CHAPTER 9

Crimes Related to Labor Standards

- Promulgated on March 28, 2016. Effective on July 1, 2016.
- Amended on December 6, 2021. Effective on March 1, 2022.
- Amended on April 24, 2023. Effective on July 1, 2023.
- Amended on March 30, 2026. Effective on July 1, 2026.

This guideline applies to adult offenders (nineteen years of age or older) who committed any offenses violating the Labor Standards Act, Article 107, Article 7 (Prohibition of Forced Labor), Labor Standards Act, Article 107, Article 8 (Prohibition of Violence), Employment Security Act, Article 46, paragraph 1, subparagraph 1 (Forced Labor), Seafarers' Act, Article 167, subparagraph 3, Article 25-2 (Prohibition of Forced Labor), Labor Standards Act, Article 107, Article 9 (Elimination of Intermediary Exploitation), Employment Security Act Article 47, subparagraph 5, Article 32 (Prohibition of Receiving Money and Valuables), Seafarers' Act, Article 168, paragraph 1, subparagraph 5, Article 111 (Prohibition of Receipt of Money and Other Valuables), Labor Standards Act, Article 109, Article 36 (Settlement of Payments), Article 43 (Payment of Wages), Article 44, Article 44-2 (Joint and Several Responsibility for Payment of Wages in Construction Business), Article 46 (Shutdown Allowance), Article 56 (Extended, Night or Holiday Work), Act on the Guarantee of Employees' Retirement Benefits Article 44, subparagraph 1, subparagraph 2 (Failure to Pay Retirement Allowance), Act on the Protection, etc. of Temporary Agency Workers Article 43, subparagraph 3, Article 34, paragraph 2 (User Company's Joint and Several Liability), Minimum Wage Act, Article 28, paragraph 1 (Wage Less than Minimum Wage Rate), and the Seafarers' Act, Article 168, paragraph 1, subparagraph 1, 2, and 3 (Shipowner's Failure to Pay Wages), Article 170, subparagraph 3 (Shipowner's Failure to Pay Retirement Allowance).

※ Note that the underlined provisions applied to certain crimes were deleted or amended following the statutory revisions made after the sentencing guidelines were established. The sentencing guidelines on those crimes will be revised later. For this reason, all or part of the current standards of sentencing would not be applied.

PART A

TYPES OF OFFENSES AND SENTENCING RANGE

1 FORCED LABOR · INTERMEDIARY EXPLOITATION ETC.

CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
Forced Labor · Intermediary Exploitation Etc.	– 8 mos.	6 mos. – 1 yr.	10 mos. – 2 yrs. 6 mos.

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases with special extenuating circumstances that mitigating the offender's involvement • An exceptionally minor degree of assault (forced labor etc.) • Exceptionally minor amount of money and valuables received (intermediary exploitation)	• Inflicting serious physical or psychological harm to the victim (forced labor etc.) • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victims • Instigating the subordinate to commit the crime
	Offender/ Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, internal whistle-blowing • Victim expresses the intent of non-punishment of the offender or substantial restitution to the victim	• Same-offense recidivism within the statutory recidivism period

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
General Sentencing Factor	Conduct	• Minor participation • Cases where the offender failed to consume or retain most of the profit from the crime (intermediary exploitation) • Cases where the victim is also primarily responsible for the crime or extent of the damage	• Planned crime • Egregious conducts or methods • Cases where the actual amount of profit involved by the crime is a large amount (intermediary exploitation)
	Offender/ Etc.	• Diminished mental capacity (with fault) • Sincere remorse • No prior criminal convictions • Considerable restitution	• Post-offense evidence tampering or attempting to destroy or conceal evidence • Different-offense recidivism within the statutory recidivism period. Prior convictions for same-offenses which do not constitute a repeat offense within the statutory recidivism period • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

2 FAILURE TO PAY WAGES ETC.

TYPE	CLASSIFICATION	MITIGATED SENTENCING RANGE	STANDARD SENTENCING RANGE	AGGRAVATED SENTENCING RANGE
1	Less than 50 million	- 6 mos.	4 mos. - 8 mos.	6 mos. - 1 yr.
2	50 million or more but less than 100 million	- 8 mos.	6 mos. - 1 yr.	8 mos. - 1 yr. 6 mos.
3	100 million or more	6 mos. - 1 yr.	8 mos. - 1 yr. 6 mos.	1 yr. 2 mos. - 2 yrs. 6 mos.

