

## 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.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> Supreme Court ruling on Nov. 24, 1989: 89do1618.

and the Enforcement Decree as well as the safety and health measures under the OSH Act. In this regard, I would like to take a detailed look at the specific details and applied practices.

## **II. Main Details of the Fatal Accidents Act**

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

### **1. Understanding the key definitions**

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

1) “Serious industrial accident” refers to an accident resulting in (i) one or more fatalities, (ii) two or more persons injured in the same accident and requiring treatment for at least six months, (iii) three or more people in the accident becoming ill and requiring treatment for three months or longer for the same cause. In the OSH Act, serious accidents were defined in the enforcement regulations of the OSH Act, and so there was some ambiguity, but in the FAA, the definition of serious accidents is clearly explained in the Act.

2) “Employee” refers to (i) a worker as defined in the Labor Standards Act, (ii) a person who provides labor in return for reward for the purpose of operation of the business, regardless of the type of contract, such as subcontract, service, or consignment. Their protection was more extended than workers under the Labor Standards Act. The term “employer” has also been expanded to include those who run their own business and those who are provided with the labor of others.

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

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

An employer or business manager shall work to protect the safety and health of workers in the business or workplace they control, operate, or manage, in consideration of the business or workplace scale and characteristics. Specifically, they are responsible for: (i) Ensuring the establishment and implementation of a safety and health management system, including the necessary personnel and

funding to prevent serious accidents; (ii) Ensuring orders from the local government for improvement, correction, etc., are followed in accordance with relevant laws and regulations; (iii) Taking the administrative measures necessary to fulfill their obligations under relevant laws and regulations related to safety and health, and (iv) Measures necessary for fulfillment of obligations under safety and health related laws and regulations. Parts (i) and (iv) above are explained in detail in the Enforcement Decree to the Fatal Accidents Act.

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

#### **(1) Punishment of employers and business managers**

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

#### **(2) Joint penal provisions**

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

#### **(3) Punitive compensation for damage**

The Fatal Accidents Act introduces punitive compensation for damage, which is nonexistent in the OSH Act. In the event that an employer or head of

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

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

Even if a serious industrial accident occurs, there will be no punishment if the employer has fulfilled his or her duty to protect safety and health. Specific details are described in the establishment of a safety and health management system (Enforcement Decree Article 4) and administrative measures necessary for fulfillment of obligations in accordance with safety- and health-related laws (Enforcement Decree Article 5).<sup>3</sup>

#### **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.<sup>4</sup> 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

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<sup>3</sup> Ministry of Employment and Labor, “Fatal Accident Punishment Act – Related to Serious Industrial Accidents,” November 2011.

<sup>4</sup> 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.

budgeting and execution (Clause 1 and 4).

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

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

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

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

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

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

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

The employer or business manager shall prepare business procedures to identify

and mitigate hazards and risk according to the characteristics of the business or workplace, and confirm, at least once every six months, whether such identification and mitigation has been carried out. However, if the procedure for risk assessment is prepared in accordance with Article 36 of the Occupational Safety and Health Act, the risk assessment is conducted according to said procedure and the implementation reported, confirmation of whether these activities have been carried out shall be considered to have taken place.

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

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

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

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

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

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

the management of safety and health; and (iii) Those receiving the contract, service, entrustment etc. in the construction and shipbuilding industries shall have their own standards for construction period or building period for the safety and health.

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

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

(2) As a result of the inspection or report in (1) above, if it is confirmed that the obligations under safety and health-related laws and regulations have not been fulfilled, the employer shall take action necessary to fulfill those obligations, such as assigning additional manpower or providing additional funding and ensuring its execution.

(3) The employer shall inspect at least every six months whether safety and health education on hazardous and dangerous work, which is mandatory in accordance with safety and health-related laws and regulations, has been provided. If the employer is not the one to directly engage in the inspection, he or she shall receive a report on the findings from those the employer delegates to perform the inspection.

(4) The employer shall take the action necessary to ensure that any unfulfilled education requirements identified in such an inspection or related report in accordance with (3) above, takes place, providing additional manpower and/or funding as necessary and without delay.

## **IV. Conclusion**

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