

Legal Aspect of Project Hands-in-Action

Hands-in-Action Team

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Introduction

What is Project Hands-in-Action?

Hands-in-Action is a student-led organization partnering with the Seongnam Migrants Center to raise awareness on the mistreatment of migrant industrial workers and the immense injuries they have faced. As students, the best that Hands-in-Action can do is raise awareness. But we want to do more than that. Although not experts in law, the students of Hands-in-Action have taken it upon themselves to research and study laws that are pertinent to migrant industrial workers and how there are too many cases where the law is either 1) being violated or 2) unfair towards the migrant workers.

What is the source of our information?

Hands-in-Action obtains their information on the mistreatment of migrant workers through the very workers that were hurt and injured in the process of working. Through interviews, we obtain unbiased information without any filter to exaggerate problems or silence the truth. Hands-in-Action bases their information solely on these interviews. The project is unable to reveal the identities of migrant workers due to privacy and safety reasons. However,

What problem does Project Hands-in-Action tackle?

The problem lies in the fact that factories and the employers of these workers refuse to provide proper compensation. Workers are forced to tend to their own hospitable bills and injuries without the assistance of their employers. However, both legal and illegal migrants are required by law to be given proper compensation for industrial injuries. Project Hands-in-Action strives to serve justice to those who were not given proper compensation and wish to inform society on how we need to take responsibility.

Key Definitions

Defined by the *Labor Standards Act - Article II*

- 1. The term "worker" means a person, regardless of being engaged in whatever occupation, who offers work to a business or workplace for the purpose of earning wages;***
- 2. The term "employer" means a business owner, or a person responsible for the management of a business or a person who acts on behalf of a business owner with respect to matters relating to workers;***
- 3. The term "work" means both mental work and physical work;***

Under laws pertinent to workers who provide their labor as services, a “worker” is defined by the Labor Standards Act’s 2nd Article. The article defines a worker as “a person, regardless of being engaged in whatever occupation, who offers work to a business or workplace for the purpose of earning wages”. The article further defines what it means to “work”. It broadly defines the term as work that involves “physical” and “mental” efforts on the worker’s part. Many migrant industrial workers that shared their stories through our platform fall under the definition of “worker” and experienced what would definitely be considered “work”.

The term “worker” is not limited, in any way, to illegal or legal migrants who found a workplace in Korea. As long as the person offered “work to a business or workplace for the purpose of earning wages” they are considered “workers” under the law and may benefit and face consequences accordingly.

Article II of the Labor Standards Act is used as a basis for many other acts regarding laborers and industrial accidents, such as the Industrial Accident Compensation Act and the Occupational Safety and Health Act. This is clarified in their respective Articles 5-2 and 2-2.

The definition of an “employer” is also crucial in understanding those responsible for providing necessary compensation for the workers who suffer from major industrial injuries. Most violations of these acts that are mentioned in this paper are committed by the business owners towards the workers.

Defined by the - *Article II*

- 1. The term "industrial accidents" refers to the death, injury, or disease of employees caused by structures, equipment, raw materials, gas, vapor, powder, dust, etc., related to their duties, or by their work or other duties;***

3. The term "business owner" refers to a person who operates a business by employing employees;

6. The term "safety and health checkup" refers to an investigation and evaluation conducted by a person designated by the Minister of Employment and Labor for preventing industrial accidents by discovering latent hazards and establishing countermeasures for their improvement;

The second article of the Occupational Safety and Health Act provides a legal definition of what industrial accidents, business owners, and safety & health checkups are. Through this definition, it is clear how migrant industrial workers should legally be considered victims of industrial accidents. Videos and stories on our website provide detailed explanations on what migrant industrial workers commonly experience when they are severely injured by faulty equipment. Workers that Hands-in-Action were able to interview suffered from vapor, powder, dust, faulty equipment, and severe injury that resulted in permanently severed fingers, amputated limbs, and countless surgeries.

Violation

A. WORKING CONDITIONS

From *Labor Standards Act - Article 50*

1. *Work hours shall not exceed 40 hours a week, excluding hours of recess.*
2. *Work hours shall not exceed eight hours a day, excluding hours of recess.¹*

All of the people that we interviewed exceed this. Some even had 12-hour shifts which exceeds the daily limit.

The fiftieth article of the Labor Standards Act states that the work hours should be limited by 40 hours a week, excluding the break which is equal to 8 hours a day excluding the break. However, the Majority of factories force the workers to work all day but offer only 10 minutes of recess. Since the work hour went over the limit, employers violated this article.

