

ENFORCEMENT DECREE OF THE ACT RELATING TO PROTECTION, ETC., FOR DISPATCHED WORKERS

Presidential Decree No. 15828, July 1, 1998

Article 1 (Purpose)

The purpose of this Decree is to define matters delegated by the Act relating to Protection, etc., for Dispatched Workers and those necessary for the enforcement thereof.

Article 2 (Positive and Negative Jobs for Worker Dispatch)

(1) The jobs "selected by the Presidential Decree" in paragraph (1) of Article 5 of the Act relating to Protection, etc., for Dispatched Workers(hereinafter referred to as the "Act") shall refer to those in Annex 1.

(2) The jobs "determined by the Presidential Decree" in subparagraph 5 of Article 5 (2) of the Act shall refer to those falling under one of the following subparagraphs:

1. the dusty work as prescribed by subparagraph 3 of Article 2 of the Act on the Prevention of Pneumoconiosis and Protection, etc., of Pneumoconiosis Workers;
2. the work that is subject to issuance of health management pocketbooks as prescribed by Article 44 of the Industrial Safety and Health Act;
3. the work of medical persons as stipulated by Article 2 of the Medical Service Act, and the work of assistant nurses as stipulated by Article 58 of the same Act;
4. the work of medical technicians as provided by Article 3 of the Medical Technicians, etc., Act;
5. the driving work in a passenger vehicle transport business as prescribed by subparagraph 3 of Article 2 of the Act on Passenger Vehicle Transport Business; and
6. the driving work in a freight vehicle transport business as prescribed by subparagraph 3 of Article 2 of the Act on Freight Vehicle Transport Business.

Article 3 (Permission Criteria in Detail)

The criteria for asset and facility, etc., of a worker dispatch undertaking, which are stipulated in the provision of Article 9 (2) of the Act shall be as follows:

1. A business or a workplace shall have five or more employees (excluding dispatched workers), and have been insured

- under employment insurance, national pension insurance, industrial accident compensation insurance and health insurance;
- 2. An undertaker shall have capital more than 100 million won(asset evaluation value in case of an individual); and
- 3. The office's exclusive area shall be larger than 66m².

Article 4 (Constraints in Using Dispatched Worker)

It shall be 2 years during which an employer, after dismissing a worker for a managerial reason under Article 31 of the Labor Standards Act as stipulated in Article 16 (2) of the Act, shall not hire a dispatched worker for the purpose of performing the concerned job. Provided that where a trade union which is composed by the majority of workers(or a person who represents the majority of workers where such union doesn't exist) exists within the concerned business or workplace, the period may be shortened to 6 months only if it/he/she agrees.

Article 5 (Using Employer's Liability)

The "using employer's liability defined by the Presidential Decree" in the beginning clause of Article 34 (2) of the Act shall refer to the reasons falling under one of the following subparagraphs:

- 1. in case where a using employer breaches a contract on worker dispatch without a justifiable reason; and
- 2. in case where a using employer fails to pay rewards for worker dispatch, which are stipulated in the contract concerned on worker dispatch, without a justifiable reason.

Article 6 (Delegation of Authority)

The Minister of Labor, in accordance with Article 41 of the Act, shall delegate authority of each of the following subparagraphs to a chief of a regional labor authority:

- 1. permission, permission on change, report acceptance on changes and permission on renewal of a worker dispatch undertaking as stipulated in paragraphs (1) and (2) of Article 7 and paragraph (2) of Article 10 of the Act;
- 2. report acceptance on shutdown of worker dispatch undertaking as prescribed by paragraph (1) of Article 11 of the Act;
- 3. permission cancellation and business suspension of a worker dispatch undertaking as prescribed by Article 12 of the Act;
- 4. receipt of business report as prescribed by Article 18 of the Act;

5. shutdown action, etc., as prescribed by Article 19 of the Act;
6. guidance and advice as prescribed by Article 36 of the Act;
7. order of improvement as prescribed by Article 37 of the Act;
8. report order and visit, inspection, and questioning as prescribed by Article 38 of the Act;
9. material requests as prescribed by Article 39 of the Act; and
10. imposition and collection of the fine for negligence as prescribed by Article 46 of the Act.

Article 7 (Imposition and Collection Procedures for Fine for Negligence)

(1) When imposing a fine for negligence under Article 46 (2) of the Act, a concerned action in violation shall first be investigated and confirmed and then a written notice containing the offense and the amount of a fine for negligence thereof shall be given to a person who is subject to the fine for negligence.

(2) The Minister of Labor, when imposing a fine for negligence under the provision of paragraph (1), shall give an interim period of at least 10 days to a person who is subject to the fine for negligence, during which he/she can make his/her statement either in verbal form or in writing. If there is no such statement until the end of the designated date, it shall be considered that he/she has no statement to make.

(3) The Minister of Labor shall take into account the cause and result of the action in violation in determining the amount of fine for negligence. The criteria for a fine for negligence are shown in Annex 2.

(4) The procedure for a collection of a fine for negligence shall be determined by the Ordinance of the Ministry of Labor.

Addenda

This Decree shall enter into force on July 1, 1998.

[Annex 1]

Jobs Positive for Worker Dispatch
 <refers to Article 2 (1) of the Decree>

Korean Standard Classification of Occupations	Jobs Positive for Worker Dispatch	Remarks
213	computing professionals	
241	business professionals	
243	archivists and related information professionals	excludes the job of librarians(24321).
2444	philologists, translators and interpreters	
31141	telegraph and telephone communications engineering technicians	limited to assistants for examining reception in the area where it is poor
3118	draughtspersons	
3121	computer assistants	
31317	image equipment operators	limited to assistants
31325	radio and television broadcasting equipment operators	limited to assistants
33409	other teaching associate professionals	
3431	administrative secretaries and related associate professionals	
347	artistic, entertainment and sports associate professionals	
411	secretaries and keyboard operating clerks	excludes data entry operators (4113) and calculating machine operators(4114)
414	library, mail and related clerks	
4215	debt collectors and related workers	
4223	telephone switchboard operators	excludes where it is considered the core service in the concerned business
5113	travel guides	
5122	cooks	excludes those cooks in tourism and hotels as stipulated in Article 3 of the Tourism Promotion Act
5131	child-care workers	
51321	institution-based nursing aids	excludes assistant nurses
5133	home-based personal care workers	
52204	petrol pump attendants	
832	motor vehicle drivers	excludes the jobs stipulated in subparagraphs 5 and 6 of Article 2 (2)
91132	telephone salespersons	
91321	charworkers	
91521	doorkeepers	

[Annex 2]

**Imposition Criteria
for Fine for Negligence by Type of Violation**
<refers to Article 7 (3) of the Decree>

(unit : 10,000 won)

Violation	Provisions Concerned	Amount of Fine for Negligence
1. failure to report, or report of false information under Article 11 (1) of the Act	subparagraph 1 of Article 46 (1)	200
2. failure to file a report, or filing of a false report, under Article 18 or Article 38 (1) of the Act	subparagraph 2 of Article 46 (1)	300
3. violation of provisions of Article 27, Article 29, or Article 33 of the Act	subparagraph 3 of Article 46 (1)	200
4. failure to send concerned health examination results violating the provisions of paragraph (3) or (5) of Article 35 of the Act	subparagraph 4 of Article 46 (1)	200
5. violation of improvement order of Article 37 of the Act	subparagraph 5 of Article 46 (1)	300
6. rejection and interference or evasion of inspection without justifiable reasons as prescribed by paragraph (2) of Article 38 of the Act	subparagraph 6 of Article 46 (1)	300