10-point Summary of the Korean Labor Laws for Foreign CEOs and HR Managers

My name is Sunny Lee. As a consultant specializing in Korean labor laws, I have been giving advice on the laws to foreign CEOs and HR managers for the last fifteen years. I selected 10 important points of Korean labor law based on the most frequently asked questions. The summary will help you get the basic information for HR management in compliance with local labor laws.

1. Employment contract

1-1. Signing a contract of employment

You should sign a written employment contract with an employee and give him/her the contract. The Labor Standards Act (LSA) specifies items that must be included in the written contract as follows.

- Pay components
- Pay calculation method
- Salary payment method
- Work hours
- Weekly paid holidays

If an employment contract has items that fall short of the Labor Standards Act, those items are null and void and automatically replaced by the relevant articles of the LSA.

1-2. Duration of an employment contract

You can sign an employment contract with an employee for a definite or an indefinite term. Legal retirement age for a contract with an indefinite term is 60.

As for a definite or fixed-term contract, the length of the contract can be freely determined within the legal limit (two years). Under a fixed-term contract (section 5-1), which is governed by the Fixed-term Employee Act, the employment relationship terminates automatically upon maturity of the fixed term.
1-3. Probationary period

You can include a probationary period in the employment contract to evaluate an employee’s competency or allow him/her to adapt to a new job.

You can freely decide the length of a probationary period and state it in the employment contract. However, most workplaces used to adopt a 3-month probationary period because an article of the LSA, which was deleted in January 2019, allowed employers to dismiss an employee without a 30-day advance notice if three months have not passed for his/her probationary period.

Three months are still expected to be a preferred choice for many companies because the current LSA allows an employer to go without the 30-day notice as long as three months have not passed for an employee since he joined a company.

You can skip the 30-day advance notice for the above-mentioned case but you still have to give an employee a written notice of dismissal. Check out section 8 on dismissal for more details.

2. Holidays

2-1. Weekly holidays with pay

You should give an employee one weekly holiday with pay if he/she showed up at work for a full week. An employee who failed to record a full attendance for a week still can have a weekly holiday “without pay”.

Weekly holidays are usually Sundays but you can make other day of the week as weekly holidays for your company depending on your business. For example, department stores may grant Monday as a weekly holiday because they have more business on Sundays.

You should pay time-and-a-half to an employee who works on a weekly holiday. This pay for the holiday work is distinct from the default pay for the weekly holiday, which is paid to him/her regardless of whether he/she worked or not on those holidays. The
default pay for a weekly holiday is ordinary wage for eight hours in workplaces with a 40-hour workweek.

2-2. Contractual holidays

As of March 2019, there are only two statutory holidays for employees. They are weekly holidays and Labor day (May 1st).

In addition to the statutory holiday, you can give contractual holidays to employees by specifying them in an employment contract or in the rules of employment. For example, a company foundation day or public holidays can be contractual holidays.

Currently, you can make the contractual holidays - a company foundation day, public holidays and etc - paid or not by specifying the details in the contract or the work rules. However, from the year 2020, the public holidays become “paid” statutory holidays for companies with 300 or more employees. The change will expand to small companies thereafter.

The list of public holidays is shown below. They are based on the Regulation on Closure Days for Public Offices.

- January 1st (New Year’s Day)
- December 31st, January 1st and 2nd on the lunar calendar (Lunar New Year’s Day holidays)
- March 1st (Independence Movement Day)
- May 5th (Children’s Day)
- April 8th of the lunar calendar (Buddha’s Birthday)
- June 6th (Memorial Day)
- August 15th (Independence Day)
- August 14th, 15th and 16th on the lunar calendar (Chuseok Holidays)
- October 3rd (National Foundation Day)
- October 9th (Korean Alphabet Day)
- December 25th (Christmas)
- Election days based on the Public Official Election Act
- Other days temporarily designated by the government
3. Annual leave with pay

3-1. One day leave for one fully worked month for an employee in his/her first year

An employee in his/her first year with a workplace is entitled to one day of leave for one fully worked month. Therefore, a maximum number of annual leave that an employee can get in the first year is 11 days.

