Revisions of the Labor Laws of 2023

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1. Increase of Minimum Wage in 2023

■ Content:

○ **In 2023, the minimum wage is KRW 9,620 per hour, 5% increase from the previous year(2022)**

- (Based on Public Notice, the monthly conversion amount is KRW 2,010,580 calculated based on 40 hours of working hours per week, or 209 hours per month (8 hours of paid holiday per week)

☞ *Hourly minimum wage in 2023: KRW 9,160*

■ Enforcement Date: Jan. 1st, 2023

(▪ Public Notice of Minimum Wage 2023 (2023. 1.1. ~12. 31.))

2. Increase of Medical Insurance Premium Contribution Rate in 2023

■ Content:

○ **Medical Insurance Premium Contribution Rate : 7.09% (2023)**

○ **Contribution Rate for Long-term Care Insurance: 12.81%(2023) of the MIPC rate**

☞ *2022 Medical Insurance Contribution Rate : 6.99%, Long-term Care Insurance: 12.27% of the MIPC rate*

■ Enforcement Date: Jan. 1st, 2023

(▪ Article 44 of Enforcement Decree of the National Health Insurance Act Article 44 (Insurance Contribution Rates and Monetary Value per Contribution Point)

3. Revision of the Election Method for Labor Management Council (LMC)'s Employee Representatives

■ Content:

- ○ The method of election regarding workers' members of labor management council has been upgraded from the enforcement decree to the law.
- ○ Changes in election method requirements (additions and deletions)
  - 'Participation of majority of member' is the new requirement added to 'direct, secret, and unsigned' ballot
  - Removal of 10 or more nominations as a requirement for candidacy for workers' member

■ Enforcement Date: Dec. 11st, 2022

(▪ Article 6 of Act on The Promotion of Employees' Participation and Cooperation, (Composition of Council), Article 3 of Enforcement Decree of the Act on the Promotion of Employees' Participation and Cooperation)

4. The Fatal Accidents Act (fully implemented from January 27, 2024)

■ Content:

The Act on the Penalty of Fatal Accidents (hereinafter referred to as the "Fatal Accidents Act" or "FAA") was enacted on January 26, 2021. The FAA has come into effect January 27, 2022, after a one-year grace period. However, businesses with fewer than 5 employees will remain exempt, while businesses with 6-49 employees will have a three-year grace period (until January 2024).

If the employer or business manager is found to be responsible for the violation of safety and health requirements in the FAA, resulting in an accident that kills one or more persons, the employer or business manager shall be subject to a minimum one year of imprisonment or a fine of not more than KRW 1 billion.

■ Enforcement Date: January 27, 2024

5. Expanding Application Scope of Recess Facility Installation

■ Content;

- ○ Workplaces with 20 to 50 full-time employees (In the case of construction workplaces, a business with a total construction cost of 5 billion or more)
- ○ Workplaces which include 2 or more full-time employees in some occupations, and 10 or more but less than 20 full-time employees (telephone counselors, care workers, telemarketers, delivery workers, cleaners and sanitation workers, apartment/building security guards and janitors)

☞ *Before Revision: Businesses with 50 or more full-time workers*

■ Enforcement Date: Aug. 18th, 2023

(▪ Article 128-2 of Occupational Safety and Health Act, Article 96-2 of Enforcement Decree of the Occupational Safety and Health Act)

Dismissal of the Finance Director of a Foreign-invested Company

I. Summary

There are cases in which workers are fired for violating the company's code of ethics even though they have done their best to develop the company. This article covers a case that serves as a warning against the mistaken idea that legal violations in business practice can be justified by increasing sales.

A multinational advertising company has a branch office (hereinafter referred to as “Company D”) in Korea and conducts business independently of the parent foreign company. Company D saw its sales cut in half due to the COVID-19 pandemic that began in 2020, and to cope with this, it froze wages and employment insurance subsidies and took other key management actions. As COVID began easing at the end of 2021, advertisement purchasing companies requested advance tax invoices from Company D in order to secure their advertising budgets that had not been used during the COVID-19 shutdowns. The branch manager of Company D asked the finance director to issue these tax invoices. The finance director was well aware that issuing tax invoices in advance violated tax law and the head office's accounting guidelines. However, such a practice was common for Korean advertising companies, and the finance director knew that if they refused to do the same, advertising from these companies would go to other companies. Accordingly, the director agreed to issue these tax invoices in advance.

In April 2022, the CFO (chief finance officer) at the head office confirmed that the Korean branch had issued advance tax invoices amounting to KRW 3 billion, and sternly warned the head of the Korean branch and the director of finance that this was not to happen again. The finance director promised that it would not. However, the Korean branch continued to issue tax invoices without receiving payment. In September 2022, the head office audited the Korean branch through an external accounting firm, which revealed that tax invoices had been issued again in advance to the tune of KRW 2.8 billion as of the end of 2021 and KRW 2.3 billion as of June 2022, which the finance director had not reported to the headquarters finance team. In mid-November 2022, a strict written warning was issued to the Korean branch manager, and a decision was made to dismiss the finance director.

The main issue in this case is whether a disciplinary dismissal of the finance director was appropriate and whether the procedure for disciplinary dismissal was followed.

II. Claims of the Two Parties

1. The employee's claims

The dismissed finance director argued that the company's dismissal was unfair because it violated the disciplinary dismissal criteria for reasons, severity and procedures.

(1) Reasons for the disciplinary dismissal

The reasons the company dismissed the finance director for disciplinary reasons were because of the illegal act of issuing tax invoices in advance and the related false financial reporting. The Korean branch accepted the request from major clients for advance tax invoices in 2021 and early 2022 to secure sales, and not due to personal corruption of the finance director. Due to the global COVID-19 crisis that began in January 2020, consumption plummeted and advertising was not being purchased at anywhere near the levels of previous years. The company saw a 40% drop in sales in 2020 and 2021. As the COVID-19 crisis began to subside at the end of 2021, Company D's customers asked for tax invoices in advance so they could secure the advertising budget before their deadlines. In the past, this had been the practice in the advertising industry, and if such requests were rejected, the advertising would go to other advertising companies, so Company D was not in a position to refuse their requests. The finance director mentioned the risk related to issuing tax invoices in the company's decision-making process, but the employee could not blindly oppose it because they felt it was necessary to ensure sales and survive in the advertising industry. The advance tax invoices issued in the second half of 2021 and the first half of 2022 were all accounted for in subsequent sales throughout 2022, and as a result, the company achieved its highest sales volume in its history, amounting to KRW 20 billion.

(2) Disciplinary action procedures were improperly followed and dismissal did not suit the finance director's actions

The finance director argued that the illegal act of issuing tax invoices in advance and the resulting tax risks should not be regarded as personal corruption by the finance director. The false report given to the headquarters was done as follow-up in light of the headquarters' policy and decision on issuing tax invoices in advance, and no malice was intended or personal gain sought. For the past 14 years since being hired by the company in November 2008, the finance director had done their best to help the company, and had never had any disciplinary action taken against them. Rather, when the company was in trouble, they returned part of their salary and shared in the pain of the company as it overcame the difficult challenges. Considering these circumstances, the harshest disciplinary action − dismissal − is excessive.

A provision in the company's employment rules states, "The company has the right to form a disciplinary committee and deliberate on specific issues in order to determine

reasonable disciplinary measures." The company did not abide by its own disciplinary procedures in that it did not form a disciplinary committee and did not give the employee an opportunity to explain. The Korean branch manager, who is the company's authority over personnel, was also excluded. Instead, on November 7, 2022, the CFO of the Asian regional headquarters sent an e-mail notifying that the finance director would be fired, and then sent a notice of dismissal through the labor attorney hired by the company.

2. Company D's claims

(1) Reasons for disciplinary dismissal

The applicant in this case is in charge of finance and accounting for the Korean branch of a global company. In a global company, the reporting system is separate for each area of business, with the person in charge of the relevant area at each branch reporting directly to the person in charge in the upper organization and receiving orders. The finance director signed on to the Global Code of Ethics as well as the company’s rules of employment. The Code of Ethics includes the duty to abide by the laws of each country, and the duty to report to the company on finances and accounting in an honest manner.

According to Article 17 of the Value-Added Tax Act, in principle, a business operator issues a tax invoice before the goods or services are provided and then receives the payment within 7 days from the date the tax invoice was issued. In unusual cases the funds can be received within 30 days from the date the tax invoice was issued. If the funds are not received within this 30-day period, a penalty of 1% of the total cost of the goods/services will be payable, if pointed out in an audit by the National Tax Service. These violations will cause the company to be subject to audits for the next five years. If the issued tax invoice is canceled or not converted into income, the National Tax Service considers this a false tax invoice, which is punishable in accordance with the Punishment of Tax Offenders Act. Punishment can include imprisonment for up to one year or a fine equivalent to a maximum of twice the tax amount calculated by applying the value-added tax rate to the supply price (Article 10 of the PoTOA)).

It is argued that providing tax invoices in advance is a practice in the advertising industry. However, the presence of such practices cannot justify the employee's violations of the law. This company is a global company, and through its code of ethics, it stipulates what should not be done. In other words, while it had not been discovered by the tax authorities yet, the act of issuing tax invoices so far in advance is in violation of the relevant laws.

The employee claims that the company has not suffered any material damage. However, if the company were to be audited by the tax authorities in the next five years, the company would be fined and/or otherwise punished under the Punishment of Tax Offenders Act if the tax invoice were ultimately canceled.

(2) Regarding the employee's claims that disciplinary procedures were not followed and that disciplinary action was excessive

KRW 2.8 billion had accrued by December 2021 in tax invoices issued in advance and were not reported by the financial director. Separately, in March 2022, the head office's accounting team became aware that Company D had issued KRW 3 billion in advance tax invoices, and the head office's CFO had explained to the head of the Korean branch and the finance director that issuing tax invoices this far in advance was illegal, and they were clearly informed that this was to never occur again and the finance director promised to comply. Nevertheless, as of June 30, 2022, an additional KRW 2.3 billion had been issued in advance tax invoices, making it clear that the illegal practice had continued, as had the manipulation of accounting data and false reporting. Therefore, the head office cannot continue the employment relationship because it can no longer trust the finance director, who is in charge of accounting for Korea.

The applicant claims that the company did not form a disciplinary committee and did not give him an opportunity to explain. Regarding this, there are no provisions in the Korean branch office's rules of employment that a disciplinary committee must be formed before disciplinary action is taken, nor does it stipulate the composition or procedures for a disciplinary committee. Nevertheless, the company gave sufficient opportunity to the finance director to explain the reasons for issuing tax invoices so far in advance during the four-week accounting audit in September 2022.

Ⅲ. Judgment of the Labor Relations Commission

1. Statements made by the parties

On January 27, 2022, a hearing took place at the Labor Relations Commission on this dismissal case. The summary of the applicant's statement is as follows. They had never received any disciplinary action during his service period with the company, and had dedicated themselves to development of the company. It was a desperate situation for the company's survival during the COVID-19 crisis, and the branch manager had requested that advance tax invoices be issued, as this was a common practice in the advertising industry. Regarding this, the finance director was not in a position to refuse the Korean branch manager. "...I admit that my omissions in the report to the head office were wrong, but I cannot agree that the harshest discipline - dismissal – is appropriate...."

