The Serious Accidents Punishment Act Expanded to Apply to Businesses with Fewer Than 50 Employees Starting Jan. 27, 2024

Starting from January 2024, the Serious Accidents Punishment Act, which imposes criminal penalties in the event of serious accidents such as worker deaths when business owners or responsible managing officers violate their obligation to establish a safety and health management system, will be expanded to apply to businesses with fewer than 50 employees.

The Serious Accidents Punishment Act, which came into effect on January 27, 2022, currently applies only to businesses with 50 or more employees(or construction sites with construction cost exceeding 5 billion won). However, starting from January 27, 2024, it will also be applied to businesses with fewer than 50 employees (or construction projects with construction costs below 5 billion won in the case of the construction industry). This means that any businesses with five or more employees will be subject to the Serious Accidents Punishment Act.

The Serious Accidents Punishment Act imposes penalties on business owners and responsible managing officers who fail to fulfill their duty of accident prevention in the event of a serious industrial accident resulting in worker fatalities. They can face imprisonment for more than one year or fines of up to 1 billion won, while corporations can be fined up to 5 billion won. Additionally, the Act introduces punitive damages, which means that if business owners or responsible managing officers deliberately or through gross negligence violate their obligation to ensure safety and health, resulting in a serious accident, they may be liable for compensation of up to five times the amount of damages incurred.

Furthermore, the Serious Accident Punishment Act has introduced the concept of ‘serious civic accident’ to address accidents occurring in public-use facilities or public transportation. The penalties for such accidents are regulated in the same manner as serious industrial accidents.

The number of accidents occurring in businesses with fewer than 50 employees accounts for over 70% of all industrial accidents. Moreover, many of these small businesses face challenges in establishing a safety and health management systems due to their limited resources. As a results, there are growing concerns regarding the implementation timing of the Serious Accident Punishment Act. Under the Act, the establishment and implementation of a safety and health management system are the most fundamental obligations. We provide the following guidance on how to establish and implement a safety and health management system for your reference.

<Establishment and Implementation of Safety and Health Management System>

1. Define objectives and management policies regarding safety and health.

2. Establish an organization exclusively responsible for the overall control and management of affairs concerning safety and health.

3. Identify and improve hazardous or risk factors varying on the characteristics of the relevant businesses.
   * Establish work procedures for identifying and improving hazardous or risk factors varying on the characteristics of the relevant business and take necessary measures after conducting an inspection at least once every half year
   * Standard Operating Procedures (SOPs) should be developed and followed for high-risk tasks.

4. Set and spend a budget necessary for preparation of human resources, facilities, and equipment for safety and health required for accident prevention and improvement of hazardous or risk factors.

5. Support the responsibilities of a person in charge of safety and health management, etc.
   * Establish criteria to assess whether a person in charge of safety and health management, etc. performs his or her duties faithfully, and assess and manage such person at least once every half year in accordance with such criteria.

6. Assign specialized personnel such as safety officers and health officers, etc.
   * Assign more than the specified number of personnel under the Occupational Safety and Health Act
   * Guarantee working hours on safety and health if the person required to be assigned holds other offices

7. Solicit and assess the opinions of employees and verify the implementation status of improvement measures.
   * If employee feedback is necessary for ensuring safety and health, develop improvement measures and assess their implementation status at least once every half year.

8. Prepare a manual in case a serious industrial accident occurs or there is an imminent risk of occurrence of such accident and conduct an inspection at least once every half year.

9. Establish the standards and procedures to secure the safety and health of workers and conduct an inspection at least once every half year where any work is contracted, outsourced, or entrusted, etc. to a third party,

Prosecutors: No charges filed in wage discrepancy case where regular wage, higher than the average wage, was not used for severance pay calculation

(2023 Hyungjae 39420 ho, Violation of the Employee Retirement Benefit Security Act)

<Labor Inspector's Opinion>

When an employee resigns, the employer must pay severance pay within 14 days from the date the payment reason arises. However, in special circumstances, the payment deadline may be extended by agreement between the parties.

Nevertheless, the suspect failed to pay the retirement benefits calculated based on the ordinary wage, according to Article 2, Paragraph 1, Clause 6, and Paragraph 2 of the Labor Standards Act, to the resigned workers Kim and Go. Since the ordinary wages of the resigned workers Kim and Go were higher than the average wage, the severance pay should have been calculated based on the ordinary wages. However, the suspect did not pay the difference in severance pay to Kim, which amounted to 403,050 won, and to Go, which amounted to 384,533 won, totaling 787,583 won, respectively, by calculating it based on the average wage.

<Non-prosecution reasons>

The main point of the allegations in this case aligns with the opinion outlined by the labor inspector.

1. The victims worked at the suspect's workplace from January 1, 2022, to February 28, 2023, and resigned. The suspect acknowledges the fact that they paid 2,808,000 won in severance pay to victim Kim and 2,683,600 won to victim Go.

2. The victims argue that the severance pay calculated by the suspect based on the average wage is lower than that calculated based on the ordinary wage, and in such cases, severance pay should be calculated based on the ordinary wage.

3. In contrast, the suspect claims that they calculated the severance pay based on the average wage in accordance with the Employee Retirement Benefit Security Act and paid it to the victims, denying any unpaid severance pay to them.

4. If there is sufficient evidence to dispute the existence or extent of the obligation to pay wages, it should be considered that there is a significant reason for the employer's failure to pay those wages, making it difficult to recognize the employer's intent to violate Articles 36 and 112 of the Labor Standards Act (See

Supreme Court Decision 2005.6.9, Case No. 2005do1089). Whether there is sufficient evidence to dispute the existence and scope of the obligation to pay wages depends on the employer's reasons for refusal to pay, the basis of that obligation to pay, the organization and scale of the company operated by the employer, the business purpose, and other relevant factors, as well as the circumstances surrounding the dispute over the existence and scope of the obligation to pay wages at the time. It should not be concluded that the employer's intent to violate Articles 36 and 112 of the Labor Standards Act is immediately recognized simply because the employer's civil liability for payment is subsequently recognized (See Supreme Court Decision 2007.6.28, Case No. 2007do1539).

5. In consideration of the aforementioned factors, it is found that the suspect calculated the severance pay based on the average wage of the wages paid to the victims for the three months prior to their resignation, and all calculated severance pay was paid. The difference between the severance pay paid to the victims and the monthly salaries paid for the three months prior to resignation, as claimed by the suspect and the victims respectively, seems to have arisen due to differences in interpretation of the provisions related to the average wage under the Labor Standards Act and the Employee Retirement Benefit Security Act. Considering this, along with other factors such as whether the suspect, separate from the question of civil liability for the difference in severance pay, deliberately failed to pay the severance pay calculated according to the method claimed by the victims, it is insufficient to recognize the suspect's intentional failure to pay severance pay solely based on the difference in severance pay amount, and there is no other evidence to support such recognition.

The Incorrect Administrative Interpretation on Calculating Severance Pay has caused a lot of confusion in severance pay calculation

Bongsoo Jung, Korean labor attorney at KangNam Labor Law Firm

Ⅰ. Introduction

The recent administrative interpretation of severance pay calculations by the Ministry of Employment and Labor (MOEL) is causing confusion in many companies.[1] If a worker who receives 2 million won per month in fixed wage has worked for one year

and resigns, he must receive 2 million won in severance pay (total wage for 3 months: 6 million won/90 days x 30 days average wage). However, the MOEL guidance says it should be 2,296,650 won and is ordering companies to be punished if they do not pay the additional 296,650 won. In the case of ordinary wages, if the monthly salary, 2 million won, is divided by 209 monthly contractual working hours, the hourly ordinary wage is obtained (2 million won/209 hours). If this hourly ordinary wage is multiplied by 8 hours, which is the contractual working hours in a day, the normal wage for one day is calculated (hourly wage 9,569 won x 8 hours = 76,555 won). Since the daily ordinary wage is higher than the daily average wage, multiplying the daily ordinary wage by 90 days becomes 2,296,650 won (76,555 x 90 days of daily ordinary wage). This recent administrative interpretation states that, citing Article 2 (2) of the Labor Standards Act (LSA), if the hourly average wage of a worker is lower than the hourly ordinary wage, that hourly ordinary wage shall replace the hourly average wage.

However, this administrative interpretation violates the method for calculating severance pay under the current Employee Retirement Benefit Guarantee Act (the ERBG Act) and does not fit the interpretation of the law by the courts. The ERBG Act states that the principle of calculating severance pay is based on the average wage, and in particular, 1/12 of the total wage for the defined contribution (DC) retirement pension is specified. Court rulings also state that, in calculating average wage, the basic principle is to use the ordinary living wage of workers.[2)]

Hereby, I would like to look at where the contradictions in the MOEL's administrative interpretation occur, and also examine in detail whether it is appropriate to use ordinary wage rather than average wage in the calculation of severance pay.

