

**REPUBLIC OF KOREA**  
**LABOR RIGHTS REPORT**

**September 2011**

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## Executive Summary

This report examines the labor laws and practices of the Republic of Korea (ROK). It responds to the requirement of the *Trade Act of 2002* that the President provide a “meaningful labor rights report” concerning each country with which a free trade agreement is under consideration. It focuses on those labor rights identified as internationally recognized labor rights in Chapter 19 of the proposed *United States-Korea Free Trade Agreement* (KORUS).

In Chapter 19 of the KORUS, the United States and the ROK reaffirm their obligations as International Labor Organization (ILO) members. Both countries commit to adopt and maintain in law and practice the rights as stated in the *1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up* and agree not to encourage trade and investment by weakening relevant domestic labor laws. Both governments pledge to provide access to judicial tribunals for labor law enforcement; ensure that the enforcement process is fair, equitable, and transparent; and promise public awareness of their labor laws.

The ROK’s legal framework governing the internationally recognized labor rights is presented in Section 2.1 of this report, “*Legal Framework for Labor Rights.*” Section 4 provides more detail on each of the relevant laws. Section 2.2, “*Administrative Framework for Labor Rights,*” provides an overview of the adjudicative, administrative, and consultative mechanisms available for application and enforcement of labor laws. The report notes that the ROK has strengthened a number of labor laws and practices in recent years, including in 1996 in the context of the ROK’s accession to the Organization for Economic Cooperation and Development (OECD). Most recently in January 2010, the ROK adopted amendments to the *Trade Union and Labor Relations Adjustment Act* (TULRAA).

The report finds that the ROK’s current laws and practices related to internationally recognized labor rights are largely consistent with relevant international standards. The Constitution of the ROK prohibits compulsory labor; grants all citizens the freedom of occupation; guarantees freedom of association and the right to bargain collectively (with certain exceptions); guarantees the right of citizens to work and to an enforceable system of minimum wages; stipulates that standards for conditions of work are to be promulgated by law to guarantee human dignity; accords special protection to working women and children; and prohibits discrimination in economic life on account of sex, religion, and social status. The laws governing individual labor rights, of which the *Labor Standards Act* is the most comprehensive, provide minimum standards for conditions of employment, including wages and hours of work; ban discrimination on certain articulated prohibited grounds; prohibit forced labor and unjustified dismissals; provide protections for minors and women; provide for labor inspections and penal sanctions in certain cases of egregious violations; address occupational safety and health and hazard and accident prevention; establish rules for workers’ compensation; and govern employment conditions for temporary, fixed-term, and part-time workers. The laws governing labor-management relations, of which the *TULRAA* is the most

comprehensive, regulate the establishment, affiliation, and dissolution of trade unions; establish the scope and conditions for collective bargaining and collective agreements; regulate industrial action, unfair labor practices, and dismissals; specify procedures for dispute settlement and resolution; establish a national-level tripartite commission to consult on labor-management relations; mandate labor-management councils in workplaces; and establish tripartite labor commissions to mediate and adjudicate disputes. The ROK also has a set of well-developed institutions to implement and enforce these laws.

The report, in Section 3, also identifies laws and practices in three notable areas in which the ILO and labor rights groups have expressed concerns. These issues would benefit from continued monitoring and dialogue under the relevant mechanisms established under the KORUS.

#### *Criminal Charges of “Obstruction of Business” Related to Trade Union Activity*

The ROK’s *Criminal Act* permits large fines and imprisonment as penalties for “obstruction of business” through violence, fraud and other means. However, Korean labor groups have claimed that obstruction of business charges have been misused to suppress legitimate trade union activity and that the application of fines in such cases has had significant financial consequences for the affected unions. The ILO Committee on Freedom of Association (CFA) has criticized the use of the ROK’s law on obstruction of business as undermining protected union activity and expressed its view that the ROK should “revert to a general practice of investigation without detention of workers and of refraining from making arrests, even in the case of an illegal strike, if the latter does not entail any violence.” The ROK has asserted that it has a policy of not making arrests under obstruction of business laws during non-violent strikes.

#### *Non-Regular Workers*

Subcontracted (“dispatched”) and temporary workers may be more vulnerable to labor abuses due to their precarious employment status. The ROK is addressing this vulnerability through enhanced protections for temporary and dispatched workers, who comprise one-third of the Korean labor force. In reviewing a recent case involving dispatched workers in several plants, however, the ILO CFA noted concerns about laws and their application with respect to the protection of these workers’ rights to freedom of association and collective bargaining. In recent years, Korean courts have ruled in favor of non-regular workers in some cases, including a landmark Supreme Court ruling in 2010.

#### *The Case of the Migrants’ Trade Union*

Labor laws in the ROK prohibit employment and workplace discrimination on the basis of nationality or migration status and generally provide foreign and migrant workers the same legal protections as Korean nationals. As such, the High Court of the ROK ruled in 2007 that the ROK Constitution accords the right of freedom of association to all workers, including foreign migrant workers. However, the Korean Ministry of Labor and Employment appealed the High Court’s decision to the Supreme Court and continues to deny legal recognition to the Migrants’ Trade Union, a union composed of foreign migrant workers.

## 1 Introduction

This report on labor rights in the Republic of Korea (ROK) has been prepared pursuant to section 2102(c)(8) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). The Trade Act provides that the President shall:

[i]n connection with any trade negotiations entered into under this Act, submit to the Committee of Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating.

The President, by Executive Order 13277 (67 Fed. Reg. 70305 (Nov. 21, 2002)), assigned the above responsibilities to the Secretary of Labor and provided that they be carried out in consultation with the Secretary of State and the U.S. Trade Representative (USTR). The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the USTR, and the Secretary of Labor (67 Fed. Reg. 77812 (Dec. 19, 2002)).

Pursuant to this mandate, the report examines labor laws and practices in the ROK, particularly as they relate to the labor rights identified as internationally recognized labor rights in the definition of “labor laws” under Chapter 19 of the *United States-Korea Free Trade Agreement* (KORUS).<sup>1</sup> These rights are:

- a. freedom of association;
- b. the effective recognition of the right to collective bargaining;
- c. the elimination of all forms of forced or compulsory labor;
- d. the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;
- e. the elimination of discrimination in respect of employment and occupation;
- and
- f. acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Section 2 of the report provides an overview of the ROK’s legal and administrative frameworks on labor rights, examining in brief the laws covering labor rights and the mechanisms available to enforce them. Section 3 of the report identifies notable areas in which the International Labor Organization (ILO) Committee on Freedom of Association (CFA) has raised concerns regarding the ROK’s laws and practices with respect to international labor standards, providing a synopsis of the issues and a discussion of government efforts to address them. Section 4 discusses in brief the relevant laws governing each of the six internationally recognized labor rights noted above. The

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<sup>1</sup> *Free Trade Agreement between the United States of America and the Republic of Korea* (KORUS), Article 19.8, [http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset\\_upload\\_file755\\_12697.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file755_12697.pdf)

Annexes at the end of the report provide supplementary information about the ROK's administrative frameworks for labor law application and enforcement, including an organizational chart of the ROK's Ministry of Employment and Labor (MOEL) (Annex I) and a chart presenting the composition of the Labor Relations Commissions (Annex II).

## 2 Overview of Legal and Administrative Frameworks

The ROK has labor laws addressing each of the internationally recognized labor rights enumerated in Chapter 19 of the KORUS. The ROK also has a set of well-developed institutions designed to implement these laws. This section provides a brief overview of the relevant legal and administrative frameworks, discussing the key laws and the primary institutions that exist for their enforcement, including those that facilitate labor consultations and adjudication of disputes. Section 4 provides a more comprehensive discussion of laws and enforcement mechanisms related to labor rights in the ROK.

### 2.1. Legal Framework for Labor Rights

Labor rights are set forth in the Constitution of the ROK and in more than two dozen individual labor laws.<sup>2</sup> Most laws have separate enforcement decrees, which are presidential decrees providing concrete details on the implementation of the relevant laws.<sup>3</sup> The ROK's labor laws can be divided into three categories: (1) individual labor relations laws, which regulate relations between workers and employers, of which the *Labor Standards Act* is the most comprehensive; (2) collective labor relations laws, which regulate labor-management relations, of which the *Trade Union and Labor Relations Adjustment Act (TULRAA)* is the primary example; and (3) general employment laws, which regulate employment policy issues, such as employment security, employment insurance, and the employment of foreign workers, of which the *Act on Foreign Workers' Employment, Etc.* is an example.

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<sup>2</sup> Constitution of the ROK, October 29, 1987; available at <http://english.court.go.kr/>; Korea International Labor Foundation (KOILAF), *Labor Law* [online] [cited December 15, 2010]; available at <http://www.koilaf.org/KFeng/engLaborlaw/bbs.php>. KOILAF is a non-profit organization established jointly by organizations representing labor, management, and government in the ROK. It seeks to promote international understanding of Korean labor-management relations. Its steering committee is comprised of leaders representing trade union confederations, national employer organizations and the Government. See KOILAF, *President's Message* [online] [cited December 15, 2010] available at <http://www.koilaf.org/KFeng/engAbout/message.php>. See also KOILAF, *Organization* [online] [cited December 15, 2010]; available at <http://www.koilaf.org/KFeng/engAbout/organization.php>.

<sup>3</sup> U.S. Embassy-Seoul, E-mail communication, May 1, 2008.

## **2.2. Administrative Framework for Labor Rights**

The ROK's system for administering labor rights consists of three sets of institutions: (1) the MOEL;<sup>4</sup> (2) adjudication and mediation mechanisms; and (3) consultative and cooperative mechanisms.

### ***2.2.1. Ministry of Employment and Labor***

The MOEL is the principal governmental labor authority in the ROK. The Ministry is responsible for enforcing labor laws and for developing and implementing policies and programs on labor standards, labor relations, occupational safety and health, labor market and employment growth strategies, youth employment, vocation training and skills development, equal employment, employment insurance, and industrial accident compensation insurance.<sup>5</sup> The MOEL also compiles and publishes labor statistics from survey data it collects.<sup>6</sup>

The MOEL, with total staff of 5,740 as of October 2010, is composed of the headquarters and regional offices. An organizational chart of the Ministry, with the particular responsibilities and functions of the different offices and bureaus, can be found in Annex I of this report. The MOEL's headquarters consists of three general offices: (1) the Planning and Coordination Office, consisting of the Policy Planning Bureau and the International Cooperation Bureau; (2) the Employment Policy Office, made up of separate bureaus dealing with Employment Policy, Manpower Policy, Skills Development Policy, Equal Employment Policy, and Employment Service Policy; and (3) the Labor Relations Policy Office, consisting of bureaus responsible for Labor Management Cooperation, Labor Standards, Occupational Safety and Health (OSH), and Public Sector Labor Relations. Policies and programs are developed and implemented by the first two offices, while the responsibility for administrative enforcement of labor laws falls on the labor inspectorate, which reports to the OSH and Labor Standards Bureaus of the Labor Relations Policy Office.

### **Labor Inspectorate**

The ROK labor inspectorate operates through the headquarters and 47 district labor offices. As of October 2010, the MOEL employed approximately 1,400 labor inspectors. The majority (78 percent) specialize in labor standards while the remaining inspectors focus on occupational health and safety. Their activities are under the purview of the district labor offices. They are administratively managed by the Labor Standards Policy

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<sup>4</sup> The Ministry of Labor changed its name to the Ministry of Employment and Labor on July 5, 2010, to "better reflect the central role that the Ministry was deemed to play in the government-wide efforts to create jobs and further strengthen its function of administering employment policies." MOEL, "The Current Status & Cases of Labor Inspection in Korea," paper presented at the ASEAN Labor Inspection Conference in Ha Long, Vietnam, October 13, 2010.

<sup>5</sup> MOEL, *About MOEL: Purpose and Function* [online] [cited November 29, 2010]; available at <http://www.moel.go.kr/english/about/organization.jsp>.

<sup>6</sup> MOEL, *MOEL Survey Data* [online] [cited November 29, 2010]; available at [http://www.moel.go.kr/english/statistics/MOL\\_Survey\\_Data.jsp](http://www.moel.go.kr/english/statistics/MOL_Survey_Data.jsp)

Bureau or the OSH Bureau of the National Labor Relations Policy Office, depending on their specialty.<sup>7</sup>

Labor inspectors are responsible both for responding to allegations of labor law violations brought to district labor offices by workers and employers and for conducting “regular” inspections to monitor labor law implementation. They have the authority to investigate, to detain and arrest employers suspected of violating labor laws, and to order fines, other penalties, and remedies where violations have been found.<sup>8</sup> While inspectors are required to provide ten day notice to employers prior to conducting “regular” inspections, no such notice is required for “special” inspections conducted in response to information received regarding working conditions or potential violations.<sup>9</sup> Where the corrective actions or remedies ordered by the inspectorate are not implemented within a specified period or where a penalty is not paid, the inspectorate is required to refer the case to prosecutors.

MOEL inspected 25,892 companies in 2009 and found 23,034 companies in violation of one or more law. As of October 2010, the MOEL reports that nearly all of the violations were handled administratively and remedied. Legal actions were taken against roughly 50 companies.<sup>10</sup>

In 2009, a total of 320,148 cases of alleged labor law violations were accepted and handled by district labor offices. Of that total, 213,116 cases were handled successfully by remedying the violations against workers’ rights and the remaining cases were handled through legal actions. The number of reported cases has been on the rise continually since 1992. According to the MOEL, this reflects the increasing awareness among the general public of the rights of workers.<sup>11</sup>

### ***2.2.2. Adjudication & Mediation Mechanisms***

In addition to filing complaints with the labor inspectorate, workers and employers may bring allegations of labor violations and labor disputes before quasi-judicial administrative bodies called Labor Relations Commissions (LRC), which serve as the principal entities for adjudication and mediation of labor-related issues in the ROK.<sup>12</sup> The responsibilities of the LRCs include: investigating allegations of violations of labor laws; judging, deciding, making resolutions, and ordering redress of labor violations; and

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<sup>7</sup> MOEL, “The Current Status & Cases of Labor Inspection in Korea.” See also U.S. Embassy-Seoul, E-mail communication, January 6, 2011.

<sup>8</sup> *Labor Standards Act*, Article 102. See also MOEL Report, “Current Status & Cases of Labor Inspection in Korea,” p.2. The *Labor Standards Act* grants labor inspectors the authority to perform the official duties of the judicial police officer in accordance with the *Act relating to Persons to Perform Duties of Judicial Police and Scope of the Duties* with regard to the crimes in violation of laws and decrees pertaining to labor affairs (Article 102(5)).

<sup>9</sup> MOEL, “Current Status & Cases of Labor Inspection in Korea,” p.2. According to the MOEL, relatively few special inspections are conducted each year.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> *Labor Relations Commission Act*, Article 2(2).



mediating or arbitrating labor disputes and providing support for interested parties to autonomously settle their disputes in accordance with the law.<sup>13</sup>

The LRCs consist of the following:

- 12 Regional LRCs, which report to the MOEL;
- a Special LRC, which handles special cases prescribed by specific labor laws, as directed by the chief of the relevant central administrative authority that has subject matter jurisdiction over the circumstances in question;<sup>14</sup> and
- a National LRC (NLRC), which also reports to the MOEL, handles cases that are under the jurisdiction of two or more Regional LRCs, and handles appeals of decisions made by the Regional or Special LRCs.<sup>15</sup>

The LRCs are comprised of an equal number of worker representatives (“employee members”), employer representatives (“employer members”), and members representing the public interest (“public interest members”),<sup>16</sup> who must meet specific qualifications with regard to expertise and experience, as stipulated in the *Labor Relations Commission Act*.<sup>17</sup>

Employee members are recommended by trade unions and employer members are recommended by employers’ associations.<sup>18</sup> Public interest members are selected from those recommended by the Chairman of the relevant LRC (National or Regional), trade unions or employers’ associations who have not been excluded (by way of veto) by either of the latter two groups.<sup>19</sup>

Each LRC is divided into committees handling different types of cases. These include the following:

- the Adjudication Committee, which is composed of three public interest members in charge of adjudication, and handles matters requiring judgment, resolution, or approval, or confirmation of the LRC in accordance with the *TULRAA*, the *Labor Standards Act*, the *Act on the Promotion of Worker Participation and Cooperation* and other labor laws;
- the Discrimination Redress Committee, which is composed of three public interest members in charge of redressing discrimination, and handles matters concerning redress for discrimination in accordance with the *Act on the*

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<sup>13</sup> Ibid., Article 2.

<sup>14</sup> Ibid., Articles 2(1), 2(3) and 3(3). See also *Enforcement Decree of the Labor Relations Commission Act*, Article 2 and Annex 1.

<sup>15</sup> *Labor Relations Commission Act*, Articles 2 and 3. The Act does not provide examples of the kinds of cases that would be handled by the Special LRC. It specifies only that “the Special Labor Relations Commission has jurisdiction over the cases concerning specified matters which are prescribed by relevant enactments as an objective of its establishment” (Article 3(3)).

<sup>16</sup> Ibid., Article 6(1). The rules governing the selection of the members of the LRCs can be found in Articles 6(2) to 6(6) of the *Labor Relations Commission Act*.

<sup>17</sup> Ibid., Articles 6 and 8.

<sup>18</sup> Ibid., Article 6(3).

<sup>19</sup> Ibid., Article 6(4).

