



**“Controversy Surrounding Risk Outsourcing in the U.S.
Principal Contractor with Power Should Take Responsibility”**

**Safety Designer under Obama Administration
David Michaels Former Assistant Secretary of OSHA**

“The United States also deals with controversies surrounding the risk outsourcing. That’s why officials of occupational safety first ask whether there is a temporary worker when visiting the industrial sites.”

David Michaels (photo), 63 year-old professor in the Department of Environmental and Occupational Health (EOH) the George Washington University, who led the Occupational Safety and Health Administration (OSHA) for 7 years under the Obama administration in the U.S., met with the Daily Labor News in the afternoon of March 12, 2019 at the conference room of the Economic, Social and Labor Council located in Jongno-gu, Seoul and discussed the story about Day Davis, ‘the American version of Yong-gyun Kim.’

Yong-gyun Kim in Korea, Day Davis in America

Day Davis is a 21 year-old African American man. He took an occupational training in the field of medical technology but failed to get a job. Eventually, he went to work at a factory through a temporary staffing service on August 16, 2012. The factory belongs to a company called *Bacardi*, a manufacturer of rum drinks. He was supposed to work on a job pouring the liquor into empty bottles. On his first day at work, he took a selfie of himself wearing orange working clothes standing in front of the mirror in the bathroom. And he conveyed his excitement to his fiancé and promised to call her during the break. But that promise never came to reality.

A factory manager told Davis who just came to work to clean up shards of glass under the conveyor belt. It wasn’t easy to remove the pieces because of sticky rum. It was at the conveyor belt that the manager pointed out, the safety signage



was placed, stating “Do not stay under the machine while in operation”; however, Davis, a temporary worker, could not dare to refuse to do what he was told to do by the manager. And shortly after, Davis was crushed to death by the conveyor belt.

Professor Michaels played a 3-minute-long video clip of footage from the surveillance TV containing the entire process from the moment Davis took his first step in the factory until the moment he was killed. It was simply horrifying. It was more horrifying because the tragedy surrounding Davis was almost identical with what happened to Yong-gyun Kim who was killed while cleaning up the coal dust under the conveyor belt at the Taean Thermal Power Plant merely 3 months after having been employed.

Professor Michaels said, “The OSHA fined *Bacardi* \$200,000 following its determination that the accident was caused by violations of safety regulations committed by the principal contractor.” It has been reported that Davis’ family filed a lawsuit against Bacardi but eventually withdrew the suit after receiving substantial settlements. In the U.S., when a temporary worker is killed from an occupational accident, its principal contractor is held liable because relevant laws and regulations stipulate that a party capable of preventing the accident has to take responsibility for safety management.

“The U.S. is also witnessing heated controversies surrounding the responsibility for safety management when workers under diverse forms of employment work at a single workplace,” said Michaels. “That’s why the first question asked by an occupational safety inspector when the inspector arrives at a work site is whether there is a temporary worker or not. And if there is, inspectors immediately check who exposed those workers to hazardous factors,” he noted.

“Since these temporary workers migrating through

a number of different work places are likely to become a 'newbie' almost all the time, the risks for accidents are even more severe. The biggest problem stems from the irresponsibility of the principal contractor neglecting to make investment or provide training for the safety of temporary workers," Michaels pointed out. The OSHA is currently promoting a campaign on 'Protection of Temporary Workers' targeting principal contractors.

"Expertise of Occupational Safety Supervision Needs to Be Elevated"

The OSHA was established as the Occupational Safety and Health Act was enacted in 1970. It is responsible for monitoring whether business owners thoroughly comply with the occupational safety and health regulations and producing policies on the prevention of occupational accidents. The number of occupational safety inspectors working for the OSHA reaches over 2,100, and over a half of these inspectors are experts holding at least the Master's Degree. Michaels also noted, "Since these inspectors routinely need to deal with safety and health officers at the business enterprises, the OSHA never hesitates to make investments into training programs for its inspectors."

