A Case of Sexual Harassment in the Workplace & Lessons Learned

I. Introduction

The most important step to handling workplace sexual harassment is to prevent it in advance. When it happens in reality, it is also important to deal with it appropriately in accordance with on-the-spot situations. There is a legal procedure for handling sexual harassment cases, but the particular case in this article was greatly influenced by the emotional state of the victim and the offending employee. Accordingly, it is necessary to seek a reasonable solution through appropriate actions, rather than only following the legal procedures by the letter.

The case discussed herein was not well handled and resulted in resignation of both the victim and the offending employee, causing direct loss to the related parties through the loss of their jobs, and to the company through the loss of the personnel in question. In the interest of preventing this kind of disruptive outcome, we will look at the problem-solving procedures in the case, review the lessons learned and consider methods of improvement.

II. Sexual Harassment Case

1. Summary of the case

On August 5, 2014, a woman who had been employed by the company in April 2012 and had worked at the company's Suwon site since then submitted a written complaint of sexual harassment by her supervisor. The Personnel Manager asked for legal opinion from a labor attorney, who read the female employee's statement and advised problem-solving procedures for the company to follow.

The labor attorney did not recognize the seriousness of the case, and focused upon prevention of recurrence through protection of both the offender and the victim. In the meantime, the female employee and her colleague submitted their resignations as they were afraid of revenge from the offending supervisor (the site manager). Then, because of their resignations, the offending supervisor was also forced to resign. As a result, the company lost significant resources: two female staff employees and one site manager.

2. Details of sexual harassment

The sexual harassment consisted of physical and verbal harassment, as detailed in the female employee's statement as follows.

(1) Physical sexual harassment

At the end of 2013, my hair was down and hanging to my shoulders, and the site manager, saying my hair needed trimming, touched my neck with his fingers and combed them through my hair. It felt instantly creepy and I felt sexually humiliated.

(2) Verbal sexual harassment

- Not long time after being hired by the company, a male colleague and I were sweeping the building in preparations for auditing, when the site manager came over to us, looked at me and said to my colleague, "You guys are sweeping like feeling a virgin's breast." His remark really shocked me.
- The site manager often commented about my make-up "You need to put on more make-up and wear more lipstick." Recently he said to me in front of some other colleagues, "You

seem to have let everything go. I mean since you got married, you really don't put on make-up nor dress well at all. Put on some make-up before you come to work." He even said to other female colleagues with a laugh, "Please teach her how to put on make-up properly." I felt very displeased and angry.

- Two months ago, while a female worker in the same office was listening, the site manager said smilingly to a male worker, "Women in the US air force do everything by themselves. In the hot summer some women only wear undershirts, moving oil drums and swinging their full breasts."
- On August 5, 2014, while the female employees were talking to each other, the female victim of the harassment said to her supervisor, "I have a headache and feel sick." The site manager responded, "You must feel sick because you're having your period." Both my colleague and I were shocked at his statement.

III. Handling of the Case by the Company

1. Questions and answers regarding the issue

The company asked three questions of the advising labor attorney regarding this sexual harassment on August 6, 2014.

<Question 1> Can sexual language or unnecessary physical contact used by this site manager be considered workplace sexual harassment?

<Response> Judgment of sexual harassment (Supreme Court ruling on June 14, 2007, 2005 du 6461): *'Sexual language and behaviors in becoming 'workplace sexual harassment' in accordance with Article 2(2) of the Equal Employment Act refer to physical relations between a man and a woman or physical, linguistic and visual behaviors in relation to the male or female physical appearance. These behaviors mean that a normal and average person would feel sexually humiliated or offended if that person were in the victim employee's situation in view of the social community's healthy common sense and socially accepted notions. The condition in which these behaviors are considered sexual harassment does not require the offender's sexual motivation or intention, but shall consider the relation with the victim employee, place and situation where such behaviors happened, the counterpart's explicit and presumptive reactions and details of such behaviors, characteristics and degree of the behavior, whether such behavior was one time only or repeated, and other concrete situations. So, such behaviors should be ones which a normal and average person in the same situation would also feel sexually humiliated or offended objectively. In such cases, these behaviors should be admitted as sexual harassment that resulted in the counterparty feeling sexually humiliated and offended.*

In this sexual harassment case, the victim employee felt humiliated by her supervisor's sexual language and behavior, which furthermore caused a feeling of inferiority and disgust by the victim. In considering a normal person's reaction, such language and physical behavior would cause similar feelings. Therefore, the sexual language and other details mentioned by the female employee would be considered workplace sexual harassment.

<Question 2> How can the company deal with a reported case of workplace sexual harassment?

<Response> According to the Equal Employment Act, "1) An employer shall take without

delay disciplinary measures or other equivalent actions against the sexual harasser if an occurrence of sexual harassment at work has been verified. 2) No employer shall dismiss or take any other disadvantageous measures against a worker who has been the victim of sexual harassment at work or has claimed to have been sexually harassed (Article 14). If the Company violates the aforementioned items, the employer shall be punished by a fine for negligence not exceeding 5 million won (Article 39)." Accordingly, when receiving information on sexual harassment at work, the employer shall interview the parties concerned, investigate the case, confirm the actual facts, and then take appropriate measures such as disciplinary action and report the outcome to the employee who was sexually harassed.

<**Question 3> How can the company deal with this case in a reasonable manner?**

<Response> The company shall take appropriate action for cases of sexual harassment in which the victim employee shall be protected from any further damage and the offender punished through acceptable disciplinary action. The company shall also work to prevent recurrence through employee education on sexual harassment.

I would like to suggest a level of disciplinary action for this case as salary reduction (10% of one month's salary) and a written warning letter stipulating that any repeat will result in serious disciplinary action like dismissal. It is also advisable to have the labor attorney who is handling this case to give a presentation on prevention of sexual harassment at your Suwon site.

2. Email conversations between the victim employee and the Labor Attorney

From: Victim employee; To: Labor Attorney; Sent: August 20, 2014 (Wednesday)

On August 12 I submitted my resignation, and on Thursday, August 14, the site manager held a general meeting in an attempt to excuse his behaviors and said to all attending employees that he did not have any intention to harass the female employees. At that meeting, he outlined point by point what I explained in my statement, explaining that he did not mean to harass me.

What angered me is that the site manager apologized to me and even sent a message that he was a stupid man and he was so sorry for his behaviors, but in front of other employees, he excused himself by skipping over the worst incidents and telling people that I was hypersensitive about nothing out of the ordinary.

From: Labor Attorney; To: Victim employee; Sent: August 20, 2014 (Wednesday)

I apologize that I have been unable to protect you better. I think the company made mistakes in handling this case. First of all, the most important thing is to protect the victim employee…. I wish you had contacted me before submitting your resignation.

From: Victim employee; To: Labor Attorney; Sent: August 20, 2014 (Wednesday)

The Personnel Team continuously recommended that I not submit my resignation. However, frankly speaking, I was disappointed to hear that the level of punishment would only be salary reduction (10% of one month's pay). I was not sure whether I could continue to work with the site manager, so, after discussing it with my

family, I decided to resign.

From: Labor Attorney; To: Victim employee; August 20, 2014 (Wednesday)

It is very sad. Now, the site manager has resigned and you also quit. So, everyone related to this has become a victim. My expectations were that I could protect both him and you, but I was unable to protect anyone at all. I think that I should take more preventive action to avoid a repeat of this case.

As time passes, it will be difficult for people to adjust to the changed environment. I would like to recommend that you reconsider your decision to quit.

From: Victim employee; To: Labor Attorney; Sent: August 26, 2014 (Tuesday)

The reason why I quit was not because the Labor Attorney could not protect me. When I officially submitted my statement to the Personnel Team, the other female employee was also planning to submit her statement, but the Head Office persuaded me not to make this case public until obtaining more tangible evidence, because the company needed the site manager during contract-renewal with the client company. As I understood the company's situation, I felt it would be hard to continue to work for this company.

From: Labor Attorney; To: Victim employee; Sent: August 26, 2014 (Tuesday)

I feel very unhappy to see the tragic results of this sexual harassment case. I have always thought that the offender should be given a chance and punished lightly, but now I think this is not always best. Because of this case, I realize I need to consider the victim employee's situation and try to help the victim employee more.

IV. Lessons Learned & Opportunities for Improvement

Sexual harassment cases cause considerable damage not only to the individual employees concerned, but also the company. This company has also turned to annual education to prevent sexual harassment, but this has not prevented it effectively. Rather, this company spent energy on covering up the case more than on dealing with it appropriately.

The labor attorney in charge could not give sufficient advice as he did not fully understand the situation. His advice was designed to protect both the victim and the offender together, but could not protect anyone as three persons related to this case resigned. As the company failed to adequately consider the victim's position and requests, two victim employees resigned. The offender too was forced to resign due to his moral responsibility. As can be seen by reviewing the email conversations between the victim employee and the labor attorney handling the case, it is regrettable that the company failed to handle things effectively, and that the labor attorney did not fully appreciate the victim employee's situation.

On August 27, 2014, the labor attorney in the case above gave a presentation on prevention of workplace sexual harassment at the Suwon site where the sexual harassment occurred. He explained the definition, the types, the judgment criteria for determining sexual harassment, and the employer's legal obligations, all of which was taken very seriously in light of the case the participants all knew about. As the outcome of this case reveals, preventive action through education on sexual harassment is the best policy, while knowing how to appropriately handle any cases that do occur will do much to realize as little disruption as possible to both the company and the victim employees.

Granting Annual Leave

I. Introduction

The ‘annual paid leave’ in the current Labor Standards Act refers to paid vacations that employees receive in return for their work. It was originally designed to provide physical and spiritual rest to employees tired from hard work, to maintain the continuity of the labor force, and to secure a balance in people’s lives. However, Human Resources (HR) managers are often confused about how to best allow for annual leave and continually ask questions on this subject. According to the Labor Standards Act (LSA), annual leave is to be calculated and provided based on the individual employee’s start date. However, for companies with many employees, individual management of annual leave is not easy to calculate due to the different starting dates, and it is also not easy to take advantage of related laws promoting the use of annual paid leave.

Although the rules of employment and collective agreements may stipulate that annual leave will follow the LSA, many companies, for the sake of convenient labor management, provide uniformity in annual leave for employees based upon a ‘calendar year’ period, and then recalculate the annual leave based upon individual start dates at the time when employment is ended. The number of annual leave days can differ in accordance to the various annual leave-provision methods, and individual companies follow different types depending on their HR policy. In this issue, I would like to review, in detail, the various ways in which annual leave can be calculated:

II. Legal Bases for Calculating Annual Leave

1. The Labor Standards Act – Start date

Article 60 of the LSA stipulates that annual leave shall be calculated on the basis of the start date of each individual employee.

