



CEO of a Contractor Company Found Guilty in The First Ruling under The Serious Accidents Punishment Act Following a Falling Accident at a Nursing Hospital in Goyang

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1. Sentencing (probation) of a CEO in the First Ruling Under the Serious Accidents Punishment Act

The first court ruling to be rendered under the Serious Accidents Punishment Act (the “SAPA”) found the CEO of a contractor company guilty for violation of SAPA. On April 6, 2023, the Goyang Branch of the Uijeongbu District Court sentenced Company A (contractor) to a fine of KRW 30 million for violating the SAPA by causing a fatal industrial accident and the Occupational Safety and Health Act. The Court further sentenced the CEO of Company A to one year and six months in prison with three years of probation for the same violation.

The Court ruled that Company A failed to measures to properly establish and implement safety and health management system required under SAPA to prevent accidents, and that such failure led to the death of an employee. This ruling was based on the following grounds:

1. The CEO of Company A did not establish business procedures to identify and mitigate hazardous and dangerous conditions specific to the workplace and further failed to establish standards to evaluate whether the director in charge of safety and health properly performed his/her duties. Due to this oversight, the director was unable to adequately identify and address the potential dangers posed by falls during labor-intensive tasks. Consequently, necessary safety measures, such as the provision of safety belts and the installation of attachment facilities, were regrettably overlooked.
2. The CEO did not prepare a safety manual for preventing serious industrial accidents. This resulted in the failure to provide safety belts to employees, despite the requirement to dismantle a safety guardrail during the lifting of heavy materials at the construction site. Moreover, the absence of attachment facilities to connect the safety belts further compounded the risk of a severe industrial accident, particularly incidents involving falls from elevated heights. Yet, the CEO failed to instruct the director of safety and health measures to either suspend the work or

immediately eliminate the risk of falling.

2. Implications of the Sentence

This ruling is the first to be handed down after the SAPA was enforced on January 27, 2022. The ruling received considerable attention as it potentially sets a precedent for defining the elements that will be taken into consideration in determining the severity of punishment for violating the SAPA.

The Court determined that when Company A subcontracted to a third party a business or workplace that it controls, operates, and manages, the CEO of Company A was bound to establish and implement safety and health measures with the objective of preventing any safety or health-related hazards or risks for the employees of the third party (Article 4(9) of the Enforcement Decree of the SAPA). In light of these framework, the Court ruled that the following facts had direct correlation with the occurrence of the accident in the instant case:

1. Failure to establish work procedures to identify and improve hazardous or dangerous conditions specific to the business or workplace (Article 4(3) of the Enforcement Decree of the SAPA).
2. Failure to establish criteria to evaluate whether a person responsible for the safety and health measures properly fulfilled his/her work duty (Article 4(5) of the Enforcement Decree of the SAPA).
3. Failure to establish a safety manual for suspension of work and elimination of risks to prevent any potential occurrence of a serious industrial accident or an imminent hazards within the business or workplace.

The above criteria applied by the court for determining whether a violation of the SAPA has occurred are likely to be similarly applied to other cases that follows the ruling.

Furthermore, in this ruling, the CEO of Company A was sentenced to one year and six months in prison (with three years of probation) for violating the SAPA. Alongside the CEO, the on-site manager C of the contractor and the on-site manager F of the subcontractor were also sentenced to eight months (with two years of probation) for causing negligent occupational manslaughter and violating the Occupational Safety and Health Act. Additionally, Company A was sentenced to a fine of KRW 30 million for violating the SAPA and the Occupational Safety and Health Act, and subcontractor E was ordered to pay a fine of KRW 10 million for violating the Occupational Safety and Health Act.

When assessing the appropriate sentence, the Court took into account several unfavorable factors that weighed against the defendants. Firstly, it considered the defendants' failure to fulfill their work-related obligations, despite the fact that the SAPA was enacted based on a consensus within society that employers and contractors should bear significant responsibility for serious accidents. Secondly, the Court recognized that there was a high likelihood of preventing the accident if the defendants had fulfilled their obligations.

However, the Court also considered certain favorable factors for the defendants that had a bearing on the sentencing decision. Firstly, it came to light during the proceedings that the accident was primarily caused by a common practice among construction workers, including the victim, of arbitrarily removing safety railings. Secondly, a settlement had been reached with the bereaved family. Thirdly, Company A, one of the defendants, presented a specific plan to establish safety and health measures in accordance with the SAPA.

These sentencing factors, both favorable and unfavorable, along with the resulting degree of punishment, are expected to serve as a basis for predicting the outcomes of future cases involving violations of the SAPA.

3. The Parameters of the Act Is Expected to Expand

On a related note, subcontractor E in this particular case, whose contract price for the construction work amounted to approximately KRW 600 million, was not subjected to the provisions of the SAPA. This exemption arose due to the current temporary suspension of SAPA's application to workplaces with fewer than 50 full-time employees (this exemption also extends to construction projects with a price below KRW 5 billion within the construction industry). However, it is important to underscore that from the upcoming year, both "companies with five or more and less than 50 full-time employees" and "construction projects with a construction price below five billion Korean won" will also fall under the purview of the SAPA.

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