Whereas the U.S. is featured with the OSHA, Korea is armed with the Korea Occupational Safety & Health Agency (KOSHA). The manpower and budgets are not much different between these two agencies, but their functions and roles are quite distant from each other. While the OSHA based on its independence and expertise not only produces strategies and policies on occupational safety and health but also functions as a supervisor of all workplaces, KOSHA is more of a public service agency focusing on development and distribution of technology preventing occupational accidents rather than developing government policies or supervisory strategies. "Korea shows somewhat higher occupational accident rates compared to that of other member nations of the OECD (Organization for Economic Cooperation and Development)," Professor Michaels said. "Aggressive investments need to be made to workplace safety and health policies."

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"Business Owners Have Duties to Ensure Safety for Workers," Former Secretary of U.S. OSHA

Former OSHA Secretary, Michaels, "Labor Environment Can Be Improved Only by Business Owners"
U.S. Has One, But No OSHA in Korea?

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The Occupational Safety and Health Administration (OSHA) is an agency under the United States Department of Labor. Founded in 1970, the OSHA engages in a role in developing, establishing and enforcing the statutes concerning safety and health of workers at work sites. Simply put, it is an independent government body which oversees general matters related to workers' safety and also enforcing legal authority against business owners upon violations. (See a related article ⇄: ["We Do Need OSHA Like England and U.S."](#))

Doctor David Michaels, who served as the Secretary of OSHA for 7 years between 2009 and 2017, recently visited Korea. He is the longest serving secretary in the history of the OSHA.

Attending as a speaker at the seminar, 'Occupational Safety and Health System of the U.S. OSHA and Trends of Supervision' co-hosted by the National Safety Policy Forum and Korean Industrial Hygiene Association at The Plaza Hotel in Seoul, Michaels said, "Employers must provide safe workplace," regarding the background how the U.S. OSHA was established. "The role of the OSHA is to ensure business owners complying with the Occupational Safety and Health Act," Michaels noted.

Michaels explained what type of supervision system the OSHA is operating in order to effectively fulfill its role.

"Only Employers Can Verify If Workers Are Safe"

Korea does not have a single independent agency concerning occupational safety and health. But in the U.S., the agency is separated as an independent entity because the American society highly deems the importance of occupational safety. Similar comparison can be made to the Ministry of Food and Drug Safety in Korea, which is an independent government agency separately managing the safety of food. It shows that the American society believes the health of workers is as important as the safety of food eaten by the general public.

Since the recent fatal accident of Yong-gyun Kim, public interests are notably growing toward safety accidents of workers in Korea. The Occupational Safety and Health Act was also amended for the first time in 28 years. The core elements of such amendments were enhanced responsibility for principal contractor and harsher penalties for business owners upon fatal accidents.

But even though the law has been amended, it is still uncertain if the law will be abided by at the work places. It belongs to the realm of enforcement whether the statutes are effectively delivered to those who need to comply with them and bring actual results. However, it is the realm where the Korean Ministry of Employment and Labor (MOEL) and the KOSHA are typically vulnerable. As evidenced where the Industrial Accident Prevention and Compensation Bureau at the MOEL repeatedly greets a new head in less than a year, the responsible branches and agencies have been criticized for their overall lack of expertise and consistency.

It is why the experts of occupational safety profess Korea is in desperate need of an independent agency like the OSHA of the U.S. If established, the new agency will be able to not only develop comprehensive goals with respect to workers' right to health but also systematically develop policy experts. In contrast to defensive approach and makeshift response to occupational accidents in the past, the new agency will be allowed to make more preemptive approaches under preventive concepts.

It is, of course, improbable even for the U.S. OSHA to decrease the occupational accident rate by managing every single one of the work

sites. The OSHA inspectors cannot be present at all work places at all times, and the number of inspectors cannot even dream of matching the total number of work sites around the nation.

"Only employers can verify if workers are safe," Michaels said. "We need to give them 'carrots' and 'sticks' in order for them to make the work places safer," he added. He also stressed that it is the government's role to bring carrots and sticks for employers. "The most important job within government activities is to encourage business owners preemptively eliminating risks from the work sites. And it is also significant to enforce disciplinary actions if they fail to comply" Michaels said.