In response, the company acknowledged that the finance director had worked hard for the past 14 years and had contributed greatly to development of the company. However, the applicant's argument that the illegal act was recognized as a practice in the industry or for the benefit of the company can be seen as a domestic sentiment. However, as a multinational company with a long tradition, the company prioritizes

laws and principles over immediate profit according to its global regulations. The direct reason for dismissal of the applicant was not that they put the company at risk through the fraudulent issuance of tax invoices. On April 22, 2022, the CFO gave the finance director the opportunity to confirm and cease the advance issuance of tax invoices. Nevertheless, even after that, in the accounting report at the end of the month and in the semiannual accounting report at the end of June were false and fabricated, and only after an audit revealed this fact did the finance director admit a failure to comply. Through this series of events, the head office's CFO lost trust in the work of the Korean branch's finance director. The company suggested the finance director resign with a bonus package, but this was refused, forcing the company to dismiss the finance director.

2. Decision of the Labor Relations Commission

The Labor Relations Commission postponed its judgment and gave the parties a week to settle. The company suggested resignation again with an early retirement package (ERP) bonus, but the finance director refused this and insisted on reinstatement. On February 6, 2022, the Labor Relations Commission dismissed the case.

The precedent criteria for such dismissals are as follows.

(1) When disciplinary action is to be taken with an employee, it is left to the discretion of the disciplinary authority to decide what kind of disposition to take. However, the disposition is illegal only when it is acknowledged that the discretionary power entrusted to the person with the right to discipline is abused in that the disciplinary action taken by the person with the right to discipline has significantly little validity in terms of social norms.[1)]

(2) Disciplinary dismissals are justified only when there is a cause attributable to the worker to the extent that the employment relationship cannot continue according to social norms. Whether or not the employment relationship with the worker cannot be continued according to social norms depends on a comprehensive review of the various circumstances, such the business purpose of the employer, conditions of the workplace, the worker's status and duties, the motive for and details of the misconduct, the status of the company as a result related to the risk of disorder, and past work attitude.[2)]

Looking at this case based on the above legal principles, the recognized facts are as follows. (1) The applicant oversaw the accounting at the Korean branch and, as an executive, had the authority to tell the branch manager that they would be unable to issue illegal tax invoices. (2) Although issuing tax invoices so far in advance was

1) Supreme Court ruling on Aug. 23, 2002, 2000da60890.
2) Supreme Court ruling on May 28, 2009, 2007doo979.

customary in the Korean market, the finance director was aware that it was in violation of tax laws and was not in line with the company's accounting policies. (3) The applicant intentionally manipulated accounting data in the financial reports to the head office's finance team for about a year, to hide that advance tax invoices had been issued. (4) Taking into account the fact that the applicant on April 22, 2022 promised the head office's CFO to no longer issue advance tax invoices, when this continued to occur, the trust between them had been damaged to the extent that the working relationship could no longer be maintained, despite the various circumstances claimed by the applicant. Therefore, the applicant is responsible for this outcome.[3)]

Ⅳ. Lessons from this Dismissal Case

There are many cases where companies take risks to increase sales, some of which can be outright illegal. This may be beneficial to the company in the short run, but in the long run can jeopardize the entire company's operations. The code of ethics of a global company is to abide by the laws and principles and conduct business legally. Although this policy may hinder immediate sales, it is essential to long-term business survival in that it builds the company's credibility and consumer trust.

I believe that if the finance director at Company D herein had complied with the basic principles of global standards, this dismissal would not have happened. In this respect, Korean companies should keep in mind that conducting sales or business operations in compliance with laws and principles is the foundation for global competitiveness.

Korean labor law: A Case of Workplace Harassment and the Criteria for Recognizing Consequent Mental Illness as an Occupational Accident

Ⅰ. Introduction

The most common consequences of bullying at work are mental illness such as depression, anxiety disorders, and adjustment disorders. As these mental disorders

3) Labor Commission decision: Seoul2022buhae2826 000 unfair dismissal case.

worsen, they are diagnosed by a psychiatrist, and if recognized as having a significant causal relationship to work, they can be recognized as occupational accidents and the person recognized as eligible for medical care benefits and suspension benefits under the Industrial Accident Compensation Insurance Act (IACI Act). In order to be recognized as an occupational accident, the mental disorders must be an illness recognized under the IACI Act, and the worker must prove that the illness occurred as a result of work. It is, in fact, difficult to prove this, but two methods make it easier: (i) the company recognizes that workplace harassment has occurred, or (ii) the Labor Office recognizes that workplace harassment has occurred. However, it is not easy for someone to get the employer to recognize they have been the recipient of workplace harassment, even with a psychiatric diagnosis of mental illness, and it takes a considerable amount of time for the Labor Office to recognize that workplace bullying has occurred. Recently, the Korea Workers' Compensation and Welfare Corporation has significantly revised its Guidelines for Investigation of whether a Mental Illness is related to Work, suggesting a detailed method for investigation of whether a mental illness is the result of workplace bullying. The following describes a case in which a female employee developed a mental illness due to bullying by her workplace superior. In this case, I will review in detail the requirements for the worker's mental illness due to workplace bullying to be recognized as an occupational accident.

Ⅱ. A Case of Mental Illness Caused by Workplace Bullying

1. Workplace bullying

Eun-joo Kim (hereinafter referred to as “Eunjoo”) joined company A with about 100 employees on May 25, 2020, and was in charge of mechanical design in the machine team, and the team leader was a foreigner. The perpetrator was Mr. Kang (hereinafter referred to as “Manager Kang”), the head of the sales development team, who was intentionally involved in Eunjoo’s work and constantly harassed her, even though he was not in her specific department. The harassment started on November 10, 2021. Manager Kang called Eunjoo at 08:54 before work started and asked, "Where are you?" She said that she was on the 1st floor. He said, "Why are you there now?" When she returned to her desk, he shook with his finger at her and e said, “Don’t leave your seat empty.” She had gone out to buy a coffee and was with several co-workers, but he scolded her only.

The second was on December 23, 2021, and a few employees on the same floor as Eunjoo worked overtime and had to eat dinner, but Manager Kang ordered a late-night meal for all employees excluding Eunjoo, saying, "Eunjoo will not eat." A few days later, Eunjoo was about to leave for the day when Manager Kang shouted to the managing director next to her, “Who’s going to work overtime during this busy time?

Who's leaving so early?" Eunjoo did not respond, but his critical remarks remained with her for a long time.

The third time was on January 5, 2022, while Eunjoo was talking to Section Chief Jin of the Electricity Team. Manager Kang interrupted their conversation and said, "Chief Jin, do you have any work for Eunjoo?" Eunjoo felt uncomfortable about Manager Kang trying to instruct Eunjoo on tasks even though he was not a senior in her department.

The fourth time was on May 23, 2022, when Eunjoo heard that Manager Kang called her team leader and asked, "This is urgent, but will Eunjoo work overtime?" She felt very uncomfortable when the team leader of another department essentially ordered her to work overtime.

The fifth incident was on July 20, 2022, when Eunjoo made a purchase request without a price quotation. Manager Kang called her to his desk and asked, "Where did the purchase order come from? If we pay that much, how are we going to eat? Will you be responsible, Eunjoo? Don't do these things without asking your superiors first." Manager Kang verbally mocked and rebuked her. After a while, Eunjoo sent another email to Manager Kang saying, "I checked the quotation and requested the purchase again." Then, Manager Kang sent a group email to employees who had no relation to the purchase, in the Technical Sales, Electrical Management, and Machine departments, mentioning that Eunjoo was not to make the same mistake and greatly exaggerated her error of failing to include a price quotation. It would have been enough for Manager Kang to scold her over the phone, but instead he humiliated and embarrassed her in front of many employees by email. Because of this, Eunjoo felt uncomfortable while working with people in other departments, and was under a lot of stress.

2. The company's poor investigation and secondary damage

After the email incident on July 20, 2022, Eunjoo suffered extreme mental anguish, and she received a flood of work assignments. On October 20, 2022, Eunjoo experienced severe anxiety and physical pain and found it difficult to endure any longer, so she consulted a psychiatrist and was diagnosed with an adjustment disorder, a kind of mental illness. The diagnosis stated that recuperation for the next three months was required. Eunjoo applied directly to the company president, as the company had no HR head, for paid leave with a written opinion from a psychiatrist. In a meeting with the president on October 24, 2022, she stated her mental illness was due to Manager Kang's workplace harassment. She also requested a leave of absence with pay, as this case constituted an occupational accident. Regarding this, the president asked her to bring evidence, and so she submitted the email document that she received from Manager Kang and a psychiatric diagnosis as evidence. The

president then told Eunjoo, "This is more like paranoia." He repeatedly asked, “Are you not normal?” When Eunjoo asked, "Shouldn't it be paid leave because (leave) is due to bullying at work?" the president said, “Go find a company that would give you paid vacation for this.”

After the meeting with the president, Eunjoo submitted an additional statement related to Manager Kang on October 31, 2022. In response, the president called in the relevant witnesses to investigate. Eunjoo hoped that the bullying case would be resolved within the company quietly, without making the problem bigger, and only receiving an apology from Manager Kang and preventing recurrence. However, rumors spread to everyone in the office when the president summoned the employees for an investigation, and the summoned employees became uncomfortable with the president’s attitude toward Eunjoo. For her part, Eunjoo found it more and more difficult to work and wondered why she was working so hard if this was going to be the result, feeling it was all unfair and futile.

On November 17, 2022, Eunjoo applied for two months of unpaid leave, and the next day the unpaid leave was approved. Eunjoo is about to file for an occupational accident claim for bullying at work. Hereby I would like to review what she needs to consider when doing this.

Ⅲ. Mental Illness-related Occupational Labor Laws, Precedents, and Guidelines

We will review the standards of laws and precedents regarding the requirements for bullying-induced mental illness to be recognized as an occupational accident.

1. Criteria for recognition of mental illness as an occupational accident under the IACI Act

On July 16, 2019, as the Workplace Harassment Prevention law was introduced pursuant to revision of the Labor Standards Act (Article 76-2), the IACI Act stipulates that “illnesses caused by work-related mental stress, such as bullying at work and verbal abuse by customers,” are recognized as occupational accidents.[4] The specific criteria for mental illness are listed in Table 3 of the Enforcement Decree to the IACI Act, which are “(f) Post-traumatic stress disorder caused by an event that can cause mental shock in relation to work; (g) An incident that may cause psychological shock, such as violence or verbal abuse from customers in relation to work, or an adjustment disorder or depressive episode caused by stress directly related to work.”[5]

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4) Article 37 of the IACI Act (Criteria for Recognition of Occupational Accidents).

5) Enforcement Decree (Table 3) of the IACI Act (Specific criteria for recognition of occupational illness) Art. 34,

2. Related precedents

A ruling in 2016 stated that an adjustment disorder caused by stress due to workplace bullying constitutes an occupational illness.[6] This court ruling stated the standard criteria for judging the case as follows. “Occupational accidents, as stipulated in Article 5, Item 1 of the IACI Act, refer to illnesses caused by work while a worker is performing his or her job, so there must be a substantial causal relationship between work and the illness. However,

(i) even if the main cause of the illness is not directly related to work performance, at least if work-related overwork or stress overlaps with the main cause of the illness and causes or aggravates the illness, it must be seen that there is a causal relationship between them.

(ii) The causal relationship does not necessarily have to be clearly proven medically or scientifically, and considering all circumstances, even if a substantial causal relationship can be presumed between the work and the illness, the proof must be admitted as verified.

(iii) The presence or absence of a causal relationship between work and illness shall be judged based on the health and physical condition of the worker concerned, not of the average person.”[7]

3. Types of mental illness

Occupational mental illness does not apply to illnesses caused by congenital physical disorders, but refers to mental illnesses related to work-related psychological stress. Representative mental illnesses related to workplace bullying include (i) depressive episodes (depression), (ii) anxiety disorder, and (iii) adjustment disorder.[8]

① Workers with depression have reduced concentration, increased fatigue, and increased accident rates and absenteeism, which affects work efficiency. This depression impairs workers' social behavior, making them less likely to participate in conversation and less cooperative, affecting interpersonal relationships and even leading to suicide.

