Overwork Recognized as Cause of Occupational Accident (Heart Attack)

I. Introduction and Summary of Case

Chronic long working hours is a major cause of death from stroke or heart attack for many workers.[1] Recognizing a death as due to overwork, and therefore an occupational accident, is not easy even if the surviving family applies for such with the Labor Welfare Agency. The courts have a broader recognition of the relationship between work and disease. In this article, we look at an exceptional case where a security guard died of a heart attack while engaged in personal activities on holiday, and his death was recognized as an occupational accident. Herein, I will examine the case in detail, and review the criteria and related implications.

After retiring from the police force, the employee entered and worked as a night security guard at a recycling center in Yangcheon-gu from February 26, 2018, and died of a heart attack while on holiday and hiking on a nearby mountain six months later (August 22). Accordingly, the spouse filed for recognition of his death as an occupational accident with the Labor Welfare Agency, claiming that the employee died due to stress accumulated from overwork. However, in February 2019, the Labor Welfare Agency dismissed the claim, stating that there was no relation between the work and the death. Accordingly, the spouse visited this labor attorney and requested legal representation for the case. So, after investigating the death of the employee, this labor attorney appealed to the Head Office of the Labor Welfare Agency for reconsideration. In August 2020, the Labor Welfare Agency's Head Office cited the opinion of the Labor Welfare Agency's medical doctors, and said that the death of a worker cannot be recognized as an occupational accident because he had not been working the number of hours considered as "overwork," and even if there was an additional weighting for shift work, they judged that it was simple surveillance and security work. Seeking to reverse the decision of the Labor Welfare Agency, this labor attorney told the Ministry of Employment and Labor (MOEL)'s Re-examination Committee that the employee's work was not simple security work, but involved night patrols every hour, and provided evidence of the harmful and dangerous environment of the workplace. Fortunately, the judges of the re-examination committee decided on May 4, 2021 to overturn the Labor Welfare Agency's decision to reject the case.

II. Decision of the Labor Welfare Agency (Occupational Disease Judgment Committee)

The Labor Welfare Agency's Occupational Disease Judgment Committee did not recognize the death of this guard as an occupational accident, as the number of hours he had worked did not meet the standard number for determining a chronic overwork

[1] Lee, Hee-Ja, 「Accident Cases due to Overwork and Workers' Compensation」, Joongang Economy, 2014, p. 204.

situation in the MOEL guidelines. The fact that he worked according to a shift system added weight, but the committee did not consider this weighting essential since they felt the guard was performing simple surveillance tasks.[2)]

"The deceased had worked as a security guard at the Yangcheon-gu Office recycling center for about 6 months from February 26, 2018, and as a result of calculating the working hours based on the patrol log, for one week before his death he had worked 46 hours; for four weeks before death, he had worked a weekly average of 52 hours and 15 minutes; and for 12 weeks before his death he had worked a weekly average of 52 hours and 57 minutes. At the time of his death, no sudden changes in work environment were observed. The minority opinion was that the working hours of the deceased were insufficient to be considered "overwork," but since he worked every other day, a considerable causal relationship was recognized between work and the heart attack leading to death. However, the majority opinion was that the average working hours per week before death was 52 hours and 57 minutes, which is less than the standard working hours to determine chronic overwork as stipulated by MOEL guidelines, and there was no significant work burden other than the fact that it was shift work. Taking these facts into account, it was difficult for the Committee to say that he was overworked or under sufficient stress that could lead to death, so a significant causal relationship between work and death was not recognized." The MOEL guidelines forming the basis for the judgment are as follows.

MOEL Guidelines on Recognition of Overwork (No. 2020-155, December 29, 2020)

1. Stroke or heart disease

A. (Omitted) In the event of sudden and unpredictable incidents related to work and sudden changes in work environment within 24 hours prior to the occurrence of symptoms

B. (Omitted) When the amount or time of work within 1 week prior to the occurrence of symptoms has increased at least 30% over the average of 1 week in the previous 12 weeks (excluding the last full week before the incident)

C. (Omitted) **Determination of chronic heavy work is based on the following:**

1) When working hours exceed an average of 60 hours per week for 12 weeks before the incident (average of 64 hours per week for 4 weeks before the incident)

2) Even if the average working hours per week exceeds 52 hours during the 12 weeks before the incident, when performing any of the following tasks (weighted factor in the burden of work)

① Work schedule difficult to predict, ② shift work, ③ work with insufficient holidays, ④ work involving exposure to harmful working environment (cold, temperature changes, noise), ⑤ work of high physical intensity, ⑥ work with large time lags and frequent business trips, and ⑦ mentally stressful work

3) When working hours do not exceed an average of 52 hours per week for 12 weeks before the incident, if they are exposed to multiple weighted factors in the burden of work in Paragraph 2.

[2)] Occupational Disease Decision, 2019 Decision No. 2571, February 6, 2020

III. Reason for Revisiting Case

1. History of the Case and Investigations

In November 2018, shortly after the initial application by the security guard's family for determination of the security guard's death as an occupational accident, Yangcheon-gu Office prepared application documents stating that the employee had died for reasons attributable to overwork, and filed an application for determination as an occupational accident with the regional office of the Labor Welfare Agency. The Labor Welfare Agency then submitted basic data on the investigation documents together with labor contracts, work (patrol) logs, and details on the health of the employee submitted by Yangcheon-gu Office to the Occupational Disease Judgment Committee without visiting the workplace and conducting a specific fact-finding investigation. The Committee dismissed the application for survivor's benefits explaining that the case was not related to occupational overwork.

In response to this, this labor attorney requested an information disclosure from the regional branch of the Labor Welfare Agency regarding the employee, and requested the same from Yangcheon-gu office, which had jurisdiction over the workplace of the deceased, together with questions about the working conditions and working environment at that time. In addition, this labor attorney visited the Yangcheon-gu recycling center and carefully investigated the guard post, the security route, and the workplace environment. In particular, a face-to-face interview was conducted with a co-worker who had worked two shifts with the deceased around the time of his demise. In this face-to-face investigation interview, it was confirmed that they had to come to work 30 minutes before their working hours began to receive necessary information from the day-shift workers, and that the employee did not just work in the guard post at night, but also patrolled every hour, as well as assisted 70 vehicles entering and leaving the recycling center during their shift. As the work load was too high for only two shifts, it was confirmed that the co-worker continually requested additional personnel, and that one more guard had been added two months after death of the deceased, creating three shifts instead of the two shifts that had existed when the deceased passed away.

2. Details of the Re-examination Request

This labor attorney added the facts revealed during the investigation and applied for reconsideration. First of all, since the employee had gone to work 30 minutes earlier than start time every day to take over the tasks, 30 minutes were added to the daily working hours. Second, the employer unilaterally deducted rest time from working hours. Ninety minutes were deducted from the employee's nighttime working hours as break time, but this break time was not constant and the deceased had been unable to leave the workplace during that time. So, it was explained based upon a related court ruling that such break time should be included as waiting time belonging to working hours.[3] Third, some MBC news material that reported on the current workplace in 2017 was cited as evidence to prove the harmful and dangerous working environment due to the odors from rotting garbage, excessive noise from large recycling vehicles coming and going, and a large amount of garbage all around the workplace.

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[3] Supreme Court ruling on Dec. 13, 2017, 2016da243078: The guard was instructed to immediately react when urgent things occurred while in the guard post (security office) during the night break. As a matter of fact, the guard patrolled the premises at the employer's instruction during the night break at different times, which seems to hinder the free use of break time. Taken together, the security guard's night break was difficult to see as a break and sleep time that guards can use freely. In addition, the guard had to be available during waiting time for any emergency situation that might arise.

3. Reasons the Labor Welfare Agency Rejected the Request for Re-examination

In this labor attorney's view, the headquarters of the Labor Welfare Agency only conceded the fact that the employee had come to work 30 minutes before his start time to facilitate the shift handover, and did not accept any other claims. It determined that the 90-minute night break claimed by this labor attorney was not waiting time because the employee was a simple surveillance guard. In addition, the weighted factor of shift work was not considered because it was felt that the workers performed simple surveillance guarding tasks only. An excerpt from its decision is as follows.[4)]

"The common medical opinion of the advisory doctors at the headquarters of the Labor Welfare Agency, who comprehensively reviewed the data related to the applicant's request, concluded that the overtime work of the deceased was simply in excess of normal working hours, but not enough to meet the standard working hours deemed sufficient for classification as "overwork." In addition, there are no items that can be recognized as psychological stress caused by work, and no items that can be judged as a sudden change in work environment. No sudden changes in the working environment or working conditions were found to exist within 24 hours before the death. The working hours of the deceased for one week before death were 47 hours and 00 minutes, and no increase of at least 30% in workload or intensity of work was confirmed. The average working hours per week of the deceased for 4 weeks and 12 weeks before death were 53 hours 30 minutes and 54 hours 12 minutes respectively, and 3 hours of rest was provided when working 24 hours of simple surveillance tasks. It is difficult to recognize this as a short-term or chronic heavy burden. The weighting of the shift system is recognized as a factor, but the duties were simple surveillance tasks of a security guard, so there is little relevance to the work. Therefore, it is difficult to recognize a significant causal relationship between the work performed by the deceased and his death."

