

Memorandum on Statutory and Non-Statutory Employee Benefits in Korea July 2020

1. Four (4) mandatory social security programs

A more detailed explanation on the four (4) mandatory social security programs in Korea including the National Pension, the National Health Insurance (including the Long-term Care Insurance for the Elderly (LCSE)), the Employment/Unemployment Insurance (EI), and the Industrial Accident Compensation Insurance (IACI), is provided in our "Memorandum on Korean Social Security Scheme" *separately*. A summary of the insurance premium rates is shown below.

Social Insurances:	Employee portion	Employer portion	Total	Remark
National Pension (NP)	4.5%	4.5%	9.0%	Won 226,350 of monthly contribution ceiling each
National Health Insurance (HI)				
a. Health Insurance(HI)	3.335%	3.335%	6.67%	Won 3,322,170 of monthly contribution ceiling each
b. Long-term Care Insurance for the Elderly (HI-LTCI) (Note a)	10.25%	10.25%	20.5%	Assessed at 10.25% of HI premium above
Employment Insurance (EI)	0.8%	1.05% ~1.65%	1.85% ~2.45%	Vary depending on the number of employees
Industrial Accident Compensation Insurance (IACI) (Note b)	NIL	0.60%~ 18.5%	0.60%~ 18.5%	Vary depending on type of business

(NOTE)

- a. LTCI contribution is imposed based on the medical insurance premium (while NP, HI, EI, and IACI contributions are imposed based on monthly wage income reported in the prior year).
- b. Wage bond surcharge and asbestos victim relief surcharge of 0.6/1,000 and 0.03/1,000 should be added to IACI rates additionally. Commute related injury surcharge is also assessed additionally at 1.3/1,000 regardless the business type starting from January 1, 2020.

2. Severance pay / retirement pension systems

Under the Korean Labor Standards Act (LSA) and the Employee Retirement Benefit Security Law (ERBSL), an employee with one year or more of service with a company (including a foreign-invested company) is entitled to receive severance pay from the company in the amount of at least one month's average salary for each year of service, upon resignation or termination of employment (regardless of reasons of such termination). The "average salary" means the average of the remuneration (defined) received by an employee during the most recent 3 months before the accrual or termination date. For directors of a company, severance pay regulations must be stated in the articles of incorporation (AOI) or resolved by the shareholders meeting if delegated by the AOI.

The above severance pay is a minimum legal requirement in Korea and applicable to an entity with five or more employees. However, according to the revised Presidential Decree of ERBSL, an employee working for a company with less than 5 employees shall be entitled to receive the severance pay from December 1, 2010 if he worked with the company for 1 year or more, counting from December 1, 2010.

However, the period from December 1, 2010 to December 31, 2012 is the grace period, for which the companies subject to the above new regulation may pay 50% or more of the severance pay specified under the ERBSL. But, in practice, most of the foreign-invested entities in Korea with less than 5 employees pay the amount that would be required to pay if it were a company with five employees or more. Furthermore, certain companies maintain internal severance pay rules, which are more favorable to the employees than the minimum legal requirement.

Under the ERBSL, an employer with five or more employees shall be allowed to convert the current lump-sum severance pay system to retirement pension system, where an employee may receive retirement benefits in the form of pension. Under the retirement pension system, employees will receive pension benefits when they reach the age of 55 and certain amount of contribution has been deposited each month in a financial institution for 10 or more years.

As the ERBSL allows only the retirement pension as the legitimate external severance pay plan after December 31, 2010, many companies are expected to convert or newly adopt the retirement pension plan with external financial institutions. Meanwhile, a taxpayer may continue to accrue the severance pay liability only on its books internally.

Given the variances of conditions of each workplace and preferences of employees and the management, the existing severance pay system will stay along with the retirement pension system.

In case where a company changes from the existing severance pay system to the retirement pension system or makes changes in retirement systems that are less beneficial to its employees, the company shall be required to obtain consent from the majority of the employees in advance.

From July 26, 2012, a newly established company is required to adopt only retirement pension system.

3. Other statutory employee benefits

The LSA prescribes minimum terms and conditions of employment such as work hours, wage payments, holidays, annual paid leaves, severance pay, etc. Any terms or conditions of employment that do not meet the applicable minimum requirements under the LSA are invalid. For a company with less than 5 employees, application of certain LSA provisions is not mandatory.

