

법제교류 연구 09-17-7

Guide for Korea's the Industrial Accident
Compensation Insurance Act and its Practices

한국 산재보상보험법제의 해설과 실무

Lee, Kyung-Hee



Guide for Korea's the Industrial Accident
Compensation Insurance Act and its Practices

한국 산재보상보험법제의 해설과 실무

연구자 : 이경희(전문연구원)

Lee, Kyung-Hee

2009. 11. 13.

Abstract

The advancement in the means of production and the improvement in the labor conditions have not reduced in the number of industrial accidents. Instead, they have introduced new types of industrial accidents and the related legal issues. In particular, many Asian countries have experienced regime changes and rapid industrialization, which expose them to various political/legislative burdens such as ex post damage compensation and ex ante prevention. Therefore, they have huge interest in learning industrial accident compensation insurance system.

Korea's astonishing speed of industrialization has guaranteed itself an increase in the law suits regarding industrial accidents and the overload of demand on administrative and/or judicial judgment, which have turned into a big social problem. In this research we concentrate on the requested issues of Korean industrial accident compensation system in an attempt to help understand Korea's system. This study offers the recent statistics and trend of industrial accidents in Korea.

Also, this research is expected to be a valuable reference to help understand Korean legislation. Further, our research is a part of a bigger picture which aims to promote the efficient international exchange of the legislative information. This research cannot be used as a universal prescription of industrial accident insurance reference to all countries. However, the existence of industrial accidents and the necessity of the related compensation system are universal.

Contents

| | |
|---|----|
| Abstract | 3 |
| Chapter 1. Introduction | 9 |
| Section 1. Purpose and need of the study | 9 |
| Section 2. Coverage and Method of the Study | 10 |
| Chapter 2. Status quo of Industrial Accidents and Compensation system | 13 |
| Section 1. Korea's industrial accidents and the trend | 13 |
| 1. The changes of industrial accidents statistics in Korea | 13 |
| 2. Recent trend of industrial accidents | 15 |
| Section 2. Definition and Meaning of Industrial Accident Insurance Program | 24 |
| 1. Definition of Industrial Accident Insurance Program | 24 |
| 2. Purpose and Objective of Industrial Accident Insurance Program | 25 |
| Chapter 3. Brief Summary of Korea's Industrial Accident Compensation Insurance Act | 72 |
| Section 1. Development of Korea's Industrial Accident Insurance Act | 27 |
| 1. Expansion of the coverage | 27 |
| 2. The trends in the amendments in Industrial Accident Insurance Act of Korea | 28 |
| Section 2. Coverage | 30 |
| 1. Mandatory subscriber | 30 |

| | |
|--|-----------|
| 2. At-will subscriber | 31 |
| 3. Exceptions | 32 |
| Section 3. Standards of Recognition of Occupational Accidents | 33 |
| 1. Meaning | 33 |
| 2. Occupational accident | 36 |
| 3. “Accident in the course of duty” and “arising out of employment” | 40 |
| 4. Principle of Causation | 42 |
| Section 4. Type and Details of Insurance Benefit | 44 |
| 1. Definition and Meaning of Industrial Accident Insurance Benefit | 44 |
| 2. Medical care benefits | 46 |
| 3. Re-treatment | 48 |
| 4. Temporary disability compensation benefits | 49 |
| 6. Disability Benefits | 50 |
| 7. Nursing benefit | 52 |
| 8. Survivor’s Benefits | 53 |
| 9. Injury-disease compensation annuity | 55 |
| 10. Funeral expenses | 57 |
| 11. Occupational rehab benefit | 57 |
| Section 5. Remedy against the disposition about Industrial Accident Benefit | 58 |
| 1. System and process | 58 |
| 2. Request for deliberation | 61 |
| 3. Request for re-deliberation | 63 |
| Chapter 4. Management and Operation of Korean Industrial Accident Insurance in Practice | 56 |
| Section 1. Understanding relationship of Industrial Accident Insurance Legal Relationship | 65 |

| | |
|---|----|
| 1. Definition of consummation of insurance contract | 65 |
| 2. Contract structure under Industrial Accident Insurance Act | 65 |
| Section 2. Calculation and management of insurance premium | 68 |
| 1. Definition of premium | 68 |
| 2. Collection | 68 |
| 3. Period of computation | 71 |
| 4. Insurance premium rate | 71 |
| Section 3. Payment of insurance benefit | 72 |
| 1. Trend of accident rate and insurance benefit | 72 |
| 2. Insurance benefit payment by type | 74 |
| Section 4. Trend of deliberation and court decision | 76 |
| 1. Deliberation example | 76 |
| 2. Court decision | 77 |

Chapter 5. The characteristics of Korea's Industrial Accident Insurance system

8

| | |
|--|----|
| Section 1. Dual law system in Korea's Industrial Accident Compensation | 81 |
| 1. Meaning | 81 |
| 2. Comparison of the compensation for the damage by <Labor Standards Act> vs. <Industrial Accident Compensation Insurance Act> | 82 |
| Section 2. Adjustment of damage compensation and benefit of Industrial Accident Insurance | 93 |
| 1. Relations between damage compensation and benefit of Industrial Accident Insurance | 93 |
| 2. Rules as to adjustment of Industrial Accident Insurance Benefit and damage compensation | 94 |

| | |
|---|-----|
| Section 3. Increase in occupational disease and standard of recognition | 95 |
| 1. Increase in occupational disease | 95 |
| 2. Standard of recognition of work overload | 99 |
| Chapter 6. Conclusion | 105 |
| Bibliography | 109 |
| Summery Report | 111 |

< List of Tables >

| | |
|--|----|
| 【Statistics on Korea's Industrial Accident】 | 14 |
| 【Trend of Industrial Accidents】 | 15 |
| 【Statistics of Korean industrial accidents, 2008】 | 16 |
| 【Statistics on Accidental injuries by industry】 | 18 |
| 【Statistics on Accidental injuries by Types and Causes】 | 19 |
| 【Statistics on occupational disease by industry】 | 20 |
| 【Occupational disease by disease type】 | 23 |
| 【Mandatory Subscriber of Industrial Accident Insurance by year】 | 27 |
| 【Damage compensation reference table】 | 52 |
| 【Nursing benefit】 | 53 |
| 【Structure of Industrial Accident Insurance Contract】 | 66 |
| 【Industrial Accident Insurance and Private Law Relations】 | 67 |
| 【2008 Industrial Accident Premium Rate by Industry】 | 69 |
| 【Trend of accident rate, insurance benefit paid, etc】 | 73 |
| 【Insurance benefit paid by type】 | 75 |

Chapter 1. Introduction

Section 1. Purpose and need of the study

A rapid change in the business environment by the industrial development is a universal phenomenon in the modern world economy rather than a locality. The advancement in the means of production and the improvement in the labor conditions have not reduced in the number of industrial accidents. Instead, they have introduced new types of industrial accidents and the related legal issues. Hence, the judgment as to whether the case is an occupational accident or not in accordance with the Industrial Accident Compensation Insurance Act or its equivalents has been an increasing burden to the authorities.

Korea's astonishing speed of industrialization has guaranteed itself an increase in the law suits regarding occupational accidents and the overload of demand on administrative or judicial judgment, and caused unduly delay, which turned into a big social problem. As such, Korean society has gone through a series of legislation and amendment regarding the compensation for the industrial accidents. Korean government is considering organizing an institution which manages and/or operates the insurance plan which serves the purpose of protecting the laborers and their families from such accidents and even offering some preventive measures as well as the modus operandi of the institution.

A fast economic development, the increased industrial accidents and the social need for the system to cope with this problem are not just an issue limited to Korea but of many other developing countries, dozens of which are in Asia.

Thus, this study which presents the Korean system regarding remedies against the industrial accidents and the development of related legislation can be a valuable guidance to other countries which experience similar problems currently. Also, this research is expected to be a valuable reference to help understand Korean legislation. Further, our research could be a part of a bigger picture which aims to promote the efficient international exchange of the legislative information. To serve these purposes we maximize the accessibility and usability from the viewpoint of the practitioners in the field. Also, our research can be used by researchers and educators overseas. Given that Korea is one of countries that have experienced the most rapid industrial development in the world, our experience can be utilized by other developing countries.

In short, the purpose of this study is to provide Korean experience about institution and legislation as to industrial accidents to other developing Asian countries which currently suffer similar problems of industrial accidents as a byproduct of the rapid industrial development.

Section 2. Coverage and Method of the Study

According to the purposes mentioned in the section, our primary focus is to meet the demand from Asian developing countries. However, our research does not attempt to cover all Asian countries due to time and resource limits. As such, we restrict our focus to the relevant institutes in Mongol and Vietnam which have shown material interests in Industrial Accident Compensation Insurance Act of Korea.

Based on Labor Law of Mongolia, occupational safety and health law, and workplace safety and labor rights laws, Mongolian government

offers a casebook of laws related to labor relationship, operates a governmental program to improve its laborers' safety and health conditions, and has studied the accidents, diseases and intoxications in the workplaces. However, Mongolia has no particular law that specializes in industrial accidents only.

We start by reporting and analyzing the industrial accident statistics to respond Mongolia's requests. We expect Mongolia to forecast and analyze the impact when it introduces its own industrial accident insurance law. For the protection of victims of the industrial accidents and their families, Mongolia could aggressively consider the introduction of industrial accident insurance law. Further Mongolia has big interests in the legislation of the prevention of industrial accidents. As such, Mongolia has huge demand for the legislation related to the industrial accidents, which encompasses the legislation, the judicature, the administration and the academic world. In order to satisfy the legislative demand, it is interested in future joint research programs with researchers in other areas which have experienced the rapid industrial development before.¹⁾

In case of Vietnam, the government runs an industrial accidents insurance program. For instance, laborers who meets the requirements of §38 of the Social Insurance Law of Vietnam are eligible to the industrial accident insurance program, which pays the compensation to the laborers who lost 5% or more of their labor capacity due to the following industrial accidents: accidents occurred in workplace during the

1) Mongolian Institutions that we surveyed the demand for legislation
- The Mongolian Parliament
- The Constitutional Court
- *The School of Law of Olgontenger University*

labor hours, accidents that happened outside workplace and/or out of the regular labor hour if they are by the request of the firm. Industrial accident compensation is the one-time payment for those who lost 5% ~ 30% of labor capacity while it is the monthly payment for those who lost 31% or more.

In other words, Vietnam appears to be beyond the stage of introducing the accident compensation system and related legislations. Rather it has more demand for the issues about the operation of the industrial accident insurance program, which includes but not limited to the information about the legislation about operating and managing the insurance fund, collecting insurance premium, and the compensation rate.²⁾

Demand for the Accident compensation and related legislations are from the needs of reference for the appropriate system and legislation of the requesting countries. Therefore, this study shows the detailed explanation of the Industrial Accident Insurance system and related legislations in Korea focusing on the above purposes.

2) Vietnamese Institutions that we surveyed the demand for legislation
- The Office of the *Vietnam Social Insurance*

Chapter 2. Status quo of Industrial Accidents and Compensation system

Section 1. Korea's industrial accidents and the trend

1. The changes of industrial accidents statistics in Korea

The number of industrial accidents and the casualties is on a steady decline since mid-1980 in Korea. However, it has rebounded for the past decade. Several factors are attributed. First, the businesses have cut the expenditure to prevent the accidents since so-called financial crisis in 1999. Second, the number of case reported has jumped after July 2007 when the government extended the coverage of the mandatory industrial accident insurance program to the business that hires 1(one) or more employees. Third, more diseases are included in the occupational diseases.³⁾

The economic loss from the industrial accidents is on a rise. In 2006, the economic loss is estimated to be 15.8 trillion KRW or 2% of gross domestic product.⁴⁾

The statistics about the industrial accidents cannot be compared directly across different countries because the method of survey and computation vary significantly. For instance, each country has different

3) The Five-Year Industrial Accident Prevention Plan II (2005-2009), the Ministry of Labor.

4) Lee, Byoung Hee, <Labor Statistics for Past20 years>, Korea Labor Institute, p.160, (2008).

standards in recognition of the industrial accidents. Also, countries differ by the degree to which they reveal the damage of victims of the industrial accidents. Readers should keep this point in mind throughout the paper.

【Statistics on Korea's Industrial Accident】

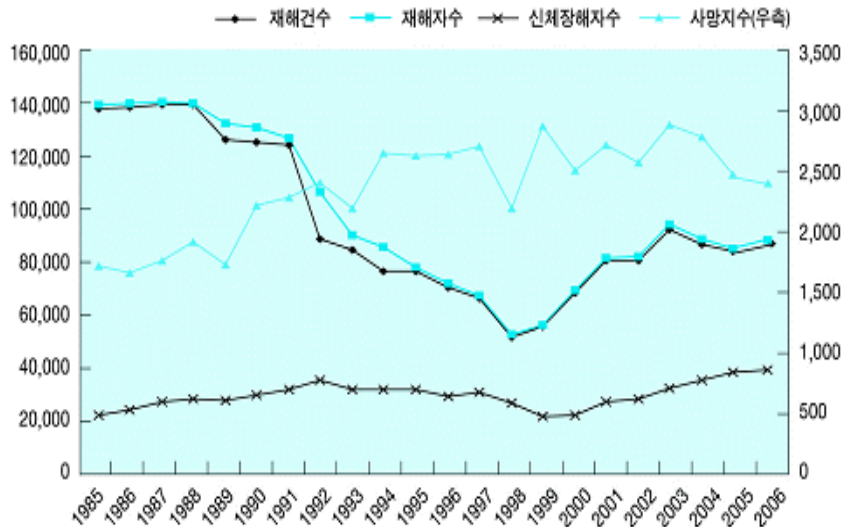
Unit;# of Person, %

| | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|---|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|-------|
| Total accident rate | 0.68 | 0.74 | 0.73 | 0.77 | 0.77 | 0.9 | 0.85 | 0.77 | 0.77 | 0.72 | 0.71 |
| (Annual % change) | -16 | 8.8 | -1.4 | 5.5 | 0 | 16.9 | -5.6 | -9.4 | 0 | -6.5 | -1.4 |
| Incident rate for business with less than 300 employees | 0.87 | 0.99 | 0.92 | 0.97 | 0.92 | 1.02 | 0.96 | 0.93 | 0.91 | 0.85 | 0.84 |
| (Annual % change) | -13.9 | 13.8 | -7.1 | 5.4 | -5.2 | 10.9 | -5.9 | -3.1 | -2.2 | -6.6 | -1.2 |
| Fatal injuries per 10,000 workers | 2.19 | 1.96 | 1.49 | 1.47 | 1.3 | 1.45 | 1.47 | 1.26 | 1.14 | 1.1 | 1.07 |
| (Annual % change) | -12 | -10.5 | -24 | -1.3 | -11.6 | 11.5 | 1.4 | -14.3 | -9.5 | -3.5 | -2.7 |
| Total fatalities | 2,212 | 2,291 | 2,528 | 2,748 | 2,605 | 2,923 | 2,825 | 2,493 | 2,453 | 2,406 | 2,422 |
| (Annual % change) | -19.3 | 3.6 | 10.3 | 8.7 | -5.2 | 12.2 | -3.4 | -11.8 | -1.6 | -1.9 | 0.7 |
| Case of occupational disease | 1,838 | 2,732 | 4,051 | 5,653 | 5,417 | 9,130 | 9,183 | 7,495 | 10,235 | 11,472 | 9,734 |
| (Annual % change) | -13.3 | 48.6 | 48.3 | 39.5 | -4.2 | 68.5 | 0.6 | -18.4 | 36.6 | 12.1 | -15.1 |

Source : 「Annual of Industrial Accident Analysis」, each year, Ministry of Labor, Korea

【Trend of Industrial Accidents】

- : Number (#) of injuries
- : Number (#) of casualties
- *—: Number (#) of the disabled
- *—: Number (#) of fatalities (The right-handside)



Source : 「Annual of Industrial Accident Analysis」, each year, Ministry of Labor, Korea

2. Recent trend of industrial accidents

Total number of casualties from industrial accidents in 2008 is 95,806, up 5,659 or 6.3% compared to the previous year. However, the incident rate has fallen by 0.71% or 0.01% from the previous year. The fatalities per 10,000 workers have 0.03P. In sum, the number of occupational injured/disease has increased while the ratio has decreased.

【Statistics of Korean industrial accidents, 2008】

| Classification | As of Dec. 2008 | Annual % change | Increase/ decrease by case | Rate(%) |
|---|-----------------|-----------------|----------------------------|---------|
| | | | | |
| ○ # of business | 1,594,793 | 1,429,885 | 164,908 | 11.5 |
| ○ # of employees | 13,489,986 | 12,528,879 | 961,107 | 7.7 |
| ○ # of injured/disease | 95,806 | 90,147 | 5,659 | 6.3 |
| – # of occupational injuries | 86,072 | 78,675 | 7,397 | 9.4 |
| – # of occupational disease | 9,734 | 11,472 | -1,738 | -15.1 |
| ○ # of fatalities | 2,422 | 2,406 | 16 | 0.7 |
| – # of fatalities from occupational injuries | 1,448 | 1,383 | 65 | 4.7 |
| – # of fatalities from occupational disease | 974 | 1,023 | -49 | -4.8 |
| ○ Incident rate (%) | 0.71 | 0.72 | -0.01%P | -1.4 |
| ○ Fatalities per 10,000 workers | 1.80 | 1.92 | -0.12P | -6.3 |
| – Fatalities from accident per 10,000 workers | 1.07 | 1.10 | -0.03P | -2.7 |
| ○ # of lost days from workplace (days) | 70,087,376 | 63,934,071 | 6,153,305일 | 9.6 |

Source: ‘2008 Annual of Industrial Accidents’, Department of Policy for Safety and Health, Office of Industrial Safety and Health.

By industry, construction industry accounts for the biggest portion (40.9%) of the incidents, followed by manufacturing. Construction also happens to suffer the largest increase in the incident rate from the previous year. The major culprits from the manufacturing industry are machinery manufacturing (64 injuries) and metal products (57 injuries). Also, sanitary and pseudo service (51 injuries) and other businesses (161 injuries) - which include restaurants and lodging, retail and whole sale, etc. - are the industries with high industrial accidents.⁵⁾ It is noteworthy that 37.5% of total occupational accidents are from small business whose employees are 5~49.

5) Department of Policy for Safety and Health, Office of Industrial Safety and Health, '2008 Annual of Industrial Accidents', (2008 Feb.), pp.6,8.

