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Summary of Research Papers 13

Study on the Equal Pay Law in Korea

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Ⅰ. Introduction

○ The legal provision for equal pay for equal value work was stipulated in the former Equal Employment Opportunity And Work-family Balance Act in 1989; however, it is so hard to find cases of it that it can be said as non-performing and not valid.

○ Research objectives

- To establish the significance and status of the logic of equal pay for equal value work as a general principle of labor law
- To put forth major issues and improvement measures to establish specific criteria for equal pay for equal value work that can be utilized in the relief procedures of wage discrimination and wage disclosure systems in relation to gender equality
- To propose the need for policy and institutional improvement for the effective application of the principle of equal pay for equal value work

○ Research details

- Review the meaning of the principle of equal pay for equal value work in the Labor Act
- Establish the criteria for judging equal pay for equal value work: centering on major issues
- Examine foreign countries' criteria for equal pay for equal value work
- Gender-sensitive methodology to evaluate and compare job evaluations

○ Research method

- Literature review
- Analysis of decisions and legal cases
- Study on the tool and practical usage of gender-sensitive job evaluation
- Hosting of expert forum
- Interview with female workers and legal experts

Ⅱ. Normative meaning of the principle of equal pay for work of equal value

Although it is the core concept of the principle of equal pay for work of equal value, work value is not found in Korean legal provisions; it is an unprecedented item in Korean labor acts.[1] Since 2000, the National

[1] In this study, we define the principle of equal pay for equal work as a legal system that regulates wage discrimination, which is a difference in wages without a justifiable reason despite the same job

Human Rights Commission of Korea Act, the Act on Fixed-Term Employees, the Act on the Protection of Temporary Agency Workers, and others have drafted stipulations that ban discriminatory hiring practices; however, the Equal Employment Opportunity and Work-family Balance Act (Article 8) is the only one that has work value in it. This section shall shed light on the unique characteristics and normative meanings of the principle of equal pay for work of equal value.

1. Normative grounds for the principle of equal pay for work of equal value

Korea's Equal Employment Act, which has regulations for equal pay for equal work, puts as its basis Clause 1 of Article 11 and Clause 4 of Article 32 of the Constitution of South Korea. Those two provisions serve as a basis for regulating gender discriminatory employment, going beyond the general principle of equal treatment. The former clause refers to gender as a cause for equality, with the latter prohibiting discrimination against female workers. The Constitutional Court once said, "If the Constitution itself sets out criteria that may not be used as a basis for discrimination or identifies areas in which discrimination is specifically prohibited, such discrimination that is based on the criteria or in such areas must be strictly scrutinized." These provisions and the

value. The "equal pay for equal work" principle serves as a determinant of wage discrimination cases by considering whether the work (labor) is the same, not the work value. In previous studies, foreign legislation, and international treaties, the principle of equal pay for equal work is sometimes defined in a broad sense, including equal pay for equal work (the UK, ILO Convention No. 100, etc.), while sometimes it is defined in a narrow sense, as an agreement to evaluate the value of different jobs, except when the jobs are the same (Canada, the US, etc.). In this study, the principle of equal pay for equal value work is used in a narrow sense and is viewed as a concept distinct from the principle of equal pay for equal work. This is to avoid confusion in the use of terms when examining issues such as whether the principle of equal pay for equal work is adopted in the principle of equal treatment under the Labor Standards Act.

case law of the Constitutional Court have become the legislative and interpretative basis for stricter regulation on gender discriminatory employment. The Constitution's specific prohibition of gender discrimination in employment is the normative basis for the principle of equal pay for equal work under the Equal Employment Opportunity Act.

The general provision to realize the constitutional principle of equality in practice is the Equal Treatment Principle Clause (Article 6) of the Labor Standards Act, and the Equal Employment Opportunity and Work-Family Balance Act is a separate law that establishes standards and procedures specifically related to gender discrimination.[2] Therefore, the principle of equality under the Constitution and the principle of equal treatment under the Labor Standards Act serve as the basic principles for interpreting the Equal Employment Opportunity Act in gender discrimination cases in employment. Based on this, the theory of interpretation can be developed in consideration of the legislative purpose that is specifically stipulated in the principle of equal pay for equal work in individual laws.

It is necessary to examine whether the principle of equal pay for equal work can be an item of general principle in equal treatment based on the Constitution or the Labor Standards Act (Article 6), rather than only being a norm that prohibits gender discrimination in wages. This is a hot issue that has arisen from the debate over whether employers can be held liable for illegal behavior in cases of discrimination against

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2) Opinions are divided as to whether the equal treatment clause in the Labor Standards Act has the status of a general provision compared to other individual anti-discrimination laws. Some hold a negative idea as the clause is not a general provision but only lists gender, nationality, faith, and social status as prohibited grounds for discrimination, which thus does not regulate recruitment discrimination. However, considering the status of the Labor Standards Act as a general labor law and the fact that the interpretation of the concept of 'social status' can provide a legislative direction for the future prohibition of discrimination, it is fair to say that it has normative significance in this regard.

non-fixed term contract workers who are not subject to individual anti-discrimination laws.

