

When Workplace Harassment Occurs, What Measures Should an Employer Take?

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I. Introduction

Korea's workplace culture has a long tradition of top-down military-style hierarchies, but a new workplace culture is emerging as the workplace harassment prevention law is strictly applied, going in a desirable direction where individual personality is respected. A superior has the right to direct the work, and a subordinate has the duty to perform the work accordingly. However, if excessive work orders, abusive language, or threatening shouts are repeated, the moral rights of workers will be infringed.¹

For this procedure to deal with workplace bullying, Article 93 of the Labor Standards Act (Preparation and Reporting of Employment Rules) No. 11 mandates that “the measures to be taken in cases of occurrence of workplace harassment” be stipulated in the rules of Employment Accordingly, all workplaces employing 10 or more people must act in accordance with the details of workplace harassment stipulated in those rules of employment. In other words, the employer must responsibly handle reports of harassment between workers in the workplace. Even when such harassment is reported to the Labor Office, the Labor Inspector's scope of investigation is limited to whether the employer has conducted an objective investigation into workplace harassment in accordance with Article 76-3 of the Labor Standards Act (Measures in the case of workplace harassment), whether appropriate measures have been taken according to the results of the investigation, and whether reasonable measures have been taken to protect the worker victim(s).²

Therefore, if an employer receives a report on workplace harassment or recognizes that workplace harassment has occurred, that employer shall, without delay, conduct an objective investigation to confirm the facts of such report or

¹ Supreme Court ruling on Feb. 10, 1998: 95da39533: Whether the employer is liable for compensation for harassment in the workplace.

² Ministry of Employment and Labor, “Manual on Judgment, Prevention and Handling of Workplace Harassment,” Feb. 2019.

witnessed harassment. In this regard, I would like to review the desirable way to handle workplace harassment and look in detail at appropriate company actions.

II. A Case of Workplace Harassment and Follow-up Measures by the Company

1. Facts

The company is a branch of a multinational corporation, and in Korea, it is managed by each department head for its own operation without a control center. The branch manager did not have authority to exercise personnel or business operation rights.

There were many cases where a certain female director (perpetrator) yelled at the branch manager or company executives and abused them. A number of employees complained about the abusive language, insulting words, and sexually harassing remarks, claiming they amounted to workplace harassment.

(1) At around 10 a.m. on April 4, 2022, according to the statements of a number of witnesses, the perpetrator's raised voice was heard coming from a conference room where the perpetrator and the branch manager were alone. Even though the director did not outrank the branch manager, it is unacceptable for the perpetrator to use abusive language with the Korean branch manager and shout at him where many junior employees could hear, considering his age and job experience.

(2) Between March 3 and May 11, 2022, the perpetrator used sexually harassing language with the male sales manager four times. ① "You are pretty. You are working hard." ② "Our conclusion is that the pretty boy can brag about the company," ③ "With pretty boys, and ④ "The prettiest boy should do it."

(3) On March 10, 2022, the perpetrator called manager A from another department on the phone and said, "You are the one who failed to meet the target," "How long do I have to waste my time writing emails like this to you," etc. The perpetrator's language was abusive and included insulting remarks while undermining the performance of this manager.

(4) The perpetrator used abusive language or insulting words against a number of employees.

a) The perpetrator wrote the following about a specific employee in an e-mail she sent to the head of the sales department and CC'd several employees. "Where else is there such a manager in his 30s who can't write emails properly or even introduce himself?"

b) The perpetrator mentioned to assistant manager C in her marketing department: “Of the sales team members, Mr. Yoon and Mr. Han are surplus manpower.”

c) The perpetrator spoke openly about the branch manager to other employees. “The branch manager has no influence, and he has no connections with head office executives. He’s a country man from a poor background.”

2. Details of the company's response actions

The company had difficulties determining on its own investigation because the perpetrator and employee victim were the managing director and the branch manager of this foreign company, so an external labor law firm was asked to investigate. The perpetrator was disciplined according to the results of this investigation.

This author’s labor law firm, which received the request to investigate the reports of workplace harassment, confirmed prior information from the company, as well as the victims, perpetrator, and witnesses. In addition, prior to the investigation, investigators received a written confidentiality agreement from each related interviewee so that they could prevent secondary damage from occurring in the future.

This labor law firm first conducted interviews and written investigations with the employee victims. In addition, multiple witnesses were interviewed to confirm the facts. Finally, through an interview with the perpetrator, it was able to confirm the facts of the situation at the time, and the perpetrator was given opportunity to explain her actions.

With these objective findings, the company held a disciplinary committee meeting in accordance with the rules of employment, and explained the facts to the perpetrator and gave her an opportunity to explain her actions in light of the confirmed facts. Finally, the disciplinary committee decided on a six-month salary reduction and a severe warning on the perpetrator’s work record.