B. GOVERNMENT INSPECTIONS

From *Occupational Safety and Health Act - Article 36*

1. *A business owner who uses harmful or dangerous machinery, apparatus, or equipment determined by Presidential Decree shall undergo an inspection conducted by the Minister of Employment and Labor to verify whether the safety-related performance of harmful or dangerous machinery, etc. conform with inspection standards determined and published by the Minister of Employment and Labor. Where the business owner who uses harmful or dangerous machinery, etc. is not the owner of the relevant machinery, etc., the owner shall undergo the safety inspection on the machinery, etc.²*

The thirty-sixth article of the Occupational Safety and Health Act states that the machines and equipment in the work area should be checked by the Minister of Employment and Labor. However, a large number of machinery wasn't meeting the safety standards. For example, since the machines weren't changed to the new version, they didn't have a sensor that detects human body parts and stops the machine automatically. This means that many workplaces in Korea aren't getting properly checked by the Minister of Employment and Labor.

C. COMPENSATION

¹ http://elaw.klri.re.kr/kor_service/lawViewMultiContent.do?hseq=31900

² https://elaw.klri.re.kr/kor_service/lawView.do?hseq=43289&lang=ENG

From *Labor Standards Act - Article 78 (Compensation for Medical Treatment)*

- 1. An employer shall provide necessary medical treatment at his/her expense or bear corresponding expenses for an employee who suffers from an occupational injury or disease.***

Occupational Injury: The injuries that were caused by faulty equipment. X from the worker's mistakes³

The seventy-eighth article of the Labor Standards Act states that the employers should provide enough medical treatment or bear corresponding expenses for an employee who suffers from injuries that were caused by faulty equipment and from the worker's mistakes. However, the majority of employers aren't paying enough for treatment. They only paid for initial treatment and the employees had to pay for the remaining treatment.

From *Labor Standards Act - Article 80 (Compensation for Disability)*

- 1. When an employee suffers a physical disability remaining after finishing treatment for an occupational injury or disease, the employer shall provide him/her with a compensation for disability calculated by multiplying the average wages by the number of days as provided for in attached***

The eightieth article of Labor Standards Act states that the employer has the burden to provide his or her employee with proper compensation if any visible disabilities are remaining after treatment is made. Not only did some of the workers not get compensation for their disabled states but the factories also told them to work for the hospital fees that the factory paid for their first visit.

From *Industrial Accident Compensation Insurance Act - Article 40 (Medical Care Benefits)*

³http://elaw.klri.re.kr/kor_service/lawViewMultiContent.do?hseq=31900

1. Medical care benefits shall be paid to any employee who suffers from an injury or disease caused by reason of his/her duties.⁴

The fortieth article of Industrial Accident Compensation Insurance Act states that medical care benefits should be paid to any employee who suffers from an injury. However, employees are only paid for the initial surgeries. After that, they have to pay with their own money since most employers are not responsive or taking responsibility.

D. BUSINESS OWNER

From Occupational Safety and Health Act - Article 5 (Duties of business Owners)

(1) A business owner shall maintain and promote safety and health of employee and follow the State's preventive policies against industrial accidents, by complying with the following matters:

- 1. Complying with standards to prevent industrial accidents prescribed by this Act and any order issued pursuant to this Act;***
- 2. Creating comfortable working environment and improving working conditions so as to diminish physical fatigue, mental stress, etc. of employees;***
- 3. Providing employees with the information on safety and health in the place of business concerned.⁵***

The fifth article of the Occupational Safety and Health Act states that a business owner should be responsible for maintaining a safe and comfortable working environment and providing employees with information on safety and health. However, the majority of working environments in Korea are found not to be reaching the safety standard. For example, machines are outdated and the workers have to stand up for the whole working period. Also, the employees aren't getting enough information on safety and health. As they entered the working area, the company was concentrating only on making products.