Ⅱ. Reasons Why Ordinary Wage is Higher than Average Wage

1. Reduction of statutory working hours

What is at issue here is that Article 2 (2) of the Labor Standards Act states that if the average wage is lower than the ordinary wage, the ordinary wage shall be the average wage. This provision did not change even when, on March 29, 1989, the existing statutory working hours per week were reduced from 48 hours to 44 hours per week. And on September 15, 2003, the statutory working hours per week were reduced to 40 hours, but there was no change to the provision. That is, the contractual monthly working hours are 240 hours in the 48-hour workweek system, 226 hours in

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1) Han Kyung-hee, Is the higher ordinary wage more often used than the average wage in calculating severance pay? Korea Apartment Daily, Sep. 15, 2020; Goh Hee-kyung, Disputes in calculating severance pay at an apartment workplace due to ordinary wage being higher than average wage... Why? Apartment Management Newspaper, July 24, 2020.

2) Supreme Court ruling on Nov. 12, 1999: 98da49357.

the 44-hour week system, and 209 hours in the current 40-hour week system. Therefore, at the present time, contrary to the purpose of this article, the average wage must be lower than ordinary wage.[3] In other words, the average wage obtained by dividing the total wage by 30 days is actually lower than the ordinary wage, as the ordinary wage becomes the amount obtained by dividing the wage for 20 days by 30. On the other hand, since the ordinary wage is 6 days a week including the weekly holiday allowance, the monthly ordinary wage is divided by 25 days. In this way, the ordinary wage is always higher than the average wage.

2. Changes in the wage structure

In December 2013, the Supreme Court ruled on a very important case related to ordinary wage that regular annual bonuses and various monthly allowances were included.[4]

As a result of this ruling, the annual fixed bonus system, which was the basic framework of Korean company wage structures, was abolished in 2014. The ruling simplifies wage structures. In other words, Korea's wage structure has come to consist of basic wages, legal allowances, and incentives since then, which increased the level of ordinary wages greatly.

Ⅲ. Method for Calculating Statutory Severance Pay and Problems with Recent MOEL Guidelines on Calculating Severance Pay

1. How to calculate statutory retirement pay

The ERBG Act stipulates that severance pay is calculated as average wage equivalent to 30 days for each year of the relevant worker's continuous service. In the defined benefit (DB) pension system, an amount calculated as the average wage of 30 days for each year of continuous service is deposited into the retirement pension account. In the defined contribution (DC) retirement pension system, 1/12 of the total annual wage is deposited into the retirement pension account. This is equivalent to 8.3% of the annual salary. Because a defined contribution (DC) retirement pension system pays a fixed amount each year, it cannot be recalculated later because the ordinary wage is higher than the average wage.[5] As such, it can be said that severance pay is clarified by calculating the average wage, which is the total wage, in the ERBG Act.

In this way, severance pay and retirement pension are calculated with the average wage, which is the total wage. The reason for calculating and paying the average wage is to protect the living wage of workers and to match a certain wage level in

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3) Koo Kunseo, Strange severance pay calculation, Korea Economy Daily, Jan. 16, 2022.
4) Supreme Court ruling on Dec. 18, 2013: 2012da89399, 2012da94643.
5) Supreme Court ruling on Jan. 14, 2021: 2020da207444.

terms of severance pay or accident compensation. The Labor Standards Act provides three ways to protect the level of average wage. First, if the average wage is lower than the ordinary wage, it is stipulated that the ordinary wage shall be the average wage (Article 2, Paragraph 2). Second, the calculations of average wage exclude the probationary period of workers, periods of absence due to reasons attributable to the employer, periods of maternity leave, periods of recovery from work-related illnesses or accidents, periods of childcare leave, periods of legal industrial action, etc. This is an exception to the calculation of average wage, and is a limited enumeration provision to prevent the average wage from being unreasonably low in special cases for workers.[6] Third, despite the exceptions to the above Enforcement Regulation to the Labor Standards Act, if the average wage fluctuates significantly due to the worker's accidental circumstances, the notice on special cases for calculating the average wage determined by the MOEL (Article 4 of the Enforcement Decree to the LSA) is applied.[7]

2. Problems in using ordinary wage when calculating severance pay

Currently, the MOEL is saying that severance pay should be calculated using ordinary wage when the average wage is lower than ordinary wage.[8] However, in principle, severance pay should be based on calculations using the average wage, and ordinary wage should help to prevent a decrease in severance pay if average wage is lower. Currently, the severance pay and defined benefit (DB) retirement pension plan under the ERBG Act are calculated as the average wage of 30 days for each year of continuous service. One-twelfth of the total annual wage for defined contribution (DC) retirement pension plans is taken as a reserve fund. According to this guideline, all calculations of retirement benefits that currently reflect average wages should be converted to reflect ordinary wages (Article 12 of the ERBG Act). If this happens, the calculation system of the ERPG Act will be broken, resulting in chaos. In other words, the administrative interpretation of the MOEL is not in line with the interpreted purpose of this Act, as it results in the use of the ordinary wage as a supplement to the average wage used in the calculation of severance pay.

Ⅳ. Purpose of Average Wage in Calculating Severance Pay and the Clause to Use Ordinary Wage in Exceptions

1. Purpose of using average wage in calculating severance pay

The severance pay system was introduced to ensure that companies can guarantee an income for their workers in their old age when there was no old-age pension in

6) Supreme Court ruling on July 25, 2003: 2001da12669.
7) Supreme Court ruling on June 25, 2020: 2018da292418.
8) MOEL Guidelines: Labor Standards-3405, Aug. 25, 2020.

Korea. Therefore, the calculation of severance pay using average wage, which is the total amount of wages, was prepared in consideration of the fact that there is no disadvantage by reflecting the ordinary living wage of workers.[9] Since the total wage is the average wage, it has always been higher than ordinary wage, which reflects only fixed and regular wages. For this reason, Article 46 of the Labor Standards Act stipulates that 70% of the average wage or 100% of the ordinary wage must be paid as leave of absence allowance for periods attributable to the employer. This is because the use of average wages is the basis for severance pay regulations and accident compensation for workers. However, ordinary wage is calculated for the purpose of calculating hourly wage, and so such ordinary wage is used when calculating paid allowances stipulated in the Labor Standards Act, such as overtime pay and unused annual allowance under the Labor Standards Act. Because ordinary wages refer to fixed and pre-promised wages paid for the contractual working hours when a labor contract is drawn up, while the average wage is paid according to the rate of attendance at work, it does not decrease.

2. Reasons for placing the clause to use ordinary wage in exceptions when calculating severance pay

The basic principle of average wage is to calculate the ordinary living wage of workers as a matter of fact. Severance pay is based on the average wage for the same reason.[10] According to Article 2 (2) of the Labor Standards Act, if the total wage decreases due to abnormal work, the average wage will be lower than the normal wage, so then the ordinary wage is used.[11] The precedent also stipulates that if the amount calculated as the average wage is lower than the ordinary wage of the worker concerned, the ordinary wage shall be the average wage in Article 2 Paragraph 2 of the Labor Standards Act. The purpose for this is to guarantee the minimum average wage in case the wage is significantly lower than in normal cases due to reasons attributable to the worker or an inability to work normally due to reasons attributable to the worker during the three months prior to the occurrence of the reason for calculating the average wage.[12] Here, ordinary wages refer to fixed wages in advance that are set to be paid regularly and uniformly regardless of the actual provision of work. For this reason, Article 2 (2) of the Labor Standards Act is used in cases where the average wage falls short of the ordinary wage.[13]

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9) Supreme Court ruling on April 12, 1994: 92da20309; Supreme Court ruling on Nov. 12,1999: 98da49357.
10) Supreme Court ruling on Nov. 12, 1999: 98da49357.
11) Gwangju Appellate Court ruling on Dec. 22, 2015: 2004nu1062.
12) Seoul Administrative Court ruling on July 1, 1999: 98gu19789.
13) Supreme Court ruling on June 28, 1991: 90daka14758; Supreme Court ruling on Dec. 26, 1990: 90daka12493.

Ⅴ. Conclusion

Severance pay is the wage calculated as the average wage of 30 days per year of a worker's continuous service. Here, the average wage falls short of the ordinary wage in situations in which workers are not protected by law, such as for absenteeism or personal leaves. At present, the ordinary wage is often higher than the average wage even in general cases, not just in special cases. This is because the standard calculation formula for ordinary wages is calculated on the basis of 6 days (including weekly holidays) in the 40-hour work week system, while average wage is calculated on the basis of 7 days a week. Accordingly, the provision in Article 2 (2) of the Labor Standards Act shall be added as a supplement when the average wage is lower than the ordinary wage, because the average wage shall be applied in accordance with the purpose of the Act. This is because, as can be seen with the MOEL's recent administrative interpretation, if the formula for calculating severance pay with ordinary wages is established, the severance pay systems in the Retirement Benefit Guarantee Act must be revised completely.

Multinational Companies, Let's Understand and Deal with Employment Contracts Accurately!

Haesun Kim / Advisor of KangNam Labor Law Firm

When working at Kangnam Labor Law Firm as an advisor, there are often cases where we provide legal consulting services on domestic Employment Contracts for multinational companies where their headquarters are in overseas countries.