The right to equality in Article 11(1) of the Constitution can be indirectly applied to the labor relationship between signed parties through general rules of the Civil Law, such as good faith. Therefore, if there is no reasonable reason for serious damages, such as the violation of the dignity of the worker concerned, his value as a human, or the right to work, for reasons of discrimination that are not protected by Article 6 of the Labor Standards Act or individual anti-discrimination laws (for example, non-fixed term employees), it is possible to bring tort liability from Articles 750 and 751 of the Civil Law in such a way that addresses those damages as in civil cases. This is described as the "general principle of equal treatment" in distinction from the principle of equal treatment under the Labor Standards Act, and a representative example of its application in labor relations is the Andong University part-time instructor case.

This ruling of the Supreme Court of Korea is about the university's practice in which full-time lecturers received KRW 80,000 per hour, while their part-time counterparts received KRW 30,000. The ruling cited individual laws prohibiting employment discrimination, stating that they are all "aimed at practically realizing the constitutional principle of equality in working relationships," and ruled that the individual laws prohibiting discrimination "should not provide unreasonable discrimination against workers for the reasons of social status, gender, and other circumstances than are unrelated to work."[3] The Supreme

[3] A press release from the Supreme Court's Public Affairs Office explains the significance of the ruling: "It is expected to make a significant contribution to protecting workers in cases where discrimination in working conditions, including wages based on social status or gender, as well as wages based on circumstances unrelated to the content of future work, are at issue." (Supreme Court Public Affairs

Court's decision carries significance in that it is the first of its kind, as it applies general equal protection principles to employment based on the Equal Protection Clause of the Constitution.[4] However, the ruling concluded that "part of the employment contract in this case that can be construed to work against the employee concerned is invalid because it violates the principle of equal treatment set forth in Article 6 of the Labor Standards Act and the principle of equal pay for equal work set forth in Article 8 of the Equal Employment Opportunity Act." This legal interpretation may raise the question of whether the ruling understands the principle of equal treatment as a general principle. However, it is necessary to look at the overall structure and context of the ruling rather than focusing only on the language itself. The part in which Supreme Court justices set out the legal principles develops the content in the flow of explaining the general principle of equal treatment in equal rights clauses, just as the principle of equal treatment under the Labor Standards Act and the principle of equal work under the Gender Equality Act are stipulated in individual laws in order to realize the constitutional principle of equality in labor relations. Therefore, it is appropriate to view this case as an example of the principle of equal treatment under the Equal Employment Opportunity Act, concluding that the general principle of equal treatment can be applied in cases where there is no individual law prohibiting discrimination, such as against non-fixed term contract employees. It cannot be seen as ruling that Article 8 of the Equal Employment Opportunity Act can be directly applied in cases, including the Andong University case, or in discrimination against non fixed-term contract employees.[5]

Office, 2019:4)

4) However, there is disagreement as to whether the ruling views full-time/non-full-time work as a "social status."

The case bears significant meaning in that it specified the direction and contents of the interpretation of the general principle of equal treatment.[6] Both Article 11(1) of the Constitution and Article 6 of the Labor Standards Act stipulate that “no discrimination shall be made,” but they do not elaborate on the criteria for determining discrimination. However, the ruling provided the following criteria for the justification of determining violations of the general principle of equal treatment.[7]

> The fact that the university was forced to pay different lecture fees depending instructors’ positions due to budgetary limitations, even if it had the intention to increase them, does not make the financial situation of the employer, which is unrelated to the content of the work of part-time lecturers, a legitimate reason for the discriminatory treatment of equally valued labor.[8]

An employer's financial situation or cost savings alone cannot justify a violation of the principle of equal treatment or different pay for equal work, as it is not related to the “content” of work. It is a violation of the constitutional principle of equality to pay different wages for equal work for reasons other than relatedness. This is the guideline used when judging the legitimacy of the violation of the general principle of equal

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5) There is a previous study that takes the same view.

6) In response to this, it may be argued that the fact that the defendant is a national university brought the direct application of the constitutional principle of equality to this case, so it is hard to say that it provides related legal principles to private organizations. However, considering that the ruling does not emphasize or explicitly mention the rule of equality for state institutions, it can be interpreted as presenting a legal theory based on the equality principle among the individuals concerned.

7) In this study, we will use the term “justification” instead of “rational reason” as an element of the concept of discrimination. The purpose is to clarify the meaning in order to recognize an exception to the prohibition of discrimination under individual anti-discrimination laws. It is not enough to simply have a reasonable cause that is not arbitrary, but it is necessary to justifiably examine whether it is the least restrictive means in consideration of purpose and necessity.

