

MINIMUM WAGE ACT

Act No. 3927, Dec. 31, 1986

Amended by Act No. 4575, Aug. 5, 1993
Act No. 5474, Dec. 24, 1997
Act No. 5888, Feb. 8, 1999
Act No. 6278, Oct. 23, 2000

CHAPTER I

General Provisions

Article 1 (Purpose)

The purpose of this Act is to stabilize worker's lives and to improve the quality of the labor force by guaranteeing them a certain minimum level of wages, and thereby to have them contribute to the sound development of the national economy.

Article 2 (Definition)

For the purpose of this Act, the terms "worker", "employer" and "wage" mean worker, employer and wage as prescribed in Articles 14, 15 and 18 of the Labor Standards Act.

Article 3 (Scope of Application)

(1) This Act shall apply to all businesses or workplaces (hereafter referred to as "business") using workers. This Act, however, shall not apply to any business using only relatives living together, and to those hired for household work.

<Amended by Act No. 6278, Oct. 23, 2000>

(2) This Act shall not apply to seamen who are subject to the Seaman Act or to shipowners employing such seamen.

CHAPTER II

Minimum Wage

Article 4 (Criteria for Determination and Classification of Minimum Wage)

(1) The minimum wage shall be determined according to the category of business taking into consideration the cost of living of workers, the wages of kindred workers, and labor productivity.

(2) The division of the business category as referred to in Paragraph (1) shall be determined by the Minister of Labor through the deliberation of the Minimum Wage Council as prescribed in Article 12.

Article 5 (Minimum Wage Rate)

(1) The minimum wage rate (referred to the amount determined as the minimum wage; hereinafter the same shall apply) shall be determined on the basis of an hour, day, week, or month. In this case, where the minimum wage rate is determined on the basis of a day, week, or month, the rate shall also be noted by an hourly rate.

(2) With respect to workers under age of eighteen, whose working period does not exceed six months, the minimum wage rate may be fixed in an amount different from the minimum wage rate as prescribed in Paragraph (1) under the conditions as prescribed by the Presidential Decree.

(3) Where wages are usually fixed on a piece-work basis or in other similar ways, if it is deemed inappropriate to determine the minimum wage rate in the way as prescribed in Paragraph (1), the minimum wage rate may be determined separately under the conditions as prescribed by the Presidential Decree.

Article 5-2 (Calculation of Wages for Application of Minimum Wage)

In case unit period of wage of a worker subject to the minimum wage is different from that of the minimum wage as prescribed in the paragraph (1) of the Article 5 of this Act, the method of calculating the concerned worker's wage based on the unit period of minimum wage shall be determined by the Presidential Decree. <Newly inserted by Act No. 6278, Oct. 23, 2000>

Article 6 (Effect of Minimum Wage)

(1) The employer shall pay the workers who are covered by the minimum wage, at least the minimum wage rate or more.

(2) No employer may lower the previous wage level on the ground of the minimum wage determined under this Act.

(3) Where a labor contract between an employer and a worker covered by the minimum wage provides for a wage that is less than the minimum wage rate, the relevant stipulation concerning the wage shall be null and void and the invalidated part shall be considered to be stipulated to pay the same wage as the minimum wage rate as determined under this Act.

(4) The wage falling under any of the following Subparagraphs

shall not be included in the wages referred to in Paragraphs (1) and (3):

1. Wages other than those paid regularly once or more times each month, and which are determined by the Minister of Labor;
2. Wages other than those paid for the prescribed working hours or prescribed working days, and which are determined by the Minister of Labor; and
3. Other wages which are deemed as inappropriate to be included in the minimum wage rate, and which are determined separately by the Minister of Labor.

(5) The provisions of Paragraphs (1) and (3) shall not oblige an employer to pay wages for the hours or days which a worker has not worked due to the following reasons:

1. Where a worker has not worked the prescribed working hours or prescribed working days for his own reason; and
2. Where an employer has not let a worker work the prescribed working hours or prescribed working days for a justifiable reason.

