

The Minimum Wage System in Korea

- An Introductory Guide -

Taimyun Jung

(Economic and Social Development Commission)



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1. Overview of the Minimum Wage System

A. Significance

The minimum wage system determines the minimum wage level through the intervention of the state in the wage-determination process between management and labor, and mandates by law that employers pay wages above the minimum level to protect low-wage workers.

Wages are determined according to the supply and demand for the production factor, labor, in the labor market, and it is not up to the government to intervene in the process to determine actual wages. However, if the wage determined in the labor market is so unacceptably low that it results in adverse social effects, the government must intervene, determine the minimum wage level, and mandate its payment by employers. The minimum wage system was introduced to partially modify the principle by which management and labor voluntarily determine wages.

B. Chronology and Legal Grounds

The Labor Standards Act enacted in 1953 provides the legal grounds for determining the minimum wage, but accommodating the minimum wage system was judged to be difficult at the time given Korea's economic situation, which was still in the initial stages of industrialization; therefore at that time the provisions concerning the minimum wage system in the Labor Standards Act were not applied.

Article 34 (Minimum Wage) of the Labor Standards Act (May 10, 1953)

- 1) The Ministry of Social Affairs may determine the minimum wage for workers employed in certain types of businesses or jobs as needed.
- 2) In cases in which the Ministry of Social Affairs intends to determine the minimum wage based on the above clause, the Ministry must have the agreement of the Labor Relations Commission.

However, rapid economic growth after the late 1960s resulted in explosive growth of the number of low-wage workers, which became a social issue. Therefore, consensus was reached that the introduction of the minimum wage system was inevitable as an institutional solution to low wages and to guarantee workers a certain level of economic stability, and that the economic situation was ready to accommodate the minimum wage system. Thus, the Minimum Wage Act was enacted and promulgated on December 31, 1986, and the Act entered into force on January 1, 1988.

Thus far, the system has been improved through nine amendments of the Minimum Wage Act, ten amendments of the enforcement decrees, and six amendments of the enforcement rules.

The minimum wage system became guaranteed with the October 1987 amendment of the Constitution, which states in Article 32, Clause 1, that “the government must implement the minimum wage system as stipulated by law.”

C. Purpose of the Minimum Wage System

The purpose of the minimum wage system is to stabilize workers' lives and to improve the quality of the labor force by guaranteeing a minimum level of wages, thereby contributing to the sound development of the national economy (Article 1 of the Minimum Wage Act).

The following effects are expected when the wages of workers who have actually received a wage less than the minimum wage are raised to a level above the minimum wage.

- It will contribute to bridging the wage gap and improve the distribution of income by solving the low-wage issue.
- Guaranteeing workers a certain standard of living will stabilize the lives of workers and boost their morale, resulting in higher labor productivity.
- Competition based on low wages will be sublated, and the payment of appropriate wages will be required, promoting fair competition and achieving rational management.

2. Who Determines the Minimum Wage, and How?

A. Principles for Determination

Minimum Wage Determination Method

- The format and details of minimum wage systems differ from country to country. Minimum wages are set using methods such as 1) determination by the legislative branch (the United States), 2) determination by the executive branch (the Netherlands, France, New Zealand, China, Vietnam, the United Kingdom, and Japan), 3) final decision by a commission (Australia and Turkey), 4) determination through collective agreement (Belgium and Germany), and 5) determination through arbitration tribunals or labor relations commissions (formerly Australia and New Zealand).
- In Korea, the executive branch sets the minimum wage. The government requests the Minimum Wage Council, which is composed of councilors representing workers, employers, and public interest (neutral) delegates, conduct a preliminary deliberation of the minimum wage. The government then sets the minimum wage based on the results of the Council's deliberation.

Establishment, Composition, and Appointment of the Minimum Wage Council

- **Establishment** : The Minimum Wage Council is established within the Ministry of Employment and Labor to determine the minimum wage and other important matters related thereto
- **Composition** : The Minimum Wage Council is composed of a total of 27 councilors: 9 representing workers, 9 representing employers, and 9 representing the public interest
- **Appointment of Councilors** : Worker councilors, employer councilors, and public interest councilors are nominated by the Minister of Employment and Labor and appointed by the President

- Worker councilors and employer councilors are nominated by the Minister of Employment and Labor from among those recommended by union confederations and national-level employer organization(s) designated by the Minister of Employment and Labor, respectively.
 - Public interest councilors are appointed from the following.
 - 1) Those who, having been a high-ranking public official (level 3 or above) or part of a group of high-ranking public officials, are highly knowledgeable and experienced in labor issues
 - 2) Those who currently are or previously were employed as an associate or higher-ranking professor of labor economics, industrial relations, labor law, sociology, social welfare, or any other relevant studies at universities or colleges for five years or more
 - 3) Those who currently are or previously were engaged in research on labor issues for ten years or more (five years or more for those with a doctoral degree in one of the fields mentioned in 2) at a publically acknowledged research institute
 - 4) Those who are recognized by the Minister of Employment and Labor to possess knowledge or experience equivalent to 1), 2), or 3)
- **Chairman** : The Chairman and the Vice-Chairman are elected by the Council from among the public interest councilors. The Chairman manages the general affairs of the Council and represents the Council

Term of Office of the Minimum Wage Councilors

- The term of office of a councilor is three years, and is renewable. Where a vacancy occurs, the term of office of any councilor filling the vacancy is the remaining period of his/her predecessor's term.

- Even after the expiration of the term of office, councilors continue to perform their duties until their successors are appointed or entrusted.

Functions of the Minimum Wage Council

- The Council 1) deliberates or redeliberates on the minimum wage, 2) deliberates on the classification by type of business to which the minimum wage applies, 3) researches and makes suggestions for the development of the minimum wage system, and 4) deliberates on other important matters related to the minimum wage, referred to the Council by the Minister of Employment and Labor.

B. Determination Process

Request for Deliberation of the Minimum Wage

The Minister of Employment and Labor requests, by March 31 each year, that the Minimum Wage Council deliberate on the minimum wage.

Deliberation of the Minimum Wage

The Council, upon receiving a request for deliberation on the minimum wage from the Minister of Employment and Labor, makes such deliberation and determines and submits a minimum wage proposal to the Minister of Employment and Labor within 90 days after the date on which the request for deliberation was received.

- Typical deliberation period for the minimum wage: April 1 to June 29 (90 days) of each year

The Minimum Wage Council composes and operates bodies such as the general assembly or technical committees for the efficient facilitation and professional review of the minimum wage deliberation.

- The general assembly is composed of all councilors of the Minimum Wage Council, and makes the final decision on the proceedings of the Council.
 - A technical committee is composed of an equal number of worker councilors, employer councilors, and public interest councilors, each number not to exceed five. Each committee deliberates on the items delegated by the general assembly and reports the results to the general assembly.

The Technical Committee on Wage Level and the Technical Committee on Living Costs are currently in operation. The Technical Committee on Wage Level researches and analyzes the wage status and labor productivity of workers, and deliberates on issues related to the minimum wage proposal. The Technical Committee on Living Costs analyzes and deliberates data related to the cost of living, which is the basis for deliberation of the minimum wage.

Decision on the Minimum Wage

The Minimum Wage Council makes a decision with the attendance of a majority of all councilors and approval of two-thirds of the councilors present. This includes at least one-third of the worker councilors and one-third of the employer councilors.