【Statistics on Accidental injuries by industry】

(# of Person, %)

| Classification | 2008. Dec. | | | 2007 Dec. | | | Change | |
|--|--------------|-----------------|-------------------------------|--------------|-----------------|-------------------------------|-----------------|-------------------------------|
| | # of workers | # of injuries | Accident ratio | # of workers | # of injuries | Accident ratio | # of injuries | Accident ratio |
| | | # of fatalities | Fatalities per 10,000 workers | | # of fatalities | Fatalities per 10,000 workers | # of fatalities | Fatalities per 10,000 workers |
| Total | 13,489,986 | 86,072 | 0.64 | 12,528,879 | 78,675 | 0.63 | 7,397 | 0.01 |
| | | 1,448 | 1.07 | | 1,383 | 1.10 | 65 | -0.03 |
| Mining | 15,275 | 299 | 1.96 | 16,105 | 312 | 1.94 | -13 | 0.02 |
| | | 14 | 9.17 | | 22 | 13.66 | -8 | -4.49 |
| Manufacturing | 3,103,942 | 31,752 | 1.02 | 3,095,377 | 29,443 | 0.95 | 2,309 | 0.07 |
| | | 407 | 1.31 | | 392 | 1.27 | 15 | 0.04 |
| Construction | 3,248,508 | 19,738 | 0.61 | 2,887,634 | 18,108 | 0.63 | 1,630 | -0.02 |
| | | 592 | 1.82 | | 539 | 1.87 | 53 | -0.05 |
| Utilities | 54,479 | 87 | 0.16 | 53,984 | 107 | 0.20 | -20 | -0.04 |
| | | 4 | 0.73 | | 4 | 0.74 | 0 | -0.01 |
| Transportation/ Warehouse/ Telecom | 703,249 | 4,297 | 0.61 | 697,833 | 4,134 | 0.59 | 163 | 0.02 |
| | | 114 | 1.62 | | 107 | 1.53 | 7 | 0.09 |
| Others | 6,364,533 | 29,899 | 0.47 | 5,777,946 | 26,571 | 0.46 | 3,328 | 0.01 |
| | | 317 | 0.50 | | 319 | 0.55 | -2 | -0.05 |

Source: '2008 Annual of Industrial Accidents', Department of Policy for Safety and Health, Office of Industrial Safety and Health

The most frequent type of occupational incidence is an accidental fall, which amounts to 32% of total. Construction is the biggest source of accidental fall with 327 fatalities. Fatalities by vehicle rollover and by machinery/equipment are 35 and 71 cases in manufacturing.

【Statistics on Accidental injuries by Types and Causes】

(# of Person)

| Classification | Total | | Vehicle rollover | Caught by machinery/equipment | Fall | Collision | Precipitation | Amputation | Traffic accident | Excessive activity | Others |
|----------------|---------------|--------|------------------|-------------------------------|--------|-----------|---------------|------------|------------------|--------------------|--------|
| | 2008. Dec. | Total | 86,072 | 18,527 | 15,250 | 14,027 | 7,279 | 8,670 | 6,615 | 5,345 | 1,896 |
| Fatality | | 1,448 | 99 | 104 | 468 | 55 | 102 | 6 | 287 | 0 | 327 |
| Injuries | | 84,624 | 18,428 | 15,146 | 13,559 | 7,224 | 8,568 | 6,609 | 5,058 | 1,896 | 8,136 |
| 2007 Dec. | Total | 78,675 | 16,231 | 15,881 | 11,834 | 12,202 | 6,565 | 4,707 | 3,659 | 1,426 | 6,170 |
| | Fatality | 1,383 | 48 | 150 | 418 | 85 | 89 | 2 | 240 | 0 | 351 |
| | Injuries | 77,292 | 16,183 | 15,731 | 11,416 | 12,117 | 6,476 | 4,705 | 3,419 | 1,426 | 5,819 |
| Change | Total | 7,397 | 2,296 | -631 | 2,193 | -4,923 | 2,105 | 1,908 | 1,686 | 470 | 2,293 |
| | Fatality | 65 | 51 | -46 | 50 | -30 | 13 | 4 | 47 | 0 | -24 |
| | Injuries | 7,332 | 2,245 | -585 | 2,143 | -4,893 | 2,092 | 1,904 | 1,639 | 470 | 2,317 |

The manufacturing industry has the large occupational disease, accounting for 41.8%. Also, many diseases (1,503 cases) are from small businesses (5 ~ 49 employees) of the manufacturing industry. All industries have enjoyed lower diseases. But the rate of decline has fallen. The mining industry accounts for the largest 41.7% of fatalities by occupational disease, 43.7% of which (426fatalities) is caused by pneumoconiosis. It is noteworthy that the transportation/ warehouse / telecom sector has seen its fatality rate increase while other industries enjoy lower death rates.

【Statistics on occupational disease by industry】

(# of Person, %, %P, P)

| Classification | 2008 Dec. | | | 2007 Dec. | | | Change | |
|----------------|--------------|-----------------|-------------------------------|--------------|-----------------|-------------------------------|-----------------|-------------------------------|
| | # of workers | # of injuries | Accident ratio | # of workers | # of injuries | Accident ratio | # of injuries | Accident ratio |
| | | # of fatalities | Fatalities per 10,000 workers | | # of fatalities | Fatalities per 10,000 workers | # of fatalities | Fatalities per 10,000 workers |
| Total | 13,489,986 | 9,734 | 0.07 | 12,528,879 | 11,472 | 0.09 | -1,738 | -0.02 |
| | | 974 | 0.72 | | 1,023 | 0.82 | -49 | -0.10 |
| Mining | 15,275 | 1,027 | 6.72 | 16,105 | 1,281 | 7.95 | -254 | -1.23 |
| | | 406 | 265.79 | | 414 | 257.06 | -8 | 8.73 |

Section 1. Korea's industrial accidents and the trend

| Classification | 2008 Dec. | | | 2007 Dec. | | | Change | |
|--|--------------|-----------------|-------------------------------|--------------|-----------------|-------------------------------|-----------------|-------------------------------|
| | # of workers | # of injuries | Accident ratio | # of workers | # of injuries | Accident ratio | # of injuries | Accident ratio |
| | | # of fatalities | Fatalities per 10,000 workers | | # of fatalities | Fatalities per 10,000 workers | # of fatalities | Fatalities per 10,000 workers |
| Manufacturing | 3,103,942 | 4,067 | 0.13 | 3,095,377 | 4,674 | 0.15 | -607 | -0.02 |
| | | 195 | 0.63 | | 213 | 0.69 | -18 | -0.06 |
| Construction | 3,248,508 | 735 | 0.02 | 2,887,634 | 942 | 0.03 | -207 | -0.01 |
| | | 77 | 0.24 | | 91 | 0.32 | -14 | -0.08 |
| Utilities | 54,479 | 12 | 0.02 | 53,984 | 14 | 0.00 | -2 | 0.02 |
| | | 3 | 0.55 | | 2 | 0.37 | 1 | 0.18 |
| Transportation/ Warehouse/ Telecom | 703,249 | 442 | 0.06 | 697,833 | 602 | 0.09 | -160 | -0.03 |
| | | 69 | 0.98 | | 59 | 0.85 | 10 | 0.13 |
| Others | 6,364,533 | 3,451 | 0.05 | 5,777,946 | 3,959 | 0.07 | -508 | -0.02 |
| | | 224 | 0.35 | | 244 | 0.42 | -20 | -0.07 |

As discussed above, the disease/injury rate is on a decline while the number of disease/injury is increasing. This is attributed to changes in the work environment introduced by new technologies and a shift in industrial structure. Also, the modern workplace requiring extensive mental jobs have exposed the workers to new kinds of risks.

An increase in the number of victims from occupational accidents/disease due to the emergence of new occupational disease is a common phenomenon among the advanced industrialized countries.

In other words, the number of the occupational disease is increasing rapidly.⁶⁾ The table below shows that the brain-cardio-vascular disease and musculoskeletal disorder account for a major fraction. The businesses with less than 300 employees are the largest source with 91.5% of total injuries/disease (82,505 cases) and 82.5% of total fatalities (1,986 cases).

Moreover the new types of diseases are a more serious problem in a sense that they are not limited to specific class of jobs but widespread to all kinds of occupations. Also a new kind of labor including mental and emotional labor introduces new types of occupational diseases such as mental disorder due to stress, which in turn requires legal judgment.

6) According to the statistics from Japan's *Ministry of Health, labour and Welfare*, the number of occupational disease is skyrocketing since 1967. Along with this trend, new kinds of occupational disease such as non-accidental back pain, vibration damage, etc, are reported.

【Occupational disease by disease type】

(#of Person)

| Classification | Total | | Occupational disease | | | | | | | Damages by disease | | | | | |
|----------------|--------------|--------|----------------------|----------------|-----------|---------------------|-----------------|-------------------|--------|--------------------|-----------------------|---------------|-----------|----------------------|--------|
| | | | Sub-total | Pneumoconiosis | Bradyecoa | Metal & heavy metal | Organic solvent | Specific chemical | Others | Sub-total | Brain-cardio-vascular | Bodily burden | Back pain | Accidental back pain | Others |
| 2008. Dec. | Total | 9,734 | 1,653 | 1,145 | 220 | 11 | 11 | 68 | 198 | 8,081 | 1,207 | 1,471 | 1,831 | 3,401 | 171 |
| | On treatment | 8,760 | 1,190 | 719 | 220 | 8 | 6 | 52 | 185 | 7,570 | 725 | 1,471 | 1,831 | 3,401 | 142 |
| | Fatalities | 974 | 463 | 426 | 0 | 3 | 5 | 16 | 13 | 511 | 482 | 0 | 0 | 0 | 29 |
| 2007 Dec. | Total | 11,472 | 2,098 | 1,422 | 237 | 6 | 25 | 153 | 255 | 9,374 | 1,493 | 1,390 | 564 | 5,769 | 158 |
| | On treatment | 10,449 | 1,618 | 980 | 237 | 5 | 19 | 131 | 246 | 8,831 | 978 | 1,390 | 564 | 5,769 | 130 |
| | Fatalities | 1,023 | 480 | 442 | 0 | 1 | 6 | 22 | 9 | 543 | 515 | 0 | 0 | 0 | 28 |
| Chg. | Total | -1,738 | -445 | -277 | -17 | 5 | -14 | -85 | -57 | -1,293 | -286 | 81 | 1,267 | -2,368 | 13 |
| | On treatment | -1,689 | -428 | -261 | -17 | 3 | -13 | -79 | -61 | -1,261 | -253 | 81 | 1,267 | -2,368 | 12 |
| | Fatalities | -49 | -17 | -16 | 0 | 2 | -1 | -6 | 4 | -32 | -33 | 0 | 0 | 0 | 1 |

Section 2. Definition and Meaning of Industrial Accident Insurance Program

1. Definition of Industrial Accident Insurance Program

Industrialization has created the labor class which lives on the wage earned by providing its labor to the market place whereby the lives of the families of the labor class rely mainly on the continued supply of labor. At the same time, the industrial development requires stable supply of labor force. The industrial accidents could potentially arise during the process of labor supply. This forfeits the opportunity to earn incomes for the laborer's families. Also, the business owners are liable to compensate the damages.

The industrial accident insurance program is to protect the standard of living of laborers and their families from the industrial accidents. In Korea, Labor Standards Act requires the business owners to pay the compensation for industrial accident by themselves. After the introduction of the industrial accident insurance program, the business owners are required to subscribe the insurance program and government operates it.

In 1964, Korea adopted the industrial accident insurance program among its first social insurance program, in an effort to protect the laborers and its families from the increasing occurrence of the industrial accidents during its rapid industrialization. When it was first introduced, firms with 500 or more employees were required to subscribe, which made 84,000 workers from 64 businesses join. Currently, the rules require any business with one or more employees to subscribe the program by which millions of firms and tens of millions of workers are

in the program. The main trait of the Korean industrial accident insurance program is as follows; it adopts the principle of no-fault liability by which responsibility for an injury that can be imposed on the wrongdoer without proof of carelessness or fault. The full amount of the Industrial Accident Insurance premium, the main funding source, is paid by the business owner. The compensation by Industrial Accident Insurance does not recover all the damages by the accident but pays a fixed rate based on the average wage. To expedite the appeal process regarding the damage compensation, it has the review and the arbitration system on top of filing a law-suit.

2. Purpose and Objective of Industrial Accident Insurance Program

Industrial Accident Insurance Program prevents possible conflicts over damage compensation between business owners and workers on top of its main objective to protect workers from damages from industrial accidents. Business owners can diversify the risk of extreme compensation while the laborers can be assured to be compensated regardless of the business owner's capacity to compensate. It helps stabilize the capital-labor relationship and develop industrial advancement.

Continued efforts to improve the system are made to realize these objectives of the Industrial Accident Insurance Program. The introduction of cutting-edge technologies and modernization of internal/external business environments have reduced the occupational accidents including so-called traditional types of accidents.⁷⁾ Of course, the occupational

7) Five major conventional accidents include being caught in machinery, vehicle rollover, fall, collision, precipitation.

accidents/disease accounts for a major fraction of the fatality rate.⁸⁾ The modernization of the means of production does not necessarily reduce the occupational injuries. It is because the new types of risks, in particular occupational diseases, expand the boundary of occupational injuries. The modern business keeps changing the qualities and the quantities of its tasks internally and externally, by which new types of risks are embedded in the various forms of the labor conditions.

As noted above, the objective of the Industrial Accident Insurance Program is to protect workers from damages of the industrial accidents. Thus, Industrial Accident Insurance Program has new tasks of establishing the standards by which occupational accident are legally recognized and expanding the coverage and the extent to which it protects the damages.

In particular, the compensation for industrial accidents does not have solid legal background when it is limited to the remedy against torts or the responsibilities of the business owners by labor laws. For example, a newly recognized occupational disease by the new discovery of epidemiology and/or pathology is hardly a promising case for the traditional law suit seeking compensation which requires predictability/mens rea/negligence. Even if no-fault responsibility is admitted, when the symptom occurs after the labor contract is terminated due to a long latency period, the business owner is hardly legally responsible individually if it is based on the labor contract.

8) According to ILO's report as of 2005, a total of 270 million workers are damaged by industrial accidents a year while 160 million are suffered by occupational diseases. In particular, fatalities due to industrial accidents exceed 2 millions a year.

Chapter 3. Brief Summary of Korea's Industrial Accident Compensation Insurance Act

Section 1. Development of Korea's Industrial Accident Insurance Act

1. Expansion of the coverage

In 1964 when the Industrial Accident Insurance program first started, it covered large businesses in mining and manufacturing sectors with 500 or more regular workers, which the compensation was made in accordance with the 'Labor Standards Act'.

With the expansion of the coverage, all businesses which hire one or more workers are in the program since July 1st, 2000.

To consolidate the collection of the premium of Employment Insurance and Industrial Accident Compensation Insurance, <Rule on the collection of premium of Employment Insurance and Industrial Accident Compensation Insurance> is legislated and implemented since January 1st, 2005.

【Mandatory Subscriber of Industrial Accident Insurance by year】

| Year | '64 | '65 | '66 | '67 | '68 | '72 | '73 | '76~ '81 | '82~ '91 | '92 | '96 | '98 | 2000. 7.1 |
|------------------------|-----|-----|-----|-----|-----|-----|-----|-------------|-------------|-----|-----|-----|--------------|
| Minimum # of Employees | 500 | 200 | 150 | 100 | 50 | 30 | 16 | 5~16 | 5~10 | 5 | 5 | 5 | 1 |

2. The trends in the amendments in Industrial Accident Insurance Act of Korea

Industrial Accident Insurance is the first social insurance in Korea, first legislated on November 5th 1963 and has implemented since July 1st 1964. Since its legislation, it has gone through 31 amendments with the last one being made on January 2009.

A major change is made on December 14th 2007 (implemented from July 1st 2008) in reflection of the tripartite agreement. The changes include adding grounds for the rehab benefit, coverage of special type workers and clear standards of recognition of occupational accidents. Enforcement Decree and Enforcement rules for the Act are also amended.⁹⁾ Also on December 27th 2007, <A partial amendment on the premium collection for the unemployment insurance and the industrial accident compensation insurance> is announced.¹⁰⁾

Expansion of the coverage

When it was first introduced, the insurance program was applied only to the business in mining and manufacturing sectors with 500 or more employees, which amounted to about 80,000 business places. In 1992, the coverage expanded to the business with 5 or more employees. In July 2000 it finally covers all businesses with one or more employees.

9) 『Industrial Accident Compensation Insurance Act enforcement decree Amendment』(No.20875) 『Industrial Accident Compensation Insurance Act enforcement decree Amendment』(No. 304).

10) 『Partial amendment of enforcement decree on Unemployment Insurance and Industrial Accident Compensation Insurance Act premium collection』(no.20874) 『Partial amendment of enforcement decree on Unemployment Insurance and Industrial Accident Compensation Insurance Act premium collection』(no. 305).

On December 31st 2003, all business places with the some exceptions provided in Presidential decree are covered by the insurance program. However, the small business can join the program at will upon the approval of the Corporation.

Upward tendency in benefit ratio

The benefit ratio has been on arise by increasing the benefit payout ratio, adding disability lump sum payment system and disability and survivors' pension program. In particular, the lost-day benefit has increased from 60% to 70% while disability lump sum and pension increased by 10% and 5% respectively, in 1989.

Qualitative improvement in benefit

Treatment and rehab programs are subject to the justness of the standard of recognition, extended treatment period and lack of proper rehab program.

In particular, the dispute over the standard and the procedure of recognition of occupational diseases such as the muscular-skeletal, brain, cardio-vascular disease are increasing.

On the other hand, the extension of treatment has become de facto standard. The number of claimants on treatment benefit has doubled from 12,000 in 2001 to 24,000 in 2004. New system for the treatment benefit is required in the face of increased medical expense fraud and the management of poor medical facilities.

The justness of the amount of insurance benefit payment is under scrutiny. The lack of linkages with the rehabilitation program is also problematic considering most of the benefit is limited to treatment and cash reward.

Complementing management and operation

The management and operation of the industrial accident program is subject to criticism - which are mostly concentrated on justness of the deliberation/ re-deliberation and the lack of participation of labor-capital in the process.

In particular, the judgment as to the occupational diseases is mostly made by the consulting committee selected by the Corporation, raising the justness issue.

Regarding collection and fund management, the instability in fund expense/revenue and the difference in the premium rate across industries are major issues. The fund for the Industrial Accident Insurance had been stable relative to other social insurances. However, the rapid increase in the benefit payment and the subsequent decline in the amount of fund size is a big problem. The current funding size is less than the legal requirement.