Article 7 (Those excluded from application of Minimum Wage)

The provisions of Article 6 shall not apply to any of the workers who falls under any of the following Subparagraphs and for whom the employer has obtained permission of the Minister of Labor under the conditions as prescribed by the Presidential Decree:

1. A worker with a very limited working capacity due to a mental or physical handicap;
2. A worker on probation;
3. A worker who receives an employer-provided skill fostering training as prescribed by the Vocational Training Promotion Act; and
4. Other workers to whom it is deemed as inappropriate to apply the minimum wage.

<Amended by Act No. 5474, Dec. 24, 1997>

CHAPTER III

Determination of Minimum Wage

Article 8 (Determination of Minimum Wage)

- (1) The Minister of Labor shall determine the minimum

wage by August 5 of every year. In making a determination, the Minister of Labor shall request a deliberation of the Minimum Wage Council under the conditions as prescribed by the Presidential Decree, and shall determine the minimum wage according to the minimum wage proposal which has been deliberated and approved by the Minimum Wage Council.

<Amended by Act No.4575, Aug. 5, 1993>

(2) The Minimum Wage Council shall make a deliberation on the minimum wage and submit a minimum wage proposal to the Minister of Labor within 90 days after receiving a request thereof from the Minister of Labor under the latter part of Paragraph (1).

(3) If the Minister of Labor deems it difficult to determine the minimum wage according to the minimum wage proposal which is deliberated and submitted by the Minimum Wage Council under Paragraph (2), the Minister of Labor may request, within 20 days, the Minimum Wage Council to redeliberate the proposal for a period of 10 days or more, indicating the reasons for such request. *<Amended by Act No.4575, Aug. 5, 1993>*

(4) The Minimum Wage Council shall, upon receiving a redeliberation request under Paragraph (3), redeliberate and submit a redeliberated proposal to the Minister of Labor within the prescribed period.

(5) If the Minimum Wage Council redecides, in making a redeliberation under Paragraph (4), the initial minimum wage proposal as referred to in Paragraph (2) with attendance of a majority of all the members and by a concurrent vote of two-thirds of members present, the Minister of Labor shall decide the minimum wage according to the proposal.

Article 9 (Raising of Objection against the Minimum Wage Proposal)

(1) When the minimum wage proposal is submitted to the Minister of Labor by the Minimum wage Council under Article 8 (2), the Minister of Labor shall publish the proposal under the conditions as prescribed by the Presidential Decree.

(2) If a representative of workers or employers has any objection against the minimum wage proposal published under Paragraph (1), he may raise an objection against the Minister of Labor within 10 days after it is published under the conditions as prescribed by the Presidential Decree. *<Amended by Act No.4575, Aug. 5, 1993>*

(3) If the Minister of Labor deems the objection as referred to in Paragraph (2), to be reasonable, he shall request the Minimum

Wage Council to redeliberate the minimum wage proposal under Article 8 (3), with the contents of the objection specified.

(4) With respect to the minimum wage proposal on which a redeliberation request has been made under Paragraph (3), the Minister of Labor shall not determine the minimum wage until the Minimum Wage Council submits a redeliberated and decided proposal under Article 8 (4).

(5) The scope of a representative of workers or employers as referred to in Paragraph (2) shall be determined by the Presidential Decree.

Article 10 (Public Announcement of the Minimum Wage and Taking Effect)

(1) When the Minister of Labor has determined the minimum wage, he shall announce publicly its contents without delay.

<Amended by Act No.4575, Aug. 5, 1993>

(2) The minimum wage announced publicly under Paragraph (1) shall come into force as of September 1 of the current year: Provided that the Minister of Labor may, if he deems necessary, determine separate effective date taking into consideration the wage bargaining season, etc. for category of business.

<Amended by Act No.4575, Aug. 5, 1993>

Article 11 (Obligation of Notice)

Any employer to whom the minimum wage applies, shall inform the workers of the related minimum wage by displaying it at conspicuous places or by using other appropriate means under the conditions as prescribed by the Presidential Decree.

