

# LAB PARTNERS

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## Newsletter *January 2019*

### Recent Amendment to the Enforcement Decree of the Minimum Wage Act, Affecting the Scope of Minimum Wage Calculation

The Amendment to the Enforcement Decree of the Minimum Wage Act (the “Amendment”) took effect on January 1st of 2019.

The violation of the minimum wage requirement is determined based on whether the actual wage divided by the prescribed work hours is less than the hourly minimum wage announced every year. According to the Amendment, the prescribed work hours for the minimum wage calculation shall include not only the “Prescribed Work Hours” defined in Article 2 paragraph 1 subsection 8 of Labor Standards Act, but also the paid statutory holiday hours. The Amendment falls in line with the administrative ruling of the Ministry of Employment and Labor (the “MOEL”) in relation to the minimum wage calculation.

However, the Supreme Court has consistently held that the violation of the minimum wage requirement is determined by dividing the actual wage by the “Prescribed Work Hours” defined in Article 2 paragraph 1 subsection 8 of Labor Standards Act, not including the ‘statutory holiday hours.’

According to the Amendment, the prescribed work hours per month to be used for the minimum wage calculation is increased to 209 hours from 174(173.8) hours that was calculated based on the Supreme Court decision.

MOEL interpretation	=	$\frac{\text{Actual Wage}}{(\text{Prescribed Work Hours} + \text{Paid Hours})}$
Supreme Court Decision	=	$\frac{\text{Actual Wage}}{\text{Prescribed Working Hours}}$

Since the 35 hours increase in the prescribed work hours per month results in the increase of 292,250 Korean won (=8,350x35) in the monthly minimum wage based on the minimum wage as of this year, employers are expected to bear additional burden of labor costs in addition to the minimum wage increase of this year. Further, since an increase of the wage of those under the minimum wage level is likely to cause a series of wage increase for the rest of the employees, the increased burden can be critical.

Therefore, we recommend that employers ① fully understand the implication of the Amendment, ② establish proper strategies based on the in-depth analysis of its current wage system and ③ take measures in a timely manner to minimize extra labor costs due to the minimum wage increase. With regards to ② above, if there are any bonuses and/or welfare benefits that are regularly paid in a cycle exceeding one month, employers may consider changing the payment cycle so that such payments can be included in the minimum wage calculation. Also, if there are any other payments that have not been included in the minimum wage calculation, you may consult with professional advisors how to include them into the minimum wage calculation, minimizing the opposition from the labor union as well as the employees during the process.

LAB PARTNERS Labor/Employment team has extensive experience and accumulated know-hows with regards to minimum wage issues through a wide range of consulting experience and dispute resolutions. Recently, the team also has successfully rendered a leading case in a litigation related to the minimum wage calculation. Should you need further advice to establish the counterplans to the Amendment, please contact us at any time.

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