

## Amendment of the Act on Employment of Foreign Workers, etc

### Q & A

October 2009

- Bill for the amendment of the Act on Employment of Foreign Workers, etc was passed at the National Assembly on September 16<sup>th</sup> 2009 and was promulgated on October 9<sup>th</sup> 2009.
- The Amended Act is to enter into force on April 10<sup>th</sup>, 2010, six months after the date of promulgation. However, provisions on the reemployment (Article 18-2) and the changing of workplace (Article 25) shall enter into force on Dec. 10<sup>th</sup>, 2009.
- Q&As contained hereinafter are focused on certain areas. Please refer to [www.eps.go.kr](http://www.eps.go.kr) for the comprehensive contents of the amended Act.

Foreign Workforce Policy Division  
Ministry of Labor

## ENFORCEMENT DATE OF THE AMENDED ACT

### Addenda

**Article 1 (Enforcement Date)**

This Act shall enter into force six months after its promulgation. However, revised provisions of Article 18-2 and Article 25 shall enter into force two months after the promulgation.

**Article 3 (Application of Special Cases for the Restriction on Employment Period)**

The revised provision of Article 18-2 shall apply from when the employer applies for the reemployment of the foreign worker who has been employed under the previous provision of Article 18 (1) at the time of entry into force of this Act and his/her expiration of three year employment period draws after the entry of force of this Act.

**Article 5 (Transitional Measure for Labor Contract Period)**

In case the employer who had signed a labor contract pursuant to the previous Article 9 (3) at the time of entry into force of this Act signs or renews the contract pursuant to the revised Article 9 (3) after the entry into force of this Act, he/she can sign or renew a contract for a period in which the total labor contract term pursuant to the previous Article 9 (3) is subtracted from three years.

**Article 6 (Transitional Measure for Fine and Fine for Negligence)**

The previous provisions for fines and fines for negligence shall apply to actions subject to fines and fines for negligence that took place before the entry into force of this Act.

- Enforcement Date of the Amended Act
  - Amended Act is to enter into force from **April 10<sup>th</sup> 2010** (six months after the promulgation).
  - However, provisions on the **reemployment** (Article 18-2) and the **changing of workplace** (Article 25) are to enter into force from **Dec. 10<sup>th</sup>, 2009** (two months after the promulgation).
  
- Application of the provision on the reemployment
  - The provision on the reemployment to be applied for foreign workers who are being legally employed as of Dec. 10<sup>th</sup>, 2009 and whose expiration of three-year employment period draws after Dec. 10<sup>th</sup> given that his/her employer submitted a reemployment application.
  - The provision is to be applied to **reemployment applications filed after Dec. 10<sup>th</sup>, 2009 by the employer.**

- Labor contract period

- The provision on the restriction on employment period is to be applied to labor contracts to be signed or renewed after April 10<sup>th</sup>, 2010.
- Example) In case an employer signed a labor contract with a worker who entered Korea on May 1<sup>st</sup>, 2009 for a year from May 1<sup>st</sup>, 2009 to April 30<sup>th</sup>, 2010, the employer can renew the labor contract within two year period from May 1<sup>st</sup>, 2010.

**REEMPLOYMENT (Effective from Dec. 10<sup>th</sup>, 2009)**

Before	Revised
<p>Article 18-2 (Special cases for the Restriction on Employment Period)</p> <p>(1) If an employer makes a request before the foreign worker, who has been employed in the Republic of Korea pursuant to this Act and whose employment period of three years has expired, leaves the Republic of Korea, the period stipulated by Article 18 (2) may be reduced as prescribed by the Presidential Decree for the relevant foreign worker.</p> <p>(2) Article 7(2) and Article 11 shall not be applied to the foreign worker who reenters the Republic of Korea and is employed pursuant to paragraph (1).</p> <p>(3) Other necessary matters such as employer's request procedure, etc. in relation to paragraph (1) may be prescribed by the Ordinance of the Ministry of Labor.</p>	<p>Article 18-2 (Special cases for the Restriction on Employment Period)</p> <p>(1) Notwithstanding Article 18 (1), the foreign worker pursuant to the following subparagraph shall be granted extension of employment period <u>within two years for one time only.</u></p> <p>1. <u>The foreign worker who is employed by the employer who was issued the employment permit pursuant to Article 8 (4) and for whom the employer applied for reemployment to the Minister of Labor before he leaves upon the expiration of three year employment period pursuant to Article 18.</u></p> <p>2. <u>The foreign worker who is employed by the employer who was issued the special employment permit pursuant to Article 12 (3) and for whom the employer applied for reemployment to the Minister of Labor before he leaves upon the expiration of three year employment period pursuant to Article 18.</u></p> <p>&lt;Deleted&gt;</p> <p>(2) Necessary matters concerning the procedure for the reemployment request by the employer</p>