The premium rate based on the riskiness of business has raised a criticism. Given that the largest premium rate is over 122 times higher than the least premium rate across 61 industries, some argue that the principle of risk sharing is not reflected.

Section 2. Coverage

1. Mandatory subscriber

- Regardless of the willingness of the business owners, they are mandatory subscribers of the insurance program at the start of business or from the date required by the rules.

- All businesses or places of business (hereafter“business”) with one or more employees.¹¹⁾
- In effect all business owners.
- For the accidents that occur during the period when mandatory subscribers are negligent in subscription of the program,50% of the compensation benefit is levied to the business owner.
- When the workers of the business which subscribes the Industrial Accident Insurance Program are dispatched to overseas, their coverage continues by the approval of the Corporation.
- Trainees of the business that subscribes the Industrial Accident Insurance Program

2. At-will subscriber

- The business in agriculture, forestry, fishing and hunting which did not incorporate and has employees less than five.
 - The business that pays compensation in accordance with <Public Officials Pension Act>, <Veterans’ Pension Act>, <Seafarers Act>, <Fishing Vessels' and Their Crew Members' Accident Compensation Insurance Act> or <Pension for Private School Teachers and Staff Act>.
 - Household service business
- cf. When pre-existing subscriber of Industrial Accident Insurance Program does not meet the requirement of mandatory subscription, it is considered at-will subscription. The subscriber has to obtain the

11) No concrete definition of worker is presented. It has to be discussed whether it is the same concept as the worker in the Labor Standard Act. (eg. Regardless of the type of job, those who provide businesses with labor to earn wage)

approval from Korea Workers' Compensation and Welfare Service to start/ terminate the insurance.

cf. In the year of 1964 when the Industrial Accident Insurance Program first started, the business in mining and manufacturing with the number of employees being 500 or more were required to subscribe the program. The accident compensation in other business was made in accordance with <Labor Standard Act>.

3. Exceptions

- Insurance planner
- Driver of concrete mixer truck
- Teachers of the study aid and
- Golf caddy

: In 2007, Industrial Accident Insurance Act and the exception provisions under its Enforcement Decree was enacted for those who supply labor services similar to workers and need protection from occupational accidents because <Labor Standard Act> is not applicable to them.

** Article 125 of <Industrial Accident Compensation Act> (Exceptions for those who are special type of workers) :

① In spite of Article 6, this Act applies to those who supply labor services similar to workers and need protection from occupational accidents because <Labor Standard Act> is not applicable to them if they has occupation prescribed by the Presidential Decree and falls within one of the following categories;

1. Those who regularly supply their labor service to one business or work place and live on their salary.

2. Those who do not use others by supplying their labor service.

** Article 125 of Enforcement Decree for the Act (The range of special type of workers)

According to Article 125 (1) of the Act, “The person who has occupation prescribed by the Presidential Decree” means as follows;

1. Insurance planner
2. Owner and driver of construction mixer truck registered by the Article 3 (1) of the 「Construction Machinery Management Act」
3. Teachers of the study aid speculated in the Korea Standard Occupation list under 「Statistics Act」
4. Golf caddy working for the athletic facility under the Article 19 of 「Installation and Utilization of Sports Facilities Act」

- Business owner of small or mid-size firm: (less than 50 employees)
According to the exception provision of the Act, such business owners shall be deemed a worker in applying this Act.

Section 3. Standards of Recognition of Occupational Accidents

1. Meaning

Despite the changes in the composition, the number of occupational injuries has not declined significantly due to the changes in industrial structures.

In particular, occupational diseases are on arise while the occupational accidents are on a gradual decline by the increased awareness of industrial safety and related policies.¹²⁾ The number of administrative

12) For instance, the occupational accidents have fallen by 1.26% in 2007 from the

actions regarding the Industrial Accident Insurance is quite high.¹³⁾ Moreover, almost half of the case which claimed the eligibility of occupational disease took over three years to process.¹⁴⁾

To determine if there are the occupational injuries, the rules and regulations stipulate the objective and detailed standards related to medical fact.¹⁵⁾ It can be said that the amendment¹⁶⁾ has resolved the

previous year while the occupational diseases have jumped 12.09% during the same period. Due to the time lag to confirm the cases of occupational diseases, both figures may not be directly comparable. Still the latter statistics show an increasing trend. Note that the Korea Workers' Compensation and Welfare Service classified the accidental back pain as an occupational disease from January 2006. The input into database is started from June 2006. The statistics as of December 2006 includes accidental back pain during June ~ December 2006. Meanwhile the statistics as of December 2007 includes accidental back pain during January ~ December 2007. <2007 Annual of Industrial Accident >, Department of Industrial Safety, Ministry of Labor, March 2008.

13) <Judgment/ Re-judgment/ Administrative Action by year> (unit: # of cases)

| Year | Jugement (decision) | Re-Jugement (decision) | Action | Total |
|------|---------------------|------------------------|--------|-------|
| 1999 | 4,250 | 1,724 | 1,908 | 7,882 |
| 2000 | 3,204 | 1,244 | 2,003 | 6,451 |
| 2004 | 4,494 | 1,569 | | |
| 2005 | 6,370 | 1,669 | | |
| 2006 | 8,458 | 2,369 | | |
| 2007 | 8,871 | 3,543 | | |

Source:<2007 Annual of Industrial Accident Insurance>, Minstry of Labor.

14) In 2000, occupational disease accounted for 12% of total claim case while it has fallen to an average of 6.1% after 2001. In 2001 there has been a change in classification such that the case pending over 3 years are excluded from the statistics. It shows that the case pending over 3 years are due mainly to occupational diseases. Lee Hyun Joo, "Study on Foreign Industrial Accident Insurance System: Recognition of Occupational Disease by Korean Industrial Accident Insurance" <Policy Research>. No. 14, Korea Labor Institute, 2004, p. 226.

15) For instance, Annexed list 3 of <Enforcement Decree of the Industrial Accident Compensation Act> describes detailed list for the standard of recognition of occupational disease.

16) Late stamendment in this study is the Act. No. 8694 amended on December 14th2007. The recognition of occupational accidents is based on this act.

previous criticism that the existing Enforcement Decree for the Act exceeds the delegated limit of legal power. It means this amendment was an attempt to overcome the limitation from the fact that administrative rules usually do not have binding force when administrative rules provide the standard for determination. It goes without saying that some orders issued by the administrative can be the source of law as long as such orders have the full force and effect of the law enacted by the legislative. However, administrative rules can not be recognized as the sources of law because they have only internal effects and do not bind the people outside the agency which issues the rules.¹⁷⁾ Thus, courts have concrete statutes as a standard to determine for the occupational injuries by this amendment.

Regardless of the forms of rule and regulation, the way which it provides the standard to determine the occupational injuries is not different in that it is done by listing the medical, objective numbers. The court still has the relatively wide discretion to find the causation of the injuries. By adopting the principle of causation for recognition of the occupational disease, court's discretion is likely to extend to the judgment as to the new type of diseases.

Moreover, disposition by the operating authority agencies, deliberation, and the re-deliberation decision by the Committee of Industrial Accident Compensation Insurance are considered to have the same effect as administrative disposition or decision of ruling administrative litigation. Since administrative disposition or decision of ruling administrative

17) Nam-jin Kim &Yeon-tae Kim, □□Administration Law I, Bubmoonsa (2006), p.60. For another administrative rules, see Hojung Kim, "Legal Order and Administrative Rules", □□HUFS Law Review, No.19 (2005. Aug.)

litigation is limited to the effect of disposal or decision, the court is not bound by such decision in terms of fact finding and legal ruling.¹⁸⁾ In other words, the court can make fact finding and/or legal ruling different from the decisions/disposal of operating authorities and/or the Committee of Industrial Accident Compensation Insurance.

Hence, it can be said the ultimate task of establishing the standard to recognize occupational injuries still remains unsolved.

2. Occupational accident

The standard for the recognition of the occupational accidents is done based on the concept of 'accidents', which implies that occupational diseases can be incorporated within the boundary of the occupational accidents by listing the kinds of occupational diseases as 'accidents'. Thus, a non-'accidental' occupational disease is not recognized as an occupational accident aside from a few exceptions.

Most European countries including Germany, UK and France require an 'accident' as a key ingredient of industrial accidents while Korea and Japan use 'accident' as a technical concept which includes both occupational injuries and diseases.¹⁹⁾ In other words, they do not negate the occupation as a source of accidents just because the specific disease/injury is not in the list.²⁰⁾ Rather, they appear to focus on the principle of causation as

18) 92 Nu 17181 Decision by Supreme Court of Korea (1993.4.13) ; 93 Nu 5437 Decision by Supreme Court of Korea(1993.8.27);93 Nu 21927 Decision by Supreme Court of Korea (1994.11.8).

19) According to <Industrial Accident Insurance Act>, occupational accident is limited to the injuries/disease/damaged caused by the reasonsre cognized as an occupational injury and/or an occupational disease; Article 37and 5.1 of the Act

20) For the same argument, see 西村健一郎, “業務上・外認定基準”, 現代労働法講座 第12巻 □□労働災害.安全衛生□□, 1983, 156頁.

a common standard of occupational accidents.²¹⁾

Even under the mainstream theory that the proper relationship between occupation and the accident is required to recognize the ‘occupationality’ concept, the problem of recognizing the occupation still remains, which means this problem is nothing but how to recognize the concept of ‘occupation/task’ in Industrial Accident Insurance Law.²²⁾ Through this process, we recognize the concept of ‘occupational’, which in turn allows us to judge ‘occupationality’.

The concept of the ‘occupation’ should follow the legislation purpose unique to the Industrial Accident Insurance Act, i.e. the legal effect of the concept of the occupation in the Industrial Accident Insurance Act is required to be consistent with the legislative purpose of the Industrial Accident Insurance Act. It can be seen from the characteristic of the Industrial Accident Insurance benefit that it considers the purposefulness of the benefit payment unlike other social insurance while it is based on the principle of casual payment like other social insurance.

However, the definition of ‘occupation/task’ is absent in Korea’s Industrial Accident Insurance Act even though the concept of ‘occupation/task’ is crucial in application of Industrial Accident Insurance Act. However, the controversy of the comprehensive delegation is expected to be resolved by revision of the standard to recognize occupational accidents.²³⁾

21) In this regard, Japan has adopted the same approach; 井上 浩, □□最新労災保険法第2版□□, 中央経済社, 1999; 西村健一郎, □□労災補償□□, 労働政策研究, 2007.2.

22) Kater, Horst/Leube, Konrad, Gesetzliche Unfallversicherung SGB VII : Kommentar, Verlag Franz Vahlen, 1997, §2 Rn. 29ff.

23) It has been criticized that the occupational accident in old <Industrial Accident Compensation Insurance Act> was defined too broadly. Therefore, the standard of recognition of the occupational accident is finely classified as occupational injury and

Meanwhile, Korea's Industrial Accident Insurance Act defines the tasks based on the labor contract, the actions under the control/management of business owner and the actions related to the tasks as the standard of recognizing occupational accidents. It tells that the worker's fulfilling the obligations of the labor contract is one of the key factors of recognition of occupationality.²⁴⁾

While the Industrial Accident Insurance Act does not define the concept of labor contract, Labor Standards Act has one.²⁵⁾ Labor Standards Act requires labor contracts to stipulate wages, hours of labor, other terms and conditions of labor.²⁶⁾ 'Other terms and condition of labor' includes the place of labor and the task to be performed.²⁷⁾ Labor contract is made by the mutual agreement between the business owner and the laborer. It is said to be a basic phenomenon under the capitalistic legal order that the combination of means of production and the labor force is consummated by the agreement between labor and

occupational disease. An accident is recognized as an occupational injury when it has occurred in the process of the job task or related activity. The recognition of the occupational disease requires an exposure to hazard related to occupation. We expect this new classification to resolve the standard of recognition of occupational accidents. <Amendment 2007.12.14Rule 8694>. Reason for Amendment.

24) Article 37 of <Industrial Accident Insurance Act> and Articles 27 and 34 of its enforcement decree: Occupational disease requires 'in the process of job task' and 'other association of the occupation'.

25) Article 2 (4) of <Labor Standards Act>.

26) The items regarding the constituent items/ calculation method/ payment method of wages/ contractual work hours/ holidays and paid leaves should be specified in written documents. Other terms of labor can be offered via alternative methods. (Article 17 of <Labor Standards Act>).

27) "Other terms and conditions of employment as prescribed by the Presidential Decree" means the term and conditions of the place of employment and the job assigned, set forth in subparagraphs 1 through 12 of Article 93 of the Act, and those prescribed by the dormitory rules. (Article 8 of Enforcement of Decree for Labor Standard Act).

management.²⁸⁾ Accordingly in light of the labor contract based on Labor Standards Act, the ‘task/occupation based on the labor contract’ is the terms and conditions of labor set by the management before the laborer’s major obligation is materialized/specified.²⁹⁾ To workers, task/occupation obviously includes to fulfill the terms of labor contract. Therefore, it is natural that it can be the most basic and crucial part of task/occupation.

In sum, Korean Industrial Accident Insurance Act does not offer a specific legal definition of ‘occupation/task’. Rather it offers only a general description. It does not change significantly even under the interpretation of amended Industrial Accident Insurance Act.³⁰⁾ Depending on the view, occupational accidents can be loosely interpreted in light of the function and purpose of Industrial Accident Insurance Act beyond management’s control and maintenance.³¹⁾ Hence, in the end, the judgment of ‘occupationality’ requires ‘reasonable’ causality. ‘Being reasonable’ requires the predictability of the consequences as a cause of ‘occupationality’.

The operating agency of Industrial Accident Insurance has ruled a major fraction of the judgment as to whether a specific case is occupational accidents or not. Although the operating body’s ruling is not binding as the court’s judgment, it is not deniable that it has played a major role in judgment of occupational accidents for each specific case.

28) Hyongbae Kim, □□Labor Law□□, 2007, pp. 215-219.

29) Youngmoon Kim, ‘The concept of occupation and accident during commute as an activity for the management’ □□Comparative private laws□□, Vol. 4, No.1, (1997), p.552.

30) In accordance with Industrial Accident Insurance Act, occupational accidents and diseases requires ‘task according to labor contract’ or ‘subsequent acts’, ‘provided by the management’, ‘under the control of the management’, ‘operated by the management’, ‘ordered by the management’, etc.

31) Jonghee Park, “Problems in accidents in the course of commute”, □□Justice□□, Vol. 85, pp.189~225.

However, many cases are filed to court to seek the ultimate judgment of occupationality because the internal rule of the administrative is not binding even if it offers detailed and scientific guidelines to determine if it is arising out of employment.

3. “Accident in the course of duty” and “arising out of employment”

Two major requirements for recognition of occupational accident are that accident should be occurred “in the course of duty” and it should be accident “arising out of employment”. However, the two requirement principle is not strictly enforced. Rather it is not recognized as an occupational accident when “causality” is denied even if “accident in the course of duty” is admitted. Meanwhile, the most accidents with causality from the performance of occupation are considered to occur “in the course of duty”. In other words, “accident in the course of duty” is understood as a prerequisite condition of the question of “arising out of employment”.³²⁾

The “accident in the course of duty” is a requirement before the judgment of “arising out of employment”. The judgment of whether it is “in the course of duty” is as to whether the act of the worker is considered act of task/occupation, which in turn is a problem of interpreting law as to whether the act of worker is an action protected by the Industrial Accident Insurance Act. It is, of course, a judgment call by the legal purpose of Industrial Accident Insurance Act. However, this tendency has become stronger as occupational acts are defined by

32) Hyongbae Kim, <Labor Standards Act>, 2000, p.542, Kim Yousung, □□On Korea Social Securities Act□□, 2000, p.285.

laws in Korea recently. Whether the judgment of “the course of duty” falls within an eligible act in Industrial Accident Insurance Act or not has become an issue of interpretation.

“Arising out of employment” is recognized via the principle of causation which requires a reasonable causality between occupation and accidents.

The view supporting the principle of causation is based on the assumption it can be used as a common basis to determine both occupational injury and disease.

As seen above, the standard to recognize occupational accidents requires both “accident in the course of duty” and “arising out of employment”. But there are divergent views as to whether causality is sufficient or both conditions should be met. When “accident in the course of duty” is admitted, unless proven otherwise, it is presumed to be arising out of employment.³³⁾ As evidence supporting “the accident in the course of duty” is not sufficient, however, the separate judgment of whether it is the accident arising out of employment or not is required.³⁴⁾

Meanwhile, even though it has not occurred in the course of duty, when it is satisfied to be rise out of employment, some theories recognize the causation between occupation/task and the accident. Recently increasing occupational diseases and corresponding new types of accidents show that the requirement that accident should be in the course of duty is not always necessary in judgment of occupational accidents while some indirect causality is deemed to suffice in this case.³⁵⁾

33) “When ‘in the course of duty’ is recognized, it is presumed to be rising out of employment”, Article 50. (3) of <Social Security Act of U.K.>.

34) Supreme Court of Korea 1990.10.23, 88 Nu5037 decision.

35) “To establish causality between occupational disease and the subsequent accident

The court follows the majority theory in a sense that it utilizes the requirements both “in the course of duty” and “arising out of employment” as the standard of judgment of occupational accidents.³⁶⁾

Court determines whether it should recognize “occupationality” for specific case. Thus, courts sometime need to determine the case which is hard to define the causation between the occupational duty and disease such as new types of occupational disease.

4. Principle of Causation

Administrative ruling, case laws and academic theories agree that the judgment of occupationality requires consistent relation between occupation and accidents. In other words, the occupation and the accidents should have some causation. The judgment of causality follows the ‘principle of causation’ in Korea. The principle of causation requires a reasonable predictability that the same cause is reasonably expected to result in the same result.

However, the court accepts more libera linterpretation of “arising out of employment” by reducing the burden of proof even if it basically follows the principle of causation.³⁷⁾

(e.g. death attributed to overload of work), the existence of an indirect causality would suffice”, Kim Hyongbae, □□Labor Law□□, 2007, p.443. 西村健一郎, “業務上・外認定基準”, 現代労働法講座 第12巻 □□労働災害・安全衛生□□, 1983, 157頁.

36) “Occupational accident is an accident attributable to the occupational task in the process performing job task...” Supreme Court of Korea, (1997.2.28), 96 Nu 14883 decision; Supreme Court of Korea, (2005.11.10) 2005 Du 8009 decision; Supreme Court of Korea, (2006.3.9) 2005 Du13841 decision, etc.