To prevent worker councilors or employer councilors from hindering the decision-making process by failing to attend, decisions may be made with the attendance of a majority of all councilors and approval of a majority of the councilors present when councilors do not attend without just grounds despite being requested to attend on two or more occasions.

Public Announcement of the Minimum Wage Proposal

The Minister of Employment and Labor, upon receiving a minimum wage proposal from the Council, announces the minimum wage proposal by types of businesses or workplaces and the scope of the applicable types of businesses without delay.

Objection to the Minimum Wage Proposal

If representatives of workers or employers object to the announced minimum wage proposal, they may file a complaint with the Minister of Employment and Labor within ten days of the announcement.

Those who are eligible to raise objections are representatives of union confederations or industrial union confederations in the case of workers, and representatives of national-level employer organization(s) designated by the Minister of Employment and Labor in the case of employers.

Redeliberation of Minimum Wage Proposal

The Minister of Employment and Labor may request the redeliberation of the minimum wage proposal in the following cases.

- In cases in which an objection made by the representatives of worker or employer groups is accepted
- In cases in which it is recognized that the minimum wage is difficult to determine based on the minimum wage proposed by the Minimum Wage Council

The Minister of Employment and Labor may not determine the minimum wage based on the minimum wage proposal for which redeliberation has been requested until the Minimum Wage Council resubmits a minimum wage proposal after redeliberation.

Determination of the Minimum Wage

The Minister of Employment and Labor determines the minimum wage by August 5 of each year. In this case, the Minister of Employment and Labor requests deliberation by the Minimum Wage Council and determines the minimum wage based on the minimum wage proposal submitted by the Council after deliberation.

If the Council makes decision again, in making the redeliberation with the attendance of a majority of all councilors and approval of two-thirds of the councilors present, the Minister of Employment and Labor sets the minimum wage according to the proposal.

Public Announcement of the Minimum Wage

If the Minister of Employment and Labor has determined the minimum wage, he/she announces its contents publicly, without delay.

Entrance into Force of the Minimum Wage

The minimum wage announced publicly enters into force on January 1 of the following year.

However, the Minister of Employment and Labor may, if deemed necessary, set different effective dates according to type of business in consideration of wage bargaining periods, and so forth.

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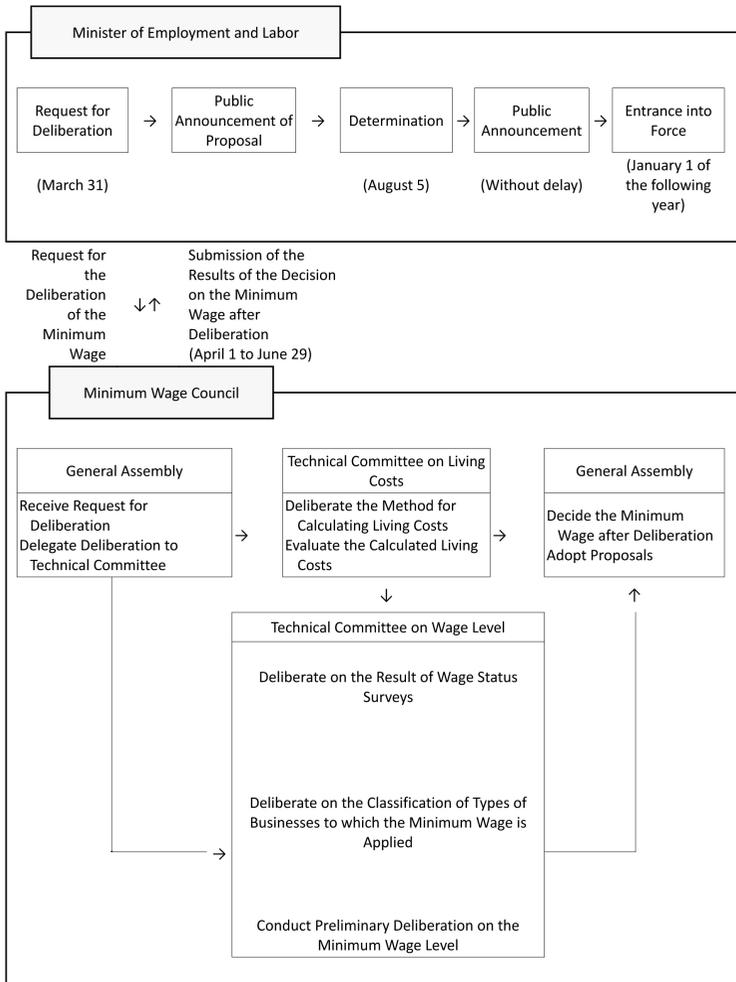


Figure 1. Flow Chart of the Minimum Wage Deliberation and Determination Process.

3. What Are the Types of Minimum Wages, and What Are the Criteria for Determination?

A. Types of Minimum Wages

By scope of application, the types of minimum wages include a *general minimum wage*, a single minimum wage applied nationwide; a *regional minimum wage*, a minimum wage applied differently in different regions; and an *industrial minimum wage*, a minimum wage applied differently in different industries.

Table 1. Types of Minimum Wage Systems by Country

Minimum wage system	Countries
General	Greece, the Netherlands, Taiwan, Romania, Spain, Ireland, the United Kingdom, Israel, the Czech Republic, Columbia, Turkey, Paraguay, Portugal, Poland, France, Hungary, Australia
Regional	South Africa, Germany, Mexico, the United States, Brazil, Indonesia, Japan, China, Canada, Thailand
Industrial	Japan, South Africa, Germany, Indonesia

In Korea, the minimum wage is stipulated to be determined by type of business.

- However, in reality, the minimum wage does not differ according to type of business; instead, a single minimum wage is determined and applied across the country, with the exception of 1988, when the minimum wage was first applied.

B. Criteria for Determination

The criteria for the determination of a minimum wage is set to take into account the cost of living for workers, comparable workers' wages, labor productivity, and income-distribution ratio.

- Article 3 of the ILO Convention 131 stipulates that “the elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include:”
 - The needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups
 - Economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment

Factors presented as criteria for determining the minimum wage in Korea are interpreted as examples to consider when deliberating and setting the minimum wage. In reality, factors such as the rate of inflation, economic growth rate, employment growth, and income distribution are being utilized comprehensively as criteria for determination.

C. Units for Determination

The minimum wage rate is determined in units of hours, days, weeks, or months. Yet, when the minimum wage rate is determined in units of days, weeks, or months, the wage per hour must also be presented.

- The minimum wage rate has been mostly determined and publically announced as an hourly wage, and the minimum monthly wage is calculated by multiplying the minimum hourly wage by the number of working hours per month.

4. How Is the Minimum Wage Applied?

A. The Minimum Wage and Its Application

The minimum wage applied in 2011 is 4,320 won per hour, or 34,560 won per day (based on an 8-hour workday) for all types of businesses.

- However, a minimum wage of 10% less than the set minimum wage rate (3,888 won per hour) is applied for those who are in an apprentice period and for whom less than 3 months have passed since the beginning of the apprentice period.
- A minimum wage of 20% less than the set minimum wage rate (3,456 won per hour) is applied to those who are engaged in surveillance or intermittent work and who have obtained approval from the Minister of Employment and Labor.