② Anxiety disorder refers to a mental illness that interferes with daily life due to various forms of abnormal or pathological anxiety and fear. Anxiety disorders include panic disorder and various phobias (fear of heights, agoraphobia, social phobia, etc.). Panic disorder has physical symptoms such as shortness of breath, a

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Para. 3.

6) Seoul Administrative Court ruling on Mar. 30, 2016. 2014gudan 2112.

7) Supreme Court ruling on July 25, 2013. 2011du10874.

8) Korea Workers' Compensation and Welfare Service, “Guidelines for Investigation of whether a Mental Illness is related to Work,” No. 2021-05, Jan. 13, 2021.

feeling of staggering, sweating, and choking. In particular, cognitive symptoms can include feeling like one is dying or going crazy and are characteristic of “panic attacks.”

③ Adjustment disorder can be diagnosed as anxiety disorder or depression depending on the pattern of accompanying major symptoms. It is characterized by the presence of symptoms, either emotional or behavioral, in response to a recognizable stressor. Adjustment disorder appears within 3 months of the onset of an identifiable stressor and does not persist for more than 6 months once the stressor is resolved. Adjustment disorder is one of the most commonly used diagnoses in psychiatry, and tends to be given when the symptoms do not meet the diagnostic criteria for other mental disorders.

4. Work-related mental illness investigation procedure (Guideline No. 2021-05)

When the Korea Workers' Compensation and Welfare Corporation (hereafter referred to as “the Welfare Corporation”) receives an occupational accident application for workplace harassment, it determines whether to recognize an incident as an occupational accident through the following procedure: ① Receipt of medical care benefit application → ② Confirmation of illness name and clinical psychological test result → ③ Incident investigation → ④ Preparation of incident investigation report → ⑤ Confirmation of medical opinion by a medical doctor working for the Welfare Corporation → ⑥ Request for deliberation by the Occupational Illness Judgment Committee.

It needs to be noted here that the applicant's treatment in a psychiatric clinic is not enough for the name of the illness to be determined and the results of the clinical psychological test. A psychiatric diagnosis at a Welfare Corporation-affiliated occupational accident hospital or general hospitals must be submitted. The name of the illness must include depression, anxiety disorder, or adjustment disorder to be considered a mental illness.

During the incident investigation, the circumstances of the incident, work-related matters, confirmation of major work-related stress factors, and evidence must be collected. The circumstances of the incident are confirmed through statements from the applicant, the applicant's employer, and fellow workers. For work-related matters, the workplace should be observed and daily work stressors checked. “Daily work stressors” shall be checked according to a checklist of 11 items to determine the major work stress factors, with each item including answers to Who, What, Where, When, Why and How. The 11 items on the checklist are:

① Assess the severity of work-related incidents,

② Assess the severity of verbal abuse/violence/sexual harassment,

③ Assess the severity of changes in the quantity and quality of work,

④ Assess the severity of work mistakes/responsibility,
⑤ Assess the severity of complaints/conflicts with customers,
⑥ Assess the severity of conflict(s) with the company,
⑦ Assess the severity of placement change(s),
⑧ Assess the severity of conflict(s) in the workplace,
⑨ Assess the severity of maladjustment to work,
⑩ Assess the viewpoints of bullying and discrimination, and
⑪ Assess the severity of other work-related stressors.

Ⅳ. Conclusion

In order for Eunjoo's case mentioned above to be recognized as an occupational accident, evidence must be gathered in accordance with the Welfare Corporation's Guidelines for Investigation of whether a Mental Illness is related to Work. First, a recent diagnosis of mental illness must be issued for the specific illness by a general hospital. Second, a specific description of the incident(s) of bullying at the workplace must be made and answer Who, What, Where, When, Why and How. Particularly in this case, the company's inappropriate investigation into the report of workplace harassment and the resulting secondary damage must be described in detail. These occurrences worsened Eunjoo's mental state and made it difficult for her to continue working, so she had no choice but to take a leave of absence. In this way, if it is proven that her mental illness occurred from and was exacerbated by bullying at work, it will be recognized as an occupational accident.

The workplace not only provides a means of income for workers, but is also an important place where workers spend most of their time. Workers form interpersonal relationships through work and achieve self-realization through personal growth. In such an important place, workplace bullying is not only a violation of workers' personal rights, it can also cause a variety of mental disorders. Therefore, the employer must ensure a safe environment for workers in accordance with the principle of good faith accompanying the labor contract, and bear in mind that failure to uphold the duty to protect workers will incur liability for criminal[9] and civil[10] violations.

9) For violations of Article 76-2 of the Labor Standards Act, an administrative fine of up to KRW 10 million is charged.
10) Supreme Court ruling on Feb. 23, 1999, 97da12082.

Workplace Harassment Resolved through Recognition of an Accident as Related to Work

Ⅰ. Introduction

Until recently, workplace harassment was resolved through workplace grievance handling, but if this did not work, the victim had no choice but to put up with such harassment or quit his or her job. However, since the procedures for remedy against harassment in the workplace were legislated on April 2021, now constituting a compulsory regulation that punishes employers if they do not comply with the required procedures, employers are much more involved in resolving things.[11)]

According to a report by the Kyunghyang daily paper on June 29, 2022, one of every four office workers has experienced harassment at work, with 31% of that number saying the harassment had been serious, and 7.3% said they were contemplating the extreme response of suicide.[12)] When someone is bullied for a long period of time, the mental strain can lead to depression and adjustment disorder, and finally to extreme choices.

This article will look at a case of harassment against an employee who had to avoid working overtime. This employee worked shifts at a production site and avoided working overtime due to a work-related injury and its long-term effects, and received psychiatric treatment over harassment from his colleagues. In this case, this labor attorney provided a reasonable solution through interviews with the victim.

Ⅱ. Details of the Related Workplace Harassment

1. Harassment occurring after injury at work

“Hong Gil-dong” (hereinafter referred to as “Gil-dong”) worked one of three shifts as a production worker for a large manufacturing company. At around 2:00 am on June 2, 2019 while working in the workroom, the old chair he was sitting on fell backwards, causing him to hit the handle of the chair with his back. Gil-dong had severe back pain, but he thought it was just a bruise from the bump and did nothing

11) On April 13, 2021, Article 76-3 of the Labor Standards Act (Measures in case of harassment at work) was introduced as an obligatory regulation for employers. Labor inspectors can impose fines for failures to comply.

12) The Kyunghyang Daily Paper, “Harassment at work has resulted in the extreme choice to commit suicide...Industrial accident applications have almost doubled,” June 19, 2022.

about it until his shift was over. He was barely able to get on the bus home from work due to the severe back pain he was enduring, and went to emergency and had an X-ray taken. The orthopedic surgeon in charge diagnosed that the 1st, 2nd, 3rd, and 4th transverse processes near the lumbar region (backbone) had been fractured.[13] However, he returned to work after a few days of treatment because the atmosphere at the workplace was chaotic due to personnel appointments between departments within the company. The severe pain continued, but he worked hard and simply took painkillers and wore an abdominal belt to support his back. He continued to receive treatment and work at the same time. On April 12, 2021, Gil-dong felt pain in his neck and shoulders, so he visited the hospital, where the doctor told him he needed surgery on his cervical disc after a thorough examination.

The harassment began on July 26, 2021, when one of the employees organized for the shift system was absent from work for a long time for personal reasons. Workers on the same shift had to fill in for the absent employee by working overtime. Gil-dong conveyed to the HR manager that he would not be able to work overtime as he was scheduled for back surgery. On August 3, he noticed on the shiftwork handover board a note saying, “Move Hong Gil-dong to another shift team.” Gil-dong felt a deep sense of humiliation, as he had never seen a person's name written on the shiftwork handover board which was posted in a public place. It was the first time he would be moved in his 27 years working on that production line.

On September 7, 2021, Gildong experienced neck and shoulder spasms (pain) due to deterioration of the cervical disc, so he was hospitalized for surgery, and after 10 days of treatment, he returned to work. When he got back to work, his shift co-workers kept asking, "Why isn't he working overtime?" and began to harass him. However, as Gil-dong had back pain and thought it best not to engage in physical contact with his co-workers, he kept his distance from them as much as possible.

2. Persistent harassment

During a short break around 6:00 pm on November 15, 2021, Gil-dong told three colleagues who were complaining about him, "Don't swear at me behind my back." In response, colleague A began a tirade of abusive language: “Hey, you son of a b*tch!

13) Doctor Sujin Jang's Introduction to Spine, Naver Blog, Mar. 7, 2022. “Transverse process fractures: The transverse process is a bone that extends from the backbone horizontally on both sides. Its appearance resembles the side-wings extending to both sides of the official hat of the Joseon Dynasty. It is 1 cm long and wide, and 3-4 mm thick. The symptoms of a transverse process fracture are that even breathing or moving the body causes intense pain.”

You aren't the only one having a hard time. I'm very sick too." "Aren't you the only one who isn't working overtime? You b*stard, you should say sorry to your seniors who have to work overtime because you won't." "Everyone knows how lazy you are!" This was followed by several curse words. In response, Gil-dong explained to colleague A that he couldn't work overtime because he had been injured and needed time to recover, but colleague A continued to insult him in the presence of several of his colleagues. Gil-dong then protested to Manager A, his senior, saying "Sir, you need to say something." Manager A apologized for the three other workers, to which Gil-dong also apologized to those three. However, the three workers continued to act very self-righteously, as if the insults had been justified. From that time, these three workers continued to harass and blame Gil-dong for their problems at work.

On November 19, 2021, Gil-dong left early because his head hurt and he felt so dizzy that he could not work. At the recommendation of a counselor, he saw a psychiatrist who prescribed him medication. Gil-dong used two weeks of his personal annual leave in lieu of sick leave from December 14, 2021 due to his back pain and extreme stress. On December 29th, Gil-dong returned to work with a strong sense of responsibility as a worker and as the head of a household. The harassment from his co-workers continued even though he was working hard. He had to continue taking painkillers and the psychiatrist's prescribed medications. Overheard statements included "That guy doesn't work overtime," and "There's something wrong with him mentally," which of course added to Gil-dong's work difficulties.

Ⅲ. Application for the Chair Accident to be Recognized as an Occupational Accident to Stop the Workplace Harassment

1. Fights between employees due to continued workplace harassment

From January 2022, Gil-dong continued to work even though it was difficult due to the group harassing him. This included colleague B humming in front of Gil-dong (which is rude in Korea) continuously during handover meetings before the next shift started. Colleague B continued the noisy humming in front of Gil-dong for several months during every shift handover time. On May 5, 2022 at 6:45 am during another shift handover, colleague B began humming in a childish way to provoke Gil-dong, who found it too much on top of everything else over the past few months. When he shouted, "Quit humming like an idiot in front of me!" colleague B retorted, "What?

Now you’re hearing things too?”

Gil-dong was very angry at being treated like a psychopath in front of many people. He felt he had been harassed for no reason, resulting in him having to take psychiatric medication, counseling, and sick leave. In frustration and anger, he kicked colleague B and a fight ensued which had to be stopped by their colleagues. The company then ordered them to submit a report about their fight. Gil-dong then prepared and handed in a report on the harassment and contacted this labor attorney to ask for help.

