

Abstract

A Suggestion of Criminal Penalty against Concealment of Industrial Accident by a business owner

Objectives : We suggest that a new establishment of a criminal penalty clause in the OSHA should be introduced to reduce or prevent a positive concealment of industrial accidents by a business owner.

Methods : We analyze criminal articles to introduce a new establishment of a criminal penalty clause in the OSHA. We use comparative methods to establish a criminal penalty in the OSHA, especially legal statutes of both in German and in Japan.

Results :

The Occupational Safety and Health Act(OSHA) Section 10(2) provides that a business owner should report industrial accident occurred etc. to the Labor Minister according to the its Executive Order. The OSHA Section 72(1), furthermore, provides that a business owner who did not report the accident etc. prescribed in the OSHA Section 10(2) above, or who did report falsely should be punished by a fine not exceeding ten million won. The fine is not a criminal penalty, but only a administrative sanction.

And the OSHA Section 29(3) also provides that a business owner should take a action to prevent a industrial accident of an employee of its contractor or subcontractor. Where the owner violates the Section 29(3) above should be punished by imprisonment for not more one year or a fine not exceeding ten million won. The fine above means a criminal penalty.

Under provisions of the OSHA, a contractor or subcontractor positively intend to conceal industrial injury occurred within its premiss or in course of performance of its subcontracted work to keep continual relations with its owner each other.

An employer also generally intend to conceal industrial accidents. There are some reasons in concealment of industrial accidents. For example, increase of insurance due, a possibility of restriction on participation in a bid concerned etc. will be reasons of the concealment.

According to the latest investigation by the National Assembly, we are able to see how many industrial accident cases have been concealed in Korea.

We think that an introduce or establishment of a criminal penalty clause in the OSHA could be one of helpful means to reduce the concealment of industrial accidents.

We should clear, however, some problems to introduce a criminal penalty clause in the OSHA. First of all principles of both a clarity and a equity are especially important.

By the way the Occupational Safety and Sanitary Act(OSSA) Section 100(1) and Section 100(3) in Japan provides that, when a Labor Minister etc. need, they order a report or an appear to the business owner or its employee. Simultaneously the OSSA Section 100(5) provides that the business owner or its employee who violates the Section 100(1) or Section 100(2) should be punished for a fine not exceeding five thousand won. Of course this fine above means a criminal penalty.

Conclusions : We suggest that a new establishment of a criminal penalty clause in the OSHA should be introduced to reduce or prevent a positive concealment of industrial accidents by a business owner.

The contents are as follows:

First, Section 10(3) of the OSHA should be established.

Where a business owner report by the Section 10(2), he or she should report without a positive concealment of industrial accident.

Second, Section 68(4) of the OSHA should be established.

A business owner who conceals positively industrial accident, he or she should be punished by imprisonment for not more one year or a fine not exceeding ten million won.

Key Words : Industrial accident, Criminal Penalty, Concealment of Industrial Accident, Subcontractor, Business Owner