III. Reasons for Requesting Re-examination and Obtaining Related Evidence

1. Reasons for Requesting Re-examination

In August 2020, the Labor Welfare Agency's Review Committee also dismissed the request for review, based on the investigation details of the Occupational Disease Judgment Committee and the opinion of the agency's advisory doctors without visiting the recycling center. In response to this, this labor attorney reflected the following items based on objective data in accordance with the MOEL Guidelines on Recognition of Overwork in his application for re-examination.

(1) Weight factors not reflected

The Labor Welfare Agency Review Committee recognized the average working hours per week for 12 weeks before the death as 54 hours and 12 minutes. However, the employee was working on a two-person, two-shift system requiring only work at night on weekdays. Although this shift work falls under the criteria to be determined a weighted factor as set by MOEL Guidelines (No. 2020-155), the committee did not reflect this in

4) The Labor Welfare Agency, Review Team 1-G0006399 (Aug. 26, 2020)

its judgment. According to this regulation, even if the average working hours per week for 12 weeks before death are fewer than 60 hours, as long as it exceeds 52 hours per week, the relevance between work and disease is valid in cases where the work falls under one or more of the 7 weighted factors. Therefore, shift work is directly related to the weighted factors involved in determining whether overwork has occurred.

(2) Additional 30% of night working hours not reflected

The employee in this case was hired for the main purpose of night security work. During the night shift, the employee patrolled every hour, and additionally assisted about 70 vehicles entering and exiting at night with recyclables to measure their weight. Therefore, his duties involved more than simple surveillance tasks. These tasks do not fall under surveillance and intermittent labor duties in Article 63, Paragraph 3 of the Labor Standards Act. Therefore, an additional 30% in work hours must be added for night work, according to MOEL Guidelines (No. 2020-155).

(3) Poor working environment due to vehicle noise and odors not reflected

The waste recycling site was a dangerous workplace, with toxic odors from melting Styrofoam, the noise of 70 vehicles every night, and the constant smell of rotting food waste. The employee had to wear a face mask, safety helmet, and safety boots when patrolling. Of particular note is that the co-worker of the deceased, who worked together with him in the two-shift system, strongly advised bringing in an additional worker after the employee's death, stating that he did not want to also die from the heavy workload. Accordingly, Yangcheon-gu Office brought in an additional worker, making it a three-shift system with three workers in November 2018, two months after the employee's death.

2. Evidence-gathering Activities related to Case Revisit

In this occupational accident case involving overwork, it was of great help to obtain supporting data through an official request for information disclosure and a fact-related questionnaire. Visiting the actual workplace and conducting an experiential survey on the work of the employee played a particularly helpful role in proving that the death amounted to an occupational accident.

(1) Application for information disclosure

This labor attorney requested the Labor Welfare Agency's Seoul Southern Branch and Head Office to disclose information related to the case and received the related documents used to reject the request for the death to be deemed an industrial accident. In addition, the labor attorney asked the employee's workplace, Yangcheon-gu Office, for information in the form of an inquiry in detail about the work environment of the relevant workplace and the reason for hiring an additional worker on a separate work shift, and received all necessary documents.

(2) Onsite confirmation of workplace conditions and interview with co-workers

This labor attorney went directly to the recycling center at Yangcheon-gu Office, the

employee's workplace, to see the workplace layout, patrol route, workplace environment, and ask questions of the co-workers in person. Of particular note is that this labor attorney met a co-worker who was the employee's shift counterpart and listened to the difficulties of the co-worker at that time. It was also confirmed that another co-worker in the other shift had demanded a change from the two-shift system to a three-shift system, and additional personnel.

(3) In addition, the labor attorney submitted MBC video data that he obtained online, which reported on the poor working environment and various civil complaints at the Yangcheon-gu Office recycling center at the time the employee was working there. This MBC video helped to prove the reality of the harmful workplace.

V. Decision during Re-examination and Conclusion

On May 4, 2021, the MOEL's Reexamination Committee held a judgment meeting on this case. Here, the committee members confirmed that the Labor Welfare Agency recognized an average of 52 working hours or more for the 12 weeks before the deceased passed away, so the issue was whether there was room to reflect the shift system, which is an important weighted factor at work. Here, under the premise that the employee's work involved only simple tasks, the Labor Welfare Agency failed to reflect the weighted factors stipulated in the MOEL Guidelines on Overwork. However, the members of the re-examination committee recognized through the MBC video data that the center was a hazardous workplace, that the work system changed from two shifts to three shifts after the employee died due to the high intensity of work, that the worker had to patrol the center premises every hour during the night shift, and that the employee provided support to 70 vehicles carrying recyclable items, also during night shift hours. They judged that the employee's work was not simple guarding work, and the weighted factor would be recognized because of the multiple duties that the employee had.[5] Nevertheless, this labor attorney's claim that an additional 30% had to be added for night work was not reflected, as the committee considered the security guard at night to be a surveillant worker.

While engaged in this case of overwork leading to occupational accident, I realized the importance of fact-finding through information disclosures on the relevant workplace, Yangcheon-gu Office, and the data confirmed through onsite visits, which were used as important information to prove the security guard's off-duty death was an occupational accident. It is not easy to have overwork recognized thus because private companies still have no legal obligation to provide basic data, so it therefore does not happen unless the employer chooses to cooperate. Therefore, it is absolutely essential that legal requirements be introduced that will facilitate labor attorneys being able to investigate factual company situations that may prove helpful in obtaining evidence supporting consideration of incidents as occupational accidents.

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5) Industrial Accident Compensation Insurance Re-examination Committee Decision on May 24, 2021: 2020 Decision 4601, May 24, 2021.5.24.

Criteria for Determining Whether Workplace Harassment Has Occurred

I. Introduction

The Workplace Anti-Bullying Act was enacted in January 2019 and came into effect in July of the same year. Three incidents contributed to enactment of this law. The first case is known as the "nut rage" incident involving an executive of Korean Air in 2014. Vice President Cho 00, a daughter of Korean Air's owners, exploded in rage that her Macadamia nuts were served in a bag, not on a plate, verbally abusing the flight attendant and the chief flight attendant and forcing both to kneel and apologize to her. Ms. Cho then ordered the plane—heading for a runway at New York's John F. Kennedy Airport to fly to Seoul—to return to the boarding gate where she ordered the chief flight attendant to get out. Then the plane departed.[6] In 2019, Korean Air was ordered by the court to pay 70 million won to former chief flight attendant Park 00, for the personnel disadvantages received as a result of the incident.[7] The second case involves a nurse who killed herself, leaving a suicide note that said, "Workplace harassment makes it difficult to work." In March 2019, the Labor Welfare Corporation's Disease Judgment Committee recognized the incident as an industrial accident caused by workplace harassment. In the third case, at the end of 2018, a video surfaced of Yang 00, chairman of WeDisk, a start-up IT company, calling in an ex-employee and brutally assaulting in the office. Yang is currently in prison for this and illegal business activities.[8]

Until recently, investigation and treatment of workplace harassment has been entirely up to companies.[9] There were only two related rules when the Workplace Anti-Bullying Act was enacted. First, rules of employment had to include procedures for dealing with workplace harassment and for remedy. Second, employers were to be punished if they disadvantage those who report harassment in the workplace. The procedures for handling reports of bullying were entirely up to the employer, which did little to actually resolve the problem. Accordingly, in April 2021, the following five employer obligations were added in amendments to the relevant laws. Employers are now obligated to: 1) Prohibit bullying in the workplace, 2) Conduct objective investigations of reported bullying incidents in the workplace, 3) Take appropriate actions to protect alleged victims, 4) Establish and carry out disciplinary action in response to bullying in the workplace, and 5) Comply with confidentiality requirements related to harassment investigations in the workplace, with fines levied for negligence.