III. Guidance on Employer Actions When Workplace Harassment Occurs

1. Guiding principle

When a report of workplace harassment is received, or such an incident is seen by the company's personnel manager, that manager shall conduct an objective

investigation with related employees to confirm the facts without delay. Here, “related employees” refers to the alleged victim, the alleged perpetrator, and coworkers who witnessed the event(s). Prior to starting an investigation, it is necessary to ensure that the related employees sign a confidentiality agreement to prevent secondary damage from the investigation.³

2. Initiate investigation and take appropriate actions promptly

When a workplace harassment report is received, the employer shall investigate the persons concerned without delay. This is because, first, there is a need for the alleged victim(s) to receive prompt relief if the harassment actually occurred. Second, over time, memories of facts fade. Third, if a prompt investigation is not carried out, the employer may be deemed to have failed to take measures required by law.

When an investigation into a person is initiated, employer actions can include allowing the alleged victim(s) to work from work or go on paid leave if requested by the alleged victim(s) so that additional damage does not occur between the alleged victim and the alleged perpetrator.

3. Ensure the investigation is objective

Investigations are conducted beginning with the alleged victim(s). As far as possible, the facts shall be clearly established according to the six basic outline of Who, What, Where, When, Why and How. Check if any concrete data exists such as cell phone voice recordings, KakaoTalk (or other messenger service) messages, and e-mails. When investigating an alleged victim, that person’s psychological and emotional situation should be considered. Investigations are carried out by checking the facts from the alleged victim's point of view, and above all, the investigators need to listen for the immediate needs of the alleged victim.

The second part of the investigation secures the statements of relevant persons who can confirm or reject the facts described in the alleged victim's statement. At this stage, it is necessary to focus on the facts, not the opinions of the alleged victim. It is also necessary, for simplicity, to interview only the essential persons.

³ Lee, Sang-gon, “A Study on Improving the Workplace Harassment Law,” Ajou Graduate School Ph.D. thesis, Aug. 2020, pp. 141–143.

And for better objectivity, to interview two or more employees on each major aspect of the report to secure corroboration of statements.

The third part of the investigation is interviewing the alleged perpetrator. It is necessary to verify the accuracy of the claims made by the alleged victim(s) and related persons. During the investigation, the person in charge must avoid deciding for him or herself whether the alleged perpetrator is guilty or not. In addition, by looking at the situation for the perpetrator at the time of the alleged harassment, it is necessary to listen to the details of the reason(s) given for the act and to confirm whether the act is necessary for work. If possible, the perpetrator should be informed that the primary purpose of the investigation or disciplinary process is to improve the workplace atmosphere, not to punish.

In the process of investigating the related employees, there are many things that can be missed by written records alone. Therefore, it is necessary to supplement the investigation with recordings.

Investigations are conducted by the HR department within the company, but if the harassment is related to the HR department or the employer is the alleged direct perpetrator, entrusting the investigation to an external expert for a fair investigation of the facts can increase the trust of the related employees and ensure that the investigation is carried out objectively.

4. Judgment of facts and appropriate dispositions of the company

After confirming the facts in a report of workplace harassment, it is necessary to determine whether the relevant act(s) fall under what has been determined to be workplace harassment. In this regard, since the person in charge is not a legal expert, it is better to understand the legal view, based on the facts, through a request sent to the Ministry of Employment and Labor or seeking the opinion of a labor attorney with related experience.

If the facts of the case are confirmed and workplace harassment is recognized to have occurred according to a legal expert, a disciplinary committee shall be convened to determine the disciplinary action in accordance with the company's in-house rules of employment. Of particular note is that the disciplinary committee should check the facts and give the perpetrator an opportunity to explain, so that the reasons for disciplinary action remain clear.

Once a disciplinary committee decides on the type of disciplinary action, objective facts such as the degree of workplace harassment, the length of service

and role of the perpetrator, and whether or not there has been a previous violation must be taken into consideration to prevent abuse of the authority to discipline. In this case, the employer can increase victim and perpetrator acceptability of disciplinary action only by explaining the disciplinary actions to the victim(s) and hearing their views beforehand.

If the alleged victim's report of workplace harassment is confirmed to be true during the investigation process, appropriate actions for the victim(s) can include a change of workplace, a change in job assignment, or a granting of paid leave, ideally in accordance with the victim's stated preference. Whether that is possible or not, the victim's preference should at least be heard.

Finally, the company must remind the perpetrator, victim(s), and employees involved in the investigation to strictly adhere to the confidentiality agreement they signed in relation to the investigation process. Revealing the investigation findings to the public may result in additional damage that may be undesirable for both sides.

V. Conclusion

In calculating whether workplace harassment has occurred, the scope of actions that are appropriate to the performance of work can be ambiguous. If the workplace harassment leads to a court decision, this will result in damage to the alleged perpetrator, the alleged victim(s), and the company organization. Lawsuits over workplace harassment claims can also lead to undesirable consequences, so it is best to resolve such reports fairly and in accordance with the company's internal procedures. To this end, HR managers need training to deal with such reports, and workers must be aware that workplace harassment can occur anywhere, and they may unexpectedly find themselves engaging in workplace harassment, or suffering from it.