However, even for well-known foreign companies, they sometimes do not have a HR department in Korea but establish an Asia headquarters in such countries as Singapore or Japan. However, due to the constantly changing working environment and amendments to domestic Labor law and Labor Standards Act (LSA) in Korea, there are often cases where companies suffer setbacks due to the absence of an HR department in Korea and a lack of updated legal knowledge regarding employment related domestic laws. For example, in case of the "Company S" where the headquarter is outside of Korea, Kangnam Labor Law Firm has been providing a regular consulting service to the company, but they were unable to address some of the issues raised by labor inspectors recently visited them. It was regarding the wage

system outlined in their Employment Contract.

For instance, regarding the "Company S", the wage related terms and condition of their Employment Contract was not in line with the LSA. Especially, according to Article 17 of LSA, the employer must include in the basic salary, overtime, night or holiday allowances, etc., in the wage related terms of their employment contract. Failure to do so may result in a heavy penalty by the Labor Office.

Fortunately, the responsible labor attorney from Kangnam Law Firm represented the "Company S" and explained the situation to the labor inspector at the time of inspection under a short notice, which helped the company to be exempted from a heavy penalty from not keeping the terms of condition of the LSA. However, similar cases are found among many other multinational companies in Korea.

As the working environment in Korea changes and employee rights strengthen, recent amendments to labor standards laws have been moving towards enhancing employees' rights. Therefore, there is a need to raise awareness to prevent companies like "Company S" from overlooking important points and potentially occur unnecessary expenses due to paying penalties.

Furthermore, in recent years, workplace and sexual harassment incidents have increased in Korea, making employee education on this matter essential for foreign companies to cope with the fast changing labor environment.

Although amending labor related laws of a country is a time-consuming process, compared to other foreign countries, relatively rapid changes can occur in countries like Korea. Therefore, firms like Kangnam Labor Law Firm, which specialize in advising foreign companies, need to provide continuous and consistent legal advice based on their experience. This is particularly important to inform their foreign clients to be prepared and cope with the fast changing labor environment.

I would like to further explain the process through which consultation was conducted by Kangnam Law Firm based on the case of "Company S".

In early November 2021, when labor inspectors visited "Company S" with a short notice, they have pointed out a several missing points in the Company's Employment Contract, but the most important one was regarding the comprehensive wage system. This system refers to a labor contract where various allowances (overtime, night, holiday allowances, etc.) are included in the basic wage. However, "Company S" did not include such allowances in the contract terms that were supposed to be part of the basic wage.

Many global companies often include various allowances in the total monthly wage amount without including detailed explanations of the allowances for the purpose of saving costs and convenience of calculation. However, such contracts basically violate

the amended LSA of which came to effect from November 19, 2021. Additionally, the basic wage and various allowances must be clearly stated in the wage ledger and payslip, and it is the employer's obligation to inform employees about the detail.

In the case of Korean branches of foreign companies who do not have a HR department in Korea nor a proper personnel with expertise in Korean Labor Law and LSA, there may be many instances where employment contracts are written in violation of labor related laws.

Despite the fact that the LSA article 48 and some other terms were amended on November 19, 2021, almost three years ago, many companies have not yet revised their employment contracts to comply with the regulations, and instead, they tend to address the issues as they arise. This is a situation that requires urgent attention.
Furthermore, among the various problems that arise from not adhering to the LSA in employment contracts, some foreign embassies in Korea are not exemption. For example, failing to settle severance pay for a resigned employee in a timely manner can lead to civil lawsuits. According to the LSA, employers should pay the severance pay to their retired employees within 14 days after resignation. Failing to do so or miscalculating severance pay can result in lawsuits filed by the employees.

When employees did not receive their severance pay and submit a petition to the local labor office for resolution, if the employer does not respond appropriately and delays the process, the issue may escalate into a civil lawsuit.

In summary, the problems that arise between foreign corporations or foreign embassies and Korean workers can have various causes, but to summarize a few:

1. Civil Law vs. Continental Law

In the case of well-known foreign companies, there is often a strong insistence on global standards. They wonder why what applies universally abroad does not apply in Korea. Essentially, when the multinational enterprise following the Civil Law practices establishes their corporation in Korea, which belongs to the Continental Law System, there may be instances where they are unaware of the Korean Labor Laws or disregard them until later when they realize that Korean labor laws are strict and enforceable.

2. Cultural Gap

Multinational companies from western cultures who establish their branch offices in Korea often face various problems when hiring Korean workers if they overlook the process of localization. Even within the same East Asian cultural sphere, such as China, Japan, or India, the cultural gap with Korea cannot be overlooked. Similarly,

when Korean companies expand overseas and insist on operating the local business following the Korean methods, they may struggle to overcome local cultural and institutional barriers, just as foreign companies do when they neglect the localization process in Korea.

Dealing with workplace and sexual harassment incidents also varies from country to country. Therefore, education on these matters is absolutely necessary. Even at Kangnam Law Firm, a leading firm in handling labor law cases to foreign companies, while explaining about Korean labor laws are provided, activities aimed at overcoming various cultural differences are equally important.

Once communication is established and efforts are made to understand the perspective of the other culture, then the key person from the HQ of multinational companies start to recognize the value of the advice and start to seek help.

While South Korean government is making efforts to address issues related to low birth rates, fast aging population, increase of hiring foreign workers, it is very important to look into the key immigration policies, narrow the gap between different culture and bridging the differences in laws and regulations.

Expertise and know-how in this regard are not built overnight. They are intangible assets that are developed over many years through trial and error. Recognizing and acknowledging the expertise required to build such a brand is where it all begins.

Whether a Study Room Manager's Working Hours can be recognized as Full-time Work

Bongsoo Jung, Labor Attorney at KangNam Labor Law Firm

Ⅰ. Introduction

On July 27, 2022, a Study Room (SR) manager in Seoul filed a lawsuit claiming unpaid wages against the study room's owner, alleging that they did not receive overtime pay and severance pay after they resigned, for their service of 1 year and 2 months. The employee (SR manager) applied for the job after seeing a job advertisement on an online recruitment site that stated, "Looking for a manager for a

study room who can work and study at the same time." The terms of employment were from 6 p.m. to 2 a.m. seven nights a week and involved managing the study room, with one day off per month. Specifically, the employee worked as manager of the study room for 2 hours each day and received a monthly salary of 685,000 won as compensation.[14] The duties of the SR manager included handling new member registrations, card payments for monthly fees, visitor guidance and phone inquiries, simple snack preparation and equipment management, facility maintenance and cleaning, and other miscellaneous tasks.

Although the employment contract of the SR manager stated a daily working time of 2 hours, their actual required presence time was 8 hours per day, during which they were free to study but confined to the study room's waiting area. The SR manager was required to perform related tasks whenever requested by users and potential customers. The employee argued that this waiting time be considered actual working hours, totaling 8 per day. Based on this calculation, the employee demanded additional payment of 19,108,000 won for the additional 6 hours per day and claimed a severance pay of 2,706,563 won as they had worked for more than a year.

The main points of contention were: (ⅰ) Whether the study room should recognize only the stated 2 hours of work per day as the SR manager's actual working hours, or if the entire 8-hour period spent studying and waiting should be considered working hours. (ⅱ) Whether evidence exists to consider the 6 hours, excluding the 2 hours of work, as break time, even though the SR manager was obligated to be present for 8 hours.

Ⅱ. Arguments of the Parties

1. Employee's Claim:

The SR manager stated that they applied for the position of manager in the study room through an online job advertisement, with the intention of saving money while preparing for the police officer exam. The terms of employment were to study while being on standby 8 hours a day, and receive a monthly salary of 685,000 won. The study room was 230 square meters in size and held 70 seats. The SR manager would study and be on standby in the study room from 6 p.m. to 2 a.m. the next day, spend

14) The monthly salary of the employee was 550,000 won. The employer intended to subsidize the individual seat usage fee to the amount of 135,000 won, but the employee chose to receive the seat usage fee in cash and instead used the study room office. Therefore, the employee received a monthly salary of 685,000 won, which included compensation for not using a regular study seat.

about 30 minutes cleaning, and then leave. The employer claimed that the SR manager's actual working hours were no more than 2 hours per day, with 30 minutes allocated for cleaning, 30 minutes for new member management, and 60 minutes for other tasks. However, the SR manager argued that tasks such as cleaning, managing residents and visitors, answering phone calls, preparing snacks, organizing equipment, and facility management required more than 2 hours of work per day. They claim that as they were always on standby, the entire 8 hours should be considered working hours. Therefore, the employee demanded unpaid wages, holiday allowances, and a severance pay totaling 26,630,000 won, along with compensation for the delay.