3-2. 15 days of leave after the first year that will increase as years go by

Starting from the second year, you should give 15 days of annual leave with pay to an employee who recorded at least 80 percent attendance in the previous year.

If an employee had an attendance rate lower than 80 percent in the second year or thereafter, the same methods as 3-1 applies to him/her. For example, if an employee did not record 80 percent attendance rate in the second year and his/her fully worked months are five, his/her annual leave in the third year will be five days.

For an employee who has worked for three years or longer, the employer should grant an additional one day of paid leave on the fourth year, and should add one additional leave day every two years thereafter. The total number of annual leave days with pay cannot exceed 25 days.

4. Minimum wage

Every year, the the Minimum Wage Commission under the Ministry of Employment and Labor determines a minimum wage for the next year.

The minimum wage rate for 2019 is 8,350 KRW a hour, 66,800 KRW a day and 1,745,150 KRW a month.

You should pay employees at least the minimum wage rate. If an employment contract has a pay rate lower than the minimum wage, the lower rate becomes null and void and replaced by the minimum wage rate.
Minimum wage applies to “a worker” defined by the Labor Standard Act, regardless of the type of employment or nationality. Therefore, the minimum wage applies not only to regular workers but also to temporary, daily, hourly workers and foreign workers. The same minimum wage rate applies to every region and every industry of Korea.

5. Fixed-term employees

5-1. Duration of a fixed-term contract

You can sign a fixed-term contract with an employee. You can choose freely the term of the fixed-term contract - for example, one year or six months - as long as the duration of the contract does not exceed two years.

The fixed-term act prohibits hiring a fixed-term employee for longer than two years. If you have a fixed-term employee for a period longer than two years, he/she is deemed a permanent employee by law.

5-2. Exceptions for the maximum 2-year term

A fixed-term contract exceeding two years is allowed in exceptional cases such as:

- An employer has predetermined a period of time required to complete a particular business or task
- An employee is on leave or dispatched to another workplace and there is a need to hire a substitute to replace him/her until he/she returns to work
- An employee takes schooling or vocational training and he/she sets a period of time required to complete the schooling or training
- An employer hires employees with professional knowledge or skills that are legally specified such as doctors, lawyers, CPAs and etc.
6. Part-time employee

6-1. Definition of a part-time employee

The Fixed-term and Part-time Employees Act defines a part-time employee as someone whose work hours per week are shorter than those of a full-time employee who works on the same job as the part-timer in the same workplace. The law does not use certain work hours - for example 35 hours - as a basis to determine if someone is a part-time employee or not. However, an employer is exempt from certain social insurance obligations towards a part-time employee with very short work hours, for example, less than 60 hours a month.

6-2. Restriction on overtime work

If you want a part-time employee to work overtime, you should get his/her consent. A part-timer’s overtime per week should not exceed 12 hours.

You should pay time-and-a-half to a part-time employee for his/her overtime. Even if a part-time employee’s weekly work hours are shorter than the statutory work hours (40 hours per week), you should still pay him/her overtime for work done in excess of the contractual work hours.

7. Maternity Protection

7-1. Maternity leave

You should give a pregnant employee 90 days of maternity leave. If she has twins, the leave should be 120 days long.

At least 45 days should be given to the employee after childbirth. In such a case, actual leave days may exceed 90 days. The 90 days are calendar days that include workdays, weekends, and holidays.

You should pay ordinary wages for the first 60 days of leave. Pay for the rest of the days (30 days) are covered by the employment insurance.
7-2. Maternity leave for miscarriage

You should grant maternity leave even for the cases of miscarriage or stillbirth. Here is the list of leave days for such cases.

