

The Unused Annual Leave compensation for Severance Pay calculation

Mar. 31, 2016

1. Overview

This is to review whether the compensation amount paid for the unused annual leaves is required to be included into the average wage which is the base amount for the severance pay upon the employee's leaving with the unused annual leaves compensated.

2. Definition of Annual Leave Allowance

The Annual Leave is provided to employee who has served for the required rate during a year. Employee could be exempted from works for the allowed period of days in order to recover from employee's physical and mental spiritual fatigue and could be recharged to keep one's health. Also employee could use their leisure time for the social and cultural civic life. To secure this right for employee, it is regulated in the Article 60 of 'Labor Standard Act' in Korea with penal provision for the compulsory implementation.

Annual Paid Leave (Article 60 in Labor Standard Act in Korea)

- (1) Every employer shall grant any worker who has worked not less than 80 percent of one year a paid leave of 15 days.
- (2) Every employer shall grant any worker who has continuously worked for less than one year or who has worked less than 80 percentage of one year one paid-leave day for each month during which he/she has continuously worked.
- (3) Where an employer grants any worker a paid leave for the latter's first year of work, the former shall grant the latter a paid leave of 15 days, including the paid-leave referred to in paragraph (2), and, if the latter has already taken the paid-leave provided for in paragraph (2), deduct the number of days of such paid-leave from the said 15 days.
- (4) Every employer shall grant any worker who has continuously worked for not less than three years paid-leave days that are calculated by adding one day for every two continuously working years not including the first one year to the 15 paid-leave days referred to in paragraph (1). In this case, the total number of paid-leave days, including the additional paid-leave days, shall not exceed 25 days.
- (6) In applying paragraphs (1) through (3), any of the following periods shall be deemed the period of attendance at work:
 1. Period during which a worker takes time off due to any injury or sickness arising out of duty;
 2. Period during which a woman in pregnancy takes time off due to the leave under the provisions of Article 74 (1) through (3).

3. Unused Annual Leave Compensation for Severance Pay Calculation

1) In case the unused annual leave allowance is entitled before employee leaves Company

In case the unused annual leave allowance is entitled before employee leaves Company (allowance for the unused annual paid leaves which is entitled based on the attendance rate of the year before prior year of the leaving date), the amount 3/12 applied to this shall be included into the average wage which is the base amount for the severance pay.

2) In case the unused annual leave allowance is entitled upon the employee's leaving

In case the unused annual leave allowance is entitled upon the employee's leaving (allowance for the unused annual paid leaves for the year of leaving which is entitled based on the attendance rate of previous year), the amount shall not be included into the average wage which is the base amount for the severance pay. Because that this is not the wage which is paid to employee before the reason occurrence date for calculation according to the definition of average wage

(Sept 21, 2006. Wage Work hours Policy Team-2820)

4. The Related Examples (counseling cases are referred)

Joining date Oct. 1, 2012 ~ leaving date Nov. 30, 2015

Annual leave is entitled effective Oct. 1, 2013

<1> Annual leave entitlement schedule (calendar year base)

1st : Oct. 1, 2012 ~ Dec. 31, 2012 adjustment → entitled on Jan. 2013

2nd : Jan. 1, 2013 ~ Dec. 31, 2013 adjustment → entitled on Jan. 2014

3rd : Jan. 1, 2014 ~ Dec. 31, 2014 adjustment → entitled on Jan. 2015

4th : Jan. 1, 2015 ~ Nov. 30, 2015 adjustment → (not applicable)

1) Employee is entitled 15 days of the annual leaves on Jan. 1, 2014 if employee attended 80% during the period Jan. 1, 2013~Dec. 31, 2013, as the compensation for the unused annual leave for the severance pay calculation should be the one of those entitled for the year before prior year of the leaving date.

2) In case employee has not used all or some of the annual leaves entitled accordingly, the unused annual leave should be compensated in cash in Jan. 2015. The severance pay should be calculated with average wage in which 3/12 of this compensation amount included.

- 3) On the other hand, the compensation amount for the unused leave for the period Jan. 1, 2014~Dec. 31, 2014 will not be included for the severance pay calculation as it is to be entitled effective Jan. 1, 2016 but paid under the reason of leaving.

<2> Annual leave entitlement schedule (joining date base)

- 1st : Oct. 1, 2012 ~ Sept. 30, 2013 adjustment → entitled on Oct. 2013
- 2nd : Oct. 1, 2013 ~ Sept. 30, 2014 adjustment → entitled on Oct. 2014
- 3rd : Oct. 1, 2014 ~ Sept. 30, 2015 adjustment → entitled on Oct. 2015
- 4th : Oct. 1, 2015 ~ Nov. 30, 2015 adjustment → (not applicable)

- 1) Employee is entitled 15 days of the annual leaves on Oct. 1, 2014 if employee attended 80% during the period Oct. 1, 2013~Sept. 30, 2014, as the compensation for the unused annual leave for the severance pay calculation should be the one of those entitled for the year before prior year of the leaving date.
- 2) In case employee has not used all or some of the annual leaves entitled accordingly, the unused annual leave should be compensated in cash in Oct. 2015. The severance pay should be calculated with average wage in which 3/12 of this compensation amount included.
- 3) On the other hand, the compensation amount for the unused leave for the period Oct. 1, 2014~Sept. 30, 2015 will not be included for the severance pay calculation as it is to be entitled effective Oct. 2016 but paid under the reason of leaving.

Customer Service Center Dept. 2 of Ministry of Employment and Labor
partially extracted from the counseling contents on Oct. 12, 2015

5. The Related Statute

Article 8-1 in Guarantee of Workers' Retirement Benefits Act (Establishment, etc. of Retirement Allowance Systems)

Any employer who intends to set up a retirement allowance system shall establish a system that makes it possible to pay a retiring worker a prorated amount equivalent to average wages earned for 30 days for each year of his/her continuous service.

Article 2-1-6 in Labor Standard Act in Korea (Average Wages)

The term "average wages" means the amount calculated by dividing the total amount of wages paid to a relevant worker during three calendar months immediately before the day on which a cause for calculating his/her average wages occurred by the total number of calendar days during those three months. This shall apply mutatis mutandis to the employment of less than three months;

(Reference: 퇴직금산정 시 연차수당의 처리방법 \ 인사급여업무사례 \ 신고&세무실무)