8) The ruling used the expression “labor of equal value” while judging the case, which led to a controversy about whether the principle of equal pay for equal work applies to the general principle of equal treatment. However, “labor of equal value” in this sentence seems to mean “equal labor,” and it is appropriate to view this case as a typical case of “equal labor” because there was no difference in the employment process, work content, and responsibilities among full-time and non-full-time lecturers.

treatment, and those causes that can be justified should be a focal point. For example, consider an employer who has always wanted to work with employees who can share hobbies with him or her sets wages differently depending on whether they participate in these hobbies or not. It is not enough to explain the pay disparity with his or her discretion, but it is enough with legitimate reasons, including “the effect of contributing to work performance due to improved teamwork” or “contributing to improving work ability.”

In addition, the court ruling is significant in that it confirms that the general principle of equal treatment. If not the principle of equal pay for equal work based on job evaluation, it at least includes the principle of equal pay for “equal work in a narrow sense.”[9] The Andong University case is about “equal work in a narrow sense,” which means that the content of work, required qualifications, and career paths are all the same, except whether the work is delivered by full-time or part-time workers. There had been a tendency found in past theories and court rulings that wages are determined by labor contracts that are signed with the relevant parties’ autonomy, and thus should be respected. If this trend is maintained, it is likely that unless wage discrimination is serious enough to violate social order, it will be judged not as a violation of the general principle of equal treatment, but the employer's discretion to set different wages for the same work. However, the ruling confirmed that the university’s wage standard violated basic rights, including the right to equality, of part-time instructors who perform the same work and required justifiable reasons related to the content of the work,

9) In this study, “equal work in a narrow sense” is defined as equal work in the narrowest sense where hiring qualifications, work content, work details, etc. are the same. On the other hand, “equal work in a broad sense” refers to cases that include substantially equal (similar or identical) work in addition to its narrow counterpart.

thereby determining that “equal pay for equal work” is the content of the general principle of equal treatment.[10)]

2. Individual anti-discrimination laws and the principle of equal pay for the work of equal value

The language written in the Andong University ruling may also raise the question of whether the principle of equal treatment (Article 6) of the Labor Standards Act adopts the principle of equal pay for equal work in relation to wage discrimination. However, the text of the judgment alone cannot be said to provide the interpretive theory and its conclusion that nationality, faith, or social status can be a reason for discrimination, if job values are compared. The general principle of equal treatment or the principle of equal treatment under the Labor Standards Act cannot be considered to include the principle of equal pay for equal work; rather, this principle can be justified to be applicable when it is explicitly stipulated in individual laws and thus has grounds, as is the case with Article 8 of the Equal Employment Opportunity Act. Although there has been some confusion over the language of the Supreme Court’s ruling over the university’s payment system, it should be construed as suggesting that the general principle of equal treatment (and the principle of equal pay for equal work thereof) can be applied even in the absence of individual anti-discrimination provisions.[11)]

This interpretation, which holds that different wages can only be

10) In addition, the court ruling leaves open the possibility that the judgment factors (skill, effort, responsibility, working conditions) and jurisprudence of Article 8 of the Equal Employment Opportunity Act can be used to determine whether the general principle of equal treatment is violated.

11) The statement that “Article 6 of the Labor Standards Act incorporates the principle of equal pay for equal work” should be read as meaning equal pay for equal work since it is due to confusion in the use of the phrases “equal pay for equal value work” and “equal pay for equal work.”

justified when there is an explicit basis for it, can be understood as being such because the phrase “equal value work” does not appear in other anti-discrimination laws (such as Article 6 of the Labor Standards Act, the Act on Fixed-term and Part-time Employees, the Act on the Protection of Temporary Agency Workers, the Act on Prohibition of Discrimination Against Persons with Disabilities, and the Act on the Prohibition of Age Discrimination in Employment). If we look at the history of this issue in the West, where anti-employment discrimination laws came into being, the principle of equal work was enacted as an addition to clauses for anti-discrimination in wages as regards gender to address the problem that “anti-discrimination employment in gender” was not applicable due to job segregation depending on gender. The usual argument for presuming gender discrimination in employment is the fact that “lower wages are paid to those performing work of equal value.” But due to jobs being segregated by gender, the number of cases where the same labor can be recognized is being reduced, and given that duties mainly performed by women are devalued and paid less, it was introduced as a legal principle to recognize wage gender discrimination even in different duties. Due to this history and legislative background, there are no foreign precedents that have applied the principle of equal pay for equal work to the prohibition of wage gender discrimination solely based on interpretation theory; instead, they stipulated legislative provisions for equal pay for equal work.[12] Considering the normative structure of the equal treatment principle, the legislative history of equal pay for equal work, and domestic and foreign legislative cases, it is

12) As EU member states are bound by this directive, it can be assumed that there is an established norm under the EU and national laws that gender discrimination in pay is not only limited to differential pay for equal work but, also differential pay for work of equal value. Australia and Canada, which are not EU members, also use the phrase “equal work or work of equal value” in their legislation.

difficult to derive the principle of equal pay for equal work from general principles in the absence of supporting regulations.[13)]

The general principle of equal treatment was explained above as adopting the principle of equal pay for equal work in a narrow sense, so how should the contents of anti-discrimination laws be interpreted, such as the Labor Standards Act (Article 6) the Act on the Protection of Fixed-term Workers, and the Act on Prohibition of Age Discrimination in Employment, which do not have equal pay provisions?

