



GLOBAL EXPANSION GUIDEBOOK EMPLOYMENT

South Korea



Downloaded: 28 Apr 2025

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Employment*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2024 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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SOUTH KOREA



Last modified 01 July 2024

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law, though court precedents play an important role. The official currency is the South Korean won (KRW). The official language is Korean.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

Foreign companies may directly engage employees in Korea; however, because of potentially negative tax implications, it is uncommon for foreign companies to do so. There are 4 ways for foreign nationals to engage in business activities in Korea:

- Establishing a local corporation
- Opening a private business
- Opening a branch
- Opening a liaison office

Payroll withholdings are required.

PRE-HIRE CHECKS

Required

Immigration checks are generally required.

Permissible

Under the Personal Information Protection Act (PIPA), to conduct background checks that go beyond the scope generally required to enter into an employment agreement, consent must be obtained from the applicant. Separate consent must be obtained if sensitive information, such as an employee's health information or criminal records, are to be checked.

IMMIGRATION

Long-term and short-term general work visas are available to visit Korea for business-related purposes. Two short-term visas are available (C-3-4 and C-4 visas), and 3 long-term visas are available (D-7, D-8 and E-7 visas). The appropriate visa type depends, among other things, on the nature of the assignment or employment and the type of employing entity located in Korea.

Special work visas (E-4, D-5 and D-9 visas) are available for foreign nationals working in highly specialized areas of expertise. Special resident visas (F-4 and F-5 visas) are available which allow a foreign national to live and work in Korea without requiring a separate work visa.

HIRING OPTIONS

Employee

Employees may be employed on either an indefinite basis (referred to as "regular" workers) or a definite/fixed-term basis for a maximum term of 2 years ("non-regular" workers). Fixed-term employees may be deemed to be employed on an indefinite basis if employed for a period of greater than 2 years, in principle.

Employees may be engaged on a full-time or part-time basis.

Independent contractor

Independent contractors may be engaged, and companies should be careful to avoid establishing employee status whereby the individual is entitled to all the benefits of an employee, including severance and employment security, thus, increasing the compliance, tax, payroll and other risks to the company. The primary factor distinguishing employees from contractors is the degree of supervision and control by the company over the individual.

Agency worker

Engagement governed by the Act on the Protection of Temporary Agency Workers. These are "dispatched workers" employed by a temporary work agency who provide services for a user company, under their direction and instruction, in accordance with the terms and conditions of a contract on temporary placement of workers, executed between the temporary work agency and the user company. The employment relationship is with the temporary work agency.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

Under the Labor Standards Act (LSA), all employers in Korea must enter into a written agreement with their employees, which details, among other working conditions, wages, working hours and recess periods, weekly paid days off and paid annual leave. Any agreement that does not satisfy the standards prescribed by the LSA and other binding laws relating to working conditions will be void to the extent that it fails to meet those legal requirements.

Probationary periods

No fixed period for probation by statute, though parties may agree to a probationary period. Generally, a period of 3 to 6 months is adopted.

Policies

Rules of employment are required in companies with 10 or more employees in Korea. Rules of employment must include details on core working terms and conditions per the LSA, such as working hours, wages, retirement, award and discipline, safety and health, prohibition of workplace harassment, and holidays. When establishing the rules of employment, an employer must obtain comments from the union representing the majority of the employees, or, if no such union exists, from a majority of the employees, and then file such comments with the Ministry of Employment and Labor (MOEL) along with the rules of employment written in Korean.

Aside from those previously mentioned, there are no mandatory policies. However, the Occupational Health and Safety Act (OHSA) establishes a basic framework of general standards for occupational health and safety, and it requires most workplaces to establish an industrial safety and health committee which is to make regular reports to the government. Pursuant to the Act on the Promotion of Workers' Participation and Cooperation, businesses with 30 or more employees must establish a labor-management council (LMC) and prepare its bylaws. Businesses that have adopted a retirement pension plan under the Employee Retirement Benefit Security Act must prepare retirement pension rules

Third-party approval

Rules of employment must be filed with the MOEL. Businesses which are obligated to establish the LMC are required to report its bylaws to the competent labor office, while businesses that have adopted a retirement pension plan must report its rules to the competent labor office. Apart from that, no third-party approval is required.

LANGUAGE REQUIREMENTS

No language requirements.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

Generally all. Employees and dispatched workers are entitled to statutory employment rights, such as statutory severance pay and annual paid leave, while other types of workers, such as independent contractors, are not.