Table 2. Minimum Wage Rate (applied in 2011)

Type of business	Hourly wage	Daily wage (based on an 8-hour workday)
All businesses	4,320 won	34,560 won
Those who have been employed as an apprentice for less than 3 months (10% reduction)	3,888 won	31,104 won
Those who are engaged in surveillance or intermittent work approved by the Minister of Employment and Labor (20% reduction until the end of 2011)	3,456 won	27,648 won

The minimum wage rate has increased continuously since its initiation in 1988, and the expansion of the workplaces for which the minimum wage is applied has contributed to stabilizing the lives of low-income workers.

- The number of workers benefiting from the minimum wage has

increased significantly, and the minimum wage rate has become a standard for various social security systems, expanding its social influence.

- Minimum wage rate (per hour): 462.5 won in 1988 → 1,865 won in 2000 → 4,100 won in 2010 → 4,320 won in 2011 → 4,580 won in 2012
- Number of beneficiaries: 94,000 persons in 1988 → 141,000 persons in 2000 → 2,566,000 persons in 2010
- Institutions pegged to the minimum wage (14 laws and 20 institutions): daily allowance for job-seekers, minimum allowance for maternity leave, minimum allowance for suspension of business, payment of grants for hiring people with disabilities, basis for the calculation of training allowances, basis for the calculation of special compensation for disasters, basis for the calculation of resettlement funds for North Korean refugees, and so forth

Table 3. Minimum Wage Rate and Its Influence by Year

Year	Applicable type of business, number of employees	Minimum wage rate (won per hour)	Rate of increase (%)	Number of workers covered (1,000)	Number of beneficiary workers (1,000)	Influence rate (%)
2012	All, 1+	4,580	6.0	17,048	2,343	13.7
2011	All, 1+	4,320	5.1	16,479	2,336	14.2
2010	All, 1+	4,110	2.75	16,103	2,566	15.9
2009	All, 1+	4,000	6.1	15,882	2,085	13.1
2008	All, 1+	3,770	8.3	15,351	2,124	13.8
2007	All, 1+	3,480	12.3	14,968	1,784	11.9
Sep. 2005- Dec. 2006	All, 1+	3,100	9.2	14,584	1,503	10.3
Sep. 2004- Aug. 2005	All, 1+	2,840	13.1	14,149	1,245	8.8
Sep. 2003- Aug. 2004	All, 1+	2,510	10.3	13,631	1,035	7.6
Sep. 2002- Aug. 2003	All, 1+	2,275	8.3	13,216	849	6.4

4. How Is the Minimum Wage Applied?

Year	Applicable type of business, number of employees	Minimum wage rate (won per hour)	Rate of increase (%)	Number of workers covered (1,000)	Number of beneficiary workers (1,000)	Influence rate (%)
Sep. 2001-Aug. 2002	All, 1+	2,100	12.6	7,152	201	2.8
Sep. 2000-Aug. 2001	All, 1+ (from Nov. 24, 2000)	1,865	16.6	6,692	141	2.1
	All, 5+ (until Nov. 23, 2000)			5,367	98	1.8
Sep. 1999-Aug. 2000	All, 5+	1,600	4.9	5,031	54	1.1
Sep. 1998-Aug. 1999	All, 5+	1,525	2.7	5,136	23	0.4
Sep. 1997-Aug. 1998	All, 10+	1,485	6.1	5,325	124	2.3
Sep. 1996-Aug. 1997	All, 10+	1,400	9.8	5,240	127	2.4
Sep. 1995-Aug. 1996	All, 10+	1,275	8.97	5,381	103	1.9
Sep. 1994-Aug. 1995	All, 10+	1,170	7.8	4,864	103	2.1
Jan. 1994-Aug. 1994	All, 10+	1,085	7.96	4,916	102	2.1
1993	All, 10+	1,005	8.6	5,045	228	4.5
1992	All, 10+	925	12.8	4,620	393	8.5
1991	All, 10+	820	18.8	4,556	393	8.6
1990	All, 10+	690	15.0	4,386	187	4.3
1989	Manufacturing, Mining, Construction, 10+	600	Group 1: 29.7 Group 2: 23.1	3,053	328	10.7
1988	Manufacturing, 10+	Group 1: 462.50 Group 2: 487.50		2,267	94	4.2

Note. The number of beneficiary workers is the number of low-wage workers (those who receive an hourly wage of less than the minimum wage) whose wages need to be increased when the minimum wage is increased. Influence rate = number of beneficiary workers / number of workers covered \times 100. Data from Minimum Wage Council (www.minimumwage.go.kr).

B. Coverage of the Minimum Wage

Scope of Application

- The coverage of the minimum wage has been expanded, taking into consideration both the economic burden of employers and the need to protect low-wage workers. The minimum wage is currently applied to all businesses or workplaces with one or more employee(s).

Table 4. Expansion of the Coverage of the Minimum Wage

Year	Scope of coverage
1988	Businesses in the manufacturing industry with 10 or more full-time workers
1989	Businesses in the manufacturing, mining, or construction industry with 10 or more full-time workers
1990	All businesses with 10 or more full-time workers
1999	All businesses with 5 or more full-time workers
2000	All workers

Workers

- *Worker* refers to someone who provides labor at a business or workplace in order to earn income, regardless of the job he or she performs.
- Therefore, the term *worker* is applied regardless of employment status, nationality, or age to include not only full-time workers but also temporary workers, part-time workers, and foreign workers.
- For those with disabilities, or those engaged in surveillance or intermittent work who meet the necessary conditions, the minimum wage is either waived or is applied at a reduced rate.

Employers

- *Employer* refers to business owners, those in charge of managing a business, or those who act on behalf of business owners

concerning other issues related to workers. Whether one is an *employer* depends on the job performed regardless of one's position or title.

C. Exclusion from Application of the Minimum Wage

The Minimum Wage Act does not apply to any business that employs only relatives living together, or to those hired for domestic labor.

- Relatives who do not live in the same residence cannot be considered *relatives living together*; and if one or more employee(s) other than relatives are living together, then the business cannot be considered “a business that employs only relatives living together,” and therefore, the Minimum Wage Act is applied.
- Those hired for domestic labor include hired cooks, housekeepers, laundresses, nannies, advisers, personal secretaries, butlers, chauffeurs, gardeners, and tutors, who are not workers as specified in the Labor Standards Act, and are subject to the employment-related laws of the civil code.

The Minimum Wage Act does not apply to seamen who are subject to the Seaman Act or to ship owners employing such seamen.

- However, the Minimum Wage Act applies to fishing boats or ships in the following cases: 1) ships with a gross tonnage of less than 5 tons; 2) ships sailing in lakes, rivers, or only within harbors; 3) fishing boats (operating in coastal waters) with a gross tonnage of less than 20 tons designated by the decree of the Ministry of Maritime Affairs and Fisheries; 4) barges regulated by Article 1-2, Clause 1, Number 3 (barges that are registered for the operations of a shipping business according to the Shipping Act are excluded).
- Those whose ability to work is apparently low as a result of mental or physical disabilities, or others to whom it is deemed inappropriate to apply the minimum wage by the Minister of

Employment and Labor, may be excluded from the application of the minimum wage.

