

# NEWSLETTER

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Occupational Safety ·  
Serious Accidents Team

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## Compliance Checklist for Small-sized Businesses Following Expansion of SAPA Regulations

### 1. SAPA Regulations to Apply against Small-sized Businesses

Effective January 27, 2024, the *Serious Accident Punishment Act (SAPA)* entered into force against small-sized businesses (businesses with 5~49 regular employees) after a 2-year grace period. For the past two (2) years since its enactment in January 2022, the SAPA regulations have been enforced only against corporations with at least 50 or more employees (and construction projects valued over KRW 5 billion), allowing individual proprietors and small-sized businesses (with less than 50 employees) to benefit from the grace period.

Over the past year, legislators explored the possibility of extending the grace period by another two (2) years for small-sized businesses. Efforts to delay the expansion of the scope of the SAPA enforcement, however, have been unsuccessful, and ultimately, the National Assembly failed to pass a bill to extend the SAPA's grace period on February 1, 2024. Consequently, the scope of the SAPA enforcement has expanded as initially scheduled, meaning that small-sized businesses with 5 to 49 employees (as well as construction projects valued less than KRW 5 billion) have now become subject to the SAPA regulations starting January 27, 2024.

### 2. Compliance Checklist for SAPA Mandates

In the wake of the expanded scope of SAPA enforcement, small-to-medium-sized businesses with less than 50 employees (including individual proprietors) and construction projects valued less than KRW 5 billion are advised to begin the preparation for SAPA compliance - specifically, the establishment and implementation of a SAPA-compliant safety/health management system. To that end, the first key step would be to develop an acute understanding of the SAPA mandates and their implications as well as various aspects of the internal safety/health oversight structure - e.g., the management's leadership, resource allocation (for both personnel and budget), identification of workplace hazard/risk factors, and assessment of the existing safety/health protocol.

Below is a compliance checklist drafted to help small-to-medium-sized businesses assess the status of the existing safety/health governance system and identify area(s) of shortcoming in the context of the SAPA compliance. Please keep in mind that this checklist is intended to serve as a point of reference only, and businesses are advised to design a system that is tailored to the specific characteristics/attributes of each workplace's operation.

SAPA Mandate(s)	Checklist (Yes/No)	Relevant Statute
Duty to Establish Safety/Health Objective(s) and Management Policies	<p><b>Safety/Health Goals</b></p> <ul style="list-style-type: none"> <li>■ The business has established a safety/health objective for the organization as a whole or per business unit, taking into account the risk/hazard profile and size of the business' operation or work site.</li> <li>■ The safety/health objective includes both outcome-oriented metrics (e.g., number of target casualties) and process-oriented metrics (e.g., target safety/health activities).</li> </ul> <p><b>Safety/Health Management Policies</b></p> <ul style="list-style-type: none"> <li>■ The policy clearly indicates that the top priority is to protect the lives of all employees and ensure workplace safety.</li> <li>■ The policy indicates that improvement of workplace hazard and risk factors should be a priority in allocating budgetary/personnel resources.</li> <li>■ The policy is disclosed to all employees and stakeholders through intranet, bulletin boards, etc., to make it easily accessible.</li> </ul>	Article 4(1), Enforcement Decree to SAPA
Duty to Establish Organization Dedicated to Safety/Health Management and Oversight	<p>N/A</p> <p><i>Note:</i> Businesses with less than 500 employees are not subject to this specific requirement.</p>	Article 4(2), Enforcement Decree to SAPA
Duty to Establish Procedures to Identify/Improve Hazard/Risk Factors & Duty to Inspect and Take Necessary Measures	<ul style="list-style-type: none"> <li>■ The business has adopted procedures to address hazardous areas, machinery, equipment, and harmful substances within the workplace.</li> <li>■ The business has adopted procedures for all employees to identify and report hazard and risk factors in the workplace, and their status is being monitored.</li> <li>■ The business has adopted procedures to ensure that (i) the relevant operations are suspended in the course of addressing workplace hazard and risk factors and (ii) the operation would resume only after the workplace hazard and risk factors are addressed.</li> <li>■ The business conducts a risk assessment in accordance with Article 36 of the <i>Occupational Safety and Health Act (OSHA)</i>.</li> </ul>	Article 4(3), Enforcement Decree to SAPA