*Protection, Etc., of Fixed-Term and Part-Time Employees and the Act on the Protection, Etc., of Dispatched Workers;*

- the Mediation, Special Mediation, and Arbitration Committees, which are established in accordance with the *TULRAA* and handle mediation and arbitration of labor relations cases;
- the Adjustment Committee for Teachers' Labor Relations, which focuses on cases covered by the *Act on Establishment, Operation, Etc., of Trade Unions for Teachers* and handles mediations, arbitration and other related matters under the Act; and
- the Adjustment Committee for Public Officials' Labor Relations, which focuses on cases pursuant to the *Act on the Establishment, Operation, Etc., of Public Officials' Trade Unions* and handles mediation, arbitration and other related matters under that Act.<sup>20</sup>

When allegations of labor violations are submitted to an LRC, the body is responsible for conducting investigations and issuing decisions and remedy orders.<sup>21</sup> The LRC may also recommend conciliation or present a conciliation proposal, either independently or at the request of either or both of the parties, before making a judgment, issuing an order or rendering a decision.<sup>22</sup> The LRC can also assist the parties concerned with settling their dispute autonomously by arranging negotiations prior to accepting requests for mediation.<sup>23</sup> For binding arbitration cases, both parties must request LRC arbitration, unless an applicable collective bargaining agreement provides for arbitration at the request of only one party.<sup>24</sup>

Decisions made by a Regional LRC or the Special LRC can be appealed to the National LRC within ten days of the receipt of the notice of the decision.<sup>25</sup> Furthermore, a decision of the NLRC can be appealed to the judicial system within 15 days of receipt of such a decision through a lawsuit against the NLRC.<sup>26</sup>

Finally, in addition to the LRC, parties may opt to settle labor disputes through private mediation or arbitration bodies pursuant to mutual agreements or collective bargaining agreements as long as the private bodies involved meet the qualification requirements specified in the *Labor Relations Commission Act*.<sup>27</sup>

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<sup>20</sup> *Ibid.*, Article 15. See Section 4 for additional details.

<sup>21</sup> *TULRAA*, Article 84.

<sup>22</sup> *Labor Relations Commission Act*, Article 16-3 (1).

<sup>23</sup> *TULRAA*, Article 53(2).

<sup>24</sup> *TULRAA*, Article 62. Mediated agreements and arbitration rulings all have the same effect as collective agreements. *TULRAA*, Article 61(2) and Article 70(1).

<sup>25</sup> *Labor Relations Commission Act*, Article 26(1) and (2).

<sup>26</sup> *Ibid.*, Article 27(1). See also *Labor Standards Act*, Article 31(2).

<sup>27</sup> *TULRAA*, Article 52.

### 2.2.3. Consultative and Cooperative Mechanisms

Three different institutions support consultative and cooperative efforts on labor matters in the ROK: (1) the Economic and Social Development Commission (ESDC); (2) labor management councils; and (3) certified labor affairs consultants.

At the national level, under the authority of the President, a tripartite commission, called the Economic and Social Development Commission,<sup>28</sup> exists to promote labor-management cooperation and participation in the formation of government policies. The ESDC is comprised of representatives from labor, management, public interest groups, and the government, including members from regional tripartite committees. Since becoming a permanent legal entity in 1999 by the *Act on the Tripartite Commission for Economic and Social Development*,<sup>29</sup> the ESDC has reached agreements on many subjects, most notably on guaranteeing the right of teachers to form trade unions, on reducing working hours, on instituting new legal protections for non-regular workers, on improving systems and practices for mediation of labor disputes, and on reforming industrial relations legislation.<sup>30</sup>

At the enterprise level, the *Act on the Promotion of Worker Participation and Cooperation* requires businesses with 30 or more employees to set up “labor-management councils” to facilitate consultations.<sup>31</sup> The councils are composed of an equal number of employer and worker representatives.<sup>32</sup> They have the responsibility of holding consultations on a broad spectrum of issues, including worker recruitment, education and training; worker grievance procedures; administration of work hours and break times; working conditions improvement and occupational safety and health; and profit-sharing plans.<sup>33</sup> While the decisions of labor-management councils are not equivalent to a collective bargaining agreement,<sup>34</sup> workers and employers are required to abide by the decisions, with failure to comply punishable by a fine.<sup>35</sup> If a labor-management council cannot resolve one of the issues listed above, it can refer the issue to an arbitral organization established by agreement between the council’s worker and

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<sup>28</sup> The ESDC was called the Korea Tripartite Commission (KTC) until January 2007. The KTC was renamed the Economic and Social Development Commission with the passage of the *Act on the Establishment and Operation of the Economic and Social Development Commission* on January 26, 2007.

<sup>29</sup> U.N. Division for Public Administration and Development Management, Department of Economic and Social Affairs, *Republic of Korea: Economic and Social Development Commission*, [online][cited December 15, 2010]; available at

<http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN027755.pdf>. See also *Act on the Tripartite Commission for Economic and Social Development*, Article 1.

<sup>30</sup> ESDC, *Major Agreements of the Economic and Social Development Commission* [online][cited December 15, 2010]; available at [http://www.lmg.go.kr/bbs/list.asp?code=e\\_bbs52](http://www.lmg.go.kr/bbs/list.asp?code=e_bbs52). See also Government of the ROK, *Labor Law Reform in Korea, Progress Report to the ELSAC Mandated by the OECD Council*, draft provided directly to the United States Department of Labor by, and cited with permission of, the Government of the ROK, April 2007.

<sup>31</sup> *Act on the Promotion of Worker Participation and Cooperation*, Article 4.

<sup>32</sup> *Ibid.*, Article 6.

<sup>33</sup> *Ibid.*, Article 19.

<sup>34</sup> KOILAF, *Labor Management Manual for Foreign Investors (2008 Updated Edition)*, 109.

<sup>35</sup> *Act on the Promotion of Worker Participation and Cooperation*, Article 30. The fine is stipulated at up to ten million won (USD 8,905). Currency conversion from <http://www.oanda.com/currency/converter/>.

employer members, to a LRC, or to a private arbitration body agreed upon by the parties.<sup>36</sup>

Employers and workers also have the option of engaging “certified labor affairs consultants” to facilitate labor-management cooperation. To be a certified labor affairs consultant, the independent professional must register with the MOEL and pass a series of qualification examinations administered by the MOEL.<sup>37</sup>

### **3 Issues of Note**

In recent years, the ROK has undertaken reforms to improve its labor laws and practices. Many of these reforms took place, at least in part, in the context of the ROK’s accession to the Organization for Economic Cooperation and Development (OECD) in 1996 and the commitments the Korean Government made to the OECD to bring its labor laws and practices in line with internationally accepted standards. Most recently, the ROK made several amendments to the *TULRAA* in January 2010. With these reforms, the ROK’s labor laws and practices are largely consistent with international standards governing the internationally recognized labor rights articulated in Chapter 19 of the KORUS. However, labor rights groups and the ILO have continued to express concerns regarding certain ROK labor laws and practices. This section provides a synopsis of notable issues and a discussion of current ROK efforts to address them. The KORUS provides mechanisms for regular monitoring and dialogue on labor rights issues. Recognizing the potential for the issues noted here to continue to affect labor rights, application of the relevant laws and reforms related to these issues would benefit from monitoring and follow-up under those mechanisms.

#### **3.1. Criminal Charges of “Obstruction of Business” Related to Trade Union Activity**

The ROK’s *Criminal Act* permits steep fines and imprisonment as penalties for “obstruction of business.”<sup>38</sup> The ILO CFA has repeatedly criticized Korea’s use of the obstruction of business provision against unionists engaged in non-violent activities that are protected labor rights, and Korean labor groups report that the application of heavy fines in such cases has had a significant negative financial impact on affected unions. The ILO CFA has recommended that the ROK refrain from detaining and arresting unionists involved in non-violent associational activities.<sup>39</sup> The ROK contends that

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<sup>36</sup> Ibid., Article 25. Failure to comply with arbitral awards is also punishable by a fine of up to ten million won (USD 8,905). Ibid., Article 30.

<sup>37</sup> *Certified Labor Affairs Consultant Act*, Article 3-2.

<sup>38</sup> *Criminal Act* (as amended through July 29, 2005), Articles 313, 314.

<sup>39</sup> ILO CFA, 353<sup>rd</sup> Report, Case 1865, paras. 749(c)(vi), (b), (f).

workers are not arrested under the *Criminal Act* for participating in legal or illegal protests without having also engaged in violent acts or other serious offenses.<sup>40</sup>

**Laws and Practices Concerning “Obstruction of Business”:** Article 314 of the *Criminal Act* defines “obstruction of business” as interfering with the business of another by injuring his/her credit through lies or fraudulent means, threat of force, or damaging records and record-keeping equipment.<sup>41</sup> The punishment for violating this provision of the Act is imprisonment of up to five years or a fine of up to 15 million won (USD 13,358).<sup>42</sup> The *TULRAA* stipulates that the obstruction of business provision cannot be used to punish justifiable, non-violent collective bargaining and industrial action.<sup>43</sup>

The Government has defended the obstruction of business provisions as similar to those used in other OECD countries to prohibit acts interfering with the work of other workers through physical violence or coercion.<sup>44</sup> The OECD has noted, however, that Korea’s obstruction of business charge has been applied to suppress activities considered unlawful in Korea that would be considered lawful in most OECD countries or civil rather than criminal disputes.<sup>45</sup>

**Concerns Raised by the ILO CFA with Respect to “Obstruction of Business”:** The ILO CFA has expressed concern that the provisions relating to obstruction of business in certain cases have been interpreted to allow the punishment of a variety of protected non-violent activities relating to collective action that halted or interrupted normal business activities.<sup>46</sup> As a result, the ILO CFA has called on the ROK to “revert to a general practice of investigation without detention of workers and of refraining from making arrests, even in the case of an illegal strike, if the latter does not entail any violence.”<sup>47</sup> In response to such criticisms, the ROK has noted that it follows a policy of minimizing arrests for obstruction of business by refraining from making arrests during strikes as long as they do not become violent.<sup>48</sup>

### **3.2. Labor Rights of “Non-Regular” Workers**

Subcontracted workers (known as “dispatched workers”) and temporary workers comprise about one-third of wage workers in the Korean labor force and have faced

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<sup>40</sup> Government of ROK, *Labour Law Reform in Korea: Progress Report to the ELSAC Mandated by the OECD Council*, para. 53.

<sup>41</sup> *Criminal Act*, Article 314.

<sup>42</sup> *Ibid.*, Articles 313, 314.

<sup>43</sup> *TULRAA*, Article 4.

<sup>44</sup> *Ibid.*, para. 53, footnote 13.

<sup>45</sup> OECD, *Labour Market and Social Safety-Net Policies in Korea: Follow-Up to the 2000 Review and Recommendations*, April 16, 2002, para. 53. Subsequent to this 2002 OECD report, the OECD ended its review of Korea’s labor law practices on June 12, 2007. See The Hankyoreh, *OECD ends monitoring of Korea’s labor issues*, June 13, 2007 [online] [accessed February 14, 2011]; available at [http://english.hani.co.kr/arti/english\\_edition/e\\_business/215626.html](http://english.hani.co.kr/arti/english_edition/e_business/215626.html).

<sup>46</sup> ILO CFA, *346<sup>th</sup> Report*, para 768.

<sup>47</sup> ILO CFA, *353<sup>rd</sup> Report*, paras. 749(c)(vi), (b), (f).

<sup>48</sup> *Ibid.* See also Government of ROK, *Labour Law Reform in Korea*, paras. 56 and 58.

discriminatory working conditions and challenges in exercising the rights of freedom of association and collective bargaining. In a recent case involving dispatched workers in several plants, the ILO CFA noted concerns about the institutional and legal protections of these rights for such workers and set forth recommendations to address the deficiencies.<sup>49</sup> ROK laws generally guarantee equal rights for “non-regular workers” and prohibit discrimination against them, and some workers have achieved regular status as a result of recent laws requiring companies to convert non-regular workers to regular status after two years.<sup>50</sup> While the ROK has yet to take up the ILO CFA’s recommendations in full, the ROK Supreme Court in July 2010 ruled that a company at issue in the ILO CFA case had incorrectly classified a dispatched worker as an in-house subcontractor and that, as a result, the worker in question should have enjoyed the protections of the *Act on the Protection, Etc. of Dispatched Workers*.<sup>51</sup> Some labor experts in the ROK believe this is a landmark case that may impact the improper use of dispatch workers throughout the country.<sup>52</sup>

**Laws and Practices with Respect to Non-Regular Workers:** Approximately 5.4 million of the 16.6 million wage workers in the Korean labor force are “non-regular workers,”<sup>53</sup> comprised of fixed-term and non-fixed-term temporary workers, part time workers, and “atypical” workers, including dispatched workers.<sup>54</sup> Non-regular workers are covered by *TULRAA* protections for fundamental labor rights including freedom of association, and the ROK has passed additional laws to ban discrimination against these workers and require conversion to permanent status after two years of employment (for a detailed discussion of relevant laws, see “*Non-Regular Workers*” in Section 4.5). In addition, in recent years, some courts have issued rulings that non-regular workers, who have worked continuously for two years or longer, shall be treated as directly employed regular employees.<sup>55</sup> With respect to freedom of association, the precarious employment status of non-regular workers may have contributed to low participation rates in trade unions. Approximately 2.5 percent of non-regular workers belong to unions, compared to 17.3 percent of regular workers.<sup>56</sup>

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<sup>49</sup> ILO CFA, *355<sup>th</sup> Report*, November 2009, para. 678.

<sup>50</sup> KOILAF, *Employment termination is up but continued employment is down for fixed-term workers*, August 6, 2010 [online] [accessed February 9, 2011]; available at [http://www.koilaf.org/KFeng/engLabornews/bbs\\_read\\_dis.php?board\\_no=6858](http://www.koilaf.org/KFeng/engLabornews/bbs_read_dis.php?board_no=6858).

<sup>51</sup> See Supreme Court Decision 2008Du4367 (July 22, 2010).

<sup>52</sup> KOILAF, *Supreme Court rules an in-house subcontracted worker should be regarded as a worker directly employed by the prime contractor after two consecutive years of working*, July 28, 2010 [online] [accessed February 14, 2011]; available at [http://www.koilaf.org/KFeng/engLabornews/bbs\\_read\\_dis.php?board\\_no=6831](http://www.koilaf.org/KFeng/engLabornews/bbs_read_dis.php?board_no=6831).

<sup>53</sup> The National Statistics Office, based on data collected in March 2010 and cited in KOILAF, *Korea Labor Review*, May-June 2010, Vol. 6, No. 32, p. 24.

<sup>54</sup> *Ibid.* See also for comparison, KOILAF, *Wage gap between regular and irregular workers appears average 15.2percent*, May 28, 2008 [online] [accessed December 9, 2010]; available at [www.koilaf.org/KFeng/engStatistics/bbs\\_read\\_dis.php?board\\_no=122](http://www.koilaf.org/KFeng/engStatistics/bbs_read_dis.php?board_no=122).

<sup>55</sup> KOILAF, *In-house subcontracted employees emerged as a hot issue in the labor relations*, November 17, 2010 [online] [accessed February 9, 2011]; available at [http://www.koilaf.org/KFeng/engLabornews/bbs\\_read\\_dis.php?board\\_no=7037](http://www.koilaf.org/KFeng/engLabornews/bbs_read_dis.php?board_no=7037).

<sup>56</sup> KOILAF, *Labor Situation 2010*, p. 79.

**Concerns Raised by the ILO CFA with Respect to Non-Regular Workers:** The Korean Metalworkers' Federation (KMWF), the Korean Confederation of Trade Unions (KCTU) and the International Metalworkers' Federation (IMF) have filed complaints with the ILO CFA alleging that dispatched workers in multiple plants in the ROK metal sector are denied their freedom of association rights, as they are subject to: (a) recurring acts of anti-union discrimination, notably dismissals or non-renewal of contracts aimed at thwarting efforts to establish a union; and (b) consistent employer refusal to bargain and negotiate, with the result that none of the unions involved in this case had succeeded in negotiating a collective agreement.<sup>57</sup>

The case, involving dispatched workers in Hyundai Motors' Corporation's Ulsan, Asan and Jeonju plants; Hynix/Magnachip; Kiryung Electronics; and KM&I, was first brought to the ILO CFA in October 2007, with additional updates and allegations made in November 2008 and July 2009.<sup>58</sup> Commenting on the case, the ILO CFA noted that "protection against acts of anti-union discrimination would appear to be inadequate if an employer can resort to subcontracting as a means of evading in practice the rights of freedom of association and collective bargaining."<sup>59</sup> The ILO CFA requested that the ROK take measures "to ensure that the use of subcontracting arrangements is not motivated by the wish to circumvent the collective bargaining provisions contained in the *TULRAA*, and that the trade unions representing subcontracted workers can carry on their activities in the interests of their members."<sup>60</sup> Among other recommendations, the ILO CFA requested that the Government "take all necessary measures, at all levels, to promote collective bargaining on terms and conditions of employment of subcontracted workers in all metalworking sector enterprises," specifically, and more generally to develop appropriate mechanisms to strengthen the protection of all subcontracted workers' rights to freedom of association and collective bargaining guaranteed by the *TULRAA*.<sup>61</sup>

A recent ROK Supreme Court decision could help stem the practice, particularly in the automotive sector, of disguising dispatched workers as in-house subcontractors to avoid legal protections for dispatched workers. In July 2010, the ROK Supreme Court found that a worker employed as an in-house subcontractor at a Hyundai auto assembly line was, in practice, in a "worker-dispatching position" subordinate to the third party contractor.<sup>62</sup> As such, the worker was covered by the *Act on the Protection, Etc. of Dispatched Workers*, which stipulated that a dispatched worker shall be considered a direct employee of the using company if he/she is employed in that position for more than two years.<sup>63</sup>

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<sup>57</sup> ILO CFA, 355<sup>th</sup> Report, para. 652.