- The approval for exceptions in the application of the minimum wage is kept at a minimum to prevent employers from using exceptions to lower the wage of workers, and in cases in which the requirements for approval are no longer met after approval, the approval is canceled. The approval period may not surpass 1 year.

D. Differential Application of the Minimum Wage

The minimum wage was not applied to those who are in an apprentice period and for whom less than 3 months have passed since the beginning of their apprentice period, or to those who are engaged in surveillance or intermittent work and have obtained approval from the Minister of Employment and Labor. However, with the amendments of the Minimum Wage Act, they became subject to payment of the minimum wage at a reduced rate beginning on September 2005 and the year 2007, respectively.

Apprentices

- *Apprentice* refers to those who are in an apprentice period and for whom less than 3 months have passed since the beginning of their apprentice period, taking into consideration the relatively lower level of skills compared with regular workers, as they are providing labor in order to achieve regular employment in the future.
- Explicit proof of *apprenticeship* must be specified in the labor contract, employment rules, or collective agreement, and the application of a reduced rate may not surpass 3 months. Therefore, even if the apprentice period agreed on between the parties surpasses 3 months, the application of a reduced rate may not surpass 3 months.

Table 5. Application of the Minimum Wage for Those in an Apprenticeship Period

Period	Method of application
Jan. 1, 1988– Aug. 31, 2005	Those who are in an apprenticeship period, for whom less than 3 months have passed since the beginning of his/her apprenticeship period, and who have obtained approval from the Minister of Employment and Labor are excluded from the application of the minimum wage
From Sep. 1, 2005 on	A rate of 10% less than the hourly minimum wage

Those Who Are Engaged in Surveillance or Intermittent Work

- Initially, a rate of 30% less than the minimum wage was applied in 2007 for those who are engaged in surveillance or intermittent work and have obtained approval from the Minister of Employment and Labor, but that rate was lowered to 20% in 2008, and the minimum wage will be applied without reduction beginning on January 1, 2012, unless the reduction rate is newly designated by December 31, 2011.
 - **Those who are engaged in surveillance work:** Those who are engaged in work that involves mostly surveillance and that innately does not impose a heavy psychological or physical burden (for example, guards [for commercial, office, or residential buildings], guards for products, janitors, and so forth)
 - **Those who are engaged in intermittent work:** Those whose work is intermittent and sporadic, with long intervals between jobs (mechanics, plumbers, day-duty substitutes for schools, and so forth)

Table 6. Application of the Minimum Wage for Those Who Are Engaged in Surveillance or Intermittent Work

Period	Applied rate
Jan. 1–Dec. 31, 2007	A rate of 30% less than the hourly minimum wage rate
Jan. 1, 2008–Dec. 31, 2011	A rate of 20% less than the hourly minimum wage rate
From Jan. 1, 2012 on	The minimum wage without reduction from January 1, 2012, unless the reduction rate is newly designated by December 31, 2011

5. Which Types of Wages are Subject to the Minimum Wage?

A. Scope of Wages Included in the Minimum Wage

The scope of wages included in the minimum wage should be set and should operate based on clear standards to guarantee a minimum wage level for low-wage workers.

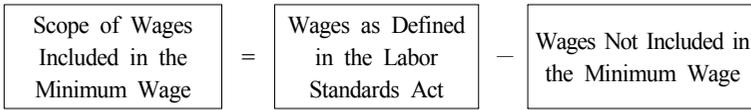
For example, including wages and additional wages for extended work and holiday work in the minimum wage would make the minimum wage system exist in name only.

Therefore, each country uses standards to determine the scope of wages to include in the minimum wage from among the types of wages paid to workers, and those standards differ from country to country.

In Korea, “the standard for the scope of wages included in the minimum wage” had been applied commonly to all workers since the minimum wage system was first applied in 1988, but since June 2009 a separate set of standards has been applied to taxi drivers.

B. Judgment on the Scope of Wages Included in the Minimum Wage in General

The scope of wages included in the minimum wage in general is “wages, salaries, and any other money and valuable goods an employer pays a worker for his/her work, regardless of what such payments are called”; in other words, the scope is determined by excluding “the wages not included in the minimum wage” according to the Minimum Wage Act from the wages specified in the Labor Standards Act.



The current Minimum Wage Act specifies the scope of wages not included in the minimum wage (Table 7) and the scope of wages included in the minimum wage (Table 8) to facilitate the judgment of the scope of wages to be included in the minimum wage.

Whether individual wages are included in the minimum wage can be judged according to the following methods.

- Whether a wage is included in the minimum wage should not be judged based on what the wage is called, but rather by comprehensively considering the purpose of the minimum wage, the contents of labor contracts, employment regulations, and collective agreements, the type of occupation and form of duties, payment practices, and so forth.
- Wages that are not excluded according to Table 7 and not specified in Table 8 (for example, base pay, wages according to the wage-payment systems affected by output, wages according to other subcontract labor systems, etc.) are rightly included in the minimum wage.

5. Which Types of Wages are Subject to the Minimum Wage?

Table 7. Scope of Wages Not Included in the Application of the Minimum Wage

Scope of wages	
Wages, other than those paid regularly once or more every month	<ol style="list-style-type: none"> 1. Bonuses for good attendance paid for the attendance of workers for a period of longer than 1 month 2. Long-service allowances paid for continued service for a period of longer than 1 month 3. Incentives or bonuses paid for reasons that extend over a period of longer than 1 month 4. Other wages paid for interim or unexpected reasons such as allowances for weddings, preparation for the winter, making kimchi for winter, or physical training; or other wages or allowances for which the conditions for payment have been predetermined but the date of the reasons for the payment is not fixed or is irregular
Wages, other than those paid for contractual working hours or contractual working days	<ol style="list-style-type: none"> 1. Wages for working during yearly leaves, monthly leaves, paid leaves, or paid holidays 2. Wages or additional wages for extended work or holiday work 3. Additional wages for night work 4. Allowances for day or night duty 5. Other wages, regardless of what such wages are called, that cannot be recognized as wages paid for contractual working hours
Other wages as deemed inappropriate to be included in calculating the minimum wage	Allowances to subsidize the lives of workers such as family allowances, meal allowances, housing allowances, or commuting allowances; actual goods such as meals, dorms, housing, or shuttles for commuting; or other wages paid in a similar form for the welfare of workers

Table 8. Scope of Wages Included in the Application of the Minimum Wage

Scope of wages	
Common criteria	<ol style="list-style-type: none"> 1. Wages or allowances for which the grounds for payment are specified as wages in collective agreements, employment regulations, or labor contracts; or paid according to practice 2. Wages or allowances paid regularly or uniformly once or more every month for contractual labor (or total labor in the case of subcontract labor systems) according to the predetermined payment conditions and rates
Standards for judging individual wages or allowances	<p>Wages or allowances referred in the following other than the wages or allowances stipulated in Annex 1 which fall under the common criteria</p> <ol style="list-style-type: none"> 1. Allowances paid according to the relative importance of duties or responsibilities according to predetermined payment conditions, such as allowances for specific duties or positions 2. Allowances paid according to changes in the cost of living or allowances paid to settle the wage gap among different positions, such as allowances for the cost of living or adjustment 3. Allowances paid for those engaged in special jobs or those who possess skills, qualifications, or licenses, such as allowances for skills, licenses, special jobs, or dangerous jobs 4. Allowances uniformly paid to those working in special areas, such as allowances for working in remote areas or hostile environments 5. Allowances paid in equal amounts every month to those engaged in operating, driving, sailing, or flying buses, taxis, freight trucks, ships, or aircraft, such as allowances for boarding, flying, or sailing 6. Allowances paid in equal amounts every month to enhance production skills and efficiency, such as incentives for production 7. Other wages or allowances acknowledged to clearly meet the common criteria stipulated in numbers 1 through 6.