2. Employer's Argument:

(1) The study room hired the SR manager through an internet job advertisement, clearly stating that they were looking for someone to work as a manager while studying. A written employment contract was signed, which stated that the actual work would be 2 hours per day, 7 days a week from Monday to Sunday, with one day off per month. During the interview, the employee stated that they were preparing to become a police officer and applied for the position to reduce study costs and earn pocket money. The employer encouraged and supported the SR manager, hoping that they would succeed in their studies, and provided sufficient study time within the 6 hours of standby each day.

(2) The SR manager's tasks as manager of the study room amounted to only about 2 hours per day, and the rest of the time was spent on personal study. The employee had the freedom to engage in personal duties during working hours, and was able to leave for personal matters without affecting their work obligations, as long as they left a forwarded phone number. The employer argued that the SR manager's actual work amounted to a maximum of 2 hours per day, with the remaining 6 hours open to personal study or personal tasks without supervision from the employer. Therefore, the employer claims that there were no unpaid wages for the employee, and there was no severance pay as the employee had actually worked very few hours.

Ⅲ. Relevant Criteria and Precedents

1. Relevant Precedent: A ruling stated, in the context of the Labor Standards Act, that rest time refers to the period during which an employee is completely liberated from the employer's directives and is guaranteed the freedom to use their time as

they wish during working hours.[15] The rest time discussed in this precedent refers to a time separated from the employer's management and supervision, indicating a private time with guaranteed freedom of use for the employee.

2. Relevant Precedent: Another ruling stated that the term "working hours" under the Labor Standards Act refers to the time when an employee provides labor under the direction and supervision of the employer as stipulated in the employment contract. Even if an employee is not actively engaged in work during working hours, such as during waiting, rest, or sleep time, if it is effectively under the control and supervision of the employer, it is considered part of the working hours, not as rest time with guaranteed freedom of use.[16]

   The SR manager in this study room is obligated to stay for 8 hours, but since the purpose of the stay is 2 hours for official duties and 6 hours for personal study, it can be considered as time in between rest time and waiting time. However, it is deemed difficult to categorize the SR manager's time purely as waiting time for work, as the contract explicitly states that the SR manager may provide labor intermittently while studying as needed.

3. Relevant Precedent: A further ruling stated that, considering that the employer (defendant or Dormitory) did not predefine specific times for the rest time available to the employee (dormitory manager), and the fact that visitors or new residents could arrive at any time, requiring the dormitory manager to remain in place and be ready to respond without specific time constraints, and taking into account that the employer provided ad-hoc work instructions without specific time constraints, and the employee complied with the employer's spontaneous work instructions, even if the employee spent their time resting or studying, it is reasonable to view that the time falls under waiting time for work rather than rest time completely liberated from the employer's directives.[17]

   The wage dispute in the dormitory manager's case revolved around the determination of whether the dormitory manager's waiting time should be considered rest time. In other words, the dormitory declared all the time as waiting time because the dormitory manager did not specify rest time. The key difference with the current study room manager's situation is that the employment contract for the current study room explicitly states 6 hours of rest time for study during rest breaks, and that there is a difference in the information in the hiring notice and the actual use of rest time for studying.

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15) Supreme Court ruling on Apr. 14, 1992, 91da20548.
16) Supreme Court ruling on Nov. 23, 2006, 2006da41990.
17) Seoul District Court ruling on June 23, 2017, 2017da922.

Ⅳ. Court's Judgment and Implications for Working Hour Disputes

1. Court's Judgment[18)]

(1) It is acknowledged that the defendant employee (hereinafter referred to as the SR manager) and the plaintiff (study room) entered into an employment contract on March 10, 2019, agreeing for the SR manager to work 2 hours each day as an overnight SR manager from 18:00 to 02:00, receiving a monthly wage of 685,000 won, and that the SR manager worked until May 9, 2020.

(2) The SR manager argues that, as he worked or waited for work from 18:00 to 02:00 daily, the entire 8 hours during this time constitute working hours. Therefore, based on these working hours, the SR manager claims that the employer should have the obligation to pay a total of 19,108,560 won, deducting 685,000 won paid each month, for the period until the resignation date after June 11, 2019, in accordance with the minimum wage set by the Minimum Wage Act.

However, the agreed working hours of the SR manager were 2 hours, assuming personal study time, and there is no evidence to support the claim that the SR manager worked beyond the agreed-upon hours or that there was a need for additional work beyond the claimed hours. There is also no evidence to suggest that the SR manager needed to wait for work without being able to engage in personal tasks or outings during the study room's operations. Therefore, the SR manager's claim on this matter is deemed unsubstantiated.

(3) The SR manager asserts that the study room is obligated to pay severance pay of 2,706,563 won. However, due to the reasons stated in paragraphs 1 and 2, the SR manager falls under the category of a worker who does not qualify as a designated beneficiary of the severance pay system according to Article 4, Paragraph 1, Subparagraph of the Labor Standards Act. This is because the SR manager is in the category of workers with an average weekly working hours of less than 15 over a 4-week period. Therefore, the SR manager's claim on this matter is without merit.

2. Lessons Learned

(1) Waiting time for work is considered part of working hours when calculating working hours (Article 50, Paragraph 3 of the Labor Standards Act). The time when the study room manager is under the supervision of the employer is considered waiting time for work, and this falls within the working hours. However, this study room

18) Seoul Eastern District Court ruling on Dec. 21, 2023, 200gaso29648.

manager had the flexibility to adjust cleaning or equipment management during the manager's 8-hour stay. Nevertheless, considering that situations such as the entry of study room users or inquiries about study room usage occur irregularly, the SR manager must respond to such occurrences during the designated working hours. Despite this, the study room intentionally stated, from the hiring stage, that it was looking for individuals who could manage the study room while studying. The employment contract also explicitly limited the working hours to 2 within the 8-hour confinement period. Moreover, the actual time the SR manager provided labor amounted to only about 2 hours. Therefore, it can be argued that the study room manager's confined time includes rest time and working hours.

(2) In the dispute over the study room manager's working hours, only 2 hours within the 8-hour confinement period were recognized as working hours, while the remaining 6 hours were considered rest time. According to the Labor Standards Act, Article 54, "? If the number of working hours equals 4 hours, the employer must provide a rest time of at least 30 minutes during working hours. If there are 8 working hours, the rest time must be at least 1 hour. ? Rest time must be provided during working hours, and the worker must be able to use it freely." Rest time must be provided during working hours, and the worker must be able to use this time freely; it is excluded from the calculation of working hours. The specific determination of rest time depends on (1) whether the worker is away from actual work and (2) whether the worker can use the time freely.[19] When applying these legal principles to the case, the study room manager could sufficiently engage in their own studies during the specified rest time. Additionally, considering that they could autonomously determine their actual work hours, it is plausible to consider that, even within the 8-hour confinement period, the actual working time may be considered as 2 hours.

(3) To avoid such disputes as this one involving the study room manager, it is necessary to obtain recognition from the Ministry of Employment and Labor for the exclusion of surveillance-type workers from the application of working hours, as per Article 63, Paragraph 3 of the Labor Standards Act. In so doing, the study room manager's working hours could have been adjusted to 2 hours within the 8-hour confinement period, and this arrangement could have been formalized in a revised employment contract, potentially preventing the current dispute.

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19) Do, Jae-Hyeong, 'Legal Aspects of Waiting Time,' Ewha Womans University Law Journal, Vol. 16, No. 3 (March 2012), pp. 253.

Case Study: Appropriate Employer Response to Workplace Harassment Reports

Bongsoo Jung, Korean labor attorney at KangNam Labor Law Firm

Ⅰ. Introduction

000 The Korean 000 Company (hereinafter referred to as "the Company") received notification from the Ministry of Employment and Labor on July 26, 2023, regarding a report of workplace harassment. The details of the notification stated that, in accordance with Article 76-3 of the Labor Standards Act, the employer is required to conduct an investigation into reports of workplace harassment, take measures against the alleged perpetrator, provide protection for the alleged victimized employee(s), take appropriate actions regarding workplace harassment, and report the outcomes to the Ministry of Employment and Labor.

The Company consists of five employees, including one office manager, two team leaders, and two staff members. The alleged perpetrator of the workplace harassment in this case was the office manager, and the alleged victim (the petitioner) was the planning team leader. From the perspective of the petitioner, there are five claims of harassment by the alleged perpetrator:

First, the petitioner was instructed to report his commuting details via personal messaging due to alleged poor attendance;

Second, the alleged perpetrator caused significant stress for the petitioner by instructing him to obtain direct signatures from the company's president without the immediate supervisor's signature;

Third, the alleged perpetrator verbally abused the petitioner for refusing excessive work orders;

Fourth, the alleged perpetrator engaged in actions to exclude the petitioner from work tasks;

Fifth, the alleged perpetrator humiliated the petitioner by verbally abusing him in the presence of other employees at a cafe.