37) “The proof of causality does not necessarily require medical and/or scientific methods. The principle of causation and the circumstantial evidence can be used to show the causality between the disease and the occupation.” Supreme Court of Korea, (1997.2.28) 96 Nu 14883 decision; Supreme Court of Korea (2005.11.10) 2005 Du

In fact, the operating body of the Industrial Accident Insurance plan makes a majority of judgment call as to whether a specific case is to be recognized as an occupational accident or not. While the operating body's judgment is not binding legally as the rule of court, it is undeniable that it has played a major role in recognition of occupational accidents in practice.

The administrative interpretation is not different in that it requires the reasonable causality in recognition of 'occupationality'. Considering that the Industrial Accident Insurance premium is solely burdened by the management, it is reasonable that the coverage of insurance is limited to the disease/injury that is reasonably attributed to the labor contract, instead of covering any disease while the worker is employed by the business.

When the operating agency of industrial accidents insurance makes a judgment of occupationality for each case, it follows detailed and scientific guidelines, which raises a criticism that it applies a tougher standard than the court.³⁸⁾ However, many cases are filed to court to seek the ultimate judgment of occupationality because the internal rule of administration is not binding even if it offers detailed and scientific guidelines to determine if it is arising out of employment.

In sum, the case by case judgment of occupationality by the operating body of Industrial Accident Insurance plan reflects the case law and academic theories as practical guidelines.

8009 decision; Supreme Court of Korea (2006.3.9) 2005 Du 13841 decision etc.

38) Soo-Hyun Kim, <Study on the system of recognition of occupational disease>, Doctoral dissertation, August 2003.

Section 4. Type and Details of Insurance Benefit

1. Definition and Meaning of Industrial Accident Insurance Benefit

It is the benefit made to the employees working for the business subscribing Industrial Accident Insurance Benefit when he/she becomes injured/ ill/ damaged/ dead in the process of work. It aims to recover the damage, to guarantee income and to protect the standard of living of the family.

< Type of Insurance Benefit >

- Medical care benefits: When the treatment period exceeds four days due to occupational disease, it pays the entire amount of treatment cost within the National Health Insurance co-benefit.
- Temporary disability compensation benefits: it pays 70% of average daily income during the treatment period.
- Injury-disease compensation annuity: If injury/disease is not cured within two years and classified as 1~3 class incurable disease, the insurance pays the rate better than the lost-day compensation.
- Disability benefits: When damage still persists after the treatment of occupational injuries, it pays compensation depending on the degree of damage.
- Nursing compensation: It pays the medical/nursing costs to those who were paid the treatment benefit previously after the recovery.
- Survivor's benefit: benefit to aid the living of the survivors when the worker is or is believed to be dead.

- Funeral expenses: It pays the funeral costs.
- Occupational rehab benefit: Benefits to promote the rehiring of the victim of the industrial accidents- including occupational training benefit, job maintenance grant, job-adjustment costs, and rehabilitation exercises.

< Average wage >

1) Meaning

It refers to the daily wage used to compute lost-day benefit, damage compensation, compensation for the bereaved, compensation for chronic disease and funeral cost.

2) Method of calculation

| | |
|------------------|--|
| Average wage= | Total wage paid for the past three months before the date of eligibility |
| | Total number of days for the past three months before the date of eligibility |

※ Total number of days for the past three months: It is not 90 days but the number of days in the three months of the calendar, regardless of the provision of the labor or not.

- The date of eligibility
 - Occupational accident: the date of accident
 - Occupational disease: the date that the disease started, confirmed by diagnosis.

2. Medical care benefits

(1) Definition and meaning

It is in-kind benefit which provides the treatment for occupational injury/disease until the recovery via the insurance institution managed by the Corporation or participating medical institution accepting Industrial Accident patients.

In some inevitable cases that the patient is treated by non-participating medical institute and/or treatment is made by the fund of the patient, however, it grants the cost of treatment directly to the worker.

(2) Coverage of medical care benefits of <Industrial Accident Insurance >

The coverage of medical care benefits is stipulated in <Industrial Accident Insurance Act>.³⁹⁾ 「Standard for Calculating Treatment Benefit of Industrial Accident Compensation Insurance」 announced by the

39) Article. 40 (4) of the <Industrial Accident Insurance Act> (medical care benefits)

1. Diagnosis and examination
2. Pharmaceutical supply or diagnosis supply and other supplemental device including artificial limb.
3. Treatment, surgery, and others
4. Rehab treatment
5. Hospitalization
6. Nursing
7. Transportation
8. Other items stipulated by the decrees of Minister of Labor.

Minster of Labor provides the details about its coverage, and the standards of calculating costs.

(3) Requirement for medical care benefits

A. Occupational injury/disease

It will be paid when the laborers working for the business subscribing the Plan gets injured or ill due to the occupational reasons.

B. Principle of in-kind benefit

In principle, patients are treated in the participating medical institutes in accordance with <Industrial Accident Insurance Act>⁴⁰⁾ and registered pharmacies provide the medical supplies by <Pharmaceutical Act>⁴¹⁾ Under unavoidable circumstances, however, the treatment cost can be paid instead of treatment.

C. Treatment over 4 days.

- Treatment benefit is not made if the occupational injuries/diseases are recovered within three days' treatment
 - By the <Labor Standard Act> Article78, the full amount of treatment recoverable within three days is paid by the business owner.
 - ※ If other benefit/compensation from the Plan is made (e.g. survivor's benefits, funeral expenses, etc), because, for instance, patient dies within two day, it is covered by treatment benefit.

40) Article 43. (1) of the Act.

41) Article 20 of the Pharmaceutical Act

(4) Claimant

: medical institute, pharmacy or worker

(5) Time of claim

: when the benefit is eligible due to occupational accidents

(6) Process of Claim

| | Reason to claim | Required documents |
|----------------------|---|---|
| Treatment claim | - When they seek to be treated by participating medical institute | - 3 copies of the Initial treatment benefit claim. (form available from Corporation) - Submitted to the Corporation/ workplace/ medical institute |
| Treatment cost claim | - Due to emergency / unavoidable reasons, the patient is treated by own fund without pre-approval | - A form for treatment cost benefit should be filled and submitted to the Corporation Attachment: * Document that proves the cost of treatment. * Request for alternative benefit (when delegated) |

3. Re-treatment

- When the occupational injuries/disease relapses after recovery by the initial treatment benefit or is confirmed to be worsened by medical experts, he/she is eligible to treatment benefit in accordance with Article 40 (hereafter 're-treatment').

4. Temporary disability compensation benefits

(1) Purpose

- Lost-day compensation is intended to protect the standard of living of the worker and her/her family from the lost wages due to treatment of occupational injuries/diseases.

(2) Requirement for Eligibility

- Worker should be on treatment of occupational disease/injury
 - Treatment includes in/outpatient and stay-at-home.
 - To be considered on treatment, medical expert's diagnosis/advice is required. Treatment arbitrary decided by the worker him/herself is not included.
- Lost-day should exceed four days or more.
 - Lost-day: Days of worker could not work due to treatment.
 - Four days or more: If the lost-day is less than four days, the business owner should compensate for the lost-day in accordance with the damage compensation responsibility by <Labor Standard Act>.
- No wage: the victim does not receive the wage during the treatment period.
- Calculating the compensation amount.
 - The lost-day compensation pays 70% of the average daily wage per lost day during the treatment period.

Exemplary case

- ▶ Case by which pays 70% of average daily wage is paid ◀
 - Date of accident: July 5th, 2008. Average daily wage: KRW 60,000, Minimum Wage KRW 35,000
 - ⇒ KRW 42,000 or 70% of average daily wage is the lost-day compensation

(3) Claimant

: victim worker or the business owner (when delegated)

(4) Frequency of claim

: Monthly or more

※ Usually claimed once a month

6. Disability Benefits

(1) Purpose

- Benefit intended to compensate loss of labor force due to the bodily/mental damage as an aftermath of the occupational accidents

(2) Eligibility

- Bodily damage has to remain after the treatment of injury/disease.
- The damage has to have causality with the occupational disease/injury.

(3) Claimant

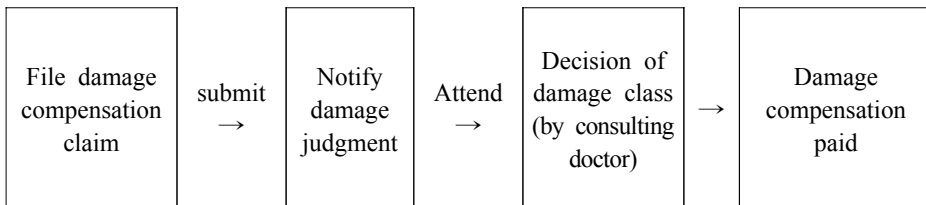
: Victim worker or business owner (when delegated)

(4) Reasons, timing, and the amount of benefit

| | Reason | Timing | Amount |
|------------------|---|-----------------|---|
| One time benefit | - Class 4 ~ 14 damage remains after the treatment of occupational accidents | After treatment | - Depending on the degree of damage, it pays the 1012~ 55 days' average wage. |
| Pension | - After the treatment of occupational accidents Class 1~7 damage remains Class 1~3 : Pension Class 4~7 : Choice between pension and one-time benefit | After treatment | - Depending on the degree of damage, it pays the 328~ 138 days' average wage |

- ※ 1. Pension will be paid automatically by the first claim.
- 2. If pension benefit is difficult due to, for instance, emigration or foreign national's leaving Korea, one-time lump sum benefit can be made by request.

(5) Method of claim and benefit payment



【Damage compensation reference table】

| Damage class | Amount of damage compensation pension | One-time benefit |
|--------------|---------------------------------------|--------------------------|
| Class1 | | 1,474 average daily wage |
| Class2 | | 1,309 average daily wage |
| Class3 | | 1,155 average daily wage |
| Class4 | | 1,012 average daily wage |
| Class5 | 329 average daily wage | 869 average daily wage |
| Class6 | 291 average daily wage | 737 average daily wage |
| Class7 | 257 average daily wage | 616 average daily wage |
| Class8 | 224 average daily wage | 495 average daily wage |
| Class9 | 193 average daily wage | 385 average daily wage |
| Class10 | 164 average daily wage | 297 average daily wage |
| Class11 | 138 average daily wage | 220 average daily wage |
| Class12 | | 154 average daily wage |
| Class13 | | 99 average daily wage |
| Class14 | | 55 average daily wage |

7. Nursing benefit

(1) Purpose

- Insurance benefit for the victim of an industrial accident who actually requires and receives nursing regularly/frequently by medical needs after the initial treatment is completed.

(2) Eligibility and type

- A. Regular nursing benefit.
- B. Frequent nursing benefit

(3) Method of claim and benefit payment

- After the disability compensation, it is claimed by filing the nursing benefit request form which requires provision of the information as to the state of disability and the related difficulties in everyday life.
- The claimant requiring regular nursing is paid the full amount stipulated by the Minister of Labor while the one in need of frequent nursing is paid 2/3 of full amount.
- The nursing benefit is paid for the days of the actual nursing service being made at monthly frequency.
- The number of the nurse is limited to one per claimant.

【Nursing benefit】

[unit: KRW/ day]

| Period | Full amount (regular nursing) | Frequent nursing |
|-------------------------|----------------------------------|------------------|
| 2009. 1. 1 ~ 2009.12.31 | 38,240 | 25,490 |
| 2008. 1. 1 ~ 2008.12.31 | 38,240 | 25,490 |
| 2007. 1. 1 ~ 2007.12.31 | 38,240 | 25,490 |
| 2005. 9. 1 ~ 2006.12.31 | 37,420 | 24,940 |

8. Survivor's Benefits

(1) Purpose

- Benefit intended to aid the living of the survivors when the worker is or is believed to be dead during the occupational reason.

(2) Requirement for Eligibility

: When the worker is or is believed to be dead during the occupational reason

(3) Method of Benefit

- Amount for survivor's benefits: Base benefit plus extra benefit

| |
|--|
| $\begin{aligned} &\text{Amount for the compensation for the survivors} \\ &= \text{Benefit base (47\%)} + \text{extra benefits (5\% \sim 20\%)} \end{aligned}$ |
|--|

- Base benefit: Base annualized wage (average daily wage * 365 days) * 47/100
- Extra benefit: Per eligible survivor member 5%, up to 4 members.
- Hybrid benefit: Per request of the eligible claimant of the compensation for the survivors, 50% of one-time lump sum compensation for the survivors (average daily wage * 1300 days) is paid in advance and 50% of the pension amount is paid.
- ※ Survivor's benefits are by default paid as pension. When there was no eligible claimant at the time of worker's death or the survivors is not Korean national living overseas, one-time lump sum benefit is made.

(4) Claimant

: Recipient (the survivors), Business owner (when delegated)

(5) Eligible recipient for survivor's benefits

- Of the family members who shared the living at the time of worker's death, the wife(including the common-law wife) and the following persons enumerated in ① ~ ⑤.

※ Except for wife, the eligibility should meet age or disorder requirement.

- ① Husband (including a spouse of common-law marriage, hence after);
Parents or Grand parents 60 years old or over.
- ② Children / grand children below 18years old
- ③ Siblings below 18 years or over 60years old.
- ④ Husband, children, parents, grandchildren, grand parents and/or siblings who do not meet ① ~ ③ but is (are) classified as disabled or more by the decree of Minister of Labor in accordance with the Article 2 of <Disabled Welfare Act>.
- ⑤ Child(ren) who was a fetus at the time of the worker's death.

| Family members who shared the living | |
|--------------------------------------|---|
| ① | Survivors who are present in the same resident register of the worker in accordance with the <Resident Registration Act> and whose living was supported mainly/solely by the dead worker. |
| ② | Survivors who relied mainly/solely on the income of the dead worker for living, but not present in the resident register of the worker due to studying/working/treatment/other residential reasons. |
| ③ | Survivors members who are not applicable to ① or ②, but who relied mainly/solely on the monetary transfer from the dead worker's income for living on a regular basis. |

9. Injury-disease compensation annuity

(1) Purpose

- In lieu of the lost-day compensation, injury-disease compensation annuity is paid in an attempt to stabilize the living of family when the treatment is extended beyond two years.

(2) Requirement for Eligibility

Injury-disease compensation annuity is paid to the worker who is on the treatment benefit for the past two years and satisfies all the following conditions.

- The injury/disease is still on-going.
- The degree of symptom of disease/injury is the same as or severer than the standard of incurable ailment set by the presidential decree.

【Injury–disease compensation annuity】

| Class of incurable ailment | Injury–disease compensation annuity |
|----------------------------|-------------------------------------|
| Class 1 | Average daily wage * 329 days |
| Class 2 | Average daily wage *291 days |
| Class 3 | Average daily wage *257 days |

(3) Claimant: the worker under the condition.

(4) Time for claim: Starts from the date the doctor issues medical certificate that confirms the incurable ailment.

(6) Effect of injury-disease compensation annuity

- Injury-disease compensation annuity is paid in lieu of lost-day compensation i.e. the temporary disability compensation benefits stops when injury-disease compensation annuity is paid.
- When a worker is on the injury-disease compensation annuity beyond the three years after the first date of the treatment, the worker treated as if he/she is paid a lump sum compensation for the purpose of application of Article 23.2 of <Labor Standard Act>

10. Funeral expenses

(1) Meaning

- Funeral expense covers the expense of funeral cost of the worker when he/she passed away by the occupational reasons.

(2) Claimant: survivors held the funeral.

(3) When: After holding the funeral

(4) Benefit: Average daily wage * 120 days.

- Maximum funeral cost: Previous year's average funeral cost benefit per day * 90 days + Maximum compensation * 30days.
- Minimum funeral cost: Previous year's average funeral cost benefit per day * 90 days + Minimum compensation * 30days.

| Period | Maximum (KRW) | Minimum (KRW) |
|-------------------------|---------------|---------------|
| 2009. 1. 1 ~ 2009.12.31 | 11,836,020 | 8,459,580 |
| 2008. 1. 1 ~ 2008.12.31 | 11,531,470 | 8,222,860 |
| 2007. 1. 1 ~ 2007.12.31 | 11,176,020 | 7,867,410 |
| 2005. 9. 1 ~ 2006.12.31 | 10,814,947 | 7,525,147 |

11. Occupational rehab benefit

Disability benefits recipients are paid occupational training costs and occupational training allowance. The business owners who keep employment of the worker are paid the job-maintenance grant, job-adjustment-training costs and rehab exercise costs.

Section 5. Remedy against the disposition about Industrial Accident Benefit

1. System and process

In accordance with the Industrial Accident Insurance Act, those who are dissent from the decision of the Corporation as to the judgment about the claim of insurance benefit can utilize deliberation and re-deliberation as a special administrative vehicle to expedite the remedy.

Aside from deliberation and re-deliberation, they can appeal to the administrative court. Also, in Korea, the dissent can seek the deliberation and/or arbitration of the Labor Relations Commission and or file a civil law suit against the management based on Damage compensation clauses of Labor Standards Act.

| | | | |
|--|--|---|---|
| <p style="text-align: center;">Disagree to disposal as to the Industrial Accident Insurance benefit→ ↓</p> | <p>1) Korea Workers' Compensation and Welfare Service - Deliberation</p> <ul style="list-style-type: none"> ○ Claimant: File two copies of the deliberation request form to the branch office that made original disposal decision within 90 days from the date he/she recognizes that the disposal is made. ○ Branch office: Within 5 days, it should transfer the case to the head office with a written opinion. ○ Headquarters: Deliberation (within 50+10 days of the date of transfer. ※ Automatic dismissal ○ Cases that does not fulfill the requirement of deliberation. <ul style="list-style-type: none"> - Period of exclusion overdue: Filing deadline overdue. - Deliberation request without disposal: Petition / Response to the question/ Request for deliberation on wired response - Ineligible claimant: The request by the ineligible claimant | <p style="text-align: center;">-dissent →</p> | <p>2) IACIAC (iaciac.go.kr) - re-deliberation (cf. deemed to be ruling of administrative action)</p> <ul style="list-style-type: none"> ○ When disagree to the deliberation, file request for re-deliberation to IACIAC of the Ministry of Labor via the branch office of the Corporation within 90 days from the date he/she recognizes that the deliberation is made. ○ The procedure and the time line is the same as deliberation ※ If the case went through the Occupational Disease Judgment Commission, re-deliberation can be directly filed without deliberation. |
|--|--|---|---|

Chapter 3. Brief Summary of Korea's Industrial Accident Compensation Insurance Act

| | | | |
|--|---|--|---|
| <p>A) Administrative action Within 90 days from the date when the claimant recognizes that deliberation is made</p> | <p>B) Administrative Court - Administrative action Within 90 days of deliberation</p> | | <p>C) Administrative Court - Administrative action Within 90 days of re-deliberation</p> |
| <p>Damage Compensation in accordance with Labor Standard Act</p> | <p>1-1) Court - civil law suit, e.g.) civil tort claim, compensatory damage</p> <p>Or</p> <p>1-2) Request deliberation and/or arbitration by Labor Relations Commission (cf. It is not deemed as the rule of administrative action. Thus, it can be processed with administrative action simultaneously)</p> | | |

Section 5. Remedy against the disposition about Industrial Accident Benefit

| | |
|--|--|
| | |
|--|--|

2. Request for deliberation

- As a remedy process internal to the administrative institute, administrative action is offered. By the <Administrative Appeals Act>, it should follow the related law if any. From the beginning, <Industrial Accident Insurance Act> offers deliberation and re-deliberation as a special administrative vehicle to expedite the remedy.
- As a special procedure replacing the function of administrative action, the request for deliberation and re-deliberation stipulates that the decision about the insurance benefit is not subject to administrative action in accordance with <Administrative Appeals Act>. Also, the operation and the procedure not defined in the <Industrial Accident Insurance Act> shall follow the <Administrative Appeals Act>.