Case 1: Is a monthly salary the same as the minimum wage?

The minimum wage includes wages that are regularly and uniformly paid every month such as base pay; and allowances for specific positions, skills, and licenses; but does not include allowances and bonuses to subsidize the lives of workers such as family allowances, meal allowances, commuting allowances, or allowances for extended work; therefore, the scope of the minimum wage is smaller than that of monthly salaries.

Case 2: In the case where a yearly wage system is in place and a bonus of a fixed amount (for example, 600%) according to the employment regulation and collective agreement is paid in equal amounts each month, would the bonus be included in the minimum wage?

Whether a wage is included in the minimum wage should not be judged based on what the wage is called but rather by comprehensively considering the purpose of the minimum wage; the contents of labor contracts, employment regulations, and collective agreements; the type of occupation and form of duties; payment practices; and so forth.

In cases in which bonuses are paid regularly once a month for contractual working hours or days, such bonuses may be included in the minimum wage. In cases in which the same bonuses are paid uniformly to workers, such bonuses may also be considered a part of ordinary wages.

Yet, in cases in which the amount paid in bonuses is determined in yearly units or a period of longer than 1 month, it is appropriate not to include such bonuses in the minimum wage, as stipulated in Table 7.

Case 3: In the case where a 10% service charge for hotel rooms and food and beverages is charged and reserved by the company and fairly distributed to all employees along with the payment of the monthly wage, would this be included in the minimum wage?

In cases in which service charges are a part of wages according to the Minimum Wage Act, and paid regularly every month regardless of revenue, such service charges may be considered a wage included in the minimum wage. Yet, in cases in which the hotel charges the guests a certain percentage of the amount spent, and distributes such service charges to the workers, the amount paid to the workers will differ according to the number of guests. Such a service charge cannot be considered a wage paid regularly and therefore is not considered a wage included in the application of the minimum wage.

Case 4: In the case where a PC salesman, who is paid the sum of the monthly base pay and the incentive according to sales achieved, does not make any sales in a certain month and therefore is paid only the base pay that month, would this be a breach of the Minimum Wage Act?

Incentives based on sales would be considered a wage affected by output specified by the enforcement decrees of the Minimum Wage Act; therefore, whether there is a breach of the Minimum Wage Act should be judged by comparing the sum of the amount divided by the total monthly working hours for the given year and the monthly base pay divided by the monthly contractual working hours with the hourly minimum wage.

Case 5: Are welfare allowances included in the minimum wage?

Whether a wage is included in the minimum wage should not be judged by what the wage is called, but rather by comprehensively considering the purpose of the minimum wage; the contents of labor

contracts, employment regulations, and collective agreements; the type of occupation and form of duties; payment practices; and so forth.

In cases in which welfare allowances are paid regularly and uniformly each month, and are included in the list of ordinary wages in the calculation of the additional allowances set by the Labor Standards Act, and are, therefore, welfare allowances in name but cannot be considered to be for subsidizing the lives of workers or for the welfare of workers, such allowances should be included in the application of the minimum wage.

Case 6: In the case where an employer pays a foreign worker allowances to subsidize the life of the worker, such as meal allowances and housing allowances, would such allowances be considered to be within the scope of wages for the application of the minimum wage?

As stipulated in Table 7, allowances to subsidize the lives of workers, such as family allowances, meal allowances, housing allowances, or commuting allowances; actual goods such as meals, dorms, housing, or shuttles for commuting; or other wages paid in a similar form for the welfare of workers, are not considered wages included in the minimum wage.

C. Judgment on the Scope of Wages Included in the Minimum Wage of Taxi Drivers

In Korea, the wages of taxi drivers consist of *fixed wages* (base pay + incentives) and *wages affected by output* (revenues in surplus of the standard revenue after the worker submits the total revenue to the company or wages paid differentially to workers termed performance allowances or incentives according to the total revenue), and the percentage of the wages affected by output is significantly

larger than fixed wages, resulting in unstable income from wages.

- Subsequently, *wages affected by output*, which are highly volatile, have been excluded from the minimum wage to protect the livelihood of taxi drivers.
- In such cases, the scope of wages included in the minimum wage is separately stipulated for taxi businesses taking into consideration the working conditions, income structure, and wage system of taxi businesses. This has been in effect since July 2009, but the effective date varies from region to region.

 Date of enforcement by region: Metropolitan cities since July 1, 2009; the Jeju Area since July 1, 2010; and other areas since July 1, 2012

The minimum wage applied to taxi drivers includes wages paid once or more each month according to the payment conditions and rates determined by collective agreements, employment regulations, and labor contracts.

Table 9. Comparison of the Scope of Wages Included in the Minimum Wage for Workers in General and Taxi Drivers

	Workers in general	Taxi drivers
Wages affected by output	Included	Not included
Bonuses paid once or more each month	Not included	Included
Allowances or additional wages for extended work or holiday work	Not included	Not included
Money and other valuable goods to subsidize the lives of workers or for the welfare of workers such as family allowances	Not included	Not included

- “Wages other than those paid for contractual working hours or contractual working days” and “wages to subsidize the lives of workers or for the welfare of workers” are not included in the minimum wage.

Case 1: In the case where the collective agreement stipulates that a bonus of 600% per year is paid in equal installments of 50% every month to taxi drivers who have been working for 1 year or longer, would such a bonus be included in the scope of minimum wages?

In cases where the payment conditions and rates are stipulated by the collective agreement for bonuses, and bonuses are paid once or more each month regardless of the calculation period, such bonuses are included in the scope of minimum wages.

Furthermore, such bonuses need not have the same payment rates for all workers, and, therefore, as long as the payment conditions and rates are stipulated in collective agreements or elsewhere, such bonuses are included in the minimum wage even if the payment rates differ from worker to worker.

Case 2: In the case of taxi drivers, would allowances for diligence paid according to attendance be included in the scope of minimum wage?

Even if the allowance is based on the payment condition and that the allowance varies based on attendance, in cases in which the payment conditions are stipulated in the collective agreement or elsewhere, and payments are made once or more each month, the allowance is included in the minimum wage.

However, payment for contractual working hours or days missed by a worker due to personal circumstances is not mandatory.

Case 3: In the case where family allowances and meal allowances are paid each month, would such allowances be included in the minimum wage?

Even in cases where the payment conditions and rates for family allowances and meal allowances are stipulated in collective agreements, employment regulations, or elsewhere, and the allowances are paid each month, such allowances are deemed to be wages to subsidize the lives of workers or for the welfare of workers, and therefore are excluded from the scope of wages included in the minimum wage.

6. How is the Judgment Made on Whether a Wage Falls Short of the Minimum Wage?

A. Methods to Judge Whether a Wage Falls Short of the Minimum Wage

To implement the minimum wage and prevent disputes, it is necessary to predetermine methods for judging whether a wage received by a worker is above the minimum wage.

