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NEWSLETTER

Labor and Employment Group

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Union Formation and Disputes Waits for No Employer

••• MOEL Clarifies Scope of Labor Disputes under the Yellow Envelope Act

On September 3, 2026, the Ministry of Employment and Labor (**MOEL**) issued new guidelines elaborating the scope of "labor disputes" under the Trade Union and Labor Relations Adjustment Act (**TULRAA**), entitled the "*Guidelines on the Scope of Labor Disputes, Including Company Performance-Based Bonuses*" (**New Guidelines**).

For context, the latest amendments to the TULRAA — also known as the Yellow Envelope Act — significantly expanded the scope of permissible "labor disputes" by including disagreements concerning the "determination of working conditions" (e.g., wages, working hours, welfare, termination and employee status) as well as "managerial decisions that affect working conditions." Since the Yellow Envelope Act took effect on March 10, 2026, labor unions have increasingly sought to bargain over matters that are traditionally viewed as falling within the realm of management-level decision-making – e.g., bonuses tied to a certain percentage of operating profit or strategic investment decisions made by management. As these topics have garnered more public attention in recent months, there has been considerable confusion about the meaning and scope of "managerial decisions" over which employers must engage in collective bargaining under the amended TULRAA.

The New Guidelines — built upon the general interpretive framework set out in its earlier guidelines issued in February 2026 — represent the MOEL's latest attempt to provide more concrete standards for interpreting and applying the amended TULRAA in the context of collective bargaining, labor-dispute mediation, industrial action, and unfair labor practice proceedings.

Below, we address key aspects of the New Guidelines and their practical implications for employers.

1. Whether Profit-Based Bonuses Fall Within the Scope of Permissible "Labor Disputes"

Profit-based bonuses can take various forms depending on how their eligibility, calculation, amount, and timing are structured. Such wide variance has created uncertainty as to whether — and under what circumstances — such bonuses would fall within the scope of permissible "labor disputes" requiring employers to engage in collective bargaining.

The New Guidelines clarified that:

- Bonuses directly linked to a fixed percentage of company profits — such as revenue, operating profit, or net income — generally fall outside the scope of "labor disputes." MOEL reasoned that requiring employers to bargain over such demands could result in a fundamental restriction against a company's managerial freedom to conduct its business or interfere with the rights and interests of third parties, including shareholders.
- In contrast, MOEL reiterated that concerning employees' wages, benefits, bonuses tied to individual performance (or fixed bonuses) or other terms and conditions of employment do fall within the scope of "labor disputes" and therefore require employers to engage in collective bargaining.

2. Meaning of "Managerial Decisions Affecting Working Conditions"

MOEL's earlier guidelines issued in February 2026 took the position that a "managerial decision" may become subject to a labor dispute where it results in "**substantive and specific changes**" to working conditions. Conversely, where the managerial decision's potential impact on working conditions remains merely abstract or speculative at the time of the decision, the managerial decision would fall outside the scope of permissible "labor disputes".

The New Guidelines clarified that:

- As a general rule, a managerial decision, in and of itself, does not constitute a mandatory subject of collective bargaining. Thus, at a stage where a "managerial decision" is under review or merely announced, the mere possibility that the "managerial decision" may ultimately affect employees' working conditions is insufficient to trigger an obligation to engage in collective bargaining.
- However, the "managerial decision" may become a mandatory subject of collective bargaining if it moves into the implementation stage and detailed plans (e.g., workforce arrangements) are formulated so that changes to employees' working conditions can be objectively anticipated.

The New Guidelines further illustrate how this framework is intended to operate in practice through examples such as corporate investments (e.g., plant establishment or relocation to abroad), business acquisitions or sales, or the introduction of new technologies like AI.

3. MOEL's Enforcement Approach

The New Guidelines also explain how MOEL intends to approach cases where a labor union nevertheless seeks to bargain over a managerial decision itself or demands that a fixed percentage of company profits be allocated as bonuses:

- **Mediation through LRC.** At the mediation stage, the Labor Relations Commission (**LRC**) will encourage the union to modify its bargaining demands and present a reasonable alternative. If the union declines to do so, the LRC may issue administrative guidance (i.e. declining the union's filing) on the basis that the relevant demand does not fall within the scope of permissible "labor disputes" under Article 2(5) of the TULRAA.

- **Industrial Action Over Out-of-Scope Matters.** Where a union engages in industrial action primarily to pursue matters that fall outside the scope of permissible "labor disputes," the legitimacy of such industrial action will be assessed in accordance with the standards established by Supreme Court precedent. In other words, industrial action may be found unlawful.

- **Unfair Labor Practice Implications.** An employer's refusal to bargain over matters falling outside the scope of permissible "labor disputes" would not constitute an unfair labor practice, given that managerial decisions themselves (or demands for profit-based bonuses) do not trigger an obligation to engage in collective bargaining.

4. Implications

The New Guidelines provide meaningful clarification by confirming that profit-based bonus demands and managerial decisions with only an abstract or speculative impact on working conditions generally fall outside the scope of permissible "labor disputes".

That said, the New Guidelines are unlikely to eliminate uncertainty altogether for the following reasons:

- First, the exclusion for profit-based bonuses appears to focus on bonuses directly linked to certain profit metrics (e.g., revenue, operating profit or net income), potentially leaving room for unions to formulate bonus demands using other metrics.

- Second, because profit-based bonuses have not been categorically excluded and bargaining over this matter is not prohibited, unions may continue to pursue such demands alongside other matters that fall within the scope of permissible "labor disputes."

- Third, the legal basis for certain aspects of the New Guidelines may itself be subject to challenge, particularly as to whether MOEL has gone beyond the scope of authority delegated to it under the TULRAA. If these uncertainties persist, they may also lend further momentum to legislative proposals to amend the Korean Commercial Code to require shareholder approval for the payment of company performance bonuses that an employer is not contractually obligated to provide.

Lee & Ko's Labor and Employment Practice Group has been closely monitoring recent developments surrounding the amended TULRAA (i.e., Yellow Envelope Act) and continues to engage with clients through newsletters and seminars addressing key issues arising under the Yellow Envelope Act.

On September 10, 2026, Lee & Ko will host a seminar on the Serious Accidents Punishment Act and the Yellow Envelope Act, where we will provide a more detailed explanation of the New Guidelines and discuss practical response strategies for corporate clients.

Lee & Ko remains committed to providing clients with timely guidance and legal support as they navigate the amended TULRAA. If you need assistance with the New Guidelines or related labor-management issues, please do not hesitate to contact Lee & Ko.

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