claim damages resulting from the breach of the conditions of employment or may terminate the labor contract forthwith.
- (2)If a worker intends to claim indemnity for damages in accordance with paragraph (1), he may do so with the Labor Relations Commission. If a labor contract has been terminated, an employer shall pay travel expenses to a worker who changes his residence for the purpose of securing new job.

Article 27 (Prohibition of Predetermination of Nonobservance)

An employer shall not enter into any contract by which a penalty or indemnity for possible damages incurred from nonobservance of a labor contract is predetermined.

Article 28 (Prohibition of Offsetting Wages against Advances)

An employer shall not offset wages against an advance or other credit given in advance on condition that a worker offers work.

Article 29 (Prohibition of Compulsory Saving)

- (1)An employer shall not enter into a contract incidental to a labor contract which stipulates compulsory savings or the management of savings.
- (2)If an employer is entrusted by a worker to manage his savings, the said employer shall obtain the approval of the Minister of Labor by determining the methods of maintenance and of repayment.

Chapter III Wages

Article 42 (Payment of Wages)

- (1)Payment of wages shall be directly made in full to worker in cash; however, if otherwise stipulated by special provisions of laws or decrees or a collective

agreement, wages may partially be deducted or may be paid by other than cash.

- (2) Wages shall be paid more than once per month on a fixed day; however, this shall not apply to extraordinary wages, allowances, or any other similar payment or those wages provided for by the Presidential Decree.

Article 43 (Payment of Wages in Subcontract Business)

- (1) If a business is operated based upon several tiers of subcontracting and a subcontractor has failed to pay wages to workers because of a cause attributable to an immediate preceding contractor, the immediate preceding contractor shall be responsible thereof along with the subcontractor concerned.
- (2) The scope of the cause attributable to the immediate preceding contractor referred to in paragraph (1) shall be determined by the Presidential Decree.

Article 44 (Emergency Payment)

An employer shall advance partial payments of wages for the work offered even prior to payday, if a worker requests to do so in order to meet the expenses incurred from childbirth, disease, disaster or any other cases of emergency which are provided for in the Presidential Decree.

Article 45 (Pay for Suspension of Business)

- (1) If a business is suspended for reasons attributable to an employer, the employer shall pay to workers concerned remuneration of more than seventy percentage points of average remuneration during the period of suspension of the business. If the amount equivalent to seventy percentage points of average remuneration exceeds normal remuneration, the normal remuneration may be paid for the business suspension.
- (2) Notwithstanding the provisions of paragraph (1), an employer who cannot continue the business operation for unavoidable reason may, with the approval of the Labor Relations Commission, pay remuneration lower than the standards stipulated in paragraph (1) for the suspension of business.

Article 46 (Subcontract Workers)

For those workers who are employed for subcontract or other equivalent system, an employer shall guarantee a certain amount of remuneration in proportion to their actual working hours.

Article 47 (Wage Ledger)

An employer shall prepare a wage ledger for each workplace and enter the matters which serve as a basis for determining wages and family allowances, the amount of wages and other matters as provided for by the Presidential Decree at each time of payment.

Article 48 (Prescription of Wages)

A claim for wages under the provisions of this Act shall be terminated because of prescription, if not exercised within three years.

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