Working hours

Statutory limit is 8 hours per day and 40 hours per week. Employees in managerial or supervisory positions and employees handling confidential information are not subject to the statutory limits on working hours. As of January 2020, the 52-hour work week system has been implemented to all businesses with 5 or more employees.

Overtime

Limited to 12 hours per week, to be paid at 150 percent of the ordinary wage. However, overtime work performed on a holiday for 8 hours or less shall be paid at 150 percent of the ordinary wage. Overtime work performed on a holiday for more than 8 hours shall be paid at 200 percent of the ordinary wage.

Wages

The Minimum Wage Act (MWA) provides for minimum wage levels. The minimum wage may be fixed on an hourly, daily, weekly or monthly basis. The hourly minimum wage rate in effect for 2023 is KRW9,620. The minimum wage is calculated by adding fixed allowances to basic pay, although it excludes other compensation, such as discretionary bonuses, overtime pay and fringe benefits.

Vacation

Employees must be given a minimum of 15 days' paid annual leave if they meet the overall yearly requirement of at least 80 percent attendance during the previous year, while employees who do not meet the attendance requirement must be afforded at least 1 day of paid annual leave for each full month of attendance. New employees who started work after May 30, 2017 and have worked for less than 1 year must be given at least 1 day of paid annual leave for each full month of service, up to 11 days. Thus, new employees will be able to receive up to 26 days of paid annual leave during the first 2 years of employment (up to 11 days in the 1st year of employment and 15 days in the second year of employment). Following completion of the 1st year of service, this entitlement increases by 1 day after each 2 years of service, up to a maximum of 25 days.

Sick leave & pay

There is no legal requirement for employers to provide leave to employees for non-work-related illnesses or injuries. It is not uncommon, however, for companies to provide paid sick leave whether or not an injury or illness is work related. Employees generally use their annual paid leave as personal sick days if paid sick leave is not available. Employers are required under the LSA to provide paid leave for work-related illnesses or injuries.

Maternity/parental leave & pay

Employers must grant pregnant female employees 90 days (120 days in case of multiple births) of paid maternity leave, which can be used before or after childbirth. Compensation for the 1st 60 days (75 days in case of multiple births) is paid by the employer, while the remaining days are paid from the Employment Insurance Fund, a state-run fund established by the Ministry of Employment and Labor under the Employment Insurance Act. The statutory 90/120 days' maternity leave includes holidays and Sundays. At least 45 days (60 days in case of multiple births) must be used after childbirth so that, even where more than 45 days (60 days in case of multiple births) were used before childbirth, an employer must allow 45 days (60 days in case of multiple births) of maternity leave after childbirth.

Male employees are entitled to 10 days' paid leave, which can be taken at the employer's discretion within 90 days of the child's birth. The leave may be divided into 2 periods of leave.

Employees with children 8 years of age or under or in the 2nd year or lower of elementary education have an entitlement to unpaid childcare leave of up to 1 year. A recent amendment to the Equal Opportunity Act regarding use of childcare leave allows for the yearly childcare leave allotment to be divided into up to 3 periods of leave (from the previous 2 periods) beginning from December 8, 2020. This entitlement is applicable to both fathers and mothers. The employee must have worked for the same employer for at least 6 continuous months.

As of November 19, 2021, childcare leave is also available for pregnant female employees before childbirth. While the overall period of childcare leave is limited to 1 year, childcare leave during pregnancy will not be deducted from the allowed number of split uses.

The employer is not obliged to pay wages during childcare leave; however, employees are instead paid under the employment insurance system:

- For the 1st 12 months of childcare leave, employees may receive 80 percent of their ordinary wage, up to KRW1.5 million.
- 25 percent of the above amount is payable 6 months after the employee's return to work.
- The MOEL released the plan to improve childcare leave in 2022 as follows:

Category	Regular compensation for childcare leave	6+6 childcare leave	Single-parent household
For the 1st 12 months	80 percent (capped at KRW1.5 million)	If parents of the same child use childcare leave at the same time or in succession within the first 18 months post-birth, the upper limit of childcare leave benefits for each parent shall be increased from KRW2 million to KRW4.5 million for the first 6 months.	100 percent (capped at KRW2.5 million)
4th to 6th month	Same as above	Same as above	80 percent (capped at KRW1.5 million)
After the 7th month to 12th month	Same as above	80 percent (capped at KRW1.5 million)	Same as above

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If an employee requests leave to receive medical fertility treatments, employers are required to approve such leave request up to 3 days per year, with the 1st day of the leave being paid leave; the other 2 days are unpaid leave days. Nonetheless, if granting the leave on the requested date(s) would cause significant hindrance to the normal operations of the business, an employer may consult with the employee and change the date(s) of the leave.