<p>Duty to Allocate/Execute Budget for (i) Provision of Personnel, Facilities, and Equipment Related to Safety/Health for Accident Prevention and (ii) Improvement of Workplace Hazard and Risk Factors</p>	<ul style="list-style-type: none"> <li>■ Budgets have been allocated for the provision of personnel, facilities, and equipment necessary for compliance with obligations under safety and health-related laws and regulations.</li> <li>■ Budgets have been allocated for the improvement of workplace hazard and risky factor in accordance with Article 4(3) of the Enforcement Decree to SAPA (including details necessary for accident prevention based on employees' opinions).</li> <li>■ The allocated budgets are being executed in accordance with their intended purpose.</li> </ul>	<p>Article 4(4), Enforcement Decree to SAPA</p>						
<p>Duty to Support Safety/Health Management Personnel's Performance of Responsibilities (i.e., authority, budget, evaluation criteria, and assessment/oversight)</p>	<ul style="list-style-type: none"> <li>■ The business clearly assigned authority, responsibilities, and budgets to the designated safety/health management officer, supervisor, and responsible persons (<b>Safety/Health Management Personnel</b>) through internal regulations (e.g., safety/health management regulations).</li> <li>■ The business adopted a set of criteria to assess Safety/Health Management Personnel's performance of duties, and conducts evaluations at least every half-year.</li> </ul>	<p>Article 4(5), Enforcement Decree to SAPA</p>						
<p>Duty to Assign Safety/Health Personnel per OSHA Requirements</p>	<ul style="list-style-type: none"> <li>■ The business designated a safety manager, health manager and safety/health management officer in accordance with the OSHA requirement.</li> <li>■ The business ensures that a safety manager, health manager and safety/health management officer are allowed time to perform their duties.</li> </ul> <p><b>Note:</b> The threshold required to trigger the OSHA requirement to designate safety/health personnel varies across industries and subject to the business' headcount - see below:</p> <table border="1" data-bbox="686 1483 1172 1943"> <thead> <tr> <th data-bbox="694 1483 839 1556">Designation Requirement</th> <th data-bbox="846 1483 1165 1556">Statutory Threshold</th> </tr> </thead> <tbody> <tr> <td data-bbox="694 1566 839 1835">Safety/Health Responsible Person</td> <td data-bbox="846 1566 1165 1835"> <ul style="list-style-type: none"> <li>■ (Constructions) Projects valued KRW 2 billion or more</li> <li>■ (Manufacturing) Businesses with 50 employees or more</li> <li>■ (Service Industry) Businesses with 300 employees or more</li> <li>■ (Other) Businesses with 100 employees or more</li> </ul> </td> </tr> <tr> <td data-bbox="694 1846 839 1943">Safety/Health Management Supervisor</td> <td data-bbox="846 1846 1165 1943"> <ul style="list-style-type: none"> <li>■ Businesses with 5 employees or more</li> </ul> </td> </tr> </tbody> </table>	Designation Requirement	Statutory Threshold	Safety/Health Responsible Person	<ul style="list-style-type: none"> <li>■ (Constructions) Projects valued KRW 2 billion or more</li> <li>■ (Manufacturing) Businesses with 50 employees or more</li> <li>■ (Service Industry) Businesses with 300 employees or more</li> <li>■ (Other) Businesses with 100 employees or more</li> </ul>	Safety/Health Management Supervisor	<ul style="list-style-type: none"> <li>■ Businesses with 5 employees or more</li> </ul>	<p>Article 4(6), Enforcement Decree to SAPA</p>
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<p>Duty to Establish Procedures to Hear Employees' Opinion and Adopt/Execute Measures of Improvement</p>	<ul style="list-style-type: none"> <li>■ The business adopted procedures to hear opinions/suggestions from its employees on safety/health matters (including issues and suggestions for improvement).</li> <li>■ The business organized an industrial safety/health committee in accordance with Article 24 of the OSHA*.</li> </ul> <p><b>Note:</b> The threshold required to trigger the OSHA requirement to establish an industrial safety/health committee varies across industries and subject to the business' headcount - see below:</p> <ul style="list-style-type: none"> <li>■ Mining/Quarrying: 50 employees or more</li> <li>■ Agriculture: 300 employees or more</li> <li>■ Construction: Valued KRW 12 billion or more</li> <li>■ Civil Engineering Construction: Valued KRW 15 billion or more</li> <li>■ Other Industries: 100 employees or more</li> </ul>	<p>Article 4(7), Enforcement Decree to SAPA</p>										

