Equal Treatment: Criteria for Judgment & Related Cases

I. Introduction

Recently, one of the most noticeable court rulings is one where the court ruled as discrimination by social status in a case where the employer made up a particular group of only non-fixed employees recently transferred and treated them unequally to their regular employee counterparts. This verdict has increased public interest in matters related to equal treatment. The Constitution of the Republic of Korea (Article 11-①) stipulates, "...there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status." In aligning with this, the Labor Standards Act contains a provision on equal treatment which includes the additional item of 'nationality', stipulating, "No employer shall discriminate against employees on the basis of gender, or give discriminatory treatment in relation to working conditions on the basis of nationality, religion or social status." Other provisions on equal treatment are gradually being introduced in other Acts as social need arises to do so, regarding irregular employment status, age, disability, and foreign workers, etc.

There are two principles the Court uses in identifying the criteria for determining whether discriminative treatment, which it defines as "the same thing treated in a different way, or different things treated in the same way", is justifiable or not. First, in order for a situation/action to be considered discriminative treatment, the primary requisite is that the employees claiming discrimination should be basically in the same working group with the target comparison employees.[1] Second, even though the employees claiming discrimination and the target comparison employees are working in the same workplace and at the same kind of job, if the employer discriminates in their working conditions based upon reasonable criteria in consideration of the detail and type of work and other conditions, this discrimination can be considered justifiable.[2] In this article, I would like to review the criteria for judgment of whether discriminative treatment is justifiable or not, and related cases.

II. Gender Discrimination

1. Criteria for judgment

Gender discrimination is prohibited under Article 11(1) of the Constitution, with a more detailed explanation given in Article 32(4): "Special protection shall be accorded to working women, and they shall not be subjected to unjust discrimination in terms of employment, wages and working conditions." Article 6 of the Labor Standards Act prohibits gender discrimination and includes penalties for violations. In particular, the Equal Employment Act enacted in 1987 defines gender discrimination (Article 2) as follows:

First, the term "discrimination" means that an employer applies different hiring and working conditions to employees, or takes other disadvantageous measures against them without

[1] Supreme Court ruling on October 29, 2015: 2013da1051.
[2] Supreme Court ruling on February 26, 2002: 2000da39064

justifiable reason on account of gender, marriage, status within the family, and whether or not they are pregnant or have had a child, etc.

Second, it is discrimination even if an employer applies the same hiring or working conditions, but the number of one gender to whom the conditions apply is considerably less than that of the opposite gender, thus causing a disadvantageous result to the opposite gender. This reflects the fact that indirect discrimination due to corporate culture can be deemed as gender discrimination.

Third, provided that this shall not apply to cases involving any of the following items: ① Where a specific gender is inevitably required in view of the nature of the duties; ② Where measures are taken to protect maternity, such as during pregnancy, childbirth or breastfeeding by female employees, etc.; or ③ Other cases where affirmative action measures are taken under this Act or other Acts. These exceptions are designed to avoid any reverse discrimination. [3]

2. Details of gender discrimination

Concrete provisions regarding gender discrimination in the Equal Employment Act can be summarized as follows: ① An employer shall not discriminate on grounds of gender in recruitment and hiring of employees. When recruiting and hiring female employees, an employer shall not present nor demand certain physical conditions, such as appearance, height, weight, etc., and marital status not required for performance of the relevant duties (Article 7). ② An employer shall provide equal pay for work of equal value in the same business. The criteria for work of equal value shall be skills, efforts, responsibility and working conditions, etc. required to perform the work (Article 8). 'Work of equal value' in judicial rulings means the same work when comparing men and women in the corresponding workplace and nearly the same work in practical terms, or the work of basically the same value as evaluated through objective job evaluations in spite of slightly different jobs. Whether the work is of equal value or not shall be estimated in comprehensive consideration of technology, working conditions, education, career, working period, etc. [4] ③ An employer shall not discriminate on grounds of gender in providing benefits, such as money, goods or loans, etc., in order to compensate his/her employees aside from wages (Article 9). ④ An employer shall not discriminate on grounds of gender in education, assignment and promotion of his/her workers (Article 10). ⑤ An employer shall not discriminate on grounds of gender in retirement age or whether certain workers are dismissed or designated to retire. No employer shall make a labor contract that stipulates marriage, pregnancy or childbirth of female workers as grounds for resignation (Article 11).

[3] Jongryul Lim, 「Labor Law」, 14th edition, 2016. Parkyoungsa, p. 374.
[4] Supreme Court ruling on March 14, 2003: 2002do3883; Supreme Court ruling on March 14, 2013: 2010da101011.

III. Discrimination Based on Nationality

1. Criteria for Judgment

Nationality refers to the status according to the Nationality Act, and discrimination can exist for certain employees such as foreigners without Korean nationality, overseas Koreans, and illegal migrant workers, etc. Recently, discrimination due to nationality has caused significant social issues due to the increased number of foreign workers. Article 22 of the Foreign Workers Employment Act enacted in August 2003 stipulates, "No employer shall discriminate or unfairly treat any person on the grounds that he/she is a foreign worker." However, this article does not include any penal provisions and only applies to non-professional workers in relation to the employment permit system. Accordingly, the prohibition of discrimination based on nationality follows Article 6 of the Labor Standards Act that "No employer shall give discriminatory treatment in relation to the working conditions on the basis of nationality," and the penal provisions therein. However, justifiable discrimination is allowed, with the related Labor Ministry Guidelines explaining, "Determining whether discrimination based on nationality exists or not shall require consideration of all related items collectively: whether the discrimination in working conditions was only based on nationality or not; other entire factors regarding the working conditions such as wages and working hours; and in addition, whether discrimination exists that exceeds reasonable criteria for the work." [5]

2. Related cases

There are many cases related to discrimination due to nationality.
① A Constitutional Court ruling in 2007, in which it stipulated, "Even though industrial trainees with a trainee's contract provided labor service under the employer's direction and supervision, they then received wages. In actual relations, as only foreign industrial trainees were excluded from the application of major labor laws without justifiable reason, we find this unreasonable." The fact that industrial trainees are excluded from some parts of the Labor Standards Act, unlike ordinary employees, is arbitrary discrimination. [6]
② Supreme Court ruling in 1995: Foreign worker "A" from Thailand, who came to Korea under a trainee working visa, was seriously injured while working beyond the permitted sojourn period. Foreign worker A applied for compensation from the Employee Welfare Corporation for medical treatment, but was rejected by the Corporation as foreign worker A was an illegal migrant worker working illegally. However, the Supreme Court ruled that even though illegal employment is clearly an act warranting punishment, the work already provided is actual performance that makes the worker subject to the protection of labor law. Accordingly, illegal foreign workers may apply for and receive Industrial Accident Compensation Insurance.[7]
③ Supreme Court ruling in 2015: Some illegal foreign workers living in Seoul and Gyeonggi Province submitted a report of their establishment of a labor union to the Seoul Regional Labor Office on May 3, 2005, but their application was rejected due to their illegal status. Even in the courts there have been disputes on whether a labor union of illegal foreign workers is permissible or not, but the Supreme Court ruled on June 25, 2015 that it was.[8]

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[5] Labor Ministry Guideline: May 25, 1994, Gungi 68207-585.
6 Constitutional Court (Industrial trainee system): August 30, 2007 2004hnma670.
7 Supreme Court ruling: September 15, 1995: 94nu12067 (Rejection for application of occupational injury)
8 Supreme Court ruling on June 25, 2015: 2007do4995 (Rejection of labor union's report of establishment)

IV. Religious Discrimination

1. Criteria for judgment

The Labor Standards Act regulates that no employer shall give discriminatory treatment in relation to working conditions on the basis of religion, which includes specific religions, religious beliefs, world view, socialist creed, or political line of a particular political party, etc.[9] However, with the exception of purpose-based companies organized to carry out business directly connected to specific ideas, it is not deemed a violation if there is discrimination regarding an employee whose behavior is in conflict with the purpose of the company he or she works for.