> Article 60 (Annual Paid Leave)
>
> (1) An employer shall grant 15 days' paid leave to a worker who has registered not less than 80 percent of scheduled attendance in a one year period.
>
> (2) An employer shall provide one day's paid leave per month to a worker whose consecutive service period is shorter than one year or whose attendance is less than 80 percent, if the worker has worked without absence for a full month.
>
> (3) In a situation where an employer provides a worker paid leave for the first year of his/her service, the number of leave days shall be 15, including the leave prescribed in paragraph (2), and if the worker has already used the leave prescribed in paragraph (2), the number of used leave days shall be deducted from the 15 days of leave.
>
> (4) After the first year of service, an employer shall provide one day's paid leave for each two years of consecutive service in addition to the leave prescribed in paragraph (1) to a worker who has worked consecutively for 3 years or more. In this case, the total number of leave days including the additional leave shall not exceed 25.

2. Government Guidelines – Calendar year

Government guidelines allow for the management of annual leave based on a calendar year, with the detailed method as follows (Labor Improvement Team-5352, issued on Dec. 19, 2011):

The period for calculation of the attendance rate in order to provide for annual paid leave under Article 60 of the Labor Standards Act shall follow the individual employee's annual service period in principle, but for the sake of efficient labor management, the calculation period may follow a calendar year period (Jan 1 ~ Dec 31) according to the rules of employment and the collective agreement where applicable. In order not to be disadvantageous to new employees when applying a calendar year-based calculation of annual leave, it is required that in the following year the paid leave be calculated in proportion to the start date of the first year for those who have worked for less than one year, after which the company can then provide annual leave on the calendar year basis. Provided, if the total number of annual leave days calculated based upon the calendar year is less than the number of annual leave days calculated by the actual start date, the company shall provide the lesser number of additional annual leave days.

3. Rules of Employment or Collective Agreement (sample): Start Date or Calendar year

The provision of annual leave stipulated in the rules of employment is usually provided as follows:

**(1) Where annual leave is calculated by the individual employee's start date **

Article 00 ***(***Annual Paid Leave***)***

(1) Each employee shall be granted 15 days for a minimum of 80% attendance during the previous one (1) full year;

(2) With respect to an employee who has worked for less than one year or an employee who has an attendance rate of less than 80% in one year, the company shall allow one day of paid leave for perfect attendance for one month; and

(3) The 15-day paid leave mentioned under Subparagraph (1) shall include the "1-day paid leave" stipulated in Subparagraph (2). If an Employee has already used the "1-day paid leave", it shall be deducted from the "15-day paid leave" stated in Subparagraph (1); and

(4) Each employee who has been employed for 3 years or longer shall be allowed one additional day for every two years exceeding the first one year of continuous employment in addition to the days of leave mentioned in Item a. above. However, the total paid leave including the additional days shall not be more than 25 days.

(2) Where annual leave is managed on a calendar year basis

Rules of Employment: Article 00 Annual Leave

Note - Subparagraphs (1), (2), (3), and (4) have the same content as the above ROE.

(5) The calculation period for annual paid leave shall start January 1 of each year and finish on December 31 of that same year.

(6) As for an employee who started work in the middle of year, the company shall allow on January 1 of the next year, the number of annual leave days calculated in proportion to the employment period of the first year, and beginning the following year, annual leave will be adjusted and provided on a calendar year basis.

(7) At the end of employment, if the number of annual leave days calculated on the calendar year basis is less than the number of annual leave days calculated by the individual's start date, the company will provide the lesser number of annual leave days.

III. Methods for Calculating Annual Leave

1. Methods Available

The details of granting annual leave, as stipulated in the Labor Standards Act or the Rules of Employment, are generally similar, but the actual calculation for that leave varies greatly by company. Four types are shown: A, B, C, and D, and a company may use one of them.

※ Annual Leave for a Period of 5 Years and 10 Months, from May 15, 2008 to March 31, 2014

Type A: Based on Employee's Start Date	**Type B: Start Date + Calendar year-based**	**Type C: Calendar year-based**	**Type D: Prior Payment + Prorated**
5-15-2008 started	5-15-2008 started **1-1-2009 → 10 days (prorated based on start date)**	5-15-2008 started **1-1-2009 → 10 days (prorated based on start date)**	5-15-2008 started **(7 days granted as monthly leave in advance)** 1-1-2009 → 15 days
5-15-2009→15 days	1-1-2010 → 15 days	1-1-2010 → 15 days	1-1-2010 → 15 days
5-15-2010→15 days	1-1-2011 → 15 days	1-1-2011 → 15 days	1-1-2011 → 16 days
5-15-2011→16 days	1-1-2012 → 16 days	1-1-2012 → 16 days	1-1-2012 → 16 days
5-15-2012→16 days	1-1-2013 → 16 days	1-1-2013 → 16 days	1-1-2013 → 17 days
5-15-2013→17 days	1-1-2014 → 17 days	1-1-2014 → 17 days	1-1-2014 → 17 days
3-31-2014→ finished	3-31-2014 → finished **(10 days deducted - adjusted according to start date)**	3-31-2014→ finished	3-31-2014 → finished **(13 days deducted – adjusted according to finish date)**
79 days	**79 days (deducted 10 days)**	**89 days (10 more days allowed)**	**90 days (11 more days allowed)**

※Annual Leave for a Period of 6 Years and 5 Months, from May 15, 2008 to October 31, 2014

Type A: Based on Employee's Start Date	**Type B: Start Date + Calendar year-based**	**Type C: Calendar year-based**	**Type D: Prior Payment + Prorated**
5-15-2008 started	5-15-2008 started **1-1-2009 → 10 days (prorated based on start date)**	5-15-2008 started **1-1-2009 → 10 days (prorated based on start date)**	5-15-2008 started **(7 days granted as monthly leave in advance)** 1-1-2009 → 15 days
5-15-2009→15 days	1-1-2010 → 15 days	1-1-2010 → 15 days	1-1-2010 → 15 days
5-15-2010→15 days	1-1-2011 → 15 days	1-1-2011 → 15 days	1-1-2011 → 16 days
5-15-2011→16 days	1-1-2012 → 16 days	1-1-2012 → 16 days	1-1-2012 → 16 days
5-15-2012→16 days	1-1-2013 → 16 days	1-1-2013 → 16 days	1-1-2013 → 17 days
5-15-2013→17 days	1-1-2014 → 17 days	1-1-2014 → 17 days	1-1-2014 → 17 days
5-15-2014→17 days	10-31-2014 → finished	10-31-2014 → finished	10-31-2014 →finished –
10-31-2014 →	**(7 days added -**	**(7 days added -**	**(3 days deducted -**

finished	**adjusted according to start date)**	**prorated according to finish date)**	**prorated according to finish date)**
96 days	**96 days (7 more days allowed)**	**96 days (7 more days allowed)**	**100 days (4 more days allowed)**

2. Advantages & Disadvantages for each Method of Calculating Annual Leave

(1) Type A- (based on employee's start date): The advantage of this method is that annual leave can be accurately calculated in accordance with the Labor Standards Act.

However, the disadvantage is that: 1) this method requires a lot of time and effort to manage the annual leave for all employees as the company needs to calculate each individual employee's annual leave separately; 2) it would be difficult to take measures to promote the use of collective annual leave; and 3), an employee who intends to leave may try to find the best time for resignation to maximize their annual leave days.

(2) Type B - (start date + calendar year-based): This method is a way of providing annual leave based on calculating 15 days in proportion to the working period of the first year, on January 1 of the following year, and then to deem January 1 of the following year as the start date for calculating annual leave for that year. When employment comes to an end, the number of annual leave days calculated based on the calendar year shall be compared with the number of annual leave days calculated based on the start date. If the number of annual leave days based on the calendar year is more than the number calculated by the start-date, it would be preferable to stipulate such a reduction of annual leave in the rules of employment.

The advantage of Type B is that a company can easily manage annual leave, effectively use the method to promote the collective use of annual leave, and be able to calculate annual leave very accurately while still adhering to the Labor Standards Act.

The disadvantage of Type B is that the company needs more time to re-calculate individual annual leave. As well, the employee may try to select a finishing date which allows for more annual leave days.

(3) Type C - (calendar year-based): This is a method of providing annual leave by calculating 15 days in proportion to the working period of the first year, on January 1 of the following year, and then to deem January 1 of the following year as the start date for calculating annual leave. At the termination of employment, if the number of annual leave days calculated based on the calendar year is lower than the number of annual leave days calculated based on the start date, the lesser number of additional annual leave days shall be allowed. However, if the number of annual leave days based on the calendar year is more than the number of annual leave days based on the start date, the higher number of leave days will not be deducted.

The advantage of Type C is that the company can easily manage annual leave and effectively use the method to promote the use of collective annual leave.

The disadvantage of this type is that the company may provide more leave days than would be allowed under the start-date based calculation, and that an employee may try to select the ending date in order to receive more annual leave days.

(4) Type D - (prior payment + prorated): This method provides monthly leave for each attendance month for the first year of employment, and then allows 15 days of annual leave in advance on January 1 of the following year, which is then continuously granted in advance based upon the calendar year. For the month when employment is ended, the annual leave will be adjusted up to the last working day on a prorated basis.

The advantage of Type D is that: 1) the company can effectively use the measure to promote the use of collective annual leave; 2) the company can adjust annual leave easily as it is calculated on a prorated basis; 3) the method can be seen as beneficial in that the employees receive their annual leave ahead of its actual occurrence; and 4) that an employee will not derive any preference for a finishing date because the annual leave is based upon the actual service period calculated on a prorated basis.

Type D's disadvantage is that the company will always grant more annual leave than what would be provided by the start-date based calculation.

3. Review of the Annual Leave Calculation Methods

Companies generally use Type B or C, which are all calendar year-based, when managing their annual leave. Type B (start date + calendar year) takes a recalculation procedure by matching annual leave calculated according to a calendar year with annual leave based on the employee's start date. Type C (calendar year-based) is a method whereby the company provides more annual leave, calculated by a calendar year-based adjustment, and will also additionally compensate for the lower number of annual leave days based on the calendar year. However, this type will also give employees reason to look for the most suitable termination date, so the company may end up providing more annual leave days than intended.