Anti-discrimination laws, including the Labor Standards Act (Article 6), the Act on the Protection of Fixed-term Workers, the Act on the Protection of Temporary Agency Workers, the Act on Prohibition of Age Discrimination Against the Disabled, and the Act on Prohibition of Age Discrimination in Employment, are based on the general principle of equal treatment, but are enacted to provide special protection when there are factors highly prone to discrimination and thus more in need of protection. Therefore, the aforementioned anti-discriminatory acts should assume the existence of discrimination when different wages are paid for equal work (the same or similar work) in a broad, not narrow, sense.[14)]

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13) This issue may be raised by the fact that Article 7 and Articles 9 through 11 of the act, which regulate discrimination in the areas of recruitment, hiring, promotion, education, and training, use the common phrase “no discrimination shall be made between men and women,” whereas Article 8(1) states that “an employer shall pay equal wages for labor of equal value within the same business,” creating a misleading impression that the equal pay principle can be applied to cases of discrimination due to reasons other than gender. However, considering the legislative purpose of the Equal Employment Opportunity Act (to regulate employment discrimination based on gender) and the system of provisions, it is difficult to argue for a general extension of the principle of equal pay based on the wording of Article 8.

14) This is even more significant when compared with the situation in Japan, where case law is unclear on whether “equal pay for equal work” is a general principle of labor law and academic opinion is divided. Article 3 of Japan's Labor Standards Act prohibits discrimination in wages, working hours, and other working conditions based on nationality, creed, or social status. Moreover, Article 4 prohibits discrimination in wages based on a worker being female, but whether these provisions adopt the principle of equal pay for equal work is a subject of debate. While it is generally accepted that the principle of equal pay for equal work is affirmed, there are other interpretations that “it is basically the freedom of the parties to adopt any wage determination method as long as gender is not a factor,

Those provisions that ban discrimination in the Act on the Protection of Fixed-term Workers and the Act on the Protection of Temporary Agency Workers come under this context as they adopted a broader scope with the phrase “work done in the same trade or similar work,” not “same or identical work.” Korean jurisprudence has adopted a broad interpretation, as the following case law uses the phrase “work that is not completely identical, but does not have essential differences in the main tasks.”

> The work of a worker selected as a comparative worker which falls under the same or similar work as that of a fixed-term worker shall be judged based on the actual work performed by the worker, not the work specified in the employment rules or labor contract. However, even if the work they perform are not completely consistent with each other, and there are some differences in the scope of work or responsibilities and authority, if there is no essential difference in the content of the main work, it shall be deemed that they are engaged in the same or similar work unless there are special circumstances.[15)]

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and the employer's failure to adopt the principle of equal pay for equal work does not breach this provision.” Or if what legislators intended to prohibit when enacting the labor standards act was “discrimination based solely on being a woman, social stereotypes about women, women having lower intelligence, shorter seniority, fewer dependents” or “different wage systems based on gender,” those are clear evidence of gender discrimination, and they did not recognize wage discrimination on the basis of job equivalence alone (Park, Eun-jung, 2022: 1). This debate still remains in Japan, as no case has clearly determined whether the prohibition of gender wage discrimination in Article 3 of the Labor Act adopts equal pay for equal work. (Mutsuko Asakura, “Proposal of the Implementation System for Equal Value Labor and Equal Wage Principles,” Meeting on Vision of Non-regular Employment, October 7, 2011, p. 2.)

15) Kookmin Bank vs. Fixed-term employees. Supreme Court, Oct. 25, 2012, 2011Du7045.

Ⅲ. Review of cases - Case of Hyosung Co., Ltd.

1. Overview and main issues

■ Facts

The defendant is a synthetic fiber producer and has a production process of polymerization, where nylon chips are made from caprolactam; spinning, where filament is made from nylon chips; winding, where filament is coiled; twisting, where two lines of filament area wheeled to be one; and weaving, where yarn is made of wheeled filament.

Employees working at Ulsan factory of Hyosung were largely divided into two groups, those employed for production or for function, and were given different salary systems. As of December 21, 2005, those hired for production were paid with from KRW 19,100, the lowest band, to KRW 29,640, the highest band. In the meantime, those for function were from KRW 24,220, the lowest band, to KRW 50,530, the highest band. Production site workers, all women, were given smaller paycheck than functional workers, all men.

The headcount of the factory was 738: 176, administration, 548, function, and 18, production. Placement of all of those worked for function was operated on a rotational basis to the total production processes. However, production staff was sent only to a few processes, including weaving and twisting (re)winding.

■ Main issue: Appropriateness of selecting the object of comparison

Is the evaluation on equal work value appropriate?

Can placement discrimination be considered at the time of determining wage gender discrimination?