- As the minimum wage is determined and implemented as hourly wages, whether a wage falls short of the minimum wage can be judged by 1) separating the wages included in the minimum wage from the wages received, 2) converting them into an hourly wage, and 3) comparing the hourly wage with the publicly announced minimum wage.
- In Korea, in cases in which a worker attends all contractual working days for a week, this includes at least 1 day of paid holiday according to the paid weekly holiday system, and in cases in which wages are paid each week or month, weekly holidays are considered to be included in the wage; therefore, the contractual working hours of the paid weekly holiday need to be added to weekly or monthly contractual working hours, and converted to an hourly minimum wage.

Wages included in the minimum wage

- Wages are calculated by adding the base pay, which is paid regularly and uniformly each month, to fixed allowances.

Conversion to hourly wage

- After determining the wages included in the minimum wage and the contractual working hours, hourly wages are calculated by dividing the wage by the total contractual working hours for the

period of the wage.

- In cases of converting to hourly wages, if the agreed-upon working hours between the employer and workers are within the legal number of working hours, the agreed-upon working hours are considered the *contractual working hours*.
- In cases where the contractual working hours exceeds the legal number of working hours, the legal number of working hours is considered the contractual working hours, and the excess time is treated as extended work. The time for which workers are paid without the responsibility to provide labor is included in contractual working hours.

☞ Those who are engaged in surveillance or intermittent work and whose exclusion has been approved by the Minister of Employment and Labor and workplaces with 4 or less employees are excluded from the application of provisions related to working hours specified in the Labor Standards Act; therefore, the working hours determined by the employer and the worker are deemed to be the contractual working hours regardless of the legal number of working hours.

Comparison with the publicly announced minimum wage

- The hourly wage is compared with the publicly announced hourly minimum wage.
- Where there is an agreement to deduct a certain amount from the wages according to related laws, collective agreements, or otherwise, the wage before the deduction is used for the comparison.
 - (a) In cases in which income taxes and health insurance premiums are deducted from wages according to the Income Tax Act and

6. How is the Judgment Made on Whether a Wage Falls Short of the Minimum Wage?

other laws related to social security, judgment is based on the wage before deductions.

- (b) In cases in which a worker is given a pay cut as a disciplinary measure stipulated in collective agreements, employment regulation, or elsewhere, judgment is based on the wage before the pay cut.

B. Methods for Judgment by Types of Wages

For hourly wages

In cases in which wages are hourly wages, the hourly wage is directly compared with the publicly announced hourly minimum wage.

For daily wages

In cases in which wages are determined as wages per day, the amount is divided by the contractual working hours per day (the legal number of working hours for cases in which the contractual working hours have not been set), and converted to hourly wages.

In cases in which the contractual working hours per day is set but are not the same for all days, a week's average contractual working hours per day is calculated and used for the conversion.

Case 1: In the case where a worker's wage is 25,000 won per day (the wage within the scope of wages included in the minimum wage) and the contractual working hours are 7 hours per day, would this fall short of the minimum wage? (the hourly minimum wage was 4,320 won in 2011).

Conversion to hourly wage: $25,000 \text{ won} \div 7 \text{ hours} = 3,571 \text{ won}$

 The hourly wage is 3,571 won and therefore falls short of the hourly minimum wage of 4,320 won.

Case 2: In the case where a worker's wage is 30,000 won per day and the contractual working hours are 9 hours per day, would this fall short of the minimum wage? (the hourly minimum wage was 4,320 won in 2011).

Working hours for the calculation of the hourly wage: $8 + 1.5 = 9.5$
(Every hour in excess of the legal working hours is deemed extended work, and 0.5 hour is added for extended work, resulting in total working hours of 9.5 hours.)

Calculation of the hourly wage: $30,000 \text{ won} \div 9.5 \text{ hours} = 3,157 \text{ won}$

 The hourly wage is 3,157 won and therefore falls short of the hourly minimum wage of 4,320 won.

For weekly wages

For weekly wages (amount including wages for paid days off), the amount is divided by the contractual working hours per week (hours including the hours for paid days off or hours including the hours for paid days off in the legal working hours) to convert to hourly wages, and compared with the publicly announced hourly minimum wage.

In cases where the contractual working hours are not the same for every week, the average contractual working hours per week are calculated over a period of 4 weeks for the conversion.

Case 1: In the case where a worker's wage is 200,000 won per week and the legal number of working hours is 44 hours, would this fall short of the minimum wage? (the hourly minimum wage was 4,320 won in 2011).

Calculation of the hourly wage: $200,000 \text{ won} \div (44 + 8 \text{ hours for the paid weekly holiday}) = 3,846 \text{ won}$

6. How is the Judgment Made on Whether a Wage Falls Short of the Minimum Wage?

☞ The hourly wage is 3,846 won and therefore falls short of the hourly minimum wage of 4,320 won.

Case 2: In the case where a worker's wage is 175,000 won per week and the contractual working hours are 35 hours for the first week (5 days × 7 hours), 42 hours for the second week (6 days × 7 hours), 35 hours for the third week (5 days × 7 hours), and 42 hours for the fourth week (6 days × 7 hours), would this fall short of the minimum wage? (the hourly minimum wage was 4,320 won in 2011).

Calculation of the hourly wage: $175,000 \text{ won} \div [(35+42+35+42) \div 4 \text{ weeks}] + 7 \text{ hours for the paid weekly holiday}] = 3,846 \text{ won}$

☞ The hourly wage is 3,846 won and therefore falls short of the hourly minimum wage of 4,320 won.

For monthly wages

Wages excluding the *wages not included in the application of the minimum wage* from the monthly salary are divided by the contractual working hours per month (in cases in which the contractual working hours are not the same for every month, the average monthly contractual working hours over a period of 1 year are used) to convert to hourly wages, and compared with the publicly announced hourly minimum wage.

In cases where the contractual working hours are not the same for each month, the average monthly contractual working hours over a period of 1 year are calculated as follows.

- The average monthly contractual working hours over a period of 1 year is calculated using one of the following methods.

- 1) The total monthly contractual working hours over a period of one year divided by 12.
- 2) [(Contractual working hours per week + hours of the paid weekly holiday) × 52 weeks + (contractual working hour per day)] ÷ 12.

Case 1: In the case where a worker's wage is 980,000 won per month and the contractual working hours are 44 hours per week, would this fall short of the minimum wage? (the hourly minimum wage was 4,320 won in 2011).

Calculation of the monthly average contractual working hours: [(44 hours + 8 hours) × 52 weeks + 8 hours] ÷ 12 months = 226 hours

Conversion to hourly wage: 980,000 won ÷ 226 hours = 4,336 won

 The hourly wage is 4,336 won and therefore is above the hourly minimum wage of 4,320 won.

Case 2: In the case where a worker's wage is 800,000 won per month and the contractual working hours are 40 hours per week, would this fall short of the hourly minimum wage? (the hourly minimum wage was 4,320 won in 2011).

Calculation of the monthly average contractual working hours: [(40 hours + 8 hours of paid weekly holiday) × 52 weeks + 8 hours] ÷ 12 months = 209 hours

Conversion to hourly wage: 800,000 won ÷ 209 hours = 3,827 won

 The hourly wage is 3,827 won and therefore falls short of the hourly minimum wage of 4,320 won.