(1) Organizing Industrial Accident Deliberation Committee

- In deliberation of the request, in an attempt to enhance objectivity and reflect the know-how of experts, the Industrial Accident Deliberation Committee is organized by the Corporation, which includes the experts of the fields. The committee makes the decision about the deliberation.

(2) Standing for request

- Those who are dissent from one of the following decision of the Corporation can request a deliberation within 90days from the date when they recognize the decision.
- Decision about:
 - Insurance benefit

- Medical expense
- Pharmaceutical expense
- Change in medical treatment plan
- Lump sum payment of insurance benefit
- Forfeiting undue profit
- Delegation of right to receive the benefit

【Bypassing the Industrial Accident Deliberation Committee】

In principle, all requests go through the deliberation of the Committee.
The exceptions are as follows

- △ Case ruled by the occupational disease evaluation committee
- △ Case being ruled in accordance with decree of Ministry of Labor (pneumoconiosis and carbon disulfide intoxication)
- △ Case with dismissal reasons - e.g. filed after deadline
- △ Case regarding medical or pharmaceutical expenses
- △ The judgment as to the legitimacy of the disposal subject to the deliberation request is reasonably clear.

(3) Standing for request (those who have rights to request deliberation)

- Claimant (victim or the survivors) and delegate (lawyer, certified public labor relationship expert)

(4) Process for the deliberation request.

- Request: File two copies of the deliberation request form to the branch office that made original ruling.
- Branch office: Transfer to the Industrial Accident Evaluation Department

Corporate headquarters with written opinion attached within 5 days of the receipt.

- Industrial Accident Evaluation Department: Deliberation of the case
- ※ Decision is made within 60 days of the receipt of the request form.

(5) Automatic Dismissal

- Case which does not satisfy the requirement of deliberation request are dismissed automatically.
 - Period of exclusion overdue: Filing deadline overdue
 - Deliberation request without disposal
 - Ineligible claim: request by a worker who has not received eligible disposal decision such as insurance benefit.

3. Request for re-deliberation

Those who are dissent from the deliberation can file a request for re-deliberation via branch office of the Corporation to the IACIAC of Ministry of Labor within 90 days from the date when they recognize the decision.

- ※ If the case went through the Occupational Disease Judgment Commission, re-deliberation can be directly filed without deliberation.

Chapter 4. Management and Operation of Korean Industrial Accident Insurance in Practice

Section 1. Understanding relationship of Industrial Accident Insurance Legal Relationship

1. Definition of consummation of insurance contract

Consummation of insurance contract indicates a start of legal relationship in accordance with <Industrial Accident Compensation Insurance Act>, i.e. by the consummation of the insurance contract, the business owner becomes responsible for report/payment of insurance premium, the insurance operating body is responsible to pay the insurance benefit and the worker earns the right to request insurance benefit in case of accidents and/or unemployment.

2. Contract structure under Industrial Accident Insurance Act

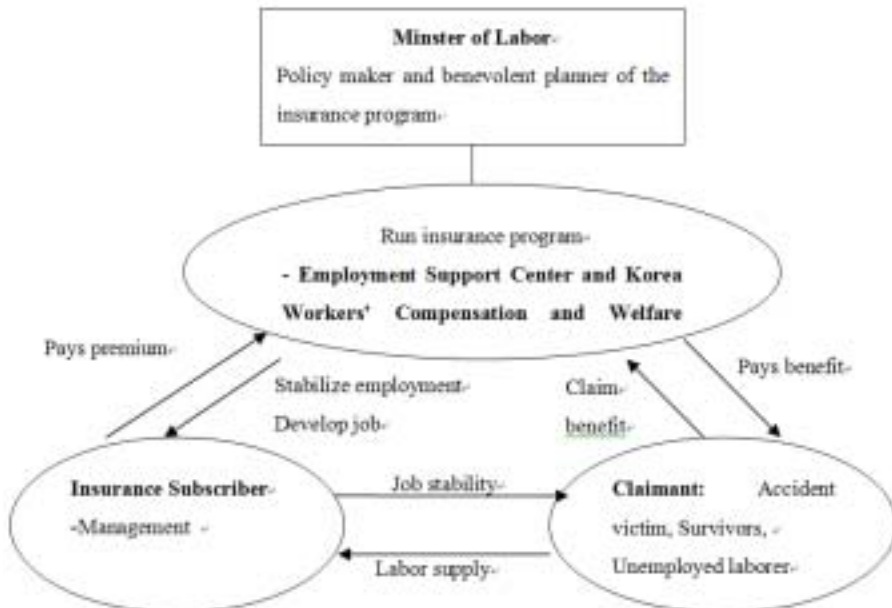
Industrial Accident and Unemployment Insurance contract is based on the relationship among the operating authority(Minister of Labor), the implementing institute (Korea Workers' Compensation and Welfare Service), insurance subscriber who pays the premium, claimant who has right to receive the benefit.

Potentially varying with the social insurance system, the legal relationship in Industrial Accident Insurance is made among 'insurance operating body, subscriber and claimant' for payment of insurance benefit.

The following legal relationships need to be distinguished.

- Relations between claimant and the third party= private law relations
e.g. Claimant vs. offender, claimant vs. medical institute (doctor).
- Relations between operating entity of Industrial Accident Insurance and other social benefit operator = administrative law relations
e.g. Relations between operators of Industrial Accident Insurance and National Health Insurance.
- Relations between operating entity and the third party = administrative and/or private laws
e.g. Operating entity vs. treatment institute or interest group (if it is an agency of public law, administrative law relation), operating entity vs. right of claimant to request indemnity against offender (private law)

【Structure of Industrial Accident Insurance Contract】



【Industrial Accident Insurance and Private Law Relations】

| | Claim and obligation under <Civil Act> | Legal relation under <Industrial Accident Insurance Law> |
|--|---|--|
| Basis for establishment | <ul style="list-style-type: none"> * “The freedom of contract” * Contracting party’s will | By meeting the requirements under the law: “obligation to perform” directly established by the law” |
| Contents | Equivalence between payment and counter-payment. | Lack of individual equivalence between payment and counter-payment |
| Effect of the default of obligation | <ul style="list-style-type: none"> * Interest for the delay of payment * Rescission of a contract * Right of suspension for concurrent fulfillment | <ul style="list-style-type: none"> * Interest for arrears * It is prohibited from refusing the payment of social benefit for a considerable period of time by the reason of insurance premium overdue. |
| | | <ul style="list-style-type: none"> - Imposition of fine for negligence - Disposition on default of national taxes. |
| Mode of act | Contract | Disposition, Consultation |
| Protection of a right | By transfer, seizure, or creation of a security right | In order to protect beneficiaries, it is not allowed to transfer, seizure, or create a security right. |
| Termination | <ul style="list-style-type: none"> * The party agreements * One party’s will | Meet the requisite for termination under the Industrial Accident Insurance Law |

Section 2. Calculation and management of insurance premium

1. Definition of premium

The insurance premium is periodic monetary transfer from the subscriber to the operator of the insurance program to fund the cost of running insurance business.

2. Collection

Subscribers should report and pay the estimated annual insurance premium by the end of March to Korea Workers' Compensation and Welfare Service. If the business has started in the middle of the year, it has to be paid within 70 days from the start of business.

The next year the business owner reports the finalized premium for the previous year and credit/additional premium payment is made.

Business with less than five regular employees can apply for special collection program by which standard wage is used to calculate the insurance premium.

When a business owner subject to mandatory subscription does not report the subscription and/or delay the report and payment of premium, the operator collects all the unpaid premium plus overdue penalties.

For the accidents that occur during the period the business owner fails to report the subscription and/or the start of the business, the operator can collect a part of or the full amount of the insurance benefit paid from the negligent business owner.

- Industrial Accident Insurance Premium is burdened solely by the business owner (management).

Section 2. Calculation and management of insurance premium

※ For workers in special types of employment, the premium is equally burdened by the employer and the worker.

【2008 Industrial Accident Premium Rate by Industry】

(Unit: per mil)

| Type of Industry | Rate | Type of Industry | Rate |
|---|------|--|------|
| 1. Mining | | | |
| Coal mine | 553 | Manufacturing of measurement /optical machinery/ other precision equipment | 13 |
| Metal and non-metal mining | 230 | | |
| Mining stones | 201 | Hand-made manufacturing | 20 |
| Mining cement | 79 | Other manufacturing | 33 |
| Salt manufacturing | 37 | 3. Electronics/ Gas/ water supply | 11 |
| Other mining | 80 | 4. Construction | 36 |
| Soft coal and solid coal manufacturing | 98 | 5. Transport/warehouse/telecom | |
| 2. Manufacturing | | Railroad and cableway transport | 10 |
| Food manufacturing | 25 | Motor vehicle passenger transport | 25 |
| Tobacco manufacturing | 11 | Motor vehicle cargo transport | 71 |
| Textile and textile product manufacturing (A) | 16 | Water transport, unload cargo at port/ cargo treatment | 36 |
| Textile and textile product manufacturing (B) | 27 | | |
| Wood and veneer plywood manufacturing | 77 | Air transport | 9 |
| Wood product manufacturing | 54 | Service related to transport | 10 |
| Pulp and paper product, manufacturing, bookbinding, and processing printed material | 27 | Warehouse | 21 |

| Type of Industry | Rate | Type of Industry | Rate |
|--|------|--|------|
| Telecom | 12 | | |
| Printing newspaper/ money, publication, light printing | 10 | 6. Forestry | 54 |
| Printing | 19 | 7. Fishing | |
| Chemical product manufacturing | 21 | Fishing | 288 |
| Pharmaceutical, cosmetic, perfume manufacturing | 11 | Fish farming and other fishing related service | 10 |
| Coke and coal gas manufacturing | 38 | 8. Agriculture | 28 |
| Rubber product manufacturing | 32 | 9. Other industry | |
| China product manufacturing | 35 | Agriculture and marine product commission sales | 35 |
| Glass manufacturing | 25 | Comprehensive management / maintenance business (building) | 24 |
| Ceramics manufacturing | 34 | Hygiene and other service | 36 |
| Cement manufacturing | 31 | Construction and machinery maintenance / management | 119 |
| Non-metallic / metallic product manufacturing and metal processing | 54 | Operating golf club and horse race track | 20 |
| Other businesses | 10 | | |
| Metal smelting | 14 | Computer operation / accounting/ lawyering related service | 7 |
| Metallic material manufacturing | 40 | | |
| Gilt | 26 | Health and social welfare | 7 |
| Machinery/ equipment manufacturing | 30 | Education service | 10 |
| Electric machinery manufacturing | 15 | 0. Financial service and insurance | 7 |
| Electronics product manufacturing | 9 | | |
| Ship building and repairing | 57 | *Overseas dispatched workers: 19 /1000 | |
| Transport machinery manufacturing and repairing (A) | 33 | | |
| Transport machinery manufacturing and repairing (B) | 27 | | |

3. Period of computation

- On-going business
 - January 1st ~ December 31st of each insurance year
- Start-up business during the year
 - Subscription date ~ December 31st
- Close-down business during the year
 - January 1st ~ Closed down date
- Business that started up and closed down in the same year
 - Subscription date ~ close down date.

4. Insurance premium rate

- In order to assure an even burden of insurance premium payment, the insurance premium rate is determined based on the riskiness of the occupation calculated by the gross benefit payment to gross wages for the past 3 years as of the end of each June.
- ※ In 2009, the insurance premium rate of 61 industries ranges 7/1000 ~360/1000 with an average of 18/1000 as 2009.
- In determination of the insurance premium rate,
 - For each business place, one premium rate is applied.
 - When one business place operates two or more different kinds of businesses differing in the premium rate, the following criteria are used to determine major business for the rate computation:
 - ① The business with more employees
 - ② The business paying higher gross wage, if the number of employees are the same for each business and/or unidentifiable,

③ The business that generates higher revenue, if the method above cannot determine the major business.

* Base wage for estimation of insurance premium

○ Definition of gross wage:

- Gross wage that serves as a basis to compute the insurance premium is the total amount of wage that the management actually pays or decides to pay during the insurance year in accordance with Article 2.1.5 of <Labor Standards Act>.
- Gross wage in accordance with Article 2.1.5 of <Labor Standards Act> includes all kinds of compensation in exchange of the labor supply including other than monetary wage, bonus and in-kind compensation.

Section 3. Payment of insurance benefit

1. Trend of accident rate and insurance benefit

The Industrial Accident Insurance premium rate is determined and announced based on the accident rate and the revenue-to-expense rate. The insurance benefit is paid upon the recognized occupational accidents. Table 1 analyzes the accident rate, the premium collected and the benefit paid for the past six years as of 2008

During the period, the accident rate has gradually fallen each year from 0.9% in 2003 to 0.71% in 2008 while the number of accident cases edged higher (94,924 cases in 2003 to 95,806 cases in 2008). The insurance premium collected has skyrocketed by 88.7% from KRW 2.53 trillion in 2003 to KRW 4.78 trillion in 2008. Also, the insurance benefit paid has surged by 37.8% from KRW 2.48 trillion to KRW 3.42

trillion during the same period. In other words, the increase in the insurance premium and the benefit is much higher than the accident rate and the number of cases.

Also, the average insurance benefit per person has increased from KRW 26.1 million in 2003 to KRW 35.7 million in 2008. The rate of the increase in insurance benefit (36.6%) is much higher than the increase in the wage rate (27.9%) during the same period,⁴²⁾ which pressures the balance sheet of the insurance program and plays the role of the factor increasing the insurance premium.

【Trend of accident rate, insurance benefit paid, etc】

(unit : ea. person, %, KRW million)

| Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|-----------------------------------|---------------------|----------------------|----------------------|----------------------|----------------------|---------------------|
| # of business | 1,006,549 | 1,039,208 | 1,130,094 | 1,292,696 | 1,429,885 | 1,594,793 |
| # of employees | 10,599,345 | 10,473,090 | 11,059,193 | 11,688,797 | 12,528,879 | 13,489,986 |
| # of accidents (annual change) | 94,924 (15.9%) | 88,874 (-6.4%) | 85,411 (-3.9%) | 89,911 (5.3%) | 90,147 (0.3%) | 95,806 (6.3%) |
| Accident rate | 0.90% | 0.85% | 0.77% | 0.77% | 0.72% | 0.71% |
| Premium (A) (annual change) | 2,537,424 (2.3%) | 2,959,030 (14.2%) | 3,247,703 (10.1%) | 3,827,266 (17.8%) | 4,367,341 (14.1%) | 4,788,650 (9.6%) |
| Benefit (B) | 2,481,814 | 2,859,914 | 3,025,771 | 3,163,769 | 3,242,276 | 3,421,885 |
| Expense to Revenue (B/A) | 81.91% | 96.65% | 93.17% | 82.66% | 74.24% | 71.46% |

42) According to the statistics of the Ministry of Labor announced in April 2008, the contract wage has increased a total of 27.9% during March 2003~March 2008 period. The increase rate by years is as follows: 5.3% in 2004, 4.1% in 2005, 5.8% in 2007 and 5.5% in 2008.

| Year | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|---------------------------------|-------|-------|-------|-------|-------|-------|
| Average benefit paid per person | 26.15 | 32.18 | 35.43 | 35.19 | 35.97 | 35.72 |

Source: Korea Workers' Compensation and Welfare Service, Annual of Industrial Accident Insurance, 2003 ~ 2008 Performance Analysis of Industrial Accident Insurance and Unemployment Insurance, 2004~2009.

2. Insurance benefit payment by type

Table 2 compares the amount and the percentage of each type of insurance benefit paid. The Industrial Accident Insurance has paid a total of KRW 3.42 trillion in benefit in 2008.

The disability benefit accounts for KRW 1.26trillion or 37.0% followed by treatment benefit with KRW 0.81 trillion or 23.7%and lost-day benefit with KRW 0.79 trillion or 23.2%. The fraction of lost-day benefit has gradually declined from 33.4% in 2004 to 23.2% in 2008. Meanwhile, in 2003 in Japan,⁴³⁾ treatment benefit accounted for JPY 0.20 trillion or

43) Japan's insurance benefit payment by type (2003~2007) is as follows.

| < Insurance benefit paid by type in Japan > | | | |
|---|-----------------|-----------------|-----------------|
| (Unit: JYP million, %) | | | |
| Year | Heisei 15 | Heisei 17 | Heisei 19 |
| Benefit type | 2003 | 2003 | 2007 |
| Medical care benefits | 207,560(26.4%) | 205,108(26.6%) | 205,806(26.5%) |
| Temporary disability compensation benefits | 120,440(15.3%) | 115,399(14.9%) | 114,215(14.7%) |
| Disability - Lump sum | 43,570(5.5%) | 40,214(5.2%) | 38,884(5.0%) |
| Survivors - lump sum | 5,902(0.7%) | 6,121(0.8%) | 7,965(1.0%) |
| Funeral cost | 2,338(0.3%) | 2,360(0.3%) | 2,666(0.3%) |
| Long-term care | 6,131(0.8%) | 6,107(0.8%) | 6,911(0.9%) |
| Pension etc | 400,735(50.9%) | 396,521(51.3%) | 399,096(51.4%) |
| Secondary health diagnosis | 358(0.0%) | 474(0.1%) | 585(0.1%) |
| Total (%) | 787,034(100.0%) | 772,304(100.0%) | 776,128(100.0%) |

Source : 厚生労働省 労働基準局, □□平成19年度 災害補償保険事業年報□□, pp54~58

26.4% while lost-day benefit and pension benefit stood at JPY 0.12 trillion and JPY 0.40 trillion, respectively. In 2007 Japan, treatment benefit, lost day benefit and pension benefit accounted for JPY 0.20trillion (26.5%), 0.11 trillion (14.7%) and 0.39 trillion (51.4%) respectively. Japanese lost-day benefit is stable around 15% of total benefit payment.

