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NEWSLETTER

Labor and Employment Group

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The National Assembly passed Amendments to the Trade Union and Labor Relations Adjustment Act (a.k.a. the Yellow Envelope Act)

The National Assembly passed amendments to Articles 2 and 3 of the Trade Union and Labor Relations Adjustment Act (commonly referred to as the **Yellow Envelope Act** or the Labor Union Act), which are now pending promulgation and enforcement. The Yellow Envelope Act derives its name from the 2014 incident involving the SsangYong Motor strike, when citizens delivered condolences and support funds to workers in yellow envelopes in response to large-scale damage claims brought by the employer. The amendments substantially expand the definition of “employer,” significantly strengthen the autonomy of trade unions and the scope of lawful union activities, and impose broad restrictions on employers’ ability to claim damages against employees and unions.

1. Key Amendments to the Labor Union Act

■ Expansion of the Definition (Article 2, Subparagraph 2)

Current	2. The term “employer” means the business owner, a person responsible for the management of the business, or any person who acts on behalf of the business owner with respect to matters concerning the employees of the business.
Amendment	2. The term “employer” means the business owner, a person responsible for the management of the business, or any person who acts on behalf of the business owner with respect to matters concerning the employees of the business. <i>In such case, even if not a direct party to the employment contract, a person who is in a position to exercise substantial and specific control or decision-making authority over the working conditions of employees shall also be deemed an employer within that scope.</i> (Newly added proviso)

▪ **Relaxation of Requirements for Labor Unions** (Article 2, Subparagraph 4)

<p style="text-align: center;">Current</p>	<p>4. The term "labor union" means an organization or an association of organizations established by employees on their own initiative for the purpose of voluntarily uniting together to maintain and improve working conditions and to promote the economic and social status of employees.</p> <p>However, any of the following shall not be deemed a labor union:</p> <p>(d) Where the organization allows the admission of persons who are not employees.</p>
<p style="text-align: center;">Amendment</p>	<p>4. The term "labor union" means an organization or an association of organizations established by employees on their own initiative for the purpose of voluntarily uniting together to maintain and improve working conditions and to promote the economic and social status of employees.</p> <p>However, any of the following shall not be deemed a labor union:</p> <p>(d) <i><deleted></i></p>

▪ **Expansion of the Scope of "Labor Dispute"** (Article 2, Subparagraph 5)

<p style="text-align: center;">Current</p>	<p>5. The term "labor dispute" means a state of conflict arising from a disagreement in assertions between a labor union and an employer, or an employers' association, concerning the determination of working conditions such as wages, working hours, welfare, dismissal, or other treatment of employees. In this context, a "disagreement in assertions" refers to a situation where, despite continued efforts by the parties to reach an agreement, there remains no further possibility of reaching agreement through autonomous collective bargaining.</p>
<p style="text-align: center;">Amendment</p>	<p>5. The term "labor dispute" means a state of conflict arising from (i) a disagreement in assertions between a labor union and an employer, or an employers' association, concerning the determination of working conditions such as wages, working hours, welfare, dismissal, <i>employee status, or other treatment, and business management decisions that affect working conditions, or (ii) an employer's manifest breach of a collective agreement with respect to the matters set forth in items (a) through (d) of Article 92, Subparagraph 2.</i></p> <p>In this context, a "disagreement in assertions" refers to a situation where, despite continued efforts by the parties to reach agreement, there remains no further possibility of reaching agreement through autonomous collective bargaining.</p>

▪ **Limitation on Claims for Damages (Article 3)**

<p>Current</p>	<p>An employer shall not claim damages against a labor union or employees for any loss incurred as a result of collective bargaining or industrial action conducted pursuant to this Act.</p>
<p>Amendment</p>	<p>(1) An employer shall not claim damages against a labor union or employees for any loss incurred as a result of collective bargaining, industrial action, <i>or other union activities</i> conducted pursuant to this Act.</p>
<p>New Provisions (Paragraphs (2) through (6) newly added)</p>	<p>(2) A labor union or employees who, in order to protect the interests of the labor union or employees against an unlawful act of the employer, unavoidably cause damage to the employer shall not be liable for such damages.</p> <p><i>(3) Where a court recognizes liability for damages on the part of employees arising from collective bargaining, industrial action, or other union activities, the court shall determine the proportion of responsibility of the liable employees in accordance with the following factors:</i></p> <ol style="list-style-type: none"> <i>1. The employee's position and role within the labor union;</i> <i>2. The circumstances and extent of the employee's participation in the industrial action or other activities;</i> <i>3. The degree of involvement in the occurrence of the damage;</i> <i>4. The employee's wage level and the amount of the damages claimed;</i> <i>5. The cause and nature of the damage; and</i> <i>6. Any other matters deemed necessary to ensure an equitable apportionment of damages</i> <p><i>(4) A labor union or employees who are liable for damages pursuant to paragraph (3) may petition the court for a reduction of the amount of damages. In such case, the court shall determine whether and to what extent to grant a reduction, taking into account each debtor's economic circumstances, family relationships including dependents, the guarantee of a minimum standard of living, and the need to maintain subsistence.</i></p>

New Provisions

(Paragraphs (2) through (6) newly added)

(5) Notwithstanding Article 6 of the Fidelity Guarantee Act, a fidelity guarantor shall not be liable for damages arising from collective bargaining, industrial action, or other union activities.

