

KOREA

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1. Are there any laws that govern a layoff of employees? If so, what do the laws require?

Under the Labor Standards Act of Korea (the “LSA”), the employer may terminate an employee(s) only if there is a “justifiable cause” for the termination. As the LSA does not have detailed provisions on which causes constitutes “justifiable causes,” it is primarily up to the court to decide whether a cause asserted by the employer is justifiable or not. On the other hand, the LSA and other labor laws expressly provide that certain terminations are not justifiable. Notable examples include, among others, termination during a maternity leave and 30 days thereafter, termination during a leave of absence due to a work-related injury or disease and 30 days thereafter, and termination on the ground that the employee engaged in lawful labor union activities.

Under the LSA, the employer should give 30 days’ written notice of termination or pay 30 days’ ordinary wages in lieu of such notice. Termination of an employee should be made by written notice.

2. Are there any formal requirements for terminating an employee or groups of employees?

Under Korean labor laws, termination of an employee may be divided into 3 types: (i) ordinary termination, (ii) disciplinary termination, and (iii) mass layoff. As described above, termination is lawful only if there is a justifiable cause; provided, however, that different requirements apply to mass layoffs as described below.

3. Are there special legal requirements for a layoff caused by redundancy in the workforce?

Under Korean labor laws, a mass layoff means termination of employees in order to reduce workforce due to a business need of the employer. In order for the mass layoff to be lawful, (i) there should be an “urgent business necessity”; (ii) efforts should be made to avoid the mass layoff; (iii) there should be reasonable and objective standards to determine which employees would be terminated; and (iv) the employer should give a 50 days’ prior notice to the labor union or the representative of the employees representing the majority of the employees and have good faith consultation with the labor union or the representative.

The “urgent business necessity” has been interpreted to mean that the company must show losses for a considerable period of time (e.g. one to two years). However, it has been the recent trend to broaden the scope of the “urgent business necessity” so that it may include M&As, plant closings and business relocations, etc. necessary to overcome certain economic difficulties.

4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?

A terminated employee may file a civil lawsuit asking the court to invalidate the termination or file a request for a remedy with the Labor Relations Commission (the “LRC”) established under the Ministry of Labor (the “MOL”). If the LRC decides in favor of the employee, the LRC may order the employer to reinstate the employee with back pay.

5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?

If the employer does not comply with an order for a remedy rendered by the LRC, the LRC may impose an administrative penalty on the employer for an amount not exceeding KRW 20 million up to 4 times within a two-year period. If the employer does not comply with the finalized decision of the LRC, the MOL may also file a criminal complaint against the employer, the penalty of which is up to 1 year imprisonment or KRW 10 million. The criminal penalty may be imposed both on the company and its individual (chief) representative.

6. What are the one or two most common mistakes that employers make that lead to liability for a layoff?

The employers often believe that an employee with a fixed term of employment may be dismissed upon the expiration of such term even if there is no other justifiable cause for dismissing the employee. However, even if the term of employment is expressly fixed in the employment contract, the employee may be deemed a regular employee with no fixed term of employment in the event that the employment relationship continues for more than 2 years. In such event, the employer’s refusal to renew the employment contract may be recognized as being equivalent to termination of the employee, which is not lawful unless there is a justifiable cause.

7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?

While the Korean courts have recently broadened the interpretation of the “urgent business necessity” standard, employer-initiated terminations (including mass layoffs) are still difficult in Korea. Given this difficulty, it is common for the employer to seek voluntary resignations from employees in lieu of involuntary terminations. For example, early retirement programs are commonly used in Korea as a safer (although costly) alternative to mass layoffs.

