

NEWSLETTER

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Occupational Safety ·
Serious Accidents Team

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Latest Update to 「Guidelines for Workplace Risk Assessment」 to Impact Businesses in Korea

On 22 May 2023, the Ministry of Employment and Labor (**MOEL**) announced a significant update to its 「Guidelines for Workplace Risk Assessment」 (**Guidelines**), effective immediately. The latest changes to the Guidelines aim to improve and reform the existing workplace risk assessment system, a key means to self-diagnose and mitigate risks of employer liability for workplace safety. The key elements of MOEL's latest development and the associated implications are summarized below.

1. 「Guidelines for Workplace Risk Assessment」 - Overview

Currently, under Article 36 of the 「Occupational Safety and Health Act」 (**OSHA**), employers are required to assess workplace risk by identifying risk factors present in the workplace that may lead to injuries or illnesses (e.g., risk factors associated with construction, machinery, equipment, raw materials, gases, vapors, dust, workers' activities) and take necessary measures. Employers often defer to the MOEL for guidelines and details regarding compliance standards pertaining to OSHA-mandated workplace risk assessments, such as the Guidelines that are intended to provide detailed regulations regarding the methodologies, procedures, relevant schedule requirements (and other administrative matters) for the OSHA-mandated risk assessments.

The Guidelines are not statutes with legally binding authority. But they represent the MOEL's administrative regulations, interpretations, and position, and, therefore, must be provided considerable weight and deference. Since the enactment of the 「Serious Accident Punishment Act」 (**SAPA**), compliance with the Guidelines has become one of the key criteria in determining whether an employer violated the SAPA requirements. Enforcement authorities also relied heavily on such guidance from the MOEL when SAPA-related violations.

Prior to the latest update to the Guidelines, the MOEL announced its '*Serious Accident Reduction Roadmap*' on 30 November 2022 as part of the government's long-term initiative to curtail the number of serious accidents and improve workplace safety. The roadmap included an extensive self-diagnosis system for companies for accident and liability prevention based on strict compliance with OSHA-mandated workplace risk assessment. With the latest updates to the Guidelines, however, the

MOEL provides a more streamlined view of workplace risk assessment methodologies/tools for self-diagnosis and accident prevention (e.g., 'checklist' and 'one point sheet' for workplace risk assessment).

2. Key Elements in Updated Guidelines

- **Redefining 'Risk Assessment'.** Previously, the Guidelines required businesses to assess the extent of the '*possibility*' (frequency) and '*severity*' (intensity) of injuries or illnesses resulting from workplace risks. This requirement was considered relatively broad and abstract, failing to provide clear guidance for employers. In the revised Guidelines, the term 'risk assessment' has been re-defined with increased clarity as a "*process through which employers can identify risk/risk factors, determine their respective risk levels, and establish and implement appropriate measures to reduce such risk.*"
- **Various Methodologies for Risk Assessment.** The revised Guidelines introduce various risk assessment methodologies, including checklists, One Point Sheets (OPS), and a three (3)-tier (low, medium, and high) classification system. By providing examples of acceptable or sufficient options for assessment methodologies, employers can more readily adopt the most appropriate and suitable method for their respective operations to facilitate risk assessments and ensure greater compliance.
- **Clarity on Assessment Schedule.** Previously, the Guidelines required (i) annual risk assessments after the initial assessment and (ii) additional ad hoc assessment upon the occurrence of a specific contingency. However, the previous Guidelines did not specify when an employer must complete its initial assessment. In the revised Guidelines, however, the MOEL clearly stipulates that an employer must complete its initial assessment (i) within one (1) month from the establishment of the workplace; or (ii) immediately upon commencement of work in cases of short-term projects or constructions. Furthermore, reassessing and updating previous risk assessments can now be recognized as satisfying the periodic assessment requirement.
- **Introducing the 'Continuing Assessment' Option.** The updated Guidelines introduce a 'continuing assessment' option as an alternative way for employers to satisfy the periodic and/or ad hoc assessment requirement. The 'continuing assessment' option includes: (i) conducting workplace risk assessment in various forms at least monthly (e.g., inspections, accident reviews, and collecting suggestions from employees); (ii) discussing and sharing the results from the risk assessments amongst safety and health managers and subcontract managers on at least bi-weekly; and (iii) conducting daily pre-work safety check meetings (also known as 'Toolbox Meetings') with employees.
- **Greater Employee Participation.** Previously, employees enjoyed limited participation in workplace risk assessments (e.g., identification of risk/risk factors). However, the revised Guidelines guarantee employee participation opportunities throughout the process. Additionally, the updated Guidelines adopted new requirements for informing employees of the overall results (i.e., from the workplace risk assessment) and raising employees' awareness of the safety risks through the Toolbox Meetings.

3. Implications

The latest update to the Guidelines introduces business-friendly methodologies for compliance (e.g., checklist, one-point sheet), streamlining the workplace risk assessment process with greater clarity, options, and employee participation. Notwithstanding, the Guidelines have imposed stricter requirements in various areas that employers are advised to review and coordinate with external counsel to ensure continued compliance with SAPA requirements. Advanced preparations and assessment have become even more critical as the MOEL expressed its plans to review and investigate the risk assessments, including the extent of employee participation, and scrutinize these aspects rigorously in case of a serious accident.

Lee & Ko's Occupational Safety · Serious Accidents Team continues to monitor government policies and legal developments related to industrial safety and serious accidents, and with key experts in this area, we are committed to providing you with timely and valuable information.

Should you have any questions or need assistance, please feel free to reach out to us.

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