

**Revised Occupational Safety and Health Act introducing criminal punishment
for concealing industrial accidents due to take effect on Oct. 19**

Oct. 17, 2017

The revised Occupational Safety and Health Act which criminally punishes those who cover up industrial accidents and requires principal contractors to integrate industrial accidents involving workers of their subcontractors into their industrial accident data to be published is due to take effect on October 19th.

Its main features are as follows.

1. Introducing criminal punishment for covering up industrial accidents

So far only fines have been imposed in cases where a person covered up an industrial accident as the related law has made no distinction between covering up an industrial accident and failing to report an industrial accident, treating both as acts of violating the reporting obligation.

From now on, however, an act of covering up an industrial accident or a principal contractor's act of instigating or colluding in the cover-up of an industrial accident will be punished by imprisonment for not more than one year or a criminal fine of not more than 10 million won in addition to the imposition of a fine for failure to report.

Moreover, the amount of fine imposed for failing to report an industrial accident to the Minister of Employment and Labor was raised from the current 10 million won to 15 million won, and in the case of serious accidents, the amount was raised to 30 million won.

* (Current law) 3 million won for first failure to report/6 million won for second failure to report/10 million won for third failure to report and 10 million won for false reporting
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(Amended law) general industrial accidents: 7 million won for first failure to report/10 million won for second failure to report/15 million won for third failure to report and 15 million won for false reporting

serious industrial accidents: 30 million won for failure to report regardless of whether it is a first, second or third offense

Meanwhile, besides criminal punishment for covering up an industrial accident, MOEL is working on measures to eliminate industrial accident cover-ups, such as giving disadvantages to workplaces which conceal industrial accidents and spreading a culture of eliminating industrial accident cover-ups.

2. Publishing the industrial accident data of principal contractors and their subcontractors in an integrated manner

The widespread use of outsourcing has enabled principal contractors to shift responsibility for industrial accidents to their subcontractors. To put this right and thus to ensure that industrial accident indicators accurately reflect principal contractors' responsibility for industrial accidents, the government introduced a system of managing the industrial accident data of principal contractors and their subcontractors in an integrated manner.

The system will be implemented first among workplaces with 1,000 employees or more in the manufacturing, rail transport and urban rail transport industries in 2018 and then extended to workplaces with 500 employees or more in those industries in 2019.

As a result, if a principal contractor's workers and its subcontractor's workers perform work in the same place, the principal contractor should add the subcontractor's number of industrial accidents to its number of industrial accidents and report the combined total number.

Moreover, the Minister of Employment and Labor should publish a list of principal contractors whose combined fatality rate calculated including both their and their subcontractors' industrial accident deaths is higher than their fatality rate*.

* Number of deaths due to industrial accidents per 10,000 workers, excluding deaths caused by occupational diseases

According to the integrated data publication system, each principal contractor (about 350 workplaces) subject to the system will have to submit to the head of the competent local employment and labor office an 'integrated industrial accident status survey table' including its subcontractors' workplace names, number of employees and number of accident victims, no later than April 30th every year.

* Any principal contractor that fails to submit data concerning its subcontractors or submits false data will be fined up to 10 million won.

3. Raising the levels of fines to be imposed

The criteria for imposition of fines under the current Occupational Safety and Health Act impose different amounts of fines according to the number of times a violation has been committed. However, the amount of fine imposed on first-time offenders is considerably low compared with the amount of statutory fine, so its effectiveness as punishment has been much questioned.

* Of a total of 1,723 workplaces fined in the past two years (Dec. 2014~Nov. 2016), just 29 or 1.7% were second-time offenders and 4 or 0.2% were third-time offenders.

From now on, if a workplace in which a serious industrial accident occurred is found to have committed a violation during investigation intended to find accident causes or related inspection, the amount of fine imposed on third-time offenders will be imposed for the violation right away instead of imposing incremental fines according to the frequency of violation.

The importance of providing information about chemical hazards has been highlighted after the occurrence of the methanol poisoning accident and humidifier disinfectant scandal.

In response, the amounts of fines* imposed for some violations, such as failure to prepare and provide Material Safety Data Sheets (MSDS), were revised upwards, taking account of the purpose of the statutory punishment, to ensure its effectiveness.

* (Current law) 100,000 won for first-time offense/200,000 won for second-time

offense/500,000 won for third-time offense→(amended law) 1 million won for first-time offense/2 million won for second-time offense/5 million won for third-time offense

* Preparing an MSDS costs about 300,000 won per chemical. Compared with this, the fine for violating the requirement to prepare an MSDA amounts to a mere 100,000 won.

4. Obligating construction project owners (client firms) to assign a safety and health coordinator

If the owner of a construction project awards an electrical construction contract, an information and communication construction contract and other construction contracts separately to many different constructors (principal contractors), the multiple constructors have to be engaged in mixed tasks. The safety and health coordinator assignment system was introduced to prevent large-scale industrial accidents that might occur due to such mixed tasks.

Under the system, a project owner who divides a construction project worth 5 billion won or more into several parts and awards related contracts separately to different constructors should assign a safety and health coordinator to the construction site.

And the project owner should designate the project supervisor or the construction supervisor responsible for the primary part of the construction project as a safety and health coordinator or appoint any of the following persons as a safety and health coordinator: a person who has worked as a safety and health manager on a construction site for at least three years; an occupational safety consultant or a professional engineer in the field of construction safety; a person who has at least five years of experience as an engineer in the field of construction safety; and a person who has at least seven years of experience as an industrial engineer in the field of construction safety.

The assigned safety and health coordinator should identify mixed tasks among the multiple constructors and related hazards and coordinate the timing and details of the tasks and safety and health measures among those constructors in order to prevent industrial accidents due to such mixed tasks.

5. Expanding the scope of dangerous places in which principal contractors must take safety and health measures

Places where there is a combustible material and work which carries a risk of fire and might generate sparks is performed were added to the list of places* where work which might cause a fire or an explosion is performed so the principal contractor must take safety and health measures.

* Under the current law, places with a risk of fire or explosion, which are one of the 22 kinds of places where principal contractors must take safety and health measures, only refer to places where work is carried out inside a ship and places where work is carried out in a special chemical facility or a facility or container used to handle or store an inflammable substance.

This addition is intended to close the loophole in the current law under which principal contractors cannot be held accountable for failing to fulfill the obligation to take safety and health measures when welding or cutting work is performed in places where there is a combustible material, as in the case of the fire at Metapolis in Dongtan last February.

In June 2016 the government submitted to the National Assembly an amendment to the Occupational Safety and Health Act which would require principal contractors to take responsibility for preventing industrial accidents in all places where their subcontractors' workers carry out work.

It revised the relevant Enforcement Regulations first to require principal contractors to take responsibility for taking safety and health measures when their subcontractors' workers carry out work in places with a risk of industrial accidents, even before the passage of the amendment.

Meanwhile, the government included the expansion of principal contractors' responsibility as part of the 'measures to prevent serious industrial accidents', which were announced last August, in order to prevent industrial accidents among subcontractors' workers.

It will do its utmost to ensure that the amendment to the Occupational Safety

and Health Act which will impose stronger responsibility on principal contractors is passed at the current regular session of the National Assembly.