<sup>58</sup> ILO CFA, 350<sup>th</sup> Report, paras. 627-628. See also ILO CFA, 355<sup>th</sup> Report, paras. 621-623.

<sup>59</sup> *Ibid.*, paras. 654 and 678

<sup>60</sup> *Ibid.*, para. 660.

<sup>61</sup> *Ibid.*, para. 678.

<sup>62</sup> Supreme Court Decision 2008Du4367 (July 22, 2010).

<sup>63</sup> See Government of the ROK, *Act on the Protection, Etc. of Dispatched Workers* (as amended through May 21, 2009); available at <http://www.moel.go.kr/english/search/search.jsp?keyword=8076>.

### **3.3. The Case of the Migrants' Trade Union**

An estimated 520,000 registered migrant workers are employed in the ROK,<sup>64</sup> constituting approximately 2.4 percent of the total number of employed persons.<sup>65</sup> The majority are employed in manufacturing (50.7 percent), while others work in services (31.7 percent), construction (14.1 percent), agriculture and livestock (2.7 percent), and fisheries (0.8 percent).<sup>66</sup>

The Migrants' Trade Union (MTU) was founded on April 24, 2005, and a notification of its establishment was sent to the Seoul Regional Labor Office (SRLO) on May 3, 2005.<sup>67</sup>

**Laws and Practices Concerning Migrant Workers' Rights:** Labor laws in the ROK generally provide foreign and migrant workers the same legal protections as Korean nationals.<sup>68</sup> However, the SRLO rejected the MTU's registration on the grounds that the union failed to provide certain documents (including a list of union members, their workplaces, and their nationalities), and that the officers of the union were foreigners "without legal right of residence and employment under the Constitution," so that it could be assumed the entire union was composed of "illegally employed foreigners who do not have the right to join labor unions."<sup>69</sup>

On February 1, 2007, the Seoul High Court ruled that the right of association, as protected under the ROK Constitution, applies to all foreign workers, regardless of immigration status.<sup>70</sup> The MOEL has appealed the High Court's decision and continues to deny legal recognition to the MTU. The case has been pending before the ROK Supreme Court since February 23, 2007.<sup>71</sup>

**Concerns Raised by the ILO CFA with Respect to the Case of the MTU:** The ILO CFA has expressed concern over the time it is taking the Supreme Court to rule on the case and called on the government to register the MTU, regardless of the outcome of the case.<sup>72</sup>

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<sup>64</sup> "Migrant worker deaths, injuries at workplaces rise: report," *Yonhap News*, June 7, 2010 [online] [accessed December 9, 2010]; available at [http://www.koilaf.org/KFeng/engLabornews/bbs\\_read\\_dis.php?board\\_no=6725](http://www.koilaf.org/KFeng/engLabornews/bbs_read_dis.php?board_no=6725). See also data available on the MOEL website [online] [accessed December 9, 2010]; available at [http://www.moel.go.kr/english/statistics/major\\_statistics.jsp](http://www.moel.go.kr/english/statistics/major_statistics.jsp).

<sup>65</sup> *Ibid.*

<sup>66</sup> Korea Employment Information Service, data current to August 2010. MOEL website [online] [accessed December 9, 2010]; available at [http://www.moel.go.kr/english/statistics/major\\_statistics.jsp](http://www.moel.go.kr/english/statistics/major_statistics.jsp).

<sup>67</sup> ILO CFA, 353<sup>rd</sup> Report, para. 754.

<sup>68</sup> See *Labor Standards Act*, Articles 5 and 115; *Act on Foreign Workers' Employment, Etc.*, Articles 2, 22, 29, and 32; UN Committee on the Elimination of Racial Discrimination, *Addendum to the Fourteenth Periodic Reports of State Parties Due in 2006, Republic of Korea*, paras. 36, 39 and 61.

<sup>69</sup> ILO CFA, 353<sup>rd</sup> Report, para. 754.

<sup>70</sup> The Administrative Court is the court of first instance for cases involving labor issues. Appeals can be brought to the High Courts, which are the appellate courts for District Courts, Family Court and the Administrative Court. Appeals on rulings by the High Court can be brought to the Supreme Court.

<sup>71</sup> As of October 2010, the Supreme Court had not yet ruled on the case. Communication to the ILO CFA, cited in ILO *GB.309/8 Report*, November 2010, para. 451.

<sup>72</sup> *Ibid.*, para. 461(a).



## 4 Relevant Laws Governing Recognized Labor Rights

This section offers an overview of the laws of the ROK pertaining to the six internationally recognized labor rights defined as “labor laws” under Chapter 19 of the KORUS.<sup>73</sup>

The Constitution of the ROK prohibits compulsory labor; grants all citizens the freedom of occupation;<sup>74</sup> guarantees freedom of association and the right to bargain collectively (with certain exceptions);<sup>75</sup> guarantees the right of citizens to work and to an enforceable system of minimum wages;<sup>76</sup> stipulates that standards for conditions of work are to be promulgated by law to guarantee human dignity;<sup>77</sup> accords special protection to working women and children;<sup>78</sup> and prohibits discrimination in economic life on account of sex, religion, and social status.<sup>79</sup>

Among the laws governing individual labor rights, the *Labor Standards Act* is the most comprehensive. It provides minimum standards for conditions of employment, including wages and hours of work; bans discrimination on certain articulated prohibited grounds; prohibits forced labor and unjustified dismissals; provides additional protections for minors, women, and women during pregnancy through the first year after childbirth; stipulates requirements for individual labor contracts; provides for labor inspections; and authorizes penal sanctions in certain cases of egregious violations.<sup>80</sup>

Other important laws protecting individual labor rights include:

- The *Minimum Wage Act*, which sets requirements for annual determination by the Ministry of Employment and Labor of the minimum wage by industry and worker classification and requires employers to pay at least the minimum wage;<sup>81</sup>

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<sup>73</sup> KORUS, Article 19.8; available at

[http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset\\_upload\\_file934\\_12718.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/korus/asset_upload_file934_12718.pdf).

<sup>74</sup> Constitution of the ROK, Article 12(1) and Article 15, available at

[http://english.court.go.kr/home/att\\_file/download/Constitution\\_of\\_the\\_Republic\\_of\\_Korea.pdf](http://english.court.go.kr/home/att_file/download/Constitution_of_the_Republic_of_Korea.pdf).

<sup>75</sup> *Ibid.*, Article 21(1) and Article 33. Article 21(1) guarantees freedom of assembly and association for all citizens. Article 21(2) prohibits the licensing of association. Article 33 describes the rights of association, collective bargaining and collective action for workers. Article 33(2) restricts the right of association and collective bargaining for public officials to those explicitly conferred by law. Article 33(3) states that the right to collective action for workers in defense industries may be restricted or denied by law.

<sup>76</sup> *Ibid.*, Article 32(1).

<sup>77</sup> *Ibid.*, Article 32(3).

<sup>78</sup> *Ibid.*, Articles 32(4) and 32(5).

<sup>79</sup> *Ibid.*, Article 11(1).

<sup>80</sup> Government of the ROK, *Labor Standards Act* (as amended through June 10, 2010); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=254&tab=Standards](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=254&tab=Standards).

<sup>81</sup> Government of the ROK, *Minimum Wage Act* (as amended through March 21, 2008); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=256&tab=Standards](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=256&tab=Standards).

- The *Occupational Safety and Health Act*, which addresses occupational safety and health, hazard and accident prevention, and implementation of a safety and health management system;<sup>82</sup>
- The *Industrial Accident Compensation Insurance Act*, which establishes rules for compensating workers for work-related accidents;<sup>83</sup>
- The *Act on the Protection, Etc., of Dispatched Workers*, which governs employment conditions for temporary employment agency workers;<sup>84</sup>
- The *Act on Age Discrimination Prohibition in Employment and Aged Employment Promotion*, which addresses discrimination based on age;<sup>85</sup>
- The *Act on Foreign Workers' Employment, Etc.*, which prohibits discrimination against workers who do not have a Korean nationality;<sup>86</sup>
- The *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, which addresses discrimination against, and protections for, fixed-term and part-time employees;<sup>87</sup> and
- The *Act on Equal Employment and Support for Work-Family Reconciliation*, which provides for equal opportunity and treatment for men and women in employment and protects maternity benefits.<sup>88</sup>

Among laws governing labor-management relations, the *TULRAA* is the most comprehensive. For all workers except public servants and teachers, the *TULRAA* regulates the establishment, affiliation, and dissolution of trade unions; establishes the scope and conditions for collective bargaining and collective agreements; regulates industrial action, unfair labor practices, and dismissals; specifies procedures for dispute settlement and resolution; and includes penal provisions.<sup>89</sup>

Other laws related to collective rights and labor-management relations include:

- The *Act on the Tripartite Commission for Economic and Social Development*, which establishes a national-level tripartite commission to consult on labor-

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<sup>82</sup> Government of the ROK, *Occupational Safety and Health Act* (as amended through June 4, 2010), available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=264&tab=Occupational](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=264&tab=Occupational).

<sup>83</sup> Government of the ROK, *Industrial Accident Compensation Insurance Act* (as amended through January 27, 2010); available at

[http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=230&tab=Occupational](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=230&tab=Occupational).

<sup>84</sup> Government of the ROK, *Act on the Protection, Etc., of Dispatched Workers* (as amended through May 21, 2009); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=471&tab=Standards](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=471&tab=Standards).

<sup>85</sup> Government of the ROK, *Act on Age Discrimination Prohibition in Employment and Aged Employment Promotion* (as amended through February 4, 2010); available at

[http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=228&tab=Equal](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=228&tab=Equal).

<sup>86</sup> Government of the ROK, *Act on Foreign Workers' Employment, Etc.* (as amended through October 9, 2009); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=218&tab=Law](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=218&tab=Law).

<sup>87</sup> Government of the ROK, *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees* (as amended through April 11, 2007); available at

[http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=262&tab=Standards](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=262&tab=Standards).

<sup>88</sup> Government of the ROK, *Act on Equal Employment and Support for Work-Family Reconciliation* (as amended through October 9, 2009); available at

[http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=224&tab=Equal](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=224&tab=Equal).

<sup>89</sup> Government of the ROK, *TULRAA* (as amended through January 1, 2010); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=238&tab=Industrial](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=238&tab=Industrial).

management relations, the development of new labor policies and laws, and structural reform of the public sector;<sup>90</sup>

- The *Act on the Promotion of Worker Participation and Cooperation*, which mandates the establishment of labor-management councils in every business or workplace with thirty or more workers;<sup>91</sup>
- The *Labor Relations Commission Act*, which establishes tripartite labor commissions at the national and regional levels to mediate or adjudicate labor disputes, such as unfair dismissals or unfair labor practices, and to issue remedy orders;<sup>92</sup> and
- The *Act on the Establishment, Operation, Etc. of Trade Unions for Teachers (Teachers' Act)*<sup>93</sup> and the *Act on the Establishment and Operation, Etc. of Public Officials' Trade Unions (Public Officials' Act)*,<sup>94</sup> which stipulate the conditions under which public sector employees may form trade unions, bargain collectively, and engage in associational activities.

#### **4.1. Freedom of Association**

##### **Right to Organize**

The Constitution of the ROK provides workers, including certain public sector employees as specified by law, the right to association and collective action.<sup>95</sup> Under the Constitution, the right to collective action among workers employed by “important defense industries” may be restricted or denied by law.<sup>96</sup>

The *TULRAA* provides workers the right to establish or join a trade union.<sup>97</sup> The *Teachers' Act* and the *Public Officials' Act* address the rights of teachers and most public officials to form and join trade unions. The latter two acts limit the rights available to teachers and public officials relative to those described in the *TULRAA* and indicate that where no limitations apply, the *TULRAA* controls.<sup>98</sup>

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<sup>90</sup> Government of the ROK, *Act on the Tripartite Commission for Economic and Social Development* (as amended through February 29, 2008); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=250&tab=Industrial](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=250&tab=Industrial).

<sup>91</sup> Government of the ROK, *Act on the Promotion of Worker Participation and Cooperation* (as amended through December 27, 2007); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=244&tab=Industrial](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=244&tab=Industrial).

<sup>92</sup> Government of the ROK, *Labor Relations Commission Act*, (as amended through May 17, 2007); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=248&tab=Industrial](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=248&tab=Industrial).

<sup>93</sup> Government of the ROK, *Teachers' Act*, (as amended through February 29, 2008); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=242&tab=Industrial](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=242&tab=Industrial).

<sup>94</sup> Government of the ROK, *Public Officials' Act* (February 29, 2008); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=240&tab=Industrial](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=240&tab=Industrial).

<sup>95</sup> Constitution of the ROK, Article 33.

<sup>96</sup> *Ibid.*, Article 33(3).

<sup>97</sup> *TULRAA*, Article 5.

<sup>98</sup> *Teachers' Act*, Article 14 and *Public Officials' Act*, Article 17. According to Article 6(2) of the *Public Officials' Act*, the following four groups of public officials shall not join a trade union: “(1) Public officials who exercise the right to direct and supervise other public officials or engage in generally managing other public officials' affairs; (2) Public officials, such as those performing jobs related to personnel and

The *TULRAA* defines a trade union as “an organization or associated organization of workers which is formed in voluntary and collective manner upon the workers’ initiative for the purpose of maintaining and improving working conditions, or improving the economic and social status of workers.”<sup>99</sup>

The *TULRAA* defines and prohibits unfair labor practices against workers and trade unionists.<sup>100</sup> It prohibits dismissal of or discrimination against a worker in retaliation for joining a union, intending to join or establish a union, engaging in union activity, or reporting or testifying about an unfair labor practice.<sup>101</sup> The *TULRAA* also prohibits making an offer of employment conditional on the worker not joining or withdrawing from a union.<sup>102</sup> The *TULRAA* further prohibits an employer from dominating or interfering with the formation or operation of a trade union or providing financial support for a union’s operation. The law provides for a “closed shop,” that is, an employer is “allowed as an exceptional case” to set as a condition for employment that workers join the union, where a trade union represents more than two-thirds of workers employed in the business and a collective agreement in effect between the union and the employer so stipulates. The employer, however, is prohibited from “performing any disadvantageous act to the status of [a] worker” on the grounds that the worker has been expelled from that trade union or withdrawn from that trade union to organize a new trade union or join another trade union.<sup>103</sup>

Employers who commit an unfair labor practice are subject to imprisonment of up to two years or a fine of up to 20 million won (USD 17,810).<sup>104</sup> A worker alleging unfair dismissal is entitled to file an application for relief with a LRC, which is authorized to investigate the matter and to order appropriate relief (see Section 2.2.2).<sup>105</sup>

All dues-paying union members have equal rights and duties with respect to participating in union activities, including being elected as union officials.<sup>106</sup> Union officials may serve up to a maximum of three years, as determined by the union’s by-laws.<sup>107</sup>

The *TULRAA* requires that any person seeking to establish a trade union must submit a report containing information about the proposed trade union and a copy of its by-laws,

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remuneration, who stand in the position of administrative agencies in relations to a trade union; (3) Public officials who engage in correction, investigation and other similar jobs; and (4) Public officials whose main jobs, such as mediating and inspecting labor relations, are considered incompatible with their status as union members.”

<sup>99</sup> *TULRAA*, Article 2.

<sup>100</sup> *Ibid.*, Article 81.

<sup>101</sup> *Ibid.*, Article 81(1) and (5).

<sup>102</sup> *Ibid.*, Article 81(2). This provision does not apply in the case of teachers and public officials. See *Teachers’ Act*, Article 14(2) and *Public Officials’ Act*, Article 17(3).

<sup>103</sup> *Ibid.*, Article 81(1)-(2).

<sup>104</sup> *TULRAA*, Article 90. This provision does not apply in the case of public officials. See *Public Officials’ Act*, Article 17(3).

<sup>105</sup> *Labor Standards Act*, Articles 28-30.

<sup>106</sup> *Ibid.*, Article 22.

<sup>107</sup> *Ibid.*, Article 23.

which must include specified matters covering the union's structure and operations.<sup>108</sup> Persons seeking to establish an associated organization (i.e., an organization comprised of related trade unions) or a larger unit trade union (i.e., a union that spans two or more large metropolitan cities or provinces) must submit the required report to the Minister of Employment and Labor,<sup>109</sup> whereas smaller unit trade unions must submit the required report to local administrative authorities, such as city mayors or provincial governors.<sup>110</sup> The relevant administrative authority must issue a certificate of union establishment within three days of receipt if the report and by-laws are complete or notify the submitter that it has 20 days to submit any required additional information.<sup>111</sup>

Certain categories of public officials are prohibited from joining a trade union:

- (1) Public officials who exercise the right to direct and supervise other public officials or engage in generally managing other public officials' affairs;
- (2) Public officials, such as those performing jobs related to personnel and remuneration, who stand in the position of administrative agencies in relations to a trade union;
- (3) Public officials who engage in correction, investigation and other similar jobs; and
- (4) Public officials whose main jobs, such as mediating and inspecting labor relations, are considered incompatible with their status as union members.<sup>112</sup>

In 2007, the ILO CFA reiterated earlier observations that public officials of all grades should be able to establish labor organizations of their own choosing to further and defend the interests of their members.<sup>113</sup>

Under the *TULRAA*, a trade union can be dissolved under four circumstances: (1) according to its by-laws; (2) by merging or dividing the union; (3) by resolution of a meeting of the union membership or their representative council of delegates; or (4) by resolution of the LRC when the union has no officials and has not carried out any activity for more than one year.<sup>114</sup>

The *TULRAA* does not prohibit trade unions from engaging in political activities.<sup>115</sup> However, trade unions for teachers and public officials are banned from engaging in such activities. The *Public Officials' Act* provides that a public officials' trade union and its members "shall not engage in political activities."<sup>116</sup> The *Teachers' Act* also provides that "[t]rade unions for teachers ... shall not be allowed to participate in any political

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<sup>108</sup> Ibid., Articles 10 and 11. See also *Teachers' Act*, Article 4, *Public Officials' Act*, Article 5.