(unit: KRW)

CLASSIFICATION		MITIGATING FACTOR	AGGRAVATING FACTOR
Special Sentencing Factor	Conduct	• Cases where there are special extenuating circumstances for the non-payment	• Malicious non-payment • Inflicted serious harm to the employee • Vulnerable victims • Instigating the subordinate to commit the crime
	Offender/ Etc.	• Hearing and/or speech disabilities • Diminished mental capacity (without fault) • Voluntary surrender to investigative authorities, internal whistle-blowing • Victim expresses intent of non-punishment or substantial restitution was made to the victim	• Same-offense recidivism within the statutory recidivism period
General Sentencing Factor	Conduct	• Considerations could be taken into account on the disputes over the existence or scope of the obligation to pay wages, etc.	
	Offender/ Etc.	• Sincere remorse • No prior criminal convictions • Considerable restitution	• Different-offense recidivism within the statutory recidivism period. Prior convictions for same-offenses which do not constitute a repeat offense within the statutory recidivism period • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)

DEFINITION OF OFFENSES

1 FORCED LABOR · INTERMEDIARY EXPLOITATION ETC.

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

1. FORCED LABOR ETC.

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCING RANGE BY LAW
An employer forces an employee to work against their own free will through the use of violence, intimidation, and others	Labor Standards Act, Article 107, Article 7	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 30 Million
An employer do violence to an employee	Labor Standards Act, Article 107, Article 8	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 30 Million
A person who conducts job placement of, recruits or supplies workers, by means of assault, threat, and others	Employment Security Act, Article 46, paragraph 1, subparagraph 1	Imprisonment Not Exceeding 7 Years or Fine Not Exceeding 70 Million
A shipowner or a seafarer coerces a seafarer to perform labor against their free will through battery, intimidation, and others	Seafarers' Act, Article 167, subparagraph 3, Article 25-2	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 50 Million

(unit: KRW)

2. INTERMEDIARY EXPLOITATION

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCING RANGE BY LAW
A person who intervenes in the employment of another person for profit or obtains benefits as an intermediary	Labor Standards Act, Article 107, Article 9	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 30 Million
A person who intends to recruit workers or a person who engaged in such recruitment work receives money or gains from applicants in connection with such recruitment	Employment Security Act, Article 47, subparagraph 5, Article 32	Imprisonment Not Exceeding 5 Years or Fine Not Exceeding 50 Million

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCING RANGE BY LAW
A person who intends to employ a seafarer, a person engaged in job placement, recruitment, and etc., or a person engaged in labor and personnel management business of seafarers shall not receive money or benefits from a seafarer or person who intends to become a seafarer in relation to such job placement, recruitment, and employment	Seafarers' Act, Article 168, paragraph 1, subparagraph 5, Article 111	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 30 Million

(unit: KRW)

2 FAILURE TO PAY WAGES AND ETC.

- This refers to an act that constitutes the offense with the following elements as prescribed in the applicable law.

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCING RANGE BY LAW
Violation of regulation regarding settlement of payments	Labor Standards Act, Article 109, Article 36	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million
Violation of regulation regarding payment of wages	Labor Standards Act, Article 109, Article 43	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million
Violation of regulation regarding the joint and several responsibilities for payment of wages for contract work by the immediate upper tier contractor	Labor Standards Act, Article 109, Article 44	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million
Violation of regulation regarding the joint and several responsibilities for payment of wages in the construction business by the immediate upper tier contractor	Labor Standards Act, Article 109, Article 44-2	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million
Failure to pay for shutdown allowances	Labor Standards Act, Article 109, Article 46	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million
Failure to pay for extended, night, or holiday work	Labor Standards Act, Article 109, Article 56	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million
Failure to pay retirement allowance, benefits, contributions, and others	Act on Guarantee of Employees' Retirement Benefits, Article 44, subparagraph 1, subparagraph 2	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million

ELEMENTS OF OFFENSE	APPLICABLE LAW	SENTENCING RANGE BY LAW
Violation of regulation regarding the joint and several responsibilities for payment of wages by the user company	Act on the Protection, etc. of Temporary Agency Workers, Article 43, subparagraph 3, Article 34, paragraph 2	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 30 Million
Paying a wage below the minimum wage	Minimum Wage Act, Article 28, paragraph 1	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 20 Million, May be imposed concurrently
A shipowner's failure to pay wages, and others	Seafarers' Act, Article 168, paragraph 1, subparagraph 1, 2, and 3	Imprisonment Not Exceeding 3 Years or Fine Not Exceeding 30 Million
A shipowner's failure to pay a retirement allowance	Seafarers' Act, Article 170, subparagraph 3	Imprisonment Not Exceeding 2 Years or Fine Not Exceeding 20 Million

(unit: KRW)

1. TYPE 1

- This indicates cases in which the amount of unpaid wages and others involved is less than 50 million KRW.
- The above 'unpaid wages and others' amount indicates the total sum of the unpaid wages, retirement allowance, shutdown allowance, and others of one or several employees (hereinafter the same).