2. Related cases

① In 2005, the Constitutional Court ruled as justifiable dismissal in cases where the employee behaved in violation of the purpose of his/her employing company. “Whether there is justifiable reason or not when an employer intends to dismiss an employee shall be considered concretely for each individual case. Such general reasons are that the employee’s violations should be serious enough to make it very difficult to maintain continuous employment relations with the employer, which means that the employer cannot expect any further work from the employee concerned due to the serious violation. Justifiable reasons for dismissal include: in cases where the employee’s work performance was seriously inferior to his/her occupational abilities; in cases where the employee cannot work due to some illness; and, exclusively for purpose-based companies organized to carry out business directly connected to specific ideas, in cases where the employee disagrees with the purpose of his/her employing company; and others.[10]

② In 1994, the Supreme Court ruled that an employee’s behavior that violates the purpose of his/her employing company is deemed a justifiable reason for dismissal. “Even though the employee’s real estate speculation, which was the reason for disciplinary dismissal, seemed like some minor misconduct in his personal life, in comprehensive consideration of the purpose of his employer, the Urban Development Corporation, which was established to create for citizens housing security and improve welfare through residential land development and supply, housing construction, etc., and the work scope of the employee engaged in real estate-related compensation, this real estate speculation by the employee could cause very negative effects of the social evaluation for the Urban Development Corporation.” [11]

V. Social Status

1. Criteria for judgment

‘Social status’ which is a position formed over a considerable time and part of social

9 Hyungbae Kim, 「Labor Law 」, 24th edition, 2015, Parkyoungsa, p. 239.
10 Constitutional Court decision on March 31, 2005: 2003hunba12 (Justifiable reasons for dismissal).
11 Supreme Court ruling on December 13, 1994: 93nu23275 (ruling related to a purpose-based company)

evaluation refers to a social position that one cannot adjust through one's intention or performance.[12] A judicial ruling on June 19, 2016 explained, "Social status is a position formed over a long time in society and part of social evaluation, and refers to the social classification that a specific group of employees cannot adjust through their intention or performance." [13]

2. Related cases

Recently, there has been some headline news on a judicial ruling regarding a case of discrimination owing to social status. The employees concerned were transferred to non-fixed term employment and then placed in their own group after being hired for temporary positions. Unlike regular employees, the workers in this group were not eligible for title promotions. Different salary regulations were applied, and they were also ineligible for housing or family allowances, or meal expenses. The employees concerned took legal action for the unpaid allowances, stating that this discrimination was null and void due to it being a violation of equal treatment according to Article 6 of the Labor Standards Act. The court ruled, "Besides job, the type of work and position can be part of social status if they require social evaluation or are social classifications that an employee cannot change through intention or performance." The court judged that being part of a group of workers with non-fixed employment status was part of social status, adding, "With the exception of salary regulations, the same rules of employment and personnel regulations apply to non-fixed term employees. The quantity, quality and difficulty of their work and their contribution to the company were not less than their regular employee counterparts, so this discrimination amounts to a violation of Article 6 of the Labor Standards Act."

VI. Conclusion

The Labor Standards Act contains a penal provision for discrimination on the basis of gender, nationality, religion or social status, and an employee can seek an order for correction of such discrimination through a petition or making a claim with the Employment Labor Ministry. Hereby, the employee can also retroactively claim that lower wages were paid in a discriminatory manner. On the other hand, a particularly notable point in the prohibition of discrimination on the basis of gender is that an employer shall not discriminate on such grounds in recruitment and hiring of employees. Also, it can be deemed as indirect discrimination when an equal number of men and woman are employed at entry level, but this is not the case at the managerial level. The provision against discrimination on the basis of nationality has become a social issue due to the increased number of foreign employees, while regarding discrimination on the basis of religion, more cases have been related to purposed-based companies rather than against particular religions. Finally, in discrimination on the basis of social status, the courts recently ruled discrimination exists against social status when an employer sets up a certain working group only for those with non-fixed employment status.

12 Jongryul Lim, p. 376; Hyungbae Kim, p. 240; Kaprae Ha, 「The Labor Standards Act 」28th edition, Joongang Economy, p. 79.
13 Seoul Southern Court ruling on June 19, 2016: 2015kahap3505.

Foreign Workers & the Social Insurances

I. Introduction

The term 'foreign worker' refers to "a person who is not a national of the Republic of Korea and works or intends to work in a business or workplace located in the ROK for the purpose of earning wages".[14] All those who are not ROK nationals are considered foreign workers. Therefore, foreign workers include ① overseas Koreans[15] with foreign nationalities, ② non-professional foreign workers[16], ③ foreign professionals,[17] and ④ illegal foreign workers. The Labor Standards Act (Article 6) stipulates that an employer shall not discriminate against other nationalities in working conditions, and the Supreme Court also ruled, in both the Labor Standards Act and the Trade Union and Labor Relations Adjustment Act, that illegal foreign workers shall not be treated discriminated against because of their illegal status. However, the social security insurance laws are applied differently, based on the particulars of each individual insurance. There are four components to social security insurance: industrial accident compensation insurance, employment insurance, national medical insurance, and national pension. The Industrial Accident Compensation (IAC) Insurance Act mandatorily covers all workers, including foreign workers, but other insurances vary in their application. Employment insurance is optional for foreign workers, as their stay is temporary. Application of the Medical Insurance Act is mandatory for all workers, including foreigners, as is the National Pension Act, but the Pension Act is also affected by the principle of reciprocity according to the application to Koreans under foreign national pension systems. I will review the application of the social security insurances to foreign workers in the following pages.

II. Industrial Accident Compensation Insurance (IAC Insurance) Act

1. Summary

IAC Insurance is a social insurance system in which the government provides, under the Labor Standards Act, an employee (who has been injured or become ill at a workplace), with compensation paid by his/her employer. This Act is applicable to all businesses or workplaces, with the exception of those prescribed by Presidential Decree, and varies according to the risk ratio, scale, and location, etc. of the business.[18] The employer pays an insurance premium which is calculated by multiplying the company's total remuneration with the premium rates declared by the government, based

14 The Act on Foreign Workers Employment etc. (Article 2) applies only to workers under the Employment Permit System (E-9) and the Working Visit (H-2), but not to foreign professional workers or illegal workers.
15 H-2 (Work Visit), F-4 (Overseas Korean).
16 E-9 (Non-professional employment), E-10 (Crew employee), C-4 (Short-term employment).
17 Professional visas consist of E-1 (Professor), E-2 (Foreign language instructor), E-3 (Research), E-4 (Technology transfer), E-5 (Professional employment), and E-7 (Designated activities).
18 Businesses excluded from application: ① construction projects with total construction costs of less than KRW 20 million; ② projects involving construction of structures of 100 ㎡ or less in total floor size carried out by entities other than housing businesses or the constructor (as for repair projects, 200 ㎡ or less in total floor size); ③ the household affairs services industry; ④ businesses that ordinarily hire no more than 1 permanent worker; ⑤ businesses in agriculture, forestry, and fishing and/or hunting, that ordinarily hire fewer than 5 permanent workers.

upon the potential accident risk per the category of business.

When an employee covered by IACI suffers an occupational injury or illness which requires medical treatment of 4 days or longer, or dies from a work-related cause, the IACI benefit shall be paid upon request by the employee (or his/her surviving family member). IACI benefits include medical care benefits, suspension benefit, injury-disease compensation annuity, disability benefit, survivors' benefit, nursing benefit, funeral expense benefit, and vocational rehabilitation benefit.

2. Application to foreign workers

Foreign workers are covered under IAC insurance regardless of their status. IAC insurance covers occupational accidents regardless of nationality or working status. The Supreme Court ruled that even though illegal employment is clearly a punishable act, the work already provided is actual performance done, which is subject to protection under the labor laws. Accordingly, illegal foreign workers may apply for IAC Insurance.[19]

III. Employment Insurance

1. Summary

Employment insurance provides benefits to unemployed workers, and is a job security project which promotes re-employment through government vocational guidance and improvement of the employment structure, employee vocational skills development, etc. In principle, employment insurance applies to any business or workplace that ordinarily hires an employee, although some businesses have size restrictions.[20] From the employee's perspective, employment insurance covers all employees, but in cases where some employees do not require unemployment benefits or are covered by other similar insurances, such employees are excluded.[21] Premiums are charged according to the unemployment benefits premium rate and the employment security & vocational ability development premium rate. The unemployment benefits premium is shared equally between the employee and employer, whereas the employment security & vocational skills development premiums are charged only to the employer.[22]

19 Supreme Court ruling: September 15, 1995. 94nu12067 (Rejection of application for injury to be deemed occupational)
20 Businesses excluded from application are the same as for IAC insurance (refer to footnote 5).
21 The following employees shall be excluded from Employment Insurance:
Those who are 65 years of age or older;
② Daily workers whose contractual working hours are fewer than 60 hours per month (15 hours per week);
③ Government officials under the State Public Officials Act and the Local Public Officials Act;
④ Those who are subject to the Private School Teachers Pension Act;
⑤ Special post office staff who are referred to in the Special Post Office Act;
⑥ Seamen under the Seamen Act; and
⑦ Foreign workers without residence permits (foreign workers who have residence permits may be insured independently).
22 Premium rate for unemployment benefits in 2016 and 2017 is 1.3% of the employee's total annual income, or 0.65% respectively for the employee and the employer; the premium rate for the employment security project & the vocational skill development project is 0.25%~0.85% of the total annual income, which is paid by the employer only .

2. Application to foreign workers

Foreign workers are excluded from employment insurance unemployment benefits. However, permanent residents [Resident (F-2), Permanent resident (F-5), Marriage to Korean Citizen (F-6)] are subject to compulsory enrollment, but those qualified for employment [Professor (E-1), Crew employee (E-10), Short-term employee (C-4), Working visit (H-2), Overseas Korean (F-4)] are eligible if they apply.[23]

【Foreign Worker Eligibility for Employment Insurance (as of Dec. 31, 2016)】

Status of Sojourn	Application	Status of Sojourn	Application
A-1 (Diplomat)	×	E-1 (Professor)	○ (Arbitrary)
A-2 (Government official)	×	E-2 (Foreign language instructor)	○ (Arbitrary)
A-3 (Agreement)	×	E-3 (Research)	○ (Arbitrary)
B-1 (Visa exemption)	×	E-4 (Technology transfer)	○ (Arbitrary)
B-2 (Tourist/transit)	×	E-5 (Professional employment)	○ (Arbitrary)
C-1 (Temporary news coverage)	×	E-6 (Artistic performer)	○ (Arbitrary)
C-3 (Short-term visit)	×	E-7 (Designated activities)	○ (Arbitrary)
C-4 (Short-term employee)	○ (Arbitrary)	E-9 (Non-professional employment)	○ (Arbitrary)
D-1 (Artist)	×	E-10 (Crew employee)	○ (Arbitrary)
D-2 (Student)	×	F-1 (Visiting or joining family)	×
D-3 (Industrial trainee)	×	F-2 (Resident)	○ (Compulsory)
D-4 (General trainee)	×	F-3 (Accompanying spouse/child)	×
D-5 (Journalism)	×	F-4 (Overseas Korean)	○ (Arbitrary)
D-6 (Religion)	×	F-5 (Permanent resident)	○ (Compulsory)
D-7 (Supervisor)	○ (Reciprocal)	F-6 (Marriage to Korean Citizen)	○ (Compulsory)
D-8 (Corporate investor)	○ (Reciprocal)	G-1 (Miscellaneous)	×
D-9 (International trade)	○ (Reciprocal)	H-1 (Working holiday)	×
D-10 (Job Seeking)	×	H-2 (Working visit)	○ (Arbitrary)

※ 'x' denotes those foreigners ineligible for employment insurance.