<sup>109</sup> *TULRAA*, Article 10(1)-(2).

<sup>110</sup> Ibid., Article 10(1).

<sup>111</sup> Ibid., Article 12.

<sup>112</sup> *Public Officials' Act*, Article 6(2)

<sup>113</sup> ILO CFA, 346<sup>th</sup> Report, para. 741.

<sup>114</sup> Ibid., Article 28.

<sup>115</sup> The *TULRAA* does prohibit the recognition as trade unions of organizations that are mainly political movements. Ibid., Article 2.

<sup>116</sup> *Public Officials' Act*, Article 4.

activities.”<sup>117</sup> The ILO CFA has indicated that Korea should give public officials the right to publicly voice their concerns about economic and social policies that impact the interests of their members and has found that “a general prohibition on trade unions from engaging in any political activities would not only be incompatible with the principles of freedom of association, but also unrealistic in practice.”<sup>118</sup>

## **Right to Strike**

The Constitution of the ROK grants the right of “collective action” to all workers except public officials and defense industry workers, who may be statutorily granted the right to engage in collective action.<sup>119</sup> The right is protected under the *TULRAA*, which prohibits employers from claiming damages resulting from an “industrial action” undertaken by trade unions and workers.<sup>120</sup> The *TULRAA* also prohibits the detention of striking workers, except when they commit a crime,<sup>121</sup> and the dismissal or replacing of striking workers during a legal strike.<sup>122</sup>

Before declaring a strike or lockout, trade unions and employers are required to undergo “adjustment procedures” aimed at resolving the dispute.<sup>123</sup> The adjustment procedures include mediation and arbitration.<sup>124</sup> Mediation shall be conducted by a Mediation Committee established within a LRC upon request from one of the parties, or if both parties agree and the dispute does not involve “public services,”<sup>125</sup> mediation may be conducted instead by a private mediation service.<sup>126</sup> In cases not involving public service workers, an LRC Mediation Committee consists of one representative each of the employer, of the workers, and of the public interest, with the public interest member serving as the chair of the committee.<sup>127</sup> For disputes involving public service workers, a special Mediation Committee consisting of three representatives of the public interest who have not been rejected by the employer or the workers is set up within the LRC to handle mediation.<sup>128</sup> The mediation process must be completed within ten days of the

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<sup>117</sup> *Teachers’ Act*, Article 3.

<sup>118</sup> ILO CFA, 346<sup>th</sup> Report, para 749

<sup>119</sup> Constitution of the ROK, Article 33.

<sup>120</sup> *TULRAA*, Articles 2 and 3. “Industrial action” means actions or counter-actions that obstruct the normal operation of a business, such as strikes, sabotage, lockouts, or other activities through which the parties to labor relations intend to achieve their claims. However, no act of violence or destruction is justifiable on any ground under the *TULRAA*.

<sup>121</sup> *Ibid.*, Article 39.

<sup>122</sup> *Ibid.*, Articles 81(5) and 43(1)-(2).

<sup>123</sup> *Ibid.*, Article 45(2).

<sup>124</sup> *Ibid.*, Article 45.

<sup>125</sup> “Public services” (not necessarily publicly provided or provided by public officials) are defined as including the public transportation, public utility, public health, banking, and telecommunication sectors. *Ibid.*, Article 71.

<sup>126</sup> Where private mediation or arbitration fails, the parties may still invoke LRC mediation or arbitration. See Government of the ROK, *Enforcement Decree of the Trade Union and Labor Relations Adjustment Act (TULRAA Decree)* (as amended through February 12, 2010), Article 23; available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=238&tab=Industrial](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=238&tab=Industrial).

<sup>127</sup> *TULRAA*, Articles 55 and 56. However, a single mediator may mediate if the parties concerned so request. See *TULRAA*, Article 57.

<sup>128</sup> *Ibid.*, Article 72.

mediation request (within 15 days in the case of public services), but may be extended up to ten additional days by consent of the parties (up to 15 additional days in the case of public services).<sup>129</sup>

If mediation fails, arbitration may occur if both parties to the labor dispute request arbitration or if one of the parties invokes arbitration provisions of an existing collective bargaining agreement.<sup>130</sup> The arbitration is conducted by an Arbitration Committee established within the LRC,<sup>131</sup> or if both parties agree or if stipulated in their collective bargaining agreement, the arbitration may be conducted by a private service.<sup>132</sup> During the first 15 days of the arbitration period, industrial actions by either party, such as a strike or lockout, are prohibited.<sup>133</sup> An arbitration award is legally binding and has the same effect as a collective agreement.<sup>134</sup>

The *TULRAA* provides that industrial action may be conducted only if a majority of union members have voted by “direct, secret and unsigned ballot” in favor of the action.<sup>135</sup> In addition, trade unions must report in advance the date, place, number of participants and method of a planned industrial action to the relevant administrative authority and an LRC.<sup>136</sup>

A strike is only legal if it is organized and led by a trade union<sup>137</sup> and a trade union is required to direct, manage and supervise the strike.<sup>138</sup> Acts of violence or destruction, the occupation by strikers of facilities related to certain “important businesses” (such as communications, air transport, and storage of dangerous substances), and the stopping, closing, or interruption by the strike of utilities necessary for the safe operation of a workplace are prohibited.<sup>139</sup>

Employers have no obligation to pay wages to striking workers during an industrial action,<sup>140</sup> and accordingly, a trade union is prohibited from undertaking an industrial action in order to demand wage payment for the period of an industrial action.<sup>141</sup> Employers are prohibited from hiring replacement workers or contractors to resume work during the strike, except for employers providing essential public services. For essential

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<sup>129</sup> *Ibid.*, Article 54.

<sup>130</sup> *Ibid.*, Article 62.

<sup>131</sup> *Ibid.*, Article 64.

<sup>132</sup> *Ibid.*, Article 52. As with private mediation, private arbitration is not available in public services.

<sup>133</sup> *Ibid.*, Article 63.

<sup>134</sup> *Ibid.*, Articles 69-70. Procedures for appeal are specified for instances when one of the parties believes the arbitrator has violated the law or exceeded its authority. Arbitration does not appear to be common. In 2008, the NLRC handled 839 mediations, settling 480. That same year, it handled only five arbitrations. NLRC, The Current State of Major Undertakings, online at <http://www.nlrc.go.kr/en/current.html>.

<sup>135</sup> *Ibid.*, Article 41(1).

<sup>136</sup> *TULRAA Decree*, Article 17.

<sup>137</sup> *Ibid.*, Article 37(2).

<sup>138</sup> *Ibid.*, Article 38(3).

<sup>139</sup> *TULRAA*, Article 42(1)-(2); *TULRAA Decree*, Article 21.

<sup>140</sup> *TULRAA*, Article 44.

<sup>141</sup> *Ibid.*

public services, the employer may hire or contract out work of no more than 50 percent of the work normally undertaken by those workers who participate in the strike.<sup>142</sup>

An employer may conduct a lockout after the initiation of a strike and must report the lockout in advance to the relevant administrative authority and an LRC.<sup>143</sup>

During a strike, a union cannot threaten individual workers who are not party to the dispute and seek to work, or attempt to prevent such workers from working. During the strike, employers and trade unions can be “supported” by an outside party such as a union federation associated with the striking union, an employer association associated with the affected employer, other parties of which the appropriate administrative authority has been notified, or a person entitled to provide such support by a “relevant law” other than the *TULRAA*. However, such other parties may not intervene in, manipulate, or instigate collective bargaining or industrial actions.<sup>144</sup>

The *TULRAA* does not specify which government organization has the authority to declare strikes illegal. The relevant administrative authorities, such as the Minister of Employment and Labor, mayors of special cities, mayors of metropolitan cities, or governors of provinces<sup>145</sup> have the authority to serve notice to trade unions to suspend strikes after a resolution by an LRC in cases where the strikes stop, close or interrupt the normal maintenance and operation of utilities necessary for the safe operation of a workplace.<sup>146</sup>

ROK law bans “industrial actions” by all “public officials,” defined to include even “public officials who are engaged in simple labor.”<sup>147</sup> Teachers and defense industry workers are also banned from initiating or participating in an industrial action. ROK law also requires that in any industrial action involving “essential public services,” a minimum level of service be maintained.<sup>148</sup> “Essential public services” is broadly defined as those services that if interrupted could “remarkably endanger the lives, health, physical safety or daily life of the public and are prescribed by the Presidential Decree” and may include “railroad, inter-city railroad services, and aviation services; water, electricity, gas supply; oil refinery and supply services; hospital and blood supply services; the Bank of Korea; and telecommunications services.”<sup>149</sup>

The ILO CFA interprets the right to organize as limiting restrictions or prohibitions on the right to strike to (1) the public service only for public servants exercising authority in

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<sup>142</sup> Ibid., Article 43. Note that a specified number of workers and the type and amount of work essential to provide a minimum level of services must be established; and those workers may not legally strike. Ibid., Articles 42-2 - 42-4. Therefore, this 50 percent figure would apply to work beyond this minimum level.

<sup>143</sup> Ibid., Article 46.

<sup>144</sup> Ibid., Article 40(1)-(2). The nature of the “support” is not specified, nor are the other “relevant laws” specified.

<sup>145</sup> Ibid., Article 12(1).

<sup>146</sup> Ibid., Article 42(3). See also Korean Labor Attorneys, Interview with USDOL officials, June 25, 2008.

<sup>147</sup> *State Public Officials Act*, Articles 2 and 11.

<sup>148</sup> *TULRAA*, Articles 41-42; *Public Officials’ Act*, Article 11; *Teachers’ Act*, Article 8.

<sup>149</sup> *TULRAA*, Articles 42-2 and 71(2).



the name of the State, or (2) essential services in the strict sense of the term (that is, services the interruption of which would constitute a clear and imminent threat to the life, personal safety or health of part or all of the population).<sup>150</sup> The ILO CFA has noted that too broad a definition of the concept of public servant, for whom the right to strike is banned or limited, is likely to result in an unacceptably wide restriction or prohibition of the right to strike.<sup>151</sup> While the ILO CFA has indicated that the right to strike may be restricted for public servants exercising authority in the name of the State,<sup>152</sup> it has not found teachers to be encompassed within that restriction, noting that “the possible long-term consequences of strikes in the teaching sector do not justify their prohibition.”<sup>153</sup>

Under ROK law, when the scope or nature of an industrial action relates to a “public service”<sup>154</sup> or poses a danger of “impairing the national economy or the daily lives of the general public,”<sup>155</sup> the Minister of Employment and Labor may conduct “emergency adjustment” after consultation with the Chair of the National Labor Relations Commission. Emergency adjustment requires the immediate suspension of the industrial action for 30 days and commencement of mediation procedures by the NLRC.<sup>156</sup> In such cases, the NLRC conducts arbitration at the request of either party or if it makes a unilateral decision to do so after consulting with its members representing the public interest.<sup>157</sup>

The ILO CFA has held that compulsory arbitration to end a strike is only acceptable in “public service or in essential services,” as narrowly defined by the ILO CFA, or at the request of both parties.<sup>158</sup> Many of the “public services” as defined by the ROK are not, for the most part, “essential services” according to the ILO CFA. For example, transportation, banking, and railroad, which are included in the *TULRAA* as “public services,”<sup>159</sup> are not considered “essential services” by the ILO CFA.<sup>160</sup>

Parties to industrial disputes who violate the *TULRAA* provisions on strikes may face penalties of imprisonment of up to five years and a fine of up to 50 million won (USD 44,525).<sup>161</sup> If the *TULRAA* violation involves an employer’s unlawful firing or replacement of workers during a legal strike, the affected workers can seek a remedy through procedures provided in the *TULRAA*. Within three months of such an offense, workers can request an LRC to investigate. The LRC will either issue an order for a

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<sup>150</sup> Ibid., at para. 576.

<sup>151</sup> Ibid., at para. 575.

<sup>152</sup> ILO CFA Digest, para. 574.

<sup>153</sup> Ibid., para. 590.

<sup>154</sup> “Public services” (not necessarily publicly provided or provided by public officials) are defined as including the public transportation, public utility, public health, banking, and telecommunication sectors. Ibid., Article 71(1). It also includes those sectors noted above as “essential public services.” Ibid., Article 71(2).

<sup>155</sup> *TULRAA*, Article 76.

<sup>156</sup> Ibid., Articles 76-78.

<sup>157</sup> Ibid., Articles 79-80. See also *Labor Management Manual for Foreign Investors 2010*, 98.

<sup>158</sup> ILO CFA Digest, para. 565.

<sup>159</sup> Ibid., Article 71.

<sup>160</sup> ILO CFA Digest, paras. 585, 587.

<sup>161</sup> *TULRAA*, Articles 88-93.

remedy or dismiss the complaint. In cases where a regional or special LRC issues a remedy order or dismissal decision, either party may appeal the order or decision to the NLRC.<sup>162</sup> Either party may appeal a NLRC decision through an administrative suit.<sup>163</sup>

### **Recent Amendments to the TULRAA on Union Pluralism and Compensation for Union Officials**

As of July 1, 2011, the *TULRAA* permits union pluralism, allowing for the establishment of multiple enterprise-level trade unions in a single workplace.<sup>164</sup>

Since 1998, the ILO CFA has repeatedly recommended that the ROK take “rapid steps for the legalization of trade union pluralism at the enterprise level” and repeal its ban on wage payments to full-time union officials, stating that the matter should be left to collective negotiations.<sup>165</sup> In 2010, the ROK amended the *TULRAA* to legalize enterprise-level union pluralism. At the same time, these amendments formalized the prohibition on wage payments to full-time union officials,<sup>166</sup> allowing employers to negotiate a paid “time-off system” for designated union representatives to engage in union activities, with a maximum limit set by a new tripartite committee within the MOEL.<sup>167</sup> The full effects of the January 2010 amendments remain to be seen, as the changes concerning union pluralism only recently took effect in July 2011.<sup>168</sup> According to a recent MOEL survey, 12 of 14 major enterprises surveyed after implementation of the new time-off system (which took effect on July 1, 2010) reported significant reductions in the number of full-time union officials.<sup>169</sup>

### **Background to the Recent Amendments**

The *TULRAA* of 1997 legalized union pluralism at the industry and national levels while continuing to prohibit multiple unions at the enterprise level. The 1997 legislation also prohibited the payment of wages to full-time union officials.<sup>170</sup> The effective date on this prohibition was postponed several times until it finally entered into force in July 2010. In the interim, wages for full-time union officials and a limit on the number of full-time

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<sup>162</sup> Ibid., Articles 82-86.

<sup>163</sup> Ibid., Article 85(2).

<sup>164</sup> Ibid., Articles 29(2)-(3), 29-2, Addenda Article 7 (January 1, 2010).

<sup>165</sup> ILO CFA, 346<sup>th</sup> Report, para. 759. Directorate for Employment, Labour and Social Affairs Committee (ELSAC) of OECD, *Labour Law Reform in Korea: 2005 Follow-up to the Monitoring Mandate Given to ELSAC by the OECD Council*, p.9. See also ELSAC OECD, *Labour Law Reform in Korea: 2007 Report*, p.11.

<sup>166</sup> *TULRAA*, Article 24(1) and (2).

<sup>167</sup> *TULRAA*, Article 24(4).

<sup>168</sup> *TULRAA*, Addenda, Article 1.

<sup>169</sup> MOEL, “Major Companies That Put Time-off into Operation,” August 3, 2010 Report [online] [accessed December 9, 2010]; available at

[http://www.moel.go.kr/english/topic/industrial\\_view.jsp?idx=604](http://www.moel.go.kr/english/topic/industrial_view.jsp?idx=604).

<sup>170</sup> *TULRAA*, Article 24(2).

union officials to be paid by the employer in a workplace were set on an ad-hoc basis through collective bargaining processes.<sup>171</sup>

The unsettled state of these issues reflected disagreements over whether employers should continue to pay wages to full-time union officials and how collective bargaining would be handled in workplaces with more than one enterprise-level union. Employers expressed fears that multiple enterprise-level unions could lead to an increase in the number of full-time union officials they were obliged to pay and also raised concerns about complexities involved in bargaining with more than one union at a time. Employers insisted that they could not acquiesce to enterprise-level union pluralism until the law effectively banned the practice of wage payments to full-time union officials and created a process for establishing a single bargaining channel for enterprises with more than one union.<sup>172</sup> Labor unions, for their part, argued that the decision on wage payments to full-time union officials and bargaining methods under union pluralism should be left to individual enterprise labor-management negotiations, in accordance with ILO recommendations.<sup>173</sup>

The 2010 amendments to the *TULRAA* eliminate the ban on enterprise-level union pluralism, and along with an accompanying new Enforcement Decree (issued Feb. 12, 2010), establish implementation procedures. The following rules have been established for selecting bargaining representatives in enterprises with more than one union. If the employer and unions agree, the employer can engage in separate bargaining with each of the unions. If such an agreement is not reached, then the unions must try to select a bargaining representative among themselves without the employer's engagement. If the unions fail to do so, a trade union representing the majority of union members shall select the representative, subject to the legal duty of fair representation of those union members not affiliated with the majority union.<sup>174</sup> Where no such union exists, all enterprise-level unions constituting at least 10 percent of the total union members shall attempt to create a joint bargaining team to serve as the workers' bargaining representative.<sup>175</sup> If the joint bargaining team cannot be established, the matter is referred to the LRC to determine a joint bargaining team with proportional representation.<sup>176</sup>

The 2010 amendments to the *TULRAA* continue to ban wage payments to full-time union officials and instead allow an employer to negotiate a paid "time-off system" for designated union members. The "time-off system" must be established in accordance with a maximum time-off limit and a maximum number of compensated union members, set by a new 15-member tripartite Time-Off System Deliberation Committee within the

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<sup>171</sup> KCTU, "Fundamental Labor Rights in KOREA after Suspension of Special Monitoring Process: Briefing document for TUAC to OECD," May 2010, p.14, [online] [December 15, 2010]; available at <http://kctu.org/documents/7981>.