The Company conducted an investigation into these five alleged instances of harassment involving relevant parties and concluded that "the alleged perpetrator's actions do not constitute workplace harassment." In response, the petitioner submitted to the Ministry of Employment and Labor additional evidence for reconsideration, prompting the Ministry to request a re-investigation of the workplace harassment claim on October 26, 2023. In response, the Company conducted a re-investigation of the alleged perpetrator's actions and concluded that they did indeed constitute workplace harassment. Accordingly, the Company took disciplinary action against the perpetrator, including a salary reduction and harassment prevention education. The Ministry of Employment and Labor then deemed the Company's actions regarding the reported workplace harassment to be appropriate and concluded the case. Considering the possibility of this leading to secondary victimization, it is important to examine the

specifics of this case alongside the employer's prudent judgment.

Ⅱ. Employee's Complaint and Employer's Response (Initial Complaint)

1. Details of the Employee's Complaint

The employee's allegations of workplace harassment are as follows:

(1) Instruction to report commuting via Personal KakaoTalk messages:

The Company has a system where all employees are required to check in and out using groupware. However, from March 24, 2023, to May 2, 2023, at the perpetrator's instruction, the petitioner exclusively reported his commuting details via personal KakaoTalk messages. On March 24, 2023, just before an event where temporary employees were to work together, the perpetrator instructed the petitioner to report his commuting via KakaoTalk. The petitioner initially forgot to report and was reminded to do so, but stopped reporting from May 3, 2023, onwards. On April 28, 2023, in the afternoon, when the petitioner asked the perpetrator, "Why am I the only one reporting commuting via KakaoTalk?" the perpetrator responded, "How can I trust you?"

(2) Rejection of Approval Documents:

In early May 2023, when the perpetrator assigned additional tasks to the petitioner, he refused due to the overwhelming workload. The perpetrator suggested the petitioner consult the company president about these additional tasks, to which the petitioner agreed. Angered, the perpetrator instructed that henceforth, all tasks should be approved directly by the company president, bypassing the petitioner. Subsequently, when the petitioner submitted approval requests to the perpetrator, he was rejected with the reason "Report directly to the company president." Following this, when the petitioner directly submitted requests to the president, he was instructed to go through the proper approval channels. After resubmitting to the perpetrator, he reluctantly approved. Despite the petitioner's inquiries as to why approvals were being withheld, the perpetrator only repeated, "Report directly to the company president." This lack of proper approvals caused significant difficulties, especially with many pending tasks before an upcoming event. Even after sending KakaoTalk messages and emails

requesting approval after drafting documents, the perpetrator ignored them.

(3) Unfair Task Assignment and Verbal Abuse:

When the perpetrator instructed the petitioner to handle all tasks except for media publicity duties, and the petitioner expressed difficulty due to existing workload, the perpetrator angrily accused the petitioner of disobedience and violating orders. They belittled the petitioner, using disrespectful language, and humiliated them.

(4) Exclusion from work meetings:

The perpetrator excluded the petitioner from departmental event meetings by not sharing the schedule, forcing the petitioner to rely on other colleagues to receive information about meeting outcomes, thus unfairly excluding him from work-related discussions.

(5) Verbal Abuse in Public Places:

When the petitioner reported work matters to the perpetrator at a caf near the company, the perpetrator, dissatisfied with the report, verbally abused the petitioner. He criticized the petitioner's position as team leader, questioned his duties, and expressed a preference for this office manager working alone. Despite the caf being quiet and no one else raising their voice, the perpetrator's actions embarrassed the petitioner in front of others, causing humiliation.

2. Employer's Investigation Results:

After conducting interviews with the perpetrator and relevant witnesses, the Company reported the following findings to the labor inspector. During the investigation period, the company implemented separation measures by allowing the petitioner and the perpetrator to work remotely in the morning and afternoon, respectively. The employer conducted an investigation and convened a disciplinary committee on August 25, 2023, ultimately reaching a decision of non-guilt regarding the perpetrator. The details are as follows:

(1) Instruction to report commuting via personal KakaoTalk messages:

The petitioner usually checked in and out using groupware. However, the perpetrator instructed the petitioner to report his commuting details exclusively via personal KakaoTalk messages.

- Perpetrator's Position: The perpetrator noted that the petitioner failed to report tasks performed in non-visible areas, unlike other employees. Specifically, concerning

COVID-19 testing, the petitioner went for testing without reporting and even sent a KakaoTalk message saying he would return to work in a week after receiving a positive result, without submitting any diagnosis or supporting documents. The perpetrator instructed the petitioner to report via KakaoTalk to emphasize the importance of diligence in his work attitude, as it differed from that of other employees.

- Assessment: While instructing commuting reports via personal KakaoTalk messages may not inherently cause psychological distress or deteriorate the work environment, it is challenging to consider it as harassment. The petitioner's concern regarding being singled out for this instruction is noted; however, considering the petitioner's distinct work attitude compared to other employees, this instruction cannot be deemed unfair discrimination. Thus, the action does not qualify as workplace harassment.

(2) Rejection of Approval Documents:

The petitioner claimed that the perpetrator rejected his drafts, insisting he report directly to the company president.

- Perpetrator's Position: The perpetrator explained that during a restructuring process by the organizational committee, there was a vacancy in the publicity team, so he asked the petitioner to assist with publicity tasks. However, the petitioner vehemently refused and abruptly left, declaring, "I will talk to the company president myself," as he had previously stated. The perpetrator merely followed the petitioner's previous assertion without giving any undue reason for rejecting the draft.
- Assessment: While it is acknowledged that the draft was rejected, the petitioner's own statement of intending to report directly to the company president precedes this incident. Therefore, rejecting the draft without a specific reason cannot be considered as causing physical or psychological distress or deteriorating the work environment.

(3) Unfair Task Assignment and Verbal Abuse:

The petitioner stated that the perpetrator ordered them to handle all tasks except for publicity duties, and upon refusal, the perpetrator berated him.

- Perpetrator's Position: While it is acknowledged that the publicity team needed support due to vacancies during the organizational restructuring, the perpetrator denied ordering the petitioner to handle all tasks and did not mention disobedience. Moreover, there is no evidence of verbal abuse. Instead, the petitioner reacted aggressively, using profanity and standing up abruptly, which prompted a similar

reaction from the perpetrator.

- Assessment: Considering the petitioner's previous involvement in publicity tasks, the request was for assistance rather than ordering him to handle all tasks. Furthermore, the petitioner refused the request and did not actually perform additional work. Additionally, there is no objective evidence besides the petitioner's claims of verbal abuse, and other employees mentioned by the petitioner did not provide corroborating evidence. Therefore, it is difficult to conclude that the request for assistance escalated to behavior causing physical or psychological distress or deteriorating the work environment.

(4) Exclusion from Work Meetings:

The petitioner claimed that the perpetrator unfairly excluded him from work by not sharing meeting schedules.

- Perpetrator's Position: The perpetrator stated that they did share the meeting schedule and did not exclude the petitioner from work.
- Assessment: Without objective evidence supporting the petitioner's unilateral claim, it is not possible to recognize workplace harassment in this regard.

(5) Verbal Abuse in Public Places:

The petitioner alleged that the perpetrator verbally abused him at the caf on the second floor of the building where the company is located, causing humiliation as others looked on.

- Perpetrator's Position: The perpetrator denied engaging in the alleged verbal abuse.
- Assessment: Without objective evidence supporting the petitioner's claim and given the perpetrator's denial, it is not possible to recognize workplace harassment in this regard.

Ⅲ. Labor Ministry's Reinvestigation Directive (Second Complaint)

1. Content of the Labor Ministry's Reinvestigation Directive:

After the company concluded its investigation on August 25, 2023, stating that the reported workplace harassment could not be recognized, and ultimately reporting "no suspicion" regarding the perpetrator, the Labor Ministry issued a reinvestigation directive to the company on October 26, 2024. The directive outlined concerns about certain facts not being properly verified. The contents are as follows:

The objectivity, fairness, and rationality should be ensured in the process and content of the workplace harassment investigation. However, upon review, it appears that objective investigation was not achieved in the following matters (①~④), necessitating a reassessment of whether workplace harassment occurred.

① Informing the petitioner of the investigation on short notice (informing the petitioner orally 30 minutes before the investigation, leaving him unprepared).

② Receiving only the respondent's answers before the petitioner's interview, and conducting the investigation based on the respondent's answers to verify the petitioner's facts.

③ Concerns about potential secondary harm, such as remarks made by investigation committee members during the petitioner's interview, such as "The petitioner's content seems ambiguous as harassment" or "Isn't reporting commuting via KakaoTalk not a difficult task?"

④ Insufficient evidence to prove the investigation results (judgment content). For instance, mentioning the lack of evidence to determine whether reporting commuting via KakaoTalk due to low work diligence was within the appropriate scope of work responsibilities.

2. Company's Reinvestigation and Disciplinary Committee Proceedings:

The company conducted a reinvestigation into the workplace harassment incident. On November 12, 2023, a disciplinary committee meeting was held, and disciplinary action of demotion was taken against the perpetrator in accordance with Article 16 of the Employment Regulations. The details are as follows:

(1) Personal KakaoTalk Reporting of Commute Times Due to Instructions from the Perpetrator:

Since March 24, 2023, when the petitioner began using a separate office space, the perpetrator instructed him to report his commute times via KakaoTalk as the perpetrator couldn't verify the petitioner's commute due to the separate office. Despite the fact that all other colleagues were reporting their commutes through the company's groupware, the perpetrator required the petitioner to report via KakaoTalk until May 2, 2023. This was used as a means by the superior to control a specific employee through abnormal methods, and by assigning tasks beyond the scope of the petitioner's duties, it can be inferred that it would have caused significant humiliation and damage to their self-esteem.