	<ul style="list-style-type: none"> <li>■ The business has a safety/health council between contractors and subcontractors (Article 64, OSHA) in place as well as labor-management consultation bodies for construction projects (Article 75, OSHA).</li> <li>■ The business formulates plans for improvement upon hearing opinion of its employees and reviews compliance with the plan at least every half-year to implement necessary measures.</li> </ul>	
Duty to Establish Response Manual and Take Measures in the Event of Serious Industrial Accident	<ul style="list-style-type: none"> <li>■ The business established a response manual to be used in the event of a serious industrial accident or other emergencies, and the business' compliance with the manual is checked at least every half-year.</li> <li>■ The manual includes responsive measures (e.g., work suspension, evacuation, removal of hazard) as well as remedial measures (e.g., rescue of injured individuals) and preventive measures.</li> </ul>	Article 4(8), Enforcement Decree to SAPA
(In Subcontracting or Outsourcing Arrangement) Duty to Establish Criteria and Procedures for Evaluating the Service Provider's Ability and Skills to Prevent Accident & Duty to Review Compliance with Standards for Service Providers	<ul style="list-style-type: none"> <li>■ For subcontracting/outsourcing arrangement, the business established criteria and procedures for evaluating the capacities and skills of third party service providers in preventing industrial accidents.</li> <li>■ The business established standards for managing the cost related to ensuring safety and health of third party service providers.</li> <li>■ In cases of construction or shipbuilding industries, the business established criteria for the construction period or building period in connection with the safety and health for third party service providers.</li> <li>■ The business reviews whether the subcontracting/outsourcing arrangement is being practiced in accordance with the established criteria and procedures at least every half-year.</li> </ul>	Article 4(9), Enforcement Decree to SAPA
Duty to Establish/Execute Post Accident Prevention Plan	<ul style="list-style-type: none"> <li>■ The business established a reporting procedure to be followed the event of an accident.</li> <li>■ In the event of an accident, the business formulates prevention plans or issues instructions to do so.</li> <li>■ The business has designated a person to be responsible for accident prevention plans and the timeframe for the implementation thereof. The business has procedures in place for the business owner to confirm whether the prevention plans are being followed.</li> </ul>	Article 4(1)(ii), SAPA
Duty to Implement Orders Issued by Administrative Agency or Municipalities	<ul style="list-style-type: none"> <li>■ The business has adopted an internal reporting protocol through which administrative orders issued by government bodies or municipalities are reported to the business owner.</li> <li>■ The business regularly reviews whether the administrative orders (and any improvement or corrections mandated by the orders) have been complied.</li> </ul>	Article 4(1)(iii), SAPA

Duty to Take Measures Necessary for Compliance with Safety/Health Related Mandates	<ul style="list-style-type: none"> <li>■ The business reviews its compliance with the statutory mandates at least every half-year (including reviews conducted via a third party service provider). If the review is not conducted directly, the results of the review are reported to the business promptly upon the completion of the review.</li> <li>■ Upon identifying any area of non-compliance, the business takes measures necessary for compliance (e.g., allocation of additional personnel or budget).</li> </ul>	Article 4(1)(iv), SAPA
Duty to Review Safety/Health Training Requirements for Hazardous Operation and Take Necessary Measures	<ul style="list-style-type: none"> <li>■ The business reviews the mandatory safety/health training items (including the associated content) and checks its compliance at least every half-year.</li> <li>■ Upon identifying any area of non-compliance via review, the business promptly takes necessary measures to address the non-compliance of the training requirement (e.g., issuing training instructions, securing the training budget).</li> </ul>	Article 5(2)(iii) and (iv), Enforcement Decree to SAPA
Duty to Ensure Safety/Health of Third Party Service Provider's Employees (in subcontracting /outsourcing arrangement)	<ul style="list-style-type: none"> <li>■ In the event where the business engages a third party service provider for subcontracting or outsourcing arrangement, the business takes measures required under Article 4 of the SAPA to prevent the third party service provider's employees from a serious industrial accidents.</li> </ul>	Article 5, SAPA

### 3. Key Points and Guidance for Compliance SAPA Regulations to Apply against Small-sized Businesses

The key legislative intent behind the SAPA regulations is to push employers to establish and implement a self-governance infrastructure for managing workplace safety/health issues that is centered around a business owner or managerial responsibility holder(s). Therefore, 'serious accident(s)' occurring as a result of SAPA violations may expose business owner/managerial responsibility holder(s) to the risk of criminal penalty. To date (as of February 2024), there have been thirteen (13) cases where SAPA violations were tried and prosecuted, in all of which the defendants facing the charges were found guilty.

Importantly, an occurrence of 'serious accident' alone does not automatically lead to criminal sanction, and strict adherence to the SAPA mandates can help shield employers or managerial responsibility holders from the risk of criminal liability. In some cases, companies that were able to demonstrate their continued attention and commitment to establishing a safety/health oversight system were able to escape prosecution and avoid criminal liability and prosecution despite an occurrence of 'serious accident'. Accordingly, it is vitally important for companies to be proactive in establishing/improving the internal safety/health management system in compliance with the SAPA regulations from early stages of the SAPA enforcement to preemptively address the legal risk associated therewith.

Lee & Ko's Occupational Safety • Serious Accidents Team boasts a successful track record and expertise in providing structured, comprehensive guidance in the context of SAPA compliance, and our expertise encompasses a wide array of legal services from compliance projects to handling disputes arising out of industrial accidents. Equipped with extensive experience as well as reliable expertise and professionalism, Lee & Ko's Occupational Safety • Serious Accidents Team has consistently delivered practical solutions tailored to the needs of each client. Should you need any assistance in this area of law, please do not hesitate to contact Lee & Ko.



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