

REPUBLIC OF KOREA

**LAWS GOVERNING EXPLOITATIVE CHILD
LABOR REPORT**

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Introduction

This report on the laws of the Republic of Korea (“ROK”, or “Korea”) governing exploitative child labor has been prepared pursuant to section 2102(c)(9) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(9) provides that the President shall:

[w]ith respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.

The President, by Executive Order 13277 (67 Fed. Reg. 70305 (Nov. 21, 2002)), assigned the responsibility under section 2102(c)(9) to the Secretary of Labor and provided that it be carried out in consultation with the Secretary of State and the United States Trade Representative (USTR). The Secretary of Labor subsequently provided that such responsibilities would be carried out by the Secretary of State, the USTR, and the Secretary of Labor (67 Fed. Reg. 77812 (Dec. 19, 2002)). Please see Sections 4.3 and 4.4 of the Department of Labor’s *Republic of Korea: Labor Rights Report* for information on the incidence and nature of forced labor and child labor.

Pursuant to Section 2102(c)(9) of the Trade Act, this report provides information on ROK laws governing exploitative child labor. The report relies upon reports and materials prepared by the ROK, U.S. Government agencies, international organizations such as the International Labor Organization (ILO), and nongovernmental organizations.

Exploitative Child Labor

There is no universally accepted definition of the term “exploitative child labor.” ILO Convention 138, Minimum Age for Admission to Employment, provides that the minimum age of admission into employment or work in any occupation “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15.”¹ Countries whose economies and educational facilities are insufficiently developed may initially specify a minimum legal working age of 14 when ratifying the convention. Additionally, under Article 7(1) of the Convention, “National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is (a) not likely to be harmful to their health or development; and (b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.” Countries that have specified a minimum legal working age of 14 may permit persons 12 to 14 years of age to engage in light work, as defined in Article 7(1). Examples of such light work may include work in a family business, on a family farm, after school, or in a legitimate apprenticeship opportunity that is not hazardous and does not affect a child’s attendance at school.

¹ ILO Convention 138, Article 2(3).

The ILO has defined the “worst forms” of child labor in ILO Convention 182, Worst Forms of Child Labor, which prohibits such labor for “all persons under the age of 18.”² Under Article 3 of ILO Convention 182, the term “worst forms of child labour” comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic purposes;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.³

According to Convention 182, the types of work referred to under Article 3(d) “shall be determined by national laws or regulations or by the competent authority . . . taking into consideration relevant international standards, in particular Paragraphs 3 and 4 of the worst Forms of Child Labour Recommendation, 1999.”⁴

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The ROK ratified ILO Convention No. 138 on the Minimum Age for Admission to Employment on January 28, 1999, and No. 182 on the Worst Forms of Child Labor on March 29, 2001.⁵

The Constitution of the ROK establishes the principle that working children be afforded special protections.⁶ The *Labor Standards Act* sets the minimum age for employment at 15 years but provides that children between the ages of 13 and 15 may work if granted a work permit by the Ministry of Employment and Labor (MOEL), provided that the work is in accordance with required procedures and permissions and does not impede compulsory education.⁷ Likewise, the

² ILO, *C182 Worst Forms of Child Labour Convention, 1999*, Articles 2, 3 and 4; available from <http://www.ilo.org/ilolex/english/convdisp2.htm>, Articles 1 and 2.

³ ILO, *C182 Worst Forms of Child Labour Convention, 1999*, Articles 3; available from <http://www.ilo.org/ilolex/english/convdisp2.htm>.

⁴ *Ibid.*, Article 4.

⁵ ILO, *Ratifications by Country*, accessed May 8, 2007; available from <http://www.ilo.org/ilolex/cgi-lex/ratifce.pl?Korea>.

⁶ *Constitution of the ROK*, (as amended through October 29, 1987), Article 32, para. 5; available from http://korea.na.go.kr/res/low_01_read.jsp.

⁷ Government of the ROK, *Labor Standards Act* (as amended through June 4, 2010), Article 64; available from http://www.moel.go.kr/english/topic/laborlaw_view.jsp?idx=254&tab=Standards. *Ibid.*, Article 64. See also Government of the ROK, *Enforcement Decree of the Labor Standards Act*, Act No. 15320, (as amended on June 25, 2008), Article 35.