In short, the government needs to deliver a clear message of principle that if anyone fails to comply with the Occupational Safety and Health Act, he/she will have to face disciplinary consequences.

"Random inspections brought down both injury rates and compensation costs"

The OSHA is effectuating the efficiency of enforcement by means of tactics where its supervisory organization appears substantially larger and more powerful in order to ensure business owners being compelled to comply. Those tactics are being implemented where the subjects for inspection are randomly selected, preannouncements of inspections are made through media outlets and the outcome of inspections is disclosed to the media.

First, the random selection of subjects for inspection is to select business types with risks above a certain level. For instance, if dairy farming business is selected as a hazardous business type, the OSHA notifies 1,000 dairy farms of imminent site visits for inspection in 3 months. Then, after serving advanced notices to manage some of the risks named, the OSHA tells them to contact the OSHA if any assistance is necessary.

And after 3 months, the OSHA only inspects 3 dairy farms from all dairy farms around the nation. If serious violations are found from any of those farms, the entire details of such violations will be revealed to the media.

Michaels said it is quite useful to employ such inspection tactic of first randomly selecting the subjects for inspection from the work sites with risks above a certain level and then running actual inspection because it encourages the business owners preemptively managing their business sites. "Through such random inspection, the workers' injury rate was reduced by 9.4%, and the compensation costs (for occupational accidents) were also lowered by 26%," Michaels explained.

When random inspections are conducted, Michaels said, "Business owners are inclined to believe they can be inspected any time. And it leads them to frequently eliminate existing risks within the work sites and also make efforts to prevent reoccurrences."

To accomplish this, of course, the key is to prohibit inspectors from notifying business owners of inspections in advance.

"At the same time, it is also important to disclose the outcome of inspections conducted at the randomly selected work sites," Michaels noted. "As long as business owners are aware of the fact that their reputation can either soar to the top or crash down to the ground depending on the results of inspections once the results are disclosed, they will eliminate all risks from their work places at all times."

"Employers' Role Is to Ensure Wearing Safety Helmets"

But most employers claim that those injuries and deaths of workers while working are caused by individual carelessness of workers. Michaels admitted, "Such assertion blaming workers is what we must fight against." He then pointed out, "Working environment is not something that can be corrected by the government or working people. It is what only business owners are capable of."

"When we go out to worksites, business owners plead to us over some workers not wearing safety helmets. Then, we ask them why not having those workers put on the helmets. Business owners then say that even though they told workers to put on the helmets, they keep taking them

off. When such conversation arises, we always tell them, "Ensuring those workers not wearing helmets to put on safety helmet is none other than the employers' role." Most accidents are caused by workers' wrongdoings; however, fundamental responsibility for accidents needs to be placed on the employers allowing the workers to suffer the accidents."

In line with the assertion concerning employers' responsibility, Michaels also discussed responsibilities that need to be placed on principal contractors. "While serving as the Secretary of OSHA, I met officials of Hyundai/Kia Motors in Georgia and told them that you (principal contractors) need to take responsibilities for the management of in-house subcontractors. They said they would, but in the following June, a young woman (an employee of subcontractor) waiting to be married in 2 weeks was killed of being crashed by a robotic machine at the Kia factory," Michaels said.

At the time, the U.S. OSHA imposed a fine of ₩3 billion 20 million KRW (\$2.56 million USD) on subcontractors and others on the grounds of negligence and non-fulfillment of safety management. What needs to be noted with this incident is that the OSHA declared the ultimate responsibility for this fatal accident lies in the Hyundai/Kia Motors, namely the principal contractor. It is quite an unprecedented conclusion of the investigation because in Korea even if a fatal accident of subcontracted worker is investigated, its structural cause of death, e.g. principal contractor's responsibility, has never been identified.

"The fine was imposed upon subcontractors at the time; however, I firmly believe that Hyundai/Kia Motors has to take responsibility for this issue," said Michaels to suggest it be vital to enhance the responsibility of principal contractors in the events of occupational accidents.