	pursuant to paragraph (1) shall be prescribed by the Ordinance of the Ministry of Labor.
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## 1. When will the revised reemployment provision go into effect?

☞ Revised reemployment provision will start to be applied from the case in which the employer applies for the reemployment from Dec. 10<sup>th</sup>, 2009 (refer to the Article 3 of the Addenda)

☞ Example) In case an employer **submits an application for reemployment on Dec. 8th, 2009** for the worker whose employment period expires on January 15th, 2010, the worker has to leave Korea for one month according to the previous provision. (Revised Act is not applied and the worker can be reemployed for up to three years after his/her reentry)

- In case an employer **submits a reemployment application on Dec. 10th, 2009** and obtains permission for the worker whose employment period expires on January 15th, 2010, the worker can continue to work at the same workplace without having to leave Korea. (Revised Act is applied)

\* According to the Enforcement Rule of the Foreign Employment Act, an employer is required to **submit a reemployment application 90 days to 30 days prior to the expiration of the employment period** of the worker.

## 2. (Removal of 1 month departure requirement for the reemployment)

According to the revised provision on the reemployment, don't foreign workers who will be reemployed need to leave Korea for one month?

☞ Under the previous provision, a foreign worker had to leave Korea for one month if he/she was rehired after the expiration of three year employment period.

- According to the revised provision, if the employer submits a reemployment application from Dec. 10th, 2009 and obtains permission for the worker, the worker can continue to work for the extended employment period without having to leave Korea for one month.

3.(Limits on the reemployment) How many times can workers be reemployed? If reemployed, how long does the reemployment period extend?

☞ Reemployment is only allowed once. If reemployed, workers' reemployment period can be extended for up to two years

- \* During the reemployment period, workers are allowed to change workplace up to two times (when legitimate reasons exist)

☞ Foreign workers can work for up to three years for the first time and if reemployed, employment period can be extended for up to two years allowing workers to be employed for a maximum five-year period.

4. Does the reemployment provision apply to the ethnic Koreans with foreign nationality (H-2 visa type)?

☞ Yes. The ground is laid in the revised Act for allowing reemployment for ethnic Koreans with foreign nationality (H-2 visa holders).

- However, the reemployment is allowed for employers who signed the labor contract with the workers pursuant to the Foreign Employment Act and reported the starting of work to the Ministry of Labor of Korea only.

☞ For example, under the previous provision, an ethnic Korean with foreign nationality (H-2 visa holder) who arrived on Jan. 11<sup>th</sup>, 2007 has to leave Korea for one month when his/her three-year employment period expires (Jan.10<sup>th</sup>, 2010) if he/she is reemployed.

- However, under the revised provision, if the employer submits a reemployment application 90 days to 30 days prior to the expiration of the employment period of the worker, the worker can continue to work without having to leave Korea for one month. (Reemployment application has to be submitted after the entry into force of the revised Act)

\* For ethnic Koreans with foreign nationality, if the employer does not submit a reemployment application, the worker can voluntarily leave Korea and reenter, and work within his/her sojourn period. (Same as the previous provision)