CHAPTER IV

Minimum Wage Council

Article 12 (Establishment of Minimum Wage Council)

The Minimum Wage Council (hereinafter referred to as "Council") shall be established in the Ministry of Labor for the deliberation of minimum wage and other important matters related thereto.

Article 13 (Functions of Council)

The Council shall perform the following functions:

1. Deliberation or redeliberation on the minimum wage;
2. Deliberation on a classification by category of business to

- which the minimum wage is applicable;
3. Research and suggestions for the development of the minimum wage system; and
 4. Deliberation on other important matters related to the minimum wage, and referred by the Minister of Labor.

Article 14 (Composition, etc., of Council)

(1) The Council shall be composed of each nine members, respectively, representing workers (hereinafter referred to as "workers' members"), employers (hereinafter referred to as "employers' members"), and public interest (hereinafter referred to as "public interest members").

(2) The Council shall have two permanent members, who are to become public interest members.

(3) The term of office of a member shall be three years, but renewable.

(4) Where a vacancy occurs, the term of office of any members filling the vacancy shall be the remaining period of his predecessor's term.

(5) On the expiration of the term of office, members shall continue to perform their duties until their successors are appointed or entrusted.

(6) Matters necessary for qualifications, appointment, entrustment, etc. of members shall be determined by the Presidential Decree.

Article 15 (Chairman and Vice-Chairman)

(1) The Council shall have a Chairman and a Vice-Chairman.

(2) The Chairman and the Vice-Chairman shall be elected by the Council from among the public interest members.

(3) The Chairman shall control affairs of the Council and shall represent the Council

(4) When the Chairman is unable to perform his duties by accident, the Vice-Chairman shall act for him.

Article 16 (Special Members)

(1) The Council may appoint three or less special members from among the personnel of the administrative agencies concerned.

(2) Special members may attend and speak at the meeting of the Council.

(3) Matters necessary for qualifications, commission, etc. of special members shall be determined by the Presidential Decree.

Article 17 (Meetings)

(1) Meeting of the Council shall be convoked by the Chairman,

if the Minister of Labor or one-third or more of all the members requests it, or the Chairman deems it necessary to do so.

(2) The Chairman shall preside over the meeting of the Council.

(3) Except as provided otherwise by this Act, the meeting of the Council shall make a decision with attendance of a majority of all the members and by a concurrent vote of a majority of members present.

(4) For decision-making as referred to in Paragraph (3), the Council shall have attendance of one-third or more of workers' members and employers' members, respectively, unless workers' members or employers' members fail to attend without justifiable reasons even with two or more summon notices given.

Article 18 (Hearing of Opinion)

If deemed necessary to do so in performing its duties, the Council may hear the opinion of the workers, employers and other persons concerned.

Article 19 (Establishment of Technical Committee)

(1) The Council may, if deemed necessary, establish a technical committee by category of business or specific matter.

(2) The technical committee shall perform the functions as prescribed in Subparagraphs of Article 13, with part of the Council's authority delegated.

(3) The technical committee shall be composed of an equal number of members, each not exceeding five representing workers, employers, and the public interest members, respectively.

(4) The provisions of Articles 14 (3) to (6) 15, 17, and 18 shall be applicable to the technical committee. In this case, the term "Council" in the said provisions shall be considered as the term "technical committee".

Article 20 (Secretariat)

(1) The secretariat shall be established in the Council for the purpose of managing its affairs.

(2) The secretariat may have three or less researchers for the investigation and research of the technical matters necessary for the deliberation of the minimum wage, etc.

(3) Matters necessary for qualification, appointment and allowance of researchers, and the organization and operation of the secretariat shall be determined by the Presidential Decree.

Article 21 (Allowance, etc., of Members)

Any member of the Council or technical committees may be

paid allowance and travel expenses under the conditions as prescribed by the Presidential Decree.

Article 22 (Operational Regulations)

The Council may enact regulations concerning the operation of the Council and technical committees within the limit not contrary to this Act.

CHAPTER V

Supplementary Provisions

Article 23 (Survey of Living Expenses, Wage Conditions, etc.)

The Minister of Labor shall survey each year the living expenses, wage conditions, etc., of workers.