For inclusive wage systems

In the case of inclusive wage systems, the conversion to an hourly wage is made based on the total take-home pay and the calculation of the additional allowances according to the Labor Standards Act based on working hours, and the calculated hourly wage is compared with the publicly announced hourly minimum wage.

Case 1: In the case where a worker whose contractual working hours are 40 hours per week (8 hours per day from Monday to Friday) works 6 hours of extended work and receives 830,000 won excluding the wages not included in the minimum wage, would this fall short of the minimum wage? (the hourly minimum wage was 4,320 won in 2011).

Monthly contractual working hours: 209 hours

Extended work (6 hours) \times 1.5 = 9 hours

Calculation of the hourly wage: 830,000 won \div (209 hours + 9 hours)
= 3,807 won

 The hourly wage is 3,807 won and therefore falls short of the hourly minimum wage of 4,320 won.

Case 2: In the case where a worker whose contractual working hours are 40 hours per week (8 hours per day from Monday to Friday) works 6 hours of extended work and receives 950,000 won excluding the wages not included in the minimum wage, would this fall short of the minimum wage? (the hourly minimum wage was 4,320 won in 2011).

Monthly contractual working hours: 209 hours

Extended work (6 hours) \times 1.5 = 9 hours

Monthly contractual working hours: $950,000 \text{ won} \div (209 \text{ hours} + 9 \text{ hours}) = 4,358 \text{ won}$

 The hourly wage is 4,358 won and therefore is above the hourly minimum wage of 4,320 won.

For wages based on subcontracts

For wages determined by wage payment systems that are affected by production or other subcontract labor systems, total wages are divided by the total number of working hours during the wage calculation period (if there is a wage closure date, the wage closure period is used), and compared with the publicly announced hourly minimum wage.

For a combination of hourly wages, daily wages, monthly wages, and wages based on subcontracts

In cases where the wage received by a worker is a combination of hourly wages, daily wages, monthly wages, and/or wages based on subcontracts, the hourly minimum wage for each is calculated and the sum of the results is compared with the publicly announced hourly minimum wage.

Incentives calculated and paid according to monthly sales (affected by production) are converted to hourly wages by dividing the total number of working hours. And then, it is added to the hourly wages calculated by dividing the wages per month such as the base pay with the contractual working hours to judge whether the wage falls short of the hourly minimum wage.

Case 1: In cases where the monthly contractual working hours are 209 hours (174 hours + hours for paid weekly holidays), the total extended work per month is 40 hours, and a monthly wage of 800,000 won (monthly ordinary income of 600,000 won + wages and additional allowances of 200,000 won for extended work) is paid along with 300,000 won as wages affected by production, would this fall short of the minimum wage? (the hourly minimum wage was 4,320 won in 2011).

Calculation of the hourly wage affected by production: $300,000 \text{ won} \div 214 \text{ hours (174+40)} \doteq 1,401 \text{ won}$

Calculation of the hourly wage from the monthly wage: $600,000 \text{ won} \div 209 \text{ hours} \doteq 2,870 \text{ won}$

Calculation of the hourly wage: $1,401 \text{ won} + 2,870 \text{ won} = 4,271 \text{ won}$

 The hourly wage is 4,271 won and therefore falls short of the hourly minimum wage of 4,320 won.

For those who are engaged in surveillance or intermittent work

For those who are engaged in surveillance or intermittent work and approved by the Minister of Employment and Labor, provisions related to working hours, holidays, and recess hours do not apply. Therefore, the contractual working hours stipulated in the Labor Standards Act cannot be used to convert the daily, weekly, or monthly wages into hourly wages.

Accordingly, when converting to an hourly wage in order to judge whether a wage falls short of the minimum wage, the total wage (weekly wages, daily wages, monthly wages, etc.) to be paid is divided by the total number of working hours.

In cases where additional allowances for night work, which are excluded from the scope of wages included in the minimum wage, are included in the total wages for the wage calculation period, the additional allowances are excluded.

On the other hand, in cases where additional allowances for night work are included in the total wage, the additional allowances are converted into hours and added to the total number of working hours.

Even in cases where those who are engaged in surveillance or intermittent work are in an apprentice period according to the labor contract, reductions for apprentices are not applied redundantly.

Case 1: A guard and an employer agree that the guard, who cannot leave the guard's post for a full 24 hours a day, will have 4 hours of recess during the night to sleep, but the guard has no choice but to sleep in a chair at the guard's post, and 1 hour each for lunch and dinner, but the guard has no choice but to eat at the guard's post. The guard and the employer sign a written labor contract that give the guard a total of 6 hours of rest, including 4 hours during the night and 1 hour each for lunch and dinner, but forbids the guard from leaving the guard's post, and wages are not paid for the 6 hours. Would this be a violation of the Minimum Wage Act?

In cases where the employer of those engaged in surveillance or intermittent work receives approval from the Minister of Employment and Labor, provisions concerning working hours, holidays, and recess hours do not apply, but such provisions may be applied in cases where the worker and employer agree on having recesses during working hours.

However, workers must be guaranteed the use of recess hours at will,

free from the direction and supervision of the employer. Whether actual recesses are given must be judged based on the detailed facts.

Therefore, if a worker who works as a guard for a residential building is given a certain number of recess hours but the guard is mandated to remain in the workplace (at the guard's post), the line between working hours and recess hours is not clear, and the worker remains under the direction and supervision of the employer even during recesses. In such a case, it is difficult to judge that the worker is given recesses to use at will.

On the other hand, if a worker is guaranteed recesses to use at will, free from the direction and supervision of the employer, but the worker selects the workplace (guard's post) as the place for recess (rest), this is difficult to consider working hours even if the worker conducts work specific to his/her job during recesses.

Furthermore, the employer should guarantee recesses that the worker may use at will, completely free from the direction and supervision of the employer, but it is possible to limit how far the worker may go from the workplace in order to maintain contact in case of emergencies given the characteristics of surveillance or intermittent work.

Case 2: In the case of 24-hour shifts, what would be the total number of working hours when converting to hourly wages?

One day: 28 hours [24 hours + 4 hours of additional wages converted for night work (8 hours × surcharge rate 0.5)]

One week: 98.3 hours [(28 hours × 365 days ÷ 2) ÷ 52 weeks]

One month: 426 hours [(28 hours × 365 days ÷ 2) ÷ 12 months]

In cases where there are recesses within a day's working hours, recess hours are excluded when calculating the total number of working hours.

Case 3: In cases where those engaged in surveillance or intermittent work work every other day and are given 4 hours of rest during the night along with 1 hour each for lunch and dinner, and are paid 1,060,000 won per month, would this fall short of the minimum wage? (the hourly minimum wage was 4,320 won in 2011).

Number of hours per day for the payment of wages: 20 hours [24 hours of working hours per day - 6 hours of lunch break, dinner break, and recess during the night + 2 hours of night work surcharge converted (4 hours \times 0.5)]

Hourly minimum wage for those engaged in surveillance or intermittent work: 3,456 won (20% less than 4,320 won)

Average monthly minimum wage: 1,051,200 won [20 hours per day for the payment of wages \times 3,456 won of hourly minimum wage for those engaged in surveillance or intermittent work \times average number of working days per month (365 days \times alternate day shift 0.5 \div 12 months)]

 The monthly wage is 1,060,000 won and therefore is above the monthly minimum wage of 1,051,200 won.

