

## Workplace Harassment Resolved through Recognition of an Accident as Related to Work

Bongsoo Jung / Korean labor attorney

### I. Introduction

Until recently, workplace harassment was resolved through workplace grievance handling, but if this did not work, the victim had no choice but to put up with such harassment or quit his or her job. However, since the procedures for remedy against harassment in the workplace were legislated on April 2021, now constituting a compulsory regulation that punishes employers if they do not comply with the required procedures, employers are much more involved in resolving things.<sup>1</sup>

According to a report by the Kyunghyang daily paper on June 29, 2022, one of every four office workers has experienced harassment at work, with 31% of that number saying the harassment had been serious, and 7.3% said they were contemplating the extreme response of suicide.<sup>2</sup> When someone is bullied for a long period of time, the mental strain can lead to depression and adjustment disorder, and finally to extreme choices.

This article will look at a case of harassment against an employee who had to avoid working overtime. This employee worked shifts at a production site and avoided working overtime due to a work-related injury and its long-term effects, and received psychiatric treatment over harassment from his colleagues. In this case, this labor attorney provided a reasonable solution through interviews with the victim.

### II. Details of the Related Workplace Harassment

#### 1. Harassment occurring after injury at work

<sup>1</sup> On April 13, 2021, Article 76-3 of the Labor Standards Act (Measures in case of harassment at work) was introduced as an obligatory regulation for employers. Labor inspectors can impose fines for failures to comply.

<sup>2</sup> The Kyunghyang Daily Paper, "Harassment at work has resulted in the extreme choice to commit suicide...Industrial accident applications have almost doubled," June 19, 2022.

“Hong Gil-dong” (hereinafter referred to as “Gil-dong”) worked one of three shifts as a production worker for a large manufacturing company. At around 2:00 am on June 2, 2019 while working in the workroom, the old chair he was sitting on fell backwards, causing him to hit the handle of the chair with his back. Gil-dong had severe back pain, but he thought it was just a bruise from the bump and did nothing about it until his shift was over. He was barely able to get on the bus home from work due to the severe back pain he was enduring, and went to emergency and had an X-ray taken. The orthopedic surgeon in charge diagnosed that the 1st, 2nd, 3rd, and 4th transverse processes near the lumbar region (backbone) had been fractured.<sup>3</sup> However, he returned to work after a few days of treatment because the atmosphere at the workplace was chaotic due to personnel appointments between departments within the company. The severe pain continued, but he worked hard and simply took painkillers and wore an abdominal belt to support his back. He continued to receive treatment and work at the same time. On April 12, 2021, Gil-dong felt pain in his neck and shoulders, so he visited the hospital, where the doctor told him he needed surgery on his cervical disc after a thorough examination.

The harassment began on July 26, 2021, when one of the employees organized for the shift system was absent from work for a long time for personal reasons. Workers on the same shift had to fill in for the absent employee by working overtime. Gil-dong conveyed to the HR manager that he would not be able to work overtime as he was scheduled for back surgery. On August 3, he noticed on the shiftwork handover board a note saying, “Move Hong Gil-dong to another shift team.” Gil-dong felt a deep sense of humiliation, as he had never seen a person's name written on the shiftwork handover board which was posted in a public place. It was the first time he would be moved in his 27 years working on that production line.

On September 7, 2021, Gildong experienced neck and shoulder spasms (pain) due to deterioration of the cervical disc, so he was hospitalized for surgery, and after 10 days of treatment, he returned to work. When he got back to work, his shift co-workers kept asking, "Why isn't he working overtime?" and began to

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<sup>3</sup> Doctor Sujin Jang's Introduction to Spine, Naver Blog, Mar. 7, 2022. “Transverse process fractures: The transverse process is a bone that extends from the backbone horizontally on both sides. Its appearance resembles the side-wings extending to both sides of the official hat of the Joseon Dynasty. It is 1 cm long and wide, and 3-4 mm thick. The symptoms of a transverse process fracture are that even breathing or moving the body causes intense pain.”

harass him. However, as Gil-dong had back pain and thought it best not to engage in physical contact with his co-workers, he kept his distance from them as much as possible.

## **2. Persistent harassment**

During a short break around 6:00 pm on November 15, 2021, Gil-dong told three colleagues who were complaining about him, "Don't swear at me behind my back." In response, colleague A began a tirade of abusive language: "Hey, you son of a b\*tch! You aren't the only one having a hard time. I'm very sick too." "Aren't you the only one who isn't working overtime? You b\*stard, you should say sorry to your seniors who have to work overtime because you won't." "Everyone knows how lazy you are!" This was followed by several curse words. In response, Gil-dong explained to colleague A that he couldn't work overtime because he had been injured and needed time to recover, but colleague A continued to insult him in the presence of several of his colleagues. Gil-dong then protested to Manager A, his senior, saying "Sir, you need to say something." Manager A apologized for the three other workers, to which Gil-dong also apologized to those three. However, the three workers continued to act very self-righteously, as if the insults had been justified. From that time, these three workers continued to harass and blame Gil-dong for their problems at work.