23「Employment Insurance Implementation Rule (Article 3) – Paragraph 2

IV. National Health Insurance Program

1. Summary

The National Health Insurance Program is designed to improve national health and promote social security by implementing insurance benefits for the prevention, diagnosis, and treatment of, and rehabilitation from, disease or injury, childbirth and death, and the promotion of health. Health insurance is a mandatory insurance combining both corporate and local membership, with 97% of the entire population enrolled, while others are covered by the Medical Care Assistance Act, which supports recipients of medical benefits under the National Basic Living Security Act.[24] Those excluded from corporate insurance coverage are ① those who are self-employed and do not employ any workers; ② daily workers employed for less than one month; ③ workers or employees working at seasonal or temporary work; and ④ irregular workers or part-timers (who work less than 60 hours per month) who do not attend a work place regularly. The premium is calculated by multiplying the premium rate by the standard monthly wage. The premium calculated is shared equally by the employee and the employer.[25]

2. Application to foreign workers

It is mandatory for foreigners and overseas Koreans to subscribe to the health insurance program when they obtain Resident status. However, exception is allowed if they have medical coverage under their country's laws, or other insurance, or by a special contract with their employers.

Long-term care insurance is automatically granted upon subscription to the National Health Insurance Program. Long-term care insurance is designed to ease the burden on families of caring for the elderly with chronic conditions such as dementia or stroke. It encompasses a broad range of assistance needed for a prolonged period of time by older people with chronic disabilities, such as bathing, dressing, eating, etc. Short-stay foreigners [limited to D-3 (Industrial trainee), E-9 (Non-professional employment), and H-2 (Working visit)] are expected to leave Korea immediately after finishing their stay, and so they can be excused from the obligation to pay long-term care insurance premiums if they submit a Report Form of Exclusion from this insurance.

24 Lee, Chulwoo and others, 「Immigration Law」, "Foreigners' social security", Parkyoung-sa, 2016, page 468.
25 The premium rate for 2016 is 6.12% of the employee's total monthly income, which is paid by the employee and the employer, both responsible for 50%. As for the effective period from July 2016 to June 2017, the lowest applicable total monthly income is KRW 280,000 while the highest is KRW 78,100,000.

V. National Pension

1. Summary

The National Pension System is designed to provide a pension to employees who reach a certain age, and to provide a pension to help support surviving family members after the sudden death or injury of an employee. All persons residing in the country who are between the ages of 18 and 60 are subject to subscription to the National Pension. However, civil servants, soldiers, employees of private schools, and other employees described in the Presidential Decree are ineligible for the pension under the Civil Servants' Pension Act, the Veteran's Pension Act, or the Private School Teachers Pension Act. The scope of application is divided between the company and the individual. For companies ordinarily hiring one or more workers, enrollment in the national pension plan is mandatory. Those excluded from corporate insurance coverage are ① the self-employed who do not hire any workers; ② daily workers employed for less than one month; ③ workers or employees working at seasonal or temporary work; and ④ irregular workers or part-timers (who work less than 60 hours per month) who do not attend the work place regularly. The National Pension premium is shared equally by the employee and the employer, in proportion to the employee's income.[26] The types of National Pension benefits are old age pension, survivor's pension, disability pension, and lump-sum refund.

2. Application to foreign workers

A foreigner employed in a workplace governed by the National Pension Act or who resides in the Republic of Korea shall be a workplace-based insured person or an individually-insured person as a matter of course: provided, that this shall not apply if any relevant law of such foreigner's home country does not apply to citizens of the Republic of Korea with respect to a pension equivalent to the National Pension Scheme under the National Pension Act. This means that the principle of reciprocity applies. Foreigners excluded from becoming workplace-based insured persons or individually-insured persons as a matter of course shall be as follows: ① those who stay without obtaining a permit for an extended period of stay under Article 25 of the Immigration Control Act; ② those who fail to register as a foreigner under Article 31 of the Immigration Control Act or to whom a forced deportation order has been issued under Article 59 (2) of the same Act; ③ those with D-1 (Artist), D-2 (Student), D-3 (Industrial trainee), D-4 (General trainee), F-1 (Visiting or joining family), F-3 (Accompanying spouse/child), or G-1 (Miscellaneous) visas.

Since recipients of the National Pension should satisfy 10 years membership and be aged 60 years or older, it is very difficult for foreign workers to receive national pension benefits, and so foreign workers can receive a lump-sum refund when they leave Korea.[27]

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26 The premium rate in 2017 is 9% of the monthly standard income, which should be paid by the employee and the employer, both responsible for 50%. The monthly standard income applicable from July 2016 to June 2017 is a minimum of KRW 280,000 to a maximum of KRW 4,340,000.

27 According to Article 126 (paragraph 4) of the National Pension Act, the lump-sum refund is not applicable to foreign workers in principle, but only to those to whom it specifically applies: 1) in cases where foreign countries have a regulation for lump-sum refunds in their national pension law; and 2) in cases where the applicable foreigner has an E-9 (Non-professional employment) or H-2 (Working visit) visa.

<Countries with Reciprocal National Pensions >

As of July 31, 2016

Applicable countries (73)	Including the USA, Canada, Russia, Japan, and China
Workplace-based-only applicable countries (36)	Ghana, Gabon, Grenada, Taiwan, Laos, Lebanon, Mexico, Mongolia, Vanuatu, Venezuela, Belize, Bolivia, Bhutan, Sri Lanka, Sierra Leone, Haiti, Algeria, Ecuador, El Salvador, Yemen, Jordan, Uganda, India, Indonesia, Zimbabwe, Cameroon, Kazakhstan, Kenya, Costa Rica, Ivory Coast, Congo, Columbia, Kyrgyzstan, Thailand, Paraguay, Peru
Non-applicable countries (22)	Nigeria, South Africa, Nepal, East Timor, Malaysia, Myanmar, Bangladesh, Vietnam, Saudi Arabia, Singapore, Iran, Egypt, Cambodia, Pakistan, Georgia, Maldives, Belarus, Swaziland, Armenia, Ethiopia, Tonga, Fiji

VI. Conclusion

The four social insurances apply differently to foreign workers according to their visa type (status of residence). As this application is not decided by employee status, but by visa type, it can be very inefficient in protecting workers. In cases where an occupational accident happens, regardless of the visa type, foreign workers are covered by IAC insurance. Similarly, as long as foreign workers reside in Korea and provide work, they should be equally covered by Korea's Employment Insurance, National Health Insurance, and the National Pension programs, as a matter of course.

Employment Systems and Employment Relations for Overseas Koreans

I. Introduction

As of December 2016, there were 2,049,441 foreigners staying in Korea for 3 months or more, comprising 4.0% of Korea's total population (51,696,216). Since 2010, the yearly average increase of foreigners in Korea has stayed at 8.4%, and if this rate continues, there will be more than 3 million foreigners in Korea by 2021, which will be equivalent to 5.6% of the total Korean population. The main reason for this increase is that immigration of overseas Koreans from China and the former Soviet Union has increased at a yearly average of 29.0% since 2010.[28] Two reasons why this has are as follows: first, the Korean government has maintained a an open immigration policy for overseas Koreans, softening the entry process to Korea and making it easy to find a job here; second, overseas Koreans from these areas can make much more money here than in their resident countries. I would like here to review the change in legal environment which has enabled this rapid increase of overseas Koreans; the employment system for hiring overseas Koreans, and the labor protection available.

II. The Legal Environment and Employment System for Overseas Koreans

1. Legal environment

The Act on the Immigration and Legal Status of Overseas Koreans (hereinafter referred to as the "Overseas Koreans Act") was designed to reduce Korea's immigration control for overseas Koreans and to induce them to come by softening a variety of restrictions for visits and stays, and related to real estate acquisition and financial transactions, etc. At the time of its enactment, the Overseas Koreans Act defined Korean foreign nationals as ① Koreans (and their lineal descendants) who had lost Korean nationality after emigrating abroad after establishment of the Government of the Republic of Korea; and ② Koreans (and their lineal descendants) who emigrated abroad before the Korean government was established and who could explicitly verify their previous Korean nationality. However, many overseas Koreans residing in China and the former Soviet Union (CIS area[29]) emigrated abroad before the Korean government was established, and at the time they emigrated there were no diplomatic relations with South Korea. It would, therefore, be impossible for overseas Koreans residing in China and the former Soviet Union to explicitly verify their former Korean nationality. The Constitutional Court ruled that discrimination in excluding overseas Koreans from these countries was unconstitutional due to violation of the principle of equal treatment when comparing full application of this Law for overseas Koreans from other countries, such as the

28 Ministry of Justice, "Monthly Statistics for Immigration and Foreign Policy (December 2016)", pp. 3-4.
29 CIS (Commonwealth of Independent States) is a combination of 9 states formed after dissolution of the Soviet Union in 1991.