2. TYPE 2

- This indicates cases in which the amount of unpaid wages and others involved is 50 million KRW or more but is less than 100 million KRW.

3. TYPE 3

- This indicates cases in which the amount of unpaid wages and others involved is 100 million KRW or more.

DEFINITION OF SENTENCING FACTORS

1. CASES WITH SPECIAL EXTENUATING CIRCUMSTANCES THAT MITIGATE THE OFFENDER'S INVOLVEMENT

- This applies where one or more of the following are present:
  - Cases where the crime was committed because the offender was virtually unable to refuse instructions, etc. based on an employment relationship
  - Participation in the crime was forced by another person or resulted from threats (This excludes cases where the Criminal Act, Article 12 is applicable)
  - When the offender merely agreed to participate in the crime but did not lead or actually participate in the commission of the crime
  - Other cases with comparable factors

2. CASES WHERE THE DEGREE OF ASSAULT AND OTHER SIMILAR ACTS WAS EXCEPTIONALLY MINOR (FORCED LABOR ETC.)

- This applies where one or more of the following are present:
  - The degree of assault, threat, or others was extremely minor that the degree of infringement on the worker's free will was slight (This excludes cases where the offense targeted vulnerable victims)
  - Offense caused extremely minor damages
  - Other cases with comparable factors

3. CASES WHERE THE AMOUNT OF MONEY AND OTHER VALUABLES RECEIVED WAS MINOR (INTERMEDIARY EXPLOITATION)

- This means that the amount of money and other valuables received is exceptionally low considering the relationship between the offender and the victim, the victim's wages, and the economical circumstances, and others.

4. VICTIM EXPRESSES THE INTENT OF NON-PUNISHMENT

- This indicates cases in which the offender shows sincere remorse with genuine efforts to reach a settlement with the victim; the victim or the family of victim (in the case of a deceased victim) fully understands the legal and social

implications of opposing punishment and clearly expresses the intent not to seek punishing the offender. However, this should not apply in the following cases:

- (1) in cases in which the victim or the family of the deceased opposes punishment as a result of *de facto* coercion or deceit by the offender against the victim's will, or
- (2) where there is no reasonable or convincing basis for the victim or their legal representative to express no desire for punishment.

- This applies only to cases in which, upon careful and thorough examination and assessment of the victim's or legal representative's age, intelligence, and ability to fully understand the meaning, content, and legal implications of expressing an intent not to seek punishment, it is determined that such expression is both informed and genuine.

5. SUBSTANTIAL RESTITUTION TO THE VICTIM

- This refers to cases in which the defendant, through genuine and sustained efforts, has restored the damages to a degree comparable to a formal settlement (generally amounting to at least 2/3 of the total loss in cases involving only property damage), or in which restitution of such degree is reasonably assured.
- In the case of a court deposit, it constitutes substantial recovery of damages only when such a determination is made after carefully examining and assessing the opinions of the victim of the underlying offense or their legal representative (including the spouse, lineal relatives, and siblings if the victim is deceased) regarding the deposit, whether the defendant is legally permitted or intends to retrieve the deposited funds, the nature of the infringed legal interests, and the scale and extent of the damage.

6. CAUSING HARM IN THE COURSE OF ATTEMPTED SETTLEMENT (EXCLUDING CASES WHERE SEPARATE CRIMES SUCH AS COERCION ARE ESTABLISHED)

- This indicates cases in which harm is inflicted by persistently harassing the victim, by applying undue pressure by suggesting tangible or intangible disadvantages for refusing the settlement, or by using other equivalent methods, in the course of attempting settlement.

7. CASES WHERE THE OFFENSE WAS COMMITTED AGAINST AN UNSPECIFIED NUMBER OF PERSONS OR MULTIPLE VICTIMS, OR WAS REPEATEDLY COMMITTED OVER A CONSIDERABLE PERIOD

- When prosecuted for concurrent same-offenses of Forced Labor and Intermediary Exploitation, such offenses will not be considered as multiple offenses but only as a sentencing factor.