From Occupational Safety and Health Act - Article 23 (Safety Measures)

⁴[https://www.moel.go.kr/english/download_eng.jsp?type=&file=\(49\)_INDUSTRIAL_ACCIDENT_COMPENSATION_INSURANCE_ACT_2015\(13323\)v1.pdf](https://www.moel.go.kr/english/download_eng.jsp?type=&file=(49)_INDUSTRIAL_ACCIDENT_COMPENSATION_INSURANCE_ACT_2015(13323)v1.pdf)

⁵ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=43289&lang=ENG

(1) A business owner shall take measures necessary to prevent the following hazards in operating their business;

- 1. Hazards caused by machines, apparatuses, or other equipment;***
- 2. Hazards caused by explosives, combustible, or inflammable substances;***
- 3. Hazards caused by electricity, heat, or other energy;⁶***

The twenty-third article of the Occupational Safety and Health Act states that a business owner should check the working area in order to prevent employees from hazards caused by equipment, inflammable substances, and energy. However, employees aren't receiving enough safety equipment such as gloves, and machines are not getting checked or updated frequently by a business owner. Therefore, the incidents when employees get injured by the equipment are continuously happening.

⁶ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=43289&lang=ENG

Flaws in the System

There are laws put into effect in order to prevent harm towards industrial workers and assure proper compensation. However, some flaws can be pointed out.

A. Government Responsibility

From the *Occupational Safety and Health Act - Article 4-1*

(1) In order to accomplish the purpose under Article 1, the Government shall conscientiously fulfill the following responsibilities:

- 1. Establishing, executing, coordinating, and controlling occupational health and safety policies;***
- 2. Supporting and guiding on accident prevention in places of business;***
- 3. Evaluating and improving the safety of harmful or dangerous machinery, apparatus, equipment, protective devices, protective clothing, etc.;***
- 4. Preparing criteria for safety and health measures and guiding on and supervising harmful or dangerous machinery, apparatus, equipment, materials, etc.;⁷***

The *Occupational Safety and Health Act* states that the Government “shall conscientiously fulfill” certain “responsibilities”. According to Article 4-1-3, the Government holds the responsibility to evaluate and improve the safety of workers. More specifically, improve the “safety of harmful or dangerous machinery, apparatus, equipment, protective devices, protective clothing, etc”. Hands-in-Action calls into question if the government truly fulfills this role when victims of industrial accidents are still frequent among many of those who provide their labor. Additionally, the government fails to provide proper compensation for many migrant industrial workers who are injured as a result of the dangerous work.

B. Losing Eligibility

In addition, the law is placed in a way that is highly disadvantageous for migrant workers.

From the *Industrial Accident Compensation Insurance Act - Article 64*

- 7. When a person entitled to a survivors' compensation annuity who is not a Korean national leaves Korea to live in a foreign country.⁸***

⁷ https://elaw.klri.re.kr/kor_service/lawView.do?hseq=43289&lang=ENG

⁸ [https://www.moel.go.kr/english/download_eng.jsp?type=&file=\(49\)_INDUSTRIAL_ACCIDENT_COMPENSATION_INSURANCE_ACT_2015\(13323\)v1.pdf](https://www.moel.go.kr/english/download_eng.jsp?type=&file=(49)_INDUSTRIAL_ACCIDENT_COMPENSATION_INSURANCE_ACT_2015(13323)v1.pdf)

In summary, migrant industrial workers that fall under the definition of a “worker” are not eligible to receive their compensation if they leave the country. However, this article, combined with other articles from this act, subjects migrant workers to a painstaking process to receive the compensation they deserve.

From the *Industrial Accident Compensation Insurance Act* - Article 70- 3

(3) A disability compensation annuity, survivors' compensation annuity, pneumoconiosis compensation annuity or pneumoconiosis survivors' annuity, shall annually be paid in twelve equal installments, each of which shall be paid on the 25th of every month; but if the payment date falls on a Saturday or holiday, it shall be paid on the preceding day.⁹

The *Industrial Accident Compensation Insurance Act*'s Article 70-3 states that employers of the victims of industrial accidents may pay the compensation in twelve equal installments annually. Although this may seem like a fair proposal, this is often abused to kill time. Migrant workers who are rendered unable to work anymore – due to their hand or other bodily injuries – must wait long periods of time without being able to make a living. Their physical trauma and low Korean-speaking abilities makes it almost impossible for migrants to find another source of income but they are forced to wait in Korea in order to receive the compensation they deserve.

⁹[https://www.moel.go.kr/english/download_eng.jsp?type=&file=\(49\)_INDUSTRIAL_ACCIDENT_COMPENSATION_INSURANCE_ACT_2015\(13323\)v1.pdf](https://www.moel.go.kr/english/download_eng.jsp?type=&file=(49)_INDUSTRIAL_ACCIDENT_COMPENSATION_INSURANCE_ACT_2015(13323)v1.pdf)