■ Gist of court rulings

Object of comparison: Comparison on labor can determine whether jobs done by male and female employees have equal value or not. Korea's equal employment act provides that the scope of comparison for equal value work should be within a same workplace. Regarding Hyosung case, male employees working for functions were placed on a rotation basis to polymerization, spinning, winding, twisting and weaving, while female for productions were to weaving and twisting rewinding. This fact makes their labor is an object of the evaluation on equal work value, and the weaving and the spinning at which the plaintiffs were working with functional male employees should not be the only processes for comparison.

Methodology of determining equal work value: Works vary depending on production process, so the work value of each process is hard to strictly appraise. This condition makes it inevitable to understand overall scope of work of each process and compare the spectrum of work value evaluation.

Skills: Related parties of this case do not seem to have an argument over the uniqueness of the labor of functional workers who are stationed in the process of polymerization and spinning, in that it requires long training periods and special job performance, which is evidently different from the plaintiffs' weaving and twisting rewinding. Yet, the plaintiffs pointed out the fact that the company did not require, at the time of hiring functional employees, specific qualifications, including of education, and those men working in the spinning section earned job skills by engaging in it for long periods, arguing that work difference was not a critical element as they themselves were not placed in those

functional positions and thus failed to secure such hands-on job skills. Even though that the way that male workers in the two functional processes picked up their skills was true with what the plaintiffs said, it is another matter to judge whether their job skills have same value with those of men's. Although the skill level of those working for function and for production in the section of twisting rewinding and twisting is equal with that of those in the section of weaving, it is hard to say that this is evidence that proves their overall job skills are equal and same.

Intensity of labor: To speak on the intensity of labor, men are stronger than women, so a simple fact of male employees providing more intense service than female ones does not justify that men's labor intensity is higher than women's. Only when male employees delivered significantly higher level of labor intensity than average, their labor can be counted as having greater value work. From this perspective, unloading, backward moving, support, weft box transportation, and other works of functional employees of the weaving section cannot be viewed as significantly intensive, even if all of them were done proactively and efficiently. Also, skein transportation and winding machine management of the functional workers in the winding section cannot be judged as more intensive jobs than yarn defect inspection of those workers of production. In addition, functional workers' loading and doping units of 10 kilogram skein and managing twisting machines in the twisting process cannot be said as more demanding than production workers' managing rewinding machines that process relatively light-weighted skein. However, filter cleaning in the polymerization and filter transportation, raw material insertion, nozzle wiping, and others in the spinning require high-level intensity of labor for workers have to continuously move heavy-weighted machines in

operation at high temperatures, which makes those types of works are significantly higher in their labor intensity compared with others. So, intensity of labor at the plaintiffs' company cannot be said of having equal work value as a whole among functional employees and their production counterparts.

Responsibility: In the twisting process, each functional employee manages 120 spinners and produces daily 120 units of skein, while each production employee works with dissected raw materials, which are produced in the twisting process all the time, on rewinding machines and produces 15 units of skein. The feature, scope, complexity, and level of the employer's dependence on functional employees can place a greater responsibility on them than on production employees. Furthermore, functional workers take the leader role and responsibility in their nightly work shift that lasts from 5:10 pm to 8:40 am, next morning, dealing with and reporting abnormalities that would happen during their shift in the process of weaving. This is not what production workers assume, making a clear difference in accountability. Even though burdens of responsibilities of production workers who inspect raw material defects in the winding process and functional workers who manage winding machine are viewed as similar, it is hard to tell that the overall responsibility level of functional employees is on par with that of production ones.

Working conditions: Overall, the workplace is very noisy and at high temperatures. To be specific, the temperatures of polymerization, spinning and twisting processes, all of which require high temperature for operating machines, are higher than 40℃, with the noise of winding process, the noisiest section, being higher than 100dB. The place for inspecting raw material defects displays 27℃, the coolest, and the

rewinding in the twisting process exhibits 30℃, lower more than 10℃ than the twisting site. Therefore, even if working conditions for functional and production employees in the weaving section are same, it is hard to say that overall working environments of those two groups are the same with each other.

2. Discussion

Regarding the method of determining equal work value, the court decision employed a “spectrum,” which deemed strange as it did not elaborate on this term. As “works vary depending on process, so it is never easy to strictly compare and decide work value required in accordance with different processes,” it is necessary to identify the range of works of each process and compare and decide the spectrum. Considering this, the methodology seems to be a non-analytical one, not an analytical one, including factor comparison method or point rating method. To interpret the sentence, “it is never easy to strictly evaluate labor value or work value,” it would mean that how much details of each of the four factors meet the requirement of equal work value is the determinant. Indeed, the court rulings conducted non-analytical methods for the evaluation of equal work value as was done on TDK Korea and other gender-discrimination cases. But, the rulings have limitations in that they failed to follow basic principles that the four factors should be appraised on works, not on workers. In determining job skills, it was acknowledged that skills and qualifications for functional and production workers were the same; however, it determined that there is difference in details of skills. Evidence for this stance is that the accumulated skills that functional male employees earned while working in polymerization, spinning, and others were distinctive from those of production female.