(2) Rejection of Approval Documents:

The petitioner reported work plans to the immediate supervisor, the perpetrator, and

received approval. Subsequently, the petitioner processed the work after obtaining final approval from the higher-level supervisor, the company president. Despite this procedure, the perpetrator disregarded it and instructed the petitioner to directly obtain approval from the second-level higher supervisor, the company president. While the second-level higher supervisor was instructing to obtain the immediate supervisor's signature first, it was apparent that the supervisor was intentionally harassing the petitioner.

(3) Unfair Work Assignments and Verbal Abuse:

When a vacancy occurred in the publicity team, the perpetrator assigned the workload to the petitioner without any consultation. When the petitioner protested against this unfair decision, the perpetrator responded by shouting and using disrespectful language, stating that refusing to comply with the order was insubordination and disobedience. Since other employees witnessed this incident, it constitutes workplace harassment through verbal abuse.

(4) Exclusion from Work Meetings:

Since May 4, 2023, the petitioner was excluded from meetings or conferences related to a specific project overseen by the office manager, the perpetrator. Consequently, the petitioner had to learn about the relevant information from third parties. However, in reality, as the petitioner's duties were excluded from this project and he was no longer involved in its execution, it cannot be acknowledged as work exclusion.

(5) Verbal Abuse in Public Places:

Regarding the claim that the perpetrator verbally abused the petitioner loudly in a caf adjacent to the company premises, since there is no evidence to substantiate this claim, it is difficult to acknowledge it.

The employer acknowledged workplace harassment for the following three out of five claims: (1) KakaoTalk reporting of commute times, (2) review or refusal of approval for the petitioner's drafts, and (3) unfair work assignments and verbal abuse. However, for claims (4) work exclusion and (5) verbal abuse in public places, since there is no evidence to substantiate them, they were dismissed.

The employer conducted an investigation into additional issues raised during the reinvestigation of the workplace harassment claim, interviewed relevant parties, and concluded that there was workplace harassment by the perpetrator in this case. As a result, the company reconvened the disciplinary committee to impose wage reduction measure on the perpetrator and issued a disciplinary notice to the perpetrator stating that if there is a recurrence of harassment, it will result in heavier penalties.

Ⅳ. Handling by the Ministry of Employment and Labor and Implications

1. Handling by the Ministry of Employment and Labor:

After investigating the incident, it was difficult to find clear unreasonable circumstances in the execution of necessary measures regarding the recognized workplace harassment under the Labor Standards Act. Therefore, the case was concluded administratively as "no violation." However, recommendations were made to the workplace to adequately consider the future situation of targeted employees and take necessary appropriate measures. Additionally, recommendations were given for special preventive activities and organizational culture diagnosis to establish a culture of mutual respect and prevention of conflicts related to workplace harassment at the company level.

2. Implications:

The issue of workplace harassment can arise at any time, and employees of the company must be aware of this fact and make efforts to prevent it. While superiors may not perceive their actions as harassment, employees who must accept and live with them may perceive them as such. Therefore, superiors need to consider whether their directives or behaviors fall within the appropriate scope of work. Superiors should reflect on their own conduct to ensure that workplace harassment does not occur. Preventing workplace harassment can serve as an important starting point for creating a company culture where mutual respect and a desire to work are fostered. The intention behind preventing workplace harassment is not to diminish the authority or status of superiors but to create a workplace culture that respects the dignity of all individuals involved. In other words, establishing a workplace culture where adults respect and recognize each other can lead to a place where individuals can realize themselves through work. Furthermore, in cases of workplace harassment, punishing the perpetrator alone may not be the best solution; it should also serve as an opportunity to re-educate employees and re-establish a culture of mutual respect.

Appropriate Responses to Different Types of Industrial Actions

Bongsoo Jung, Labor Attorney at KangNam Labor Law Firm

Ⅰ. Introduction

Labor rights are among the basic rights guaranteed by the Constitution of the Republic of Korea for citizens. In the event an employer suffers damage due to a collective action of a labor union, it cannot claim compensation from the union or its workers (Article 3 of the Trade Union and Labor Relations Adjustment Act, hereinafter the TULRAA). Collective actions by labor unions aiming to improve working conditions are not subject to criminal punishment under Article 20 of the Criminal Act (Article 4 of the TULRAA). However, if a labor union's actions during a dispute are unlawful, those unlawful actions become subject to civil and criminal liabilities, as well as disciplinary action by the employer. For such actions to be considered legitimate labor actions, the justifiably established union, purpose, procedures, and means and methods must all be justifiable. In other words, for a workers' dispute to be deemed justified, it must meet these four criteria:

① The independent union must be an entity eligible to negotiate collectively;

② The purpose should involve fostering autonomous negotiations between labor and management for the improvement of working conditions;

③ It must commence only if the employer refuses collective bargaining on specific demands for improving working conditions and should follow the legal procedures, including obtaining the prior consent of union members, unless there are special circumstances otherwise;

④ The means and methods must be in harmony with the employer's property rights and should not involve or condone any acts of violence.[20)]

Labor union actions during disputes involve collective refusal to provide labor, which can be divided into general strikes (full strikes) and partial strikes. Secondary actions such as slowdown strikes, work-to-rule, workplace occupations, and picketing lines accompany these dispute actions. Regarding the methods and means of these labor actions, labor union laws have various restrictions:

① Labor actions are prohibited if they violate laws or societal order (Article 37 of the TULRAA);

② Acts that disrupt the entry of individuals unrelated to the dispute or those seeking

20) Supreme Court ruling 99do4837, Unanimous Decision by Full Bench, October 25, 2001.

to provide labor and acts that interfere with operations or that disrupt regular work processes while soliciting or persuading participation in dispute actions through violence or coercion are prohibited (Article 38, Paragraph 1);

③ Labor actions must not hinder the regular performance of tasks aimed at preventing damage to workplace facilities, spoilage of materials, or products (Article 38, Paragraph 2);

④ Acts of violence, destruction, or occupation of facilities as designated by presidential decree that are related to production facilities or other major operations are prohibited (Article 42, Paragraph 1);[21)]

⑤ Actions that suspend, abolish, or interfere with the normal maintenance and operation of safety facilities are prohibited (Article 42, Paragraph 2); ⑥ Actions that impede the legitimate maintenance and operation of essential duties are prohibited (Article 42, Paragraph 3).

These fundamental principles of legislation on labor actions explain how they specifically apply in actual strike-supportive measures like secondary actions such as slowdown strikes, work-to-rule, workplace occupations, and picketing.

Ⅱ. Slowdown Strikes

1. Concept

Work slowdowns or deliberate reductions in work efficiency by labor unions, where employees formally provide labor but intentionally perform tasks slowly, incompletely, or in a sloppy manner to reduce productivity, are termed "slowdowns" (태업). Slowdowns differ from full strikes (파업) in that they involve partial non-fulfillment or incomplete fulfillment of labor, rather than a complete refusal to provide labor.

2. Criteria for validity of slowdown strikes

Unlike strikes, slowdowns occur within the workplace where employees only partially follow the employer's instructions. Therefore, they should, in principle, abide by the employer's managerial rights regarding labor instructions. Refusal to perform tasks not covered by slowdown intentions, contrary to the union's intentions, might result in violation of Article 37, Paragraph 2 of the TULRAA, leading to disciplinary action as per employment regulations.

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21) Facilities where occupation is prohibited include electrical, computer, or communication facilities, railway vehicles or tracks, places storing hazardous materials, among others. Occupation of these facilities could result in the suspension or cessation of production and other major operations or areas of business (Article 21 of the Enforcement Decree to the TULRAA).

(1) Case #1: Implementation of lawful operations following resolutions by the union's operating committee resulted in hindering the normal functioning of the company's operations, seemingly to advocate for the workers' demands. This could be seen as a form of dispute, but it failed to comply with such requirements as the union membership needing to vote on whether to take such action and regulations on cooling-off periods (conciliation procedures) and reporting the labor dispute, making it an illegal act.[22)]

(2) Case #2: Setting a daily income cap of KRW 50,000 for a taxi driver and intentionally controlling it to cause substantial financial losses for the company is disruptive. Additionally, influencing operations to match the income cap, like operating sparsely populated coastal routes or engaging in gambling during work stoppages, seems to align with a form of dispute (slowdown strikes or partial strikes). These actions appear to violate regulations outlined in the TULRAA.[23)]

3. Slowdowns and wage reductions

Even during slowdowns, the principle of "no work, no pay" naturally applies, allowing for wage reductions. The extent of such wage reductions can be based on the proportion of work refused as per the usual workload specified in the employment contract or other agreements. Calculating the proportion of work refused requires comprehensive consideration of the details of the work, type of tasks involved, and other relevant factors. According to Article 44, Paragraph 1 of the TULRAA, the employer is not obligated to pay wages to employees for times while they participate in labor actions and do not provide labor accordingly. Slowdowns involve partially withholding the labor agreed upon in the employment contract, enabling wage reductions for the corresponding portion on the part of the employer. In determining the level of reduction, factors such as how much labor was withheld, how much output was reduced, and the company's wage calculation method should be considered if not stipulated in the related collective agreement or employment rules.[24)]

4. Slowdowns and workplace closures

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22) Supreme Court ruling on May 15, 1990, 90do357.
23) Supreme Court ruling on December 10, 1991, 91nu636.
24) Labor Administrative Guidelines: Nojo 68110-40, February 4, 2003.