Employers are legally required to treat May 1 (ie, Labor Day) as a mandatory paid holiday for employees. As of January 1, 2022, companies with 5 or more employees are required to guarantee holidays designated by the Presidential Decree as paid holidays.

With the enactment of the Public Holidays Act, starting May 4, 2023, employers must grant the next business day as a substitute holiday in cases where a national holiday (Independence Movement Day (March 1), Independence Day (August 15), National Foundation Day (October 3) and Hangul Proclamation Day (October 9) or Children's Day (May 5), Buddha's Birthday (April 8 in the lunar calendar), and Christmas (December 25) falls on a Saturday or Sunday. The substitute holidays must be treated as paid holidays. However, substitute holidays will not be granted for New Year's Day (January 1), Memorial Day (June 6), even if such public holidays fall on Saturday or Sunday.

Other leave/time off work

Employees are also entitled to family-care leave to take care of family members on account of their illness, accident or old age, among others, as well as fertility treatment leave to receive medical fertility treatments, such as artificial insemination and in vitro fertilization (IVF). An employer must, upon request, grant 1 day of menstrual leave per month. In addition to legally mandated paid leave, many employers in Korea voluntarily provide other compensated leave, including marriage leave, bereavement leave and leave for academic pursuits.

DISCRIMINATION & HARASSMENT

The LSA prohibits discrimination against employees on the grounds of sex, nationality, religion or social status. Discrimination is also prohibited under statutes protecting disabled employees, female employees, foreign workers and non-regular workers. Age discrimination is also prohibited.

Employers, managers and employees are prohibited from sexually harassing anybody in the workplace. Whether or not an act or acts constitute sexual harassment is determined based on the complainant's viewpoint (ie, based on how the average person in the complainant's position would view the conduct), regardless of the intent or perception of the alleged harasser. It is also prohibited to retaliate against an employee who is the victim or employee who reports workplace harassment.

The "Guidance on Review of Rules of Employment Regarding Workplace Harassment" issued by the MOEL went into effect as of July 16, 2019. As a result, the rules of employment must include the definition of workplace harassment and provisions prohibiting workplace harassment, and failure to do so will result in "amendment orders" from the MOEL.

While the details of workplace harassment are stated in the LSA, as of October 14, 2021, if an employer or certain members of his/her family engages in workplace harassment, an administrative fine not exceeding KRW10 million may be imposed. Moreover, in addition to the employer's obligation to conduct a prompt investigation and take necessary measures, the law imposes a confidentiality obligation on parties involved in the workplace harassment investigation. Violations of these obligations may result in an administrative fine of up to KRW5 million.

Serious Accident Prevention Act (SAPA)

The SAPA, effective as of January 27, 2022 for businesses with 50 or more employees, works to secure the safety and health of workers in the workplace or general public by holding the top decision maker of the business accountable for "serious accidents."

The responsibilities of employers and responsible management personnel under the SAPA include establishing a safety and health management system that covers workforce and budgetary issues, implementing necessary plans to prevent recurrence of serious accidents and taking necessary measures to ensure compliance with relevant safety- and health-related laws.

WHISTLEBLOWING

On September 30, 2011, the Whistleblower Protection Act ("WPA") was enacted to encourage internal reporting or whistleblowing of misconduct that is against the "public interest" by establishing certain protection for whistleblowers. The WPA only applies to whistleblowing of misconduct related to violations of specific laws listed in the WPA (ie, Monopoly Regulation and Fair Trade Act, Personal Information Protection Act, Act on Prohibition of Bribery to Foreign Public Officials in International Trade, etc.). Therefore, many types of misconduct which can occur in private companies (eg, accounting fraud, embezzlement, misappropriation of business, sexual harassment) fall outside the scope of the WPA.

BENEFITS & PENSIONS

Employers must subscribe to mandatory social insurance programs, the National Pension, the National Health Insurance, the Unemployment Insurance and the Industrial Accident Compensation Insurance.

DATA PRIVACY

Under the PIPA, an employee is entitled to request the employer to allow access to, correct or delete their personal information. The PIPA requires an employer to obtain the consent of the individual employee when their personal information is obtained or provided to 3rd parties.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

The transferee automatically assumes the transferor's responsibilities with regard to the employees, including their working terms and conditions as well as liabilities, unless the employees otherwise agree. Unless there is just cause, employees are protected against dismissal before or after the transfer.

