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** This Act reflects only the amendments made until June 30, 2013*

ACT ON THE PROTECTION, ETC. OF FIXED-TERM AND PART-TIME EMPLOYEES

Act No. 8074, Dec. 21, 2006

Amended by Act No. 8372, Apr. 11, 2007
Act No. 10339, Jun. 4, 2010
Act No. 11273, Feb. 1, 2012

CHAPTER I

General Provisions

Article 1 (Purpose)

The purpose of this Act is to promote the sound development of the labor market by redressing undue discrimination against fixed-term and part-time employees and strengthening the protection of their working conditions.

Article 2 (Definition)

The terms used in this Act shall be defined as follows :
<Amended by Act No. 8372, Apr. 11, 2007>

1. The term "fixed-term employee" refers to an employee who has signed a labor contract whose period is fixed (hereinafter referred to as "fixed-term labor contract").
2. The term "part-time employee" refers to a part-time employee as defined in Article 2 of the Labor Standards Act.
3. The term "discriminatory treatment" refers to unfavorable treatment in terms of wages and other working conditions etc. given without any justifiable reasons.

Article 3 (Scope of Application)

(1) This Act shall apply to all businesses or workplaces ordinarily employing five workers or more : Provided that this Act shall not apply to businesses or workplaces which employ only relatives living together with their employer and to domestic workers.

(2) With respect to businesses or workplaces ordinarily employing four workers or less, some of the provisions of this

Act may apply, as prescribed by the Presidential Decree.

(3) With respect to State and local government agencies, this Act shall apply regardless of the number of workers they ordinarily employ.

CHAPTER II

Fixed-term Employees

Article 4 (Employment of Fixed-term Employees)

(1) An employer may employ a fixed-term employee for a period not exceeding two years (In case where a fixed-term labor contract is repeatedly renewed, the total consecutive employment period shall not exceed two years.): Provided that, an employer may employ a fixed-term employee for more than two years in any of the following cases:

1. Where the period required to complete a project or particular task is defined;
2. Where a fixed-term employee is needed to fill a vacancy arising from a worker's temporary suspension from duty or dispatch until the worker returns to work;
3. Where the period required for a worker to complete his/her schoolwork or vocational training is defined;
4. Where a fixed-term labor contract is made with an aged person as defined in Article 2 Subparagraph 1 of the Aged Employment Promotion Act;
5. Cases prescribed by the Presidential Decree, where the job requires professional knowledge and skills or is offered as part of the government's welfare or unemployment measures;
6. Other cases prescribed by the Presidential Decree, where there is any reasonable ground equivalent to those described in subparagraphs 1 through 5.

(2) If an employer employs a fixed-term employee for more than two years even though those grounds under the proviso to paragraph (1) do not exist or cease to exist, the fixed-term employee shall be considered as a worker who has made a non-fixed term labor contract.

Article 5 (Conversion to Workers on Non-fixed Term Contract)

If an employer intends to make a non-fixed term labor contract, he/she shall make efforts to preferentially employ fixed-term employees engaged in the same or similar kinds of work in the business or workplace concerned.

CHAPTER III

Part-time Employees

Article 6 (Restrictions on Overtime Work of Part-time Employees)

(1) If an employer intends to have a part-time employee work in excess of the contractual working hours prescribed in Article 2 of the Labor Standards Act, he/she shall obtain consent from the relevant employee. In this case, the overtime hours shall not exceed 12 hours a week. *<Amended by Act No. 8372, Apr. 11, 2007>*

(2) Any part-time employee may refuse to do overtime work if the employer makes him/her do overtime work without obtaining his/her consent pursuant to paragraph (1).

Article 7 (Conversion to Full-time Workers, etc.)

(1) If an employer intends to hire a full-time worker, he/she shall make efforts to preferentially employ part-time employees engaged in the same or similar kinds of work in the business or workplace concerned.

(2) If a worker applies to work part time on account of household duties, study or any other reason, the employer shall make efforts to convert the worker to a part-time employee.

CHAPTER IV

Prohibition and Correction of Discriminatory Treatment

Article 8 (Prohibition of Discriminatory Treatment)

(1) An employer shall not give discriminatory treatment to any fixed-term employee on the ground of his/her employment status compared with other workers engaged in the same or

similar kinds of work under a non-fixed term labor contract in the business or workplace concerned.