On November 19, 2021, Gil-dong left early because his head hurt and he felt so dizzy that he could not work. At the recommendation of a counselor, he saw a psychiatrist who prescribed him medication. Gil-dong used two weeks of his personal annual leave in lieu of sick leave from December 14, 2021 due to his back pain and extreme stress. On December 29th, Gil-dong returned to work with a strong sense of responsibility as a worker and as the head of a household. The harassment from his co-workers continued even though he was working hard. He had to continue taking painkillers and the psychiatrist's prescribed medications. Overheard statements included "That guy doesn't work overtime," and "There's something wrong with him mentally," which of course added to Gil-dong's work difficulties.

## **III. Application for the Chair Accident to be Recognized as an Occupational Accident to Stop the Workplace Harassment**

### **1. Fights between employees due to continued workplace harassment**

From January 2022, Gil-dong continued to work even though it was difficult due to the group harassing him. This included colleague B humming in front of Gil-dong (which is rude in Korea) continuously during handover meetings before the next shift started. Colleague B continued the noisy humming in front of Gil-dong for several months during every shift handover time. On May 5, 2022 at 6:45 am during another shift handover, colleague B began humming in a childish way to provoke Gil-dong, who found it too much on top of everything else over the past few months. When he shouted, "Quit humming like an idiot in front of me!" colleague B retorted, "What? Now you're hearing things too?"

Gil-dong was very angry at being treated like a psychopath in front of many people. He felt he had been harassed for no reason, resulting in him having to take psychiatric medication, counseling, and sick leave. In frustration and anger, he kicked colleague B and a fight ensued which had to be stopped by their colleagues. The company then ordered them to submit a report about their fight. Gil-dong then prepared and handed in a report on the harassment and contacted this labor attorney to ask for help.

## **2. Labor attorney's view and application for accident to be recognized as an occupational accident**

On May 13, 2022, Gil-dong contacted this labor attorney to help him report the workplace harassment to the Ministry of Employment and Labor. This labor attorney said that in order to solve the problem of harassment at work, it must be officially acknowledged that the reason Gil-dong did not work overtime was simply due to the aftereffects of a work-related accident. This labor attorney explained that if Gil-dong's back pain were recognized as the result of an occupational accident, his colleagues would have to accept that he had to avoid overtime due to the pain and difficulties he had. In addition, it was explained that filing a complaint with the Ministry of Employment and Labor on the grounds of workplace harassment is done when the procedure in Article 76-3 of the Labor Standards Act has not been carried out properly or when the company has not investigated the report fairly nor put in place the remedy procedure for workplace harassment. Since Gil-dong's occupational accident occurred on June 2, 2019, there were only about 20 days left until expiration of the statute of limitations for the application. Even if Gil-dong's back injury was caused by a work-related accident, once the 3-year statute of limitations expired, there would be no way

for his injuries to be recognized as from the occupational accident, so the labor attorney submitted the application right away.

On May 19, 2022, this labor attorney submitted an application for medical treatment stating that Gil-dong's back injury was caused by a work accident and submitted a report on the accident itself. This report described the details of what happened that day and the measures taken in the emergency room, with medical records, details of his application for sick leave, and eyewitness statements regarding the accident at the time as proof. The competent Labor Welfare Corporation office acknowledged the fact that Gil-dong's back injury was caused by a work-related accident through the related data and company verification procedures, and three months later, at the end of September 2022, Gil-dong's back injury was recognized as due to an occupational accident.

## **VI. Appropriate Actions and Lessons Learned**

### **1. Actions taken by the company**

The company acknowledged the physical violence between Gil-dong and colleague B on May 5, 2022 as due to temporary conditions, and the parties also showed an attitude of reflection and the incident was concluded with a written warning. On October 1, 2022, Gil-dong reported to the HR team in writing that he had been harassed at work by colleagues A and B and handed over an official confirmation letter from the Labor Welfare Corporation that the back injury that occurred three years ago was recognized as due to an occupational accident. In response, the company held its own personnel committee meeting, recognized that harassment at work had taken place, and admonished colleague A and colleague B with a disciplinary salary reduction. Judging that Gil-dong's current shift work was negatively impacting recovery from his back injury, the company transferred him to a new workplace in the quality control department, which is not physically demanding.

Under current law, workplace harassment is, in principle, resolved autonomously within a company through its internal procedures. Article 93 of the Labor Standards Act stipulates “matters concerning the prevention of workplace harassment and measures to be taken when it occurs” as mandatory items in the employment rules, allowing voluntary regulation. On the other hand, Article 76-3 of the Labor Standards Act specifies measures an employer must take in the event of workplace harassment, and includes a punishment clause if the employer fails to take such measures. As such, the current law requires that workplace

harassment be reported to and dealt with by the employer, but in cases where it is difficult to expect fairness from the employer, the victim shall file a complaint with the Ministry of Employment and Labor.

## **2. Lessons from this workplace harassment**

Employers have an obligation not only to provide a safe workplace, but also to prepare institutional devices for preventing workplace harassment and taking follow-up measures against it.<sup>4</sup> Therefore, employers need to regularly carry out activities to prevent harassment through the introduction of prevention and follow-up measures through their employment rules, periodic anti-harassment education, and a grievance-handling system.

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<sup>4</sup> 2019. 2. 91~99면. Ministry of Employment and Labor, “Manual on Judging and Preventing Workplace Harassment, Feb. 2019, pp. 91-99.