EMPLOYEE REPRESENTATION

Employees have the right to establish and operate trade unions, and collective bargaining has a binding legal effect.

Each workplace with 30 or more employees must have a labor management council (LMC). LMCs are composed of an equal number of members representing employers and employees, and there shall be no less than 3 and not more than 10 members.

TERMINATION

Grounds

The LSA provides that an employer may only terminate for "just cause," though "just cause" is not defined. The courts have generally held that "just cause" only exists in limited circumstances, including:

- Fault attributable to the employee making continued employment untenable – for example, where the employee is guilty of sufficiently grave misconduct, making it impossible to continue the relationship; continuous and persistent unsatisfactory performance; criminal or deliberate tortious acts against the employer; serious criminal acts not in the line of duty; improper relationships with other employees; or material misrepresentation in the hiring process
- Urgent business necessity to try and save a failing business from imminent bankruptcy

While it is not mandatory to have a Disciplinary Action Committee (DAC), procedures for disciplinary action are required to be included in the rules of employment, and such procedures may vary according to the needs of the workplace.

Employees subject to termination laws

All employees are covered if their employer employs 5 or more employees.

Restricted or prohibited terminations

Employees on sick leave due to a job-related illness or injury (and for 30 days after their return), employees on maternity leave (and for 30 days after their return) and employees on childcare leave.

Third-party approval for termination/termination documents

None required.

Mass layoff rules

Lawful, provided an employer can show there is an "urgent business necessity," that the employer has made best efforts to avoid the termination and that an objective selection process is conducted.

A duty to report dismissals may be triggered depending on the number of employees routinely hired:

- Where 99 or less employees are routinely hired, 10 or more dismissals trigger a duty to report.
- Where 100 to 999 employees are routinely hired, dismissal of 10 percent of the workforce trigger a duty to report.
- Where 1000 or more employees are routinely hired, 100 or more dismissals trigger a duty to report.

Notice

If an employee is dismissed, the LSA requires that the company provide the employee at least 30 days' prior notice or at least 30 days' ordinary wages in lieu of notice. The company may be exempted from this requirement if either:

- The employee has been continuously employed for less than 3 months
- It can establish that it is impossible to maintain its business due to a natural disaster or other unavoidable reason or
- The employee intentionally causes substantial problems for the company or intentionally damages company property.

Statutory right to pay in lieu of notice or garden leave

A statutory right to at least 30 days' payment in lieu of notice. Garden leave is possible if provided for in the contract of employment or under company policy.

Severance

Employers must adopt a retirement benefit system. The default is the statutory severance pay system, whereby, upon termination of employment for any reason (including employee resignation), where the employee has been employed for at least 1 year, the employee is entitled to severance pay of 30 days' "average wages" (ie, all wages generally including any bonus paid within the previous 3 months) for each year of continuous service.

POST-TERMINATION RESTRAINTS

Restrictive covenants are generally enforceable in South Korea, provided they are reasonable and protect an employer's trade secrets.

Non-competes

Enforceable if reasonable and necessary to protect the employer's trade secrets.

Customer non-solicits

Enforceable if reasonable and necessary to protect the employer's trade secrets.

Employee non-solicits

Enforceable if reasonable and necessary to protect the employer's trade secrets.

WAIVERS

Permissible. Terminations are often implemented through mutual agreements.

REMEDIES

Discrimination

Employees may bring a claim before the National Human Rights Commission with a possible remedy of recommendation for, for example, cease of discriminatory activities and/or damage compensation.

Unfair dismissal

An employee may bring a claim before the relevant Regional Labor Relations Commission (RLRC) with a possible remedy of re-instatement with back pay. Where the employee does not wish to be re-instated, a lump sum may be provided to the employee. Employees dismissed without cause may also initiate civil proceedings in the District Court.

Failure to inform & consult

In certain circumstances, the employer's action may be deemed null and void in the absence of required consultation. Action for breach of contract may be possible, but damages should be substantiated. Failure to obtain comments concerning the rules of employment may subject the employer to a criminal fine up to KRW5 million.

CRIMINAL SANCTIONS

If the ruling of unfair dismissal is finalized by the court and the employer does not comply with the re-instatement order from RLRC, the employer may be subject to an imprisonment of up to 1 year or a criminal fine of up to KRW10 million.

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