【Insurance benefit paid by type】

(Unit: KRW million, %)

| Year Benefit type | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Medical care benefits | 709,578 (28.6%) | 786,792 (27.5%) | 769,167 (25.4%) | 800,391 (25.3%) | 763,003 (23.5%) | 812,279 (23.7%) |
| Temporary disability compensation benefits | 819,681 (33.0%) | 954,612 (33.4%) | 938,439 (31.0%) | 848,135 (26.8%) | 800,305 (24.7%) | 792,490 (23.2%) |
| Injury-disease compensation annuity | 105,337 (4.2%) | 123,143 (4.3%) | 140,345 (4.6%) | 151,580 (4.8%) | 162,236 (5.0%) | 176,158 (5.1%) |
| Disability | 626,222 (25.2%) | 752,287 (26.3%) | 922,185 (30.5%) | 1,067,385 (33.7%) | 1,170,647 (36.1%) | 1,265,917 (37.0%) |
| Survivors' pension | 192,584 (7.8%) | 210,834 (7.4%) | 220,577 (7.3%) | 253,876 (8.0%) | 296,797 (9.2%) | 317,714 (9.3%) |
| Funeral cost | 22,678 (0.9%) | 22,81 (0.8%) | 21,221 (0.7%) | 22,162 (0.7%) | 22,754 (0.7%) | 23,526 (0.7%) |
| Nursing and occupational rehab | 5,734 (0.2%) | 9,434 (0.3%) | 13,837 (0.5%) | 20,240 (0.6%) | 26,534 (0.8%) | 33,801 (1.0%) |
| Total (%) | 2,481,814 (100.0%) | 2,859,914 (100.0%) | 3,025,771 (100.0%) | 3,163,769 (100.0%) | 3,242,276 (100.0%) | 3,421,885 (100.0%) |

Source : Korea Workers' Compensation and Welfare Service, Annual of Industrial Accident Insurance, 2003~2008 Performance Analysis of Industrial Accident

Chapter 4. Management and Operation of Korean Industrial Accident Insurance in Practice

Insurance and Unemployment Insurance, 2004~2009.

Section 4. Trend of deliberation and court decision

1. Deliberation example

(1) Occupational accidents during the break time between the labor hours

Case : 2008 Deliberation number 652.

A worker has injured while returning to his company after the dinner at a restaurant around the company. The deliberation has ruled that the break time including the dinner time is related to the labor supply after the break time and therefore the accident during the break time is considered to be under the control of the management. The initial deliberation by Korea Workers' Compensation & Welfare Service denied the treatment benefit by the reason that the claimant did not use the company's designated restaurant and the accident occurred outside the work hours. However, considering that the company offered only one designated restaurant, the claimant had dinner in order to perform the overtime requested by the company, the dinner is paid by the company's account, and the claimant has not proven to have deviated from the route between the restaurant and the company, it is appropriate to regard the accident that occurred during such break time is under the control of management. Therefore, the accident is occupational accident in accordance with Article 32 of the enforcement rule.

2. Court decision

(1) Difference between the Industrial accident compensation and the Indemnification for damage

1) Indemnification for damage

Supreme Court of Korea, 1994.11.18, 94 Da 34272 Decision

【Issue】

- A. The interpretation of 'in the course of the execution of the undertaking' under Article 756 of Civil Act
- B. The case that employee's violent behavior is irrelevant to the performance of job.

【Summary of the ruling】

- A. The requirement for the employer's liability for damage in accordance with Article 756 of Civil Act is 'in the course of the execution of the undertaking'; When the employee's tort appears to be a part of business or performance of the job task by reasonable objective standards, it is deemed to be a behavior related to the job performance regardless of the intent of the act.
- B. A restaurant employee was verbally harassed and beaten by the manager because of the private phone call he/she made. The employee wandered 8 hours and returned to the restaurant with a small knife. The employee stabbed the manager to death in self defense when the manager repeated the harassment. In this case, even though the employee's tort was made during

the business hour in the business place, it is appropriate to view that the killing is done in self defense which is irrelevant of the performance of the job. Therefore, the tort of the employee cannot be considered a part of the performance of the job task by a reasonable standard.

2) Industrial Accident Compensation.

Daejeon District Court. 2007.4.11. Case 2006 GuHap 4105decision

【Issue】

- A. The standard of the recognition of ‘occupational accident’ when a worker is damaged by other person’s violence,
- B. A private dispute between the associates extended to a dispute at the work place, which resulted in the resignation of one party, who trespassed into the company and killed the other party. The court recognized that this accident is an occupational accident by the principle of causation.

【Summary of the ruling】

- A. The occupational accident in accordance with Industrial Accident Compensation Insurance Act is the accidents that occurred in the process of the performance of the job task due to the job. When a worker is damaged by other’s violence, if it is due to the inter-personal relationship within the company or it is intrinsic in the job task by the reasonable standard or the principle of causation, it can be recognized as an occupational accident. However, if it is due to the personal grudge, or the victim dared the offender beyond the occupational limit, it cannot be considered an occupational accident.
- B. The employees of the same company A and B had a private dispute which extended to the dispute at the work place. The

company intervened to resolve it but A resigned the job in the end, which fostered the grudge against the firm. As A kept threatening to kill B and company's managers, company discussed a contingency plan. However, A have broken into the company and killed B during the process of job task, B's damage is recognized as occupational accident by the principle of causation.

(2) Occupational disease

A. Occupational disease outside the work place

Supreme Court of Korea, 2006 Du 17956 decision

... 'Occupational accident' has to be attributable to the job task in the process of performing occupational duties. Therefore, the job task and the disease that triggered the death should have causality. However, even if the major cause of the disease does not have a direct causation, the disease and the occupation are deemed to have causality if occupational overload and/or stress from job triggered and/or aggravated the main cause of the disease. This causation does not necessarily require medical/scientific proofs. Also, if the mild underlying disease or existing conditions under which the workers can perform regular duty are aggravated at an unnaturally rapid pace, it should be included when it is provable. The determination of the causality between the occupation and the death in this case should base on the health condition of the specific worker under consideration, not of the ordinary average person. (Cf: Supreme Court of Korea 4. 13.2000 Du 9922 decision; Supreme Court of Korea 2004. 3. 26, 2003 Du 12844 decision, etc)

According to the fact finding from the judgment of original court, the plaintiff's husband, late Mr. Song (Born in 1962), is found dead during defecation while he worked as a chief of the road construction site of Halla Civil Engineering & Construction(hereafter Halla). Considering the time of death being right after the discussion about the work with his subordinates at his office, his subordinates being at work in their office next to the chief's office at the likely time of death, the place of death being the toilet of the construction site under the control of management, Mr. Song's defecation is recognized as an act during the process of performing his job task. Therefore, Mr. Song's death is recognized as an occupational accident.

Meanwhile, the late Mr.Song was under continued occupational stresses considering that his service at Halla for 5 years and 3 months was mostly as a chief of the construction sites, forced him to be away from his family. He was pressured by the profitability of the construction site. Mr. Song was able to visit his home one every two weeks for the last four months before his death. He worked from 07:00 to 19:00 daily, which sometimes extended to 22:00around his time of death. Although Halla nominated Mr. Song as the fourth chief of the site to recover the loss made by his predecessors, Mr. Song was not so much successful. This was likely to have pressured him. Medical opinion also stipulated that the exposure to occupational stress for an extended period time due to his service as a chief of construction site is likely to have caused and/or accelerated the progress of the coronary sclerosis beyond the natural pace. Taking all the circumstances into consideration, Mr. Song's death is recognized as an occupational accident.

Chapter 5. The characteristics of Korea's Industrial Accident Insurance system

Section 1. Dual law system in Korea's Industrial Accident Compensation

1. Meaning

As we have seen above, Korea has two major legal codes, <Industrial Accident Compensation Insurance Act> and <Labor Standards Act>, that deal with the Industrial Accident Compensation. <Labor Standards Act> stipulates the direct compensation by the management while <Industrial Accident Compensation Insurance Act> specifies the compensation via social insurance benefit. The dual system is due to the historical fact that the latter act is introduced long after the former act is legislated.

However, the legal remedy in accordance with <Industrial Accident Compensation Insurance Act> is done by the civil law suit between the management and the worker. It is not unexpected that this kind of civil law suits would increase with a continuous growth in the new type of occupational accidents.

The business sometimes resorts to the private insurance to guarantee the capacity to pay the damages in accordance with the <Labor Standards Act> in addition to the burden of premium payment for Industrial Accident Insurance. Some argue that these dual burdens to the businesses are too much. Being lack of knowledge about the related laws and system, the workers have to compare the benefit of each option (<Labor Standards Act> vs. <Industrial Accident Compensation

Insurance Act>) to search for the better remedy, which burdens the victim or the survivors in the process of law suits and the settlement.

From the perspective of the comparative law, this kind of dual system is not common. Even though industrial accident compensation law is one of the social security laws, it exceeds the regional limits which can be said as general features of social security laws. Every industrial accident compensation system of each country shows tendency towards not only insurance system but also social securities. Does such a dual featured industrial accident compensation system of Korea have implications more than the historical singularity? If so, whether the liability of the management has to be imposed by the <Labor Standard Act>, and whether the social insurance system that allows the risk of industrial accident being shared by the entire society is possible deserve proper considerations.

2. Comparison of the compensation for the damage by <Labor Standards Act>vs. <Industrial Accident Compensation Insurance Act>

(1) Decision of the coverage

Even if both <Labor Standards Act> and <Industrial Accident Compensation Insurance Act> offer the legal remedies for the industrial accidents, a case cannot be compensated under both Acts at the same time.

Therefore, we are going to review the similarity and differences of the applicable coverage. We will also discuss the necessity and possibility of the adjustment of the system and then explore how to do it.

Section 1. Dual law system in Korea's Industrial Accident Compensation

Since its legislation in 1963, <Industrial Accident Compensation Insurance Act> had shared its coverage with <Labor Standard Act> until 1989 when it had become applicable to all businesses. Strictly speaking, however, the former had narrower coverage because there were exception rule stipulated by Presidential decree.

The coverage of the accident compensation rule in accordance with Labor Standards Act had expanded through a series of amendments to any business or business place with one or more regular worker.⁴⁴⁾ Industrial Accident Compensation Insurance Act extended its coverage to any business with an employee since 1989 amendment with exceptions listed in the Presidential decree.⁴⁵⁾

44) <Coverage by Labor Standard Act and Industrial Accident Insurance Act>

| Year | 1953 | 1975 | 1989 | 1998-2007 |
|--|---|--|---|--|
| Labor Standard Act | Business with 15 or less regular employees are excluded | -Business with 4 or less regular employees are excluded -Partial application for business with 5~15 regular employees | -Applied to business with 5 or more regular employees -Partial application for business with 10~15 regular employees | Applied to business with 5 or more regular employees |
| Damage Compensation | Business with 15 or less regular employees are excluded | Applied to business with 5~15 regular employees | Applied to business with 5~15 regular employees | Applied to business with 4 or more regular employees |
| Industrial Accident Compensation Insurance Act | | 1963-1973 Business covered by Labor Standards Act | All business with exceptions stipulated by Presidential decree | |

45) Coverage of Industrial Accident Insurance :

1. Mandatory subscription

: Insurance subscription starts regardless of the intention of the management (start of business or the mandatory coverage period)

Given this circumstances, some argue that the mandatory coverage under Industrial Accident Compensation Insurance Act is narrower than the accident compensation standard by Labor Standards Act⁴⁶⁾ because the coverage of Industrial Accident Compensation Insurance Act could be limited depends on a type of business while Labor Standard Act applies to all workers without limitation. Others argue that industrial accident compensation insurance is designed to guarantee the accident compensation liability of the management of Labor Standard Act by insurance.

Here is another factor that we need to take into consideration. While Labor Standards Act stipulates minimum number of regular workers as a requirement of mandatory coverage, the enforcement decree of Industrial

-
- Business with one or more employees, de facto all businesses.
 - The insurance subscription report is negligent, 50% of the damage compensation paid by the insurance can be collected from the management.
 - Workers dispatched overseas can be covered by the approval of the Corporation
 - Trainee working at the covered business.

2. At will subscription

- The business in agriculture, forestry, fishing and hunting which did not incorporate and has employees less than five.
- The business that pays compensation in accordance with <Public Officials Pension Act>, <Veterans' Pension Act>, <Seafarers Act>, <Fishing Vessels' and Their Crew Members' Accident Compensation Insurance Act> or <Pension for Private School Teachers and Staff Act>.
- Household service business

cf. When pre-existing subscriber of Industrial Accident Insurance Program does not meet the requirement of mandatory subscription, it is considered at-will subscription. The subscriber has to obtain the approval from Korea Workers' Compensation and Welfare Service to start/terminate the insurance.((3) of Article 7, (1) of Article 8)

3. Covered workers

Regardless of the type of occupation, "the worker" covered under the Industrial Accident Insurance and Employment Insurance means the person who offers their labor for the purpose of wages in the business or the work place.

46) Kang Wan-gu, Adjustment of claims endowed by occupational accident, <Major Issues in Civic Law suits I>, The Korean Association of Civil Law, The Korean Association of Civil Procedure, (1995), p.549.

Accidents Compensation Insurance Act has an exception which allows at-will subscription depending on the risk rate of the business.⁴⁷⁾

While the accident compensation rule under <Labor Standards Act> requires the number of regular workers as a key requirement, <Industrial Accidents Compensation Insurance Act>'s criterion is not based on the fact that they are workers, but follows the risk rate intrinsic in the business.

Therefore, it cannot be argued that the coverage of Labor Standard Act is wider than that of Industrial Accident Compensation Act. For instance, a special type worker, who are not commonly considered a regular worker might be covered under Labor Standards Act if he/she is recognized as a worker belongs to the business. Meanwhile, Industrial Accidents Compensation Insurance Act considers the riskiness of the business as well as the characteristic of the worker.

Regarding this point, the necessity and possibility of balancing between two Acts are to be sought. Even with the divergence in the coverage and standards, the business covered under both Acts is on a rising trend, which increases the necessity of the adjustment.

Meanwhile, the difference in determining the coverage under the two Acts raises a question as to which rule should apply to a specific case, or what does it mean by allowing just one rule to be applied for each case. It leaves room for consideration whether the provision of such institutionalized remedy by the government satisfies the purpose of legislation.

47) For example, in the amendment of 1989, Labor Standards Act excluded the businesses with 4 or less regular employees while Industrial Accident Insurance Act included all businesses with some exceptions stipulated in its enforcement decree. The comparison of the coverage is a subtle issue.

(2) Types of benefits and method of computation.

The type and cause of benefit under Industrial Accidents Compensation Insurance Act is not so much different with Labor Standards Act except for nursing benefit,⁴⁸⁾ which raises a question about the necessity of the dual system. Given that the benefit by Industrial Accidents Insurance is higher than the damage compensation by the business, the latter's significance as an alternative legal remedy is limited.⁴⁹⁾

The biggest difference between the two acts is that the benefit payment of Industrial Accident Insurance is made by pension while the damage compensation by Labor Standard Act is lump sum payment, which reflects the common trait of the social insurance which attempts to stabilize the standard of living of the people.⁵⁰⁾ Nursing benefit under Industrial Accident Insurance Act shows the uniqueness of Industrial Accident Insurance Act as social insurance.⁵¹⁾

The difference in the burden of legal liability has also been an issue, i.e., the damage compensation under Labor Standard Act ultimately depends on the business owner's capacity to compensate even though both Acts recognize the right to claim.

48) Labor Standards Act does not have the chronic disease benefit. But it requires two or more years of long-term treatment.

49) In accordance with Industrial Accident Insurance Act, for instance, the lost-day benefit (Article 52) is 70% of the average daily wage while it is 60% under Labor Standards Act (Article 82). Also, the survivors' benefit is lower under Labor Standards Act (Article 82, 1000 days × average daily wage) than under Industrial Accident Insurance Act (1300 days). Funeral cost compensation is similar.

50) For instance the survivors' benefit (Industrial Accident Insurance Act Article 62), disability benefit (Article 57), chronic disease benefit (Article 66).

51) Nursing benefit (Article 61 of Industrial Accident Insurance Act) is paid to those who have finished treatment by the insurance, are determined to be eligible to damage compensation and require continual/frequent medical nursing.