Yet, this method was wrongfully applied in that work value appraisal should take into account the four factors, including those skills required for related jobs, not personal elements of those in charge. Adding to this, the court rulings cited as evidence the fact that functional workers play a leader role; however, this is not appropriate as such role is not an essential factor for serving in functional positions.

The core issue in relation to the court rulings is how to set up comparison objects for evaluating equal work value. The employer's side claimed that winding and polymerization among the total five are physically demanding processes, so they considered the value of labor and therefore paid higher wages to those functional employees placed in the two sections. As a response, the plaintiffs' side pointed out the facts that only a few of functional workers were actually working on winding and polymerization and some of them who only worked at spinning and weaving had received greater wages than those production workers. As a matter of fact, some functional workers who had been engaged only in spinning and weaving for 15 years since their employment received equal salary with other functional workers. Putting their basis on this fact, the plaintiffs argued that those functional workers who do not work for winding and polymerization should be the object of comparison for them.

> The weaving process was all mixed up. A total of 17 were working in the section, and Shift No. 1 was composed of five male and two female workers. Each of them was to weave on his/her machine. When I first met them, they were receiving de-facto minimum wages. Female employees could not believe that their paychecks were almost at the level of minimum wage, even though they worked as a regular worker at locally-famed large company. I myself could not believe that I encountered this gender-based different wage system in reality, a textbook example that I met as existed only in the old banking industry while

I was studying to become a labor attorney. (Legal counsel 2)

It seems to me that judges considered not the uniqueness of our working conditions but overall workplace environment the male workers belonged to. We work with men in our production section but our wage system is problematic. Male employees are on the salary system designed for functional workers, while female ones on the production workers' salary system, even though we are doing the same work as men do. Judges seem to think that male employees are functional workers as they were placed on rotation to all five production processes, even if they perform the same work with female counterparts. I do not understand how they can say male workers are different from female when male and female workers are working in a same department and on shared machines. (Female worker 8)

The court rulings excluded the plaintiffs' argument, by accepting as valid the company's rotational placement that can put functional workers to all production processes. Put different, some of functional employees, those working at spinning and weaving, should not be an object of work value comparison. Short explanation of the rulings does not clearly state why the total of functional workers should be an object of the comparison, even though this is not provided in the Korea's equal employment act. But still it can be assumed that highlighted portions of the legal explanation say that functional workers performing equal value work cannot be separated for other comparison. The court, however, misconstrued Article 8 of the equal employment act in that they mixed the selection of objects for comparison and the issue of work value comparison. To judge on the intention and language of Article 8, if those jobs largely done by females and those by males exist within a single workplace, they can be an object of work value comparison. Whether the works or positions chosen by employees as comparison objects have equal value or not shall be determined in the next phase.

Behind the rulings can be the perception that the object of comparison should be based on the job classification system that employers put to use. But, it is doubtful where we can find normative reference for practice on the perspective.

This case, as well, is noteworthy as gender discriminatory placement is a structural cause for wage discrimination. It can be understood as gender placement discrimination that newly-hired female employees were placed to different production processes and job positions than their male counterparts were, even if they had equal level of education and career with men. In a sense, this can be an irony as it acknowledges and accepts distinctive gender wage gap.

> Basically, the company classified production positions and function ones depending on job. It analyzed jobs and categorized those which require more strength, greater responsibility, poor working conditions, and dangerous processes as functional works. Those works that did not fall into the category were grouped as production works. The company explained that it did not have the principle of "functions for men and productions for women." As production positions provided very small paychecks, most male workers wanted to work at functional positions. Yet female workers avoided handling heavy items and thus made their way to production positions. Hyosung said that it did not make blanket gender separation in the first place. (Legal counsel 2)

■ Issues derived from case law

These issues are as following:

○ Job evaluation methodology

- Application of analytical job evaluation method and tool
- Job evaluation that includes personal elements

○ Gender-neutral job evaluation

○ Phases of comparison object and judgment criteria

○ Relief for unfair wages due to discrimination in placement and promotion

○ Job evaluation procedure and related systems

Ⅳ. Seniority wage system and the principle of equal pay for equal value work

1. Seniority wage system and the gender wage gap

○ Current status of Korea’s seniority wage system

- The current status of Korea's seniority wage system can be indirectly checked through the results of the Ministry of Employment and Labor's “Additional Survey on Business Labor,” which surveys types of methods to determine basic wages, including the hierarchical single-salary system. Among all companies, the percentage of companies that adopts this salary system as the basic method to determine salary has continued to decline: 43.5% in December 2009, 36.3% in June 2013, 19.5% in June 2017, and 13.7% in June 2021.
- The result of examining the number of companies using the hierarchical single-salary system and the gender wage gaps among those firms depending on industry they belong to in 2021 shows this; as the proportion of companies using the hierarchical

single-salary system increased, there was also a tendency for the gender wage gap to increase between all workers' total monthly wages and regular workers' flat salaries. It was found that when the proportion of companies using the hierarchical single-salary system in each industry increases, the gender wage gap also increases between all workers' total monthly wages and flat salaries, as well as the total monthly wages of regular workers and flat salaries.