When determining whether bullying has occurred in the workplace, the criteria are

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6) Moon, Kangboon, "Is this workplace harassment?" 2020. Gadian, p. 34.
7) Seoul High Court ruling on Nov. 5, 2019.
8) Moon, Kangboon, "Is this workplace harassment?" 2020. Gadian, pp. 35-36.
9) Shin, Kwonchul, "Legal Concepts and Criteria for Determining the Occurrence of Bullying in the Workplace," Labor Law (69), Korean Labor Law Association, Mar. 2019, p. 228.

somewhat complex given the blur between the employer's discretionary personnel rights and the employee's personal rights. I will take a look at the related details and criteria for judgement herein.

II. Factors in Determining Whether Workplace Harassment Has Occurred

1. Concept of workplace harassment

The Labor Standards Act (Article 76-2) prohibits harassment in the workplace, which is defined as "an act of inflicting physical or mental pain on other workers or worsening the working environment through an abuse of the superior position of the employer or relationships in the workplace." There are four components to workplace harassment: (i) Defined target: employer or employee, (ii) Abuse of position: Using position or work relationship against the target, (iii) Repeated actions towards the target, or assigning of tasks, unnecessary for performance of contracted work: Actions beyond the appropriate scope of work, (iv) Infringements of human rights and/or degradation of the working environment: Any action that causes physical or mental pain or worsens the working environment. All four factors above must be met for an incident to qualify as workplace harassment.

2. Explanation of the factors in harassment[10)]

(1) Defined target: Employer or employee

The Labor Standards Act (Article 2 (2)), defines an employer as someone in charge of managing the business, or a person who acts on behalf of the employer with respect to matters related to workers. Someone in charge of managing the business does not have to be the business owner but is in charge of general business management, and refers to someone who represents a business externally after comprehensive delegation from the business owner for all or part of the business management. Anyone who acts on matters related to workers for the business owner is delegated authority from the business owner or the person in charge of business management and is involved in making personnel decisions, such as hiring and dismissal of those within their own realm of responsibility, and directing and supervising the workers on the job, and working conditions. It also refers to someone who can decide and execute matters related to working conditions. Relatives of the employer are included in the scope of "employer" with revision of the Labor Standards Act in 2021 (Article 116). "Employer" includes those with an advantage over other workers, such as via position or work relationship.

In the worker dispatch relationship, according to the Act on the Protection, etc., of Dispatched Workers, a bullying agent in the workplace can also include an employer who directly supervises and directs the work of a dispatched worker.

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10) Ministry of Employment and Labor, "Manual for Judgment and Prevention of Harassment in the Workplace," 2019, pp. 24-27.

(2) Abuse of position: Using position or work relationship, etc., against the target

Harassment in the workplace mainly occurs in places where there is a strong organizational culture or authoritarian hierarchy. It occurs mainly in the form of actions by people with superior social or economic status using their power and superior status against those less socially privileged.[11)]

A superior relationship refers to one in which it is likely to be difficult for those in lower positions to resist any bullying behavior. An abuse of position refers to an offender using their superiority against someone in a command-and-control relationship, or even if it is not a direct command-order relationship, it is to use the higher position or rank system. Workplace harassment does not occur unless it involves the abuse of superiority in position or relationship.

(3) Repeated actions towards the target, or assigning of tasks, unnecessary for performance of contracted work: Actions beyond the appropriate scope of work

Actions that are inappropriate and recognized as exceeding the scope of work can be classified into the following seven categories.

1) **Violence and intimidation**: Actions that involve direct physical force or the threat of physical force, such as directly or indirectly inflicting violence on an object.
2) **Verbal behavior, such as violent, abusive language or gossip**: If it is determined that gossip is spread to a third party, such as in an open place, to damage the victim's reputation, it is beyond the appropriate scope for work. In particular, continuous and repetitive verbal abuse or abusive language can seriously harm the victim's personal rights and cause mental pain, so engaging in it constitutes an act beyond the appropriate scope for work.
3) **Orders to perform tasks related to assistance with non-work affairs**: These are orders that exceed the appropriate scope of work and beyond what is considered normally acceptable in human relations. Examples include continuous and repetitive instructions to run personal errands related to daily life.
4) **Bullying and exclusion**: Intentional disregard and exclusion in the process of performing work are acts that are beyond the appropriate scope of work and beyond the social norm. Examples include intentionally not providing important information related to work or excluding someone entitled to participation in the decision-making process without justifiable reason, forcing someone to move or leave the department without good reason, discriminating against someone in training, promotion, rewards, or routine benefits without good reason, etc.
5) **Repetitive instructions for work unrelated to the employment contract**: If instructions are given to an employee repeatedly to do work that is unrelated to that specified

11) Lee, Soo-Yeon, "The Concept of Workplace Harassment and Judgment Criteria", Ewha Gender Law 10(2), Ewha Womans University Gender Law Research Institute, Aug. 2018, p. 119.

at the time the labor contract was signed, and if a justifiable reason is not recognized, it amounts to an act beyond the appropriate scope for work. Examples including menial tasks only when an employee was hired for specific other tasks, or giving the employee little work without justifiable reason.

6) **Assigning an excessive amount of work**: If the action is judged to be inappropriate, such as not allowing even the minimum amount of time physically necessary for the task, without unavoidable reasons, it is beyond the appropriate scope of work.

7) **Interfering with smooth business performance**: Actions that interfere with smooth business performance, such as not providing essential equipment (computers, telephones, etc.) necessary for business, or blocking access to the Internet or company intranet, are beyond social norms and inappropriate for business.

(4) Infringements of human rights and/or degradation of the working environment

This refers to actions of an employer or a worker that inflict physical or mental pain on another worker through harassment in the workplace or worsening the working environment. It can be said that the working environment has been degraded if an employer intentionally moves certain workers to work in front of the washroom, embarrassing them or creating an environment in which workers cannot perform their duties properly. Intention of the offender is not a prerequisite to determining that actions directly cause physical or mental pain or worsen the working environment.

III. Criteria for Determining Workplace Harassment

1. Conflict between the employer's right to order work and the employee's personal rights

In determining whether or not bullying has occurred in the workplace, there are cases in which the employer's right to order work and the employee's personal rights are in conflict. In labor disputes, an employer's exercise of personnel rights in a way that violates the employee's personal rights is often viewed as illegal under the Civil Act.

The employer's right to command work is one of the personnel rights, which is an authority unique to the employer and necessary to maintain and establish corporate order. The courts have ruled that employers have considerable discretion in determining the extent of personnel management necessary for business, as they are responsible for personnel.[12] In contrast, the Constitutional Court argues that the right to work includes not only the "right to a place to work" but also "the right to a reasonable environment in which to work," with the latter a basic right to protect against infringement on human dignity. It has ruled that this right includes the right to demand a healthy working environment, fair compensation for work, and guarantee of

12) Supreme Court ruling on July 22, 2003: 2002do7225, and many similar rulings.

reasonable working conditions.[13]

Here, in determining the appropriate scope of work, it is necessary to determine whether the employer's right to order the work or the worker's personal rights should take precedence. In this case, it is necessary to determine whether or not it is illegal to determine certain work as falling within the appropriate scope for a job through an "evaluation of conflicting fundamental rights."[14] Of the requirements for determining whether an action constitutes workplace harassment, whether or not it departs from the appropriate scope of work needs to be determined so that conflicts over the basic rights of the employer and employee can be harmoniously resolved.[15] This is determined in the light of sound common sense and practices of the social community, and whether there is rationality or substantiality in common social concepts, etc., which shall be judged individually and in relationship to each other.[16] However, since the problem of workplace harassment arises on the premise of an imbalance of opwer and infringes on the personal rights of workers, an evaluation of conflicting fundamental rights is required from the perspective of the victim, and should focus more on the protection of personal rights.[17]

2. Criteria for determining whether workplace harassment has occurred

The factors and criteria suggested by the court can be used to determine whether workplace harassment has occurred. This shall be decided by considering and evaluating the following collectively: "① the relationship between the offender and victim, ② the motive and intention of the act, ③ the timing, place, and situation, ④ the details of the victim's explicit or presumed reaction, ⑤ the content and extent of the act, and ⑥ the repetition or continuity of the act."[18] Simply put, it is possible for an employer to infringe on human and personal rights or worsen the employment environment with position (power relations), related work (work relations), or other actions unwanted by the receiving party that are outside the scope of the relevant work (harassment, abusive language, etc.).[19]

The employer is the exerciser of authority, while the employee has voluntarily consented to perform subordinate duties. Therefore, it is not easy to distinguish if harassment has occurred or if the employee is simply unhappy with work duties.[20]

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13) Constitutional Court decision on Nov. 28, 2002: 2001hunba50; Constitution Court decision on Aug. 30, 2007: 2004hunma670.