(3) Damage compensation vs. Accident Compensation vs. Industrial Accident Compensation

| Classification | Civil law damage compensation* | Accident compensation by Labor Standards Act | Industrial Accident Insurance benefit |
|-----------------|--|--|---|
| Claimant | Victim / heir | Victimized Labor/survivors | Claimant (⊃ survivors) |
| Purpose | Damage compensation | Loss compensation | Stabilize standard of living (social protection) |
| Liability | Negligence liability (comparative negligence) (Burden of proof lies with the claimant) | No fault liability (The fault of the victim does not affect the compensation except for intentional / several faults.) | Social Insurance |
| Covered | Actual damage plus compensatory damage | Fixed rate/ no compensatory damage | Fixed rate/ compensation for loss of labor force |
| Protected right | Private autonomy, Statutory inheritor, Rightful claimant | | No at will disposal (It cannot be transferred/ seized/collateralized/inherited) Survivors' benefit depends on de facto family support |
| Enforcement | Preservative measure/ litigation | Deliberation/ arbitration by Minister of Labor or Labor Committee (no enforcement) or the civil law suit or Article 110 of Labor Standards Act | Deliberation and re-deliberation of the Corporation and Industrial Accident Compensation Insurance Evaluation Committee or Administrative law suit. |

Chapter 5. The characteristics of Korea's Industrial Accident Insurance system

| Classification | Civil law damage compensation* | Accident compensation by Labor Standards Act | Industrial Accident Insurance benefit |
|-----------------|--|--|--|
| | All costs are burdened by the business Cannot be paid beyond the capability of the business owner | | Can be paid beyond the means of the business owner Business owner pays premium + government subsidy |
| Jurisdiction | Court | Court | Branch of the Corporation Administrative Court |
| Time limitation | Tort: 3 years Default of obligation: 10 years | 3 years (Article 92 of Labor Standard Act) | 3 years |
| | Coverage | Any business with one or more employees - the management is liable to pay the occupational damage | All mandatory subscribers plus at will subscribers |
| | At will subscription | N/A | Small business, one man business, special worker |
| | Medical care | Medical care benefit or cost | Treatment benefit or cost |
| | Temporary disability compensation | 60% of average wage | Every four lost-days benefit is paid (60% of average daily basis wage) |
| | Disability | -Lump sum compensation -no Average daily wage -number of days depending on the degree of damage by the predetermined table | Class 1 ~ 7 is paid by pension Class 8~14 is paid by lump sum compensation |
| | | | |

Section 1. Dual law system in Korea's Industrial Accident Compensation

| Classification | Civil law damage compensation* | Accident compensation by Labor Standards Act | Industrial Accident Insurance benefit |
|----------------|--------------------------------|---|--|
| | Nursing | N/A | Paid to those who requires nursing after the treatment benefit |
| | Survivors | Lump sum compensation Average daily wage × 1000 days | * Pension * Lump sum payment if pension is inapplicable |
| | Funeral | Average daily wage × 90 days | Average daily wage × 120days |
| | Extended medical care | After 2 years from the start of medical care, lump sum compensation of average daily wage × 1340 days | After 2 years from the start of medical care, chronic disease benefit is paid in lieu of lost-day benefit |
| | | Lump sum | Chronic disease benefit pension lump sum and pension |
| | Workers' welfare business | N/A | * Promotion of society adjustment * Special benefit and support * Labor safety hygiene * Proper labor condition |
| | Burden sharing | Business owner is solely responsible | * Business owner pays premium * Special type worker pays a fraction of premium * Government subsidy |

(4) Principle of Reconciliation of Damage Compensation and Industrial Accident Benefit payment

1) The liability

A laborer who works for a business covered harmed by an occupational accident can claim the industrial accident benefit and request damage compensation by Labor Standard Act even if the management is not liable for the accident.

It is clearly stated in the legal codes/ case laws that an accident case cannot be paid both the damage compensation and insurance benefit, which is supported by the mainstream academic theories. The application would be an issue for each case.

It seems that it is hard to deny that the Industrial Accident Insurance Act put more stress on the stabilization of standard of living rather than the damage compensation, setting the disputes over legal system or theoretical dogma aside.

Japan is not so much different from Korea in a sense that the former also has a dual system for the industrial accident compensation. Japanese labor accident act took a similar path such that it has increased its mandatory coverage and stipulates a better compensation rate than the labor standard act. The labor accident act has become a major legislation that it has almost replaced the labor standard act even if the latter is in principle the basis code for the industrial accident compensation.

2) Adjustment according to the legal trait of the claim : Principle of the identity

It is a principle that an adjustment is made when the claims overlap. For instance, when both the claim of survivors under the Labor Standard

Act and the survivors' benefit under Industrial Accident Insurance Act are applicable, the benefit is adjusted so that the double payment is avoided for the same case.

3) Adjustment by priority of legislation

As discussed above, Labor Standard Act and Industrial Accident Insurance Act offer similar protection. We are going to discuss how these competitions are resolved when these acts are applicable at the same time. It could be resolved through the way of legislative adjustment, and it is also about how to see the relations between accidental compensation and its benefit, considering that the legal theory which the legislation based on.

A. Theory prioritizes Industrial Accident Insurance Act

Under this theory, Industrial Accident Insurance Act supersedes Labor Standard Act. According to this theory, the victim of industrial accident can claim the benefit of Industrial Accident Insurance only while the claim in accordance with Labor Standard Act is invalidated.⁵²⁾

This theory is based on the argument that Industrial Accident Insurance is a special law of Labor Standard Act or that Industrial Accident Insurance is liability insurance.

In fact this theory considers the following factors; 1) the benefit of Industrial Accident Insurance is higher than the damage compensation, 2) the management could be penalized twice when it is liable to the

52) Kang Wan-gu, Adjustment of claims endowed by occupational accident, major issues in civic law suits I, p. 560; Lee Woo-tae, Damage compensation and management's right of indemnity against the state, p 112; Kwak Jong-chul, Relations of claims due to occupational accident, p. 386.

damage compensation considering that it pays the premium of Industrial Accident Insurance.

It can be said that the prioritization of claim of Industrial Accident Insurance has advantage that it makes the legal relations simplify. In Korea, however, this kind of prioritization requires more bases considering in the dual legislations which differ in purposes, requirement, contents and coverage, etc.

B. Theory of selective claims

This theory allows both kinds of claims as they have different underlying independent codes. Under this theory, forcing the victim to choose the benefit of Industrial Accident Insurance limits the legal rights of the victim. Some argue that the benefit of Industrial Accident Insurance might expire by completing the period of limitation or the victim has to go through administrative law suit when the deliberation denies the payment of benefit.⁵³⁾

5) Case Law

The Supreme Court of Korea has ruled that both claims can coexist.⁵⁴⁾ However, recently the Court has favored the claim under Industrial Accident Insurance Act given the protection of insurance subscriber and the immunity of liability of the management.⁵⁵⁾

53) Traffic/Industrial Accident Compensation Practical Guidance Research Group, Traffic/Industrial Accident Compensation Practical Guidance, p. 436.

54) "The claimant can selectively choose between the benefit of Industrial Accident Insurance and damage compensation. The management cannot be exempt from the liability unless it proves the claim of Industrial Accident Insurance is actively applied." Supreme Court, 1970. 11. 24. 70 Da 2144 Decision; Supreme Court 1994. 5. 24. 93 Da 38826 Decision.

55) "If the management covered by the Industrial Accident Insurance by paying mandatory

Section 2. Adjustment of damage compensation and benefit of Industrial Accident Insurance

1. Relations between damage compensation and benefit of Industrial Accident Insurance

The major cause of social insurance is a tort. The victim is likely to have claims in accordance with both damage compensation and social insurance programs at the same time, which means that workers could have the two claims for compensation for damage and the Industrial Accident Insurance in the industrial accident cases.

The Industrial Accident Insurance attempts to protect the workers from social risks by offering claims for Industrial Accident benefit. It does not mean that they are allowed to be compensated twice from the same damage.

It also does not mean to cause undue benefit/losses of the subscribers/ the operating body of the insurance. It is not intended that the offender is unduly exempt from the liability and the operating body gets unduly liable.

How to balance between the damage compensation and the benefit payment of Industrial Accident Insurance Compensation is one of the major issues. The judgment starts from the understanding of the legal characteristic of the insurance program, which would be a basis of the computation of benefit amount.

premium is forced to pay the damage compensation, its insurance benefit is denied. The purpose of the subscription of Industrial Accident Insurance is to avoid the compensation of damages from the covered accidents.” Supreme Court 2001. 9. 18.2001 Da 7834 Decision.

2. Rules as to adjustment of Industrial Accident Insurance Benefit and damage compensation

It is necessary to adjust conflicting claims when the claimant has both the claim under Industrial Accident Insurance Act and the claim of damage compensation as well as the claim against the third party. The range of the third party is an important factor to determine the range of person subject to adjustment. With regard to this, the Industrial Accident Insurance Act has stipulated the range of the third party.⁵⁶⁾

When operating agency of Insurance benefits paid to the worker damaged by the third party, it is considered for operating agency of insurance benefits to subrogate the right to claim for compensation for damage. In addition, when operating agency paid to the worker damaged by the management, it could be considered as recovery of compensatory damage. In particular, whether the employer is to be included in the third party or not could be another important issue. If the occupational accident is due to the tort of the management of employer, of course, the worker has both claims - Industrial Accident Insurance benefit and the damage compensation from the management.

Set aside the fact that the employer could be assumed as a liable offender of industrial accident, however, it is hard to determine whether the employer should come to the third party in question in that Industrial Accident Insurance does not require the individual negligence of the

56) Article 80, Article 87 (indemnity to the third party), and Article 89 (Subrogation of the right to receive insurance benefits) of Industrial Accident Compensation Insurance Act.

Article 89 of the Act (Subrogation of the right to receive insurance benefits) Article 44 (Scope of Adjustment of Insurance Benefits for Person receiving Compensation for Damages), Article 48 (Adjustment of Insurance Benefits for Person receiving Compensation from Third Person), and Article 49 (Right for Insurance Benefits by Subrogation) of the Enforcement Decree for the Act.

employer. In order to maintain the original purpose of the Industrial Accident Insurance as well as compensation for damages, the mainstream theories argue that the liable third party should be determined on the basis of mens rea or negligence of employers because employers are the insurance subscribers that pay the premium, who are usually free from the damage compensation issue.

Section 3. Increase in occupational disease and standard of recognition

1. Increase in occupational disease

(1) Increase in disease by work overload.

From the year of 2001, Korea's Ministry of Labor has started to include the number of treatment due to disease through overwork and stress in occupational disease statistics. As this is not the classification by disease but by cause. This statistics cannot be interpreted as occupational mental disease.⁵⁷⁾

Overwork is neither medical nor legal concept. In many cases, however, the legal judgment is required in this regard even in the absent of established concept like the application of other social laws.⁵⁸⁾

57) 【Treatment and death toll due to work overload and stress as of 2005】

(Unit: # of person)

| Gender Number | Total | Male | Female |
|---------------|------------------|-----------------|----------------|
| Treatment | 178 (100.00%) | 114 (64.04%) | 64 (35.96%) |
| Death | 28 (100.00%) | 24 (85.71%) | 4 (14.29%) |

Source : <2005 Annual of Industrial Accident Statistics>, Ministry of Labor

58) “‘Death by work overload amidst hot weather’, recognized as occupational accident, YTN 2007. 9. 3.;’Standard to recognize death by work overload’tortures the survivors,

“Death by overwork” is commonly referred as death caused by brain and/or cardio-vascular disease due to the accumulation of stress or work overload. However, the terminology of “sudden death” is recognized by the time to death and it does not necessarily require specific disease.⁵⁹⁾

New kinds of occupational disease are not limited to specific occupations like conventional occupational diseases. The judgment as to the dangerousness or hazardousness is not restricted to specific labor condition such as work place environment but also cannot be confined to old age and/or female workers. The European countries rarely use the term of the death by overwork. Instead they treat it as an acute cardiac arrest.

The cardio-vascular disease due to overwork is also related to life style. The judgment about the causality is difficult. The overwork is due to rapid changes in the quality and quantity of the work according to the changes in the external business environment. The legal judgment about the cause of cardio-vascular disease is a major issue in many countries.

(2) Increase in brain, cardio-vascular disease

“Death by overwork” caused by disease due to the accumulation of stress or work overload is neither medical nor legal concept. Many diseases due to brain-vascular disease and/or cardiac disease are recognized

KBS 2007. 4. 28.; “Financial Supervisory Service suffers one death by overwork a year”, e-daily, 2007. 7. 3.; Increase in death by work overload among young generation of Japan, NHK 2007. 5.

59) Kwonwook Nam, ‘Standard of recognition of work overload’(Supreme Court 2002. 2. 5, 2001 Du 7725 Decision), □□Yeungnam Law Review□□ Vol.12No.1, 2006. 6, pp.116-117.

as occupational disease due to work overload.⁶⁰⁾

The changes in work environment including job instability and increased workload have altered the type of occupational accidents in particular occupational diseases. That is, workers are exposed to extended labor in the workplace, nighttime or irregular workload, which increased job related stresses, lack of sleep, sleep disorder, continued mental agitation, etc.⁶¹⁾

This, in turn, has increased the occurrence of diseases such as high blood pressure, cardiac disease, and brain vascular diseases, etc, which have known for as highly associated with the life style. This makes the judgment of the cause of the disease difficult.

Occupational disease patients are those who are eligible to the benefit payment of Industrial Accident Insurance from the Korea Workers' Compensation & Welfare Service. As the coverage of the industrial accident insurance has expanded, the occupational disease is classified as <vocational disease> and <job related disease>. It can be said that so-called overwork disease belongs to <job related disease>.⁶²⁾

60) The etymology of 'death by work overload' is not studied here. We limit our focus on the commonly accepted meaning of it. Youseok Jung, 'Death by work overload and industrial accident compensation', □□Labor Laws□□ Vol. 13. No 157, 2004. 6,p.88.

61) For instance, clinical symptom of myocardial infarction is nil during the rest. When the heart requires more work (exercise, mental agitation, overeat, smoking), the symptom manifests itself, i.e., it is caused by lack of blood stream in the heart muscle. Nitroglycerin and rest mitigate the symptom.

62) ○ Vocational disease : disease with direct relationship with hazard factors of work environment(pneumoconiosis, bradyacusia, intoxication by metal/heavy metal/ organic solution, chemicals)

○ Other vocational disease : physical factor, extraordinary air pressure, germ, virus, etc

○ Occupation related disease : Disease due to occupational/non-occupational factors such as existing symptom (brain-cardio-vascular disease, work requiring excess physical burden, back pain etc).

Particularly among these, so-called overwork disease includes brain vascular disease, cardiac disease, brain internal hemorrhage, subarachnoid hemorrhage, cerebral infarct, myocardial infarction, and Aortic Dissection, etc. (Industrial Accident Insurance enforcement decree Article 34.3. attachment 3)

Brain vascular disease is divided into is chemic disease and hemorrhage. Cerebral infarct is classified as an is chemic disease while brain hemorrhage, subarachnoid hemorrhage and high blood brain hemorrhage are all hemorrhage.⁶³⁾

Occupational heart disease is limited to the is chemic diseases (note 10). Myocardial infarction is caused by lack of blood stream in the heart muscle, 95% of which is due to coronary artery calcification. Angina pectoris is partial blockage of coronary artery, which is usually without its symptoms. It also is a major cause of coronary artery calcification.⁶⁴⁾

-
- Other occupation related disease: Work overload, stress, disease due to liver disease, etc.

Source : Korea Workers' Compensation & Welfare Service and Ministry of Labor

63) Brain-vascular disease (disorder) :

- ① Is chemic disease : Brain vessel infarct → cerebral infarct (low brain metabolism cause brain disorder) → brain softening
- ② Hemorrhage usually occurs in the cerebral space. Brain hemorrhage, subarachnoid hemorrhage and high blood brain hemorrhage are most common. Stroke is the final destination.

64) It mainly caused due to coronary artery calcification. Coronary artery consists of 3 layers. Coronary artery calcification is due to atheroma build-up in the inner layer. Atheroma build-up reduces the diameter of the blood vessel, lowering bloodstream. Continued development of the symptom will cause myocardial infarction. Fat concentration in the blood and diet are highly associated, □□イラストでみる介護福祉用語事典(第3版)□□, 用語事典編集委員会(編), 福祉教育カレッジ 医学評論社, 2006. 2. 16, p80.

The recognition of the death by overwork that happened outside the work place is increasing. For instance, the death in the public bathhouse is recognized as occupational accident when it is caused by cerebral hemorrhage due to the high blood pressure worsened by overwork (Industrial Accident Judgment Committee 1994. 1.24 deliberation).⁶⁵⁾

2. Standard of recognition of work overload

(1) Definition of ‘overload’

The discussion about the work overload is concentrated on the causality between the overwork and the accident and the degree of the proof. However, the standard, the coverage and the legal relations under Industrial Accident Insurance Act about the overload itself are relatively less discussed because the existence of overwork has been simply determined by working hours. That is to say, ‘overwork’ is nothing but one of the factors in causation between the work and accident.⁶⁶⁾ The diversity in industrial accidents complicates the legal relations and liability problem. Concerning the work overload, various and flexible interpretation and legal judgment beyond the work condition are required in this respect.

For instance, a legal standard as to ‘overload’ itself is required in judgment/ruling of the liability in the civil law on top of the distribution

65) Jungil Park, “Case law of occupational accidents ‘brain vascular disease, heart disease and occupational cancer’”, *Industrial Health*, pp.14-16

66) Jin Kim, “Subjective criterion of work overload”, *Criticism of labor case law. Analysis of labor cases by Supreme Court*, Lawyers Association for Democratic Society Vol.2001,2002. 9, pp. 270-289.

of the burden of proof in accordance with the Industrial Accident Insurance Act.

(2) Diseases related to 'work overload' and manifestation of symptoms

Active legal discussions about the work overload and the related death are required in Korea and Japan more than European countries given the labor conditions and its culture.

The enforcement decree (attached Table 3.1) of the Article 34 (3) of Korea's Industrial Accident Insurance Act sets the criterion about occupational disease. The criterion of 'brain vascular disease or cardiac disease' includes work overload, which embraces mental and physical overload as well as acute and chronic one.⁶⁷⁾

The recognition of these diseases requires confirming the name of disease through a medical opinion such as doctor's letter or autopsy report. However, circumstances before the manifestation of the symptom are also important to do so. The association between overload and the symptom can usually manifest itself with 24 hours. But it may take several days.

(3) The meaning of regular work and workers at the similar jobs as a judgment criterion

According to the standard of recognizing occupational diseases set by the enforcement decree of Korea's Industrial Accident Insurance Act,

67) For example, "unexpected and sudden tension, agitation, terror, surprise", "rapid changes in work environment" "changes in work quantity, hours, workload, responsibility, environment", "increase in occupational burden before short and/or long-term occupational burden" are standards. Industrial Accident Insurance enforcement decree attachment table 3.1

‘brain vascular or cardiac disease (brain-cardiac disease hereafter)’ does require a detailed and objective criterion. For instance, the standard of recognizing brain-cardiac disease include ‘...within 24hours of the manifestation of disease... within 1 week of the manifestation of disease... A 30% increase in workload relative to the regular work or... within 3months of the manifestation of disease, a continued...’.⁶⁸⁾ As it is an internal guidance of the Ministry of Labor, one should not expect the court to be bound by this criterion. Also, the enforcement decree of Korea’s Industrial Accident Insurance Act requires the judgment of occupational disease to base the condition of the specific worker.⁶⁹⁾ The criterion of recognition for each specific worker has room for interpretation.

The Korean case law’s basis of recognizing the work overload has shifted from regular work⁷⁰⁾ to ‘the regular work and regular work hours of the workers at similar jobs’.⁷¹⁾ Under some circumstances, courts also used ‘the worker’s health and physical condition’⁷²⁾ as a standard.⁷³⁾ If an existing disease, which allows the worker to engage in regular work, is exacerbated beyond the normal pace due to the work overload, it can be used with a medical opinion as a standard of recognition. The judgment as to the causation between the occupation and the disease should base on the condition of a specific individual worker, not the average worker.⁷⁴⁾

68) Announcement by the Ministry of Labor, No. 2008-43.