Accordingly, in my opinion, the most suitable is Type D (prior payment + prorated). This type provides monthly leave for each attendance month for the first year of employment, then allows for 15 days of advance annual leave the following year, and in the month when employment is ended, allows for an adjusted annual leave prorated according to the last working day. In particular, Type D can be the most desirable method because it takes full advantage of the convenient calculation of annual leave as well as the benefits of calendar year-based management.

IV. Conclusion

Annual leave is designed to provide an opportunity for exhausted employees to recharge through the provision of a paid vacation; this should not be considered as an expense, but rather as an investment in securing a constant workforce. Employers should also consider some basic principles when applying a method for calculating annual leave. Firstly, the employee should be able to understand and anticipate his or her annual leave and the available number of days that can be used in the near future. Secondly, the company should provide for collective annual leave so it can easily manage the annual leave for all employees and also promote the use of annual leave. Thirdly, when employment is terminated, the company can easily calculate the annual leave and the employee has no reason to consider the date of termination in the expectation of more annual leave. That is to say, the final annual leave can be easily adjusted based upon the termination date.

An Airline Labor Union Improves Working Conditions

I. Introduction

As a labor attorney, I have usually represented companies on labor issues, but recently I was asked to provide some consulting by a labor union (hereinafter referred to as "the Union"). This particular union is composed of employees of a foreign airline (hereinafter referred to as "the Company") and was established in April 1989, surviving simply as an entity without a collective agreement for the past 25 years. As soon as the Union was established, the company had treated the Union chairman so disadvantageously (such as moving him from the Seoul office to a workplace at the airport) that he was obliged to resign. In addition, the Union was unable to carry out its duties due to the headquarters' continuous habit of disadvantaging all succeeding union officers. Although Union members' salary was superior to that of employees at other airlines in the beginning, their salary increases had not kept pace with their peers' at other airlines. Through 10 months of collective bargaining, the Union was able to improve its working conditions, including salaries, with the assistance of a professional (this labor attorney) through legal advisory consulting.

This article will describe how the Union concluded a successful collective agreement, and dealt with major issues.

II. Company Handling of the Union

1. Company refusal to recognize the Union

The Company refused to recognize the Union entity, and shut down attempts at collective bargaining by creating an atmosphere of insecurity for Union members and treating them unfavorably. Some of the details are listed below.

(1) When the Union was established in 1989, the Company moved its new Union chairman from the head office in Seoul to the airport branch office, without a promotion or salary increase, after which the Union chairman decided to resign.

(2) Between 2009 and 2012, the branch manager emailed Union members at "director" level (a Korean employment rank designation) and threatened them as pressure to withdraw their membership from the Union. This included public orders to withdraw their membership during wage bargaining meetings, which resulted in several directors withdrawing their union membership. As an explanatory side note, although their Korean title was "Director", they did not have any practical management authority over lower-ranking employees, and just worked as "persons in charge". Their English title was still "Employee": only those with the Korean rank of "Manager" could use their Korean titles in English, as they had actual management authority (Manager = Team leader = Department head). "Director" was simply a title given to recognize their age and their long service.

(3) The branch manager also included threats during labor-management council meetings or the wage bargaining table, saying repeatedly "My company's wage level is inferior. If you don't want to work for that wage, then quit." This prevented any effective bargaining with the employer.

(4) The company also constantly reminded employees through various department heads and the branch manager's secretary, of its intention to disadvantage any union members refusing to obey company policy. Together, this kind of environment cowed the Union members against pursuing a collective agreement.

2. Disadvantageous changes in working conditions

(1) Wage cut: The Company unilaterally cut out almost 1/3 of its regular bonus in 2009 (normal bonuses equaled 650% of normal salary, but only 450% was paid out that year). Although the Company informed the Union chairman and Union officers in writing in February 2009, the Company designated a particular Union member to sign the agreement, completely ignoring the Union chairman, and used this "agreement" to make the unilateral cut in May of the same year.

(2) Unpaid incentive (in 2012): The Company paid incentive bonuses every year in the past when it reached its corporate targets. However, although the Company reached its 2012 targets, no incentive bonus was paid, nor any explanation given.

(3) Changing menstruation leave from paid to unpaid leave (from 2009): Prior to 2009, the Company had paid menstruation leave allowances to women, but changed this to unpaid leave without collective consent or Union agreement.

(4) Unilateral reduction of sales allowances for sales department employees: Sales employees had received 450,000 won in sales allowance every month, but in 2009, the Company reduced this sales allowance to 350,000 won without notification or explanation to the sales department. It was again unilaterally reduced to 250,000 won in 2012. Unilaterally changing a long-running sales allowance twice is a disadvantageous change of working conditions.

III. Details of Collective Bargaining

1. The Company's attempts to evade collective bargaining

The Union requested collective bargaining in January 2014, and at the first meeting on February 10, 2014, demanded a collective bargaining schedule. The Union also handed over a draft of the collective bargaining demands, without response from the Company. The Union sent two reminders in writing, but still no response. Then, suddenly, the Korean branch manager (a non-Korean) returned to his home country without notifying the Union of any bargaining schedule. It is assumed that this was part of the Company's strategy to maintain the existing situation and avoid making a collective agreement.

2. Inducing the Company to engage in collective bargaining through Labor Ministry authority

When the branch manager returned to his home country in March 2014, the Union decided to exercise its rights guaranteed by the Constitution to force the Company to the bargaining table, and began lawsuit proceedings with the Ministry of Employment & Labor for the Company's unfair labor practices and violations of the Labor Standards Act.

The purpose of the suit was to retrieve the illegally reduced wages, and continue to work out collective bargaining with the Company. The Company's former branch managers were required to attend the Labor Office investigations, coming to realize the power of the Union for the first time. After two months of investigations, in July 2014 the Company had to

return the unpaid wages, and also the additional 200% of the regular bonus that was deducted illegally. As the Union accepted the payment of the retroactive wages and trusted the Company's verbal promise to engage in collective bargaining, the Union withdrew the suit it had filed against the Company.

3. Concluding a collective agreement through the Labor Relations Commission

The Company appointed the Busan branch manager as its representative negotiator and began to negotiate a collective bargaining agreement with the Union in July 2014, meeting 8 times up to September 23. However, the Company continually rejected any other working conditions except those agreed on in the rules of employment, claiming that the collective bargaining draft contained so many articles that infringed on Company personnel and management rights. On top of this, the Company also pushed to lower the current working conditions in return for increasing salaries.

The Union decided that this kind of collective bargaining would yield nothing in the way of better working conditions, and on September 25, 2014, applied to the Labor Relations Commission for adjustment of labor disputes towards obtaining the official right to strike (case number: NLRC 2014 mediation 99). [1]

The Labor Relations Commission assigned this case to the Special Mediation Committee of the National Labor Relations Commission for 15 days, as the Company belonged to the public services industry as an aviation service and had workplaces in several cities (Seoul, Busan, Incheon etc.). The Special Mediation Committee held its first investigation meeting on September 29, 2014, and then held a preliminary mediation hearing for 4 hours on October 7. The Company had stubbornly rejected the Union's proposals, but displayed serious concerns at the present situation which could lead to a strike by the Union. Although the Company began negotiating more actively than previously, the parties could not reach agreement within the permitted mediation period of 15 days due to the wide gap in their viewpoints.

The Company and the Union agreed to extend the mediation period and an additional 15 days were permitted. The Union focused on obtaining Company recognition of itself and recovering the unfavorably-changed working conditions rather than striking. Labor and Management made the most of the mediation period, intensively negotiating a final agreement on changes related to 28 of the 60 articles in the first collective agreement draft.

Both parties submitted the agreed draft to the Special Mediation Committee which in turn

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[1] **LABOR UNION AND LABOR RELATIONS ADJUSTMENT ACT.** **Article 45 (Mediation before Industrial Action)** (2) No industrial action shall be taken without first undergoing mediation procedures (excluding mediation procedures that come after the decision to end the mediation is made pursuant to Article 61-2) under the provisions of Sections Two to Four of Chapter V. This paragraph shall not apply when mediation procedures do not finish within the period prescribed in Article 54, or when the arbitration ruling is not made within the period prescribed in Article 63.

Article 53 (Commencement of Mediation) (1) The Labor Relations Commission shall conduct the proceedings of mediation, without any delay, when one of the parties to labor relations submits a request for mediation to the Labor Relations Commission. The parties concerned shall undertake in good faith the proceedings of mediation.

accepted it, making the collective agreement official. [2]

This successful outcome was possible thanks to two distinctive factors: (1) the two parties were required to attend the compulsory mediation hearings held by the Labor Relations Commission; (2) three commissioners from the Special Mediation Committee worked hard with labor and management in the process of reaching agreement. If the commissioners had been unsuccessful in persuading the employer, concluding a collective agreement would have been impossible with a company that thought the Union was an organization to be under its control.

IV. Evaluation and Lessons

1. Evaluation

One of the most significant outcomes for the Union was successful conclusion of a collective agreement, something it had not had in its 25 years of existence. Although the collective bargaining agreement contained only 28 of the original 60 articles, the Union was recognized as a real entity through the collective agreement, and obtained the legitimacy and power to negotiate with the Company as an equal bargaining party concerning the determination of terms and conditions of employment. The details of what was obtained in this collective bargaining include a Union office, paid time-off for full-time Union officers, and an equal number of labor and management representatives in the disciplinary action committee. The improved working conditions include restoration of the original sales allowances, restoration of the paid menstruation leave, and stipulations in the collective agreement protecting working conditions that had been previously obtained. As the structure for wage agreement and general collective agreement bargaining was also established in the first collective agreement, the Union is now equipped with knowledge and a recognition of its authority to negotiate improvements to working conditions.

2. Lessons

Article 32, Paragraph 3 of the Korean constitution stipulates, "Standards of working conditions shall be determined by Act in such a way as to guarantee human dignity." Out of this article came the Labor Standards Act. Here, if the Labor Standards Act existed without the Labor Union Act, improving working conditions would be difficult as employers usually pursue profit over worker benefits. Enhancing working conditions is the reason why the Labor Union Act guarantees three rights for labor: association, collective bargaining, and collective action. Through exercise of these three rights guaranteed by the constitution real working conditions can be improved, based upon mutual determination of working conditions where labor and management can negotiate on equal footing.

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[2] **Article 54 (Period of Mediation)** (1) Mediation shall be completed within ten days in the case of general businesses, and fifteen days in the case of public services, after the request is made for mediation pursuant to Article 53.

(2) The parties concerned may agree to extend a period of mediation under paragraph (1) up to ten days in the case of general businesses, and fifteen days in the case of public services.

