



「Recent Cases on Wage Peak System in Korea」

1. Overview

The wage peak system was established by the Act on Prohibition of Age Discrimination in Employment & Promotion of Employment of Elderly (hereinafter referred to as the "Employment Act for the Elderly"), which was amended in 2015.

As the retirement age was extended to 60 years old with the the implementation of the Act, various issues were raised, such as increased labor costs and a reduction in new hires. In response, the Korean government introduced the wage peak system for public institutions, and it has also been adopted by major companies in Korea. The wage peak system involves adjusting wages by a certain percentage from a pre-retirement age.

In recent years, the Korean courts have issued a number of rulings stating that some of the wage peak systems adopted by various companies constitute age discrimination without reasonable justification. In particular, there have been a number of lower court rulings stating that some of the wage peak systems, especially some of the so-called "retirement age retention type wage peak systems" are invalid.

In the following, we will examine recent court rulings and provide key points to consider regarding the implementation and operation of the wage peak system.

2. Supreme Court Decision 2017 Da 292343, (case on Korea Electronics Technology Research Institute) May 26, 2022

On May 26, 2022, the Supreme Court ruled that the anti-discrimination clause of the Employment Act for the Elderly is a mandatory provision, rendering any employment rules contradicting it invalid. Consequently, the "retirement age retention type wage peak system," which involves employers maintaining the retirement age while reducing wages for a certain period until retirement, could be deemed invalid if it constitutes unjustifiable discrimination.

The Court emphasized that the assessment of whether discrimination is justified should consider various factors comprehensively, **including the purpose behind implementing the wage peak system, the extent of disadvantages faced by the targeted employees, and whether appropriate measures for wage reduction are introduced, ensuring that the funds reduced through the wage peak system are used for its original intended purpose.** In this particular case, the court found no justifiable reason for the wage peak system, stating that it was implemented to ease the burden of labor costs and increase performance achievement, without any measures for disadvantaged workers or any notable differences in the target levels or work tasks assigned to the workers under the wage peak system.

This ruling suggests that the so-called "retirement age retention type wage peak system" which involves adjusting the wages of employees before their retirement while keeping the existing retirement age unchanged, could be considered invalid unless justified with reasonable reason.

3. Daegu District Court Judgment 2021-ga-hap 205418 (Case on Gyeongbuk Regional Cooperative) April 27, 2023.

On April 27, 2023, the Daegu District Court ruled that even if there is an increase in the total amount of money received by the time of retirement under the 'retirement age extension type wage peak system', it may still be considered a 'change that is disadvantageous to the workers.' Therefore, the implementation of such a wage peak system requires the consent of the majority of workers through a collective decision-making method.

The defendant Cooperative implemented a wage peak system that extended the retirement age from 58 to 60 years, but also reduced wages from the age of 57, resulting in age-specific payment rates of 65% at 57, 60% at 58, 50% at 59, and 50% at 60. The court ruled that this wage peak system constituted an unfavorable change in employment rules because it imposed a wage reduction from the age of 57, which was "below" the existing retirement age of 58 and the "total wage amount" received by retirement increased, but only 50%. Moreover, the court held that for an unfavorable change to be lawful, there must be a **'majority consent by meeting method'**. However, the consent forms were submitted the day after the notice requesting consent was sent, in this case, which the court held could not be considered as 'meeting method' consent. Therefore, it was also determined that there was no consent under Article 94 of the Labor Standards Act for the wage peak system. As a result, the employment rule regarding the wage peak system for this case was deemed invalid without further examination of whether there was a 'justifiable reason' under the Employment Act for the Elderly.

This ruling highlights that even if the total amount of wages received by an employee increases under a retirement age extension type wage peak system, it may still be considered an unfavorable change to the relevant employment rules, necessitating compliance with the procedural rules outlined in the Labor Standards Act. Furthermore, the ruling points out that the employers implementing the wage peak system must also provide

evidence of majority consent obtained by a "meeting method," establishing the "procedural validity" of implementing the wage peak system.

4. Seoul Central District Court. Judgment 2020gaap575036 (KB Credit Information Case) May 11, 2023

On May 11, 2023, the Seoul Central District Court ruled that the 'retirement age extension type wage peak system' is invalid if there is an 'excessive reduction in annual salary' before the original retirement age, as it violates the obligation not to discriminate based on the age in employment under the Employment Act for the Elderly.

The defendant, KB Credit, in this case, on February 2016, extended the retirement age from 58 to 60 years old and implemented a wage peak system that involved reducing annual salaries from the age of 55. Under this system, employees were paid 45% to 70% of their previous year's annual salary, and only those who received high performance grades (such as S or A+) in their annual evaluations after turning 55 and until their retirement age of 60 could maintain their original wage level. This resulted in some employees experiencing a reduction to 45% of their previous year's salary right from the first year of the wage peak system. Additionally, if they received low performance grades, their total wages for the entire period of service could also be reduced, even though they worked for an additional two more years beyond the original retirement age.