### CHANGING OF WORKPLACE (Effective from Dec. 10<sup>th</sup>, 2009)

Before	Revised
<p>Article 25 (Permission for Change of Business or Workplace)            (1) In case a foreign worker is difficult to continue his/her normal employment relationship in a business or workplace due to situations falling under any of the following subparagraphs, the foreign worker may apply to an Employment Security Office for a transfer to other businesses or workplaces under the conditions prescribed by the Ordinance of the Ministry of Labor:</p>	<p>Article 25 (Permission for Change of Business or Workplace)            (1) The foreign worker who is employed by the employer who obtained an employment permit pursuant to Article 8 (4) and the foreign worker who is employed by said employer and <u>whose employment period is extended pursuant to Article 18 (2)</u> may apply to the head of the Employment Center for transfer to another business or workplace in accordance with the conditions prescribed by the Ordinance of the Ministry of Labor if employment relations cannot be maintained due to reasons falling under the following</p>

<p>1. ~ 3. ~</p> <p>&lt;Created &gt;</p> <p>4.</p> <p>(2) ~</p> <p>(3) In case a foreign worker has failed either to obtain permission to change his/her workplace pursuant to Article 21 of the Immigration Control Act <u>within two months</u> of applying for a change of business or workplace pursuant to paragraph (1), or to apply for a change of business or workplace within one month of the termination of his/her labor contract with the employer, the foreign worker shall depart from Korea. &lt;Created and added&gt;</p> <p>(4) A foreign worker shall not transfer to other businesses or workplaces as prescribed in paragraph (1), in principle, more than three times during the period of sojourn prescribed in Article 18 (1); &lt;Created and added&gt; ~</p> <p>provided, that this shall not apply in case there are inevitable reasons prescribed by the Presidential Decree.</p>	<p>subparagraph:</p> <p>1. ~ 3. (Not changed)</p> <p>4. <u>In case working conditions are completely different from the terms of the labor contract or employment relations are deemed impossible to be maintained by social norms due to employer's unfair treatment including violation of working conditions;</u></p> <p>5. (Not changed)</p> <p>(2) (Not changed)</p> <p>(3) In case the foreign worker failed either to obtain permission to change his/her workplace pursuant to Article 21 of the Immigration Control Act <u>within three months from the date of applying for a change of business or workplace</u> pursuant to paragraph (1), or to apply for a change of business or workplace within one month from the date of termination of his/her labor contract with the employer, he/she shall depart from Korea. <u>However, if he/she cannot obtain permission to change workplace or apply for a change of workplace due to reasons such as industrial accidents, illness, pregnancy, or childbirth, the three months or one month time period will be counted from the day the reason disappears.</u></p> <p>(4) The foreign worker's change of business or workplace pursuant to paragraph (1) shall not exceed three times during the period prescribed in Article 18 (1) and <u>two times during the extended period prescribed in Article 18 (2)-1 (the change of business or workplace due to the reasons prescribed in Article 25 (1)-2 shall not be counted).</u> However, this provision shall not apply in case where there are inevitable reasons prescribed by the Presidential Decree.</p>
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1. (Job seeking period for changing of workplace) If a foreign worker wants to change workplace, how many months are given to the foreign worker to find another workplace?

☞ Under the previous provision, workers were required to find another workplace within two months from the date of applying for changing of workplace.

- Under the revised Act, **workers who apply for changing of workplace on Dec. 10<sup>th</sup>, 2009 or later are given three months to find another workplace.**

☞ For example, in case a labor contract expires on Dec. 1<sup>st</sup>, 2009,

- the worker is required to apply for changing of workplace by Dec. 31<sup>st</sup>, 2009, within a month from the date of expiration of the labor contract period, and has to complete the changing of workplace by March 31<sup>st</sup>, 2010, within three months from the date of applying for changing of workplace.

2. (Number of changing of workplace) How many times can foreign workers change workplace?
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☞ **For the first three-year(maximum) employment period, workers are allowed to change workplace for up to three times in principle.**

- In case employment period is extended for reemployment, workers can change workplace up to two times during the extended period. (when legitimate reasons exist)

\*Changing of workplace before and after the reemployment is counted separately.

☞ Under the previous provision, changing of workplace due to the reasons attributable to employer's fault was included in counting the number of workplace changes.

- Under the revised Act, “in case it is deemed impossible to continue to work in the current workplace due to business suspension, closure, and other reasons not attributable to the worker” (Article 25(1)-2) will not be counted.