Article 61 (Effect of Mediation) (2) The contents of the mediated agreement shall have the same effect as a collective agreement.

V. Conclusion

The foreign airline's labor union had simply existed without a collective agreement for 25 years, and was unable to represent its members effectively or act collectively towards improving their working conditions. However, through the process of concluding a collective agreement this time, they understood the importance of exercising their three rights of labor in the workplace, and also restored the Union's real functions and at the same time achieved the power to protect their working conditions through a collective agreement achieved by collective bargaining. It is my hope that this Union will maintain the solidarity that its members showed throughout the collective bargaining process and protect its members' job security, while also improving their relatively lower wage levels and working conditions when compared to other airlines.

Application for Cancellation of Additional Premium Charges for Industrial Accident Compensation Insurance[3]

I. Summary

Engineering company A (hereinafter referred to as "the Company") was founded in March 2005, and began with simple construction work with such things as reinforced concrete structures, before gradually moving into construction of more specialized, larger machines and facilities. On March 21, 2010, one of its 10 regular employees (a daily worker) was injured on the job, and applied to the Employee Welfare Corporation (hereinafter referred to as "the Corporation") for accident compensation. While handling the occupational injury of the worker concerned, the Corporation came to believe that the Company was not a construction company, but a manufacturing company instead. The Corporation confirmed that the Company's corporate register stipulated that it was a construction and manufacturing firm together, that in its financial statements since 2007, production costs had been described as higher than construction costs, and that its product sales were much higher than its construction sales.

The Corporation then changed the Company's business registration from construction to 'manufacturing of metal products for construction'. Due to this, additional premiums were charged and penalties imposed on the Company in December 2010, in accordance with the change of business registration. Since the Company had been registered as a subcontractor for its construction projects, its daily workers were automatically covered by the main contractor's Industrial Accident Compensation Insurance. This meant that only resident employees at its head office subscribed to the Insurance separately as administration office staff (905009), with premiums due at a rate of 10:1,000 of the total yearly wages. This was in contrast to the Corporation's determination of the Company as a manufacturer of metal products (21809), with premiums due at a rate of 49/1,000. The Company then took legal action in February 2011, filing with the Administrative Appeals Commission for cancellation of the Corporation's fines and additional premiums.

As already mentioned, it was discovered that the Company was registered as a construction firm while the Corporation was handling the accident compensation case. The manufacturing costs were listed as greater than construction costs, and product sales greater than construction sales, because the Company had manipulated the dates in order to secure lending from a bank in the near future. During investigation by the Administrative Appeals Commission, the Company was recognized as a construction business, and not manufacturing, by providing verifiable documents for all sales-related VAT invoices issued during the corresponding period. Here, I would like to explain the details of this case and how the company proved its claims.

[3] Feb~Aug 2011: The Administrative Appeals Commission, represented by labor attorney Mr. Bong Soo Jung

II. Reasons for Additional Premium Charges

The Company subscribed to Industrial Accident Compensation Insurance on July 1, 2005, and since then it had been considered a 'separate administrative office' among other various businesses. As an occupational injury occurred to one of the employees of this Company on March 21, 2010, the Corporation investigated the Company's business registration to determine the applicable business type for the insurance. After auditing, the Corporation concluded the Company's business was manufacturing, because, even though the Company did not have a plant for production, it purchased raw materials, assembled or produced metal structures at building sites, and installed them there. The Company was informed of the Corporation's decisions to change its business registration to "metal products manufacturing for construction" and charge ₩101,536,050 for additional premiums for the years 2007 to 2009 and the adjusted premiums for 2010.

Although the Company registered its construction license without registering its plant separately, it produced half-finished metal structures on its own premises and installed them on building sites to fulfill contracts with purchasers. When confirming purchase agreements with purchaser M and purchaser W during the years 2007 to 2009, the Company hired daily workers to produce metal structures, fabricate the half-finished products, and then assemble and install them at the building sites. Labor costs occurring at the building sites shall be evidence enough to prove that registration as a manufacturing business was more appropriate.

Accordingly, the Company has used its construction license to engage in construction, and besides building operations, it purchased the materials necessary to produce structures to fulfill contracts with purchasers, manufactured half-finished products on its own premises, and welded or otherwise assembled those structures at building sites. Even though the Company did not have a manufacturing facility to produce structures on its premises, it has regularly and continuously produced metal products related to building structures in accordance with contracts with purchasers, thereby justifying the current change of the Company's registration to "metal products manufacturing for construction".

III. The Company's Reasons for Filing for Cancellation

In March 2005, the Company was founded as a small construction company with ₩220 million in capital. If a small construction company like ours has to pay more than ₩100 million in penalties, this becomes an imminent matter of survival. Since its establishment, the Company has managed typical construction projects with ten regular employees, sometimes hiring from 3 to 100 temporary workers to meet our subcontract obligations.

In our estimation, the Corporation based its decision only on documentation stating that the Company's business license stipulated "construction and manufacturing" and its income statement showed that product sales were larger than construction sales. However, in reality, the Company did not produce any original products, did not own a production facility, and did not hire any personnel to regularly produce. It is for these reasons that we put forward that this Company cannot be considered a manufacturing business.

Even in legal terms, this Company does not satisfy the enforcement regulation (Article 4) of the Industrial Accident Compensation Insurance Act: "When the employer produces original products on a regular basis and installs them directly according to a contract with

purchasers, this installation is deemed to be part of manufacturing. However, if such installation includes other building projects besides installing its own original products to fulfill subcontracts, this installation is not deemed as manufacturing." The Company's biggest building contracts were to install three subcontractors' products for their customer companies. The Company completed three projects as their subcontractor: 1) For Company S, the Company installed their product, a drying oven, in the Hyundai Motors Ulsan plant after tearing down the out-dated facility; 2) For Company M, the Company installed a heat-retaining facility for gas pipes in the Hyundai Iron Dangjin plant; and 3) For Company W, the Company installed pipes in the same Dangjin plant. Such subcontracting projects were not related to manufacturing at all, but purely to construction.

IV. Details of Administrative Appeals Commission Decision

1. Details of the Case

1) March 21, 2010	A daily worker suffers an occupational injury and applies to the Corporation for compensation
2) May 25 ~ Nov 11, 2010	The Corporation audits the Company to confirm type of business
3) Nov 11, 2010	The Corporation changes the Company's business registration and charges additional premiums
4) Feb 9, 2011	The Company files an administrative appeal
5) Jun 1, 2011	Two investigators from the Administrative Appeals Commission visit the Company to investigate the facts.
6) Aug 9, 2011	Judgment hearing held and decision made. (Cancellation of change to business registration and charges of additional premiums)

2. Decision of the Administrative Appeals Commission

1) The Corporation claimed that the business the injured employee worked for should be considered a business 'manufacturing metal products for construction' because the Company manufactured metal products for construction on its premises and installed them at construction sites. In addition to this, while the Company's business license stated it was a 'construction and manufacturing' company, its income statements showed product sales were a bigger portion of its income than construction sales, which the Company claims it intentionally falsified in order to secure a bank loan. To back this up, the Company stated that it didn't have the personnel, machines, or facilities to manufacture metal products for construction on its premises, and that it has never produced any metal products. When considering these claims, it is necessary that "type of business" be judged in practical terms by looking at the Company's goods and services, its production process, etc., not details of the business license, corporate registration, or financial statements.

2) 'Manufacturing' in "type of business" categorization means a business produces new products by physically or chemically changing organic or inorganic substances, and shall have a typical place and facility to manufacture, process, and assemble materials. The

Corporation also admitted in its investigation report and rebuttal to the Administrative Appeals Commission that the Company had not registered itself as a manufacturing plant, and was not equipped with production facilities.

3) In 2007, its income statement showed ₩70 million in product sales and ₩1.3 billion in construction sales, with actual calculation of tax invoices for sales as ₩1.37 billion, the same as its income statement. The company stated that some money was made from product sales even though there were no product sales. In 2008, its income statement stipulated ₩600 million in product sales and ₩400 million in construction sales, but its actual tax invoices claimed construction sales of ₩1 billion in 2008. In 2009, its income statement showed ₩2.6 billion in product sales and ₩200 million in construction sales, but its actual construction sales were ₩2.8 billion according to tax invoices issued in 2009. Accordingly, we determine that the product sales given in the 2007, 2008, and 2009 income statements were falsified, regardless of the details of its actual sales the Company gave, in order to prepare favorable documents to secure loans from banks in the future. Except for the facts that the Company's business license showed that it was licensed for 'manufacturing', its financial statement showed details for product sales, and documentation on the Company's business submitted by the employer to the Corporation showed that the Company began its manufacturing from November 1, 2007, we could not find any other evidence that the Company, in practical terms, produced and sold metal products for construction.

Occupational Fatalities and Follow-up Actions

I. Occupational Fatalities: a Related Case

If an employee dies from an occupational accident, the employer must follow the procedures required by law and take actions deemed appropriate for the victim's family. When occupational fatalities occur at the workplace, the police will immediately begin investigating, while the company shall be required to begin discussing compensation and other necessary issues with the family so that funeral services can be conducted without delay. In relation to the above issues, I would like to look at one occupational fatality and the resulting actions taken by the employer, as a way to explain measures that companies can prepare in advance of any such tragedy.

Company A (hereinafter referred to as "the Company") operates a warehouse at Suwon airfield. At 8:20 in the morning on September 6, 2013, Employee A (hereinafter referred to as "the Employee") was in a warehouse guiding a forklift carrying air conditioning equipment. The air conditioner slipped off the left side of the forks and fell on the Employee, which caused serious injury. He was taken to Aju University Hospital in Suwon, where he died during emergency treatment. At this news, the Company called the police immediately to report the death. Once confirming the Employee had died, the police visited the accident site to begin their investigation. The Company called this labor attorney (who provides regular legal advisory services) in the afternoon of September 6, and requested answers to three urgent questions related to the procedures they were to follow in handling this accident.

The first question was "What recommendations do you have regarding overall handling of this occupational fatality, and the surviving family?" The second question was "While the Company handles this case through Industrial Accident Compensation Insurance, do we have other legal liabilities like civil claims or criminal charges?" The third question was "What process do we need to follow to have Industrial Accident Compensation Insurance cover this case?" *[For reference, the Employee was a senior citizen, 72 years of age, with a monthly average wage of ₩1,719,340, and a daily ordinary wage of ₩56,065].* This article will discuss the responses given to the Company's questions.