The court in this case ruled that KB Credit's implementation of the wage peak system imposed an undue disadvantage on workers **by causing a significant and sudden drop in their wages.** It was also noted that KB Credit applied **a uniform wage reduction without taking appropriate measures such as reduction of the workload or work intensity for the affected employees.** Consequently, the wage peak system was deemed illegal and invalid as it unjustly differentiated wages based on their age without reasonable justification.

This ruling suggests that the validity of a retirement extension type wage peak system may depend on the extent of annual salary reduction. By way of examples, there have been cases like KT case, where wages were reduced by 10 percent every year from the implementation of the wage peak system until the retirement age, and Samsung Fire Insurance case, where annual salaries were gradually reduced from 90% to 60% over four years after the original retirement age. In these cases, the wage peak system was ruled valid.

5. Supreme Court Decision 2023da220875 (KT case), June 15, 2023

The Supreme Court recently made a final decision not to review the wage peak system case involving KT, thereby confirming the victory for the company.

In 2014, KT extended the retirement age from 58 to 60 years old and implemented the wage peak system (wage peak system with retirement age extension). Under this system, employees aged 56 received 90% of the previously set wage, employees aged 57 received 80%, and employees aged 59 received 60%.

The court in this case recognized that there was an urgent need for cost reduction in labor expenses due to the high number of older workers at the company when they introduced the wage peak system in 2014. The court also found it difficult to conclude that the wage peak system in this case caused a unilateral disadvantage to the workers since a comparison

between the wages before the retirement age extension and after the implementation of the retirement age extension with wage peak system showed that a greater amount of total wage was paid to the workers after implementation of the retirement age extension type wage peak system.

Additionally, even though there was no explicit reductions in workload or work intensity, the court considered that what was saved in labor expenses was used for the retirement age extension itself. Therefore, it was concluded that the absence of explicit reductions in workload or work intensity alone could not be insufficient to prove the lack of a reasonable reason for the wage peak system.

This is the Supreme Court's ruling on a wage peak system with an extended retirement age. It is anticipated that this ruling will serve as a precedent for future cases considering the necessity of implementing a wage peak system and need for the comparison of total wages earned by workers under the wage peak system with retirement extension with the total wages which could have been earned up to the original retirement age (without the retirement age extension).

6. Implications

The Supreme Court's ruling, 2017 Da 292343, which was summarized above, provided a standard for evaluating a wage peak system. Subsequently, several lower courts have issued judgments related to the wage peak system based on this standard, and it is expected that further wage peak system cases will arise in the coming days, with respect to companies that have implemented a wage peak system.

In light of these case precedents, it is evident that in order for a wage peak system to be considered valid, certain procedural requirements must be met. Moreover, it appears essential to be able to prove a reasonable justification for the wage adjustment which will be examined considering various factors comprehensively. These factors would include whether the particular wage peak system was introduced as a 'retirement age retention type system' or a 'retirement age extension type system', whether any measures are adopted for disadvantaged workers under the wage peak system, and whether the wage peak system with retirement age extension leads to a reduction in the total amount of wages to be earned by the employees.

In light of the foregoing, employers are in need to examine whether the procedural requirements are fulfilled at the time of their implementing the wage peak system. Additionally, employers should also proactively manage related legal risks by conducting a comprehensive review of their wage peak system, including but not limited to the examination of the amount of the wage reduction, any accompanying measures such as reduction of working hours, or changes in workload under the implementation of the system.

* * *

If you have any inquiries or questions regarding the above, please feel free to contact Ji-Joo Choi, an Attorney in the HR Department at LIN (Tel. +82-2-3477-8677).

Related Members



Sun Hee CHA
Attorney
T. 02-3477-3003
E. jskim@law-lin.com



Ji Su CHOI
Attorney
T. 02-3477-8677
E. jschoi@law-lin.com



Hyuk PARK
Attorney
T. 02-3477-3003
E. hpark@law-lin.com

Please note that our newsletters are published for general informational purposes only, and the content does not constitute the official views of LIN or a legal opinion on any matter.

To unsubscribe from this email, please send to lin-newsletter+unsubscribe@law-lin.com.

[More LIN Newsletters](#)



3F #306 G5 Central Plaza 27, Seochojungang-ro 24-gil, Seocho-gu,
Seoul, Republic of Korea

Tel: (+82) 2-3477-8695 Fax: (+82) 2-3477-8694