USA, Japan, etc.[30] After this Constitutional Court ruling and supplementary revision of the law, overseas Koreans from China and the former Soviet Union began to obtain working visit visas (H-2), and gradually extended these to overseas Korean visas (F-4) and permanent resident visas (F-5), making it possible for them to stay longer.[31] However, in order to prevent negative impacts on the Korean employment market due to uncontrolled issuance of such visas to overseas Koreans, those in the country under working visit visas (H-2) who obtained their qualification through long service in non-professional employment have been allowed to receive an overseas Korean visa (F-4), except for those with college graduate degrees (see Table 1 below).

<Table 1> Status of Sojourn for Foreigners[32]

As of	**Total**	**Overseas**	Non-	**Working**	**Permanent**	Studying	Resident	Other
Dec. 31, 2016	**2,049,441**	**372,533**	279,187	**254,950**	**130,237**	76,040	39,681	896,813
Dec 31, 2011	**1,395,077**	**136,702**	234,295	**303,368**	**64,979**	68,039	138,418	449,277
Dec. 31, 2007	**1,066,273**	**34,695**	175,001	**228,686**	**16,460**	47,780	9,071	554,580
Rate of Increase	**92%**	**974%**	60%	**12%**	**691%**			

2. Employment system for overseas Koreans

After the Constitutional Court's decision that the provision discriminating against overseas Koreans according to country of residence was unconstitutional, a new amendment was enacted that avoided this discrimination. Many systemic changes were then adopted.

(1) Employment management system (2002~2004, F-1 family visitation visa)

In December 2002, the employment management system for overseas Koreans was introduced, which allowed overseas Koreans aged 40 years or older who had a family member or relative in Korea, to get a job in 8 service fields. In May 2003, the age limit was lowered to 30.

(2) Exceptional employment permit system (2004~2007, E-9 non-professional employment visa)

Overseas Koreans from China and the former Soviet Union were managed under the exceptional employment permit system in the Act on Foreign Workers' Employment, Etc. This system allowed overseas Koreans who were 25 years of age or older, and who had a relative in Korea, to receive a family visitation (F-1) visa first and then change it to a non-professional (E-9) visa with which they could work for up to 3 years in workplaces in services, manufacturing,

30 The Constitutional Court Decision on November 29, 2001: 99 hunma 494 (Unconstitutional for Article 2(2) of the Overseas Korean Act): The Overseas Korean Act grants various benefits to foreign nationality Koreans. The related article of the Overseas Korean Act distinguished between those overseas Koreans who emigrated abroad before establishment of the South Korean government and those who emigrated abroad after establishment of the South Korean government, and granted preferred benefits.... The related provision that excluded the benefits provided by this law to those overseas Koreans who emigrated abroad before establishment of South Korea is very arbitrary and unconstitutional as it is in violation of Article 11 (Principle of Equal Treatment) of the Constitution.

31Immigration Office, 「Explanation of the Immigration Law」, 2011, p. 177.

32Ministry of Justice, "Monthly Statistics for Immigration and Foreign Policy (respective Decembers in 2007, 2011, and 2016)"

and the agricultural and cattle-feeding industries. However, as can be gleaned from the requirements, this employment permit system excluded those who did not have relatives in Korea.

(3) Working visit system (from 2007, the H-2 working visit visa)

The working visit system was introduced in March 2007. This system has the characteristic engagement policy towards overseas Koreans from China and the former Soviet Union, who have been relatively neglected as concerns the benefits of the Overseas Koreans Act.[33] This system allows employment for all overseas Koreans, whether or not they have a family member or relative in Korea; the scope of jobs for which they are eligible has been extended and permission given to allow their quitting one job and moving to another workplace with no restrictions.

Within the effective period of their working visit visa, they can visit their home countries freely and stay in Korea for up to 5 years. Overseas Koreans who have relatives can come to Korea by invitation, while those who do not have relatives are allowed to come to Korea based on a computer-based lottery among those who have passed a Korean language proficiency test. This working visit system allows for employment in 38 non-professional jobs; the seeker should complete employment training first before getting a job either through the job centers or on their own.

<Table 2> Changes of the Employment System for Korean Foreign Nationals[34]

System	Year	Legal Reference	Content
Employment management system	2002	Labor management rules for family visitors(Labor Ministry notice: 2002-29)	Overseas Koreans could work only in the service sector and for a maximum of 3 years after entering via invitation from a relative.
Exceptional employment permit system	2004	Act on Foreign Workers' Employment, Etc.	The employment management system was incorporated into the employment permit system, after which the scope of allowed jobs and period of employment.
Working holiday system	2007	Act on Foreign Workers' Employment, Etc.	Overseas Koreans can enter Korea on a 5-year working visit visa and can visit their home countries freely. They are managed by the employment permit system, and can freely move to other workplaces.

III. Employment Relations for Overseas Koreans

1. Expanded visa qualifications for overseas Koreans (H-2 → F-4 → F-5)

The Ministry of Justice expanded the application of the overseas Korean visa (F-4) to eliminate discrimination based upon resident country. In April 2010, according to 「Policies to

33Injin Yun, Heesang Kim, "Migrant communities and status for returned overseas Koreans", Korean Ethnic Culture (Vol. 60), August 2016, p. 51.
34 The Ministry of Justice, 「Immigration status and policies regarding overseas Koreans」, 2011.

be pursued for overseas Koreans in 2010」, those working under a working visit visa (H-2) for at least 1 year (changed to 2 years in August 2011) in a specific industry such as manufacturing, were allowed to obtain an F-4 (overseas Korean) visa that would permit them to stay in Korea in recognition of their contribution to the national interest.[35]

As well, overseas Koreans with a working visit (H-2) visa can obtain a permanent resident (F-5) visa upon satisfying all of the following conditions: ① he/she has worked for at least four years in the same workplace (manufacturing, agriculture or the livestock or fishing industry) without changing his/her workplace; ② He/she or his/her family has property in Korea valued at KRW 30 million or more, with the ability to maintain their livelihood; or ③ he/she has obtained a specified technical certificate through the examination given by the Korea HR Development Corporation or whose annual income is more than the average GNI (Gross National Income) as stated by the Bank of Korea in the previous year.[36]

<Table 3> Status of Overseas Koreans[37]

(Unit: person)

Visa	Dec. 2007	Dec. 2011	Dec. 2016	Remarks
Working visit (H-2)	**228,686**	**303,368**	**254,950**	An increase of 10-30% over the past 10 years.
Overseas Korean (F-4)	**34,695**	**136,702**	**372,533**	An increase of over 300,000 people (974%) over the past 10 years.
Permanent resident (F-5)	**16,460**	**64,979**	**130,237**	An increase of over 110,000 people (691%) over the past 10 years.

2. Employment relations

(1) Working visit (H-2)

Overseas Koreans who entered with a working visit (H-2) visa must strictly follow the provisions concerning the employment process, change of workplace, time frame, etc. in accordance with the Act on Foreign Workers' Employment, Etc. This visa allows overseas Koreans to change jobs within the permitted job categories, but they can only stay for up to 3 years. After that, their maximum stay can be extended by up to 2 years.

Overseas Koreans with a working visit visa (H-2) are protected under Korean labor laws as native-born Koreans. Article 22 of the Act on Foreign Workers' Employment, Etc. states "No employer shall discriminate or unfairly treat any person on the grounds that he/she is a foreign worker." Article 6 of the Labor Standards Act also stipulates that "No employer shall discriminate against workers on the basis of nationality."

However, justifiable discrimination is allowed, with the related Labor Ministry Guidelines explaining, "Determining whether discrimination based on nationality exists or not shall require consideration of all related items collectively: whether the discrimination in working

35 Hongyup Choi et al, 「Immigration Law」, "Foreign Workers and Professional Foreign Personnel', Parkyoung-sa, 2016, p. 388.
36 Ministry of Justice, "Easy manual for overseas Koreans", July 14, 2016.
37Ministry of Justice, "Monthly Statistics for Immigration and Foreign Policy (respective Decembers in 2007, 2011, and 2016)"

conditions was only based on nationality or not; other entire factors regarding the working conditions such as wages and working hours; and in addition, whether discrimination exists that exceeds reasonable criteria for the work." Therefore, if there is justifiable reason in the workplace, an employer's discrimination against foreign workers could be acceptable. For example, "in considering collectively, the foreign workers' unskilled status, inconvenience in verbal communication due to language, impossibility of long-term service, difficulties in improving productivity, and other work performance-related factors, including better welfare items such as free housing and free meals, it could not be interpreted as discrimination due to nationality even if an employer applied inferior working conditions for foreign workers only under different rules of employment." Consequently, discrimination between overseas Koreans and native-born Koreans in the above instance could be acceptable as exceptions. [38]

(2) Overseas Korean (F-4)

An overseas Korean (F-4) visa is issued only to college graduates and excludes those who are normally engaged in simple repetitive work, corporate presidents, holders of a technician's certificate or higher skill, and overseas Koreans who are at least 60 years of age. While this F-4 visa had seldom been issued for overseas Koreans from China or the former Soviet Union, since 2010, it has been expanded to include working visit (H-2) visa holders who have met certain qualifications. Overseas Koreans with this H-2 visa can renew their stay every three years, which means that F-4 visa holders can stay for a long time.