II. Handling Occupational Fatalities & the Surviving Family

First of all, as occupational fatalities are regarded as serious occupational accidents, the company shall immediately report it to the district Labor Office. The on-site manager shall begin discussions with the surviving family for funeral arrangements while the personnel team shall prepare to deal with the related corporate responsibilities. The following information details the major issues companies who face this tragedy must deal with: reporting a serious occupational accident, handling the surviving family, methods for compensating surviving family and calculating those industrial accident compensation benefits, and civil compensation for damages.

1. Immediate reporting of a serious occupational accident

In the case we are looking at, the Company shall immediately report the fatality to the

police and the district Labor Office as this is a serious industrial accident. Should a company fail to report within 24 hours, a fine of up to ₩10 million will be levied.

□ **Reporting Incidence of Industrial Accidents (Article 10 of the Occupational Safety and Health Act: a fine up to ₩10 million will be levied for failure to report.)**

○ When an occupational death, injury or illness requiring medical treatment for four days or longer occurs, the employer shall report to the district Labor Office through an Occupational Accident Report Form within one month: Provided, that this shall not apply if medical care benefits, survivors' benefits, or pensions for surviving family members have been applied for during that same period.

○ **When an occupational accident falls under one of the following serious occupational accidents, the report shall be made immediately:**

1. When the occupational accident results in the death of one or more employees; 2. When the occupational injuries of two or more requiring medical treatment for 3 months or longer has occurred at the same time; and 3. When the occupational injuries or illness of ten or more employees occur at the same time.

2. Handling the surviving family

The surviving family requested three items in a text message as required before conducting funeral services. The first was confirmation by the Company that the accident would be covered by Industrial Accident Compensation Insurance. Second was an agreement on the Company's responsibility in addition to industrial accident compensation and its related schedule. Third was an advance payment by the Company for medical expenses and funeral service fees. The Company responded in the following manner, and a three-day funeral service was held on September 8th (two days after the accident) on the basis of this response.

The company offers its response to the following items regarding your request by text message:

1. *Coverage by Industrial Accident Compensation Insurance: The company promises to handle this case through Industrial Accident Compensation Insurance, and will take care of it as soon as possible upon receipt of the necessary information from you.*
2. *The company's responsibility besides industrial accident compensation and its related schedule: If the company must be responsible for something more, we will accept that responsibility. We promise to meet and consult with the surviving family along with the company's appointed labor attorney and the surviving family's representative (or the surviving family's appointed labor attorney) on the date that the surviving family schedules.*
3. *Advance payment for medical expenses and funeral service fees: We are afraid that we are unable to pay the expenses in advance due to the fact that the fatality occurred suddenly and the funeral is scheduled for this weekend. Please cover the costs first and then we will reimburse you as quickly as possible. If the surviving family wishes, we will provide reimbursement for the medical expenses and funeral services on Monday, September 9th, the earliest time available for bank transactions.*

3. Calculating industrial accident compensation (survivors' pension and funeral expenses)

Surviving family members can request survivors' benefits and compensation for funeral expenses in accordance with the Industrial Accident Compensation Insurance Act, so it is desired for companies to calculate the benefits in advance. Compensation for occupational fatalities includes expenses for medical treatment and funeral services, and survivors' benefits. Lump sum payments for survivor's benefits in this case equaled ₩72,884,500, and for funeral expenses ₩9,300,770, for a total of ₩82,185,270. The details for compensation through Industrial Accident Compensation Insurance are as follows:

○ **Survivor's benefits:** 1,300 days' average wages;

Options for receipt of payment: 1) 100% Pension or 2) half pension and half lump sum. In this case, the total lump sum was calculated as ₩56,065 x 1,300 days = ₩72,884,500.

(1) 100% pension (the Employee's daily average wage was ₩56,065)

① Basic pension: ₩56,065 x 365 days x 0.47 = ₩9,617,950 per year

② Addition for Basic pension: ₩56,065 x 365 days x 0.05 x 1 = ₩1,023,186

(Up to four surviving family members can be added for additional basic pension: The victim's directly dependant family members – spouse, parents aged 60 or older, and children aged 19 or younger)

If the 100% pension is chosen, the total sum of ① and ② is ₩10,641,136. As this amount is divided by 12 months, the monthly payment would be ₩886,761.

(2) Half pension and half sump sum payment

① Lump sum: ₩72,884,500 x 50% = ₩36,442,250

② 50% pension: ₩886,761 x 50% = ₩443,380

○ **Funeral expenses:** 120 days' Average wages (Minimum: ₩9,300,770 ~ Maximum ₩13,051,700).

The calculation in this case was ₩56,065 x 120 days = ₩6,727,800. As this calculated amount is less than the minimum funeral expenses, the minimum amount, **₩9,300,770**, shall be paid.

Should the Employee's surviving wife die while the monthly pension payments made total less than the lump sum payment would have been, the remaining money shall be paid out in a lump sum to the next closest surviving family.

4. Civil claims on compensation for damage

When an employee dies from an occupational accident, as occurred in this case, the employer shall file for compensation through Industrial Accident Compensation Insurance, and then will be exempt from responsibility for such compensation. However, in cases where employer negligence (for example, a failure to take adequate safety precautions), results in the employee's death, the employer may also have civil liabilities to the victim's surviving family, in addition to industrial accident compensation.

Civil compensation for damages refers to all damages the victim suffered from proximate causal relations to the company's negligence. The judicial ruling divides such coverage of compensation for damages into three parts: direct damage, indirect damage and emotional damage. Direct damage due to occupational fatality would be medical and funeral expenses, while indirect damages would include the lost monthly wages for the period from death to retirement age and the lost severance pay due to early retirement; Emotional damages would be compensated by payment for consolation. General speaking, if the employee is younger or is less at fault than the employer, it is better for the family to choose civil compensation, as civil compensation for damages may far exceed the amount claimed for industrial accident compensation. However, in this case, as the victim was 72, lost monthly income would be significantly less, and lost severance pay would not occur, so only emotional damages would need to be decided.

For occupational fatalities, the Occupational Safety and Health Act regulates only medical care benefits, survivors' benefits, and funeral expenses. It does not include consolation payments, which means that such payments cannot be covered by industrial accident compensation. However, any benefits received for industrial accident compensation does not affect the right to claim civil compensation for emotional damage, meaning companies are not exempt from the responsibility to compensate for such damage. Accordingly, when an accident can be blamed on employer negligence, the surviving family can receive industrial accident compensation and claim civil compensation for emotional damages. The court will determine the amount of consolation payment in consideration of the victim's age, the degree of negligence, the amount of compensation received, etc.

III. Other Legal Responsibilities for Employers, such as Civil Claims & Criminal Charges While Claiming Industrial Accident Compensation

1. Industrial accident compensation and civil claims for compensation

In cases where the employer is not at fault, the victim (or victim's family) can only receive industrial accident compensation according to the Industrial Accident Compensation Insurance Act, but they cannot claim compensation for damages through the Civil Law for illegal actions by the employer. However, if the employer is determined to be at fault for the accident, then the victim (or the victim's family) can claim compensation for damage through the Civil Law for illegal actions by the employer, according to the degree of fault. Provided, that industrial accident compensation awarded can be deducted from any such claims.

2. Industrial accident compensation and claims for criminal damage compensation

If there exists a direct offender and victim relationship in an occupational fatality, the surviving family can seek compensation for criminal action against the individual offender. The company in this case will not be the subject of the claim, but may still be the target of an intensive audit by the labor inspector for compliance with industrial safety rules according to the Occupational Safety and Health Act, as the workplace had a serious industrial accident. If, during this audit, the company is found to have violated any of the safety rules, it would

have criminal charges filed against it. Accordingly, workplaces suffering a serious occupational accident shall need to have made thorough preparations to ensure they are not in violation of the safety rules found in the Occupational Safety and Health Act.

Article 66-2 (Penal Provisions) of the Occupational Safety and Health Act: A person who has caused the death of a worker in violation of Article 23 (Safety Measures) (1) through (3), or Article 24 (Health Measures) (1) shall be punished by imprisonment for not more than seven years or a fine not exceeding 100 million won.

IV. Covering an Accident through Industrial Accident Compensation Insurance

Industrial accident compensation is commissioned to and handled by the Employee Welfare Corporation by the Ministry of Employment & Labor. Surviving family members shall apply to the district office of the Employee Welfare Corporation for the benefits by filling out the form, "Application for Survivors' Benefits and Funeral Expenses" and receiving the employer's confirmation signature on the form. In cases where a serious industrial accident has occurred, the employer shall report to the Ministry of Labor immediately, while for minor industrial accidents, the employer shall apply for industrial accident compensation within one month from the date the accident occurred, or can submit an Occupational Accident Report Form to the district Labor Office. For accidents that are very clearly occupational, as was the case for the accident described here, only two or three weeks are necessary to receive confirmation as an industrial accident and related compensation. However, for occupational illnesses, it will take a minimum of two months for confirmation as an industrial illness. The procedures for determining whether an accident or illness is occupational are: Application for medical care benefits → Confirmation of illness details → Analysis of relationship between working environment and illness → Confirmation of advisory medical doctor's opinion → Approval or rejection by the Occupational Illness Deliberation Committee.

Cause of Death Verified as Occupational Illness through Epidemiological Investigation

I. Introduction

When an employee applies for compensation for an occupational illness, the Korea Workers' Compensation & Welfare Service (hereinafter referred to as "COMWEL") determines whether the employee has an occupational illness or not through its own investigation, the opinions of a medical professional (or professional agency), and a review by the Occupational Disease Determination Committee. In cases where its own investigation is unable to determine whether there is a relationship to work, COMWEL can ask a professional agency to conduct an epidemiological investigation, through which it will determine whether the illness in question is an occupational illness or not. Such illnesses as black lung disease (Pneumoconiosis) and lead poisoning, and conditions such as noise-induced deafness are more easily linked to occupation than some other illnesses such as cancer, hemoptysis (vomiting blood), asthma, and dermatitis are not so easy to link. In this case, gathering information on the working environment will be of considerable help.

I would like to introduce a case of occupational illness which resulted in death from vomiting of blood. The employee in question had had a lung illness for a long period of time, and along with severe coughing, became worse from his harmful working environment. The labor attorney for this case claimed, on the basis of a statement from his surviving family, that the industrial illness victim (hereinafter referred to as "the employee") died from his long-term illness deteriorating through exposure to harmful chemicals like sulfuric acid in the process of zinc smelting. The labor attorney submitted an application for survivor's benefits without a direct investigation. After receiving the application, COMWEL asked a professional agency (the Occupational Lung Disease Research Institute[4]) to conduct an epidemiological investigation. Once the results were in, COMWEL concluded a close relationship between the employee's workplace environment and the exacerbation of his illness, accepting his death as due to a work-related illness.