14) Naver Korean dictionary: An evaluation to compare and judge the legal interests of conflicting fundamental rights.

15) Lee, Sang-Gon, "A Study on Improvement of the Law on Bullying in the Workplace," PhD Thesis, Graduate School of Ajou University, Aug 2020, pp. 163-164.

16) Supreme Court ruling on Feb. 10, 1998: 95da39533: Whether the employer is liable for compensation for harassment in the workplace.

17) Lee, Sang-Gon, "A Study on Improvement of the Law on Bullying in the Workplace," PhD Thesis, Graduate School of Ajou University, Aug. 2020, p. 165.

18) Supreme Court ruling on Feb. 10, 1998: 95da39533.

19) Kim, Elim, "Gender Equality and Law," Korea National Open University Press and Culture Center, 2013, p. 242.

20) Shin, Kwonchul, "Legal Concepts and Criteria for Determining the Occurrence of Bullying in the

Nevertheless, if the above criteria are individually reviewed and judged comprehensively, it is believed that clarity will emerge in each individual case as to whether or not workplace harassment has occurred.

IV. Conclusion

The Workplace Anti-Bullying Act, introduced in July 2019, is a major influence on reducing the existing patriarchal authoritarian culture in the workplace and guaranteeing the personal rights of workers. Nevertheless, if resolving workplace harassment is left up to companies, there will be no effective results any time an employer deals with bullying half-heartedly. Amendment to the Workplace Anti-Bullying Act in April 2021 includes provisions to punish employers for engaging in or failing to take the appropriate action for workplace harassment, and obligate employers to conduct an objective investigation if they become aware of workplace harassment. This amendment is particularly helpful to workers. In the future, when harassment occurs in the workplace, the Ministry of Employment and Labor will thoroughly review the incident and actively intervene and punish any employers who fail to take appropriate action, which will work to drastically reduce recurrence. Actions to prevent workplace harassment and provide practical remedies when it does happen can be expected to occur at the same time.

Effect of Paying Severance Pay in Installments and Related Cases

I. Introduction

Recently, a client entrusted us with a case involving a claim that severance pay had not been paid due to the signing of an agreement to receive severance pay in installments. I would like to review the relevant regulations and judgment criteria in detail. In this case, our client had worked as an employee at a firefighting equipment company (“the Company”) from October 2019 to April 2021. When he requested severance pay upon resigning, the Company told him that it had no obligation to pay it as 10% of his monthly salary was an additional payment in lieu of severance pay, in accordance with the severance installment agreement he had signed along with the employment contract the Company had offered him. One of the documents in question was an application for payment of severance pay in monthly installments, while the

Workplace,” p. 243.

other was a pledge that included a request for prepayment of the severance allowance equivalent to the employee's service year, and an agreement on the employee's part to repay any overpayment. All employees were required to sign these documents during the hiring process.

The following questions in this case had to be answered: ① Can the amount received in the form of preliminary payments be offset against the owed severance pay? ② Can the employee receive a separate severance pay amount if he submits a petition to the Employment and Labor Administration Office that he has not received severance pay? ③ Does the prepayment received monthly from the company in accordance with the agreement to receive severance pay installments amount to unfair gains received by the Company or ordinary wage as he received the prepayments on a regular and fixed basis?

In this article, I will look at the relevant court rulings and identify answers to these questions.

II. Classification of Agreements to Receive Severance Pay by Installment and Interim Settlements of Severance Pay

1. Agreements to receive severance pay in installments

An agreement to receive severance pay in installments is an agreement between employer and employee for the employer to pay a certain amount as severance pay in advance, along with monthly wages or daily wages. It is similar to an interim settlement of severance pay in that severance pay is received in advance. However, the fundamental difference is that severance pay installments amount to payments of severance pay for an unknown length of employment in the future so that severance pay will not be paid at the time of resignation.[21] On the other hand, interim settlements of severance pay amount to payment of severance pay that has already accrued, but paid before the time of resignation has been decided, meaning the remaining severance pay will still be paid upon resignation.

2. Interim settlements of severance pay

In principle, severance pay is a wage paid after the fact when an employee resigns from a job according to Article 8 (Severance Pay System) and Article 9 (Payment of Severance Pay) of the Workers' Retirement Benefit Guarantee Act (hereinafter referred to as the "Retirement Benefit Act"). Even in precedents, severance pay is a deferred payment that occurs only when an employee resigns, and is guaranteed by law. It is a right that cannot be given up.[22]

Severance pay is accrued to be paid upon resignation, not before. It amounts to 30 days of the employee's average wages for every full year of continuing work, is paid to a resigning employee, and is a statutory wage (Article 8 (1) of the Retirement

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21) Lim, Jongryul, 「Labor Law」, 18th ed., Parkyoungsa, 2020, p. 589.
22) Supreme Court ruling on Aug. 23, 2007: 2007do4171.

Benefit Act). Therefore, severance pay cannot be replaced by an agreement to receive it in installments. What has thus far been accrued can be paid upon request of an employee before resignation, while the employee's working period continues after the interim payment and severance pay continues to accrue for work performed in the future (Article 8, Article 2 of the Retirement Benefit Act).

III. Criteria for Judgment on an Agreement to Receive Severance Pay in Installments

1. Supreme Court decision (May 20, 2010: 2007da90760)

(1) Facts and progress of the lawsuits

The defendant was a business management consulting company, and the plaintiffs were the defendant's former employees, who did not receive severance pay due to the company's requirement to sign agreements to receive severance pay in installments. The company determined annual salary and severance pay through an annual salary contract, divided it into one-twelfth, and paid monthly salary and severance pay separately. In this annual salary contract, it was stated that "the employee hereby voluntarily requests to receive severance pay on a monthly basis, and on the regular pay day."

During the first trial, the court ruled that the base benefit paid to the employees through the installment agreement amounted to ordinary wage and that the agreement to receive severance pay in installments was invalid. During the second trial, the High Court ruled that the contract for division of severance pay was invalid, but the amount termed "severance pay" received by employees each month was an unfair benefit and should be returned. In response, the Supreme Court kept the ruling of the High Court, but limited the scope of the claim for severance pay under Article 246 (1) 5 of the Civil Execution Act to one-half of the severance pay received through the agreement to receive severance pay in installments.

(2) Details of the Supreme Court decision

Since the judgments were different regarding the agreement to receive severance pay in installments, the principle was established through this Supreme Court decision in 2010. The Supreme Court deliberated on ① whether severance received in prepaid installments can be valid as severance pay, ② whether the payments amounted to a wage or unfair gain, ③ if the payments were unfair gain, could the company offset it with other wages, and ④ the scope of the amount of prepaid severance pay that could replace the mandatory severance pay at resignation.[23)]

① Validity as severance pay: "The agreement to receive severance pay in installments is a waiver of the right to claim severance pay that occurs when resigning, and is invalid because it violates law. It has no effect as severance pay."

23) Kim, Hongyoung, "Effect of the Agreement to Receive Severance Pay in Installments", Labor Law (35), Korean Labor Law Association, Sept. 2010, p. 387.

② Determination as wage or unfair gain: “If the payment of severance pay is not effective, the employer was not obligated to pay the amount corresponding to the original severance pay. Therefore, the amount prepaid as severance pay under the above agreement is not wage to be paid as compensation for work. These payments then amount to losses without legal cause, with the employees thereby gaining an uncalled-for benefit. It is therefore reasonable from the standpoint of fairness that it should be returned to the employer.”

③ Replacement by the employer in the event the prepayments amount to unfair gain: “In the case of overpayment of wages due to an error in calculation, etc., the employer may replace the claim for return of the overpaid wages with the wage to be paid or severance pay of the employee. This also applies when the amount the employer has already paid as severance pay to the employee is ruled as not severance pay. The employer has a claim against the employees to return the unfair benefit they received, which is balanced against the employee's claim for unpaid severance pay.”

④ When replacing, the employer needs to pay an additional amount equivalent only to one-half of the severance pay: “Under the Civil Execution Act, the amount equivalent to half of the severance pay and other benefit bonds with similar properties is stipulated as a non-seizure bond (Article 246 (1) 5). When replacing the unfair gain equivalent to the amount paid by the employer as prepaid severance pay with the employee's severance pay, it is allowed only for the amount equivalent to no more than one-half of the severance pay bond.