2. Labor attorney's view and application for accident to be recognized as an occupational accident

On May 13, 2022, Gil-dong contacted this labor attorney to help him report the workplace harassment to the Ministry of Employment and Labor. This labor attorney said that in order to solve the problem of harassment at work, it must be officially acknowledged that the reason Gil-dong did not work overtime was simply due to the aftereffects of a work-related accident. This labor attorney explained that if Gil-dong's back pain were recognized as the result of an occupational accident, his colleagues would have to accept that he had to avoid overtime due to the pain and difficulties he had. In addition, it was explained that filing a complaint with the Ministry of Employment and Labor on the grounds of workplace harassment is done when the procedure in Article 76-3 of the Labor Standards Act has not been carried out properly or when the company has not investigated the report fairly nor put in place the remedy procedure for workplace harassment. Since Gil-dong’s occupational accident occurred on June 2, 2019, there were only about 20 days left until expiration of the statute of limitations for the application. Even if Gil-dong's back injury was caused by a work-related accident, once the 3-year statute of limitations expired, there would be no way for his injuries to be recognized as from the occupational accident, so the labor attorney submitted the application right away.

On May 19, 2022, this labor attorney submitted an application for medical treatment stating that Gil-dong's back injury was caused by a work accident and submitted a report on the accident itself. This report described the details of what happened that day and the measures taken in the emergency room, with medical records, details of his application for sick leave, and eyewitness statements regarding the accident at the time as proof. The competent Labor Welfare Corporation office acknowledged the fact that Gil-dong's back injury was caused by a work-related accident through the related data and company verification procedures, and three months later, at the end of September

2022, Gil-dong's back injury was recognized as due to an occupational accident.

Ⅳ. Appropriate Actions and Lessons Learned

1. Actions taken by the company

The company acknowledged the physical violence between Gil-dong and colleague B on May 5, 2022 as due to temporary conditions, and the parties also showed an attitude of reflection and the incident was concluded with a written warning. On October 1, 2022, Gil-dong reported to the HR team in writing that he had been harassed at work by colleagues A and B and handed over an official confirmation letter from the Labor Welfare Corporation that the back injury that occurred three years ago was recognized as due to an occupational accident. In response, the company held its own personnel committee meeting, recognized that harassment at work had taken place, and admonished colleague A and colleague B with a disciplinary salary reduction. Judging that Gil-dong's current shift work was negatively impacting recovery from his back injury, the company transferred him to a new workplace in the quality control department, which is not physically demanding.

Under current law, workplace harassment is, in principle, resolved autonomously within a company through its internal procedures. Article 93 of the Labor Standards Act stipulates “matters concerning the prevention of workplace harassment and measures to be taken when it occurs” as mandatory items in the employment rules, allowing voluntary regulation. On the other hand, Article 76-3 of the Labor Standards Act specifies measures an employer must take in the event of workplace harassment, and includes a punishment clause if the employer fails to take such measures. As such, the current law requires that workplace harassment be reported to and dealt with by the employer, but in cases where it is difficult to expect fairness from the employer, the victim shall file a complaint with the Ministry of Employment and Labor.

2. Lessons from this workplace harassment

Employers have an obligation not only to provide a safe workplace, but also to prepare institutional devices for preventing workplace harassment and taking follow-up measures against it.[14] Therefore, employers need to regularly carry out activities to prevent harassment through the introduction of prevention and follow-up measures

14) 2019. 2. 91~99면. Ministry of Employment and Labor, “Manual on Judging and Preventing Workplace Harassment, Feb. 2019, pp. 91-99.

through their employment rules, periodic anti-harassment education, and a grievance-handling system.

The Relationship between the Fatal Accidents Act and the Occupational Safety and Health Act

Ⅰ. Introduction

The Act on the Penalty of Fatal Accidents (hereinafter referred to as the "Fatal Accidents Act" or "FAA") was enacted on January 8, 2021. The Occupational Safety and Health Act (hereinafter referred to as the "OSH Act" or "OSHA") was also completely revised from January 2020 to reduce fatal industrial accidents. However, as fatal accidents have not decreased, a fatal accident penalty law was introduced that is much stronger than the existing penal provisions of the OSH Act.[15] The Fatal Accidents Act covers both major industrial accidents occurring on company premises as well as major fatal accidents/incidents out in society at large, such as the Sewol ferry accident and the air purifier disinfectant fatalities. The legislative purpose of this law is to punish employers, managers, and corporations for fatal accidents from actions in violation of the obligation to follow the mandatory measures to protect safety and health, so that companies can ① secure the workers' (and the general populations') right to safety, and ② prevent fatalities from negligent practices or a deficient safety management system.[16] This aims to protect workers and the general population from injury or death (Article 1 of the FAA).

However, the current OSH Act requires that employers establish a management system for occupational safety and health, to take steps to prevent incidents with harmful/dangerous equipment, facilities, materials, working environment, etc., and at the same time to periodically provide workers with the necessary safety and health education to further work to reduce industrial accidents. In cases where an employer is found to have violated the Fatal Accidents Act, the employer will be punished immediately, to

15) Safety Journal, "The obligation to secure safety and health of employers has been further strengthened", Jan. 15, 2021; Daily Labor News, "[The total amended Occupational Safety and Health Act is insufficient] The number of deaths from industrial accidents increased in 2020", Jan. 5, 2021: Industrial accident fatalities did not decrease between 2018 and 2020 (971, 855 and 860, respectively).

16) Proposer: Chairman of the Legal Affairs and Judicial Council of the National Assembly, Reasons for the legislative proposal in "Draft of a Fatal Accidents Act", Jan. 2021.

further incentivize other employers to make it a habit to protect occupational safety and health and work to avoid accidents. The Fatal Accidents Act is a punitive law that imposes strong penalties on business owners whose workplaces have been the site of a fatal incident, while the OSH Act is a preventative law against industrial accidents.

The purpose of the Fatal Accidents Act will be better understood through comparison with the Occupational Safety and Health Act. I will also look at the relationship between the two laws in detail.

Ⅱ. The Concept of Fatal Accident and Duties of the Employer

1. Concept of fatal accident

Fatal accidents as stipulated in the Fatal Accidents Act, are accidents where ① one or more deaths have occurred, ② two or more persons are injured and require treatment for six months or more due to the same accident, or ③ three persons contract an occupational illness (such as acute poisoning) due to the same hazard within one year (Article 2 of the FAA).[17] The OSH Act specifies fatal industrial accidents as the following: ① one or more deaths have occurred, ② two or more people are injured at the same time and require at least 3 months of medical care, or ③ 10 or more people are injured or contract an occupational illness at the same time (Article 2 of the OSH Act, Article 3 of the Enforcement Regulations). Therefore, it can be seen that the FAA and the OSHA have similar definitions of “fatal accident.”

2. The scope of application and responsibilities of employers

The Fatal Accidents Act does not apply to workplaces with fewer than five regular workers (Article 3 of the FAA). However, the OSH Act applies to all workplaces. All or part of the law may not apply in consideration of the degree of harm or risk, business type and size, and business location. In general, some provisions are excluded for ① pure administrative work, educational service work, foreign institutions, ② workplaces using only white-collar workers, and ③ workplaces employing fewer than five regular workers (Article 3 of the OSH Act, Article 2-2 of its Enforcement Decree, Appendix 1). The difference in scope of application is that the OSH Act describes all required occupational safety and health measures for the entire workplace, while the Fatal Accidents Act is limited to fatal and other serious accidents.

In both the Fatal Accidents Act and the Occupational Safety and Health Act,

17) The Fatal Accidents Act is divided into fatal industrial accidents and fatal civil accidents. A fatal civil accident is an accident ① caused by defects in design, manufacture, installation, or management of specific raw materials or products, public facilities or public transportation means, ② in which 10 or more people are injured and require medical care, or ③ 10 or people become sick and need treatment for at least 3 months due to the same cause (Article 2 of the FAA, section 2).

persons protected goes beyond only workers as defined in the Labor Standards Act, to include all those who provide work. This includes ① workers as defined in the Labor Standards Act, ② those who provide labor for the purpose of income for the execution of business, regardless of type of employment relationship, such as contract, service-based, or consignment, and ③ all contractors at each level in a multi-contract project (Article 2 (7) of the FAA).

In the Fatal Accidents Act, the person responsible for reducing the risk of fatal accidents is specified as the employer and head of operations (Articles 3 and 4 of the FAA). “Employer” refers to a person who runs his or her own business or a person who conducts business by receiving the labor of others (Article 2 (8) of the FAA). The head of operations refers to a person who has the authority and responsibility to represent the business and is in charge of it, or a person who is in charge of safety and health related to work (Article 2 (9) of the FAA).

However, while the OSH Act places on employers the duty to maintain and promote worker safety and health, the implementation of specific safety and health management responsibilities can be delegated to a person (the safety and health manager) who substantially supervises site offices, factories and etc. (Articles 5, 15, 38, 39 of the OSHA). Accordingly, when an accident occurs at an actual workplace, legal sanctions are imposed mainly on the general manager in charge of safety and health, such as the site manager and the plant manager, rather than the representative director.

3. Employer's obligations

The Fatal Accidents Act stipulates the obligation of the employer to take actions to protect safety and health, and provides for severe penalties for fatal accidents due to the employer violating his or her obligations. In the event that a fatal accident occurs because of a violation of the obligation to protect safety, penalties will be imposed. Conversely, if the employer fulfills his or her duty to put safety and health measures in place, penalties can be avoided.

Employers and heads of operations must establish a safety and health management system to reduce risk and hazards to safety and health in workplaces that are substantially controlled, operated, and managed, and take measures to prevent recurrence in the event a fatal accident occurs (Article 4 of the FAA). Actions to protect safety and health shall also be taken when subcontracting, servicing, or entrusting a third party to engage in the required work, to prevent fatal industrial accidents from occurring among third party employees. However, this is limited to cases where the employer, corporation, or institution is substantially responsible for controlling, operating, and managing the facility, equipment, and place where the third party employees are working (Article 5 of the FAA).

Under the OSH Act, when a fatal accident occurs, the employer must immediately stop the related work and take steps necessary to protect the safety and health of other workers, such as evacuating the workplace. In addition, the employer must immediately report to the Minister of Employment and Labor when he/she becomes aware that a fatal accident has occurred (Article 54 of the OSHA). When a fatal accident occurs, the Minister of Employment and Labor can order all work to stop in relation to ① the job in which the fatal accident occurred, ② the job(s) corresponding to the job in which the fatal accident occurred, if it is determined that there is an imminent risk of recurrence at that workplace. Upon request of the employer whose work has been suspended, the Minister of Employment and Labor shall lift the suspension of work after decision by a deliberation committee composed of experts on cancellations of work suspensions (Article 55 of the OSH Act). In accordance with the revised OSH Act (January 2020), the Minister of Employment and Labor shall issue an order to suspend work to a workplace where a fatal accident has occurred. Work can be resumed at the workplace only after a considerable period of time has elapsed, which places a significant burden on the company.

Ⅲ. Penalties and Employer's Responsibilities

1. Penalties for employer and head of operations

The Fatal Accidents Act applies stronger penalties for fatal accidents than the OSH Act, with fines up to 10 times higher. If at least one person dies due to a violation of the safety and health measures by the employer or head of operations, the employer or head of operations will be sentenced to imprisonment for at least one year or a fine of not more than KRW 1 billion. Penalties are also imposed for injuries or occupational illness. If two or more persons are injured and require treatment for at least six months due to the same accident, or if three or more persons contract an occupational illness within one year due to the same hazards, the employer and/or head of operations shall be sentenced to imprisonment for no more than 7 years or a fine imposed of not more than KRW 100 million won. (Article 6 (2) of the FAA). If the same type of fatal accident recurs within five years, the penalties are levied again but increase by half (Article 6 (3) of the FAA). In addition, the person in charge of corporate management at that workplace must attend and complete safety and health education. If the education is not completed without justifiable reason, a fine of not more than KRW 50 million is imposed (Article 8 of the FAA).

A person who causes the death of a worker for violating the obligation to take measures for occupational safety and health under the OSH Act shall be punished by imprisonment for not more than 7 years or a fine not exceeding KRW 100 million. If

the same type of fatal accident recurs, the punishment is levied again, but also increased by half (Article 167 of the OSH Act).