8. VULNERABLE VICTIM

- This indicates cases in which the victim was especially vulnerable due to the physical and/or mental disability, nationality or age at the time of the crime and the offender was already aware of or possibly aware of the victim's such circumstances.

9. CASES WHERE THE VICTIM IS ALSO PRIMARILY RESPONSIBLE FOR THE CRIME OR EXTENT OF THE DAMAGE

- This applies where one or more of the following are present:
  - Cases where the worker's own fault caused the offense, such as where the worker refused a lawful work instruction from the employer or performed their duties unlawfully and thereby caused loss to the employer. Or cases where the damage was aggravated in the course of, or after the defendant's commission of the offense by reasons attributable to the victim.
  - Cases where the victim handed over money or valuables while being well aware that the defendant was attempting to secure employment, recruitment, or hiring through an unlawful solicitation or brokerage.
  - Other cases with comparable factors

10. EGREGIOUS CONDUCTS OR METHODS

- This applies where one or more of the following are present:
  - Cases where the labor was forced by illegal methods such as by making the false or counterfeited documents or by an act of deceit
  - Pretended or misrepresented as a person with influence on hiring, employee recruiting, or received money and other valuables by such means
  - Abuse of relationships of trust
  - Other cases with comparable factors

11. CASES WHERE THERE ARE SPECIAL EXTENUATING CIRCUMSTANCES FOR THE NON-PAYMENT

- This applies where one or more of the following are present:
  - Failed to pay because of external factors that caused financial deterioration such as bankruptcy of a client or failure of payment from a client or immediately preceding contractor
  - Acquired the business that was already in a poor state of management
  - Other cases with comparable factors

12. MALICIOUS NON-PAYMENT

- This applies where one or more of the following are present:
  - Refused to pay for unjust reasons, although there is apparent duty to pay the wages
  - Failure to pay with priority to the employee even after receiving contract money from a client or immediately preceding contractor
  - The concealed executable property, pretended to be out of a business or used other person's name as business owner and operated same or similar type of company to evade duty to pay
  - Other cases with comparable factors

13. SINCERE REMORSE

- This indicates cases in which, after examining and assessing the specific circumstances surrounding the offender's admission of the offense and any voluntary efforts made toward victim restitution and/or the prevention of re-offending, the offender is deemed to show genuine remorse for the offense.

14. NO PRIOR CRIMINAL CONVICTIONS

- This indicates cases in which, the defendant has never committed a crime even once prior to the relevant offense. However, this excludes cases targeting unspecified victims or multiple victims, or cases where crimes were committed repeatedly over a prolonged period.

PRINCIPLES APPLICABLE TO SENTENCING FACTORS

1 DETERMINING THE SENTENCING RANGE

- When determining the appropriate sentencing range, judges must consider only the Special Sentencing Factors.
- However, where multiple Special Sentencing Factors are present, the applicable sentencing range shall be determined after assessing the factors in accordance with the following principles:
  - ❶ Greater weight is accorded to Conduct Factors than to Offender/Etc. Factors of equal number. However, where a victim has intent of non-punishment, such wishes may be treated on a par with a Conduct Factor.
  - ❷ Conduct Factors *inter se*, and Offender/Etc. Factors *inter se*, shall be treated as equivalent.
  - ❸ If the sentencing range applicable cannot be determined by the aforementioned principles in ❶ and ❷, judges are to decide the sentencing range by a comprehensive comparison and assessment of Special Sentencing Factors based on the principles set forth in ❶ and ❷.
- After the assessment of sentencing factors, where aggravating factors outweigh mitigating factors, the aggravating sentencing range is recommended; where mitigating factors outweigh aggravating factors, the mitigating sentencing range is recommended; and in all other cases, the standard sentencing range is recommended.

2 DETERMINING THE SENTENCE TO BE IMPOSED

- The sentence to be imposed shall be determined within the sentencing range established under paragraph 1 above, by comprehensively taking into account both General Sentencing Factors and Special Sentencing Factors.

GENERAL APPLICATION PRINCIPLES

1 SPECIAL ADJUSTMENTS TO THE RECOMMENDED SENTENCING RANGE

❶ After the assessment of Special Sentencing Factors, if a case falls within the Aggravating Sentencing Range and either i) two or more Special Aggravating Factors exist alone, or ii) Special Aggravating Factors outnumber Special Mitigating Factors by two or more, the upper limit of the recommended sentencing range may be increased by up to 1/2.

