**Specific Grounds for Disciplinary Action or Termination under Korean Labor Law** – Employer’s Standpoint

When you hire an employee in South Korea, you cannot freely fire the employee. The Article 30 of Labor Standard Act(“LSA”) requires a “justifiable cause” if and when an employer takes disciplinary actions, including termination of employment, with regard to its employees. Korean courts have held that a “justifiable cause” refers to such causes as criminal offense, serious illegal acts, and gross negligent acts, etc. which would make maintaining of the relevant employment relationships no longer possible under generally accepted public notions.

Especially, because a termination of employment is the most extreme measure, taking away an employee’s means of making a living, Korean courts are known to be very strict in applying the above-noted criteria, when it determines whether a particular termination is justified. Thus, unless an employee’s specific conduct is something that makes current employer-employee relationship no longer possible to continue, it would be advisable for an employer to take less severe disciplinary actions such as suspension of employment, reduction of salary, or reprimand.

Further, as regards the employment termination, under LSA, an employer may also terminate employees where the employer can establish an “imminent managerial reason”. Article 31 of LSA provides that before an employer terminates a group of employees, the employer must have made its best efforts to avoid termination and have fair and reasonable standards of termination in place. The termination of employees must have been based on such standards for termination and the employer must have given notice to and consulted with the employees’ relevant labor representative (i.e., labor union).

It is the Korean Supreme Court’s firm position that an “imminent managerial reason” exists if the employer’s termination of employees is rational from an objective standpoint. The Korean Supreme Court has recognized the existence of an imminent managerial reason in the following cases: (i) the employer has continuously experienced deficit operation; (ii) due to continuous labor disputes, the operation of the employer is expected to worsen to a degree that half of the capital amount of the employer has decreased for one year; (iii) a part of the business is changed to a sub-contract system due to continuous deficit operation and, as a result, the employer terminated the employment of related employees; or (iv) in the course of privatization of a public corporation, reorganization of the corporation has been taken.

In light of the foregoing, it can be concluded that an imminent managerial reason to terminate will be found to exist where it is inevitable that the employer must terminate employment in order to overcome actual difficulties in management. However, even where an employer with a positive balance sheet terminates the employment of a group of employees in order to overcome actual difficulties or to generate additional revenues, the existence of an imminent managerial reason will not be found to exist unless the inevitability of such termination can be proven objectively.

Therefore, as described above, unless there is a legitimate, objective reason to terminate employees, it is not easy under current Korean labor laws to establish a justifiable cause or imminent managerial reason to terminate employees under LSA. However, as an alternative to termination, it is sometimes recommended that an employer attempt to persuade those employees whom it wishes to terminate to voluntarily retire from his/or her office. It is customary practice in Korea for an employer to induce the early retirement of employees whom they wish to terminate by offering them a reasonable severance package. Though not required by Korean law, a Korean company will ordinarily offer early retirement employees a retirement benefit package in addition to the statutory severance pay in accordance with standards set forth in LSA or the employer’s employment rules and regulations.

Lastly, we note that LSA requires a 30 days’ prior notice when an employee is dismissed. The 30 days’ notice requirement could be waived by the relevant employer if the employee being dismissed is paid one month’s salary in lieu of the 30 days’ notice.

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