When a labor union withholds some labor as part of a slowdown, the employer can rightfully refuse to accept any labor through workplace closures and thereby be relieved of the obligation to pay wages. The legitimacy of workplace closures due to slowdowns is determined after considering specific circumstances such as reasonableness, attitudes during negotiations and progress between labor and management, the nature and duration of the slowdowns, and impact of the slowdown on the employer.

Ⅲ. Work-to-Rule

1. Concept

Work-to-rule refers to the collective actions of labor unions or groups of workers within a workplace, aimed at supporting their demands by strictly adhering to laws, collective agreements, or regulations that are not usually strictly followed. This behavior involves exercising the rights granted to workers collectively, thereby disrupting the normal functioning of business operations. In essence, it involves intentional, exaggerated adherence to laws, collective agreements, or employment rules to decrease work efficiency or performance, pressuring the employer to concede to their demands. Generally, work-to-rule operates similarly to strikes or slowdowns. It commonly manifests as strict adherence to regular working hours, refusal to do overtime or work on holidays, collective use of vacation days, strict and literal compliance with safety and health regulations in all situations, and other similar actions.

For instance, compelling union members to collectively take vacation days during negotiations on renewing a collective agreement aims to secure a favorable position, constituting a form of confrontational legal advocacy. Similarly, nurses, particularly those required to wear specific attire for identification and hygiene reasons, not adhering to the prescribed attire collectively, disrupts normal hospital operations and also falls under this category of confrontational work-to-rule.[25)]

Additionally, if workers, to support their demands, collectively refuse customary holiday work which they have traditionally performed, this constitutes disruptive behavior affecting normal company operations, qualifying as a form of labor action.[26)]

2. Legal nature of work-to-rule

25) Supreme Court ruling on June 14, 1994, 93da 2916.
26) Supreme Court ruling on December 26, 1997, 95nu8427.

For work-to-rule actions to be considered legitimate labor actions, the following must be evident:

① Purposeful Intent: It should aim to support the labor demands in question; ② Collective Action: It must be a collective effort; and ③ Disruption of Normal Operations: It should result in "disruption of normal business operations." Here, "normal operations" do not refer strictly to "lawful operations" but rather to activities that are practically or customarily carried out. Thus, any action that disrupts these practical or customary operations is considered a form of labor action. However, when specific labor-management practices are established, while the parties should generally comply, if these practices blatantly violate mandatory regulations, adherence cannot be enforced. Actions demanding correction in line with legal regulations due to established practices blatantly violating these regulations are not deemed labor actions. The legitimacy of work-to-rule as a form of labor action is judged based on general criteria for assessing the legitimacy of labor actions.

For example, refusing overtime work typically conducted according to collective agreements, employment rules, labor contracts, or customary practices is considered disruptive to normal business operations and qualifies as a form of labor action. However, if the actual practice of overtime work blatantly violates legal regulations stipulated in labor standards, demanding corrective actions in compliance with the law doesn't constitute a labor action. In such cases, the labor beyond legally mandated overtime hours does not need to be provided.[27)]

3. Types of work-to-rule

(1) Refusal to work overtime or on holidays

Workers collectively refusing, in support of their labor claims, to work overtime or on holidays as normally done in alignment with collective agreements, employment rules, labor contracts, or customary practices, which in turn has the potential to disrupt normal business operations, qualifies as a form of labor action.

① Case #1: Refusal to engage in customary practices

Even if overtime work is typically agreed upon by the parties involved, if workers

27) Labor Administrative Guidelines, Hyup-Lyuk 68140-208, May 29, 1997.

are instigated to collectively refuse overtime they have traditionally performed, thereby impeding normal business operations, this is considered a form of labor action.[28)]

② Case #2: Refusing to work overtime

Despite a collective agreement allowing for holiday work due to unavoidable work circumstances or production disruptions, workers collectively refuse to work on holidays without valid reasons, despite the customary nature of the company's directive to work on holidays. This refusal disrupts normal business operations and qualifies as a labor action.[29)]

③ Case #3: Strict adherence to stipulated working hours

For instance, if a collective agreement mandates that employees start work at 9:00 AM, but the union instructs its members to all arrive precisely at 9:00 AM, causing delays in operations such as repairs due to a sudden influx of employees at that hour, this disrupts normal business operations. This collective action, intended to support workers' labor claims, obstructs the company's usual operations and qualifies as a labor action.[30)]

(2) Collective use of annual leave and similar actions

Collective utilization of annual leave by a labor union to advocate for its claims, obstructing normal business operations, qualifies as a form of dispute action. Although it might formally appear as individual workers exercising their holiday rights, the collective need for holiday usage becomes unlikely, and could be viewed as an infringement on the employer's right to adjust the timing of employee holidays.

Instances that qualify as labor actions are those where collective annual leave is used with the intent to disrupt normal business operations. Using collective leave solely to interfere with work is not considered a legitimate action.

① Case #1: Misuse of monthly paid leave

If a worker, without having a genuine purpose to take leave, exploits the monthly paid leave for other motives, this is not considered legitimate use of holiday

28) Supreme Court ruling on October 22, 2001, 91do600; Supreme Court ruling on February 27, 1996, 95do2970.

29) Supreme Court ruling on July 9, 1991, 91do1051.

30) Supreme Court ruling on May 10, 1996, 96do419.

entitlements.[31]

② Case #2: Collective use of annual leave to gain advantage in negotiations

Failing to follow proper procedures when utilizing collective annual leave during contract negotiations to cause the employer severe financial loss and undermine the company's normal operations towards increasing the workers' negotiation strength constitutes an illegitimate labor action.[32]

(3) Work-to-rule in safety and health regulations

Safety and health work-to-rule entails adhering strictly to safety regulations and general rules to ensure safety, indirectly impacting operations. If such stringent adherence disrupts work to advocate for workers' claims, it can be deemed a form of labor action. Whether strict compliance with safety rules constitutes a labor action depends on whether it genuinely aims at improving safety or merely serves as a means to disrupt work. If the strict adherence to safety rules surpasses what is objectively necessary for safety or aims solely at hindering work operations, it is considered a form of labor action.

Ⅳ. Workplace Occupations

1. Concept

Workplace occupation refers to a form of labor action where workers remain in the workplace facilities, engaging in continuous rallies or demonstrations to increase the effectiveness of primary labor actions like strikes. Occupying workplace facilities is an active form of labor action. When the occupation involves only a portion of the workplace facilities and does not block the employer from accessing, controlling or supervising the work facilities, it can be considered a legitimate labor action. However, if the occupation completely and exclusively blocks access to non-union individuals or prevents the employer from managing, leading to work disruptions or chaos, it surpasses the limits of legitimacy.[33]

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31) Supreme Court ruling on March 13, 1992, 91nu10473.
32) Supreme Court ruling on April 23, 1993, 92da34940.

When union members occupy the main entrance of a factory and the corridors leading to the factory manager's office, making it nearly impossible for outsiders to enter the main building and causing significant disruption to the company's normal operations during lunchtime or at night by chanting slogans or singing, such actions by union members are considered illegal labor actions.[34)]

2. Justification of workplace occupations

During labor disputes, strikes often accompany sit-ins at workplaces as a means to secure and strengthen the efficiency of work stoppage. Sit-ins themselves cannot be deemed illegal. If the occupation does not completely block the employer from entering or exiting the facilities and does not interfere with company operations but remains a partial and coexisting occupation, it is recognized as justified.[35)]

However, occupying the employer's business facilities entirely and exclusively over an extended period infringes upon the employer's facility management rights and cannot be justified.[36)]

① Case #1: SsangYong Motor's labor union occupied the workplace from May 26, 2009, to August 6, 2009, utilizing violence and occupying the factory completely and exclusively. Due to this overstepping of legitimate action, the defendant had the obligation to compensate the plaintiff for its losses.[37)]

② Case #2: The defendant conspired with around 70 other labor union members to physically occupy the company's factory gate, securing it with locks they had acquired on their own, partially or completely controlling the access of transport vehicles utilized by the company or its branch managers. Even if these actions were taken by the labor union to counter the company's attempts to neutralize their declared strike, their methods involved active interference with work, not merely passive disruption. Thus, it surpassed the justified limits of labor actions.[38)]

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33) Supreme Court ruling on June 1, 1991, 91do383.
34) Supreme Court ruling on January 15, 1991, 90snu6620.
35) Supreme Court ruling on July 14, 1992, 91da43800.
36) Supreme Court ruling on July 14, 1992, 91da43800.
37) Supreme Court ruling on June 15, 2023, 1019da38543.
38) Supreme Court ruling on July 9, 1991, 91do1051.

