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NEWSLETTER

Labor and Employment Group

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Yellow Envelope Act Unlocked: Essential Updates to Know before March

The amended Trade Union Act and Labor Relations Adjustment Act (**Trade Union Act**), scheduled to take effect on March 10, 2026, expands the scope of 'employer' to include 'any person in a position to substantially and specifically control or determine the working conditions of employees' (Article 2) and recognized further grounds for labor disputes to include 'business management decisions affecting working conditions' (Article 5). To minimize concerns about increased legal uncertainty and reduced predictability arising from these significant amendments, the Ministry of Employment and Labor (**MOEL**) issued an administrative notice regarding its draft interpretive guideline (December 26, 2025 ~ January 15, 2026). Key points of the MOEL's latest guidelines are as follows:

1. On the Expansion of the 'Employer' Scope

A. Key Criteria for Determining Employer Status

Article 2(2) of the Trade Union Act specifies 'substantial and specific control over working conditions' as the criterion for determining the 'employer' status. The MOEL has proposed 'structural control over working conditions' as a key factor for this determination.

'Structural control over working conditions' is a criterion for determining 'employer' status that has been outlined for the first time in the latest guidelines. It establishes that 'structural control' exists when the principal contractor structurally constrains the subcontractor's determination of working conditions for its workers, thereby fundamentally and continuously limiting the

subcontractor's discretion in setting those conditions. For example, this would include cases where: (a) where the number of the subcontractor's work days, etc. are determined unilaterally pursuant to the contract prepared by the principal contractor, and a non-compliance thereof may result in the termination of the relevant subcontract, such that, changing the number of work days, etc. through any mutual agreement between the subcontractor and the relevant workers is effectively difficult in practice; (b) where the working hours of the relevant workers are, in substance, determined by factors such as the volume of work, the number of logistics vehicles and their departure times under subcontracting agreements controlled by the principal contractor, including also the scale of work equipment and number of deployed or assigned personnel.

Conversely, when the principal contractor makes general requests or consults/coordinates with the subcontractor regarding the performance or procedures of the subcontracted work, such measures are understood as performance of contractual obligations, and are thus distinguishable from 'structural control over working conditions'. Examples of such distinguishable acts include: (1) requiring compliance with agreed delivery deadlines and quality requirements; (2) amending subcontract terms through mutual agreement; (3) requesting work performance based on individual purchase or work orders, etc.

B. Factors and Cases to Consider when Determining Employer Status

In its draft interpretation guidelines, the MOEL explains that factors that Korean courts have to date regarded as indicia of employer status under the Trade Union Act—such as the subcontractor's integration into the principal contractor's business and the subcontractor's economic dependence on the principal contractor – will now be considered as supplementary factors for assessing 'structural control over working conditions'. Under this approach, circumstances such as (a) where the subcontractor is directly incorporated into the principal contractor's business system, (b) where the principal contractor is the subcontractor's sole customer, or (c) where the subcontractor's continued existence depends on the continuation of the subcontract agreement with the principal contractor, may be taken into account in determining whether there is 'substantive and specific control' and 'decision-making over working conditions'.

Furthermore, the MOEL provided several illustrative cases recognizing 'employer' status under the Trade Union Act, to facilitate practical use of the draft guidelines. For instance: where (a) from an occupational safety perspective, the principal contractor controls the overall safety and health management system, including work processes and safety procedures, or the subcontractor is structurally unable on its own to improve facilities or equipment by eliminating risk factors or installing safety devices; (b) from a welfare perspective, the principal contractor effectively determines subcontractor employees' access to convenience facilities or exerts influence over the rules for use; (c) from a working-hours perspective, the principal contractor holds substantive decision-making authority over, or exercises approval rights in respect of, the subcontractor's production planning, work schedules, working hours, break times, and overtime; or (d) from a compensation perspective, the principal contractor effectively determines labor costs based on the number of subcontractor workers deployed and their working hours, or directly sets wage increase rates or standards for various allowances, thereby fundamentally constraining the subcontractor's managerial discretion.

These points are summarized in the table below. For more detailed information, please refer to the Attachment.

Categories	Factors Supporting Principal Contractor's Employer Status
Labor Safety	<ul style="list-style-type: none"> ■ Control over the overall safety and health management system, including work processes and safety procedures ■ Facilities and equipment are under the principal contractor's control (making it structurally difficult for the subcontractor to eliminate hazards or install safety equipment) ■ Decision-making authority over the formulation and execution of safety-related budgets for subcontractors outside the principal contractor
Welfare	<ul style="list-style-type: none"> ■ Substantially determines the use of convenience facilities (commuter buses, rest facilities, etc.) ■ Determines or exerts influence over setting/changing welfare standards (meal allowances, transportation expenses, welfare points, etc.)