69) Article 34 (4) of the Enforcement Decree for the Act

70) The Supreme Court (1985. 8.13),85 Nu 178 Decision.

71) The Supreme Court (2001. 4.13), 2000 Du 9922Decision.

72) 『Special Theory of Labor and the Lawsuits related to Occupational Accidents,』
Judicial Research and Training Institute, 2007.

73) The Supreme Court (1991. 9.10), 91 Nu 5433 Decision.

74) The Supreme Court (2007. 4.12), 2006 Du 4912Decision; Similar cases: The Supreme Court (2001.7.27), 2000 Du 4538Decision; The Supreme Court (2003. 11.14),

In sum, the judgment of occupational disease needs a reconciliation of the personal health condition of each worker and the objective cause of the disease. In order to determine this, whether the cause of overwork lies in the work place or private life space⁷⁵⁾ and how to determine the meaning of “ace or” as a criterion of judgment should be resolved beforehand.

(4) Recognition of causation in aggravation of pre-existing disease

One of the toughest problems in the recognition of occupational accident is a proof of causation, especially when the worker had the symptom of pre-existing disease in the same organ before the case. In particular, the brain-cardiac disease, high blood pressure, cardio-vascular disease, or musculoskeletal disease can be caused by factors in both overwork and lifestyle as well as by hereditary diseases. Thus, the need to determine causation of these diseases seems to be expected to increase. In these cases, legal judgment based solely on the medical opinion is going to be more difficult as complicated cases are on the increase in number (e.g. worker with existing mental disorder develop the condition due to the overload, which forces the worker hurt/kill him/herself spasmodically).

The standard of recognizing occupational disease in the case of pre-existing symptom requires the judgment as to the worker's health condition and the contribution of work in development of the condition. In other words, whose health condition should be used to assess the

2000 Du 5501 Decision.

75) Heungjae Lee, “Trends in case law about the standard to recognize the death by overwork”, Seoul National Univ. Legal Research Institute, □□Law□□ Vol.41, No.4, Seoul National Univ. Press (2001).

causality, (i.e., average worker vs. average worker of the same line of labor vs. workers with the existing symptom)? Also the distinction between natural development of the disease and the aggravation by the overwork has to be sorted out.

Japanese Minister of Health Labor and Welfare has ruled that the progress of the symptom by the regular workload is considered to be within a natural development and when the progress of disease is beyond this natural pace, it is considered occupational disease.⁷⁶⁾ It shows significant progress in that this ruling finally recognizes the accumulation of fatigue as the causality of the occupational disease without requiring specific accidents after their denial to recognize brain-cardio disease without accident as an occupational disease lasts for 26 years.⁷⁷⁾

The judgment as to the causality on the existing disease is on-going in the United States where the discussion focuses on acute cardiac arrest by overwork or stress. For the judgment as to the causality, the criterion of the 'remarkable contribution' can be utilized. The 'contribution' means the judgment as to whether the disease in question is sufficient to stimulate the worker's pre-existing symptom or not and it satisfies the requirement of contribution if the accident could be avoided but for the work.⁷⁸⁾

Some argue that the pre-existing disease is not considered as the eligible disease under the conventional regular risk standard. This

76) 過重負荷主義認定基準(95年2月1日付基発 38号 & 96年1月22日付基発 30号)

77) 岡村親宜, □□過労死・過労自殺救済の理論と実務: 労災補償と民事責任□□, 旬報社, 2002.12, p 133.

78) Susan B.Fellman, *Workers' Compensation : Causation for Mental and Cardiovascular Disability under the 1980 Amendment to Section 301*, 1983 DET. COLL. LE REV.143, 160.

opinion is subject to criticisms that the measurement of the regular workload/risk is difficult and that it shifts the burden of judgment to the court. The burden of medical proof from the pre-existing disease to the manifested symptom is deemed too high in recognizing occupational accident practice.⁷⁹⁾

79) Similar to this, 品田充儀, “アメリカにおける急性心臓死と労災補償”、□□季刊労働法□□, 153号, 1989, pp 52-54.

Chapter 6. Conclusion

A rapid change in the business environment by the industrial development is a universal phenomenon in the modern world economy rather than a locality. The advancement in the means of production and the improvement in the labor conditions have not reduced in the number of industrial accidents. Instead, they have introduced new types of industrial accidents and the related legal issues.

Hence, the judgment as to whether the case is an industrial accident or not in accordance with the Labor Standards Act or its equivalents has been an increasing burden to the authorities. In particular, many Asian countries have experienced regime changes and rapid industrialization, which expose them to various political/legislative burdens such as ex post damage compensation and ex ante prevention. Therefore, they have huge interest in learning industrial accident compensation insurance system.

Korea's astonishing speed of industrialization has guaranteed itself an increase in the law suits regarding industrial accidents and the overload of demand on administrative and/or judicial judgment, which have turned into a big social problem. As such Korean society has gone through a series of legislation and amendment regarding the compensation for the industrial accidents. Korean government is considering organizing an institution which manages and/or operates the insurance plan which serves the purpose of protecting the laborers and their families from such accidents and even offering some preventive measures as well as the modus operandi of the institution. A fast economic development, the increased industrial accidents and the social need for the system to cope

with this problem are not just an issue limited to Korea but of many other developing countries, dozens of which are in Asia. Thus, this study which presents the Korean system regarding remedies against the industrial accidents and the development of related legislation can be a valuable guidance to other countries which experience similar problems currently. Also, this research is expected to be a valuable reference to help understand Korean legislation. Further, our research is a part of a bigger picture which aims to promote the efficient international exchange of the legislative information.

The interest is diverse depending on the development of the industrial accident compensation system. For instance, a country in its infant stage of the accident compensation system would focus on the trend of accident compensation in the advanced countries and the related function of industrial accident insurance systems. Those who already have the legal basis and system of industrial accident insurance are interested in the modus operandi and know-how of the operating body of the program.

In this research we concentrate on the requested issues of Korean industrial accident compensation system in an attempt to help understand Korea's system. This study offers the recent statistics and trend of industrial accidents in Korea. The function and social meaning of the industrial accident insurance program is covered. To serve as a reference for a country which wants to introduce the industrial accident insurance, the Korea's legislative history is explained. Major concepts such as subscription, application, benefit, claim, etc are explained, which can be a good reference for the starters. Further, practical problems in management/operation of the industrial accident insurance program are

discussed, which can be a reference to countries with their own industrial accident insurance program.

Industrial accident insurance act is restricted to the sovereign territory. Each country has different legal system and underlying codes depending on the situation and history. We confirm the locality of the social law here. One country's legal system cannot be directly applied to other countries. In light of this characteristic, the author covers the unique characteristics of Korea's Industrial Accident Insurance system. Other countries which seek to build their own industrial accident insurance system should be keenly aware of the locality of the system.

This research cannot be used as a universal prescription of industrial accident insurance reference to all countries. However, the existence of industrial accidents and the necessity of the related compensation system are universal. In this regard, this reference is expected to offer useful legislative information and practical guidance as to the industrial accident insurance.

Bibliography

- Kim, Soo-Bok, □□Industrial Accident Compensation Insurance Law□□, ChungAng Economics, 2008
- Kim, Yu-Sung, □□Labor Law (I)□□, Bubmoonsa, 2006
- _____, □□Korea Social Security Laws□□, Bubmoonsa, 2002
- _____, □□Social Security Law□□, Dongsungsa, 1985
- Kim, Chi-Seon, □□Labor Law Lecture□□, Parkyoungsa, 1999
- Kim, Hyung-Bae, □□Labor Law□□, the 4th edition, Parkyoungsa, 2007
- _____, □□Labor Law Lecture□□, Shinjosa, 2007
- _____, □□Labor Standard Act□□, Parkyoungsa, 2002
- Ministry of Labor, □□History of Industrial Accident Insurance for past 50 years□□, Moonwonsa, 1981
- Shin, Soo-Sik, □□Social Security Theory□□, Parkyoungsa, 2000
- Yang, Seung-Kyu, □□Insurance Law□□, Samjiwon, 1992
- Lee, Byoung-Tae, □□Labor Law□□, the 9th edition, Chung-Ang Economics, 2008
- Lee, Sang-Kwang, □□Social Laws□□, Parkyoungsa, 2002
- Lee, Sang-Kook, □□Industrial Accident Compensation Insurance Case Laws□□, Daemyung Pub., 2006
- _____, □□Labor Standard Act□□, Shinronsa, 2003
- _____, □□Industrial Accident Compensation Insurance Act□□, Chungam Media, 2001

Bibliography

- Lee, Sang-Yun, □□Labor Law□□, the 4th edition, Bubmoonsa, 2008
- Lee, Jung, □□Labor Law Lecture□□, HUFS Press, 2004
- Jeon, Kwang-Seok, □□Social Security Law and Social Policy in Germany□□,
Parkyoungsa, 2008
- _____, □□Korea Social Security Law Theory□□, Bubmoonsa, 2007
- _____, □□Social Security Law Theory□□, the 6th edition, Bubmoonsa,
2005
- _____, □□German Social Security Law Theory□□, Bubmoonsa, 1994
- Han, Kyung-Sik, □□Theory of Compensation for Industrial Accident□□,
Korean Academic Information Service, 2007

< Statistics >

- 『2007 Annual of Industrial Accident Insurance』, Ministry of Labor (2008)
- 『2007 Annual of Industrial Accident Insurance Business』, Ministry of
Labor (2008)
- 『2007Annual of Industrial Accidents』, Department of Policy for Safety
and Health, Office of Industrial Safety and Health (2008)
- 『2003 Annual of Industrial Accident Insurance』, Ministry of Labor (2004)
- 『2005 Annual of Industrial Accidents』, Ministry of Labor (2006)
- 『Economically Active Population』 Additional Survey, The National
Statistical Office of Korea, 2003
- 『Economically Active Population』 Additional Survey, The National Statistical
Office of Korea, 2004

Summery Report

I . Introduction

- Changes in modern industrial society
 - Development in means of production
 - Rapid changes in external/internal business environment
 - Changes in labor conditions
- Issues regarding industrial accidents
 - Emergence of new kinds of industrial accidents due to introduction of new industrial technology
 - Problem of recognition of occupational accident in accordance with Industrial Accident Insurance Act
 - Increase in related law suits
 - Issues in organizing and operating insurance program
- Industrial development and necessity of damage compensation are common issues.

II . Trend of Korea's industrial accidents and Industrial Accident Insurance system

1. Trend of Korea's industrial accidents

- The number of cases and victims of industrial accidents is on a steady decline since mid-1980s
- Since the financial crisis of 1999 in Korea, it has rebounded.
 - Prevention expenditure has fallen.

- Business with one or more employees is required to subscribe Industrial Accident Insurance from July 2007.
- Increase in industrial accident ratio statistics
- More diseases are recognized as occupational diseases.
- Increase in economic loss due to industrial accidents
 - Economic loss as of 2006 amounts to KRW 15.8 trillion or 2% of GDP.

2. Recent statistics and trend of industrial accidents

- Industrial accident as of 2008
 - Total number of victim: 95,806, up 5,659 or 6.3% from the previous year
 - The accident ratio: 0.71%, down 0.01% from the previous year
 - Accidental death toll: up 4.7% from the previous year
 - Fatality per 10,000 workers: down 0.03P from the previous year
 - ∴ The number of accidents and diseases has increased but the occurrence ratio has declined.
- Statistics by industry
 - Construction accounts for the largest fraction (40.9% of total)
 - Occupational injuries are concentrated in construction and manufacturing
 - 37.5% of total occupational accidents are from small businesses with 5-49 employees.
- Type of occupational injuries
 - Falling has largest death toll (32% of total)
 - Death by falling is largest in construction (327 cases)

- The occurrence of vehicle rollover and jammed in machine is largest in manufacturing (35 and 71 cases respectively)
- Type of occupational disease
 - Manufacturing is the biggest source of occupational disease (41.8% of total)
 - Mining accounts for the largest fraction of fatalities (41.7% of total), 43.7% of which is due to pneumoconiosis(426 deaths)
 - Most of industries enjoy lower fatality ratio except for mining and transport/warehouse/telecom sectors.
- Characteristics of Korea's industrial accident
 - Decrease in accident ratio vs. increase in total cases and death tolls
 - Emergence of new kinds of risks
 - Emergence of new types of occupational diseases and increase in the number of cases
 - Skyrocketing occupational diseases

III. Summary of Korean Industrial Accident Insurance Act

1. Legislative history of Korean Industrial Accident Insurance Act

- In 1964, Korean Industrial Accident Insurance started, covering businesses in mining and manufacturing sectors with 500 or more regular employees.
- Damage compensation in accordance with <Labor Standard Acts>

- Expansion in the coverage of Industrial Accident Insurance
- From July 1st2000, businesses with one or more employees are covered.

2. Coverage of the insurance

- Mandatory subscription
 - Regardless of the will of the management, the insurance relations start (from business start date or deemed subscription period)
 - All business owner/management of the businesses with one or more employees.
- At-will subscription
 - No-incorporated business in agriculture/forestry/fishing/hunting with less than 5 regular employees
- Exception
 - People those who supply labor services similar to workers and need protection from occupational accidents. <Labor Standard Act> is not applicable to them.
 - Insurance planner, Driver of concrete mixer truck, teachers of the study aid, golf caddy
 - Business owner of mid-size firm (less than50 employees)

3. Standard of recognition of occupational accidents

- Occupational accident
 - No definition of ‘occupation/task’ in Korean Industrial Accident Insurance Act

- Korean Industrial Accident Insurance Act offers the following as the standard of recognition of occupational accidents: task in accordance with labor contract, act under the control of management, job related activity etc.
 - No definition of labor contract in Industrial Accident Insurance Act
 - It requires labor contracts to define wage rate, labor hours and other labor conditions.
 - ‘Other conditions’ include the place of work and type of work.
 - Korean Industrial Accident Insurance Act does not offer clear definition of ‘occupational accidents’. The range and extent of “occupation” can be inferred only from other general provisions.
 - Judgment as to the occupational relatedness requires reasonable causation.
- Accident “in the course of duty” and “arising out of employment”
- Two major requirements for recognition of occupational accident
 - Accident in the course of duty: the accident occurred during the act to be considered part of the task/occupation
 - Accident arising out of employment: the principle of causation which requires a reasonable causality between occupation and accidents.
 - The court follows the majority theory in a sense that it utilizes the requirements both accident “in the course of duty” and “arising out of employment” as the standard of judgment of occupational accidents.
- Principle of causation
- Established association between occupation and accident, i.e. causality.

- Korea adopts 'the principle of causation', which requires a reasonable causality between occupation and accidents.
- 'Reasonable' implies that the predictability, i.e. a similar factor is expected to cause a similar result.
- While the court follows the principle of causation it lowers the burden of proof, admitting flexible standards.

IV. Practical guidance of management and operation of Korea's Industrial Accident Insurance

1. Relations in Industrial Accident Insurance

- Structure of Industrial Accident Insurance
 - Industrial Accident Insurance Act relations= Legal relations which generate rights and obligation in accordance with Industrial Accident Insurance Act
 - Legal relations among 'operating body, subscriber and claimant' to collect the insurance premium and pay the insurance benefit.
 - Minster of Labor: Operating body of unemployment and industrial accident insurance
 - Korea Workers' Compensation & Welfare Service: institute that implements the insurance business
 - Subscriber : pays the premium - business owner
 - Claimant : Worker or the survivors eligible to receive insurance benefit

2. Computation and collection of the premium

- Collection
 - Entire premium is paid by the business owner

- For special type workers, business owner pays 1/2 of premium.

- Industrial accident insurance premium rate

- Premium rate by occupation is computed based on the gross benefit payment/ total wage over the past 3 years and riskiness of the occupation.

3. Payment of insurance benefit

- Accident rate

- In 2003, 0.9% (94,924 cases) → in 2008, 0.71% (95,806 cases)
- The accident rate has slightly decreased year over year

- Trend in gross premium

- In 2003, KRW 2.53 trillion → in 2008, KRW 4.78 trillion
- Up 88.7%

- Trend in insurance benefit

- In 2003, KRW 2.48 trillion → in 2008, KRW 3.42 trillion
- Up 37.8%
- Relative to the trend of the accident rate and the number of cases, the premium collection and benefit payment have skyrocketed.

- Benefit payment by type

- In 2008, a total of KRW 3.42 trillion is paid as insurance benefit.
- Disability benefit accounts for KRW 1.26trillion or 37.0% followed by treatment benefit (KRW 0.81 trillion, 23.7%) and lost-day compensation (KRW 0.79 trillion, 23.2%)

- Lost-day compensation is on a gradual decline. In 2004, it represented 33.4% of total benefit. In 2008, its portion is about 23.2%.

V. Characteristics of Korea' Industrial Accident Insurance system

1. Trend in Korea' Industrial Accident Insurance Act amendment

- Expansion in coverage
 - In 1964, Korean Industrial Accident Insurance started, covering businesses in mining and manufacturing sectors with 500 or more regular employees.
 - In 1992, business with 5 or more employees
 - From July 1st 2000, businesses with one or more employees are covered.
- Increase in payout ratio
 - Increase in payout ratio
 - Mandatory payment of disability/survivors'pension
 - Introduction of nursing benefit
- Qualitative improvement in benefit
 - Justness in the standard of recognition of occupational disease
 - Problems in rehab treatment system
- Improvement in management/operation
 - Justness of operation of deliberation, re-deliberation system
 - Issues regarding increased participation of management and labor.

2. Dual legal system of Korea's industrial accident compensation

- A unique dual system: <Labor Standard Act> stipulates direct compensation by the management. <Industrial Accident Insurance Act> defines the compensation via Industrial Accident Insurance.
- Relationship between damage compensation by <Labor Standard Act> and <Industrial Accident Insurance Act>

3. Adjustment between damage compensation and benefits of Industrial Accident Insurance

- Double compensation for the same case both by offender and social insurance is unjust.
- Offender should not be immune from his/her liability of damage compensation
- Insurance operator should not be liable for the damage compensation of offenders.

*** Useful Websites**

- Ministry of Labor <http://www.molab.go.kr/english>
- Korea Worker's Compensation & Welfare Service
<http://www.kcomwel.or.kr/english>
- The Korea Occupational Safety and Health Agency
<http://english.kosha.or.kr>
- Korea Legislation Research Institute <http://www.klri.re.kr/>
- Statutes of the Republic Korea <http://elaw.klri.re.kr>

관련 홈페이지 아래에

E-mail : khlee@klri.re.kr / judith-lee@hanmail.net

추가 요청 !!!