Since F-4 visa holders, unlike overseas Koreans with a working visit visa, can stay for a long time, they can be engaged in any business except simple repetitive work, and are protected by Korean labor laws to nearly the same extent as Korean citizens. Overseas Koreans (F-4) are not covered by the Act on Foreign Workers' Employment Etc., but are protected under the Immigration Control Act and general labor laws. As they can stay for a long period of time, they can maintain long-term employment rather than fixed-term employment. In cases where an overseas Korean with an F-4 visa has worked as a fixed-term employee beyond 2 years, whether or not this overseas Korean can be regarded as a non-fixed employee is a frequently-asked question. Labor Ministry Guidelines state the following:

"According to Article 4 of the Act on the Protection, etc. of Fixed-Term and Part-Time Employees, if an employer employs a fixed-term employee for more than two years (in cases where a fixed-term labor contract is repeatedly renewed, if the total consecutive employment period exceeds two years), the fixed-term employee shall be considered a worker who has entered into a non-fixed term labor contract. However, if there is an exceptional regulation, an employer may employ a fixed-term employee for more than two years. Since a foreigner must qualify for the status of stay and can stay for the permitted period according to Article 17 of the Immigration Control Act, this is considered an exceptional case for the period of employment protected by the Act on the Protection, etc. of Fixed-Term and Part-Time Employees."[39]

Accordingly, overseas Koreans employed under the overseas Korean (F-4) visa are not protected from the restrictions on fixed-term employment under the Act on the Protection, etc. of Fixed-Term and Part-Time Employees. However, for a permanent resident (F-5) visa, there are no restrictions on the period of stay according to Article 18 of the Immigration

38 Labor Ministry Guidelines: Labor Standards 852 (May 25, 1994); Labor Standards 68207-1586 (December 9, 2003).
39 Labor Ministry Guidelines: Employment discrimination correction 446 (March 15, 2012).

Control Act. Therefore it cannot be considered as a “case where the period of employment is differently stipulated by other laws”.

(3) Permanent resident (F-5) for Korean foreign nationals

Overseas Koreans with a permanent resident (F-5) visa have the most secure status under the Immigration Control Act and can stay with no limitations. Accordingly, there is no need to apply for an extension of stay with this visa; it is also possible to invite family members from abroad.

IV. Conclusion

As Korea needs to attract foreign workers to compensate for a shortage of manpower in vulnerable industries due to its low birthrate and its aging society, it is desirable to induce overseas Koreans who can more easily adapt to Korean culture and thereby minimize social conflict. I would like to mention two items in need of improvement. First, Article 3 of the Presidential Decree to the Overseas Koreans Act restricts its definition of overseas Koreans to within the 3rd generation by stipulating, “those who obtained foreign nationality as one whose parent or grandparent used to hold Korean nationality.” As many overseas Koreans from China and the former Soviet Union emigrated abroad before the Korean government was established in 1948, it is necessary to extend the scope of overseas Koreans to the 4th generation, which will meet the requirements foreign worker manpower policy. Second, as overseas Koreans cannot be properly protected by Korean labor laws due to the restrictions of their visa status under the Immigration Control Act, the related legal system should be improved.

Application for Cancellation of Additional Premium Charges for Industrial Accident Compensation Insurance[40]

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.

[40] 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.

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.

Death from Overwork (Heart Attack[41]) and Verifications[42]

I. Introduction

On May 4, 2011, the plant manager (hereinafter referred to as "the Employee") of a milk-carton printing company, located in Gyeonggi province (hereinafter referred to as "the Company"), died from a heart attack (acute myocardial infarction) while at his office desk. His spouse applied to the Employee Welfare Corporation for a survivor's pension claiming this was an occupational accident, that the Employee had died from overwork and stress related to work.

Generally, an injury occurring at work is easily admitted as an occupational accident. However, it is possible to have an illness occurring from overwork and stress declared an occupational accident when the survivor can satisfy the strict criteria presented by the Minister of Labor for recognition of a considerable relationship between work and death. Accordingly, it is not possible to declare an incident like this an occupational accident when the survivor applying for industrial accident compensation cannot confirm a cause-and-effect relationship between work and death.

The Employee Welfare Corporation, after this widow's application for the survivor's pension, declared in August 2011 that the employee's death was caused by overwork and stress related to work. In reality, it is difficult to prove overwork and stress are the cause of death at work, but it was estimated that there was sufficient evidence to verify this case as related to overwork. In this article, I will explain the details of overwork and stress that caused illness in this employee's case. After reviewing the criteria for determination as an occupational accident concerning the acute myocardial infarction (heart attack) according to the Industrial Accident Compensation Insurance Act, I will lay out the considerable cause and effect relationship between the employee's work situation and his death.

II. Details of Overwork

1. Summary

The Company, with a head office located in the US, an administrative office in Seoul, and a factory in Gyeonggi province, has been engaged in printing milk cartons, etc. with about 100 employees. Since the Employee was hired by the company in 1984, he had been given many different positions until he became plant manager in 2004. In February and March 2011, foot-and-mouth disease was spreading around the country, causing a reduction in Company sales and increased labor costs. Then, the head office in the US ordered him to implement

41 Acute myocardial infarction is an incident where the heart muscle dies from a lack of blood by sudden blockage of the coronary arteries which provide blood to the heart.
42 From June to August, 2011, Byun Ji-hye and Jung Bongsoo represented the widow in this case against the Employee Welfare Corporation.

redundancies), which created stress for the Employee as he had to lay off many of the colleagues who had worked together well for more than 10 years. In the meantime, a huge earthquake and tsunami occurred in Japan, resulting in the Company receiving a great number of production orders in April 2011. Production was extended from two shifts to three shifts to meet the sudden increase in orders. Because of the strict quality demands from the Japanese milk carton production company, the Company had to scrap many defective products, which increased labor costs even more. In the middle of this, just one day before the Employee's death, the Employee entertained directors from the head office who had just arrived in Korea to visit the factory. He returned home very late, and went to bed even later after putting together a presentation on the Company's business situation. The following morning, the Employee went to the office at 7 o'clock, and while preparing for the presentation, had a heart attack (acute myocardial infarction) and died around 8:30 am, while sitting at his desk.

2. Details

A. The Employee's health

In reviewing the Company's Medical Checkup reports for the previous three years (from 2008 to 2010), no evidence was found that the Employee had died from natural deterioration of a pre-existing condition. Some doctors had noted that the Employee had to be careful with his blood pressure and high cholesterol, but his figures were within the normal range.

In reviewing details of his use of the National Health Insurance over the five years leading up to his death, it was discovered that the Employee had visited the hospital once every two months since 2006 to check his blood pressure, and had taken prescription medication for hypertension every morning. He did not have any disease or other condition.

B. Details of the Employee's heavy workload

(1) Twenty-four hours before the heart attack

The day before his heart attack, the Employee arrived at his office one hour earlier and started working. Then in the evening, he entertained in Inchon some directors from the head office until 9:40 pm and arrived home at about 12 pm. He then stayed up one more hour working on the presentation for the directors from the head office before going to bed. The morning of the heart attack, the Employee arrived at the office one hour early, at 7am, to work some more on the presentation.

(2) One week before the heart attack

The Employee came to work every day of the entire week before the heart attack, including Saturday, April 30, Sunday, May 1, and the Company Foundation Day, May 2. Due to the combination of increased orders from Japan and peak-season production, the factory was in full-scale production, with employees working overtime and on holidays and weekends from the middle of April to the early part of May. These situations, as well as his preparations for the visit by company directors created physical and emotional hardship for the Employee that was too great for his body to bear.

(3) Three months before the heart attack

- In early February, foot-and-mouth disease was spreading around the country, which increased labor costs due to reduced production. Because of this situation, the Employee was ordered by the head office in the US to reduce the number of employees.
- Because of all the production orders from the Japanese company, the Employee had to deal directly with all disputes with the buyer over quality issues in April 2011. As he was the only one in the company who could speak Japanese, he also had to entertain the Japanese engineers with dinner several times.
- In April and May, the Company began emergency production, changing the work schedule from two shifts to three shifts, to meet the orders from Japan and peak-season production. The Employee worked at the office almost every day of April (including weekends & holidays) because of his responsibilities as the plant manager.

C. Major details of stress

The Employee also experienced significant mental stress as well as the physical fatigue mentioned in the above paragraphs. He was ordered to implement a redundancy plan because the production costs in the Korean plant were higher than in the Taiwanese or Chinese plants, and also due to the impact foot-and-mouth disease had on the industry. He had already reduced the number of employees by 30 percent from 2007 to 2009 through individual interviews, letting go of people who had worked with him for more ten years. This created greater stress, partly because he had never thought there would be more lay-offs so soon. Having this latest redundancy plan confirmed while entertaining the directors from the head office added to the burden.