2. Critiques within the Supreme Court ruling

① Validity as severance pay: If the right to claim severance pay is waived in advance, this is a violation of law. It can be argued that the employer has paid severance pay already through the installment agreement to comply with the labor-management agreement as a way to reduce the burden on the company of paying a certain amount of money upon resignation or employee retirement. However, since the retirement pension system was introduced in December 2005, the defined contribution retirement pension system has also been introduced.[24] By this DC retirement pension plan, it is possible to prevent future payments by depositing a certain amount of severance pay each month into financial facilities. Therefore, it is not justifiable for an employer to use his/her superior position to require employees to sign an agreement to receive severance pay in installments when signing an employment contract.

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[24] Article 2 of the Retirement Benefits Act. 9. “Defined contribution retirement pension system” refers to a retirement pension system in which the level of contributions to be borne by the employer for payment of benefits is determined in advance.

② Determination as wage or unfair gain: In judging whether the amount prepaid in lieu of severance pay is wages or not, the Supreme Court regarded it as unfair gain. Here, if the amount that is not recognized as severance pay is paid regularly and in a fixed amount to employees, it can be regarded as ordinary wage. In December 2013, the Supreme Court's decision on ordinary wage was that if a fixed monthly wage was paid to all employees, it should be regarded as ordinary wage, regardless of the name it was called.[25] Therefore, the argument that the amount paid in advance as severance pay is not wages (compensation for work), but is other money and goods that amount to unfair gains, is weak. The fixed amount paid monthly in lieu of severance pay should be regarded as a regular wage because it was a regular and fixed amount of money paid only to employees who have worked.

③ Replacement by the employer in the event the prepayments amount to unfair gain: The Supreme Court ruled that even though the agreement to receive severance pay in installments was invalid, it was done in good faith. The Court ruled that it could be replaced with the employee's severance pay. However, it can be seen that the agreement to receive severance pay in installments amounted to a way to avoid paying the amount of severance pay employees were entitled to. Since the retirement pension system was introduced, severance pay can be deposited into the retirement account on a monthly basis, to be paid out upon resignation. Therefore, receiving severance pay in installments through monthly wages cannot be recognized as severance pay. Therefore, I do not believe that the amount paid under the agreement to receive severance pay in installments can replace the obligation to pay severance pay upon resignation/retirement.

④ When replacing, only the portion that exceeds one-half of the severance pay is allowed: The Supreme Court considers the amount paid through the severance pay installment agreement as unfair gain, and based on the provisions of Article 246 (1) 5 of the Civil Execution Act, the employer stipulates that the amount equivalent to half of the benefit receivables can be replaced with the severance pay receivables. The above Civil Execution Act is a legislative consideration that protects the debtor from social policy considerations and maintains the standard of 1/2 of the severance pay to balance with the interests of the creditors.[26] However, since the principle of paying full wages under Article 43, (1) of the Labor Standards Act is a special law of the Civil Act and is a claim arising from the illegal but employer-required agreement to receive severance pay in installments, the amount seen as unfair gain cannot be the full amount paid through the illegal agreement.

IV. Revision of Related Law and Changes in Major Precedents after Supreme Court Ruling

1. Legislation prohibiting abuse of the interim payment system for severance pay

25) Supreme Court ruling on Dec. 18, 2013: 2012da94643 (Decision on ordinary wages)

26) Yoo, Jaeshin, "Critical Review of the Legal Principles of the Severance Pay by Installment Agreement," Labor Law Forum (20), Labor Law Theory and Practice Society, Feb. 2017, p. 225.

In many cases, the interim settlement system for severance pay was overused, threatening the livelihood of employees after retirement. Accordingly, on July 25, 2011, the Retirement Benefit Act was revised to place stricter requirements for interim settlement of severance pay. Employers shall not make interim severance payments outside of the following 7 reasons: ① the employee needs it to purchase a home, ② the employee needs it to provide key deposit money for leasing a home, ③ the employee needs it for medical care of an illness or condition that requires medical treatment of at least 6 months, ④ the employee declares bankruptcy or ⑤ individual rehabilitation procedures are initiated, ⑥ the employer introduces a wage peak system, or ⑦ the employee needs it to recover from a disaster. Therefore, requiring an employee to give up receiving severance pay upon resignation or retirement and to agree to receive it in advance instead violates the Labor Standards Act.[27)]

2. Recent precedents related to paying severance pay in installments

(1) Daegu District Court ruling on October 26, 2012: 2012na11028 for a claim stating: "The company signed an annual salary contract with the employees and received a pre-payment agreement for severance pay from the employees. The company calculated the annual salary including severance pay, divided it by 12, and paid it to the employees every month. Since the company has already paid all severance pay owing, there is no obligation to pay severance pay to the employees again."

(2) Busan District Court ruling on October 16, 2012: 2012gadan28710 for a claim stating: "The employees signed an employment contract with the company at the beginning of each year, including the amount of severance pay for the next one year, and the company paid the amount of severance pay accordingly. If the above payment is not recognized as a payment of severance pay and is not effective as a wage payment prescribed by labor-related laws, employees must return the above amount to the company as an unfair benefit."

Ruling on (1) and (2) above:

The court stated, "If the effect of the payment of severance pay is not recognized due to the violation of laws and compulsory regulations even though the employer has actually paid the employee the required amount of severance pay, the amount received as severance pay by the employee is an unfair benefit and must be returned to the employer.[28)] However, in view of the legislative purpose of stipulating the severance pay system as mandatory, although the agreement concluded between the employer and the employee only sets wages, the employer required an installment agreement simply to avoid having to pay severance pay at resignation/retirement. In such case, the above rule cannot be applied." Therefore, the ruling was against having to repay the severance pay received through the agreement to receive severance pay in installments.

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27) Supreme Court ruling on Mar. 27, 1998: 97da39732.
28) Supreme Court ruling on May 20, 2010: 2007 da 90760

(3) Supreme Court ruling on October 11, 2012: 2010 da 95147: The agreement to receive severance pay in installments to avoid paying severance pay later means the payments are not severance pay, and the amount received as severance pay cannot be regarded as unfair gain. Therefore, return of the funds cannot be sought.

V. Conclusion

In 2010, after the Supreme Court ruling that money received under agreements to receive severance pay in installments was unfair benefit and that 1/2 of the employer's severance pay obligation could be considered paid due to the unfair benefit claim, restrictions on interim severance pay were made stricter in 2011 in order to protect the right to severance pay. Accordingly, receiving interim severance pay has become virtually impossible outside of the seven legal reasons. In December 2013, the Supreme Court ruled that certain allowances given a variety of names were actually ordinary wages as they were paid according to a fixed schedule. Due to such legislation and precedents, payments given to employees through an agreement to receive severance pay in installments is not recognized as severance pay or unfair benefit. It is also particularly important to recognize that such pre-payment of severance pay is no longer recognized as interim receipt of severance pay or an unfair employee benefit.

Understanding the Police and Prosecutor's Investigation regarding Labor Case (2/4) (Attorney at Law, Sangyung Park)

1. What to expect if you are arrested or there is a warrant out for your arrest.

Sometimes a warrant for arrest is requested because there is sufficient evidence that a crime was committed by the suspect, the crime is very cruel, there is a high possibility that the suspect will fail to appear and/or destroy evidence, and there is a risk of recidivism. In such cases, whether the warrant is granted or not is decided after the court reviews the application for an arrest warrant.

First, a copy of the request for an arrest warrant is submitted to the court. Then, upon receiving the reason for a warrant, the accused may wish to prepare written statements to deny the allegations that constitute a crime, the high possibility of escape and destruction of evidence. The accuser will need to prepare two copies and submit one to the court at the time the court is considering whether or not to issue the arrest warrant.

As for claiming warrants, the accused must give an explanation of the items that the accused agrees and disagrees on, has provided evidence related to the charges refuted, and has been voluntarily present during police investigations. It will also be necessary to attach a certificate of family relations, and status of his/her residence and job, and emphasize that the amount of evidence the police have already obtained through search and seizure is sufficient, and the possibility exists that the accused will have an unreasonably difficult time protecting his/her rights if he/she is detained.

If the warrant is requested by the police after actual examination of the need, or if the prosecutor at the police detention center requests, the accused will have to wait at the detention center until the necessity for arrest is determined.

2. Your response to a search and/or seizure.

In the event of an accident such as a gas explosion or a falling incident during construction, the police will begin search and seizure against the contractor and its subcontractors. This will target bank accounts, mobile phones, the Internet, CCTV footage, and even corporate computer servers.

In the past, the practice has shifted away from seizing paper items such as company document books to searching for digital evidence to seize on laptops, mobile phones, and even car navigation systems.