The National Assembly in Korea had passed the legislation in 2004 instituting a 5-day work week, and, to that end, the LSA has been amended to reduce the current maximum work hours from 44 to 40 hours a week and alter minimum standards for paid leave. These changes are scheduled to be adopted in workplaces in several phases depending on the size of the workforces and the type of works.

The first phase, applicable for government institutions and companies having more than 1,000 employees, commenced in July 2004. The last phase, applicable for companies having less than 20 employees, was adopted in the year of 2011. The 40-hour work week was expanded to the small business with the employees between 5 and 20 effective from July 1, 2011.

a. Work hours

The Korean Labor Standards Act (LSA) requires employees not to work more than eight hours a day and 40 hours a week regardless of the type of business. The only condition under which the overtime work is permissible is when the concerned parties have reached a mutual agreement, even in which case maximum overtime hours allowed are 12 hours per week. If such agreement is reached, the workers should be paid 150% of their normal hourly wage. In addition, the workers

should be paid an additional 50% for working overtime at night (from 10pm to 6am) and holiday work, respectively. If two or more foregoing reasons for additional payment incur at the same time, employee shall be entitled to receive additional 50% for each reason (e.g., in the case of night work between 10pm and 6am, the additional payment shall be 200% per hour including the ordinary wage per hour; i.e., 100% ordinary wage + 50% for overtime work allowance + 50% for night time work allowance).

b. Holidays

Employer is obligated to allow a weekly day-off, once a week on average usually on Sunday. The LSA requires that the weekly day-off be a paid day and 150% of the normal hourly rate should be paid if workers are asked to work on such day. Under the 5-day workweek legislation, Saturdays will also be the paid holidays.

c. Leave/Vacation days

Under the 5-day workweek legislation, minimum standards for paid leave will change as follows.

Employees will no longer be entitled to minimum monthly leave. Under Article 60 of the LSA, an employer shall grant its employees 15 days of paid annual leave if the employees fulfilled at least 80% attendance during one (1) year. With respect to employees who have worked for less than one (1) year, employers shall grant one (1) day of paid leave for each completed month of service.

Before amendment of the LSA, the paid leave days used during the first year can be deducted from the 15 days to be granted in the second year (Article 60, Paragraph 3). However, effective from May 29, 2018, under the amended LSA provisions, the paid leave days earned and used in the first year shall no longer be deducted from the 15 days to be granted in the second year (Articles 60, Paragraph 3 was deleted). Employees will be granted one (1) day of paid leave for each completed month of service in their first year and separately, employees should be granted 15 days in the second year if fulfilled 80% or more attendance requirement.

For an employee who has worked for a company for more than 3 years, 1 additional day of paid leave for every 2 years will be vested, but not to exceed 25 days in aggregate.

The new provisions of the 5-day workweek legislation clarifies that an employer is not required to pay compensation for any portion of paid leave if unused by an employee despite being encouraged to do so through the guidelines provided.

Sick leave is required by the statute only in connection with any occupational injuries or diseases. Employee on such leave is entitled to receive at least 60 percent of his average wage during such leave. The prevailing practice is to grant some period of leave to employees suffering from non-occupational injuries and disease. Where an employer specifies the amount of such leave available, entitlement is usually based on length of service with the company.

Special leave must be granted for military reserve training requirements and other civil duties, including voting. Special leave is generally given in connection with certain family events such as the birth, death or marriage of members of an employee's family.

Employer shall grant a female employee who is pregnant a maternity leave of ninety (90) calendar days (120 calendar days of leave in case of pregnancy with multiple fetuses) in total before and/or after the childbirth. Provided however, that at least forty five (45) calendar days (60 calendar days of leave in case of pregnancy with multiple fetuses) of such maternity leave shall be used after the childbirth.

When a female employee who is pregnant applies for a maternity leave pay to the Korean Labor Welfare Corporation, employer shall fully cooperate by providing necessary documents of proof for an employee concerned to be able to receive maternity leave pay under the Employment Insurance Act.