7. What Effects Result from the Determination of the Minimum Wage?

A. Obligation of Notice by Employers

Employers are to inform their workers of the new minimum wage and the date on which it takes effect at least 1 day before it takes effect.

Employers should inform workers of the following:

- 1) Minimum wage of workers to whom the Minimum Wage Act applies
- 2) Wages not included in the minimum wage
- 3) Scope of workers within the workplace who are excluded from the application of the minimum wage
- 4) Date on which the minimum wage takes effect

Employers should inform workers of the minimum wage after the public announcement by displaying it where it can be easily seen by workers, or by other appropriate means under the conditions at least 1 day before the minimum wage takes effect.

A labor inspector inspects the implementation of the minimum wage, and performs the duties of a judicial police officer in relation to any offence committed in violation of the Minimum Wage Act.

An employer who violates the obligation to notify and report the minimum wage will be subject to a fine not exceeding 1,000,000 won.

B. Obligation to Pay the Minimum Wage

An employer must pay a wage equal to or above the minimum wage rate to workers to whom the minimum wage applies.

However, the payment of wages for hours or days on which work was not performed for the following reasons is not obligated.

- In cases in which a worker did not work during contractual working hours or on contractual working days due to personal circumstances
- In cases in which an employer did not give work to a worker during contractual working hours or on contractual working days on just grounds

C. Changes in the Labor Contract

In cases in which a labor contract sets the wage at less than the minimum wage rate, such provisions are null and void and the invalidated provision is regarded as stipulating the wage as being equal to the minimum wage rate.

Therefore, a worker may claim the payment of wages of less than the minimum wage based on this provision by applying the 3-year statute of limitations to exercise a claim for wages as stipulated in Article 49 (Prescription of Wages) of the Labor Standards Act.

D. Prohibition on Lowering the Level of Wages

An employer may not lower previous wages that were above the minimum wage to the minimum wage level on the grounds of the minimum wage.

Not lowering the previous wage level here refers to not lowering the previous wage level including base pay, various allowances, and bonuses.

- Therefore, an employer who lowers the wage level on the grounds of the minimum wage level is in violation of the provision that prohibits the lowering of the wage level even if the wage does not

fall short of the minimum wage.

Case 1: In cases where the current wage is less than the minimum wage and the wage paid is brought to above the minimum wage by converting a part of the bonus of 300%, which is currently not within the scope of wages included in the minimum wage, to special allowances paid each month, would this violate the regulation that prohibits the lowering of the previous wage level on the grounds of the minimum wage rate?

The scope of wages included in the minimum wage should not be judged based on what the wage is called, but rather by comprehensively considering the purpose of the minimum wage; the contents of labor contracts, employment regulations, and collective agreements; the type of occupation and form of duties; payment practices; and so forth.

Therefore, in cases where the wage is simply renamed a special allowance and a certain amount is paid each month, this is a wage calculated based on reasons which occurs over a period of longer than 1 month, and is not within the scope of wages included in the minimum wage.

However, unlike the above-mentioned case, in a case where the total wage remains the same but the items within the wage have been adjusted and changed, converting the bonus to ordinary wages would result in higher additional allowances for night work. It will also become a wage included in the minimum wage, which is not always disadvantageous for the workers.

E. Joint Liability of the *Direct Upper-Tier Contractor*

In the event that a project is carried out under a contract, if the contractee has paid his/her workers wages that are lower than the

minimum wage rate for reasons for which the contractor is liable, the contractor and the contractee have a joint liability.

- Where there are two or more tiers of contractors, the contractor for each tier is the direct upper-tier contractor and the contractee is the subcontractor.

The scope of reasons for which a contractor is liable:

- Where a contractor sets unit labor costs lower than the minimum wage rate at the time of the signing of the contract
- Where a contractor lowers unit labor costs to below the minimum wage rate during the contract period

The contractor (direct upper-tier contractor) and the contractee (subcontractor) have joint obligation for the wages of workers that fall short of the minimum wage rate.

- A worker may file a claim for the whole amount or a part of the wage obligation that falls short of the minimum wage rate with the contractor (direct upper-tier contractor) and/or the contractee (subcontractor) at the same time or consecutively.

Case 1: When selecting the subcontracting company, the lowest bid price method through open competitive bidding is used. In such a case, even if the estimated cost is above the minimum wage, the winning bid may fall below the minimum wage due to competition during the bidding process. If the company that won the bid shoulders the amount that falls short of the minimum wage, given that the public notice for the bid states that the minimum wage must be guaranteed, would the contractor be exempt from the joint liability stipulated in the Minimum Wage Act?

The case in which a public notice stated that “the minimum wage must be guaranteed” but the labor unit cost fell short of the minimum

7. What Effects Result from the Determination of the Minimum Wage?

wage as a result of the bid also applies to “a contractor’s act of determining unit labor costs lower than the minimum wage rate at the time of the signing of the contract” in the Minimum Wage Act.

8. What are the Penal Provisions for Violations of the Minimum Wage Act?

A. Penal Provisions

If an employer pays wages lower than the minimum wage rate, lowers wages that previously exceeded the minimum wage on the grounds of the minimum wage, or does not maintain the wage following the shortening of working hours,

- the employer is punished by imprisonment of up to 3 years or a fine not exceeding 20 million won. Both imprisonment and fine may be imposed simultaneously.

If a representative, an agent, a servant or any other employee of a juridical person commits the above offence in relation to the business of the juridical person, the juridical person, in addition to the offender, shall be punished by a fine pursuant to the same provision.

- If an agent, a servant, or any other employee of an individual commits the above offence in relation to the business of the individual, the individual, in addition to the offender, shall be punished by a fine pursuant to the same provision.

Case 1: What rights to claim for wages does a worker who is paid a wage which falls short of the minimum wage have?

Where a labor contract sets the wage at less than the minimum wage rate, such provisions are null and void and the invalidated provision is regarded as stipulating the wage as being equal to the minimum wage rate. Therefore, a worker may claim the payment of wages of less than the minimum wage and the statute of limitations is 3 years, just as with ordinary wages.

B. Fines

A fine not exceeding 1,000,000 won is imposed on a person who 1) fails to notify workers of the minimum wage rate determined and publicly announced by the Minister of Employment and Labor, 2) fails to report matters concerning wages to the workers within the limits necessary to implement the Minimum Wage Act although required to do so by the Minister of Employment and Labor, or 3) refuses, interferes with, or evades the request or inspection, or gives a false answer to questions asked.

9. What Are the Remedies for Workers Whose Rights Have Been Violated?

If a worker suffers an unjust loss such as receiving a wage of less than the minimum wage, the worker may request a redemption of rights and receive help by visiting the local employment office of the Ministry of Employment and Labor.

The website of the Ministry of Employment and Labor (www.molab.go.kr) and the website of the Minimum Wage Council (www.minimumwage.go.kr) offer details concerning the minimum wage. The counseling center of the Ministry of Employment and Labor can be reached at 1350 by phone for counseling on the minimum wage or for further assistance.

Labor inspectors of local employment offices may take redemptive action through investigations of the violation of the minimum wage, and in cases where the workplace does not execute the order for corrective action or in cases where records of violations of the minimum wage within the previous 3 years are confirmed, immediate legal action will be taken.