2. Joint penal provisions

The Fatal Accidents Act imposes a fine of not more than KRW 5 billion won for corporations and up to KRW 1 billion won for injuries or occupational illness. However, if a corporation has taken considerable care and supervision to prevent violation but a fatal accident still occurred, no fine will be imposed (Article 7 of the FAA). The OSH Act imposes a fine of not more than KRW 1 billion on corporations for the same case where one person or more has died due in a fatal accident (Article 173 of the OSHA). The Fatal Accidents Act has strengthened penalties at least fivefold over the existing OSH Act.

3. Punitive damage compensation

The Fatal Accidents Act introduces a punitive damage compensation system that is not found in the OSH Act. In the event that an employer or head of operations intentionally or by gross negligence violates the obligation to take measures to protect safety and health and this results in a fatal accident, the relevant employer or corporation shall be held liable for compensation not exceeding 5 times the damage suffered by the injured person, or the survivors. However, this does not apply if the accident occurs despite the corporation having given considerable attention and supervision of the relevant risks and hazards (Article 15 of the FAA). The courts shall decide the amount of punitive damage compensation in consideration of the following seven items:

① the severity of intentional or unintentional negligence,
② the type and details of the violation of the obligation to protect,
③ the scale of the damage caused by violation of the obligation to protect,
④ the economic benefit obtained by the employer or the corporation due to violation of the obligation to protect,
⑤ the duration and number of violations,
⑥ the corporation’s property holdings, and
⑦ the extent of the corporation's efforts to mitigate the damage and prevent recurrence.

As there has been no punitive damage compensation system so far, damages have been based only on calculations of the amount of compensation for industrial accidents and civil damages. According to this method, when a worker dies from an industrial accident, the company handles it through industrial accident compensation insurance and is not held liable for compensation. However, if the company is liable for negligence in the event of a worker's death, such as due to a lack of safety measures, the company shall be liable for damages under the Civil Act in addition to compensation from the workers' industrial accident compensation insurance to the survivors. The scope of compensation provided under he Civil Act refers to all

damages to the injured person/survivors in relation to the company's negligence and considerable causality, with the range of damage recognized by court rulings divided into active, passive, and mental damage. In general, when a worker dies, the scope of passive loss include income (lost income from the time of death to what would have been the time of retirement) and retirement allowance (loss of severance pay due to early termination of employment). Funeral expenses are active damage, while any alimony is included in mental damage.

In the future, it will be possible to request up to 5 times the amount of compensation for existing damages available under he Civil Act when industrial accidents result in death. As a result, the bereaved family and the company will need to engage in a prolonged period of determination of compensation for the bereaved due to disputes over whether an employer was negligent or not, which will act as a considerable burden on the company's ability to quickly handle the aftermath of fatal accidents.[18)]

Ⅳ. Implementation Date and Application

The Fatal Accidents Act has a grace period of one year and comes into effect on January 1, 2022. For workplaces with fewer than 50 regularly hired workers (or construction companies engaged in an average project value of less than KRW 5 billion), there is a three-year grace period, meaning the Act comes into effect on January 1, 2024.

Fatal accidents are classified in the FAA as fatal industrial accidents and fatal civil accidents. Major industrial accidents are handled by Ministry of Employment and Labor inspectors, who investigate the situation for workers and contractors who are directed and supervised by the employer concerned. Since a fatal civil accident involves members of the public who are using a facility or public mode of transportation, the Ministry of Justice, through police officers, has jurisdiction. Therefore, since the two different ministries have jurisdiction over fatal accidents separately, differences in interpretation and disposition of the law are expected in its enforcement, leading to some confusion.[19)]

Ⅴ. Conclusion

The Fatal Accidents Act was designed to raise awareness about the need to prevent accidents through strong penalties for employers found to be at fault (through failure to fulfill OSHA requirements) for fatal and other serious accidents. On the other hand, the OSH Act requires that employers have an occupational safety and health system in place to reduce the chance of industrial accidents occurring, take actions against incidents involving hazardous work or substances, and continuously provide education for the purpose of preventing industrial accidents. Therefore, the law should be enforced not expecting that these two laws are compatible with each other, but that

18) Chung, Daewon. "Major Details and Topics in the Fatal Accidents Act," HR Insight, Jan. 11, 2021.
19) FKI press release, "Concerns about side effects of the Fatal Accidents Act," Jan. 1, 2021.

they complement each other to reduce the occurrence of fatal accidents and other serious incidents. In addition, with enactment of the Fatal Accidents Act, employers and heads of operations in each workplace should strengthen the safety and health protections in place for workers in advance, and faithfully fulfill their duty of care and supervision, to avoid criminal liability in the event of a fatal accident.

Korean labor: The Fatal Accidents Act and Employer Obligations

Ⅰ. Introduction

The Occupational Safety and Health Act (hereinafter referred to as the "OSH Act") was completely revised in January 2020 to prevent fatalities and other serious industrial accidents that regularly occur at industrial sites, but fails to significantly contribute to preventing serious accidents. This is because, in an industrial accident, only the site manager responsible for the safety of the work site is punished. The employer, who is actually responsible for the project escapes responsibility, because it is next to impossible to prove an employer is intentionally negligent under criminal law.[20] Korea's Supreme Court denied the charge of manslaughter against an employer for occupational negligence when the onsite director was supervising construction at the site, and determined that a worker killed in an accident at work was not under the supervision of the employer during construction.[21] In fact, if employers remain unpunished, awareness of the risk of industrial accidents will remain inadequate, and employers will remain less willing to invest in the personnel, funding, and effort necessary to prevent industrial accidents.

On April 29, 2020, 38 workers died and approximately 10 workers were injured during a fire at the Icheon Logistics Warehouse construction site. This was shocking news, and resulted in passage of the Act on the Penalty of Fatal Accidents (hereinafter

20) Kwon, Hyuk. "Legal Systemic Status and Legislative Policy Significance of the Fatal Accidents Act," Labor Law Forum (34), Labor Law Theory and Practical Society, November 2021, p. 4.
21) Supreme Court ruling on Nov. 24, 1989: 89do1618.

referred to as the “Fatal Accidents Act” or “FAA”) on January 26, 2021. The FAA will come into effect January 27, 2022, after a one-year grace period. However, businesses with fewer than 5 employees will remain exempt, while businesses with 6-49 employees will have a three-year grace period (until January 2024).

The purpose of the FAA is “to stipulate the punishment of employers, business managers, civil servants and corporations, etc. to prevent accidents and protect the lives and health of workers.” In other words, it seeks to prevent industrial accidents through strict punishment for inadequate safety measures at a place of employment. In order for an employer to avoid liability for a serious industrial accident, they must fulfill the safety and health obligations required by this Act and the Enforcement Decree as well as the safety and health measures under the OSH Act. In this regard, I would like to take a detailed look at the specific details and applied practices.

Ⅱ. Main Details of the Fatal Accidents Act

The FAA consists of four chapters and 16 articles, covering general rules, serious industrial accidents, serious civil accidents, and supplementary rules.

1. Understanding the key definitions

Some terms used in this law are different from other laws.

1) “Serious industrial accident” refers to an accident resulting in (i) one or more fatalities, (ii) two or more persons injured in the same accident and requiring treatment for at least six months, (iii) three or more people in the accident becoming ill and requiring treatment for three months or longer for the same cause. In the OSH Act, serious accidents were defined in the enforcement regulations of the OSH Act, and so there was some ambiguity, but in the FAA, the definition of serious accidents is clearly explained in the Act.
2) “Employee” refers to (i) a worker as defined in the Labor Standards Act, (ii) a person who provides labor in return for reward for the purpose of operation of the business, regardless of the type of contract, such as subcontract, service, or consignment. Their protection was more extended than workers under the Labor Standards Act. The term “employer” has also been expanded to include those who run their own business and those who are provided with the labor of others.

3) “Business manager, etc.” refers to a person who has a relationship of equal responsibility with the employer, and who has the authority to represent the business and responsibility for its management, or a person in charge of safety and health-related tasks equivalent thereto. In other words, “employer” refers to actual owners of the company and those with the authority to make company-wide decisions.

2. Obligations of employers and business managers to secure safety and health (Article 4)

An employer or business manager shall work to protect the safety and health of workers in the business or workplace they control, operate, or manage, in consideration of the business or workplace scale and characteristics. Specifically, they are responsible for:

(i) Ensuring the establishment and implementation of a safety and health management system, including the necessary personnel and funding to prevent serious accidents;

(ii) Ensuring orders from the local government for improvement, correction, etc., are followed in accordance with relevant laws and regulations;

(iii) Taking the administrative measures necessary to fulfill their obligations under relevant laws and regulations related to safety and health, and

(iv) Measures necessary for fulfillment of obligations under safety and health related laws and regulations. Parts (i) and (iv) above are explained in detail in the Enforcement Decree to the Fatal Accidents Act.

3. Details on punishment of employers and business managers when serious industrial accidents occur

(1) Punishment of employers and business managers

If the employer or business manager is found to be responsible for the violation of safety and health requirements in the FAA, resulting in an accident that kills one or more persons, the employer or business manager shall be subject to a minimum one year of imprisonment or a fine of not more than KRW 1 billion. Penalties are also imposed for injuries or occupational illness. If two or more persons are injured and require treatment for at least six months due to the same accident, or if three or more persons suffer an occupational illness within one year due to the same hazards, the employer or business manager shall be subject to imprisonment of a maximum 7 years imprisonment or a fine of not more than KRW 100 million (Article 6 (2)). If the same type of fatal accident recurs within five years, the penalties shall be increased by 50% (Article 6 (3)). In addition, the person in charge of corporate management at that workplace must attend and complete safety and health education. If the person in charge of corporate management fails to complete the education without justifiable reason, a fine of not more than KRW 50 million shall be imposed (Article 8 of the FAA, Article 6 of the Enforcement Decree).

(2) Joint penal provisions

The Fatal Accidents Act imposes a fine of not more than KRW 5 billion for corporations and up to KRW 1 billion for injuries or occupational illness. However, if a corporation has taken considerable care and supervision to prevent violation but a fatal accident still occurs, no fine shall be imposed (Article 7 of the FAA).

(3) Punitive compensation for damage

The Fatal Accidents Act introduces punitive compensation for damage, which is nonexistent in the OSH Act. In the event that an employer or head of operations intentionally, or by gross negligence, violates his or her obligation to take measures to protect safety and health and this results in a fatal accident, the relevant employer or corporation shall be held liable for compensation not exceeding 5 times the damage suffered by the injured person, or the surviving family. However, this does not apply if the accident occurs despite the corporation having given considerable attention to implementing safety measures and supervision over the relevant risks and hazards (Article 15 of the FAA).

Ⅲ. Requirements for Employer Immunity in the Event of a Serious Industrial Accident

Even if a serious industrial accident occurs, there will be no punishment if the employer has fulfilled his or her duty to protect safety and health. Specific details are described in the establishment of a safety and health management system (Enforcement Decree Article 4) and administrative measures necessary for fulfillment of obligations in accordance with safety- and health-related laws (Enforcement Decree Article 5).[22)]

1. Establishment of a safety and health management system and implementation measures (Enforcement Decree Article 4)

The details of the safety management and health management system required by Article 4 Paragraph 1 of the Fatal Accidents Act are explained in nine clauses in Article 4 of the Enforcement Decree. These can then be divided into six areas: i) preventative measures, ii) organization and arrangement of an exclusive organization, iii) prior hazard and risk assessment, iv) listening to workers' opinions, v) creating an emergency response manual of actions to be taken in the event of a serious accident, and vi) managing service agency personnel.[23)] Since companies have different hazards and risks according to the size, characteristics, etc. of their business or workplace, and the manpower and financial situation are different, it is difficult to uniformly determine specific means and methods to control those hazards and risks, and so room must be made to allow for autonomous reasonable judgment.