(2) An employer shall not give discriminatory treatment to any part-time employee on the ground of his/her employment status compared with full-time workers engaged in the same or similar kinds of work in the business or workplace concerned.

Article 9 (Request for Correction of Discriminatory Treatment)

(1) If a fixed-term or part-time employee has received discriminatory treatment, he/she may file a request for correction with the Labor Relations Commission under Article 1 of the Labor Relations Commission Act (hereinafter referred to as "Labor Relations Commission"): Provided that, this shall not apply if six months have passed since such discriminatory treatment occurred (since such treatment ended in cases of continuous discriminatory treatment). *<Amended by Act No. 11273, Feb. 1, 2012>*

(2) When a fixed-term or part-time employee files a request for correction pursuant to paragraph (1), he/she shall clearly state details of the discriminatory treatment.

(3) Necessary matters concerning the procedures for and methods of filing a request for correction under paragraphs (1) and (2) shall be separately determined by the National Labor Relations Commission under Article 2 (1) of the Labor Relations Commission Act. (hereinafter referred to as "National Labor Relations Commission")

(4) With regard to disputes relating to paragraphs (1) through (3) and Article 8, the burden of proof shall be placed on employers.

Article 10 (Investigation, Inquiry, etc.)

(1) Upon receiving a request for correction under Article 9, the Labor Relations Commission shall conduct, without delay, a necessary investigation and inquiry into the parties concerned.

(2) When the Labor Relations Commission conducts an inquiry pursuant to paragraph (1), it may have a witness attend the inquiry at the request of the parties concerned or by virtue of its authority and ask necessary questions.

(3) In conducting an inquiry pursuant to paragraphs (1) and (2), the Labor Relations Commission shall give sufficient opportunities for the parties to present evidence and cross-examine witnesses.

(4) Necessary matters concerning the methods of and procedures for investigations and inquiries prescribed in

paragraphs (1) through (3) shall be determined by the National Labor Relations Commission.

(5) A Labor Relations Commission may have expert members to conduct professional surveys or research on the work of redressing discrimination. In this case, necessary matters concerning the number, qualification requirements and remuneration of such experts shall be prescribed by the Presidential Decree.

Article 11 (Mediation and Arbitration)

(1) A Labor Relations Commission may commence mediation procedures at the request of both or either of the parties concerned or by virtue of its authority during an inquiry prescribed in Article 10, and may conduct arbitration if the parties concerned file for arbitration under agreement to follow an arbitration decision taken by the Labor Relations Commission.

(2) A request for mediation or arbitration under paragraph (1) shall be filed within 14 days of the date on which a request is made to redress discriminatory treatment pursuant to Article 9 : Provided that, a request for mediation or arbitration may be filed after the 14-day period where the Labor Relations Commission approves thereon.

(3) The Labor Relations Commission shall sufficiently hear opinions from the parties concerned when conducting mediation or arbitration.

(4) The Labor Relations Commission shall present a mediation proposal or render an arbitration decision within 60 days of commencing mediation procedures or receiving a request for arbitration, if there is no special reason.

(5) The Labor Relations Commission shall, if both of the parties concerned accept a mediation proposal, prepare a mediation statement and if a arbitration decision is made, prepare a written arbitration decision.

(6) A mediation statement shall be signed and sealed by the parties concerned and all members involved in the mediation and a written arbitration decision shall be signed and sealed by all members involved.

(7) A mediation or arbitration decision under paragraphs (5) and (6) shall have the same effect as conciliation reached in the courts in accordance with the Civil Procedure Act.

(8) Matters concerning mediation and arbitration methods, preparation of a mediation statement or written arbitration

decision, etc., shall be determined by the National Labor Relations Commission.

Article 12 (Correction Order, etc.)

(1) If the Labor Relations Commission judges that the treatment in question is discriminatory after ending an investigation and inquiry under Article 10, it shall issue a correction order to the employer, and if it judges that the treatment in questions is not discriminatory, it shall make a decision to dismiss the request for correction.

(2) A judgment, correction order or dismissal decision under paragraph (1) shall be made in writing and delivered to the respective parties, clearly stating the reasons therefor. In this case, when issuing a correction order, the Labor Relations Commission shall specify details of such correction order, compliance deadline, etc.

Article 13 (Contents of Mediation, Arbitration or Correction Order)

The contents of mediation or arbitration under Article 11 or of a correction order under Article 12 may include suspending discriminatory actions, improving working conditions, such as wages, etc., and making adequate monetary compensation.