<sup>172</sup> *Labour Law Reform in Korea: Progress Report to the ELSAC Mandated by the OECD Council*, 2007, para.1. See also ROK "Labor Reform Update," Submission to OECD, Spring 2010, p.12.

<sup>173</sup> ILO CFA, 346<sup>th</sup> Report, para. 759.

<sup>174</sup> *Enforcement Decree of the TULRAA* (as amended through Feb 12, 2010), Articles 14-7 through 14-12.

<sup>175</sup> *Ibid.*, Article 14-8.

<sup>176</sup> *Ibid.*, Article 14-9.

MOEL.<sup>177</sup> Decisions of the Committee require “the attendance of a majority of all members and the approval of a majority of the members present.”<sup>178</sup> The first time-off limit was established on May 1, 2010,<sup>179</sup> and all union representatives on the committee abstained from voting on this measure.<sup>180</sup> The law provides for a mechanism to reconsider such limits every three years upon request to the Minister of Employment and Labor.<sup>181</sup>

## **4.2. Effective Recognition of the Right to Collective Bargaining**

The Constitution of the ROK provides workers the right to collectively bargain, although it stipulates that such rights may be restricted by law for certain public officials and workers in important defense industries.<sup>182</sup>

The *TULRAA* provides that a trade union and an employer or employers’ association shall bargain in good faith and “shall not refuse or delay, without just causes, bargaining or concluding collective agreements.”<sup>183</sup> An employer’s refusal to negotiate a collective agreement or to bargain in good faith, without “justifiable reasons,” constitutes an unfair labor practice.<sup>184</sup>

Until January 1, 2010, the *TULRAA* generally did not permit multiple unions at the enterprise level; therefore, there has usually been only one collective bargaining agreement covering a particular workplace. Multiple collective bargaining agreements have generally been permitted across the same industry at a national level.<sup>185</sup> However, for teachers, the law requires that collective bargaining be conducted through a “unified

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<sup>177</sup> The Time-Off System Deliberation Committee consists of five members recommended by nationwide employers’ organizations, five members recommended by nationwide labor organizations, and five public interest members recommended by the MOEL. *Ibid.*, Article 24-2. See also *Enforcement Decree of the TULRAA*, Article 11-2.

<sup>178</sup> *TULRAA*, Article 24-2(5).

<sup>179</sup> Workplaces with union membership of fewer than 50 were accorded a maximum of 1,000 hours, those with between 50 and 99 union members a maximum 2,000 hours, those with between 100 and 199 union members a maximum 3,000 hours, and so on. For union membership of 15,000 and over, the limit was set at 28,000 hours plus an additional 2,000 hours for every 3,000 members, with a 36,000 hour-cap to take effect on July 1, 2012, for unions with more than 15,000 members. The ban on wage payments to full-time union officials and the maximum time-off system went into effect on July 1, 2010. *Ibid.*, Addenda, Article 2. See also *Enforcement Decree of TULRAA*, Article 11-6; MOEL, “Maximum Time-Off Hours,” [http://www.moel.go.kr/english/topic/industrial\\_view.jsp?&idx=558](http://www.moel.go.kr/english/topic/industrial_view.jsp?&idx=558); KOILAF, “Time-Off Limit for Full-Time Unionists Decided,” May 4, 2010.

<sup>180</sup> “Maximum Time-Off Hours.” See also “Time-Off Limit for Full-Time Unionists Decided.”

<sup>181</sup> *TULRAA*, Article 24-2.

<sup>182</sup> Constitution of the ROK, Article 33(1)-(3).

<sup>183</sup> *TULRAA*, Article 30(2).

<sup>184</sup> *Ibid.*, Article 81(3)-(4). The *TULRAA* does not define “justifiable reasons.” Two examples of justifiable reasons that apply to public officials are found in *Public Officials’ Act*. An employer (in this case, the Government) may refuse to bargain if unions cannot agree to a unified bargaining channel; an employer may refuse to reopen bargaining over subjects covered by a collective bargaining agreement that is still in effect. See *Public Officials’ Act*, Article 9(4)-(5).

<sup>185</sup> Government of the ROK, *Labour Law Reform in Korea: Progress Report to the ELSAC Mandated by the OECD Council*, paras. 1, 32-39.

bargaining channel,” and for public officials, the law also authorizes the Government to request multiple unions seeking to bargain to “unify their bargaining” and to refuse to negotiate with them until they have done so.<sup>186</sup>

There is no specific provision in the *TULRAA* limiting the matters subject to collective bargaining, and there is no specific collective bargaining procedure prescribed under the law, except for public officials and teachers.<sup>187</sup> The *Teachers’ Act* provides that teachers’ unions may bargain and conclude collective agreements on matters concerning “improvement of the economic and social status ... such as wages, working conditions, and welfare.”<sup>188</sup> The *Public Officials’ Act* provides that public official unions may bargain over “wages, welfare, and other working conditions.”<sup>189</sup> However, the *Public Officials’ Act* also explicitly states that provisions in collective agreements are non-binding if they pertain to matters stipulated by other laws or by-laws, thus effectively precluding bargaining over matters relating to wages, benefits and other matters generally determined by relevant laws and regulations.<sup>190</sup>

The ILO CFA has noted that while certain matters that pertain to the management and operation of government may be excluded under the law from the scope of collective bargaining, matters that primarily relate to the working conditions of public servants not engaged in the “administration of the state” may not.<sup>191</sup> As a result, all such public servants “should be able to engage in free and voluntary negotiations” and “the bargaining autonomy of the parties should prevail and not be conditional upon the provisions of laws, by-laws or the budget.”<sup>192</sup>

There is no statutory requirement that a certain percentage of workers be covered before collective bargaining can occur. Once concluded, a collective bargaining agreement is valid for up to two years. When a collective bargaining agreement covers more than half of the workers performing the “same kind of ... job” at an enterprise or workplace, it is understood as covering all such workers. When a collective bargaining agreement covers more than two-thirds of workers in the “same kind of ... job” in a geographic area, the ROK may require that it cover all such workers.<sup>193</sup>

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<sup>186</sup> *Teacher’s Act*, Article 6(3) and *Public Officials’ Act*, Article 9(4). The law does not define what a “unified bargaining channel” is. Government documents suggest that, in cases where more than one trade union is involved, a unified bargaining channel is one that involves the employer on the one hand, and the trade union that represents the most members on the other. See *Labour Law Reform in Korea: Progress Report to the ELSAC Mandated by the OECD Council*, para. 36.

<sup>187</sup> *Public Officials’ Act*, Article 9; *Teachers’ Act*, Article 6. See also Government of the ROK, *Enforcement Decree of the Act on the Establishment, Operation, Etc., of Trade Union for Teachers, (Teachers’ Act Decree)* (as amended through February 29, 2008), Articles 3 and 4; available at [http://www.koilaf.org/KFeng/engLaborlaw/bbs\\_read\\_dis.php?board\\_no=25](http://www.koilaf.org/KFeng/engLaborlaw/bbs_read_dis.php?board_no=25).

<sup>188</sup> *Teachers’ Act*, Article 6(1).

<sup>189</sup> *Public Officials’ Act*, Article 8(1).

<sup>190</sup> *Ibid.*, Article 10(1). See also ILO CFA, *346<sup>th</sup> Report*, paras. 547-550.

<sup>191</sup> ILO CFA Digest, paras. 886-887.

<sup>192</sup> ILO CFA, *346<sup>th</sup> Report*, paras. 741,743.

<sup>193</sup> *Public Officials’ Act*, Articles 35 and 36.

Disputes during the collective bargaining process, except in cases involving public officials and teachers, are subject to the same procedures as other labor-management disputes, discussed above.<sup>194</sup> In cases involving public officials' unions and teachers' unions, if disputes arise during the collective bargaining process, either or both of the parties may apply for mediation to the NLRC.<sup>195</sup> If a dispute is not resolved through mediation, at the request of both parties or by decision of the NLRC, the case may be referred to arbitration.<sup>196</sup> Arbitration decisions can be appealed through the filing of an administrative law suit.<sup>197</sup>

The ROK has the authority to find a collective bargaining agreement unlawful and order that it be amended.<sup>198</sup> When disputes arise regarding the interpretation or implementation of a collective agreement, one or both of the parties may ask an LRC for a review. An LRC opinion is binding on the parties and can be appealed through an administrative law suit.<sup>199</sup>

A union may bring a complaint that an employer has committed an unfair labor practice related to collective bargaining and request an LRC to investigate. Upon receipt of a complaint, the LRC is required to promptly investigate and to either order a remedy or dismiss the complaint. Either party may appeal an LRC decision to the NLRC.<sup>200</sup> The NLRC's decision may be further appealed through an administrative suit.<sup>201</sup> An employer who violates the terms of a collective bargaining agreement is subject to a fine of up to ten million won (USD 8,905).<sup>202</sup>

### **4.3. Elimination of All Forms of Forced or Compulsory Labor**

The Constitution of the ROK states that no person shall be subject to involuntary labor except as provided by statute and through lawful procedures.<sup>203</sup> The *Labor Standards Act* also establishes that employers cannot force persons to work against their own free will through any means that unjustly "restricts their mental or physical freedom."<sup>204</sup>

Employers forcing workers to work against their free will can be punished by up to five years imprisonment or a fine of up to 30 million won (USD 26,715).<sup>205</sup> The *Criminal Act* similarly provides for imprisonment of up to five years of public officials who abuse their official authority and force persons to work involuntarily.<sup>206</sup> It also provides for

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<sup>194</sup> *TULRAA*, Articles 81(3) and 82-86.

<sup>195</sup> *Public Officials' Act*, Article 12. See also *Teachers' Act*, Article 9.

<sup>196</sup> *Public Officials' Act*, Articles 13-15. See also *Teachers' Act*, Articles 10-11.

<sup>197</sup> *Public Officials' Act*, Article 16. See also *Teachers' Act*, Article 12.

<sup>198</sup> *TULRAA*, Article 31(3).

<sup>199</sup> *Ibid.*, Article 34.

<sup>200</sup> *Ibid.*, Articles 82-85.

<sup>201</sup> *Ibid.*, Article 85(2).

<sup>202</sup> *Ibid.*, Article 92.

<sup>203</sup> Constitution of the ROK, Article 12.

<sup>204</sup> *Labor Standards Act*, Article 7.

<sup>205</sup> *Ibid.*, Article 107.

<sup>206</sup> *Criminal Act*, Article 123.

imprisonment of up to five years for persons forcing others to work through violence or intimidation,<sup>207</sup> and at least three years imprisonment in cases where persons are kidnapped and forced to work.<sup>208</sup>

The *Military Service Act* permits the temporary conscription of military reservists to act as public service workers. They may be required to serve at national government agencies, local governments, public organizations and social welfare facilities. They may also be required to engage in art or sports-related activities or participate in activities to support the economic, social, or cultural advancement of developing countries.<sup>209</sup> The wide range of activities permitted under the *Military Service Act* appears to exceed the exceptions allowed by ILO Convention 29 (*Convention Concerning Forced or Compulsory Labour*) to prohibitions on forced labor. The Convention permits “any work or service exacted in virtue of compulsory military service laws” only “for work of a purely military character.”<sup>210</sup> Convicts in the ROK may be sentenced to terms of prison labor.<sup>211</sup>

Anyone who forces a person to offer sex for money through violence, intimidation or fraud is subject to up to ten years imprisonment or fines of up to 100 million won (USD 89,050).<sup>212</sup> The trafficking of persons for commercial sexual exploitation is punishable by a minimum of three years imprisonment.<sup>213</sup> Recently passed anti-prostitution laws permit victims’ advocates to sue brothel owners and managers to nullify debts for food, rent, accessories, finders’ fees, and other services accumulated as a result of the illicit sex trade.<sup>214</sup> *The Law on Regulations of Public Morals Businesses* prohibits the forced prostitution of children and imposes penalties of one to ten years imprisonment for violations.<sup>215</sup>

The U.S. Department of State has determined that the ROK fully complies with the U.S. *Trafficking Victims Protection Act*’s minimum standards. It also reports that the ROK is a source, transit, and destination country for trafficking in persons, specifically forced labor, and for women and girls in forced commercial sexual exploitation.<sup>216</sup>

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<sup>207</sup> Ibid., Article 324.

<sup>208</sup> Ibid., Article 324-2.

<sup>209</sup> Government of the ROK, *Military Service Act* (as amended through July 27, 2007), Articles 26–33.

<sup>210</sup> ILO Convention 29, Article 2(a).

<sup>211</sup> U.S. Embassy- Seoul, *reporting*, May 21, 2007.

<sup>212</sup> Government of the ROK, *Act on the Punishment of Acts of Arranging Sexual Traffic* (as amended through March 24, 2005), Article 18(1).

<sup>213</sup> Ibid., Article 18(3).

<sup>214</sup> U.S. Embassy- Seoul, *reporting*, August 24, 2005. See also U.S. Embassy- Seoul, *reporting*, March 2, 2007.

<sup>215</sup> Government of the ROK, *Worst Forms of Child Labour Convention, 1999 (No. 182) Article 22 report*, May 2005, submitted in accordance with Article 22 of the ILO Constitution for assessment by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), 10.

<sup>216</sup> U.S. Department of State, *Trafficking in Persons Report 2010*, available at <http://www.state.gov/g/tip/rls/tiprpt/2010/142760.htm>.

Labor inspectors from the MOEL have the authority to detain and arrest employers suspected of violating labor laws, including those against forced labor. The MOEL inspectors then refer the cases to the Ministry of Justice for prosecution.<sup>217</sup>

#### **4.4. Effective Abolition of Child Labor, a Prohibition on the Worst Forms of Child Labor, and Other Labor Protections for Children and Minors**

The ROK ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment on January 28, 1999, and No. 182 on the Worst Forms of Child Labor on March 29, 2001.<sup>218</sup>

The Constitution of the ROK establishes the principle that working children be afforded special protections.<sup>219</sup> The *Labor Standards Act* sets the minimum age for employment at 15 years but provides that children between the ages of 13 and 15 may work if granted a work permit by the MOEL as long as the work is in accordance with required procedures and permissions, and the work does not impede compulsory education.<sup>220</sup> Likewise, the *Elementary and Secondary Education Act* prohibits the employment of children if such employment would interfere with their compulsory school attendance.<sup>221</sup>

According to the *Labor Standards Act*, employers of minors under the age of 18 are required to maintain documentation of written consent by the child's parent or guardian.<sup>222</sup> Parents or guardians cannot obligate a minor to a labor contract,<sup>223</sup> and a parent, guardian, or the MOEL may terminate a child's labor contract if it is determined to be disadvantageous to the minor.<sup>224</sup>

The *Labor Standards Act* also contains other protective measures for working minors. Persons 15 to 18 years of age may not work more than seven hours a day or 40 hours a week.<sup>225</sup> Children under 18 are prohibited from working between 10 p.m. and 6 a.m. or on holidays, unless the employee consents or the employer receives approval from the

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<sup>217</sup> U.S. Embassy- Seoul, *reporting*, May 21, 2007.

<sup>218</sup> ILO, Ratifications by Country, accessed May 8, 2007; available from <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?Korea>.

<sup>219</sup> Constitution of the ROK, Article 32, para. 5.

<sup>220</sup> *Labor Standards Act*, Article 64; available from [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=254&tab=Standards](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=254&tab=Standards). See also *Enforcement Decree of the Labor Standards Act*, Article 35.

<sup>221</sup> Government of the ROK, *Elementary and Secondary Education Act* (as amended through March 21, 2008); Article 15. See also Government of the ROK, *Worst Forms of Child Labour Convention, 1999 (No. 182) Article 22 report (2005)*, submitted in accordance with Article 22 of the ILO Constitution for assessment by the CEACR (ILO Committee of Experts on the Application of Conventions and Recommendations), 20, 21.

<sup>222</sup> *Labor Standards Act*, Article 66.

<sup>223</sup> *Ibid.*, Articles 67 and 68.

<sup>224</sup> *Ibid.*, Article 67, para. 2.