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22) Ministry of Employment and Labor, "Fatal Accident Punishment Act – Related to Serious Industrial Accidents," November 2011.

23) Jeon, Hyeong-bae. "Issues in Interpretation of the Fatal Accident Punishment Act," Labor Law Forum (34), Labor Law Theory and Practice Society, November 2021, pp. 278-282.

(1) Establishment of safety and health goals and management policies, and budgeting and execution (Clause 1 and 4).

The goals and management policies related to safety and health may overlap substantially with the employer's plans for safety and health as stipulated in Article 14 of the OSH Act (Reporting to and Approval of the Board of Directors, etc.). However, if the safety and health plan established and reported by the employer considers the situation of the workplace every year, the safety and health goals and management policies required by the Fatal Accidents Act are always considered in each sector while carrying out their business. Such a plan shall contain the basic management philosophy and general guidelines for decision-making regarding safety and health (Clause 1).

The individual employer or business manager shall formulate a budget and ensure the existence of funds necessary for the provision of personnel, facilities, and equipment related to safety and health to prevent serious accidents and decrease risk and the occurrence of hazards, etc. (Clause 4).

(2) Exclusive organization and personnel arrangement (Clause 2, 5, 6)

According to the Occupational Safety and Health Act, individual employers or corporations must have at least three persons in charge of safety and health in all workplaces: a safety manager, a health manager, and an occupational health doctor. In addition, together, they should form an exclusive organization. This exclusive organization is to be in charge of overall management of safety and health for a business or workplace (Clause 2).

An employer or business manager shall assign a safety manager, health manager, and occupational health doctor in accordance with the OSH Act. However, if other laws and ordinances stipulate otherwise for the allocation of relevant personnel, those other laws or ordinances shall be followed. In cases where the personnel to be allocated concurrently hold other duties, time for fulfillment of safety and health responsibilities shall be guaranteed in accordance with the standards set and announced by the Minister of Employment and Labor (Clause 6).

The employer or business manager shall grant the necessary authority to the person(s) in charge of safety and health management and shall grant the funding necessary for such person(s) to fulfill the tasks prescribed in the OSH Act, and evaluate and manage whether the relevant tasks are faithfully performed at least once every six months (Clause 5).

(3) Prior hazards and risk assessment (Clause 3)

The employer or business manager shall prepare business procedures to identify and mitigate hazards and risk according to the characteristics of the business or workplace, and confirm, at least once every six months, whether such identification and mitigation has been carried out. However, if the procedure for risk assessment is prepared in accordance with Article 36 of the Occupational Safety and Health Act, the risk assessment is

conducted according to said procedure and the implementation reported, confirmation of whether these activities have been carried out shall be considered to have taken place.

(4) Listening to the opinions of workers (Clause 7)

The employer shall prepare procedures to hear the opinions of employees on matters related to safety and health at a business or workplace, and shall confirm, every six months, that improvement measures have been prepared and implemented. If any abnormalities or omissions are identified, the employer shall be responsible for taking necessary countermeasures. However, when an occupational safety and health committee, as defined in the OSH Act, and the safety and health consultative body discuss, deliberate, or decide on the safety- and health-related situation of a related business or workplace, it shall be deemed that the opinions of the relevant workers have been heard.

(5) Creation of a manual on action to be taken in the event of a serious industrial accident (Clause 8)

The employer shall prepare a manual covering actions to occur in the event a serious industrial accident has occurred or imminent risk of occurrence of such an industrial accident exists in the business or workplace. The employer shall check whether measures are taken according to the manual at least once every six months. The manual shall include the following: (i) Response measures such as cessation of work, evacuation of workers, and removal of hazards; (ii) Relief measures for persons injured in serious industrial accidents; and (iii) Measures to prevent further damage.

(6) Management of external service agency workers (Clause 9)

When work is subcontracted, outsourced, or entrusted to a third party, standards and procedures are to be prepared to ensure the safety and health of third-party workers, which are to be inspected by the employer at least every six months. The standards and procedures are to include the following: (i) Those receiving the contract, service, entrustment, etc., are to have standards and procedures in place to evaluate the third party's ability and technological level to take the actions necessary to prevent industrial accidents; (ii) Those receiving the contract, service, entrustment, etc., shall have their own standards for funding the management of safety and health; and (iii) Those receiving the contract, service, entrustment etc. in the construction and shipbuilding industries shall have their own standards for construction period or building period for the safety and health.

2. Administrative measures necessary for the fulfillment of obligations under safety and health-related laws and regulations (Enforcement Decree Article 5)

(1) The employer shall inspect, at least every six months, to confirm that the obligations under safety and health-related laws have been fulfilled.

(2) As a result of the inspection or report in (1) above, if it is confirmed that the obligations under safety and health-related laws and regulations have not been fulfilled, the employer shall take action necessary to fulfill those obligations, such as assigning additional manpower or providing additional funding and ensuring its execution.
(3) The employer shall inspect at least every six months whether safety and health education on hazardous and dangerous work, which is mandatory in accordance with safety and health-related laws and regulations, has been provided. If the employer is not the one to directly engage in the inspection, he or she shall receive a report on the findings from those the employer delegates to perform the inspection.
(4) The employer shall take the action necessary to ensure that any unfulfilled education requirements identified in such an inspection or related report in accordance with (3) above, takes place, providing additional manpower and/or funding as necessary and without delay.

Ⅳ. Conclusion

The Fatal Accidents Act has been enacted with stiff punishment clauses to prevent industrial accidents by ensuring compliance with the Occupational Safety and Health Act. Industrial accidents cause pain and suffering not only for the victims themselves, but also for their families, as well as incurring significant social costs. Serious industrial accidents can really only be prevented through periodic and continuous attention and funding. The Fatal Accidents Act is expected to play a major part in reducing the occurrence of serious industrial accidents.

Feature Articles

Preparation for Labor Inspection

Labor Case: Labor Inspection and Company Follow-up Measures[24)]

Ⅰ. Summary

To ensure standards for working conditions, a labor inspector can visit any workplace, inspect it, and request to see books and documents, as well as interview both employer and employees. Employers or employees shall, without delay, report on the matters required, or shall present themselves to the Labor Office if the labor inspector requests it in relation to enforcement of the Labor Standards Act.[25)]

A labor inspector informed a company (hereinafter called “Company T”) located in Seoul on October 17, 2019 of his plans to audit the company. He visited the workplace 3 days later on October 20 to learn whether the company was following appropriate labor standards. While inspecting the company Rules of Employment and payroll documents, the labor inspector noticed many problems: unpaid overtime allowance and compensation for unused annual leave, incorrect calculation of average wages for severance pay, some violations of the Rules of Employment, no Labor-Management Council, and no education on sexual harassment prevention. On November 17, the labor inspector sent a correction order to Company T regarding the above Labor Standards violations.

The company hired a labor attorney to implement the correction order. This labor attorney recalculated overtime allowance, etc., considering the company’s characteristics as an IT business and the working situations of the dispatch employees. He also assisted the company in meeting the correction deadline by adding supplements to the Rules of Employment, establishing a Labor-Management Council, and correcting the average wage calculations for employees who had left the company to make up for the inadequate severance payments. As use of annual leave and overtime was too ambiguous to calculate, employees’ written explanations on actual use were considered in recalculation. When the company calculated unpaid wages in accordance with the correction order, the total amount to be paid came out to about ₩60 million, but this was adjusted by confirming with the employees (through written statements) whether

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24) This case was represented by Labor Attorney Bongsoo Jung at KangNam Labor Law Firm. (November 2019)

25) Article 101 (Supervisory Authorities) ① The Ministry of Employment and Labor and its subordinate offices shall have a labor inspector to ensure the standards of the conditions of labor.
Article 102 (Authority of Labor Inspectors) ① A labor inspector has the authority to inspect a workplace, dormitory and other annexed buildings, to request presentation of books and documents, and to question both employer and workers.
Article 13 (Duty to Report and Attend) An employer or worker shall, without delay, report on matters required, or shall present himself, if the Minister of Labor, the Labor Relations Commission under the Labor Relations Commission under the Labor Relations Commission Act or a Labor Inspector requests him or her to do so in relation to the enforcement of this Act.

the leave had actually not been used, and whether the recorded overtime had been done. After all this, the company and the labor inspector agreed that the total amount not paid was about ₩2 million. Company T finished carrying out its correction order by paying the confirmed unpaid wages to the appropriate employees. What follows is a detailed explanation of how the company was able to avoid unnecessary costs and meet the labor inspector's requirements.

Ⅱ. Violations of the Labor Standard

When visiting Company T and inspecting the working conditions on October 20, 2019, the labor inspector noticed the violations listed above (unpaid allowance for unused annual leave, incorrect calculation of overtime allowance and average wages, etc.). The company received a correction order for the following items on November 17, 2019.

Related Labor Standards Act Articles	Correction Order
1. Article 17 of the Labor Standards Act	The company shall stipulate details regarding annual leave (according to Article 60 of the LSA) additionally in the employment contract, and then submit a copy to the Labor Office.
2. Article 56 of the LSA	The company shall pay the additional amount by recalculating overtime allowances for 30 employees including Kim 00, and then submit evidence of its payment.
3. Article 36 of the LSA	The company shall pay the additional amount of severance pay for 9 resigned employees including Lee 00, by correcting average wage calculations, and then submit evidence of its payment.
4. Article 60 of the LSA	The company shall pay compensation for annual leave unused in 2018 to 28 employees including Park 00, and then submit evidence of its payment.
5. Article 94 of the LSA	The company shall revise its Rules of Employment by updating the details on maternity leave so that they are in accordance with Article 74 of the Labor Standards Act, and report to the Labor Office.
6. Article 4 of the LMC Act	The company shall establish a Labor Management Council and report its operational rules to the Labor Office.

7. Article 13 of the Equal Employment Act	The company shall set up training on preventing sexual harassment at work during 2019, and then submit evidence that this has been done.
The labor inspector audited [Company T's] working conditions on Oct 20, 2019, confirmed the existence of labor standard violations and issues the correction orders above. The company shall post this correction order on the notice board where employees can see easily, and then give to the Labor Office, by November 25, 2019, documents verifying that these corrections have been carried out.	

Ⅲ. Correction of the Violations

1. Categorization of Company T's business

Company T is a software developer (Business Rules Engine: BRE) composed of project teams. When a client requests development of its system, Company T sends the project team members to the client's office and sets up the system there. The company has a total of 48 employees: 15 engaged in management and administration at the company office, and 33 software engineers assigned to client projects. These 33 engineers were not required to attend company meetings or to otherwise report, except as specifically requested, such as at year-end meetings etc. Although annual salaries are relatively higher than that of its competitors, the company paid a fixed allowance of ₩60,000 for any overtime claim for work done during the weekend and not under the employer's supervision and control. This was recorded in the payroll files, and was the particular cause of most of the violations.

2. Details on Company T's correction of each violation

(1) Article 17 of the LSA (Absence of an article in the employment contract related to annual leave)

The company included details regarding the use of annual leave in the employment contract, and then submitted one copy of the revised employment contract.

(2) Article 56 of the LSA (Recalculation of annual leave allowance and holiday work allowance)

The contractual working hours are 8 hours per day, 40 hours per week, with the fixed overtime allowance paid for two hours each working day. The important point was that the company paid a fixed amount of ₩60,000 per day for overtime on Saturdays and Sundays, upon receiving email from the employees that they had worked those days. This was done as the work was outside of Company T

premises, and verification was difficult any other way. The labor inspector requested that the company pay an additional allowance for actual working hours, calculated according to the standard found in the Labor Standards Act.