❷ After the assessment of Special Sentencing Factors, if a case falls within the Mitigating Sentencing Range and either i) two or more Special Mitigating Factors exist alone, or ii) Special Mitigating Factors outnumber Special Aggravating Factors by two or more, the lower limit of the recommended sentencing range may be reduced by up to 1/2.

2 RELATION BETWEEN THE RECOMMENDED SENTENCING RANGE UNDER THE SENTENCING GUIDELINES AND THE APPLICABLE SENTENCING RANGE BY LAW

- Where the sentencing range recommended under this guideline conflicts with the statutory applicable aggravated/mitigated sentencing range, the upper or lower limit of the applicable sentencing range by law shall govern.

3 APPLICATION OF DISCRETIONARY MITIGATING FACTORS BY LAW

- Where a judge declines to apply discretionary statutory mitigating factors listed in the Sentencing Factor Table of this guideline, such factors shall be considered as extenuating circumstances among mitigating factors.

GUIDELINES ON SENTENCING MULTIPLE OFFENSES

1 APPLICABLE RANGE

- This section applies to concurrent crimes prescribed in the first part of Article 37 of the Criminal Act. However, when concurrent crimes under the first part of Article 37 of the Criminal Act include both an offense set forth in the sentencing guidelines and an offense not covered by the sentencing guidelines, then the minimum level should be the minimum of the sentencing range of the offense that is set forth in this sentencing guideline.

2 DETERMINING THE BASE OFFENSE

- The "base offense" refers to the offense subject to the most severe punishment after selecting the type of punishment and applying any statutory aggravation and/or mitigation thereto. However, where the upper end of the sentencing range under the sentencing guidelines for an offense covered by this chapter is lower than the upper end of the sentencing range under the sentencing guidelines for the other concurrent offense, the other concurrent offense shall become the base offense.

3 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE SAME-OFFENSES

- For concurrent offenses among Failure to Pay Wages Etc., the following method of aggravation for multiple offenses shall apply.
  - ❶ The Type of offense shall be determined based on the aggregate amount of unpaid wages, etc. Within that Type, the sentencing range shall be selected by the judges taking into account all relevant circumstances.
  - ❷ (1) Where the aggregation of unpaid wages, etc. results in an offense Type one level higher than that of the most severe single offense among offenses of the same Type, the lower end of the sentencing range shall be reduced by 1/3. (2) Where the aggregation of unpaid wages, etc. results in an offense Type two

levels or more higher than that of the most severe single offense, the lower end of the sentencing range shall be reduced by 1/2. However, the reduced lower end of the sentencing range shall not fall below the lower end of the sentencing range of the offense Type applicable to the most severe single offense.

- For multiple offenses between Forced Labor, Intermediary Exploitation, or other type of Failure to Pay Wages Etc., the following methods of 'Determining the Sentencing Range for the Concurrent Multiple Different-Offense' shall apply.

4 DETERMINING THE SENTENCING RANGE FOR THE CONCURRENT MULTIPLE DIFFERENT-OFFENSES

- Except for concurrent different-offense that are treated as a single offense under the sentencing guidelines, the following method of aggravation for multiple offenses shall apply.
  - ❶ The sentencing range for multiple offenses involving two offenses shall be determined by adding 1/2 of the upper end of the sentencing range of the other offense to the upper end of the sentencing range of the base offense.
  - ❷ For multiple offenses involving three or more offenses, the upper end of the sentencing range shall be determined by adding the following three figures: (1) the upper end of the sentencing range of the base offense, (2) 1/2 of the upper end of the sentencing range of the offense with the highest upper end of the sentencing range among the other offenses, and (3) 1/3 of the upper end of the sentencing range of the offense with the second highest upper end of the sentencing range among the other offenses.
  - ❸ For multiple offenses where the lower end of the sentencing range of the other offense is higher than the lower end of the sentencing range of the base offense, the lower end of the sentencing range after applying the method of aggravation for multiple offenses shall be the lower end of the sentencing range of the other offense.
- However, where the concurrent multiple offenses include same-offense concurrences among of Failure to Pay Wages Etc., the sentencing range shall first be determined in accordance with 'Determining the Sentencing Range for Concurrent Same-Offenses', and the aggravation method for Different-Offense set out above shall then be applied to the sentencing range determined.