<sup>225</sup> *Ibid.*, Article 69. Work hours for minors between 15 and 18 may be extended by one hour a day, or six hours per week, upon agreement between the "parties concerned," presumably the minor employee, the minor employee's parent, and the employer. *Ibid.*



MOEL.<sup>226</sup> Employers are also prohibited under the *Labor Standards Act* from employing children under 18 for any work that is deemed hazardous or dangerous to their morality or health.<sup>227</sup>

In addition to the *Labor Standards Act*, the ROK has enacted other laws concerning child labor. The *Juvenile Protection Act* expands on the *Labor Standards Act* prohibition on hazardous child labor. The *Juvenile Protection Act* and its accompanying Presidential Decree prohibit certain types of establishments from employing, and in some cases even granting access to, persons 18 and under.<sup>228</sup> Such establishments are those deemed “harmful” to juveniles and include: “video-show establishments”; “song-practice establishments”; dance instruction and dance establishments”; “speculative businesses”; businesses engaged as intermediaries for “voice and video conversations between unspecified persons”; lodging establishments; barbershops and public bathhouses; businesses engaged in the use of toxic material; theatres showing certain video products; “games service businesses” and businesses distributing certain “game services”; comic-book rental businesses engaged in collecting membership fees or other charges; businesses manufacturing, producing and distributing media materials harmful to juveniles; businesses manufacturing, producing and distributing drugs harmful to juveniles; and businesses manufacturing, producing and distributing other materials harmful to juveniles.<sup>229</sup>

The *Act on the Protection of Children and Juveniles from Sexual Abuse* prohibits the brokerage and sale of the sexual services of persons 18 and under.<sup>230</sup> Violations are punishable by five years to life imprisonment.<sup>231</sup> The *Juvenile Protection Act* forbids owners of entertainment establishments from hiring persons less than 19 years of age and imposes prison sentences of up to three years and fines of up to 20 million won (USD 17,810) for violations.<sup>232</sup> The *Law on Regulations of Public Morals Businesses* prohibits the forced prostitution of children and imposes penalties of one to ten years imprisonment for violations.<sup>233</sup> Under the ROK’s *Criminal Act*, buying or selling a female for the purpose of prostitution is punishable by at least one year of imprisonment.<sup>234</sup> The 2004 *Act on the Punishment of Procuring Prostitution and Associated Acts* prohibits prostitution, the procurement of prostitution and associated acts, and human trafficking for the purposes of prostitution. The Act also seeks to protect the human rights of victims of prostitution, including from any punishment for acts of prostitution. The *Act on the*

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<sup>226</sup> Ibid., Article 70.

<sup>227</sup> *Labor Standards Act*, Article 65, para. 1.

<sup>228</sup> *Juvenile Protection Act*, Article 2. The Act defines “juvenile” as an individual 18 years old or younger, until January 1 of the year in which the individual will turn 19. Ibid.

<sup>229</sup> Ibid.

<sup>230</sup> *Act on the Protection of Children and Juveniles from Sexual Abuse*, Article 12. The Act defines “juvenile” as an individual 18 years old or younger, until January 1 of the year in which the individual will turn 19. Ibid., Article 2.

<sup>231</sup> Ibid., Article 7(1).

<sup>232</sup> *Juvenile Protection Act*, Articles 5, 24, and 50.

<sup>233</sup> Government of the ROK, *Worst Forms of Child Labour Convention, 1999 (No. 182) Article 22 report*, submitted in accordance with Article 22 of the ILO Constitution for assessment by the CEACR, 10.

<sup>234</sup> *Criminal Act*, Article 288, 2.

*Prevention of Prostitution and Protection of Victims Thereof* provides for protection to victims of prostitution and those who sell sex.<sup>235</sup>

#### **4.5. Elimination of Discrimination in Respect of Employment and Occupation**

The ROK ratified ILO Convention No. 100 on Equal Remuneration on December 8, 1997, and ILO Convention No. 111 on Discrimination (Employment and Occupation) on December 4, 1998.<sup>236</sup>

The Constitution of the ROK states that all citizens have the right to work; that all citizens are equal before the law; that there shall be no discrimination in economic, social or cultural life on account of sex, religion, or social status; that all citizens shall have an equal right to receive an education; and that women shall not be subjected to unjust discrimination in terms of employment, wages, and working conditions.<sup>237</sup> The *Labor Standards Act* prohibits employers from discriminating against workers on the grounds of sex, nationality, religion, or social status.<sup>238</sup>

In accordance with the *Labor Standards Act*, MOEL inspectors conduct inspections of workplaces in order to ensure compliance with the prohibition against employment discrimination contained in the Act.<sup>239</sup> A person who violates the non-discrimination prohibition faces a fine of up to five million won (USD 4,453).<sup>240</sup>

The following sections provide additional information on the situation of specific groups of workers in the ROK with respect to discrimination.

#### **Gender**

In addition to the bans on discrimination in the Constitution and the *Labor Standards Act*, gender-based discrimination in employment is also prohibited under the *Gender Discrimination Prevention and Relief Act of 1999*.<sup>241</sup> The most specific and extensive legislative provisions regarding gender-based discrimination in employment are found in

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<sup>235</sup> Minister of Justice and Minister of Gender Equality, *Act on the Punishment of Procuring Prostitution and Associated Acts and Act on the Prevention of Prostitution and Protection of Victims Thereof*, available at [http://text.moge.go.kr/moge/data/pdf/1217\\_acts.pdf](http://text.moge.go.kr/moge/data/pdf/1217_acts.pdf).

<sup>236</sup> ILO, Ratifications by Country.

<sup>237</sup> Constitution of the ROK, Articles 32(1), 11(1), 31(1), and 32(6).

<sup>238</sup> *Labor Standards Act*, Article 6.

<sup>239</sup> *Ibid.*, Articles 104-109.

<sup>240</sup> *Ibid.*, Article 114.

<sup>241</sup> *Ibid.*, Article 31(2); Government of the ROK, *Gender Discrimination Prevention and Relief Act of 1999* (July 1, 1997), Articles 3 and 4; available from [http://www.iwraw-ap.org/resources/documents/GE\\_South\\_Korea.doc](http://www.iwraw-ap.org/resources/documents/GE_South_Korea.doc). Article 2(1) of the Act defines gender discrimination as “all forms of differentiation, exclusion, or limitation, made without any justifiable reason on the basis of one’s sex, in the recognition, enjoyment or exercise of basic human rights in any political, economic, social, and cultural sectors.” Article 3 of the Act requires employers to “ensure gender equality in employment opportunities and treatment” and prohibits gender discrimination “in the recruitment, promotion, transfer, dismissal, and retirement of employees.” Articles 9 through 37 of the Act authorize the Presidential Commission on Women’s Affairs to remedy allegations of gender-based discrimination.

the *Act on Equal Employment and Support for Work-Family Reconciliation (Equal Employment Act)*. The *Equal Employment Act* defines such discrimination as applying “different conditions of employment or work to workers or ... any other disadvantageous measures against them without any reasonable reasons on account of sex, marriage, status within family, pregnancy, or child-birth, etc.”<sup>242</sup> The *Equal Employment Act* requires the payment of equal wages for work of equal value in the same business.<sup>243</sup> It also prohibits employers from:

- discriminating in recruitment and hiring based on gender;<sup>244</sup>
- discriminating in recruitment and hiring of female workers on the basis of “physical conditions such as appearance, height, weight, etc., unmarried status, and other conditions” determined by the MOEL, “which are not required to perform” the job being filled;<sup>245</sup>
- discriminating on the basis of gender in employer-provided welfare programs, such as payments of non-wage money, goods, or loans;<sup>246</sup>
- discriminating on the basis of gender in training, deployment, and promotion;<sup>247</sup>
- discriminating on the basis of gender with respect to retirement age limits, retirement and dismissal, including entering into a labor contract stipulating marriage, pregnancy, or childbirth as cause for retirement;<sup>248</sup> and
- engaging in sexual harassment at work.<sup>249</sup>

The statutory definition covers discrimination arising both from disparate treatment and from disparate impact: “even if an employer applies the same hiring or working conditions to males and females, if the number of males or females who can meet the conditions is considerably less than that of the opposite sex, if this causes a disadvantageous result to either sex, and if the conditions applied cannot be justified as fair ones, it shall constitute a discrimination.”<sup>250</sup> The following cases, however, are exceptions:<sup>251</sup>

- when workers of a specific gender are “inevitably needed” due to the nature of a job;

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<sup>242</sup> Government of the ROK, *Act on Equal Employment and Support for Work-Family Reconciliation* (hereinafter “*Equal Employment Act*”) (as amended through October 9, 2009), Article 2(1); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=224&tab=Equal](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=224&tab=Equal).

<sup>243</sup> Ibid., Article 8.

<sup>244</sup> Ibid., Article 7.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid., Article 9.

<sup>247</sup> Ibid., Article 10.

<sup>248</sup> Ibid., Article 11.

<sup>249</sup> Sexual harassment at work is broadly defined in the *Equal Employment Act* as “a situation where an employer, a senior, or a worker makes [an]other worker feel sexually humiliated or offended by using sexually charged behavior or language using their high status at work or in relation to work, or gives disadvantages in employment on account of no-response to the sexual gesture or other requests.” Article 2(2).

<sup>250</sup> *Equal Employment Act*, Article 2(1) and (3).

<sup>251</sup> Ibid.

- when measures must be taken to protect “pregnancy, childbirth, child-feeding, etc.”; and
- when employers temporarily take special measures to give preferential treatment to a specific gender to remove existing discrimination.

The *Equal Employment Act* is applicable to all businesses or workplaces regardless of size, except those workplaces consisting of blood relatives living together and to domestic workers.<sup>252</sup> In addition, businesses with less than five workers are exempt from provisions concerning wages; money and goods other than wages; training, deployment, and promotion; and retirement age limits, retirement, and dismissal.<sup>253</sup>

The *Equal Employment Act* provides that if an employer is informed of a gender discrimination grievance, it shall make efforts to settle it through the grievance-handling committee of its labor-management council. Should the council fail to resolve the grievance, the dispute may be referred to arbitration to be resolved under the procedures specified in the *Act on the Promotion of Worker Participation and Cooperation*.<sup>254</sup> Employers bear the burden of proof in all disputes arising under the *Equal Employment Act*.<sup>255</sup>

MOEL inspectors may also investigate reports of employment discrimination on the basis of gender.<sup>256</sup> Internal MOEL regulations specify that if a labor inspector finds a violation of the *Equal Employment Act*, the inspector shall give the employer a period of 25 days to remedy the violation. If the employer fails to do so, the inspector officially acknowledges the violation and sends the case to a prosecutor who determines whether to impose a criminal fine or send the case to a criminal court. Prosecutor-imposed fines may be appealed to criminal courts.<sup>257</sup>

Employers who are found in violation of the *Equal Employment Act* are subject to imprisonment of up to five years or a monetary penalty of up to 30 million won (USD 26,715), depending on the nature of the violation.<sup>258</sup> Employers who are found to be negligent in their responsibilities to comply with the *Equal Employment Act* are subject to fines of up to ten million won (USD 8,905).<sup>259</sup>

The *Equal Employment Act* also directs the MOEL to establish and carry out certain measures aimed at realizing gender equality in employment, such as awareness

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<sup>252</sup> Ibid., Article 3. See also Government of the ROK, *Enforcement Decree of the Act on Equal Employment and Support for Work-Family Reconciliation* (hereinafter “*Enforcement Decree of the Equal Employment Act*”) (as amended through June 5, 2008), Article 2; available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=224&tab=Equal](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=224&tab=Equal).

<sup>253</sup> *Enforcement Decree of the Equal Employment Act*, Article 2.

<sup>254</sup> *Equal Employment Act*, Article 25.

<sup>255</sup> Ibid., Article 30.

<sup>256</sup> MOEL, *Organization*. See also U.S. Embassy- Seoul, E-mail communication, March 6, 2008.

<sup>257</sup> U.S. Embassy- Seoul, E-mail communication, March 6, 2008; see also Korean Labor Attorneys, Interview with USDOL officials, June 25, 2008.

<sup>258</sup> *Equal Employment Act*, Article 37.

<sup>259</sup> Ibid., Article 39.

campaigns, and to establish a basic plan on equal employment to address matters such as maternity protection and payment of equal wages for work of equal value.<sup>260</sup>

## Disability

Both the *Act on Employment Promotion and Vocational Rehabilitation for Disabled Persons (Disabled Persons Act)* and the *Anti-Discrimination against and Remedies for Persons with Disabilities Act (Remedies for Persons with Disabilities Act)* prohibit employers from discriminating against workers by reason of their disabilities in personnel actions such as recruitment, hiring, promotion, wage and benefit plans, and transfers.<sup>261</sup> The *Disabled Persons Act* states that employers shall cooperate with government policies regarding employment for people with disabilities and that they are obligated to provide people with disabilities with employment opportunities suitable to their abilities.<sup>262</sup>

The national and local governments are required to fill at least 3 percent of their total workforces with people with disabilities, with the exception of certain public safety, military, and other positions.<sup>263</sup> Private employers with workforces of at least 50 people are also required to fill a certain percentage of their total workforces with people with disabilities; the rate is currently set at 2 percent, and it is re-set every five years by Presidential Decree.<sup>264</sup>

An employer with a total full-time workforce of more than 100 people that fails to employ workers with disabilities at the obligatory employment rate set by Presidential Decree is required to pay a “share” (levy) to the MOEL. The shares are contributed to a fund that finances a wide variety of activities undertaken by the MOEL to promote the employment of people with disabilities.<sup>265</sup>

The MOEL has the authority to inspect a workplace to investigate employer compliance with the *Disabled Persons Act*.<sup>266</sup> Employers that violate inspection, reporting, and other procedural or technical provisions of the *Disabled Persons Act* may be fined up to 3 million won (USD 2,672).<sup>267</sup>

Individuals who suffer disability-based discrimination and individuals or organizations aware of such discrimination may file complaints with the National Human Rights

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<sup>260</sup> Ibid., Article 5(1)1-5.

<sup>261</sup> Government of the ROK, *Act on Employment Promotion and Vocational Rehabilitation for Disabled Persons* (as amended October 9, 2009), Article 5(2); available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=226&tab=Equal](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=226&tab=Equal). Government of the ROK, *Anti-Discrimination against and Remedies for Persons with Disabilities Act* (April 10, 2007), Article 11; available at [http://www.humanrights.go.kr/english/information/legal\\_materials\\_05.jsp](http://www.humanrights.go.kr/english/information/legal_materials_05.jsp).

<sup>262</sup> *Disabled Persons Act*, Article 5(1).

<sup>263</sup> Ibid., Article 27.

<sup>264</sup> Ibid., Article 28. See also Government of the ROK, *Enforcement Decree on the Act on Employment Promotion and Vocational Rehabilitation for Disabled Persons*, (as amended through February 29, 2008), Article 25; available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=226&tab=Equal](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=226&tab=Equal).

<sup>265</sup> *Disabled Persons Act*, Articles 33(1), 69, and 71.

<sup>266</sup> Ibid., Article 76(1).

<sup>267</sup> Ibid., Articles 84 and 86(1)-(3).

Commission. The Commission may also independently initiate an investigation if it has sufficient cause to believe that a discriminatory act prohibited under the *Remedies for Persons with Disabilities Act* has occurred.<sup>268</sup> If the Commission's investigation finds evidence of discrimination, the Commission makes a recommendation for remediation and notifies the Minister of Justice of its recommendation.<sup>269</sup> If the violating employer does not comply with the recommendation, the Minister of Justice may issue a remedial order to discontinue the discriminatory act, restore the injured party to his/her original state prior to such discrimination, take measures to prevent future acts of discrimination, or take other measures to rectify the violation.<sup>270</sup> The Minister of Justice may also order monetary compensation for damages to the injured party.<sup>271</sup> Failure to implement a remedial order may result in a fine of up to 30 million won (USD 26,715). The court may also mandate relief measures, and if a finding is made that the prohibited discriminatory act was "malicious," the court may impose a penalty of up to three years imprisonment or a fine of up to 30 million won (USD 26,715).<sup>272</sup>

The *Disabled Persons Act* obligates the Government to effectively and comprehensively promote the employment of people with disabilities and establishes the Korea Employment Promotion Agency for Disabled Persons, subject to MOEL authority, to help fulfill such obligation.<sup>273</sup> The Minister of Employment and Labor is charged with creating the basic plan for employment promotion among people with disabilities.<sup>274</sup> The Minister of Employment and Labor, the Korea Employment Promotion Agency for Disabled Persons, and the Minister for Health, Welfare and Family Affairs are also charged with implementing vocational counseling and guidance activities to encourage the development of jobs suitable for people with disabilities and to help people with disabilities obtain such jobs.<sup>275</sup> Both the national and local governments are also required to create a working environment suitable for people with disabilities who cannot work under typical working conditions.<sup>276</sup>

## Age

The *Act on Prohibition of Age Discrimination in Employment and Aged Employment Promotion* ("Aged Employment Promotion Act")<sup>277</sup> outlines a series of initiatives and programs that are to be undertaken by the Government in order to promote the employment of the aged and semi-aged (currently defined as persons 55 years or older,

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<sup>268</sup> *Remedies for Persons with Disabilities Act*, Articles 38-39.

<sup>269</sup> *Ibid.*, Article 42.

<sup>270</sup> *Ibid.*, Article 43.

<sup>271</sup> *Ibid.*, Article 46.

<sup>272</sup> *Ibid.*, Articles 48-50. By Article 49, malice is determined after considering the willfulness of the discriminatory act, whether there is evidence of continuation or repetition of the act, evidence of retaliation against the victim for complaint, and the substance and extent of the injury sustained due to discrimination.

<sup>273</sup> *Disabled Persons Act*, Articles 3 and 43.

<sup>274</sup> *Ibid.*, Article 7.

<sup>275</sup> *Ibid.*, Articles 10(1) and 10(2).

<sup>276</sup> *Ibid.*, Article 14.

<sup>277</sup> Government of the ROK, *Act on Prohibition of Age Discrimination in Employment and Aged Employment Promotion* (hereinafter "Aged Employment Promotion Act") (as amended through February 4, 2010), available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=228&tab=Equal](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=228&tab=Equal).

and persons who are 50 years or older but less than 55 years old, respectively<sup>278</sup>) and prohibits discrimination against these groups in recruitment, hiring, or dismissal.