The company received written statements from the engineers to confirm and recalculate actual overtime and holiday working hours, as it could not independently confirm their actual working hours on Saturdays and Sundays. The company paid an additional amount to those who worked more overtime hours than what was covered by the fixed overtime allowance of ₩60,000 per day.

(3) Article 36 of the LSA (Inadequate severance pay due to incorrect calculation of average wages)

When calculating average wages for severance pay, the company included only basic pay and bonuses, excluding overtime and other allowances. The company recalculated average wages and paid the amounts owed (approximately ₩600,000).

(4) Article 60 of the LSA (Inadequate compensation for unused annual leave)

Each project team manager scheduled team members' leave at his/her own discretion, and provided 10 days or more leave in the middle of a project or at the end as necessary, after obtaining verbal approval from the company to do so. As the leave application form was not used, it was impossible to track and record the number of leave days used.

Compensation was not paid for unused annual leave because no record was kept of used leave. Company T confirmed the number of used leave days through written statements of all dispatched engineers and paid an allowance for only the number of days of unused leave confirmed by their statements. The company submitted to the Labor Office verification that it paid allowance and that recorded leaves were confirmed with employee statements.

(5) Article 94 of the LSA (Absence of articles in company Rules of Employment protecting pregnant employees)

The company added missing items on premature or stillborn birth into the maternity leave section in the Rules of Employment, and submitted it to the Labor Office with evidence of the fact that the company received majority agreement from the employees on the revised rules. A copy of its report was included in its submission.

(6) Article 4 of the Act on the Promotion of Worker Participation and Cooperation (No Operational Rules for a Labor-Management Council)

Employers who ordinarily employ 30 workers or more shall establish a Labor-Management Council and report its operational rules to the Labor Office, something the company had not done. A Labor-Management Council was accordingly established, and its rules of operation were submitted to the Labor Office.

(7) Article 13 of the Equal Employment Act (no training on prevention of sexual harassment at work)

Training to prevent sexual harassment at work shall be done once a year in workplaces where ten employees or more are working. Company T carried out some training with audiovisual material (CD) distributed by the Labor Office, and submitted a document with attendee signatures.

Ⅳ. Reference: Audit of Workplaces by a Labor Inspector[26)]

Article 13 (Inspection of workplaces, etc.)

① To enhance working conditions, the labor inspector shall inspect in advance (preventive inspection) whether labor laws are being violated, and shall carry out an inspection of the workplace (regular or investigative).

② The "preventive inspection" stipulated in paragraph ① means that the head of the regional Labor Office confirms observance of labor laws at particular businesses and certain sizes of companies according to plans made at the beginning of the year by the main branch of the Labor Office. In this case items to be inspected shall be limited to things taking place during the one-year period previous to the date of inspection.

③ The "regular inspection" of a workplace as stipulated in paragraph ① means that, in cases where the head of the regional Labor Office inspects the workplaces expected to be the worst, and finds violations, it is the inspection used to correct violations, or investigate violators according to head office plans decided at the beginning of the year.

④ The "investigative inspection" of the workplace stipulated in paragraph ① means that, in cases where the head of the regional Labor Office synthetically checks for observance of labor laws at workplaces in the following situations and finds violations, it is the inspection used to correct

26) Reference "Job Manual for the Labor Inspector"

violations, or investigate violators.

Workplaces where labor disputes have taken place or can be expected due to a failure to conform to working conditions regulated in labor law, collective bargaining, the Rules of Employment, or the employment contract; Workplaces where civil complaints or other social complaints have taken place due to a failure to pay wages or other legal allowances for many employees;

Workplaces where labor disputes have taken place in relation to sexual harassment at work or where labor disputes such as petitions or civil complaints can be expected due to sexual harassment at work; or

Workplaces where the company did not follow the correction orders for violations found during a preventive inspection, according to paragraph ② above.

Article 18 (Inspection Method)

① When intending to inspect a workplace, the labor inspector shall make every effort to prepare in advance, by reviewing and analyzing the company's register, Collective Agreement, Rules of Employment, etc., confirming whether labor laws are observed, and understanding conditions and problems by gathering related information from the labor union, etc.

② The labor inspection shall be carried out by visiting the workplace in principle. Before initiating the inspection, the labor inspector shall explain its purpose and intent to the employer.

Article 20 (Inspection Follow-Up)

① The labor inspector shall dispose of matters according to "criteria for handling violations" when violations are found during the labor inspection.

② When violations are "subjects to be corrected" according to paragraph ①, the labor inspector shall issue a "correction order" by indicating substantially the violations, methods for correction, reporting on corrections made, reporting deadline, etc., immediately after his/her own report of the inspection results. The labor inspector shall also carry out an immediate investigation if a labor issue requiring investigation is discovered.

Self-Assessment Checklist for Labor Inspections

Hello HR managers,

Welcome to the Self-Assessment Checklist for Labor Inspections.

Labor inspectors visit workplaces on a regular basis to inspect whether companies are complying with the legal requirements of the Labor Standards Act. If violations are found during the inspection, companies are either penalized or issued correction orders. Therefore, properly preparing for a labor inspection has become essential for HR and labor managers.

What follows is a self-assessment checklist for you to accurately determine whether your company is in compliance with the Labor Standards Act. It involves 140 questions in a total of 16 areas. Specific explanations about how to prepare against violations being identified during the labor inspection will be of considerable help.

We estimate you will need about 30 minutes to answer the 140 questions in 16 areas. You will mark your answers as “Compliant,” “Incomplete,” or “Non-compliant.” The results can be emailed to you directly or you can print them out.

1	Written Statement of Working Conditions
2	Preservation of Employee Registers and Contract Documents
3	Payment of Various Money and Goods such as Wages
4	Violation of limits on working hours and overtime
5	Granting recess hours
6	Paid holidays
7	Annual paid leave
8	Children and Maternity Protection
9	Rules of Employment
10	Payment of retirement benefits
11	Prevention of workplace harassment
12	Observation of minimum wage
13	Prevention of sexual harassment in the workplace
14	Prohibition of Sex Discrimination in Employment
15	Prohibition of discrimination against non-regular workers
16	Establishment of labor-management council

If the results of your self-assessment show a lot of Incomplete or Non-compliant issues, we highly recommend contacting us at Kangnam Labor Law Firm for consultation on properly rectifying the situation.
I hope you find your self-assessment useful and informative.

Bongsoo Jung
Labor Attorney, Representative Director, Kangnam Labor Law Firm

1. Written Statement of Working Conditions

1-1 Written statement of working conditions

1-1-1 Have you drawn up employment contracts for all relevant workers?
1-1-2 Are all important working conditions (wages, working hours, holidays, vacations, etc.) written in the employment contracts?
1-1-3 If important working conditions have changed, have you rewritten and issued a new employment contract?
1-1-4 Is one copy issued to each worker in writing and one copy kept at the workplace?
1-1-5 Have the wages, working hours, holidays and vacations stipulated in the labor contract changed due to changes in the collective agreement or rules of employment after the labor contract was concluded? If a worker requested a labor contract with the changes specified, was the labor contract reissued?

1-2 Written statement of working conditions for fixed-term and part-time workers

1-2-1 Have you written and issued employment contracts for each fixed-term and part-time worker?
1-2-2 Are all the essential items listed in the employment contract?
1-2-3 Do employment contracts for part-time workers include the working days and working hours per working day?
1-2-4 If the worker requested re-issuance of the labor contract due to a change in working hours by agreement between the parties, did you draw up a new contract with the changes therein and reissue it?
1-2-5 Is one copy issued to each worker in writing and one copy kept at the workplace?
1-2-6 Are you preparing and issuing an employment contract for daily workers who sign an employment contract on a daily basis?

2 Preservation of Employee Registers and Contract Documents

2-1 Preservation of contract documents

2-1-1 Do you keep documents related to labor contracts, such as employee registers, labor contracts,

2-2 Payroll

2-2-1 Do you prepare a wage ledger every time you pay wages?
2-2-2 Are all items stipulated by law written in the wage ledger?

3 Payment of Various Money and Goods such as Wages

3-1 Settlement of payments

3-1-1 If a worker dies or retires, are wages, compensation, and all other money and valuables paid within 14 days?
3-1-2 Have you paid all the money and valuables that were supposed to be paid to the workers, including business expenses in addition to wages and severance pay?
3-1-3 In the event of special circumstances, the payment date can be extended by agreement between the parties within 14 days from the date of retirement/resignation. If applicable, have you reached an agreement on this?
3-1-4 If the payment was delayed due to an agreement with the involved parties, was interest paid for the delayed period?

3-2 Payment of wages

3-2-1 Are wages paid to workers in Korean currency?
3-2-2 Are wages paid directly to workers?
3-2-3 Are wages paid in full without unauthorized deductions?
3-2-4 Are wages paid on a fixed date at least once a month?

3-3 Pay slips

3-3-1 Are pay slips issued each time wages are paid?
3-3-2 Are all items stipulated by law written on the pay slip?

3-4 Wage payment for subcontracting

3-4-1 Are wages paid to subcontract workers up to date (direct upper or higher level contractors)?

3-5 Shutdown allowance

3-5-1 Has the company ever shut down for reasons attributable to the employer? Were the workers paid at least 70% of their average wage during the period of suspension?

3-5-2 Do you know the concept of average wage?

3-5-3 If employment adjustment is unavoidable due to a business crisis, are you prepared to take advantage of the Employment Retention Subsidy Program that provides support for maintaining employment through business suspensions, etc.?

3-6 Extended, night and holiday work

3-6-1 Are you familiar with the concept of extended/night/holiday work?

3-6-2 Are additional wages paid for extended/night/holiday work?

3-6-3 Do you know how to calculate additional wages for extended/night/holiday work?

3-6-4 Are part-time workers (part-timers) paid overtime pay if they work in excess of the contractual working hours, even if it is less than 8 hours a day?

3-6-5 If a young worker who works 7 hours a day works over 7 hours, is overtime pay paid for the excess hours?

3-6-6 Is 100% of the regular wage paid additionally for holiday work exceeding 8 hours?

3-6-7 Are additional allowances paid to supervisory and intermittent workers for night work?

4 Violation of Limits on Working Hours and Overtime

4-1 Working hours

4-1-1 Do you know what statutory working hours, prescribed working hours, overtime working hours, night working hours, and holiday working hours are?

4-1-2 Do you know that waiting time under the supervision of the employer is working time?

4-1-3 Are you complying with the statutory working hours?

4-2 Restrictions on overtime work

4-2-1 Do you know the exact criteria for calculating overtime hours?
4-2-2 Do you agree with the workers to work overtime?
4-2-3 Do you restrict overtime work to 12 hours a week for each relevant worker?
4-2-4 Are you aware of flexible work arrangements that can be used?

5 Granting recess hours

5-0-1 Are breaks of 30 minutes or more given for each 4-hour block of working hours?
5-0-2 Do workers who work 8 working hours receive a 1 hour break or more during the course of the 8 hours?
5-0-3 Are breaks granted during working hours?
5-0-4 Can workers freely use their break times?
5-0-5 Do you count individual breaks taken while waiting as working hours?

6 Paid Holidays

6-0-1 Are your workers given an average of one or more paid holidays (weekly holidays) per week when they complete the prescribed working days for a week?
6-0-2 Are you properly calculating your workers' weekly holiday pay?
6-0-3 Are weekly holidays paid for part-time workers who work more than 15 hours a week?
6-0-4 From January 2022, workplaces with at least 5 employees are to treat Labor Day and public office holidays as paid holidays. Is your business in compliance with this requirement?