☞ For example, in case a foreign worker who entered Korea on Oct. 1<sup>st</sup>, 2007 changed workplace twice for personal reasons on Oct. 1<sup>st</sup>, 2008 and Oct. 1<sup>st</sup>, 2009 respectively, and

- applies for changing of workplace due to the reason of business closure which is not his/her fault on Dec. 11<sup>th</sup>, 2009, as the date of applying for changing workplace comes after the entry into force of the revised Act, the case will not be counted as changing of workplace based on the Article 25(1)-2.
- Accordingly, he/she can change workplace if the legitimate reason specified in the Foreign Employment Act occurs.

3. (Legitimate reasons for changing of workplace) What are the legitimate reasons for foreign workers to change workplace?

☞ In principle, foreign workers are required to work at the workplace he/she was initially placed after entry.

☞ However, they are allowed to change workplace if there are legitimate reasons specified in the Foreign Employment Act. In the revised Act, another reason is added in addition to the existing 4 legitimate reasons.

- According to the revised Act, in addition to the reasons under the previous Act, workers can also change workplace “if working conditions

are completely different from the terms of the labor contract or employment relations are deemed impossible to be maintained by social norms due to employer's unfair treatment including violation of working conditions.” (Effective from Dec. 10<sup>th</sup>, 2009)

<Legitimate reasons for changing workplace under Article 25(1) of the Foreign Employment Act and Article 30 of the Enforcement Decree of the Act>

1. In case the employer intends to cancel a labor contract during the contract period for justifiable reasons or refuses to renew the contract after its expiration;
2. In case it is deemed impossible to continue to work in the current workplace due to business suspension, closure, and other reasons not attributable to the worker;
3. In case the employment permit is canceled pursuant to Article 19 (1) or any restriction is imposed on the employment of foreign workers pursuant to Article 20 (1);
4. In case working conditions are completely different from the terms of the labor contract or employment relations are deemed impossible to be maintained by social norms due to employer's unfair treatment including violation of working conditions;
5. In case it is deemed inappropriate for a foreign worker to continue his/her work in the business or workplace due to an accident, etc but he/she is fit to work in another business or workplace.

**SIGNING OF LABOR CONTRACT (Effective from April 10<sup>th</sup>, 2010)**

Before	Revised
<p>Article 9 (Labor Contract)</p> <p>(1) ~</p> <p>(2) An employer who intends to sign a labor contract pursuant to paragraph (1) may have a proxy determined by the Presidential Decree conduct the process.</p> <p>(3) The term of the labor contract shall not exceed one year: provided, that the labor contract may be renewed for a period not exceeding that prescribed in Article 18 (1), and in this case, the</p>	<p>Article 9 (Labor Contract)</p> <p>(1) ~</p> <p>(2) The employer who intends to sign a labor contract pursuant to paragraph (1) may entrust the signing of the contract to the Human Resources Development Service of Korea pursuant to the Human Resources Development Service of Korea Act.</p> <p>(3) The employer who obtained employment permit pursuant to Article 8 and the foreign</p>

term of each renewed contract shall not exceed one year.

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worker may conclude or renew a labor contract for a period decided by mutual agreement within the period pursuant to Article 18 (1).

(4) The foreign worker whose employment period is extended pursuant to Article 18 (2) and the employer may sign a labor contract within the extended employment period.

(5) ~

1.Can employer sign a labor contract with a foreign worker for a period exceeding one year?

☞ Under the revised Act, the employer and the foreign worker can sign or renew a labor contract for a period decided **by mutual agreement within three-year employment period.**

☞ For example, in case an employer wants to sign a labor contract with a foreign worker who has two years and 6 months left, the employer can sign a labor contract **for the period of up to two years and 6 months** when mutual agreement is made with the worker.

2. Can employer sign a labor contract with a foreign worker for a period exceeding one year in case the worker is reemployed?

☞ The foreign worker whose employment period is extended for the reemployment and the employer can sign a labor contract within the extended employment period (within two years)

☞ For example, when applying for the reemployment, the employer can decide the labor contract period by mutual agreement with the worker within two years and submit a reemployment application for the agreed period.