II. Summary[5]

(1) The employee had worked at a zinc smelting factory since 2006. When he died at Aju University hospital at age 61 on December 16, 2011, his spouse applied for Survivor's Benefits on February 29, 2012 to the COMWEL Youngju Office.

(2) On December 9, 2011 when the employee began vomiting blood and experienced difficulties in breathing, he was admitted to Wonju Christian Hospital where he continued to vomit blood and suffer from pneumonia. He died from respiratory and organ failure on December 16, 2011.

(3) Since joining OO zinc smelting company[6] on June 12, 2006, the employee had worked as a machine operator in charge of a filter press machine for a total of 5 years and 3 months. The smelting process at a filter press extracts zinc by dividing cake (solids) and filtrate (liquid) after melting sludge coming from a sludge container. The employee swept up the cake on the floor when it fell in the

[4] The Occupational Lung Disease Research Center (run by COMWEL and under the Ministry of Labor) was established in Ansan Sanje Hospital for the purpose of clinical and preventive studies on Lung Diseases.

[5] Survivor's Compensation Case (Daegu-2013-0000296, May 9, 2013) – Park, Kyuhee , Labor Attorney of Kangnam Labor Law Firm represented the case.

[6] Zinc smelting process: mining ore → milling → smelting → refinement. Then, 90% of zinc is retrieved.

process of dividing from the filtrate. In this smelting process, sulfuric acid[7] was used and the employee was continuously exposed to the sulfuric acid gas.

(4) Before beginning employment at OO company, the employee had worked as a street cleaner from 2001 to 2005 (aged 51 to 55) from 4 am to 4pm, during which he began suffering from, and receiving treatment for, bronchitis and obstructive lung disease due to early morning cold air.

(5) As mentioned, the employee had been exposed to sulfuric acid gas, mineral dust, etc. continuously at the workplace while suffering from existing bronchitis and obstructive lung disease. In addition to this, the employee had to work longer hours than normal for a long period, which, combined with the stress from worry he would lose his job due to his poor health, was claimed to have caused pulmonary (lung) hypertension, resulting in his vomiting blood and ultimately his death.

(6) Fifteen months after his spouse applied for Survivor's Benefits, during which COMWEL conducted an investigation, received medical opinions, and the results of an epidemiological investigation, the Occupational Disease Determination Committee agreed that the employee died from an occupational illness.

III. The Limits of Investigation and Request for Epidemiological Investigation

1. The applicant's difficulties in investigating for herself

In the application for Survivor's Benefits, the applicant claimed that the employee had suffered from chronic fatigue due to working in two shifts for a long period of time; had stress and insomnia due to worries over losing his job because of his illnesses; and had been exposed to a harmful working environment (including sulfuric acid), which had caused pulmonary hypertension, vomiting of blood, and his death. The claim that the employee suffered from fatigue and stress could be causes for stroke or heart disease, but not for vomiting blood. Accordingly, the applicant had to verify that the workplace's harmful substance (sulfuric acid) had exacerbated the employee's existing conditions of bronchitis and obstructive lung disease and had caused pulmonary hypertension and vomiting of blood. However, the applicant was not able to gain access to the workplace, and had to depend on the COMWEL investigation. The following is the result of the epidemiological investigation from the professional agency commissioned by COMWEL.

2. COMWEL request for an epidemiological investigation

When there is difficulty in determining whether an illness is occupational or not, COMWEL can ask for professional opinions from a medical doctors' advisory council, the industrial safety and research centers of the Korea Industrial Safety Corporation, or other agencies that can evaluate occupational diseases.[8] Also, the Medical Care Processing Rules describe that when it comes to difficulty in determining recognition of an occupational illness concretely, COMWEL may ask relevant institutes (such as medical doctors' associations or industrial safety research institutes) to give advice and participate in the investigation.[9] This includes cases 1) where it is difficult to verify whether the employee's existing illness affected the occupational illness, 2) where meaningful difference exists between the medical doctor in charge and the advisory doctor regarding clinical

[7] Sulfuric acid (H2SO4) is a highly corrosive mineral acid. It is a pungent, ethereal, colorless to slightly yellow viscous liquid which is soluble in water at all concentrations.

[8] Enforcement Rule-Article 39-2 of the Industrial Accident Compensation Act

[9] Article 24 of the Medical Care Processing Rules

signs that will show the degree of the employee's exposure to harmful materials, 3) where it is difficult for a doctors advisory council to determine relation of an illness to occupation, or where there are no criteria for the occupational illness, and 4) where an epidemiological investigation is necessary to recognize whether a cause-and-effect relationship exists between work and illness. Upon concluding this investigation, as long as there is no clear evidence to disprove the illness was work-related, it should be accepted as an occupational illness.[10]

3. Epidemiological investigation and recognition of the occupational disease by the Occupational Lung Disease Research Center

(1) Understanding workplace environment

The employee's work was to operate the filter press (F/P disintegration) machine to retrieve a small amount of metal out of sludge coming from a sludge container. In this process, the employee was exposed to steam and carbon monoxide (CO) from the leftover liquid and cake. There is no artificial ventilation system in the disintegration process of the filter press, but there is natural ventilation in the roof of the three storey building. The agency measured the air quality of the workplace twice: on October 10, 2012, for 5 hours and 40 minutes to check the internal air of the workplace with a multiple gas measurement instrument; and on March 26 & 27, 2013, for 20 hours to check carbon monoxide concentrations in the air near the filter press, with a carbon monoxide measurement device. Additionally, workers' individual exposure was measured by affixing the measurement instruments to the waists of three workers onsite for twenty hours.

The results of measurement showed an average density of 38ppm of carbon monoxide in the work area around the filter press. At the height the worker was breathing at the top of the F/P machine, concentrations exceeded 500ppm, the limit of the measurement instrument. Individual measurement done for 20 hours averaged 19ppm, 60% of the exposure limit according to the Ministry of Labor. However, as time passed, the density of carbon monoxide increased up to a maximum of 185ppm. Besides carbon monoxide, hydrogen sulfide was detected at an average of 5.1ppm.

(2) Effects of carbon monoxide & hydrogen sulfide on the human body

The normal concentration of carbon monoxide is 0.1~0.2 ppm. This carbon monoxide combines with hemoglobin delivering oxygen to the body, and results in carboxy-hemoglobin, causing hypoxia (low oxygen levels in the blood). This contracts blood vessels in the lungs and increases resistance of lung vessel (lung rigidity), which causes pulmonary hypertension. As mentioned, hydrogen sulfide was also measured at an average of 5.1ppm around the filter press. If a healthy adult is exposed to hydrogen sulfide up to a density of 50ppm, pulmonary edema (fluid into the lungs) appears. Exposure to a density of 5.1ppm of hydrogen sulfide could not cause lung damage, but hydrogen sulfide just like carbon monoxide is also chemical material to influence lung hypertension. Accordingly, as the employee had repeatedly been exposed to a high concentration of carbon monoxide, this mixed exposure to hydrogen sulfide could have affected the occurrence of lung hypertension.

[10] Kim Kyusang, "Examples of Occupational Disease", Monthly Labor Law Magazine, Jan 2008, JoongAng Economy Publishing Company

(3) Occupational illness

The employee, who had been exposed to a density of carbon monoxide since December 2006, experienced headaches and a decline in physical abilities that could have been due to the carbon monoxide exposure. Moderate lung hypertension was diagnosed in August 2010, four years after beginning employment at the zinc smelting company. This had become severe hypertension by October 2011. Upon reviewing medical records from that time, no diseases were diagnosed that would be responsible for lung hypertension. It could, however, have occurred from the repeated exposure to a high density of carbon monoxide in the course of working at his last workplace, and possibly from the exposure to hydrogen sulfide. Lung hypertension causes vomiting of blood. This hemoptysis (vomiting of blood) does not reverse easily, and can easily reoccur even upon improvement. It was therefore concluded that the employee died from the vomiting of blood, caused by lung hypertension.

IV. Conclusion & Content of the Letter on Determination of Occupational Illness

1. **Conclusion**: Making a determination of whether occupational illness exists or not through epidemiological investigation requires time and money, but provides objective and scientific processes, allowing both the employee and the decision-making body to easily accept the findings. Accordingly, the use of a professional agency to conduct the epidemiological investigation is recommended, and can help stop further occupational illness in the early stages by providing accurate data on harmful factors in the workplace.

2. **The letter on determination of occupational illness**[11]

   1) According to the epidemiological investigation submitted by the professional agency that COMWEL commissioned, the employee had been exposed to carbon monoxide and hydrogen sulfide together, causing lung hypertension which in turn resulted in vomiting of blood and death. It is therefore determined that the employee's death was from occupational illness.

   2) The advisory medical doctor to COMWEL stated that lung hypertension had been the result of repeated exposure to a high concentration of carbon monoxide, which had caused acute respiratory failure and acute pneumonia, leading to death.

   3) The Occupational Disease Determination Committee reviewed the investigation findings, the examinations submitted by COMWEL and based on medical opinions, and the measurements of the workplace environment conducted by the professional agency. The Committee determined that the employee's lung hypertension was the result of repeated exposure to carbon monoxide and hydrogen sulfide, with complications such as vomiting blood, and resulted in the employee's death.

   Based upon the above facts and medical opinions, this employee's death can be admitted as a result of occupational illness according to Article 37 of the Industrial Accident Compensation Insurance Act.

[11] Occupational Disease Determination Committee (Daegu-2013-0000296, May 9, 2013)

Case of Suicide due to Depression

I. Introduction

Suicide is emerging into a serious social phenomenon, occurring more frequently due to higher depression rate. Depression, a disease to be treated medically with special concern, can lead to extreme behaviors such as committing suicide if it is neglected on the basis that symptoms are difficult to detect. The following case of <Suicide due to Depression> demonstrates considerable causality between the employee's illness and work, thereby allowing admission as occupational disease. According to the Implementation Regulation (Article 32) of the Industrial Accident Compensation Insurance Act (hereafter referred to as "IACI Act"), "if a suicide is committed by an employee who has received psychiatric therapies due to work stress or whose normal recognition ability, selection ability or mental control power has been affected due to work as determined by medical prognosis, it shall be admitted as a work-related accident."