7 Annual Paid Leave

7-0-1 Do you grant annual paid leave?
7-0-2 Are 15 days of annual paid leave granted to workers who show up for at least 80% of their contractual working hours for one year?
7-0-3 Are additional vacations granted to workers who have worked continuously for 3 years or more?
7-0-4 Are workers in their first year of employment granted 1 day of paid leave for every 1 month of attendance?
7-0-5 Is annual paid leave granted to workers who have returned to work after child care leave?

7-0-6 Can workers freely use their annual paid leave?

7-0-7 Do you avoid preventing workers from using their annual paid leave at their desired time simply because they are busy with work?

7-0-8 Are you paying workers an allowance for their unused annual paid leave?

7-0-9 Are unused annual paid leave allowances paid to workers whose contract period is 1 year?

8 Children and Protection of Maternity

8-1 Night and holiday work for minors and women

8-1-1 When a female worker works at night (between 10:00 pm and 6:00 am the next day) or on a holiday, do you get her explicit consent beforehand?

8-1-2 Do you avoid having pregnant female workers or workers under the age of 18 work at night or on holidays?

8-2 Overtime work for women soon after childbirth

8-2-1 Are female workers exempted from overtime work for one year after childbirth, miscarriage or stillbirth?

8-3 Protection of pregnant women

8-3-1 Are pregnant women given at least 90 days of maternity leave (120 days if pregnant with more than one child at a time)?

8-3-2 Are female workers who have given birth granted leave of at least 45 days (60 days if pregnant with more than one child at a time) after the date of childbirth?

8-3-3 Is maternity leave granted to workers after they experience a miscarriage and stillbirth?

8-3-4 Are reduced working hours allowed for female workers during the first 12 weeks of pregnancy and from the 36th week of pregnancy?

8-3-5 If a pregnant female worker applies for a change in the start and end times of work while maintaining the prescribed working hours per day, is it allowed?

8-3-6 Are pregnant female workers prohibited from working overtime?

8-3-7 Have pregnant female workers been switched to easier types of work if requested?

8-3-8 Have you returned workers coming back from maternity leave to the same job or a job that pays the same level of wages?

8-4 Paternity leave

8-4-1 Is paternity leave granted when an employee's spouse gives birth?
8-4-2 Is split use of spousal paternity leave permitted?

8-5 Childcare leave

8-5-1 Is childcare leave granted to pregnant female workers and workers raising children under the age of 8 or in the 2nd grade of elementary school when they apply for it?
8-5-2 Is childcare leave allowed for male workers, fixed-term workers, and dispatched workers?
8-5-3 Are workers who have taken childcare leave protected from dismissal or other unfavorable treatment for taking the childcare leave?
8-5-4 When returning to work after childcare leave, are workers given the same or similar tasks as before the leave?
8-5-5 Do you include childcare leave in the service period of the applicable worker?

8-6 Reduction of working hours during childcare period

8-6-1 If a worker applies for reduced working hours in lieu of childcare leave, is it permitted?
8-6-2 Are workers protected from unfavorable treatment for having reduced working hours during the childcare period?
8-6-3 Are workers protected from having to work overtime during reduced working hours due to a childcare period?

9 Rules of Employment

9-1 Creation of and reporting rules of employment

9-1-1 If your workplace employs 10 or more full-time workers, do you have employment rules at your workplace?
9-1-2 Are all legal items written in the rules of employment?
9-1-3 Have the revised laws and regulations been reflected in the rules of employment?

9-1-4 Did you listen to the opinions of the worker group after drafting the rules of employment?
9-1-5 Did you report the written rules of employment to the Ministry of Employment and Labor?

9-2 Changes to rules of employment

9-2-1 When changing other regulations that are similar to rules of employment in nature, do you go through the appropriate procedures and report those changes?
9-2-2 When changing the rules of employment, do you listen to opinions or obtain consent from the labor union or the employee representative of a majority of workers?
9-2-3 Did you report existing changes to your rules of employment?

9-3 Compliance with laws and collective agreements

9-3-1 Are there any parts of the rules of employment that are inconsistent with the law?
9-3-2 Are there any parts of the rules of employment that are inconsistent with the collective agreement?
9-3-3 Did you comply with all Ministry of Employment and Labor orders to change the rules of employment?

10 Payment of Retirement Benefits

10-1 Payment of severance pay

10-1-1 Do you calculate your workers' severance pay based on their average wages?
10-1-2 Do you calculate severance pay including non-taxable items?
10-1-3 Do you pay severance pay within 14 days of the date the reason for payment occurs?
10-1-4 Is severance pay paid separately from wages?
10-1-5 When the 4 major insurances were registered later, is severance pay paid for all consecutive working periods other than the period covered by the 4 major insurances?

10-2 Payment of defined benefit (DB) retirement pension

10-2-1 Are you paying at least the minimum reserve as of the end of each business year?
10-2-2 Do you require the retirement pension provider to pay retirement benefits within 14 days from the date the reason for payment occurred?
10-2-3 If the salary level paid by the retirement pension provider is insufficient, do you pay the insufficient amount within 14 days?

10-3 Payment of defined contribution (DC) retirement pension

10-3-1 Are contributions equivalent to 1/12 or more of the total annual wages paid?

10-3-2 When a reason for payment occurs, if the contribution to the subscriber is unpaid, do you pay the contribution and delayed-payment interest within 14 days from the date the reason for payment of the pension occurs?

10-4 Payment of SME Retirement Pension Fund System Benefits

10-4-1 Are contributions equivalent to 1/12 or more of the total annual wages paid?

10-4-2 When a reason for payment occurs, if the contribution to the subscriber is unpaid, do you pay the contribution and delayed-payment interest within 14 days from the date the reason for payment of the benefit occurs?

11 Preventing Workplace Harassment

11-0-1 Have you made yourself aware of the meaning of bullying in the workplace?

11-0-2 Do the rules of employment include efforts to prevent workplace harassment and measures to handle it when it occurs?

11-0-3 If there is a report of bullying at work, do you take action in accordance with the principles stipulated by law?

11-0-4 If bullying at work has occurred, do you protect the alleged victim and handle the alleged perpetrator appropriately?

11-0-5 Do you treat the alleged victim of bullying at work or the worker who reported it unfavorably?

11-0-6 Are you making efforts to prevent secondary harms, such as by maintaining confidentiality of all information learned in the process of investigating a report of workplace harassment?

12 Observing Minimum Wage

12-1 Effect of minimum wage

12-1-1 Are your workers paid at least the minimum wage?

12-1-2 Are new workers who have begun their 3-month probation paid at least minimum wage?

12-1-3 Are workers engaged in simple labor jobs paid 100% of the minimum wage even during their probationary period?

12-2 Obligation to notify workers of minimum wage

12-2-1 Are matters concerning the minimum wage posted in a place where workers can easily see them, or are the workers notified in other appropriate ways?

13 Preventing Sexual Harassment in the Workplace

13-1 Prohibiting sexual harassment in the workplace

13-1-1 Do you know the criteria for defining sexual harassment in the workplace?
13-1-2 Are you familiar with the concept of sexual harassment in the workplace?
13-1-3 Do you know what to do in the event that sexual harassment occurs at work?

13-2 Preventing sexual harassment in the workplace

13-2-1 Do you conduct sexual harassment prevention training at work once a year?
13-2-2 Do the employer as well as the workers participate in the training?
13-2-3 Are educational materials on preventing sexual harassment always posted or kept in a place where workers can freely read them?

14 Prohibiting Gender Discrimination in Employment

14-0-1 When recruiting or hiring workers, do you avoid discriminating on grounds such as gender, religion, marital status, family status, pregnancy or childbirth without reasonable grounds?
14-0-2 When recruiting or hiring workers, do you avoid presenting or implying that physical conditions (appearance, height, weight, etc.) or specific marital status are preferred that are not necessary for the performance of the job?
14-0-3 Do you pay equal wages to male and female workers for work of equal value within the same business?
14-0-4 Have you been able to completely avoid discriminating, without reasonable justification, on the grounds of gender, religion, marital status, family status, pregnancy or childbirth, etc. in welfare items (beyond wages), education/placement/promotion, retirement/retirement, and dismissal?
14-0-5 Have you entered into an employment contract that presupposes marriage, pregnancy, or childbirth of a female worker as a reason for retirement?

15 Prohibiting Discrimination against Non-regular Workers

5-0-1 Do you avoid discriminating against workers of a using employer who perform the same or similar work simply because they are dispatched workers?

15-0-2 Do you avoid discriminating against workers who are engaged in the same or similar work and have contracts with an indefinite period simply because they are fixed-term workers?

15-0-3 Are part-time workers treated the same as regular workers engaged in the same or similar work?

16 Establishing a Labor-Management Council

16-1 Establishing a labor-management council

16-1-1 If you have 30 or more full-time workers, have you established a labor-management council?

16-1-2 If yes, has the labor-management council been established in accordance with the procedures stipulated by law?

16-1-3 Have workers democratically elected worker representatives?

16-1-4 Do the labor-management council regulations include all the contents stipulated by the law?

16-1-5 Have you enacted labor-management council regulations and reported them to the Ministry of Employment and Labor?

16-2 Labor-management council meetings

16-2-1 Are labor-management council meetings held at least every 3 months?

16-2-2 Have you implemented the matters decided during labor-management council meetings?

16-2-3 If you have 30 or more full-time workers, have you appointed a grievance handling member to the committee?

인사관리 앱 개발 (Mobile App)

기본서 Basic Guides	1. 노동법전 2. 노동법 해설 3. 노동 사건 사례	1. Labor Law 2. Labor Law Guide 3. Labor Cases
동영상 (Video)	YouTube GO	Korean and English videos (each 20 categories)
매뉴얼 Manual	1. 구조조정 2. 해고 3. 외국인 고용과 비자 4. 노동조합 5. 임금 6. 근로시간, 휴일, 휴가, 7. 비정규직 근로자 8. 근로계약 9. 산업재해보상보험 10. 근로감독 준비 11. 고용보험 12. 취업규칙 13. 남녀고용평등 14. 직장내 괴롭힘 방지 15. 노사협의회 16. 산업안전보건법 17. 국민연금, 국민건강보험	1. Workplace Restructuring 2. Dismissal 3. Foreign Employment and Visa 4. Labor Union 5. Wage 6. Working Hours, Holiday, Leave 7. Irregular Workers 8. Employment Contract 9. Industrial Accident Compensation Insurance 10. Labor Inspection Preparation 11. Employment Insurance 12. Rules of Employment 13. Equal Employment Act 14. Workplace Harassment Prevention 15. Labor Management Council 16. Industrial Safety and Health Act 17.National Pension, Health Insurance
Auditing	Self-Assessment for Labor Inspection	근로감독 자가진단 앱 추가 제작
외국인 Foreigner	출입국관리법과 외국인 (기고글, 동영상, 비자36가지)	Immigration Laws and Foreigner Workers (Law, Articles, Video, Visa)
근로계약 Employmt Contract	근로계약 자동작성 (5가지 기본 틀을 가지고 작성) (정규직, 기간직, 시간제)	Making Employment Contracts based on 5 basic templates (Regular, fixed-term, and part-time)
자동계산 Automatic Calculation	1. 연차휴가, 2. 퇴직금 3. 4대보험, 4. 퇴직소득세 5. 산재보상 (장해보상, 유족보상)	1. Annual Leave, 2. Severance Pay 3. Social Insurance Premiums 4. Retirement(Severance) Income Tax 5. Industrial acc
Labor Auditing	1. 주요 질문/답변 2. 인사감사	1. FAQ 2. Labor Auditing

- "__" underlined parts are being prepared, and other parts are completed and posted.
- "__" 표시는 준비 중임. 나머지는 완료 되었음.