Article 14 (Confirmation of Correction Order, etc.)

(1) A party dissatisfied with a correction order or dismissal decision rendered by a Regional Labor Relations Commission may make a request for reexamination to the National Labor Relations Commission within 10 days of receiving the notice of such correction order or dismissal decision.

(2) A party dissatisfied with a decision made by the National Labor Relations Commission after reexamination pursuant to paragraph (1) may bring an administrative lawsuit against the decision within 15 days of receiving the notice of the reexamination decision.

(3) If no request for reexamination is made within the period prescribed in paragraph (1) or no administrative lawsuit is brought within the period prescribed in paragraph (2), the correction order, dismissal decision or reexamination decision shall be confirmed as final.

Article 15 (Submission of Status Report on Compliance with Correction Order)

(1) The Minister of Employment and Labor may request an employer to submit a status report on compliance with a

confirmed correction order. *<Amended by Act No. 10339, Jun. 4, 2010>*

(2) If an employer fails to comply with a confirmed correction order, the worker who has filed a request for correction may report the failure to the Minister of Employment and Labor. *<Amended by Act No. 10339, Jun. 4, 2010>*

Article 15-2 (Demand for Correction of Discriminatory Treatment by Minister of Employment and Labor)

(1) If an employer gives discriminatory treatment in violation of Article 8, the Minister of Employment and Labor may demand correction thereof.

(2) If the employer fails to accept the demand for correction under paragraph (1), the Minister of Employment and Labor shall specify the details of such discriminatory treatment and notify the Labor Relations Commission thereof. In such case, the Minister of Employment and Labor shall give a notice of the fact to the employer and worker concerned.

(3) Upon receiving a notification from the Minister of Employment and Labor pursuant to paragraph (2), the Labor Relations Commission shall examine, without delay, whether there is any discriminatory treatment. In such case, the Labor Relations Commission shall give the employer and worker concerned an opportunity to state their opinions.

(4) The provisions of Article 9 (4) and Articles 11 through 15 shall apply mutatis mutandis with regard to examinations by the Labor Relations Commission and other correction procedures under paragraph (3). In such case, "the date on which a request for correction is made" shall be read as "the date on which a notification is received", "dismissal decision" as "decision that there is no discriminatory treatment", "the parties concerned" as "the employer or worker concerned", and "the worker who has filed a request for correction" as "the worker concerned".

(5) Matters concerning examinations by the Labor Relations Commission, etc., under paragraphs (3) and (4) shall be determined by the National Labor Relations Commission.

<This Article Newly Inserted by Act No. 11273, Feb. 1, 2012>

CHAPTER V

Supplementary Provisions

Article 16 (Prohibition of Unfavorable Treatment)

An employer shall not dismiss or give any other unfavorable treatment to a fixed-term or part-time employee on the ground that he/she has committed any of the following acts:

1. Refusing the employer's unfair demand for overtime work under Article 6 (2);
2. Filing a request for correction of discriminatory treatment under Article 9, attending and making a statement at a Labor Relations Commission under Article 10 or making a request for reexamination or bringing an administrative lawsuit under Article 14;
3. Reporting a failure to comply with a correction order under Article 15 (2);
4. Giving notification under Article 18.

Article 17 (Written Statement of Working Conditions)

When an employer makes a labor contract with a fixed-term or part-time employee, he/she shall clearly state in writing all of the following matters : Provided that subparagraph 6 shall apply only to part-time workers.

1. Matters concerning the contract period;
2. Matters concerning working hours and rest hours;
3. Matters concerning components, calculation and payment methods of wages;
4. Matters concerning holidays and leave;
5. Matters concerning the place of work and jobs to do;
6. Work days and working hours of each work day

Article 18 (Notification to Inspection Agency)

If any violation of this Act or an order issued under this Act occurs in a business or workplace, any of its worker may notify the Minister of Employment and Labor or a labor inspector of the violation. <Amended by Act No. 10339, Jun. 4, 2010>

Article 19 (Delegation of Authority)

Part of the authority of the Minister of Employment and Labor under this Act may be delegated to the heads of local employment and labor offices as prescribed by the Presidential Decree. <Amended by Act No. 10339, Jun. 4, 2010>

Article 20 (Efforts of State, etc., for Employment Promotion)

The State and local governments shall make efforts to

preferentially take necessary measures, such as providing employment information, vocational guidance, job placement services, vocational skills development services, etc., to promote the employment of fixed-term and part-time employees.