- Within 11 weeks into pregnancy: Five days of leave from the date of miscarriage or stillbirth
- 12~15 weeks into pregnancy: 10 days of leave from the date of miscarriage or stillbirth
- 16~21 weeks into pregnancy: 30 days of leave from the date of miscarriage or stillbirth
- 22~27 weeks into pregnancy: 60 days of leave from the date of miscarriage or stillbirth
- 28 weeks or longer into pregnancy: 90 days of leave from the date of miscarriage or stillbirth

8. Dismissal

8-1. The need for justifiable reasons

You cannot dismiss an employee without a reason. At-will employment is alien to Korean labor law. You can dismiss an employee only when you can give a socially acceptable reason for doing so. For example, an employee has failed to comply with the contract of employment or the employee has caused a financial damage to the company.

8-2. Procedures for dismissal

You should first give an employee a 30-day advance notice. You can also pay him/her ordinary wage for 30 days instead of the advance notice and let him/her go immediately.

You can simply go without the advance notice for exceptional cases such as:

- Three months have not passed for an employee since he joined a company.
● You cannot continue the business due to national disaster, war or any other unavoidable reason
● An employee deliberately caused a severe business disturbance or a massive property damage to the company by taking actions such as disclosing business secrets to competitors, stealing products or materials, etc.

You should also give the employee a written notice specifying the reason for dismissal, the date of dismissal, etc. If you dismisses an employee without such a written notice, the dismissal becomes null and void.

However, if you give the employee a 30-day advance notice in writing that includes the date of dismissal and the reason for dismissal, it is deemed that you have give him/her the same written notice for dismissal.

9. Retirement benefits system

You should adopt one of the retirement benefits system by obtaining the consent of a majority union or the majority of employees, if there is no such union. Retirement benefits system applies to every workplace regardless of the number of employees.

Retirement benefits system includes two options which are retirement pay or retirement pension. The system applies to every employee whose employment relations terminates after he/she worked one year or longer. However, the system does not apply to an employee whose weekly work hours averaged over four weeks are less than 15 hours.

9-1. Retirement pay (mandatory severance pay)

If you adopt retirement pay, you should give a 30-day average wage to a departing employee for each year he/she worked for the company. For example, retirement pay for an employee who quits after three years is average wage for 90 days.

A reason an employee leaves the company does not affect the retirement pay. He/she may quit. He/she may have reached a retirement age. He/she was fired for doing something wrong. In each and every case, you should pay him/her retirement pay.
9-2. Retirement pension

If you adopt retirement pension system, you should draw up retirement pension rules and report them to the labor office. You should also sign a contract with a retirement pension provider (a financial institution) that operates the pension program and manages the fund.

Pension benefits are given to a departing employee as an annuity or a lump-sum pay. An employee, who is aged 55 or over and has subscribed to the pension for 10 years or longer, can receive an annuity. An employee who does not meet the requirements can receive a lump-sum pay. Those who meet the requirements for annuity can still opt for a lump-sum pay.

There are two different plans of retirement pension: defined benefit (DB) and defined contribution (DC). You should choose at least one among DB retirement pension, DC retirement pension or retirement pay.

10. Rules of Employment

10-1. Definition of the rules of employment

The rules of employment are a set of rules that are made by an employer. They specify working conditions or work rules generally binding to employees. If you hire 10 or more employees, you should make the rules of employment.

10-2. Drawing up and amending the rules of employment

When you draw up or amend the rules of employment, you should get opinion of a majority union or a majority of employees, if there is no such union.

If you make changes to the rules of employment that render them disadvantageous to employees compared to the previous rules, you should get consent of the majority union or the majority of employees.
You should report the rules of employment to the competent local labor office. When reporting the rules of employment, you should also submit a document showing that you got opinion of employees.

This summary covered only a small part of the labor-related laws of Korea that govern work conditions. If you want more information on Korean labor laws, you can get my book “Korean Labor Law Guide for CEOs and HR managers” at Amazon. The book explains major points of 10+ labor laws in a concise format. It covers topics such as work hours, ordinary wage, average wage, social insurances, non-regular employees, termination, work rules, maternity leave, retirement age and etc.