Article 24 (Support of Government)

The Government shall make its best effort to furnish the relevant data and to give any other necessary assistance to ensure the efficient application of the minimum wage system to workers and employers.

Article 25 (Report)

The Minister of Labor may request workers and employers to report on matters relating to wages, in the limit necessary for the enforcement of this Act.

Article 26 (Authority of Labor Inspector)

(1) The Minister of Labor shall have a labor inspector take charge of the matters relating to the enforcement of this Act under the conditions as prescribed by the Presidential Decree.

(2) In order to exercise the authority as referred to in Paragraph (1), the labor inspector may enter workplaces, demand presentation of accounting books and documents, inspect other articles, and ask the persons concerned any question.

(3) The labor inspector who enters and inspects under Paragraph (2), shall carry with him an identification card showing his status, and present it to the persons concerned.

(4) The labor inspector shall discharge the duties of a judicial police officer, as prescribed by the Act relating to perform Duties of Judicial Police and Scope of their Duties, on any crime committed in violation of this Act.

Article 26-2 (Delegation of Authority)

The authority of the Minister of Labor pursuant to this Act can be delegated in part to heads of local labor offices in accordance with Presidential Decree. <This Article newly inserted by Act No. 5888, Feb. 8, 1999>

Article 27 (Enforcement Decree)

Matters necessary for the enforcement of this Act shall be determined by the Presidential Decree.

CHAPTER VI

Penal Provisions

Article 28 (Penal Provisions)

Any person who violates the provisions of Article 6 (1) or (2) shall be punished by imprisonment for not more than three years or a fine not exceeding ten million won, or both.

Article 29 (Penal Provisions)

Deleted. <Act No. 5888, Feb. 8, 1999>

Article 30 (Joint Penal Provisions)

If a representative of a juridical person, or agent, employee or other hired person of a juridical person or individual has committed violations as prescribed in Article 28 in connection with the business of the juridical person or individual, not only shall the violator be punished, but also the juridical person or individual shall be fined in accordance with the relevant provisions. <Amended by Act No. 5888, Feb. 9, 1999>

Article 31 (Non-penal fines)

(1) Any one who falls under one of the following subparagraphs, shall be punished by a fine not exceeding one million won.

1. One who violates the provisions of Article 11;
2. One who fails to make a report or makes a false report as prescribed in Article 25;and
3. One who refuses, interferes with, evades the request or inspection pursuant to Article 26(2), or makes a false statement on the questions.

(2) The fines prescribed in paragraph (1) shall be levied and collected pursuant to Presidential Decree by the Minister of Labor.

(3) Those who object to the decision on the fines pursuant to paragraph (2) may raise the objection to the Minister of Labor within 30 days from the date when the notification of the decision is received.

(4) In case those who were levied fines pursuant to paragraph (2) submit the objection by the provisions of paragraph (3), the Minister of Labor shall notify, without delay, the fact to a competent court, and the court concerned shall bring the matter of the fines to trial by the Non-Contentious Case Litigation Procedure Act.

(5) In case those levied fines do not raise objections within the period prescribed in paragraph (3) and do not pay the fines, the fines, shall be collected pursuant to cases handling national tax arrears. <This Article Newly Inserted by Act No. 5888, Feb. 8, 1999>

Addenda

Article 1 (Enforcement Date)

This Act shall enter into force as of the date of its promulgation.

Addenda <Amended by Act No. 5888, Feb. 8, 1999>

(1) (Enforcement Date)

This Act shall enter into force as of the date of its promulgation.

(2) (Transitional Measures Concerning Penalty)

The penalty for acts committed prior to the enforcement of this Act shall be dealt with by the previous regulations.

Addenda <Oct. 23, 2000>

(1) (Enforcement Date)

This Act shall enter into force at the expiration of one month after its promulgation.

(2) (Application Cases Concerning Business to which This Act Newly Applies)

With regard to wage of a worker belonging to business to which this Act newly applies, the work offered after the enforcement of this Act shall be subject to the minimum wage.

(The rest omitted.)