CHAPTER VI

Penal Provisions

Article 21 (Penal Provision)

A person who gives unfavorable treatment to a worker in violation of Article 16 shall be punished by imprisonment of up to two years or a fine not exceeding 10 million won.

Article 22 (Penal Provision)

A person who makes a part-time employee do overtime work in violation of Article 6 (1) shall be punished by a fine not exceeding 10 million won.

Article 23 (Joint Penal Provisions)

If an agent, a servant or any other employee of an employer commits any of the offenses under Articles 21 and 22, not only shall the offender be punished, but the employer shall also be punished by the fine prescribed in the respective Articles.

Article 24 (Fine for Negligence)

(1) A person who fails to comply with a correction order confirmed under Article 14 (including cases where it is applied *mutatis mutandis* pursuant to Article 15-2 (4)) without any justifiable reason shall be punished by a fine for negligence not exceeding 100 million won. *<Amended by Act No. 11273, Feb. 1, 2012>*

(2) A person who falls under any of the following subparagraphs shall be punished by a fine for negligence not exceeding five million won: *<Amended by Act No. 10339, Jun. 4, 2010 and Act No. 11273, Feb. 1, 2012>*

1. A person who fails to comply with a request of the Minister of Employment and Labor to submit a status report without any justifiable reason in violation of Article 15 (1) (including cases where it is applied *mutatis*

- mutandis pursuant to Article 15-2 (4));
2. A person who fails to clearly state in writing working conditions in violation of Article 17.
- (3) A fine for negligence under paragraphs (1) and (2) shall be imposed and collected by the Minister of Employment and Labor as prescribed by the Presidential Decree. *<Amended by Act No. 10339, Jun. 4, 2010>*
- (4) A person who is not satisfied with the imposition of a fine for negligence under paragraph (3) may raise an objection against the Minister of Employment and Labor within 30 days of receiving notice of the fine for negligence. *<Amended by Act No. 10339, Jun. 4, 2010>*
- (5) When a person subject to a fine for negligence under paragraph (3) raises an objection pursuant to paragraph (4), the Minister of Employment and Labor shall notify without delay the competent court thereof, and the competent court so notified shall try the case of a fine for negligence in accordance with the Non-contentious Case Litigation Procedure Act. *<Amended by Act No. 10339, Jun. 4, 2010>*
- (6) If neither an objection is raised nor the fine for negligence is paid within the period stipulated in paragraph (4), the fine for negligence shall be collected according to the process of recovery of national taxes in arrears.

Addenda *<Act No. 8372, Apr. 11, 2007 ; Revision of the Labor Standards Act>*

Article 1 (Date of Enforcement)

This Act shall enter into force on the date of its promulgation: Provided that....omitted....the amended provision of Article 16 (9) of the Addenda shall enter into force on July 1, 2007.

Articles 2 through 15 Omitted

Article 16 (Revision of Other Acts)

- (1) through (8) Omitted.
- (9) Part of the Act on the Protection, etc. of Fixed-term and Part-time Employees shall be revised as follows :
- "Article 21" in subparagraph 2 of Article 2 shall be changed

to "Article 2".

"Article 20" in the former part of Article 6 (1) shall be changed to "Article 2"

(10) through (24) Omitted

Article 17 Omitted.

Addenda <Act No. 10339, Jun. 4, 2010>

Article 1 (Date of Enforcement)

This Act shall enter into force one month after its promulgation. <Proviso omitted>

Articles 2 and 3 Omitted

Article 4 (Revision of Other Acts)

(1) through (31) Omitted.

(32) Part of the Act on the Protection, etc. of Fixed-term and Part-time Employees shall be revised as follows :

"Minister of Labor" in Article 15 (1) and (2), Article 18, Article 19 and Article 24 (2) 1 and (3) through (5) shall be changed to "Minister of Employment and Labor".

"Local labor offices" in Article 19 shall be changed to "local employment and labor offices".

(33) through (82) Omitted

Article 5 Omitted

Addenda <Act No. 11273, Feb. 1, 2012>

Article 1 (Date of Enforcement)

This Act shall enter into force six months after its promulgation.

Article 2 (Applicability concerning Request for Correction of Discriminatory Treatment)

The amended provisions of Article 9 (1) shall apply to cases where a request for correction of discriminatory treatment is made after this Act enters into force.