**CANCELLATION OF EMPLOYMENT PERMIT &  
RESTRICTION ON EMPLOYMENT (Effective from April 10<sup>th</sup>,  
2010)**

Before	Revised
<p>Article 19. (Cancellation of Foreign Worker Employment Permit)</p> <p>(1) In case an employer falls under any of the following subparagraphs, the Minister of Labor may issue an order to cancel the <u>foreign worker employment permit prescribed in Article 8</u> under the conditions prescribed by the Presidential Decree.</p> <p>3. In case <u>an employment permit</u> is obtained in false or other fraudulent ways;</p> <p>1. In case an employer has violated wages and other labor conditions promised in a contract made before entry;</p> <p>2. In case maintaining a labor contract is considered difficult due to overdue wages and the employer's violation of other labor-related laws.</p>	<p>Article 19. (Cancellation of Employment Permit or <u>Special Employment Permit of Foreign Workers</u>)</p> <p>(1) <u>The head of the Employment Center may cancel the employment permit pursuant to Article 8 (4) or special employment permit pursuant to Article 12 (3)</u> in accordance with the conditions prescribed by the Presidential Decree for the employer who falls under the following subparagraph:</p> <p>1. In case the employer obtained the employment permit or <u>special employment permit</u> in false or other fraudulent ways;</p> <p>2. In case the employer violated the terms of the labor contract including wage and other labor conditions signed before the entry of the worker; or</p> <p>3. In case maintaining the labor contract is deemed difficult due to overdue wages and other violations of labor-related laws by the employer.</p>

- In the revised Act, ground is laid for cancellation of special employment permit for ethnic Koreans with foreign nationality (H-2 visa holders) in addition to the existing ground for the cancellation of the employment permit for foreign workers (E-9 visa holders)
- For example, in case an employer obtains the special employment permit in false or other fraudulent ways, violates the terms of the labor contract including wage and other labor conditions, or withholds wages and violates labor-related laws making it difficult to maintain the labor contract, special employment permit can be canceled.

Before	Revised
<p>Article 20 (Restriction on Employment of Foreign Workers)</p> <p>(1) <u>The Minister of Labor</u> may restrict employers who fall under any of the following subparagraphs from employing foreign workers for three years from the date of the incident:</p> <ol style="list-style-type: none"> <li>1. Those who employ foreign workers <u>without obtaining an employment permit pursuant to Article 8 (4)</u>;</li> <li>2. Those whose <u>employment permit has been cancelled pursuant to Article 19 (1)</u>;</li> <li>3.-4. ~</li> </ol>	<p>Article 20 (Restriction on Employment of Foreign Workers)</p> <p>(1) <u>The head of the Employment Center</u> may restrict an employer who falls under the following subparagraph from employing foreign workers for three years from the date of its occurrence:</p> <ol style="list-style-type: none"> <li>1. <u>The employer who hired a foreign worker without obtaining the employment permit pursuant to Article 8 (4) or the special employment permit pursuant to Article 12 (6)</u>;</li> <li>2. <u>The employer whose employment permit or special employment permit has been canceled pursuant to Article 19 (1)</u>;</li> <li>3.-4. ~</li> </ol>

- Ground for restriction on employment of foreign workers was added.
- For example, in addition to the existing ground for the restriction of the employment of foreign workers, restriction will also be imposed on the employer who hired a foreign worker without obtaining the special employment permit and the employer whose special employment permit has been canceled pursuant to Article 19 (1).

### OTHERS (Effective from April 10<sup>th</sup>, 2010)

- In the revised Act, provision is created for assessing skills of the foreign workers which will be used as selection criteria along with the Korean language proficiency test. (HRD Korea will be in charge of the skill test)
- In case ethnic Koreans with foreign nationality (H-2 visa holders) express the intention to work in Korea, the Minister of Labor can provide employment information before they enter Korea.
- Provision is created for establishing a Consultative Body for Protection of Foreign Workers' Rights.

\*For other areas of the amended Act, please refer to the announcement at [www.eps.go.kr](http://www.eps.go.kr)