III. Related Legal Regulations: Criteria for Determining Heart Attack or Brain Vessel Disease as Occupational Accidents

That an employee's illness or disease was caused by his/her job-related duties must be verified before determination of that illness or disease as an occupational illness. The criteria for recognition 'occupational **illness** or death caused by the reason' are as follows. (Implementation Decree ([Article 34] and its attachment #3).

A. When an employee at work experiences such things as an intra-cerebral hemorrhage, subarachnoid hemorrhage, cerebral infarction, myocardial infarction, or aortic dissection, or dies from one or more of these incidents (for at least one of the following reasons), this can be considered a work-related accident (however, in cases where the incident was caused by natural deterioration, it will not be regarded as a work-related accident):

1) Sudden and unexpected tension, excitement, horror, surprise or changes in the work environment cause remarkable physiological changes to the employee;

2) The work burden increases for a short period of time just before the occurrence of the accident due to volume of work, time, intensity, responsibilities, or changes to the work environment, and causes physical and mental fatigue that can noticeably affect the normal operation of blood vessels in the brain or heart.

3) The chronic work burden due to volume of work, time, intensity, responsibilities, or changes to the work environment causes physical and mental fatigue that can noticeably affect the normal operation of blood vessels in the brain or heart.

B. For incidents of brain vessel or heart disease not described in paragraph A above, if the occurrence or deterioration of the disease can be verified as happening during the time periods mentioned above and medically verified as remarkably related to work, it can be regarded as a work-related illness.

C. Notification 2008-43 of the Ministry of Labor

1. Brain Vessel Disease or Heart Disease

A. "Sudden and unexpected tension, excitement, horror, surprise or changes in the work environment cause remarkable physiological changes to the employee" means that, within the 24 hours before the occurrence of the incident, the condition of brain vessel or heart disease deteriorated rapidly and noticeably more than naturally, due to the occurrence of sudden and unexpected incidents or rapid changes in the work environment.

B. "The work burden increases for a short period of time just before the occurrence of the accident due to volume of work, time, intensity, responsibilities, or changes to the work environment, and causes physical and mental fatigue that can noticeably affect the normal operation of blood vessels in the brain or heart" means that, within the one week before the occurrence of the incident, the volume of work or working hours increased by more than 30%, and the intensity, responsibilities or work environment changed so greatly that a normal person would not be able to adjust.

C. "The chronic work burden due to volume of work, time, intensity, responsibilities, or changes to the work environment causes physical and mental fatigue that can noticeably affect the normal operation of blood vessels in the brain or heart" means that it was objectively confirmed that the physical and mental stress continuously occurred more often than during general work duties at least three months before the occurrence of the incident.

D. When evaluating "the work burden for a short period of time" and "the chronic work burden" according to "B" and "C" above, the following items shall be considered collectively:

1) Working hours and intensity at normal times;

2) Special cases such as fixed night-work, shift work, driving for long periods of time, etc.; and

3) Whether the employee can adjust to the volume of work, choose the adjustment period, and get enough sleep.

IV. Conclusion (Verifying the cause-and-effect relationship between work and death)

A review of this case reveals that the related facts almost completely satisfy the 'Criteria for Evaluation as an Occupational Accident.' The foot-and-mouth disease that affected the nation earlier this year had also seriously and negatively impacted the milk carton company the Employee worked for in terms of lost business and increased labor costs. Receiving the redundancy plan only made matters worse. Then suddenly orders from Japan greatly increased in April 2011 after the earthquake and tsunami. The factory had to work three shifts instead of two, working overtime and on holidays and weekends, days which the Employee also worked. There were disputes over quality issues with the related Japanese managers, which, as mentioned, the Employee had to directly resolve. On top of the accumulated physical fatigue from the aforementioned work load, his emotional stress greatly increased as the plant manager in charge of implementing the redundancy plan given by company headquarters. Accordingly, as it could be deemed that the Employee's death could be considered a case where "*the work burden increases for a short period of time just before the occurrence of the accident due to volume of work, time, intensity, responsibilities, or changes to the work environment, and causes physical and mental fatigue that can noticeably affect the normal operation of blood vessels in the brain or heart,*" this case was determined to be a work-related-accident.

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

1. Related law (Industrial Accident Compensation Insurance Act)

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.

Settlement Following an Occupational Fatality

I. Introduction

In October 2015, the Seoul International Fireworks Festival was held at the Han River Park and provided a fantastic show and good memories for many. However, during the night just before the fireworks began, a daily worker (hereinafter referred to as “the deceased worker”) drowned while working on preparations for this event. While the deceased worker was moving laser equipment for the fireworks from a boat to a barge, he lost his balance, fell into the water and died. The deceased worker was hired as a daily worker by the company that would operate the laser equipment (hereinafter referred to as “Company A”), which in turn was in a subcontract with the primary contractor (hereinafter referred to as “Company B”) in charge of the whole fireworks project. In addition, the boat where the accident happened belonged to a third company (hereinafter referred to as “Company C”).

A funeral could not be held due to disputes with the surviving family, so the president of Company A visited KangNam Labor Law Firm and asked for its assistance in resolving this occupational accident case. This labor law firm, representing Company A, explained the legal responsibilities to each party and successfully helped them to reach an amicable settlement. Here, I would like to explain how the claims in this occupational accident were resolved, and the legal points of the disputes.

II. Facts

On Saturday October 3, 2015, the Seoul International Fireworks Festival 2015 was held at the Han River Park in Yeouido. Company A had entered into a subcontract with Company B (presiding over the fireworks for the festival), and was engaged in leasing, installing and operating the laser equipment. Company A had hired the deceased worker as a daily worker to be paid a daily rate of 100,000 won from September 29 to install the laser equipment. The deceased worker had been working on this installation with the president of Company A from 2 pm to late night on Friday, October 2. At 10:30 in the evening, three persons (Company A’s president, the deceased worker, and another employee) were moving the laser equipment from a 5 meter-long boat to a barge floating on the river between Wonhyo Bridge and the Han River Train Bridge near Yeouido. While the deceased worker was lifting the laser equipment from the motor boat to the barge, he lost his balance and fell into the water. An underwater search begun very shortly after by the police failed to find him. It was only on Sunday October 4, at 8:30 am, that his body was found floating near the Han River Park (Yeouido area) and recovered by the police.

The deceased worker was unmarried at the time of death, and did not live with any family members. His parents passed away years ago, and he is survived only by a brother and a sister. On November 6, 2015, the surviving family reached a settlement with the president of the contractor, Company B, and the president of the subcontractor, Company A. The total amount of compensation came to 260 million won, with the surviving family applying for part of that

compensation to the Industrial Accident Compensation Insurance (IACI) Agency directly, with the remainder (totaling 150 million won) to be paid by Company A and Company B to the surviving family no later than November 10, 2015.

III. Responsible Parties for Survivor's Compensation

Company B, responsible for the fireworks project, had exclusively subcontracted the related laser operations to Company A. The daily worker, working for Company A but while moving laser equipment from a boat belonging to Company C, fell into the water and drowned. In this case, who is considered responsible as the employer?

Article 90 (Exception to Subcontracted Work) (1) stipulates "If a business is operated based upon several tiers of subcontracts, the primary contractor shall be regarded as the employer for purposes of accident compensation." For occupational accidents, the employer who hired the employee shall be responsible as the employer with the duty of ensuring safety. However, for construction projects, the primary contractor is charged with general responsibilities of safety and health regarding the safety facilities, safety nets, etc. required by the Occupational Safety and Health Act. Accordingly, in cases where the primary contractor does not fulfill its safety responsibilities, the primary contractor shall have the first obligation to provide compensation.[43]

In this case, Company A, which had hired the deceased worker directly shall be first responsible as his employer. Provided, as Company A was a subcontractor assigned to part of the fireworks project by the primary contractor, as Article 90 of the Labor Standards Act (Exception to Subcontracted Work) states, the primary contractor shall be responsible for compensation for damage. Accordingly, Company A and Company B shall hold joint responsibility. In reality, it was agreed that Company A was responsible for the IACI's obligation, while Company A and Company B were both obligated to cover any amount exceeding IACI compensation. On the other hand, as the deceased worker had fallen to his death from a boat operated by Company C, the surviving family may have legal claim separately against Company C. It was thus agreed that the elements related to Company C could be handled separately from this particular case.

IV. Details of Compensation for Damages & Determining Settlement Amount

It is essential to calculate substantial amounts for compensation under the IACI Act and for compensation for damages from civil claims to reach an amicable settlement. Through accurate calculation of compensation, the amounts the surviving family could claim and the proportion to be covered by the related companies can be understood.

43 Jongryul Lim, 「Labor Law」, 13th Edition, 2015, Parkyoung sa, pg. 487; Sanggook Lee, 「Industrial Accident Compensation (I)」, 3rd Edition, 2014, Daemyung Publishing Co., pg. 153.

1. Calculation of compensation for damages under the IACI Act

(1) Basic data

- Average daily wage: 73,000 won (daily wage 100,000 x 0.73: Applying to daily worker's average working rate)

(2) Compensation under the IACI Act: 104,712,340 won

- Survivor's compensation: One day's average wage x 1300 days =

73,000 x 1300 = **94,900,000 won**

- Funeral allowance[44] : One day's average wage x 120 days =

73,000 x 120 = 8,760,000 won.