	<ul style="list-style-type: none"> ■ Establishing criteria, grades, or performance targets to determine the payment, level, and performance evaluation of subcontractors' performance-based pay and bonuses
Working Hours	<ul style="list-style-type: none"> ■ Exercising actual decision-making authority or approval rights over subcontractors' production plans, work schedules, working hours, rest periods, overtime work, etc. ■ Exercising approval authority or having an approval practice regarding subcontractors' working hour systems, work schedules, staggered work hours, etc.
Wages, etc.	<ul style="list-style-type: none"> ■ Providing wage tables for subcontracted workers ■ Control over subcontracted workers' hazard pay, special duty pay, overtime pay, etc. ■ Effectively determining labor costs based on the number of subcontracted workers deployed and their working hours, or directly setting wage increase rates and standards for various allowances ■ Determination of contract fees based on a delivery-based method (<u>Note</u>: However, if the contractor calculated the total contract fee using average wage levels and estimated personnel required for task performance, but the subcontractor was allowed to pay wages within the total contract fee amount, the likelihood of finding 'employer status' would be low.)

2. On the Expanded Scope of Recognized Grounds for Labor Disputes

A. Business Management Decisions Affecting Working Conditions

In its draft interpretation guidelines, the MOEL explains that 'business management decisions as defined in Article 2(5) of the Trade Union Act' may manifest as a series of combined actions. Among such actions, business management decisions that are subject to labor disputes should be assessed based on **whether they cause substantive, specific changes to working conditions**. If the impact on employees' working conditions is merely abstract or speculative at the time of the decision, it would be difficult to recognize such a decision as a permissible ground for a labor dispute.

According to the MOEL's view, a business management decision aimed to accomplish organizational restructuring (such as a merger, division, transfer, or sale) does not, in and of itself, readily qualify as having a substantive and specific impact on working conditions. Therefore, such decisions cannot be said to fall within the scope of collective bargaining. However, when implementing such a decision, measures that cause substantive and specific changes to employees' status or working conditions (such as layoffs or reassignments arising from restructuring) may become subject to collective bargaining. In addition, labor unions would now be entitled to demand collective bargaining on employment-security measures not only where workforce adjustment is imminent as a result of a merger, division, sale, or transfer decision, but also where such adjustment is objectively foreseeable.

B. Determination of Working Conditions Related to Employee Status

In its draft interpretation guidelines, the MOEL explains that 'disagreements over the determination of employee status' refer to disputes between labor and management concerning the establishment or modification of principles, standards, or procedures related to changes in employment type, disciplinary actions, promotions, etc. The MOEL states that interest disputes concerning matters such as the conversion of non-regular employees to regular employees, and demands to establish or revise disciplinary and promotion criteria, are included within the scope of labor disputes.

Accordingly, once the amended Trade Union Act takes effect, labor unions are anticipated to demand collective bargaining or engage labor disputes not only regarding the conversion of non-regular employees to regular employees but also regarding a wide range of existing HR governance systems, including disciplinary actions and promotions.

C. Employer's Violation of Collective Agreement

Where an employer *clearly* violates a collective agreement that stipulates matters relating to working conditions under Article 92(2) of the Trade Union Act – specifically, items (a) through (d) (including wages, welfare benefits, severance pay, working hours, dismissal, occupational safety and health, etc) – such violation would become a subject of a labor dispute.

In its draft interpretation guidelines, the MOEL stipulates that

'clear violation of a collective agreement' may be found where the employer fails to comply with the collective agreement terms without a justifiable reason, despite the agreement's language being unambiguous and leaving no room for alternative interpretation. Specifically, this includes situations where the employer acknowledges the violation yet refuses to comply, or where the violation is objectively confirmed during labor dispute mediation by the Labor Relations Commission or during labor-management negotiation guidance by local employment and labor offices.

3. Implications

The amended Trade Union Act, while expanding the scope of 'employers' and the grounds for labor disputes, provides only abstract criteria for determination, which has raised significant concerns that the legislative change would result in greater uncertainty in practice. Against this backdrop, MOEL's draft interpretation guidelines are expected to help alleviate some of the difficulties and anxiety. However, as the draft guidelines are currently not yet finalized, they are subject to revision based on future feedback from labor and management. Therefore, continuous attention and monitoring are necessary.

In response to the rapidly changing labor policies under the new administration, Lee & Ko acquired Ahn Kyung-duk – the former Minister of Employment and Labor – as a senior advisor on May 14, 2025, and launched a Labor Compliance Team. We have been continuously communicating with clients regarding the Trade Union Act and its Enforcement Decree through newsletters and client seminars. In addition to the MOEL's draft interpretation guidelines, we anticipate that additional operational manuals for procedures related to the consolidated bargaining channels will be released soon. Lee & Ko will make every effort to communicate with our clients regarding these issues and provide necessary legal support.

Should you require assistance regarding the content of the Trade Union Act (effective March 10, 2026), or related corporate response strategies, please feel free to contact us at any time.

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