What should you do if police officers enter your company premises to search? First, they must present a warrant for such search and seizure. The scope and location of the search should be identified and remain within that range.

In addition, it is necessary to monitor the search and seizure process of investigative agencies such as the police by filming it, and of whether or not they conduct the search and seizure outside the specified range.

A seizure list shall be issued for the goods and documents to be seized. In addition, if necessary for the company's business, such as for tax filing, an application form to claim a refund for the loss of seized items may be requested for prompt analysis and return of the seized items.

When dealing with mobile phones, laptops, and computers, the police and investigation offices are required to participate in the analysis process so as to ensure only the data necessary for investigation is seized.

In addition, the search and seizure shall not be carried out without the participation of the accused or his/her representative. So for example, if computer servers are to be seized, it is necessary to inform the investigators that the computer room manager must be in attendance.

In addition, if a seized mobile phone is discarded, damaged, or information deleted during the search or seizure, the person who discarded or damaged the phone, or deleted information can be charged with the serious offense of destroying evidence. However, it

is possible to get a new phone or computer if your original ones are seized.

3. Claims of injustice should be asserted through investigations, written statements in the proceedings, explanations of evidence, petitions, and fact-confirming statements.

In general, the role of lawyers in criminal cases is limited because lawyers do not have the right to see and check the documents in the investigative process. The only way to know about the criminal investigation is to be appointed as a lawyer for a suspect, a victim, and witness, and participate in the police and prosecution's interrogation process to advise the client on the content of the questions.

However, the investigating agency often refuses to have the lawyers participate in the investigation process because the victim and the reference person are not the suspects.

Recently, however, in order to guarantee the right of the person under investigation, the Ministry of Justice has allowed the recording of interrogations during the investigation process. However, in the case of the substantial examination of the arrest warrant, there is a limit to explain the injustice of the arrest based upon only the copy of the warrant.

Participation of the attorney for the accused in the investigation process is essential in terms of the right of defense during the investigation, but the reality is that it is not utilized properly because lawyers consider it time-consuming, profitless, troublesome, and often charge separate fees for participation.

In spite of this, lawyer participation is important for the practical advice they can give on how to answer the investigator's questions during the investigation process.

In such circumstances, some suspects may use their cell phones to record coercive behavior and unfair interrogation attitudes by the investigator and use it as evidence to deny their statements given during interrogation in any future trial. Of course, it is not illegal to record with a mobile phone during an investigation, but it is difficult to actually record without the investigator recognizing it immediately.

But it is important, as recordings are vital to proving coercion and bias on the part of the investigator(s).

In addition, it is necessary to ensure a non-coercive or biased interrogation by a later investigator. This will be more likely if the coercive and biased nature of the first interrogation can be clearly described.

Next, lawyers can be useful in shifting the investigator's perception of the investigation by preparing and submitting opinions on its direction and the facts of the allegations in the form of a legal opinion. Some attorneys may not wish to give investigators negative feedback and therefore will avoid writing their opinions, but this is wrong.

When attending the investigation process, you can understand how the investigator understands the case. You can gain indications about whether the investigation will lead to prosecution or a declaration of innocence. In such a case, if the investigator's direction of investigation is not objective, it will be necessary to submit a written opinion of that fact.

In such a statement, the accused (the suspect) needs to comment on whether the investigator has enough evidence to determine whether prosecution will proceed, or point out the facts and errors.

The accuser (the victim) will need to include in such an opinion his/her views of the objectivity of the investigation by that investigator, the collection of evidence and decision-making, and any legal errors.

If you do not have a lawyer, submit your opinion in the form of a written statement, but be sure to attach any supporting evidence or reference materials. In addition, when submitting such opinions, make sure it is included in the investigation record so that it can be used as evidence in the event of prosecution and during the trial process.

If the case is not solved well because of disagreement between the accuser and the accused, it is necessary to go to the scene of the alleged crime and confirm.

For cases involving sexual assault and/or physical violence, it is also a good idea to take photos or video of reenactments (which show people roleplaying the offender(s), victim(s), and witnesses) there and submit to the investigating agency as reference.

For cases involving assault and/or injury, the medical certificate/diagnosis may seem suspicious. Therefore, it is necessary to compare and analyze the issuance history of medical certificates, injury site, and severity of injuries. It will take some time to receive the issuance history of medical certificates and a written diagnosis of injury and treatment from the issuing hospital. It is also important to make the investigation agency to clarify the details of any medical certificates.

4. The accused should submit a written statement to the police investigator. What needs to be in this written statement?

It is necessary for the accuser, the accused, and the witness to frequently submit information to the investigating agency in the form of written statements, urging that the investigation be conducted fairly.

In general, this would be a lawyer's purview, but lawyers rely heavily on data and statements from their clients (case parties) and avoid onsite visits to keep costs lower. However, it still remains necessary to submit information that comes to their attention about the case to the investigating agency in a timely manner to assist with identification of the facts.

A statement of opinion may be written to the investigator before or after the investigation to support relevant claims, or to counter evidence presented by the other party.

In particular, if an investigator does not have any specialized knowledge in the field of work where an industrial accident has occurred, or simply asks a representative of the company or field manager to determine responsibility for the accident, written opinions can be submitted with onsite photographs or related drawings and references attached to help the investigator understand the situation surrounding the accident.

When submitting photographs, be sure to include the date and time the photographs were taken and descriptions.

You can also think about how a statement should be worded and sent to the investigator if the person who has a statement to make in your favor is in another country or a remote area, making it difficult for that person to visit the police station.

In some cases, your written statements may be notarized by a notary office, but this has limited meaning as notarization only verifies that the statement was written by you.

If the police terminate the investigation, sending on an opinion to the prosecution office whether to indict or not, the parties concerned need to ensure their dissent is put on the investigation records along with the opinions of the police. It is very helpful for the prosecution to see this written dissent when reviewing the investigation records.

If the investigators do not know the incident site well, they cannot properly investigate the case. As investigators do not usually visit such sites, it will not be

properly preserved, and evidence can easily disappear. Lawyers also do not usually want to go onsite either. Therefore, it is up to the related parties to take video and photographs of the incident site and attach explanations to the investigating agency. Such image data can be used as evidence in later court appearances, and is also effective in enhancing the understanding of judges.

5. Q&A interviews are common, so they must be expected.

Most criminal cases begin with a summons and question-and-answer interviews. When search and seizure is warranted, related persons will be summoned to verify the items seized and searched.

The defendant's lawyer will need to prepare a defense as a way to offer input into how the investigating agency should proceed with the investigation. In other words, he/she will prepare for some questions expected in the investigation and deal with where the investigating agency will seize and search for evidence.

Sometimes the accuser, or the attorney who must argue for the victim's position, will need to work hard to ensure the investigating agency properly identifies evidence of damage and where that evidence can be found.

The accuser or his/her attorney may have to urge investigators to seek out the relevant documents or facts or search for and seize concealed related items to prevent their destruction.

Most people are reluctant to be summoned by the police or prosecutors. There have been cases where an arrest warrant is issued because someone has ignored a summons without justifiable reason.

To avoid arrest, summoned persons must go to the investigative office for the interview. There are cases where summoned persons feel such a great burden about going to an investigating agency because they do not remember the details of an incident well. Sometimes there is fear of making false statements and receiving criminal punishment because of mistakes. This can lead persons to commit suicide before they are to appear, the strain can be that great. There is also the fear of being arrested during an investigation.

Therefore, if you are summoned, you need to ask whether you are being summoned as a suspect or a person of reference. If you are a suspect, you need to ask about whether you will be free to go home only after the interview is complete, how long the interview will take, and what the content of the interview will be. In some cases, the investigator may not be able to answer questions like these, but he/she may be able to give you an overview. This will allow you to prepare properly before the Q&A interview.

A mobile phone can be brought, although it may be confiscated during the interview, as can be the case with passenger cars, which may also be searched at home or the office. What you cannot answer while you are being interviewed can be answered by someone you know.

Sometimes, when being investigated, you can ask someone to answer questions to which you don't know the answers. This is because the credibility of other factual statements you might make can be questioned if you answer without knowing enough about something. If you can't remember because it was a long time ago, you can respond according to your memories, presenting the relevant documents or materials.

In any case, potential questions and responses can be presented to the investigator prior to visiting the investigating agency. Sometimes investigators ignore this list, but those who are busy can find your prepared questions and answers helpful.