PART B

GUIDELINE ON SUSPENDING A SENTENCE

1 FORCED LABOR · INTERMEDIARY EXPLOITATION ETC.

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Caused grave damage to the victim's body or mentality (forced labor, etc.) • Where the offense was committed against an unspecified number of persons or multiple victims, or was repeatedly committed over a considerable period • Vulnerable victims • Prior convictions for the same-offense [suspended sentence of imprisonment without labor or a more severe punishment imposed within the past five years, or three or more fines (including suspended fine)]	• Cases with special extenuating circumstances that mitigate the offender's involvement • The degree of assault, etc. was exceptionally minor (forced labor, etc.) • The amount of money and other valuables received was minor (intermediary exploitation) • Voluntary surrender to investigative authorities or internal whistle-blowing • No prior criminal convictions • Victim expresses intent of non-punishment or substantial restitution was made to the victim
General Circumstances	• Cases where the actual amount of profit involved by the crime is large (intermediary exploitation) • Egregious conducts or methods • Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Planned crime • Lack of social/family ties • Absence of sincere remorse • Playing a leading role as a co-offender • Post-offense evidence tampering or attempting to destroy or conceal evidence • Absence of efforts to reverse damages • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• Cases where the offender failed to spend or retain most of the profit from the crime (intermediary exploitation) • Minor participation as a co-offender • No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Sincere remorse • Considerable restitution

2 FAILURE TO PAY WAGES ETC.

CLASSIFICATION	ADVERSE	AFFIRMATIVE
Primary Circumstances	• Malicious non-payment • Caused grave damage to the employee • Vulnerable victims • Prior convictions for the same-offense [suspended sentence of imprisonment without labor or a more severe punishment imposed within the past five years, or three or more fines (including suspended fine)]	• Cases where there are special extenuating circumstances for the non-payment • Voluntary surrender to investigative authorities or internal whistle-blowing • No prior criminal convictions • Victim expresses intent of non-punishment or substantial restitution was made to the victim
General Circumstances	• Two or more prior convictions resulting in a suspended sentence of imprisonment without labor or heavier punishment • Lack of social/family ties • Absence of sincere remorse • Absence of efforts to reverse damages • Causing harm in the course of attempted settlement (excluding cases where separate crimes such as coercion are established)	• Considerations could be taken into account on the disputes over the existence or scope of the obligation to pay wages, etc. • Sincere remorse • No prior convictions resulting in a suspended sentence of imprisonment without labor, or heavier punishment • Stable social/family ties • The offender's physical condition is severely impaired • Cases where detaining the offender would impose excessive hardship on dependent family members • Considerable restitution

DEFINITIONS OF CIRCUMSTANCES TO CONSIDER WHEN SUSPENDING A SENTENCE

- For identical factors in both Sentencing Factors and the Circumstances for Suspending a Sentence, refer to the definitions set forth in the Definition of Sentencing Factors.
- Calculation of the Period of Prior Criminal Convictions
  - For cases where a suspended sentence of imprisonment or a fine was imposed, the period of a prior conviction is calculated from the date on which the judgment became final to the date of the commission of the offense.
  - For cases where a sentence of imprisonment was executed, the period of a prior conviction is calculated from the date on which the sentence was fully served to the date of the commission of the offense.

PRINCIPLES APPLICABLE TO CIRCUMSTANCES WHEN SUSPENDING A SENTENCE

- When the recommended sentence is imprisonment with labor and judges decide to suspend execution of the sentence, they must give greater weight to the Primary Circumstances than to the General Circumstances, and the following principles should be considered:
  ❶ When two or more Primary Affirmative Circumstances exist alone, or when Primary Affirmative Circumstances outnumber Primary Adverse Circumstances by two or more, it is recommended to suspend the sentence.
  ❷ When two or more Primary Adverse Circumstances exist alone, or when Primary Adverse Circumstances outnumber Primary Affirmative Circumstances by two or more, imprisonment is recommended.
  ❸ In cases in which ❶ or ❷ apply, but the difference between the number of General Adverse (Affirmative) Circumstances and General Affirmative (Adverse) Circumstances is greater than the difference between the number of Primary Affirmative (Adverse) Circumstances and Primary Adverse (Affirmative) Circumstances, or in cases other than ❶ or ❷, the judges shall decide whether to suspend the sentence after comparing and assessing all the Circumstances comprehensively.