Employers are obligated to make efforts to provide aged workers with employment consistent with their skill level, to improve working conditions for aged workers, and to extend the retirement age.<sup>279</sup> Depending on industry, employers must employ aged workers at a rate of at least two to six percent of their workforces.<sup>280</sup>

Employers with more than 300 employees are obligated to make reports to the MOEL regarding the current state of their retirement systems.<sup>281</sup>

Fines for violating inspection, reporting, and other procedural or technical provisions of the *Aged Employment Promotion Act* may range up to 5 million won (USD 4,453). An employer who retaliates against an employee for exercising rights under this Act is subject to up to two years in prison or a fine up to ten million won (USD 8,905).<sup>282</sup> An employer who unlawfully discriminates against a worker based on age is subject to a fine of up to 5 million won (USD 4,453).<sup>283</sup> Employers who fail to comply with a MOEL order to cease the practice of age discrimination are subject to a penalty of up to 30 million won (USD 26,715).<sup>284</sup>

### **Ethnic Minorities/Foreign Workers**

The National Human Rights Commission has jurisdiction to investigate discrimination in employment and make recommendations to address discrimination on the basis of place of origin, country of origin, ethnicity, race, and color.<sup>285</sup> It defines discrimination to include “[a]ny act of favorably treating, excluding, differentiating, or unfavorably treating a particular person in employment (including recruitment, hiring, training, placement, promotion, wages, payment of commodities other than wages, loans, age limit, retirement, and dismissal, etc.).”<sup>286</sup>

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<sup>278</sup> Government of the ROK, *Enforcement Decree of the Act on Prohibition of Age Discrimination in Employment and Aged Employment Promotion* (hereinafter “*Enforcement Decree of the Aged Employment Promotion Act*”) (as amended through April 29, 2010), Article 2, available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=228&tab=Equal](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=228&tab=Equal).

<sup>279</sup> *Aged Employment Promotion Act*, Article 4.

<sup>280</sup> *Enforcement Decree of the Aged Employment Promotion Act*, Article 3.

<sup>281</sup> *Aged Employment Promotion Act*, Article 20. See also *Enforcement Decree of the Aged Employment Promotion Act*, Article 7.

<sup>282</sup> *Aged Employment Promotion Act*, Article 23-3(1).

<sup>283</sup> *Ibid.*, Article 23-3(2).

<sup>284</sup> *Ibid.*, Article 24.

<sup>285</sup> Government of the ROK, *National Human Rights Commission Act* (as amended through May 17, 2007), available at [http://www.humanrights.go.kr/english/information/legal\\_materials\\_02.jsp](http://www.humanrights.go.kr/english/information/legal_materials_02.jsp). The Commission may issue a general recommendation after investigating; if it deems a criminal violation has occurred, it may make a recommendation for criminal prosecution.

<sup>286</sup> *Ibid.*, Article 4(a). The Act does explicitly permit favorable treatment of individuals or groups in order to remedy past discrimination. *Ibid.*, Article 4.

The two primary employment laws in the ROK applicable to ethnic minorities and foreign workers do not appear to prohibit employment discrimination specifically against ethnic minorities, but they do prohibit discrimination on the basis of nationality. The *Labor Standards Act* states that employers shall not discriminate in relation to the conditions of employment on the basis of nationality.<sup>287</sup> The *Act on Foreign Workers' Employment, Etc.* states that employers “shall not give unfair and discriminatory treatment to foreign workers on grounds of their status,” with a “foreign worker” defined as “a person who does not have Korean nationality and works or intends to work in a business or workplace located in Korea for the purpose of earning wages.”<sup>288</sup> The *Act on Foreign Workers' Employment, Etc.* also extends to foreign workers, except domestic workers, the same protections afforded to Korean nationals under all labor laws<sup>289</sup> and was designed to eliminate employment discrimination experienced by foreign workers by reason of their “underprivileged” status under the *Immigration Control Act*.

The MOEL has the authority to assess fines for violating contract terms, inspection, reporting, and other procedural or technical provisions of the *Act on Foreign Workers' Employment, Etc.*, which may range up to ten million won (USD 8,905), but there is no penalty for violating the anti-discrimination provisions of the Act.<sup>290</sup>

## Non-Regular Workers

“Non-regular workers” include workers who work full-time but are on fixed-term contracts, part-time workers, and “atypical” workers, such as temporary agency workers, also known as “dispatched workers.”<sup>291</sup> Discrimination against such workers is addressed in two laws. The *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees* addresses discriminatory and negative employment conditions that may be experienced by those with fixed-term or part-time employment contracts.<sup>292</sup> This law applies to businesses with five or more workers, with the exception of domestic servants and businesses consisting of relatives living together.<sup>293</sup> Businesses made up of fewer

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<sup>287</sup> *Labor Standards Act*, Article 5.

<sup>288</sup> *Act on Foreign Workers' Employment, Etc.*, Articles 2 and 22.

<sup>289</sup> UN Committee on the Elimination of Racial Discrimination, Addendum to the Fourteenth Periodic Reports of State Parties Due in 2006, Republic of Korea, paras. 36, 39 and 61, available at <http://www.unhcr.org/refworld/country,,CERD,,KOR,4562d8cf2,45c30ba10,0.html>.

<sup>290</sup> *Act on Foreign Workers' Employment, Etc.*, Articles 29-32.

<sup>291</sup> The MOEL excludes part-time workers from their calculation of non-regular workers, although the same laws govern full-time fixed-term workers and part-time fixed-term workers. The National Statistics Office, based on data collected in March 2010 (Data released June 4, 2010). “Atypical workers” includes temporary agency workers, individual contract workers, at-home workers, on-call workers, and other non-regular forms of employment. KOILAF, *Korea Labor Review*, June 28, 2010, p.24 [online] [accessed December 9, 2010]; available at

[http://www.koilaf.org/KFeng/engPublication/bbs\\_read\\_dis.php?board\\_no=125](http://www.koilaf.org/KFeng/engPublication/bbs_read_dis.php?board_no=125). See also for comparison, KOILAF, *Wage gap between regular and irregular workers appears average 15.2 %percent*, May 28, 2008 [online] [accessed December 9, 2010]; available at [www.koilaf.org/KFeng/engStatistics/bbs\\_read\\_dis.php?board\\_no=122](http://www.koilaf.org/KFeng/engStatistics/bbs_read_dis.php?board_no=122).

<sup>292</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 2. See also *Labor Standards Act*, Article 21.

<sup>293</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 3(1).



than five employees may also be subject to certain provisions of the Act, as prescribed by Presidential Decree, and the Act applies to all government agencies regardless of their size.<sup>294</sup> The *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees* prohibits discriminatory treatment against fixed-term and part-time employees, as compared to their non-fixed term or full-time counterparts in the same or similar jobs, with respect to wages and other working conditions without justifiable reasons.<sup>295</sup> The Act also prohibits retaliation against fixed-term or part-time employees for exercising certain rights provided by the law, such as refusing to perform overtime work.<sup>296</sup>

Discriminatory treatment of temporary agency or “dispatched workers” is prohibited by the *Act on the Protection, Etc., of Dispatched Workers*. This law defines “dispatched worker” as a worker who, while maintaining an employment relationship with a “sending employer,” such as a temporary agency, engages in work for a “using employer” in compliance with direction and order of the using employer and in accordance with a worker dispatch contract.<sup>297</sup> The law prohibits discriminatory treatment of dispatched workers, defined as “unfavorable treatment in terms of wages and other working conditions . . . without any justifiable reasons.”<sup>298</sup> Both sending and using employers are prohibited from treating a dispatched worker in a discriminatory manner as compared to a directly employed worker “who performs the same work in the business of the using employer.”<sup>299</sup> Employers are also prohibited from rescinding a worker dispatch contract on the basis of gender, religion, or social status, or based on involvement in legal trade union activities.<sup>300</sup>

The *Labor Standards Act* provides that the term of any fixed-term labor contract may not exceed one year, except when the term is linked specifically to the completion of a particular project.<sup>301</sup> In order to prevent the use of serial fixed-term contracts to employ a worker in long-term non-regular status, the *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees* establishes that an employer may hire an individual as a fixed-term employee only for a period of up to two years (comprised of two or more fixed-term labor contracts).<sup>302</sup> An employer may exceed the two-year limit in only a few cases, such as to complete a project or particular task or to fill a vacancy for a regular worker until that worker returns to the job.<sup>303</sup> The *Act on the Protection, Etc. of Dispatched Workers* also mandates that the length of an employment period for a dispatched worker may not exceed one year, which may be extended for up to one more year.<sup>304</sup> If an employer

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<sup>294</sup> Ibid., Article 3(2)-(3).

<sup>295</sup> Ibid., Articles 2 and 8.

<sup>296</sup> Ibid., Article 16.

<sup>297</sup> *Act on the Protection, Etc. of Dispatched Workers*, Article 2.

<sup>298</sup> Ibid., Article 2(7).

<sup>299</sup> Ibid., Article 21.

<sup>300</sup> Ibid., Article 22.

<sup>301</sup> *Labor Standards Act*, Article 16.

<sup>302</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 4.

<sup>303</sup> Ibid., Article 4.

<sup>304</sup> *Act on the Protection, Etc. of Dispatched Workers*, Articles 5(2) and 6. In a few limited cases, such as when the temporary employment is due to childbirth, illness, or injury of a regular worker, these time limits do not apply; rather, the period of dispatch can last until the situation impacting the regular worker is resolved. Ibid.

continues to employ a fixed-term employee for more than two years, the employer is considered to have made a labor contract with no fixed term, and the worker is automatically converted into a regular employee.<sup>305</sup> An employer is obligated to directly employ a dispatched worker after retaining the worker for more than two years.<sup>306</sup>

The MOEL is charged with enforcing the *Act on the Protection, Etc. of Dispatched Workers* and the *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, and a worker may notify a labor inspector of violations under either act.<sup>307</sup> If a fixed-term, part-time, or dispatched worker experiences discriminatory treatment or violation of their legal rights, the employee may also apply to an LRC for redress.<sup>308</sup> Upon receiving an application for redress, the LRC will conduct an investigation.<sup>309</sup> In cases where it judges that the treatment in question was, in fact, discriminatory, the LRC shall issue a redress order to the employer.<sup>310</sup> At any time during the investigatory process, under its own authority or at the request of one of the parties, the LRC can commence mediation or arbitration proceedings to attempt to settle the dispute. Remedies available through mediation, arbitration, or a redress order include suspending discriminatory actions, and improving working conditions (including wages) or monetary compensation.<sup>311</sup>

A person who employs a worker for a fixed term that is longer than that permitted by law is subject to a fine of up to 5 million won (USD 4,453).<sup>312</sup> A person who employs a dispatched worker for longer than permitted by law is subject to a fine of up to 20 million won (USD 17,810) or a prison term of up to three years.<sup>313</sup> Failure to directly employ a dispatched worker if the business has retained the worker for more than two years can result in a fine of up to 30 million won (USD 26,715).<sup>314</sup> An employer who discriminates or retaliates against fixed-term or part-time employees or whose agents engage in such conduct face a fine of up to 10 million won (USD 8,905) or up to two years imprisonment.<sup>315</sup> The MOEL may impose a negligence fine of up to 100 million won (USD 89,050) on an employer for failing to comply with a redress order issued by the LRC without a justifiable reason.<sup>316</sup>

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<sup>305</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 4.

<sup>306</sup> *Act on the Protection, Etc. of Dispatched Workers*, Article 6-2.

<sup>307</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 18; *Act on the Protection, Etc. of Dispatched Workers*, Article 38.

<sup>308</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 9. See also *Act on the Protection, Etc. of Dispatched Workers*, Article 22. See also *Labor Standards Act*, Article 26.

<sup>309</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 10. See also *Act on the Protection, Etc. of Dispatched Workers*, Article 22.

<sup>310</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 12. See also *Act on the Protection, Etc. of Dispatched Workers*, Article 22.

<sup>311</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 13. See also *Act on the Protection, Etc. of Dispatched Workers*, Articles 22 and 43-2.

<sup>312</sup> *Labor Standards Act*, Article 114.

<sup>313</sup> *Act on the Protection, Etc. of Dispatched Workers*, Article 43.

<sup>314</sup> *Ibid.*, Article 46(2).

<sup>315</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Articles 21 and 23; *Act on the Protection, Etc. of Dispatched Workers*, Article 45. See also *Labor Standards Act*, Article 116.

<sup>316</sup> *Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 24. See also *Enforcement Decree of the Act on the Protection, Etc. of Fixed-Term and Part-Time Employees*, Article 6. See also *Act on the Protection, Etc. of Dispatched Workers*, Article 46.

#### **4.6. Acceptable Conditions of Work with Respect to Minimum Wages, Hours of Work, and Occupational Safety and Health**

##### **Minimum Wages**

The ROK ratified ILO Conventions No. 26 on Minimum Wage Fixing Machinery and No. 131 on Minimum Wage Fixing on December 27, 2001.<sup>317</sup>

The Constitution of the ROK provides that the Government “shall enforce a minimum wage system under the conditions as prescribed by law.”<sup>318</sup> The *Minimum Wage Act* obligates employers in the ROK who employ at least one worker to pay at least the minimum wage rate, with some exclusions.<sup>319</sup> The *Minimum Wage Act* does not apply to businesses employing only family members living together; domestic workers; or to seafarers and their employers, who are instead subject to the *Seaman Act*.<sup>320</sup> With approval of the Minister of Employment and Labor, provisions of the *Minimum Wage Act* may also be waived for workers who have limited capacity to work due to a physical or mental disability.<sup>321</sup> The *Minimum Wage Act* allows a sub-minimum wage rate to be paid to workers during an initial three-month probationary period and to workers engaged in “surveillance” or “intermittent” work.<sup>322</sup> If a worker is paid on a contract basis and it is difficult to calculate the number of hours worked, the minimum wage rate is to be determined on the basis of the output or achievement of the worker concerned.<sup>323</sup>

Under the *Minimum Wage Act*, the Government establishes an hourly minimum wage rate, but the rate may also be expressed as a daily, weekly or monthly equivalent.<sup>324</sup> The law requires that the Minister of Employment and Labor determine the minimum wage by August 5 of every year, according to the recommendation of the Minimum Wage Council.<sup>325</sup> The Minimum Wage Council is a tripartite body composed of 27 members, with equal numbers representing workers, employers, and the public interest.<sup>326</sup> The minimum wage rate is established based on the cost of living, the wages and labor productivity of workers engaged in similar work, and the ratio of workers’ compensation

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<sup>317</sup> ILO, Ratifications by Country.

<sup>318</sup> Constitution of the ROK, Article 32(1).

<sup>319</sup> *Minimum Wage Act*, Article 6(1). See also *Labor Administration 2007*, 45. The terms “worker” and “employer” are defined in the *Labor Standards Act*, Article 2.

<sup>320</sup> *Minimum Wage Act*, Article 3.

<sup>321</sup> *Ibid.*, Article 7. See also Government of the ROK, *Enforcement Decree of the Minimum Wage Act*, (as amended through June 26, 2009), Article 6; available at [http://www.moel.go.kr/english/topic/laborlaw\\_view.jsp?idx=256&tab=Standards](http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=256&tab=Standards).

<sup>322</sup> *Minimum Wage Act*, Article 5(2). See also *Enforcement Decree of the Minimum Wage Act*, Article 3. “Surveillance” work includes “work causing relatively less physical and mental fatigue,” [such as] “security guards for apartment houses, and janitors.” “Intermittent” work is defined as work with many breaks or that can be carried out intermittently, such as that of “machine repairmen, boiler mechanics, and replacement workers for school night watchmen.” *Labor Administration 2007*, 47. See also *Labor Situation in Korea 2010*, 38. See also *Labor Management Manual for Foreign Investors 2010*, 37.

<sup>323</sup> *Minimum Wage Act*, Article 5(3). See also *Enforcement Decree of the Minimum Wage Act*, Article 4.

<sup>324</sup> *Ibid.*, Article 5(1).

<sup>325</sup> *Ibid.*, Article 8(1).

<sup>326</sup> *Ibid.*, Article 14(1).

to national income. The consideration of these factors may lead to different minimum wage rates for separate industries.<sup>327</sup>

In 2010, the minimum wage rate was equal for all industries: 4,110 won (USD 3.66) per hour.<sup>328</sup> Workers on probation and who have worked less than three months are entitled to 90 percent of the minimum wage rate; after three months, the full minimum wage rate applies.<sup>329</sup> Workers engaged in surveillance or intermittent work are entitled to 80 percent of the minimum wage rate.<sup>330</sup>

Enforcement of the *Minimum Wage Act* is the responsibility of MOEL inspectors.<sup>331</sup> Employers who violate the Act are subject to imprisonment of up to three years and/or a fine of up to 20 million won (USD 17,810).<sup>332</sup>

## Hours of Work

The *Labor Standards Act* sets the maximum work day at eight hours and the maximum work week at 40 hours.<sup>333</sup> Amendments to the *Labor Standards Act* adopted in 2003 shortened the work week from 44 to 40 hours and are being phased in gradually through 2011 according to firm size.<sup>334</sup>

Workers are allowed a recess period of at least 30 minutes for every four hours worked and at least one hour for every eight hours worked.<sup>335</sup> Recess time is not counted as working time and, as such, is not remunerated.<sup>336</sup> The Act generally applies to all workplaces with five or more workers, except domestic work and businesses employing only household family members.<sup>337</sup> However, the Act's provisions on working hours, recess, and days off also extend to enterprises with four or fewer workers.<sup>338</sup> Workers involved in agricultural, forestry, livestock, sericulture, fishery, security guard, or intermittent work, as well as businesses excluded by Presidential Decree, are not covered by the working hours, recess, and holiday provisions of the Act.<sup>339</sup>

Under the *Labor Standards Act*, employers may require employees under a flexible time schedule to exceed the statutory limit on work hours without paying an overtime premium. However, an employee's work hours per day and per week may not exceed the

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<sup>327</sup> Ibid., Article 4(1).