(6) An employer shall not exercise a claim for damages with the purpose of undermining or interfering with the operation of a labor union, or with the intent to obstruct the union activities of its members and cause harm.

▪ **Exemption from Liability** (Article 3-2)

New Provision

An employer may exempt a labor union or employees from liability for damages or other responsibilities arising from collective bargaining, industrial action, or other union activities.

2. Analysis and Outlook

▪ **Expansion of the Scope of “Employer”** (Article 2, Subparagraph 2)

Under the current Trade Union Act, only the direct employer has been recognized as the “employer.” However, under the amended Act, any person who has substantial and specific authority to control or determine employees’ working conditions will also be deemed an employer. As a result, labor unions composed of indirectly employed workers—such as subcontracted, dispatched, subsidiary, or affiliate employees—may demand collective bargaining not only with their direct employer but also with the principal contractor or parent company.

The precise meaning of “substantial and specific control or determination” as an element of the employer concept will inevitably be clarified in the future through decisions of the Labor Relations Commission and judicial precedents. In the interim, however, considerable uncertainty and disputes regarding its scope appear unavoidable.

From the corporate perspective, companies are recommended to:

- Assess the impact of subcontracting structures on labor-management relations;
- Review whether collective bargaining provisions under the Act apply when entering into new subcontracting arrangements; and
- Consider the size and operating model of subcontractors to develop strategies that minimize the principal company’s legal exposure.

- Given that similar risks are likely to recur, this is an opportune time for companies to conduct a compliance review of their labor relations management systems regarding subcontractors, subsidiaries, and affiliates, and to reinforce internal compliance processes accordingly.

- **Strengthening of Rights to Join and Participate in Labor Unions** (Article 2, Subparagraph 4)

The amended Act abolishes the existing restriction that prohibited non-employees from joining labor unions. As a result, workers in “special employment” relationships and platform workers will now be able to join labor unions.

This development not only affects individual companies but also has broader implications for entire industries where the use of special employment and platform workers is prevalent. Companies should therefore:

- Review the operational practices across their industry regarding special employment and platform workers;
- Strengthen channels of communication with such workers; and
- Maintain transparency and actively share information about changes, thereby reducing the risk of conflict and tension in advance.

- **Expansion of the Scope of “Labor Dispute”** (Article 2, Subparagraph 5)

Under the current Trade Union Act, only the “determination” of working conditions was subject to labor disputes. The amendment expands the scope of labor disputes to include not only business management decisions that affect working conditions but also material breaches of collective agreements.

Originally, the amendment sought to encompass all matters relating to “working conditions” within the scope of labor disputes. However, due to concerns that this would excessively broaden the range of permissible industrial action and significantly increase the costs of workplace conflict, the scope was partially narrowed during the legislative process.

From the corporate perspective, companies are recommended to:

- Conduct a comprehensive review of “working conditions,” with particular focus on provisions in collective agreements and rules of employment that were not previously subject to disputes;
- Strengthen communication with labor unions or works councils, especially in relation to major managerial decisions such as mass layoffs, restructurings, mergers, acquisitions, and corporate spin-offs; and
- Review the adequacy of disciplinary, dismissal, and occupational safety regulations in anticipation of a broader range of potential labor dispute issues.

- **Limitation on Union Liability for Damages and Restriction on Damages Amounts** (Article 3)

The amendment restricts employers from seeking damages against labor unions for losses arising from industrial action, thereby protecting unions and employees from large-scale damages lawsuits, except in unavoidable cases.

From the corporate perspective, companies are recommended to:

- Review and update internal manuals on claims for damages, covering the entire process from the initiation to the conclusion of industrial action; and
- Examine the internal decision-making procedures related to claims for damages to ensure alignment with the intent of the amended Act, and to establish a robust process for determining when and how such claims may be pursued.

- **Exemption from Liability** (Article 3-2)

A new statutory provision has been introduced allowing employers to voluntarily exempt labor unions or employees from liability for damages or other responsibilities arising from collective bargaining, industrial action, or other union activities. The intent is to alleviate employers' concerns about potential criminal breach-of-trust claims when granting such exemptions. From the corporate perspective, companies may consider the option of liability exemption as one possible measure in the resolution of labor disputes.

- **Effective Date**

The amended Trade Union Act will take effect **six months** after its promulgation. However, the new provision allowing employers to exempt labor unions and employees from liability will apply retroactively to damages arising prior to the Act's enforcement.

As the amendments address the scope of employers, the scope of labor disputes, and restrictions on claims for damages against unions, they represent a fundamental shift in the paradigm of labor-management relations. While the amendments are expected to significantly strengthen union autonomy and broaden the rights associated with union activities, they may also impose substantial burdens on companies. Employers should, therefore, ensure thorough preparation in advance and adopt appropriate response measures afterward to maintain sound and stable labor relations.

3. Conclusion

The amended Trade Union Act both fundamentally reshapes the paradigm of labor-management relations and reflects the broader policy direction of the new administration—many of its key elements had been anticipated.

To prepare for such sweeping changes in labor policy, Lee & Ko established its Labor Compliance Team in May 2025, led by former Minister of Employment and Labor Ahn Kyung-Deok. Should you require assistance regarding the amended Trade Union Act, including its substantive contents or practical strategies for corporate response, please do not hesitate to contact the attorneys listed in this newsletter.

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