○ Analytical review on the relationship between the seniority wage system and the gendered wage gap: Results of the 2021 Female Manager Panel Survey

- We examined the gender wage gap between the basic wage system and the wage system by position in companies that participated in the 2021 Women's Manager Panel Survey. The result was that the gender wage gap according to the basic wage system was different by position. For middle- level managers, the gender wage gap was smaller in companies that put in place a combined form of different salary systems, including the mixture of seniority, position-based wage and performance-based wage, than their counterparts that adopt only one basic wage system from seniority, position-based, or performance-based one.
- Yet, for low-level managers, those companies that operate the seniority-wage system as an only basic wage system exhibited a smaller gender wage gap than those employ a combined form of different salary systems, including the mixture of seniority, position-based wage and performance-based wage, as well as the position-based or the performance-based wage system. In the case

of executives, the gender wage gap in companies that run employ the mixture of seniority, position-based wage and performance-based wage as a basic wage system was smaller than those which introduced only seniority, position-based, or performance-based wage system.

- Using the Oaxaca-Blinder decomposition method, we analyzed the difference between the monthly average wage for male and female managers who participated in the 2021 Female Manager Panel Survey. Of the KRW 562,000 difference in the sample, KRW 182,000 (32.4%) was explained, but KRW 380,000 (67.6%) was not. The investigation into the gap between men's and women's monthly average wages found that those companies which chose a seniority, a position-based, or performance-based wage system as a base salary displayed bigger gender wage gaps, while those with a combination of the seniority and the position-based system or the seniority and the performance-based one uncovered smaller gaps. When the unexplained wage gap was further explored, retention period and seniority wage system were significant factors in widening the gender wage gap.

2. Interpretation of clauses about the seniority wage system and equal pay for equal value work

○ Even if there is equal pay for equal value work, if salary cap is set up high for jobs where male workers dominate and low for jobs where female do, it can be construed that there is gender discrimination. But with regard to this, the excuse that "discriminatory practices of the past when women's employment was made later than men's and there were jobs mostly covered by

male employees had a tendency of setting up a high cap" can be granted.

○ Or, as in the Wilson case in the UK, where the seniority wage system is argued as discrimination against women when men and women perform same jobs, the practices of seniority-based salary can justify this.

○ Contrary to some claims that Korea's seniority-based salary system and legal provisions for equal pay for value work are incompatible, the seniority-based salary system that is not peppered with discrimination and thus well in place can work under the provisions for equal pay for equal value work and the anti-discrimination law.

○ It is necessary to justify regulatory legislation by referring to clauses in legal provisions, including of the US and Canada (Chapter 2). But citing the seniority-based wage practice as if it were a panacea can compromises the legislative purpose of equal pay for equal value work, we need a more nuanced approach than framing the. This is because in countries like the US where only the "real seniority-based wage structure" is provided, such justification can be accepted in most cases. The basic principle should be that the argument presented for seniority-based wages has to be able to break the presumption that there has been gender discrimination in wages (a violation of the provision for equal pay for equal value work). In cases where there is a wage difference between men and women in same jobs because of the seniority wage system working more favorably for men, the wage system should be strictly examined for justification. Only with justifiable reasons, the case that different seniority wage systems for equal value work can be granted and

accepted. In particular, if evidence shows that different seniority standards for same value jobs are derived of gender discrimination, employers' defense should be reviewed more strictly.

Ⅴ. Gender-neutral job evaluation and the principle of equal pay for equal value work

○ Review foreign cases that contributed to the elimination of gender discrimination in wages through job evaluation

○ Case from the State of Minnesota, US

- It is one of the state governments in the US, the first in its kind, to make legislation for equal wages for equal value work and to lead a change.
- Minnesota's willingness to lead change through systematic and long-term efforts to bridge the gender wage gap and to endlessly find implications and improve in the process was the factor that drove its success. Not satisfied with the achievement, since 1992, the Midwest state has been continuously striving to realize pay equity between local governments and private companies.

○ Case from a local government of the UK

- Decision for the basic salary in the UK local government was to reach through negotiations between the NJC and local governments, and basic salaries for local civil servants in site operations and office jobs are determined by central negotiations enforced by the 1997 implementation of the Single Status

Agreement. The job evaluation tool of the NJC is meaningful in that it plays an important role in presenting appropriate standards for the local government's wage system and preparing rational procedures.