The most difficult part of the Q&A interview is to summarize your answers in writing. It is difficult for investigators to write down your verbal statements properly if the answers are long and complicated. So sometimes an investigator answers his own questions, which can also occur if an investigator's question is not specific, but rather ambiguous and abstract, and simply confirms the investigator's own opinion. In such cases, it can be helpful to prepare answers in writing or help to type your answers directly for the investigator.

For questions whose answers need technical and professional knowledge, it is a good idea to avoid answering specifically at the time and instead prepare an answer later to submit as an opinion.

Information sought in the investigator's questions usually include the summoned person's personal information, such as resident registration number, occupation, place of

residence, contact information, situation of property, and health.

Regarding residence, the investigator is looking for the address where he/she can contact you. Regarding occupation, it is better to answer with details rather than simply “unemployed” as if you are a suspect you may be deemed a “flight risk”. As assets are not matters to be checked by the investigating agency, it is good to state your monthly income if questions are asked about assets.

Regarding questions about your health, the possibility of arrest and detention exists for a suspect, so explaining your health conditions in detail is a good idea. You can also submit an official letter from the National Health Insurance Corporation regarding your health.

Investigators should ask questions regarding facts whenever possible. The questions should be short, simple, and easy to understand so that the person being interviewed can understand them. Asking the investigator's legal opinion or facts about his or her knowledge is likely to give the perception that you believe the investigator is conducting the case with prejudice. If you are asked for your opinion about the investigator's legal views or judgment on your case, it is good to say that you do not have to answer such questions, but will do so only through a lawyer.

In addition, if the investigator asks only your opinion about his thoughts, does not seem to be after a fair investigation of the case regarding which you were summoned, or constantly interrupts your answers, you need to ask for a piece of paper so that you can write down that the investigator's questions seem irrelevant to the case, or his opinions seem to be based only on his own thoughts, or state that you strongly doubt the fairness of the investigation because the investigator does not allow you to complete your answers. In this way, you may be able to prevent the investigator from disadvantaging you through your comments.

Findings from an interview may vary depending on the investigator's understanding and personality. Therefore, it helps to ponder what questions might be asked and prepare answers in advance.

Death from Overwork (Heart Attack) and Verifications

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)[29] 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.[30]

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

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29) 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.

30) From June to August, 2011, Byun Ji-hye and Jung Bongsoo represented the widow in this case against the Employee Welfare Corporation.

head office in the US ordered him to implement 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

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.[31)]

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.

31) 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.

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.

1. Calculation of compensation for damages under the IACI Act

(1) Basic data

- Average daily wage: 73,000 won (daily wage 100,000 × 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 × 1300 days =73,000 × 1300 = 94,900,000 won
- Funeral allowance[32] : One day's average wage × 120 days = 73,000 × 120 = 8,760,000 won.

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

2. Compensation for damage through civil claims[33]

(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 × 0.73: Applying to daily worker's average working rate
4) Standard unit of wage[34]: 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[35]: 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

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32) 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.

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

34) 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.

35) 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))

○ 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[36] × deduction of living expenses[37] × the loss of working ability × Hoffmann's figure[38] from his death to 60 years
- 102,144 won × 22 days × (1-1/3) × 100% × 144.7001 = 216,776,956 won
- 20% deducted due to mistakes made by the deceased worker: 216,776,956 won × 80% = 173,421,564won

2) Compensation for emotional damages
- 100,000,000 won[39] × 100% (Loss of working ability) × [1-(mistakes by the victim × 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.[40] 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)

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

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

38) 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).

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

40) 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.

1. Parties to Agreement

1) Party A: Subcontractor (Company A) and Contractor (Company B)
2) Party B: Deceased worker's siblings (brother and sister)

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.

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.

Explanation of the Guidelines on How to Handle Commuting Accidents

I. Background to Recognizing a Commuting Accident as Work-related

Although Industrial Accident Compensation Insurance (IACI) has not applied to accidents

that occur while commuting in principle, accidents which occur during a commute using transportation provided by the employer or equivalent have been acknowledged as industrial accidents. Even if two similar accidents occur while commuting, the accident that occurred while using transportation provided by the employer was recognized as a work-related accident, while an accident which occurred while commuting on foot or using personal or public transportation was not so recognized. The Constitutional Court ruled that this application was unconstitutional and violated the principle of equality. The Court made a decision as non-constitutional for the related legal provision, stating that a legislative amendment was to be made by the end of 2017.[41] Accordingly, the related provision was revised on September 28, 2017, and beginning January 1, 2018, accident insurance has been applied to accidents occurring during normal commutes.

II. Revisions of the IACI Act and Guidelines for Accidents Occurring during Commutes[42]

1. Related legal provisions

A. Industrial Accident Compensation Insurance Act: Article 37 (Standards for Recognition of Occupational Accidents)

(1) If a worker suffers any injury, disease, or disability or dies due to any of the following causes, it shall be deemed an occupational accident: Provided, that this shall not apply where there is no proximate causal relation between his/her duties and the accident:

1. Accident on duty: (Contents omitted)
2. Occupational disease: (Contents omitted)
3. Accident occurring during a commute:
   (A) Accidents that occur while commuting to work under the control of the employer, such as using transportation provided by the employer or equivalent transportation;
   (B) Accidents that occur while commuting to work in common routes and manners.

(2) No injury, disease, disability or death of a worker due to his/her intentional action, self-harm or other criminal act, or caused by such act shall be deemed an occupational accident. (The following omitted).

(3) If there is a deviation or interruption of the commuting route as per Subparagraph 3 (B) of Paragraph (1), the accident during the deviation or interruption and subsequent movement during the commute shall not be regarded as a work-related accident. However, if the deviation or interruption of the commuting route is an act necessary for

41) The Constitutional Court ruling on Sep. 29, 2016, 2014 Hunba 254 (Article 37 (1)-C of IACI Act)
42) The Employee Welfare Corporation, 「Guidelines of How to Handle Accidents Occurring during a Commute」, 2017-48, Dec. 28, 2017

daily life and there is a reason prescribed by Presidential Decree, it shall be deemed to be a work-related commuting accident.

B. Enforcement Decree of IACI Act: Article 35 (Accident during commuting)

① If an accident that occurred while a worker was commuting to work falls under all of the requirements of the following subparagraphs, it shall be deemed to be a commuting accident according to Article 37 (1) 3 of the Act.

1. An accident will have occurred while using the means of transportation provided by the employer for commuting or the means provided by the employer.
2. The management or use of the means of transportation used for commuting should not belong to exclusive workers.

② In the proviso of Article 37 (3) of the IACI Act, the term "the reason prescribed by Presidential Decree as an act necessary for daily life" means any of the following instances:

1. Buying necessary supplies for daily life;
2. Receiving education or training in accordance with Article 2 of the Higher Education Act or at vocational education and training institutions under Article 2 of the Vocational Education and Training Promotion Ac」 which can contribute to vocational ability development;
3. Exercising the right to vote;
4. Taking or bringing a child or disabled person under the care of an employee to a child care or educational institution;
5. Receiving medical treatment at a medical institution or public health center for the purpose of treating or preventing a disease;
6. Caring for a family member at a medical institution in a family that needs the worker's care;
7. Acts in accordance with the provisions of Items 1 to 6 which the Minister of Employment and Labor considers to be necessary for daily life, such as buying supplies necessary for daily life.

2. Guidelines for handling accidents which occur while commuting

(1) Basic concept of commuting: The term "commuting" refers to the movement between a residence and a place of employment or movement from one place of employment to another place of employment (Article 5 (8) of the IACI). An “accident occurring while commuting” is accepted as work-related if it occurs while traveling in relation to employment. That is, an accident occurring during the commute movement process is applicable, but not an accident which occurs while staying in a specific place on the route.

(2) Principles for recognizing work-related accidents for regular commuting: Accidents during commute are those that meet all of the following requirements, since the risks associated with normal commuting are specified:

① It must be a moving act that makes the "place of employment" such as a company, factory etc. and the "home" such as personal residence, etc. as a start or end point;
② It is assumed that the commuting activity is to be carried out before work begins or after the work is done;
③ It is assumed that commuting acts will be carried out according to "conventional routes and methods" in a social sense, and that there will be no "deviation or interruption".

III. Specific Criteria for Determining Commuting Accidents as Work-related[43)]

1. Residence

"Residence" refers to a base for providing labor or housing in which a worker practically resides. Therefore, all of the following instances are accepted as a residence:

① Sheltered residence: A place where a worker, alone or with a spouse, child, parent, or grandparent has lived or is expected to live for a considerable period of time.
② Non-lodging residence: When it is difficult to move daily considering the distance, time, and transportation difficulties between a residence and place of work, it becomes necessary to arrange for separate accommodation nearer the place of work and to commute to and from this place.
③ Temporary housing: Temporary accommodation for unavoidable reasons such as work, traffic disruption, natural disasters, etc.