The minimum official funeral allowance for 2015 is **9,812,342 won.**

2. Compensation for damage through civil claims[45]

(1) Basic data

1) Date of birth: May 13, 1972

2) Date of accident occurrence: October 4, 2015 (43 years, 4 months, 21 days)

3) 1 day's average wage: 73,000 won (daily wage 100,000 x 0.73: Applying to daily worker's average working rate

4) Standard unit of wage[46]: 102,144 won (based upon a supporting worker's standard unit of wage in the second half of 2015)

5) End of expected working period[47]: May 12, 2032 (199 months of potential working life remaining between the date of death to 60 years of age)

(2) Substantial calculation

1) The deceased worker's lost wages

ㅇ Between the date of death to 60 years of age (100% in terms of lost working ability)

- Standard unit of wage for supporting worker x 22 days[48] x deduction of living expenses[49] x

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44 A funeral allowance equivalent to 120 days' average wages is paid to the surviving family conducting a funeral service. As the employee's wages are too low to cover the funeral expenses, a system was introduced to determine maximum and minimum allowances.
- As of 2015, the funeral allowance shall be a maximum 13,848,542 won, and a minimum 9,812,342 won.

45 Introduction of Calculation Sheet for the Amount of Damage Compensation (2005): Kiman Hong, Judge of Southern Seoul District Court

46 Construction Association of Korea, Standard unit cost of wage (Wage survey on the construction industry): Effective from September 1, 2015.

* Daily workers can be categorized in the following three groups:
1) Non-professional workers (daily wage 89,566 won): Workers engaged in light work not requiring specific skills; simple, manual jobs.
2) Skilled workers (daily wage 111,771 won): Workers engaged in relatively skilled jobs, performing duties under special working conditions.
3) Supporting workers (daily wage 102,144 won): Workers engaged in supporting a skilled worker and under the directions of that skilled worker.

47 Remaining working period is the period remaining in terms of working years up to the retirement age determined by the Collective Agreement or the Rules of Employment, and if a retirement age has not been introduced, the legal retirement age (60 years) is regarded as the end of the expected working period. (Article 73 of the IACI Enforcement Decree (Paragraph 3))

48 Daily workers in agriculture are determined to work 25 days a month, while other daily workers are determined to work 22 days a month.

the loss of working ability x Hoffmann's figure[50] from his death to 60 years

- 102,144 won x 22 days x (1-1/3) x 100% x 144.7001 = 216,776,956 won
- 20% deducted due to mistakes made by the deceased worker:

216,776,956 won x 80% = 173,421,564won

2) Compensation for emotional damages

- 100,000,000 won[51] x 100% (Loss of working ability) x [1-(mistakes by the victim x 0.6)]
- Deducting 20% for victim's actions brings this number to 88,000,000 won.

3) Compensation through civil claims: The deceased worker's lost wages (173,421,564 won) + Compensation for emotional damage (88,000,000 won)

= 261,421,564 won

3. Further details on reaching settlement

It was important to accurately calculate the compensation according to the IACI Act and compensation through civil claims in order to reach a settlement between the surviving family and Company A & Company B. Total compensation for this occupational fatality was calculated as 261,421,564 won, which included 104,712,342 won in compensation to be claimed under the IACI Act. The surviving family, Company A and Company B negotiated with one another and finally agreed that Company A and Company B would pay 150 million won directly to the surviving family, while the surviving family would apply to the IACI Agency directly for the remaining compensation.[52] This agreement stipulated that after the related companies had paid the agreed compensation, the surviving family would take no further civil, criminal, or administrative action against them. In addition, the surviving family promised to submit a petition to the relevant administrative offices to reduce the criminal charges against Company A and Company B.

V. Content of Settlement (Settlement Agreement)

1. Parties to Agreement

1) Party A: Subcontractor (Company A) and Contractor (Company B)

2) Party B: Deceased worker's siblings (brother and sister)

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49 Living expenses equivalent to one third (33.33%) are deducted from total wages.

50 1. (Sisa Encyclopedia, Park Moon Kak) Hoffmann and Leibnitz calculation methods
If compensation is made in the form of a lump sum paid in advance, rather than each month until a certain ending period, deductions should be made equivalent to the interest that would be paid in the latter case for payments made in the future. In this case, the Hoffman method is for simple interest, while the Leibnitz method is for compound interest.
2. Generally, the Hoffmann method is preferable for employed victims, and is more often used in compensation for civil claims. In the IACI Act, the Leibnitz method is designated only for calculating Special Disability Benefits. Which method is used for calculating compensation should be determined exclusively by the court according to a Supreme Court ruling (Supreme Court July 28, 1983, 83 da 191).

51 As of March 1, 2015, the standard compensation amount for emotional damage for an occupational accident is 100 million won.

52 Related judicial ruling (Seoul High Court ruling on September 10, 2000, 99 nu 15343): The compensation that a person receives for an occupational accident from the employer separately from the compensation under the IACI Act refers to compensation received other than the compensation under the IACI Act. Therefore, the right to claim benefits for the occupational accident under the IACI Act shall not be extinguished.

2. Details of the accident: -omitted-

3. Content of the settlement

1) Party A will pay Party B 150 million won as settlement (excluding compensation under the IACI Act) and compensation for emotional damages claimed under civil and other laws, to the bank account designated by Party B. Party B will apply for and receive compensation (Survivor's compensation and funeral allowance) under the IACI Act from the Korea Workers' Compensation and Welfare Service.

2) Since Party B amicably agreed with Party A on the above settlement for claims by Party B and other relatives (lineal blood relatives, collateral blood relatives, other relatives), Party B will not make any civil or criminal claims such as filing of complaints, additional compensation, lawsuits, or any other type of claims including for unexpected items at the time of agreement regarding this accident in the future, and waive any claims regarding this accident against Party A.

3) Since the settlement in the above Article (1) includes all compensation for emotional damages to Party B's other relatives (lineal blood relatives, collateral blood relatives, other relatives), Party B will be responsible for any particular person among Party B's other relatives making complaints or other claims against Party A or persons related to Party A.

4) As Party A and Party B have reached settlement amicably, Party B confirms that Party A and Party A's employees related to this accident will not receive criminal charges, and if necessary, Party B will cooperate in submitting this intention to the related agencies.

5) Party B confirms that this settlement agreement has been concluded with sincere intentions after understanding all situations sufficiently on equal footing, without fraud, coercion, or mistake.

6) Party A and Party B shall compose four copies of the settlement agreement, print and sign their respective names on each copy, and keep one copy each after notarization of those copies, in order to certify this settlement agreement.

VI. Conclusion

Two lessons presented themselves in the course of resolving the claims from this occupational accident. The first is the importance of industrial safety. This occupational accident occurred through the failure to have safety measures at the workplace, and could have been avoided if the deceased worker had worn a life jacket while on the boat. The second is the importance of having an expert resolve the complicated interests and disputes in an occupational accident. This labor attorney was able to explain the legal obligations to the respective parties, propose appropriate compensation, and successfully persuade each party to reach agreement on a settlement.

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.

Can an accident on the way to the office before a business trip be considered work-related?

I. Introduction

When an accident at work is determined to be work-related, this can provide the injured employee and his/her family the opportunity to more easily get through the misfortune. A certain employee left home two hours earlier than usual to go to his office before beginning a business trip, and got into a traffic accident, which resulted in his becoming paralyzed from the waist down. A branch office of the Korea Workers' Compensation & Welfare Service Corporation (hereinafter referred to as "the Agency") rejected the employee's application for accident compensation, on the grounds that the accident occurred on the way to a gathering place for a business trip, not on the business trip itself, and that an accident occurring on the way to work is not recognized as a work-related accident under current labor laws. The employee appealed to the Agency's head office for a reexamination of his application, claiming that even though the accident involved his own car and occurred on the way to work, the employer assigned the employee to take part in the business trip and designated his car as the main form of transportation. Therefore, the accident could be considered to have occurred during the business trip. The Accident Compensation Appeal Board confirmed that the company had designated his car as the main form of transportation, and that the accident occurred on the way to work to pick up his colleagues, and so it reversed the branch office's rejection of his application for accident compensation.

Herein, we will review the main points of dispute and the criteria for determining whether an accident that occurs during the commute to and from work before a business trip can be considered a work-related accident.

II. Actual Facts & Main Points of Dispute

1. Actual facts

The employee drove away from his house (in Daebang-dong, Seoul) at 5:30 am in his own car, which would be the main vehicle for the business trip, to participate in a meeting in Changwon, South Gyeongsang Province at 11 am, June 26, 2015. On the way to the office (located in Anyang City) to pick up the company president (the employer) and a colleague, his car slid on the road (wet from rain) and hit some trees on the side of the road, causing injuries that resulted in him being paralyzed from the waist down. The employee applied for accident compensation, but the Agency rejected the application.

2. Reasons for the Agency's rejection

In cases where employees receive an order from their employer to take a business trip, are to meet at a certain gathering place and move on to the workplace in a vehicle provided by the employer, the business trip is from the time of meeting at the gathering place to the time of returning to the gathering place at the end of the business trip. Therefore, the time during

which the employees travel to the gathering place from their respective residences, and the time during which they return to their respective residences from the gathering place shall be regarded as outside of the business trip. This means that cases where several employees are ordered to go on a business trip and are asked to meet at a certain gathering place and travel to the working place together in one particular employee's car should be regarded as the same. Therefore, this accident was a traffic accident that occurred on the way to the gathering place while the employee was driving his own car outside the employer's control. Therefore, the accident is an "accident during the commute to and from work" and is not recognized as a work-related accident.