- In addition, the job evaluation of the NJC acts as a standard for reviewing whether the same wage is paid for the same labor and is utilized as a standard for identifying whether unfair and unequal wages were paid. The Equal Pay Audit (EPA) is a survey related to employment discrimination that examines the possibility that there is unequal pay for equal value labor. It compares the wages of groups performing the same work, as presented in the Equality Act, with the objective of narrowing gaps that cannot be justified on a legitimate basis, such as those wage gaps caused by gender, race, disability, or part-time/full-time status.
- The NJC's job evaluation tool is of major significance in that it is a common, credible standard that presents the standard framework of the local government's basic salary standards.

Ⅵ. Policy recommendations

○ The outline of policy improvement tasks for the effective application of the principle of equal pay for equal value work and resolving the gender wage gap is as follows:

1. Job evaluation methodology

○ Establish and reflect the principle of gender-neutral job evaluation

- Supplement job evaluation tools and manuals of the Ministry of Employment and Labor's Wage and Job Information System (wage.go.kr).
- Suggest the necessity of gender-sensitive evaluation and its methodology for the future in the Evaluation Manual for Equal Pay for Equal Value Work (5th Basic Plan for Equal Employment for Men and Women).
- Reflect manuals and guidelines, including of the UK's NJC, where employers' discriminatory job evaluation are recognized as violating the principle of equal pay for equal value work.

2. Application of the principle of equal pay for equal value work in the seniority wage system

○ If there is no factor regarding position level, like in the flat mixed-salary system, it is not necessary to go through the step of job value evaluation. In cases like the Hyosung Co., Ltd. where, within the same production job, occupational groups are divided according to their process and wages are thus set differently (mixed type), it needs to determine if their job values are equal and same because the application of the wage system is different depending on job.

○ It is necessary to clearly address the clause "equal pay for equal value work," which some misinterpret as "mandating or forcing a position-level wage system." It can be understood that the existing wage system that was selected according to the employer's management discretion is respected, but if there is a possibility that

the employer has violated the principle of equal pay for equal value work, the tools and means that can be used for job evaluation and comparison are provided so it can be determined if there has been gender wage discrimination. In other words, the equal pay for equal value work clause is not a regulation that mandates the system of paying wages in advance. Rather, if gender wage discrimination is suspected, it is a regulation for judgment after the fact. Even if it is found that the job value is the same, it is not necessary to abolish the hierarchical single salary system and introduce a system based on job function. The response can be adjusting the gender wage gap between jobs as much as needed so as not to violate the principle of equal pay for equal value work or establishing a non-discriminatory standard for wages.

○ In Korea, cases in which past placement, promotion, and discrimination in promotion have led to wage gaps have emerged as important issues. Theoretically, it is possible to make measures to respond to all forms of discriminatory configurations in placement, promotion, and wage discrimination, and it is believed that the most effective method to relieve damages due to discrimination can be adopted.

3. Establishing criteria for judging equal pay for equal value work

○ Selection of targets for comparison

- In order to not confuse the step of selecting targets with the step of judging whether the jobs (job value) are the same, it is necessary to clearly present their significance and their main issues.

4. The matter of Justification

○ Legislative revisions related to reasoning of equal pay for equal value work violations (Article 8, Equal Employment Opportunity And Work-family Balance Act)

○ Reasonable justifications concretely illustrated: Examples of exceptional reasons such as educational background, years of service, the route of employment, shortage in the labor market, and peak wage systems are shown as examples, and a proportional review is clearly stipulated. Refer to legislative cases of Canada and UK.

○ Investigation manuals, etc. from the Ministry of Employment and Labor and the Human Rights Commission on employment discrimination cases

5. Comprehensive Revision of the Equal Opportunity Provisions

○ Necessity of revising regulation contents based on systemic understanding of the principle of equal pay for equal value work

6. The necessity of supporting policy related to gender-sensitive job evaluation

○ Due to costs and technical difficulties in job evaluation, it is difficult to access individual workers and labor unions. The Ministry of Employment and Labor conducts projects to support related expenses.

○ In particular, the UK's equality act of 2010 granted the employment tribunal the authority to request evaluation from independent experts designated by the ACAS in cases where it is necessary to determine

whether there is equal pay for equal value work. In addition, regarding the job, if results from job evaluation survey research already exist and there is no reason to doubt them or regard them as discriminatory, the results of the research should be used.

- We would like to propose an amendment to Korea's Equal Employment Opportunity And Work-family Balance Act that would grant authority to the Labor Relations Commission or the court so they can request the results of expert evaluations. Although it is possible to utilize (expert) appraisal procedures or on-site verification under the existing Civil Procedures Act, there is a limitation as that risks relying only on the competence of individual judges or labor committee investigators. We would like to request an 'Equality in Employment Expert Committee on Job Evaluation' to investigate and report on job evaluation and utilize this to propose the regulatory basis of a system that can be used for judgment. Professional job evaluation experts, like the pool of experts designated by ACAS in the UK, would be appointed as members.

○ Job evaluation and wage comparison projects targeting social service jobs not involving caregiving (jobs where men are concentrated) were implemented as demonstrations → As in the case of local governments in the UK, the wage system that had devalued occupations the female workers dominated improved with leadership from the public sector.

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