2. Employment Relevance and Place of Employment

(1) Employment Relevance: In Article 5 (8) of the Act, the term "in relation to employment" refers to any act in which commuting is related to going to or coming home from work. In the event of an accident occurring beyond the normal commute time, it is necessary to check the facts such as the specific schedule before or after the work time and the distance between the residence and the workplace to judge whether the work is relevant or not. If a worker stops working after a considerable amount of time in the workplace (within approximately two hours) due to non-work reasons after the work day has finished, this is interpreted as having no employment relevance.

43) Korea Labor Welfare Corporation, 「A Guide for Compensation of Accidents caused while Commuting」, Compensation 2018-da-2, January 2018.

(2) Concept of place of employment: "Place of employment" is a place where workers provide labor, and it is a place where ordinary work is performed in accordance with labor contracts and employment rules, such as company and factory offices.

3. Usual commuting routes and methods

A "usual commuting route" means a route between residential and employment locations, or places of employment and places of employment, that can be utilized by ordinary people. Therefore, if an accident occurs outside the normal commuting route, it is not recognized as a commuting accident. "Usual commuting method" means the use of transportation in a rational way as recognized by socially-accepted rationale.

4. Deviation and suspension from route

(1) "Deviation from route" refers to an act that differs from the ordinary commuting route, while "suspension from route" refers to an act that does not relate to commuting while on the commuting route. The deviation or stopping on the commute route must be caused by private activity not related to the purpose of the commute. However, minor acts (such as picking up a newspaper, getting gas, having a cup of coffee, washroom breaks, or having a shower) that normally occur during commute time are not regarded as deviations or interruptions from the route.

(2) Exceptions to application of deviations and suspension from route (① ~ ⑦ below): Exceptions to deviation and suspension from route due to activities necessary for daily life that may occur during normal commuting are recognized as exceptions. In the case of a recognized deviation or suspension from route, only an accident on the move is protected; not the whole process.

① Purchasing goods necessary for everyday life: Purchase of daily necessities is judged based on comprehensive consideration of the location and distance of the place of sale, necessity of action, urgency, time required, etc.

② Education or training that can contribute to vocational ability development in the vocational education and training institutions pursuant to Article 2 of the Higher Education Act or Article 2 of the Vocational Education and Training Promotion Act: Deviations and suspensions from route in order to participate in some hobby club or exercise are excluded. However, even if it is a flower arrangement or a sports dance, deviations and suspensions from route for the development of vocational abilities, such as acquisition of qualifications other than hobbies, are recognized.

③ The right to participate in voting or the right to vote: The right to participate in voting means the right to vote by participating in an election (the presidential election and the parliamentary election are typical), and the term "referendum" means an act in which a citizen of a certain age exercises the right to vote on

important matters of national policy.

④ The act of bringing a child or disabled person virtually protected by an employee to a child care institution or an educational institution or bringing him/her from an institution: "Child" means a person who is in the age range of childcare, kindergarten, elementary, middle and high school. "Persons with disabilities" means a person with disabilities covered under the Welfare of Persons with Disabilities Act.

⑤ An act to receive medical care for treatment or prevention of disease at a medical institution or public health center: It is permitted to detour for medical treatment or preventive purposes during a commute, but not for everyday life items such as consultation for cosmetic purposes.

⑥ Caring for a family member at a medical institution: To take care of a family member etc. who is hospitalized at a medical institution.

⑦ Acts that are in conformity with the provisions of Items 1 to 6 and which the Minister of Employment and Labor deems necessary for daily life:

Acts that comply with the provisions of No. 1: Activities that occur repeatedly for the purpose of daily living (going to a laundry, repairing shoes). Acts of daily living, such as eating, drinking, ablutions, etc.; an act performed through business necessity (eating a meal at work on the grounds that there is no restaurant in the workplace; bathing outside the workplace because the business does not have shower facilities)

Acts in conformity with the provisions of No. 2: Participate in training for improvement of vocational skills at academies. To be educated or trained for improvement of vocational ability, such as a foreign language academy, computer academy (Hangul, Excel etc.), driver's license school.

Acts in accordance with the provisions of No. 3: Exercising the right to vote as prescribed by law, such as the election of labor union officers or the election of apartment tenants' officers.

Acts in conformity with No. 4: The act of bringing a child or a disabled person to a nursing home, not a childcare institution, or bringing him/her to a consignment agency such as a welfare center for the disabled or a daycare facility.

Acts in accordance with the provisions of No. 5: attending a health center or smoking cessation clinic.

Acts in accordance with Regulation 6: Caring for a family member in a nursing home or similar place where the address is different from that of the worker.

5. Judging whether or not a criminal act applies:

According to Article 37 (2) of the IACI Act, commuting accidents caused by criminal activities (drunk driving, unlicensed driving, intruding on the main line, etc.) are not accepted as commuting accidents in principle.

IV. Note: General information related to commuting accidents

1. Comparison between IAC insurance and automobile insurance

	IAC Insurance	Automobile Insurance
Benefits	①Medical care benefits, ②Suspension benefits, ③Nursing benefits, ④Rehabilitation benefits, ⑤Disability benefits, ⑥Injury-disease compensation annuity, ⑦Survivors' benefits, ⑧Funeral expenses	①Medical care benefits, ②Injury insurance, ③Disability insurance, ④Death insurance, ⑤Funeral expenses, ⑥Consolation money
Fault rate	Take no responsibility	Take responsibility
Alimony	No alimony	Alimony (consolation money)
Payments	Pension or lump payment (Pension is available for disability grade 7 or higher)	Lump sum payment (no pension)
Details	Survivors' pension (monthly pension calculation) 100% pension = daily average wage × 365 × 47/100/12 * Each pension subject person will be added 5 from 47.	Insurance benefit = actual income × number of available working months × labor loss rate × Leibnitz coefficient * Only 2/3 of the actual income at the time of death is recognized (living expenses deduction).

★ Application: Comparison of industrial accident insurance and automobile insurance in case of death[44]

(Assumption: 35-year-old employee with a monthly average wage of KRW 3 million, dependents: wife and one child, 50% responsibility).

44) Ilwoo Lee, "Major issues on revision of law on commuting accidents", Monthly Labor Law, February 2018.

Division	IAC Insurance	Automobile Insurance
Pension/Insurance	100% pension (month): KRW 1,896,058 = KRW 97,826 × 365 × 57/100/12 (Receiving monthly allowance until the spouse dies.)	Death insurance (lump sum payment): KRW 3,000,000 × 2/3 × 171.06 × 50% (responsibility) = KRW 171,060,000
Funeral expenses	KRW 97,826 × 120 days = KRW 11,739,120	KRW 5,000,000 × 50% = KRW 2,500,000
Damage compensation	No damage compensation	KRW 80,000,000 × 50% = KRW 40,000,000
Details	* Over 10 years: KRW 155,266,113 = KRW 203,526,993 + 11,739,120 * Over 20 years: KRW 418,793,106 = 407,053,986 + 11,739,120	Total amount: KRW 213,560,000 (Lump sum payment, no pension).

If a commuting accident is related to an automobile accident, the worker can choose which type of insurance to apply; either industrial accident compensation insurance or automobile insurance, depending on the degree of compensation. As a general criterion for this choice: 1) industrial accidents are more favorable for those with a disability grade 7 or higher; 2) automobile insurance is advantageous for those younger in age or with less responsibility for the accident. The industrial accident compensation insurance is compensated at a fixed amount irrespective of fault.

2. Whether the premium rate increases or not due to IACI applications

For industrial accident compensation insurance treatment due to a commuting accident, it is not an accident occurring under the control of the employer because commuting accidents occur outside the workplace. Therefore, it does not affect the insurance premium.

노동법 앱 개발 (Mobile App)

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동영상 (Video)	YouTube	Korean and English videos (each 20 categories)
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외국인 Foreigner	출입국관리법과 외국인 (관련법, 기고글, 동영상, 비자 36가지 설명)	Immigration Laws and Foreigner Workers (Law, Articles, Video, Types of visa)
자동계산 Automatic Calculation	1. 연차휴가 2. 퇴직금 3. 4대보험 4. 퇴직소득세	1. Annual Paid Leave 2. Severance Pay 3. Social Insurance Premiums 4. Retirement(Severance) Income Tax
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