3. Facilities where workplace occupations are never justified

Article 42, Paragraph 1 of the TULRAA prohibits the occupation of "facilities related to production, other major tasks, and facilities equivalent to them as designated by presidential decree." Presidential decrees outline specific facilities where occupations are prohibited, including electrical, computing or telecommunication facilities, railway vehicles or tracks, and places storing hazardous substances. Other facilities subject to prohibition include those whose occupation could lead to the suspension or termination of production or other major tasks (Article 21 of the Enforcement Decree to the TULRAA).

However, if an employer hires individuals unrelated to the affected business to carry out tasks disrupted by the labor dispute, striking workers may occupy key facilities needed exclusively by the substitute workers. In this scenario, if an employer violates the prohibition against substitute labor stipulated in Article 43, Paragraph 1 of the TULRAA, worker occupation of facilities to prevent substitute labor is considered a justified act under the Article 20 of the Criminal Act (Justifiable Acts) concerning criminal liability related to obstruction of business.[39)]

Ⅴ. Picketing

1. Concept

Picketing refers to the act where a labor union obstructs the entry of non-union members or others to the workplace and calls for support for a strike. Essentially, it involves encouraging workers to participate in the strike while gaining public support for the union's demands, aiming to economically impact the employer more effectively. Picketing itself is not an independent form of labor action but primarily serves as a supplementary means carried out to enhance the effect of strikes or boycotts.

Picketing entails appealing to non-striking workers or third parties to support the strike and align with it. Therefore, it usually takes the form of an appeal or surveillance but can manifest in various ways based on specific needs. Commonly, methods involve installing placards at the workplace entrance, using loudspeakers, or distributing printouts to persuade and encourage alignment.

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39) Jang Seung-hyuk, "Permissible Scope and Criminal Liability of Collective Actions by Workplace Occupation," Labor Law Research, Vol. 48, First Half of 2020, Seoul National University Labor Law Research Society, pp. 198-199.

Picketing involves urging those not participating in the strike to cooperate with it or prevent actions that obstruct the strike. It is employed by labor unions as an auxiliary method to effectively execute their labor actions. Typically, it involves union members hanging placards at the company entrance or holding signs with slogans or demands while stationed at the entrance and voicing their demands.

Strikes, as part of labor action, may be accompanied by picketing as a supportive measure or simultaneous occupation of the workplace for rallies and protests, and picketing itself cannot be considered illegal. However, in such cases, picketing should ideally involve peaceful persuasion within the realm of verbal and written communication to persuade those who continue to work to instead join the strike. Resorting to physical force, threats, or coercion is not justified.[40)]

2. Criteria for determining the legitimacy of picketing

(1) Picketing is considered legitimate only when peaceful persuasion methods, such as verbal and written communication, are employed toward workers who refuse to participate in a strike and wish to continue working.

During labor actions, strikes sometimes accompany picketing as a supportive measure to enhance the effectiveness of work stoppages. While picketing itself cannot be considered illegal, when it comes to those who do not join the strike and wish to continue working, legitimacy is acknowledged within the bounds of peaceful persuasion and verbal and written communication. Resorting to physical violence, threats, or coercion is not justifiable.[41)]

(2) According to Article 38, Paragraph 1 of the TULRAA, actions obstructing the normal entry, work, or operation of prospective workers at the workplace are unjustifiable.

In a situation where the plaintiff obstructed the access of employees attempting to enter the company's premises for about a month, using force to block the entrance, it disrupts the company's operations. Hence, such strike action cannot be considered socially justified due to its method or means, hence qualifying as an illegal action.[42)]

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40) Supreme Court ruling on July 14, 1992, 91da43800.
41) Supreme Court ruling on October 12, 1990, 90do1431.
42) Supreme Court ruling on September 30, 1994, 94da4042.

① Case #1: Assaulting, threatening, pressuring or otherwise harassing employees who wish to continue working to stop working:

The labor union occupied various branch offices of an insurance company during working hours or very close to them, involving 16 to 160 union members who chanted slogans, sang labor songs, verbally abused the CEO, physically restrained employees, and chased them away. These actions, even if considered labor actions, went beyond the acceptable limits of law, infringing on property rights through comprehensive and exclusive facility occupation or by employing threats (grabbing by the neck and making intimidating statements) and violence, which fall outside the boundaries of legitimate labor actions.[43)]

② Case #2: Obstructing workplace entry, such as closing the main gate:

The labor union, in collusion with its members, forcibly occupied the entrance of the company's factory by locking it with their own locks, preventing access by the company's security personnel, controlling the entry and exit of transportation vehicles used by the company and the managing agents of the company's, thereby disrupting the product transport operations of the company or its agents. This kind of action, which actively disrupted work through various forms of coercion or physical force, exceeded the legitimate boundaries of labor actions.[44)]

③ Case #3: Using force or threats to participate in a strike:

The labor union occupied parts of an office, engaging in night vigils with groups of around 10 members taking turns and making noise, shouting slogans or singing songs, playing musical instruments, causing disturbances, verbally attacking and threatening employees who were not participating in the strike, actively urging them to join, and damaging the functioning of the equipment on-site. These actions, extending beyond the boundaries of legitimacy in terms of methods and means used during labor actions, were unjustifiable.[45)]

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43) Supreme Court ruling on November 10, 1992, 92do1315.
44) Supreme Court ruling on July 9, 1991, 91do1051.
45) Supreme Court ruling on May 8, 1992, 91do3051.

④ Case #4: Actively obstructing the work of other workers or third parties:

The picketing of workers participating in a strike was directed at those who continued working. While such actions are viewed as part of alliance strikes to achieve effective labor actions, obstructing the mailing operations of notifications to everyone by hiding and confiscating all notifications at the worksite cannot be justified even as a form of supportive picketing during a strike.[46)]

⑤ Case #5: Individuals in a third-party position picketing in specialized areas:

Considering the airport's significance in prioritizing the safety and order of domestic and foreign individuals, the prohibition of unauthorized occupation of airport facilities under the former Aviation Act, and the control and supervision of airport facilities' security and safety by the airport corporation under supervision of the Minister of Land, Infrastructure, and Transport, picketing actions carried out by the defendant and others as part of the union's activities at the airport, despite being asked to discontinue the protest and vacate the facilities, persisted, and continued to be regarded as unlawful acts in the contractual relationship between the subcontractor, the airport corporation, and the workers' positions as third parties.[47)]

Ⅵ. Conclusion

By examining the specifics of secondary actions during strikes, such as slowdown strikes, work-to-rule, workplace occupations, and picketing, we've delved into the lawful means and methods of legitimate labor actions. Collective action rights, constituting the right of labor unions to strike, are legally guaranteed. However, if such rights to strike are abused by labor unions, those labor unions may face civil and criminal liabilities as well as disciplinary action from employers. Therefore, labor unions should exercise special caution in the methods and means they employ during strikes to ensure those strikes remain lawful and are conducted within permissible boundaries, thus safeguarding both their rights and responsibilities.

46) Supreme Court ruling on July 14, 1992, 91da43800.
47) Supreme Court ruling on November 12, 2020, 1016do8627.

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

Bongsoo Jung, Korean labor attorney at KangNam Labor Law Firm

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.[48] 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.[49] 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 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.

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48) 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).

49) 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.

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).[50] 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, 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

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50) 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).

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.[51)]

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.[52)]

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 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.

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

Korean labor: The Fatal Accidents Act and Employer Obligations

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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.[53] 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.[54] 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 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

53) 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.

54) Supreme Court ruling on Nov. 24, 1989: 89do1618.

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).[55]

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.[56] 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.

(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).

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

56) 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.

(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.

인사관리 앱 개발 (Mobile App Development)

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. 직장내 괴롭힘&성희롱 예방	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 10. Workplace Harassment Prevention 11. Labor Inspection Preparation
취업규칙 Rules of Employment	취업규칙 작성 (3개의 모범 취업규칙을 가지고 작성)	Establishing rules of employment (Self-making the ROE based upon three standard templates)
판례500선 500 labor precedents	기준 판례 500선 선정하여 내용별 게시	500 labor precedent cases – uploaded in different categories
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. 임금명세서, 2. 연차휴가, 3. 퇴직금 4. 4대보험, 5. 퇴직소득세 6. 산재보상 (장해보상, 유족보상, 민사상 손해배상)	1. Payslip, 2. Annual Leave, 3. Severance Pay 4. Social Insurance Premiums 5. Retirement Income Tax 6. Industrial accident benefits and civil compensation
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.
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