

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

I. Introduction

The Act on the Penalty of Fatal Accidents (hereinafter referred to as the “Fatal Accidents Act” or “FAA”) was enacted on January 8, 2021. The Occupational Safety and Health Act (hereinafter referred to as the “OSH Act” or “OSHA”) was also completely revised from January 2020 to reduce fatal industrial accidents. However, as fatal accidents have not decreased, a fatal accident penalty law was introduced that is much stronger than the existing penal provisions of the OSH Act.¹ 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.² 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.

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

¹ 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).

² 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.

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).³ 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 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 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).

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 the 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 the 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.⁴

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.⁵

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

⁴ Chung, Daewon. "Major Details and Topics in the Fatal Accidents Act," HR Insight, Jan. 11, 2021.

⁵ FKI press release, "Concerns about side effects of the Fatal Accidents Act," Jan. 1, 2021.

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.