Elementary and Secondary Education Act prohibits the employment of children if such employment would interfere with their compulsory school attendance.⁸

According to the *Labor Standards Act*, employers of minors under the age of 18 are required to maintain documentation of written consent by the child's parent or guardian.⁹ Parents or guardians cannot obligate a minor to a labor contract.¹⁰ In addition, a parent, guardian, or the MOEL may terminate a child's labor contract if it is determined to be disadvantageous to the minor.¹¹

The *Labor Standards Act* also contains other protective measures for working minors. Persons 15 to 18 years of age may not work more than seven hours a day or 40 hours a week.¹² Persons under the age of 18 are prohibited from working between 10 p.m. and 6 a.m. or on holidays, unless the employee consents or the employer receives approval from the MOEL.¹³ Employers are also prohibited under the *Labor Standards Act* from employing children under 18 for any work that is deemed hazardous or dangerous to their morality or health.¹⁴

In addition to the *Labor Standards Act*, the ROK has enacted other laws concerning child labor. The *Juvenile Protection Act* expands on the prohibition on hazardous child labor contained in the *Labor Standards Act*. The *Juvenile Protection Act* and its accompanying Presidential Decree prohibit certain types of establishments from employing, and in some cases even granting access to, persons aged 18 years and under.¹⁵ Such establishments are those deemed "harmful" to juveniles and include: "video-show establishments"; "song-practice establishments"; "dance instruction and dance establishments"; "speculative businesses"; businesses engaged as intermediaries for "voice and video conversations between unspecified persons"; lodging establishments; barbershops and public bathhouses; businesses engaged in the use of toxic material; theatres showing certain video products; "games service businesses" and businesses distributing certain "game services"; comic-book rental businesses engaged in collecting membership fees or other charges; businesses manufacturing, producing and distributing media materials harmful to juveniles; businesses manufacturing, producing and distributing drugs harmful to juveniles; and businesses manufacturing, producing and distributing other materials harmful to juveniles.¹⁶

⁸ Government of the ROK, *Elementary and Secondary Education Act* (as amended through March 21, 2008); Article 15. See also Government of the ROK, *Worst Forms of Child Labour Convention, 1999 (No. 182) Article 22 report (2005)*, submitted in accordance with Article 22 of the ILO Constitution for assessment by the CEACR (ILO Committee of Experts on the Application of Conventions and Recommendations), 20, 21.

⁹ Government of the ROK, *Labor Standards Act* (as amended through June 4, 2010), Article 66.

¹⁰ *Ibid.*, Articles 67 and 68.

¹¹ *Ibid.*, Article 67, para. 2.

¹² *Ibid.*, Article 69. Work hours for minors between 15 and 18 may be extended by one hour a day, or six hours per week, upon agreement between the "parties concerned," presumably the minor employee, the minor employee's parent, and the employer. *Ibid.*

¹³ *Ibid.*, Article 70.

¹⁴ *Labor Standards Act*, Article 65, para. 1.

¹⁵ *Juvenile Protection Act*, Article 2. The Act defines "juvenile" as an individual 18 years old or younger, until January 1 of the year in which the individual will turn 19. *Ibid.*

¹⁶ *Ibid.*

The *Act on the Protection of Children and Juveniles from Sexual Abuse* prohibits the brokerage and sale of the sexual services of persons aged 18 years and under.¹⁷ Violations are punishable by five years to life imprisonment.¹⁸ The *Juvenile Protection Act* forbids owners of entertainment establishments from hiring persons less than 19 years of age and imposes prison sentences of up to three years and fines of up to 20 million won (USD 17,810) for violations.¹⁹ The *Law on Regulations of Public Morals Businesses* also prohibits the forced prostitution of children and imposes penalties of one to ten years imprisonment for violations.²⁰ Under the ROK's *Criminal Act*, buying or selling a female for the purpose of prostitution is punishable by at least one year of imprisonment.²¹ The 2004 *Act on the Punishment of Procuring Prostitution and Associated Acts* prohibits prostitution, the procurement of prostitution and associated acts, and human trafficking for the purposes of prostitution. This Act also seeks to protect the human rights of victims of prostitution, including from any punishment for acts of prostitution. The *Act on the Prevention of Prostitution and Protection of Victims Thereof* also provides for protection to victims of prostitution and those who sell sex.²²

¹⁷ *Act on the Protection of Children and Juveniles from Sexual Abuse*, Article 12. The Act defines “juvenile” as an individual 18 years old or younger, until January 1 of the year in which the individual will turn 19. *Ibid.*, Article 2.

¹⁸ *Ibid.*, Article 7(1).

¹⁹ *Juvenile Protection Act*, Articles 5, 24, and 50.

²⁰ Government of the ROK, *Worst Forms of Child Labour Convention, 1999 (No. 182) Article 22 report*, submitted in accordance with Article 22 of the ILO Constitution for assessment by the CEACR, 10.

²¹ *Criminal Act*, Article 288, 2.

²² Minister of Justice and Minister of Gender Equality, *Act on the Punishment of Procuring Prostitution and Associated Acts* and *Act on the Prevention of Prostitution and Protection of Victims Thereof*, available at http://text.moge.go.kr/moge/data/pdf/1217_acts.pdf.