For the first sixty (60) days (75 calendar days of leave in case of pregnancy with multiple fetuses) of maternity leave, employer shall pay the difference between the ordinary salary received from employer before her maternity leave and the maternity leave pay received from the Korean Labor Welfare Corporation in accordance with the provisions of the Employment Insurance Act (that is, Won 2,000,000 per month), if such maternity leave pay received is less than the ordinary salary of employee concerned. Even though employer is not statutorily required to pay the difference for the third month of the maternity leave, however, we have seen most of the foreign companies do choose to pay the difference even for the third month voluntarily.

This maternity leave should be provided to the female employees for all their child births (not limited to the first child).

Childbirth and childcare related systems has been improved from February 2, 2013. The male employees are given minimum 10 days of paid paternal leave when their spouse gives birth under the Labor standards Act of Korea.

For male or female employees who have a child born in 2012 or after, a maximum of one year of parental leave is allowed until their child reaches eight years of age. Employees can split their leave in two, but the period of their parental leaves should not exceed one year in total. Also, instead of taking a full day off during the parental leave, employees may be allowed to adjust the work hours within 15 to 35 hours per week upon agreement with their employer. The concerned employee can choose the adjusted work hours with a maximum of two years if he/she has not taken one-year child-care leave.

4. Non-statutory, but common employee benefits

The following explains non-statutory employee benefits which are common to foreign-invested companies as well as domestic companies in Korea.

a. Car and parking allowance

It is common for a company to provide a company car and parking allowance to a manager-level or director-level employee, or for the company to run a mileage scheme to compensate the employees who use their own car for the business. Such a car allowance or mileage scheme would not be taxable up to Won 200,000 per month under certain conditions under the current Individual Income Tax Law. A written policy is required for the payment of car allowance/mileage.

The cost for a company-provided car and related maintenance expenses, including a driver who is on the company payroll, is not taxable to the concerned employee under certain limit (defined). To be eligible for treatment as non-taxable income to the concerned employees, designated insurance shall be purchased and a detailed driving log shall be maintained for each car. To avoid any confusion, an advance planning is essential.

b. Meals

Many employers provide their employees with meals or a meal allowance. A meal allowance for employees is not taxable up to Won 100,000 per month. A written policy is required for payment of meal allowance.

c. Childcare allowance

If an employer pays childcare allowance to an employee who has a child(ren) with an age of 6 or under for benefit of the employee, such allowance is nontaxable to the employee up to Won 100,000 per month.

d. Education allowance for employees

If an employer pays admission fees, tuition, and other regular fees to schools qualifying under the Korean Education Law for the benefit of an employee, such benefit is nontaxable to the employee if the education is related to the employer's business and meet certain conditions under the Individual Income Tax Law.

e. Education allowance for children

Education allowance for an employee or for his/her children is included in his/her taxable income, but the income tax will be reduced by tax credit on the education expense (defined) allowed to the employee if the school qualifies under the Korean Education Law with certain limitations. The maximum limitations of education expense and tax credit thereon for spouse and dependents for the tax year 2020 are as follows.

	15% tax credit limit per year and per person (15% * education expense limit)
College/university (excluding graduate schools)	Won 1,350,000 (9 million * 15%)
Elementary/junior high/high school	Won 450,000 (3 million * 15%)
Nursery/preschool/physical education center for preschoolers	Won 450,000 (3 million * 15%)

However, an employee is eligible for a full tax credit on education expense for himself/herself without any limitations.

f. Condolence donation, etc.

For the occasions including family funeral, wedding, etc., it is a common practice in Korea that an employer pays cash to its employees as condolence donation or celebration gift. Provided that the amount given to employees is within the conventional range, such cash donation or gift is treated as non-taxable to employees.

g. Company provided housing for expatriate assignees

The housing provided by the company may be treated as non-taxable earned income to expatriate employees in general (subject to certain conditions) if (1) the house offered to the expatriate employee is owned by the employer or the rental contract is made in the employer's name, (2) the accommodation is not a serviced apartment or hotel, and (3) the related housing cost is paid directly by the employer to the landlord.

However, the utility and maintenance charges of the housing provided by the company shall be treated as taxable earned income to the expatriate employees.

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With any inquiries or comments, please contact specialists of Hanul LLC, a member firm of Crowe Global [Telephone: (82)(2)316-6600, Facsimile:(82)(2)775-5885, or Email: post@crowe.kr].

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