3. The employee's claim

(1) The route and means of transportation had been ordered.

The employee usually left his house around 7:30 am, traveling to work either by public transit or his own car. However, on the day the accident occurred, he left his house around 5:30 am, two hours earlier than usual, to meet his employer and a colleague at the office (in Anyang), as substantially directed the day before (June 25, 2016) by the employer, to take the business trip together in the employee's car.

The place where the accident occurred was on a main road, the typical route the employee used to commute to work from his house. The employer confirmed that the accident occurred while the employee was following company instructions, covered some medical expenses and lost wages, and submitted the Application for Medical Care Benefits on behalf of the employee. Since the employer had designated the applicant's own car as the main transportation for the business trip, the means of getting to the gathering place was restricted to that car, and therefore the route was also determined. Therefore, as the employee's car was used for business purposes from the time he left his house on the day of the accident, the employee's right to use his vehicle had changed hands to the employer, making this accident one that occurred while under the employer's direction.

(2) This accident was an occupational accident regardless whether it occurred during a commute or on the business trip.

The employee had to use his car for the business trip as the employer had directed, and had the accident on the way to the office (in Anyang) to pick up the president and a colleague who were waiting there. This accident should therefore be considered an occupational accident because the employee's car was at the time being operated by the employee while he was acting according to the employer's direction and supervision: the fact that the employee was using his own car for the business trip to Changwon via the company premises in Anyang was in the course of implementing the employer's instructions. Therefore, the vehicle that the employee drove to the office in Anyang was not the vehicle that the employee could choose, but the vehicle the employer chose, making this accident one that occurred while commuting to work under the employer's direction and supervision.

4. Main points of dispute

This case revolves around whether a traffic accident caused by individual negligence can be considered an accident during a business trip or a simple commuting accident. Generally, accidents during the commute to work for the purpose of taking a business trip are not considered occupational accidents, but in cases where the employer has designated a certain employee's car as the vehicle for the business trip, a traffic accident occurring during that

employee's commute to work in that designated vehicle can be recognized as an occupational accident. These controversial issues are the main points of disputes.

III. Legal Principles for Commuting Accidents

1. Related laws

The term "work-related accident" refers to any injury, illness, disability or death of a worker, that occurs in the course of carrying out his/her duties.[53] The criteria for recognition of an accident as work-related: "an accident is admitted as an occupational accident when it happens while the worker is commuting to and from work under the control of the employer, such as using transportation provided by the employer or the equivalent thereof: ① The accident should happen while the worker is using a means of transport which either is provided by the employer for the worker's commute to and from work or can be regarded as being provided by the employer; ② The worker should not have entire and exclusive responsibility to manage or use the means of transport used for his/her commute to and from work." [54]

2. Related judicial rulings

(1) A Supreme Court ruling stipulates, "In considering the content of the above provisions and forms and the legislative intent, Article 29 of the Presidential Decree enumerates some work-related accident examples to give requirements for accidents to be considered work-related. Article 37 of the IACI Act (Accidents while commuting to and from work) regulates that work-related accidents include 'an accident which happens while the worker is commuting to and from work under the control of the employer, such as using transportation provided by the employer or the equivalent thereof.' This Article does not regulate that other work-related accidents occurring while commuting to and from work should be excluded from what can be deemed as occupational accidents. ① In cases where the employee uses the means of transportation provided by the employer or has to use another equivalent means of transportation as directed by the employer; ② In cases where the employee has to fulfill work-related duties while commuting to and from work, or the employee has to conduct urgent assignments before or after ordinary working hours; ③ In cases where the employee did not have any other choice in means of transportation to commute to and from work due to characteristics of the job or special characteristics of the workplace: Such accidents occurring during the commute to and from work can be directly and closely related to work, and so such accidents shall be recognized as work-related accidents occurring while under the employer's direction and supervision." [55]

(2) In cases where an accident occurs during a situation involving commuting and a business trip, judicial ruling determines the following: "Article 34 (Paragraph 4) of the IACI Act's Enforcement Decree regulates that in cases where the employee is injured while commuting

53 Article 5 of the Industrial Accident Compensation Insurance Act
54 Article 37 of the IACI Act (Criteria for Recognition of Work-related Accidents); Article 29 of the IACI Act's Enforcement Decree (Accidents while Commuting to and from Work).
55 Supreme Court ruling: November 29, 2015 2001 do 28165; September 25, 2008 2006 du 4127.

to and from work, only the following two cases are recognized as work-related accidents: ① The accident should happen while the worker is using a means of transport provided by the employer for the worker's commute to and from work; or ② The worker should not have entire and exclusive responsibility to manage or use the means of transport used for his/her commute to and from work. Accordingly, the employee concerned went on a business trip with his team leader and colleagues, then returned to the gathering place, where each person went to their respective homes. On the way back to his house, the employee concerned drove his own car and had a traffic accident. The employee concerned was not under the employer's direction and supervision. He drove at his own volition, so this accident cannot be regarded as an occupational accident." [56]

3. The Agency's criteria for determining accidents while commuting to and from work as work-related: [57]

(1) Basic principle: Whether the traffic accident while commuting to and from work can be recognized as work-related or not shall be determined by whether the course of commuting to and from work was under the direction of the employer. Therefore, it shall consider whether the means of transportation was provided by the employer or whether the employee could decide the means of transportation and his/her commuting route or not.

(2) Whether the traffic accident while commuting to and from work can be recognized as work-related or not shall be determined by the following:

① 1st step: The accident should satisfy the requirements in Article 29 of the Enforcement Decree of the IACI Act. That is, the employee should use a means of transport like the company's commuter bus and its route exclusively, or use its equivalent means.

② 2nd step: Whether the route and means of transportation can be determined by the employee. That is, even though an employee uses his/her own car for commuting, if the employee cannot use another means of transportation or route, it shall be regarded as an occupational accident.

(3) Choice of route and means are determined to be limited in the following cases:

① The employee carries out assigned duties during the commute to and from work;

② The employee carries out urgent duties related to work before or after the usual contractual working hours; and

③ In view of other job characteristics or special characteristics of the workplace, the employee's choice of means of transportation and route for the commute to and from the workplace is limited by the employer.

However, in ① and ②, until the employee completes his/her duties and tasks and returns to the ordinary commuting route, his/her trip is treated as a business trip, and any accident occurring after the employee returns to the ordinary commuting route shall be determined as an "accident while commuting to and from work." [58]

56 Supreme Court ruling on September 4, 2002 2002 do 5290: The employee died on the way back home from the business trip. The accident occurred out of the regular route and means, and so could not be recognized as a work-related accident.

57 Guidelines for handling accidents occurring while commuting to and from work: The Agency's Compensation Department – 10195 (December 17, 2013) The Agency distributed guidelines that included a wider recognition of accidents while commuting to and from work to be determined as work-related.

58 The Agency's Compensation Department – 7065ho, August 30, 2013.

IV. Decision by the Industrial Accident Review Committee & Evaluation

1. Decision

The employee usually used the subway to commute and only used his own car when he had a business trip, usually two or three times per week. In the morning, he arrived at the office around 8:30. On the day when the accident occurred, he was directed by his employer to use his own car, and drove it towards the office to pick up the president and a colleague before leaving together on the business trip. The employee left his house around 5:30 am, two hours earlier than ordinary, and had the accident at 6:16 am. The accident occurred on the regular commuting route. In consideration of these things, the employee's accident is considered a work-related accident occurring while under the employer's direction and supervision as per the means of transportation and route, so the Committee unanimously reversed the Agency's earlier rejection.

2. Evaluation

The day before the accident, the employer had designated the employee's car as the means of transportation for the business trip. The employee did not use public transit as he normally did and instead drove his own car to work to use for the business trip as directed. On the way to the office, he got into an accident. Even though the car was his own, it was designated by the employer for company use, so the accident can be regarded as work-related as the employee used the car as designated by the employer under the employer's direction and supervision.

V. Conclusion

The courts have continuously expanded the range of recognition as work-related those accidents occurring while commuting to and from work, and on December 17, 2013, the Agency distributed updated work-process guidelines reflecting recent judicial rulings. The accident in this article was recognized as work-related accident in accordance with this gradually-widening recognition as work-related those accidents occurring while commuting to and from work.

Recently, revision of the Industrial Accident Compensation Insurance Act has been proposed to the National Assembly to extend the range of recognition as work-related these types of commuting accidents. Currently, in general terms, accidents occurring while commuting to and from work are not recognized as work-related accidents, even though they are the most frequent type of accidents and seriously hinder employees' abilities to make a living. At present, commuting accidents are generally only admissible as work-related for government employees, which also goes against the principle of equal treatment for employees in the private sector. I look forward to such private-sector employees receiving equal protection under the principles of industrial accident compensation. As the legal representative for the employee in the case described in this article, it was with great satisfaction that I was able to assist him in successfully appealing the Agency's rejection of his application for compensation, and thereby provide his family some hope and relief for the future.