<sup>328</sup> *Labor Situation in Korea 2010*, 38.

<sup>329</sup> *Enforcement Decree of the Minimum Wage Act*, Article 3. See also *Labor Situation in Korea 2010*, 38. See also *Minimum Wage Act*, Article 5(1).

<sup>330</sup> *Enforcement Decree of the Minimum Wage Act*, Article 3(2).

<sup>331</sup> *Minimum Wage Act*, Article 26(1).

<sup>332</sup> Ibid., Article 28.

<sup>333</sup> *Labor Standards Act*, Article 50.

<sup>334</sup> *Enforcement Decree of the Labor Standards Act*, Addenda, Article 2.

<sup>335</sup> Ibid., Article 54.

<sup>336</sup> *Labor Management Manual for Foreign Investors 2010*, 46.

<sup>337</sup> *Labor Standards Act*, Article 11. However, some provisions of the Act concerning working hours apply to firms with four workers or less, as discussed below.

<sup>338</sup> *Enforcement Decree of the Labor Standards Act*, Addenda, Table 1. Table 1 cross-references the *Labor Standards Act*, Articles 53, 54, and 61.

<sup>339</sup> *Labor Standards Act*, Article 63.

legal standard when averaged over a two-week period and in no case may an employee's hours exceed 48 in a particular week.<sup>340</sup> By agreement with workers' representatives, the employer may also institute a flexible working system over a three-month period, where the average hours do not exceed the legal standard, with a cap of 52 hours per week and 12 hours per day.<sup>341</sup> Employers may not apply any flexible working hour system to workers aged 15 to 18 years or to pregnant women.<sup>342</sup>

If the employer and the employee both agree, employers may also extend working hours up to 12 hours per week, in which case an overtime premium of at least 50 percent of the employee's ordinary wages must be paid.<sup>343</sup> In addition, for three years from the end of the phase in of the 40-hour work week, working hours may be extended by up to 16 hours per week by agreement of the worker and the employer.<sup>344</sup> Additional leave may be granted in lieu of additional wages for overtime, weekend, and night work, if agreed to by workers' representatives.<sup>345</sup>

Workers must be granted at least one paid day off per week.<sup>346</sup> Workers who have an 80 percent or better attendance rate in one year are to receive 15 days paid annual leave.<sup>347</sup> If a worker has been with an enterprise for less than one year, the employer is required to grant one day of paid leave per month if the worker has not been absent throughout a month.<sup>348</sup> After the first year of service, the employer shall grant one day's additional leave for each two years of consecutive service, for a maximum of 25 days leave per year.<sup>349</sup>

An employer must obtain the explicit consent of women before requiring them to work at night or on their weekly day off.<sup>350</sup> An employer may not require a woman within a year of childbirth to work overtime in excess of two hours per day, six hours per week, or 150 hours per year, even if stipulated in a collective bargaining agreement.<sup>351</sup> Women may request and employers must grant one day's unpaid menstrual leave per month.<sup>352</sup>

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<sup>340</sup> *Labor Standards Act*, Articles 51 and 53.

<sup>341</sup> *Ibid.*, Article 51(2).

<sup>342</sup> *Ibid.*, Article 51(3).

<sup>343</sup> *Ibid.*, Articles 53 and 56. Extended work is equivalent to overtime work, and refers to work done in excess of the standard hours. Employers must also pay an overtime premium for holiday and night work (work performed between 10 p.m. to 6 a.m.). *Ibid.*, Article 56. Pregnant women may not work extended hours, and must be put on light duty upon request. *Ibid.*, Article 74.

<sup>344</sup> *Labor Management Manual for Foreign Investors 2010*, 39. The effective dates of enforcement vary by firm size, and are spelled out in the *Enforcement Decree of the Labor Standards Act*, Addenda, Article 2. For the first three years of the 40-hour work-week system, employers are only required to pay 25 percent more for the first four hours of extended work hours.

<sup>345</sup> *Labor Standards Act*, Article 57.

<sup>346</sup> *Ibid.*, Article 55. The Act uses the term "holiday" to refer to the weekly day(s) of rest.

<sup>347</sup> *Ibid.*, Article 60(1).

<sup>348</sup> *Ibid.*, Article 60(2).

<sup>349</sup> *Ibid.*, Article 60(4).

<sup>350</sup> *Ibid.*, Articles 70(1) and 70(2).

<sup>351</sup> *Ibid.*, Article 71.

<sup>352</sup> *Ibid.*, Article 73.

The punishment for violating provisions of the *Labor Standards Act* related to extended work, night work, or weekend work is imprisonment of up to three years or a fine of up to 20 million won (USD 17,810).<sup>353</sup> Sanctions for violating other provisions of the *Labor Standards Act* related to work hours include imprisonment of up to two years and fines of up to 10 million won (USD 8,905).<sup>354</sup>

## Occupational Safety and Health

The ROK ratified Conventions No. 155 on Occupational Safety and Health and No. 187 on the Promotional Framework for Occupational Safety and Health on February 20, 2008. Convention No. 162 on Asbestos was ratified on April 4, 2007, and Convention No. 170 on Chemicals was ratified on November 4, 2003.<sup>355</sup>

The *Occupational Safety and Health Act (OSH Act)* establishes standards on occupational safety and health and delineates the roles of the Government, employers, and workers with respect to these standards.<sup>356</sup> Various types of businesses are exempted from certain parts of the *OSH Act*, some because they are covered by health and safety provisions of other legislation and others based on the MOEL's assessment of "the degree of hazard and danger, the kinds and scale of business, the location of business, etc."<sup>357</sup>

The MOEL is responsible for establishing mid-term and long-term plans for the prevention of industrial accidents and disease, including the establishment of an Occupational Safety and Health Policy Deliberative Committee composed of senior government officials and specialists, to advise on and coordinate these plans and major policies.<sup>358</sup> The MOEL is also responsible for tracking statistics on industrial accidents, although it is at MOEL's discretion whether to announce those statistics publicly.<sup>359</sup> In addition, the MOEL examines and classifies hazardous chemicals and physical substances and sets exposure limits and reviews the safety of new chemicals as they are submitted by employers after conducting hazard and risk evaluations.<sup>360</sup> The Korea Occupational Safety and Health Agency is charged with providing technical, financial, and training assistance to workplaces to improve occupational accident prevention.<sup>361</sup>

The *OSH Act* requires employers to take the following safety and health measures, among others:

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<sup>353</sup> Ibid., Article 109.

<sup>354</sup> Ibid., Article 110.

<sup>355</sup> ILO, Ratifications by Country.

<sup>356</sup> *OSH Act*, Articles 1, 4, 5, and 6. The *Act on the Prevention of Pneumoconiosis and Protection, Etc., of Pneumoconiosis Workers* addresses the parallel responsibilities of the Government, employers, and workers in preventing and managing pulmonary diseases of workers exposed to dusty work, including compensation for workers and their families.

<sup>357</sup> *OSH Act*, Article 3. See also *Enforcement Decree of the OSH Act*, Addenda, Table 1. Table 1 lists those businesses and /or sectors subject to partial application of the Act's provisions. Mining and quarrying are examples of businesses subject to other health and safety legislation (i.e., the *Mining Safety Act*).

<sup>358</sup> *OSH Act*, Articles 7 and 8. See also *Enforcement Decree of the OSH Act*, Articles 4 and 5.

<sup>359</sup> *OSH Act*, Articles 4(8) and 9-2.

<sup>360</sup> *OSH Act*, Articles 39 and 40.

<sup>361</sup> Korea Occupational Safety and Health Agency, *Major Functions* available at <http://english.kosha.or.kr/bridge?menuId=3140>.

- establish Occupational Safety and Health Committees;<sup>362</sup>
- appoint safety and health officers;<sup>363</sup>
- conduct periodic measurements and evaluations of any workplace that uses any of 190 chemicals and substances designated as hazardous by the MOEL;<sup>364</sup>
- offer employees periodic medical examinations, including additional examinations for employees who work with harmful substances;<sup>365</sup>
- take measures to prevent safety and health hazards and stop work immediately in the event of an accident or an imminent danger;<sup>366</sup>
- refrain from producing, importing, transferring or supplying certain hazardous substances listed in the *Enforcement Decree of the OSH Act*, as well as any other substances proven to cause occupational cancers and identified as hazardous to workers' health;<sup>367</sup> and
- maintain accurate records on health and safety measures required by law.<sup>368</sup>

Employers are also responsible for taking actions to prevent industrial accidents and diseases with respect to subcontracted workers,<sup>369</sup> and employers must include subcontracted employees in the employer safety and health program if the workers are employed on site.<sup>370</sup> Employers must also obtain permission from the MOEL before subcontracting out any work specified as hazardous in the *Enforcement Decree of the OSH Act*.<sup>371</sup>

Under the *OSH Act* and related regulations, workers are responsible for observing standards for the prevention of industrial accidents and diseases and to abide by preventive measures implemented by employers or other related organizations.<sup>372</sup> Workers may report any violations of the *OSH Act* to the MOEL or a labor inspector and cannot be dismissed or otherwise suffer adverse treatment for making such reports.<sup>373</sup> Employers may not dismiss or otherwise disadvantage an employee who removes himself or herself from danger because of an urgent hazard that could lead to an industrial accident.<sup>374</sup>

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<sup>362</sup> Ibid, Article 19. See also *Enforcement Decree of the OSH Act*, Article 25. OSH Committees must be established for employers with 100 or more employees, and for employers with between 50 to 99 employees engaged in hazardous or dangerous work, and that have experienced high rates of industrial accidents or diseases.

<sup>363</sup> *OSH Act*, Articles 13-18. Safety and health officers must be established by employers with 50 or more employees. Specific criteria for selection and allocation of these officers are spelled out in the *Enforcement Decree of the OSH Act*, Appendix, Tables 3 and 5.

<sup>364</sup> *Labor Administration 2007*, 79.

<sup>365</sup> *OSH Act*, Article 43.

<sup>366</sup> *OSH Act*, Articles 23, 24, and 26.

<sup>367</sup> Ibid., Article 37. See also *Enforcement Decree of the OSH Act*, Article 29.

<sup>368</sup> *OSH Act*, Article 64.

<sup>369</sup> Ibid., Article 29.

<sup>370</sup> Ibid., Article 28.

<sup>371</sup> Ibid., Article 28.

<sup>372</sup> Ibid., Article 6.

<sup>373</sup> Ibid., Article 52.

<sup>374</sup> Ibid., Article 26(3).

The *OSH Act* provides for imprisonment of up to seven years or a fine of up to 100 million won (USD 89,050) for an employer that causes an employee's death as a result of failure to take preventive safety and health measures with respect to hazardous or dangerous conditions.<sup>375</sup> An employer who violates the provisions of the Act pertaining to hazardous or dangerous working conditions may be imprisoned for up to five years or be liable for a fine of up to 50 million won (USD 44,525).<sup>376</sup> These same penalties apply for dismissal or mistreatment of workers who report violations of the Act.<sup>377</sup> Other violations of the Act are punishable by imprisonment of between one to three years or fines ranging from 5 million won (USD 4,453) to 20 million won (USD 17,810).<sup>378</sup>

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<sup>375</sup> Ibid., Article 66-2.

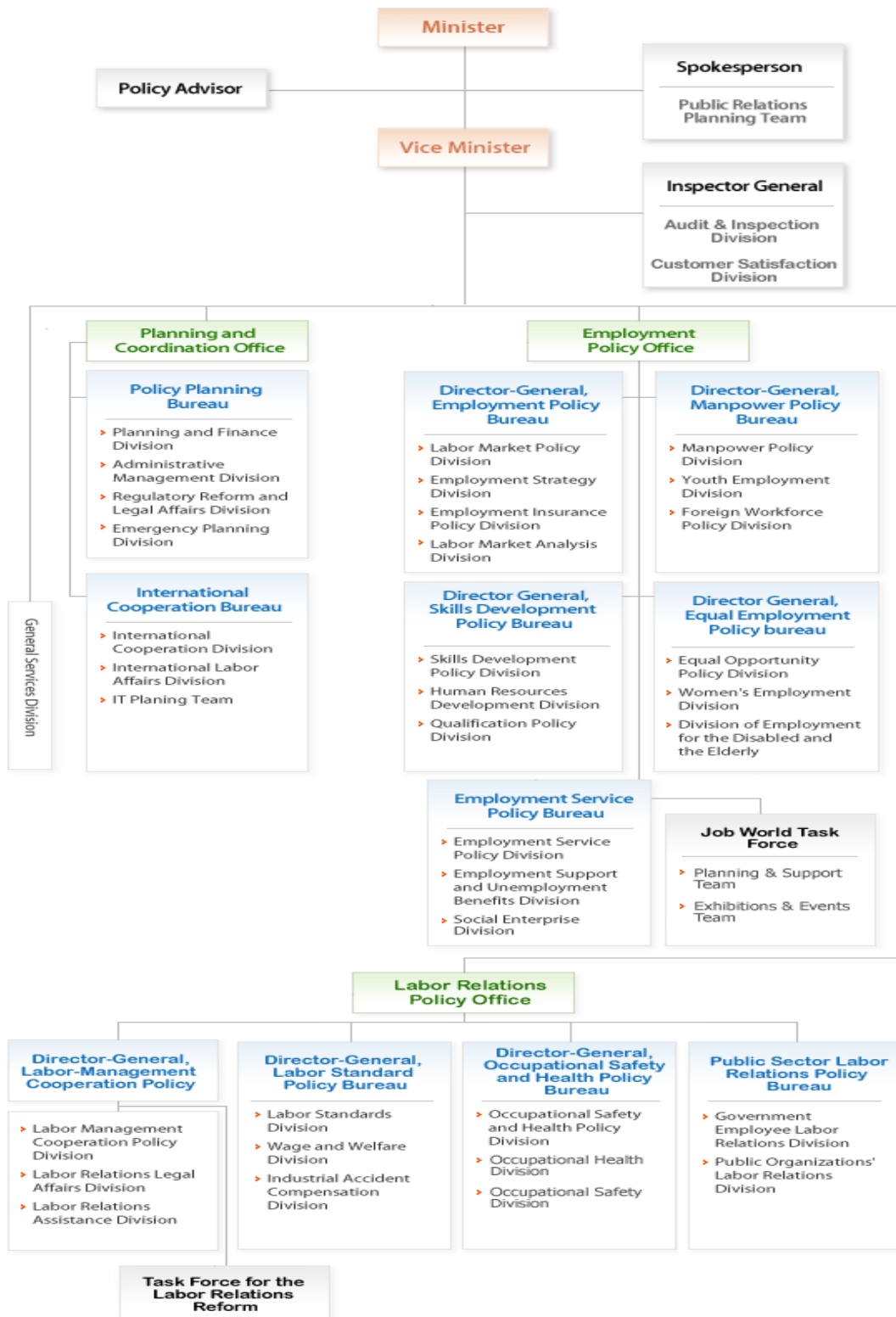
<sup>376</sup> Ibid., Article 67.

<sup>377</sup> Ibid.

<sup>378</sup> Ibid., Articles 67-2 through 72.



# Annex I. Organizational Structure of the ROK's Ministry of Employment and Labor



## Annex II. Labor Relations Commissions

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As noted in Section 2.2.2, Labor Relations Commissions serve as the principal adjudication and mediation agencies on labor-related issues in the ROK.<sup>379</sup> The table below provides additional information about the 12 Regional Labor Relations Commissions (RLRC) and their composition.

### Composition of the Labor Relations Commissions

Title	Employees' Commissioners	Employers' Commissioners	Public Interest Commissioners*		
			Adjudication	Mediation	Discrimination Correction
National Labor Relations Commission	50	50	33	20	17
Seoul RLRC	50	50	33	20	17
Busan RLRC	50	50	33	20	17
Gyeonggi RLRC	50	50	33	20	17
Chungnam RLRC	40	40	26	15	14
Jeonnam RLRC	40	40	26	15	14
Gyeongbuk RLRC	40	40	26	15	14
Gyeongnam RLRC	40	40	26	15	14
Incheon RLRC	40	40	26	15	14
Gangwon RLRC	30	30	19	12	9
Chungbuk RLRC	30	30	19	12	9
Jeonbuk RLRC	30	30	19	12	9
Jeju RLRC	25	25	16	11	8

\* Note: The Chairperson is included in the number of public interest mediation commissioners, and the 7 public interest commissioners taking exclusive charge of public officials' labor relations mediation are excluded.

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<sup>379</sup> *Labor Relations Commission Act*, Article 2(1). See also *Enforcement Decree of the Labor Relations Commission Act*, Article 2 and Annex 1.

## List of Acronyms

CFA	ILO Committee on Freedom of Association
ESDC	Economic and Social Development Commission
ELSAC	Labour and Social Affairs Committee (of OECD)
ILO	International Labor Organization
IMF	International Metalworkers' Federation
ITUC	International Trade Union Confederation
KCTU	Korean Confederation of Trade Unions
KMWF	Korean Metalworkers' Federation
KOILAF	Korea International Labor Foundation
KORUS	United States-Korea Free Trade Agreement
LAC	U. S. Labor Advisory Committee for Trade Negotiations and Trade Policy
LRC	Labor Relations Commission
MOEL	Ministry of Labor and Employment
MTU	Migrants' Trade Union
NLRC	National Labor Relations Commission
NGO	Non-governmental Organization
OECD	Organization for Economic Cooperation and Development
OSH	Occupational Safety and Health
ROK	Republic of Korea
SRLO	Seoul Regional Labor Office
TULRAA	<i>Trade Union and Labor Relations Adjustment Act</i>
USTR	U.S. Trade Representative