An office manager of Law Firm x committed suicide due to occupational stress in April 2008. The victim's widow visited this Labor Law Firm and commissioned this case to prove the suicide of her husband occurred due to occupational stress. Upon initial investigation of the case, there was great deal of burden because a suicide-related case is generally hard to get admitted as occupational accident. After careful research, we were highly confident that our case would be accepted if we could satisfy the criteria of work-related accident as stipulated in the IACI Act. As a result, we successfully proved 'the suicide case due to depression' as an occupational accident and the survivors were able to claim pension from the nation.

II. Occurrence of Depression and Work Stress

1. The Employee's work environment

The victim, age 37, (hereafter referred to as "Employee") entered the Law Firm as a career office manager in October 2005. The Law Firm is a registered corporation engaged in lawyer's business and made up of six lawyers and six employees (one office manager and five staff assistants). The Employee drafted legal documents (civil, criminal and execution lawsuits), managed office staff, provided advisory consulting to clients, and provided assistance to the lawyers.

2. Excessive work volume

Before entering the current Law Firm, the Employee worked for a law office, which was not a corporate law firm, but an office of multiple lawyers, where each lawyer had an office manager, and where the Employee prepared legal documents for one lawyer. However, at the current Law Firm, a corporate law firm with 5 to 6 lawyers with varied specialties, the Employee was the only one to provide assistance to the lawyers in drafting legal documents. The Employee was a man of sincerity and responsibility, and made every effort to derive best results. Eventually, the Employee earned the lawyers' trust and was assigned to prepare legal papers for lawsuits with higher degree of difficulty.

3. Stress concerning the lawyer in charge

The lawyer who assigned the Employee with most work is known for his stubborn and strict

character. He had blamed the Employee severely for any mistakes and demanded perfection. He was easily upset and often raised his voice.

4. Depression diagnosed due to work-related stress

The Employee's health deteriorated with symptoms of depressed mood, fatigue, disinterestedness, loss of sleep and appetite, guilty conscience, and reduced confidence from December 2007 to early January 2008. Then, he was diagnosed with depression at a psychiatric clinic on January 5, 2008.

5. Severe psychological burden due to occupational negligence

In 2007, the Law Firm received a redemption request of outstanding loans (10 items) from a long time corporate client, and the Employee was assigned with that case. The Employee discovered much later that one of the loans lost an extinctive description, that equaled an amount to 50 million and that it was impossible for the company to claim the loan. The Employee told his spouse in despair just one week before his death, "The client company may request compensation for damage to my Law Firm, and the Law Firm may demand its compensation to me. In order to secure our apartment's deposit money, my ownership should be replaced with your name."

6. Long-distance business trip, work failure, traffic accident and suicide

1) The Employee was ordered by one lawyer to take a long-distance business trip to the local district on April 16, 2008. The purpose of the trip was to implement a 'provisional disposition of handing-over a child' according to a court decision, for a case in which the child's parents claimed custody of the child from the grandparents.

2) The Employee left the office at 5pm and drove the company car by himself to Kohung, South Chulla province. After driving for five hours, he arrived at Kohung at almost 11pm. In a small town where he arrived, he could not find a lodging facility and had to sleep in the car. He could not fall into sleep until 4am and only slept for three hours. On the following morning, the Employee met two court officials and the child's parents, headed to the elementary school together at 10:50am. However, the handing-over of a child to the parents was strongly resisted by the grandfather and the child who refused to leave the grandparents.

3) While the Employee was driving back to Seoul in the afternoon of April 17, he got into an automobile accident and took the damaged company car to a repair shop. At about 6:10pm, he boarded on the express bus for Seoul, and could not rest in the bus, as he had to report the car accident to the insurance company and brief the failed execution to the Law Firm. The Employee arrived at Kangnam Express Bus Terminal at about 9pm and came home past 11pm, where he had a light meal and went to bed. At approximately 6am early morning, the following day, he committed suicide by hanging himself on the mountain trail near his house.

III. Symptoms of Depression and Criteria of Work-related Accident

1. Symptoms of depression (Wikipedia)

Depression—different from feeling depressed temporarily—is a continual state of feeling

depressed mixed with sad emotion, low mood, and other physical symptoms. The main symptoms of depression are dejected mood and emotion, which follows with decrease in sleep, appetite and interest, unrest, thinking about committing suicide, and enervation. It also affects people with thoughts of uselessness about oneself, improper sense of guilt, and failed concentration and memory. People are chronically tired and cannot fall asleep well, and still tired even after sleeping long hours. Physical symptoms along with emotion, mood and appetite are characterized by headache, indigestion, pain at neck and shoulder, feeling heavy in the chest, etc. Severe depression can lead to delusion and hallucination.

2. Criteria of work-related accident under the IACI Act

1. Definition of occupational accident (Article 5 (1ho) of the IACI Act)

The term "occupational accident" means any wound, disease, physical disability, or death of a worker, caused by his/her duties.

2. Criteria of work-related accident (Enforcement Regulation (Article 32), the Act)

Accident caused by one of the following reasons shall be regarded as work-related accident.

1) When the accident takes place while the employee performs contractual duties under supervisory control and management of the employer, or when the accident occurs due to defects of facilities or management;
2) When there is considerable causality between the accident and the injury of the employee;
3) When the accident is not caused by the employee's intentions, self-injury, criminal behaviors, etc. Provided, however, that if a suicide is committed by an employee who receives mental treatment due to work stress or whose normal recognition ability, selection ability or mental control power is affected due to work by medical analysis, it shall be admitted as a work-related accident.

IV. Conclusion

Depression is a disease that can be found in anyone, and shall be treated by appropriate medical examination and therapy. If neglected and overlooked as mere psychological condition, the employee may resort to extreme alternatives to find solutions, as illustrated in the case described. In situations where an employee is diagnosed with depression in relation to work, the employer shall make every effort to provide care as part of employer's responsibility to provide safe work environment. It is important to take appropriate measures through grievance handling procedures and to prevent reoccurrence in the workplace.

Occupational Disease, a Stroke, Occurred at Lunch Time

I. Case Summary

1. The victim of the occupational disease, (hereafter referred to as “Employee”), entered the Korea Agriculture Corporation (hereafter referred to as “Company”), in November 1973. The employee was promoted in December 1998, and since 2000 he has been working as a branch manager of the Yungi branch office affiliated to Yungi-daekum Division.
2. While the Employee was having lunch together with his coworkers at a nearby restaurant at 12:10 on March 2, 2005, he collapsed without consciousness and then was taken to the University Hospital, where he died due to a stroke by bleeding in the brain at 2 am on March 13, 2005
3. The employee’s survivor visited this labor attorney and entrusted the case. The survivor applied for payment of survivor’s benefits and funeral expenses to the Branch Office of the Employee Welfare Corporation (EWC) on June 8, 2005, but the Branch Office rejected the application on August 10, 2005 because there was no considerable causality between the employee’s work and disease.
4. The survivor applied for examination of the Branch Office’s rejection to the Head Office of the EWC on September 28, 2005, but the Head Office rejected the application on November 21, 2005. Then, the survivor applied for examination of the Head Office’s rejection to the Commission of the Industrial Accident Compensation Insurance on April 18, 2006.
5. So, the survivor filed this case to Deajeon District Court in August in 2006 and won a lawsuit.

II. Employee Welfare Corporation’s Claim

1. According to the Industrial Accident Compensation Insurance Act (IACI Act), the term “occupational accident” means any wound, disease, physical disability, or death of a worker, which is caused by his/her duties. That is, there shall be considerable causality between the employee’s work and disease. This considerable causality requires objective facts to be recognizable by which the cause of the accident is attributable to the work and by which the disease became worsened remarkably in excess of natural speed to be worsened in that disease. Accordingly, this work-related accident shall be decided by medical opinions based upon such facts.
2. We reached our conclusion after considering disease process, work performance and medical opinions. While having lunch at 12:10 on March 2, 2005, the employee showed abnormal acts like rubbing his eyes, was taken by an ambulance to the University Hospital where he had a surgery surgoperation, but die without being recovered. So, the employee’s disease can not be recognized as an accident occurred at work, and we confirmed that there had not been occurrences apparent chronic fatigue at recent work or sudden changes at work environment on occurrence day or before. Although it was assumed that the employee had some psychological stresses due to the lowest result at the company’s business evaluation in 2004 and some parts of his work had became

heavier overwork since the area of his Branch Office was chosen as the Administration-centered Complex City, there are a shortage of medical opinions that such work performance could cause the stroke. However, there are a majority of medical opinions that his accident occurred naturally due to potential risk factors causing a stroke like his high blood pressure, overweight, etc. Accordingly, according to the aforementioned facts, it is hard to be recognized that there is a considerable causality between the employee's disease and work.

III. Survivors' Claim

1. The accident occurred at recess hours (lunch time), which is not related to work performance

   Rebuttal : According to the Supreme Court ruling (Apr 25, 2004, Supreme Court 2000da2030), if the employee's behaviors are physiological requirement, reasonable and necessary actions in relation to the labor service after recess hours, they shall be recognized as work-related accident.

2. There has not been apparent chronic fatigue at recent work or sudden changes at work environment on occurrence day or before.

   Rebuttal : The area of Yungi branch office of which the employee is in charge was chosen as the administration-centered complex city. Due to this change, there have been more questions and complaints from residents, which disrupted the 'Large Scale Project of Agricultural Land' and caused the lowest business performance among regional Agricultural Corporation divisions to the Yungi-daekum Division that comprises his Branch Office. The Division director who was appointed in early January 2005 extended one time Branch Managers meeting to two times and encouraged bigger result at each branch office. In particular, the employee paid more attention to the Large Scale Project as it could be easily evaluated as its result was shown in digital figure. So, the employee strived to make the most of his personal networking in January and February, and promoted the Large Scale Project through his relatives and friends, which resulted in making him on the top manager in business performance out of 27 managers of the Division concerned.

3. The day before the accident was holiday.

   Rebuttal : The employee drank a lot because of a quarrel with other coworker over the Large Scale Project on February 28 (Monday). While he took a rest at home on March 1 (Tuesday, holiday), he conducted his work calling land owners in relation to the Large Scale Project. This showed that he managed to work out his Project-related duties even during holiday.

IV. Related Legal Regulations

Article 5 (Definition), the Industrial Accident Compensation Insurance Act:

The term "occupational accident" means any wound, disease, physical disability, or death of an worker, which is caused by his/her duties.

Article 39 (Occupational Disease or the Death caused by the Reason), the Ordinance of the Ministry of Labor.

The criteria for recognizing occupational accidents concerning 'occupational disease or the death caused by the reason shall be prescribed by the following attachment table:

[Attachment 1] The criteria for recognizing occupational accidents concerning 'occupational disease or the death caused by the reason.

