

## **Workplace Harassment Cases Arising from Excessive Work by a Superior**

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### **I. Introduction**

It has been four years since the legislative introduction of workplace harassment prevention measures in 2019. Initially, the provisions only included voluntary improvement efforts by employers, with no specific punitive regulations. In essence, employers were required to incorporate provisions related to workplace harassment into their employment regulations and ensure that appropriate investigations and disciplinary actions were taken by the employer in the event harassment was reported. However, effective prevention and proper actions in response to actual incidents were not consistently carried out in practice. In response to these issues, new legislation was introduced to include punitive provisions for incidents of workplace harassment, similar to those for workplace sexual harassment cases. These legislative changes mandated objective investigations by employers, obligations to provide protective measures, enforce appropriate disciplinary actions, maintain confidentiality, and prevent any adverse actions for reporting.

Employers are diligent in conducting thorough investigations and implementing protective measures and preventive actions for employees who report workplace harassment incidents. However, they appear to be hesitant to impose appropriate penalties on competent employees who engage in harassment. The reasons for this reluctance are threefold:

Firstly, lenient penalties are applied to the harassing manager who is a high-performing employee since the harassment was driven by the desire to achieve greater results.

Secondly, the organization itself is primarily focused on achieving its operational goals, and employee protection is considered a secondary responsibility for the employer.

Thirdly, imposing severe penalties on the harassing manager could negatively impact the motivation of other managers and their commitment to achieving organizational objectives.

In this context, we aim to examine specific cases of workplace harassment and delve into the company's handling procedures in greater detail.

### **II. