COVID-19 Update for Employers in Korea

Resurgence of COVID-19 and intensified social distancing

After several months in which new case levels stayed relatively stable and low, Korea is once again experiencing a surge in new COVID-19 cases, primarily in and around the Seoul Metropolitan Area. In response, the national government initially elevated its social-distancing requirements to “Level 2” nationwide. Under Level 2, gatherings are limited to 50 people indoors and 100 outdoors, and private employers are recommended to limit the number of employees at the workplace by implementing flexible hours and telecommuting (public institutions and state owned/controlled enterprises are required to do so). Now, as of August 30, what is being referred to as “Social Distancing Level 2.5” has been imposed throughout the entire Seoul Metropolitan Area. Under these Level 2.5 social-distancing requirements:

• it is prohibited to drink inside cafés, with the exception of non-franchise establishments (only take-out is allowed);
• dining in at restaurants is allowed only from 5:00 AM to 9:00 PM;
• indoor sports facilities are required to close completely.

Violating mandatory social-distancing standards is subject to a fine of up to KRW3 million (approx. US$2,530).

Additionally, the Seoul Metropolitan Area local authorities have issued administrative orders requiring all people to wear masks indoors and outdoors. A violation of those administrative orders is subject to a fine of up to KRW100,000 (approx. US$85), starting from October 13th.

The government has recognized the current situation as significantly more severe than the prior mass infection in Daegu and North-Gyeongsang province, and is considering implementing Level 3 social distancing. Under Level 3:

• gatherings of more than 10 people would be prohibited indoors and outdoors;
• non-essential workers at public institutions and state-controlled enterprises would be required to telecommute; and
• non-essential workers at privately owned enterprises would be recommended to telecommute.
Subsidies

The Korean government is attempting to mitigate the economic impact of imposing stronger restrictions on commercial activities, by extending certain subsidies that had previously been provided or expanded due to COVID-19.

For example, there is a temporary subsidy established in light of COVID-19 to support employees taking unpaid family-care leave to care for family members who are confirmed or suspected COVID-19 carriers, or to take care of children when necessary due to school closures. The use of this subsidy for childcare had been scheduled to end but has been extended to September 30, although the existing limit of 10 days per employee and KRW50,000 per day remains the same.

The employment-retention subsidy provided under the unemployment-insurance system has also been increased and the eligibility requirements loosened until the end of September. The employment-retention subsidy is a per-head subsidy to support placing employees on furlough or reduced hours, instead of downsizing. It defrays part of the cost of paying them their legally required “shutdown allowance”—70% of their average wage—with respect to the furlough period or reduced hours. Eligibility had already been temporarily expanded and available subsidy amounts increased in the wake of the COVID-19 outbreak. However, due to lack of funds in the Employment Insurance Fund, the government is reluctant to further loosen the requirements or extend the effective period of the more generous subsidy. For eight industries designated as “special employment support industries” (e.g. travel, accommodation, etc.), the more generous employment-retention subsidies have been extended until March 2021, and the 180-day limit on receiving benefits has been increased to 240 days. For more information on subsidies, please see our earlier legal update.

Although there have not yet been any further changes to available subsidies for flexible working arrangements after the recent resurgence of COVID-19, they take on added relevance given the current Level 2 recommendations for employers. Mid-sized companies and small businesses eligible for “preferential support” may be eligible for subsidies if they implement flexible working hours, selective working hours, or remote-work systems. The maximum subsidy is KRW50,000 (approx. US$40) per employee per week, if flexible-working arrangements are allowed once or twice per week; or KRW100,000 (approx. $85) per employee per week if allowed at least three times per week. The subsidy can apply only to 30% of an employer’s employees registered for unemployment insurance, capped at 70 per employer. The government has loosened the normal standards required for tracking work hours for work-from-home arrangements to be eligible for these subsidies.
Impact on Employers

**Localization and liquidation**

Some multinationals doing business in Korea have been looking to localize certain functions due to strict limitations on international travel. Companies that do so have to address both the appropriate distribution of these functions between the HQ and the Korean operation, and how to maintain their compliance processes while devolving some control overseas.

We are also already seeing a modest uptick of interest by foreign companies in withdrawing from the Korean market. Businesses that decide to do so must be careful to abide by Korean laws and regulations (especially labor law) and be mindful of common practices, to prevent reputational damage and legal risk.

**Restructuring and cost-cutting**

Restructuring is inevitable in times of economic hardship, and the COVID-19 era is no exception. Many businesses have already explored furloughs, voluntary salary cuts, reduced working hours, and other arrangements to cut costs and avoid downsizing. Some have resorted to or are considering redundancies, and more will do so where a permanent downsizing is needed as opposed to more temporary measures to minimize personnel expenses short-term. Related legal disputes are expected to surge, due to Korea’s very strict regulation of layoffs and any other adverse changes in terms and conditions.

**Telecommuting as the new normal**

From the beginning of the COVID-19 pandemic, a number of major IT companies in Korea introduced telecommuting broadly throughout their workforces. Due to the current resurgence, other major companies are also adopting telecommuting either completely or partially.

Telecommuting can be a practical option to reduce the odds of intra-workforce transmission. However, it raises certain legal and practical issues that should be considered and addressed when establishing a telecommuting system: (i) how to validly adopt the system; (ii) how to calculate working hours; (iii) how to manage “attendance”; and (iv) how to manage security and confidentiality concerns. There are also various government subsidies available to encourage the adoption of telecommuting.
Growth of labor unions and increased militancy

Restructurings, liquidations, pay-cuts, and unstable employment status due to COVID-19 will tend to bring about the establishment of new labor unions and increased labor-management conflict generally.

A collective bargaining agreement will continue to govern and affect a business even after COVID-19 ends, and a CBA is hard to alter once its terms are established. Thus, even in the face of economic hardship and demands from hard-liners, it is important to approach collective bargaining carefully and rationally. Managing collective workforce issues during COVID-19 is and will increasingly be a delicate challenge.