1. Cerebral accident or cardiac disorder

(1) When the employee at work had such diseases as Intra-cerebral Hemorrhage, Subarachnoid Hemorrhage, Cerebral Infarction, Hypertensive Encephalopathy, Angina Pectoris, Myocardial Infarction, and Aortic Dissection, or died due to aforementioned diseases, this is work-related disease. In cases where the disease occurred outside working hours, if considerable causality between the occurrence of the disease or its deterioration and the work was evident in the medical perspectives and time logic, it is regarded as work-related accident.

1) In cases where sudden and unexpected tension, excitement, horror, surprise and sudden changes at work environment causes remarkably physiological changes to the employee;

2) In cases where the increase of work burden like volume of work, time, intensity, responsibility, and changes at work environment causes physical and mental fatigue chronically to the employee; and

3) In cases where Intra-cerebral Hemorrhage and Subarachnoid Hemorrhage occurred during working hours or where the reasons of the death by the same diseases were not verified medically to be spontaneously deteriorated.

(2) "Sudden changes at work environment" stipulated in the Subparagraph (1) means workload to be apparent enough to affect normal function of cerebral blood vessel or cardiac blood vessel.

(3) "Chronic fatigue" stipulated in the Paragraph (2) means that the employee's work volume and working hours increased 30% or more continuously for three days than normal work, or that the employee's work volume, working hours, intensity, responsibility or working environment has changed dramatically enough for the general people to not be able to get adjusted.

2. Related ruling (Supreme Court ruling on March 9, 2006. 2005 doo 13841)

According to Article 5 (1) of the IACI Act, the "occupational accident" means any disease which is caused by his/her duties, and there shall be causality between the employee's work and the disease occurred. Although there was no direct relation between the main cause of the disease and work performance, at least, if occupational fatigue or stress overlapped with the main causes of the disease, causing or deteriorating the disease, it is assumed that there is causality between them. The cause and effect shall not be verified in terms of medical or physical science. If it is assumed that there is considerable causality between the work and the disease in considering all given facts, it shall be regarded that there was verification. In cases where the basic and potential disease that is no problem carrying out normal work duty has become suddenly deteriorated faster than natural speed of deterioration due to heavy workload, it is also regarded that there was verification. Whether there is causality between the work and the death shall be estimated not by the health and physical conditions of the employee concerned, but not average employee.

V. Conclusion (Daejon District Court Ruling on Apr 18, 2007, 2006 Guhap 3836)

1. The employee had suffered from chronic fatigue and stress since January 2005 due to the Yungi-daegum Division's poor business performance in relation to 'Large Scale Project of Agricultural Land', the encouragement of the new Division director appointed in January 2005, difficulties of implementing Large Scale Project because of construction plans of the Administration-centered Complex City, and mental stress coming from repeated failure in promotion and proactive efforts not to miss the last opportunity to promotion.
2. The employee suffered from a slight stroke in July 1988 and was hospitalized for regular treatment and visiting treatment. As the employee had received treatment of high blood pressure until last moment, it could be assumed that his occupational fatigue and stress might deteriorate his chronic disease.
3. As we review that the cause of the employee's death was due to a stroke by bleeding in the brain, but it was recurrence of his past stroke, it is estimated that his past stroke caused by occupational fatigue and stress and his chronic high blood pressure were suddenly deteriorated faster than natural speed of deterioration or recurred, which led to blood bleeding in the brain and caused death of the employee. Accordingly, this case belongs to the occupational disease under the Industrial Accident Compensation Insurance Act.

Occupational Disease resulting from Food Infection on a Business Trip

I. Case Summary

1. The victim of the occupational disease, (hereafter referred to as "Employee") began working for Construction Company D on January 1, 1995 as an electric researcher at the company's Technical Center. For a total of two days and one night —September 25, 2006 to September 26, 2006--the Employee went on a business trip to Daegu and Guje. When he returned to work the following day on September 27, he felt a chill, but continued to work normally. On August 28, he took a day off using his annual leave due to suffering from fatigue. On September 29, when his conditions worsened, the Employee was hospitalized at Aju Hospital, where he was treated, but died at 12:30 PM on September 30, due to virus Cirrhosis of the liver by hepatitis B and blood poisoning.

2. Following the Employee's death, the surviving family applied for survivors' pension and funeral expenses to the Branch Office of the Employee Welfare Corporation (hereafter referred to as "Branch Office"), but the Branch Office rejected the application on the grounds that medical survey and objective investigation revealed little evidence that the Employee's death was related to overwork. The Branch Office argued that even if the Employee, who was in poor health at the time, had died resulting from eating food infected with Vibrio virus on his business trip, there was no considerable causality between food consumption and work performance.

3. The surviving family consulted the Labor Attorney for a review of the rejected decision and appealed to the headquarters of the Employee Welfare Corporation. After further scrutiny, the Employee Welfare Corporation admitted the case as an occupational disaster.

II. Brach Office's Claim

1. The Employee was hospitalized for body aches in Aju University Hospital on September 29, 2006 and died on the following day from blood poisoning suspected of a Vibrio virus infection. The Employee worked five days per week as an electric researcher. It was investigated that he did not suffer extreme stress or physical fatigue; it could be assumed he was infected with Vibrio virus from oyster rice eaten at the restaurant he had dined while on his business trip. As a patient of Hepatitis B, he was diagnosed with Cirrhosis of the liver during his physical examination check-up in 2004. He neglected the doctor's advice to seek further precision examination. Additionally, his medical records indicated that the Employee consumed three bottles of Soju during one sitting on average 3 times per week. Given the fact that those who have Cirrhosis of the liver are susceptible to blood poisoning from Vibrio virus, we determined the Employee's poor management of his own health had led to his infection. Hence, we concluded there was no considerable causality between food consumption and work performance.

2. As the Employee died on account of a blood-poisoning shock, Vibrio blood poisoning, acute insufficiency, and Hepatitis B-typed Cirrhosis, there was no basis to admit that his death was due to occupational fatigue. The doctor stated it would be difficult to relate work performance to

his death, because the Employee was infected with the Vibrio virus when his health was so poorly managed. Similar judicial ruling showed there is no relation between food consumption and work performance. Hence, we concluded his death is an accident not related to work.

Although the Employee ate a swellfish that caused secondary infection of virus peritonitis, it is difficult to accept the occasion as an occupational disaster as there is little relation between food consumption and work performance. (Oct 10, 2006, Seoul Administrative Court 2006 Guhap 15202)

III. Survivors' Claim

1. According to Article 36 (1) (Accident on a business trip) of Enforcement Regulations, Industrial Accident Compensation Insurance Act, in cases where the employee dies or becomes injured due to an accident caused while on duty outside the workplace—
   i.e. a business trip—it is admitted as an industrial accident. This is because the employee's actions taken on a business trip are deemed as work under employer's supervision and control.

2. The Employee was inflected with the Vibrio virus after he ate the food provided to him by a client on the business trip. Dining with clients demands similar physiological performance as in regular work setting. Even though the Employee had managed his health poorly, he had no problems in carrying out his duty. According to the Doctor, the Vibrio virus can be very fatal to patients with chronic liver diseases, as in this case.

3. Despite being at fault for the poor management of his health, if the employee had not eaten the food--essential physiological behavior- on his business trip under his employer's supervision and control, he would not have been infected with the Vibrio virus that resulted in his death.

4. As the Employee died from a Vibrio virus infection after eating the food –essential physiological behavior-- while on the business trip, there is considerable causality between the Employee's death and his work performance, and the case should be classified as occupational disaster under the Industrial Accident Compensation Insurance Act. Hence an application for review to the headquarters of Employee Welfare Corporation was submitted..

IV. Related Legal Regulations

1. Accident on a business trip (Article 36 of Enforcement Regulation, the Industrial Accident Compensation Insurance Act)
   ① In cases where the employee dies or becomes injured due to an accident while carrying out his/her duty outside the workplace under the employer's order, such as a business trip, it is admitted as industrial accident. Provided, however, that if this shall not apply to one of the following cases, it is not regarded as an industrial accident:
      1. The accident occurred at a non-regular route on a business trip;
      2. The accident occurred as a result of the employee's private behavior, self-injury or criminal offense, or due to a cause of aforementioned actions;

3. The accident occurred in violation of the employer's direction

② In cases where the employee dies or becomes injured due to an accident while on route to or leaving the workplace under the employer's supervision, it shall apply to Paragraph ①.

③ In cases where the employee dies or becomes injured due to an accident that occurs during the period from starting work and to finishing work off-site, under the employer's direction, it shall apply to Paragraph ①.

2. Criteria of work-related accident (Article 32 of Enforcement Regulation, the IACA)

Accident caused by one of the following reasons shall be regarded as work-related accident.

1) When the accident takes place while the employee performs contractual duties under supervisory control and management of the employer, or when the accident occurs due to defects of facilities or management;

2) When there is considerable causality between the accident and the injury of the employee;

3) When the accident is not caused by the employee's intentions, self-injury, criminal behaviors, etc.

V. Conclusion

1.Fact finding

Before the accident, the Employee had carried out his ordinary duties as an electric engineer without much occupational fatigue and extreme stress. He was advised to take further precise medical examination for his deteriorating liver as a patient of Hepatitis B during his regular health check-up in 2004, but the Employee failed to take action. Admittedly, the Employee managed his health poorly by frequent alcohol consumption. Nonetheless, the Employee was on a business trip at his employer's request, and on this business trip, he became infected with the Vibrio virus after eating food (oyster rice, raw oyster, fried oyster etc.) provided to him by the client.

2.Legal reference

The Employee's death resulted from Vibrio blood poisoning. It is believed the Employee became affected with the Vibrio virus after eating contaminated seafood. As the seafood was eaten for lunch provided by the client during the business trip, this activity shall be treated as accompanying process in general if there was no other situation

.

3.Decision

Vibrio blood poisoning is a disease that results from eating raw seafood contaminated with Vibrio virus or from infection through skin-wounds in contaminated sea water and foreshore. It is an acute virus disease particularly common to chronic patients, alcoholics and habitual drinkers. The Employee had a serious liver problem due to chronic Cirrhosis of the liver and died of a blood poisoning shock due to the Vibrio virus infection. It is acknowledged that his immune system had weakened from poor management of his health (e.g. heavy drink); however, his death did not result from natural exacerbation of his health, but from eating seafood. Therefore, the liver's fatal condition resulted as a direct consequence of the Employee's food consumption on his business trip, so this case is justifiably deemd as an industrial accident.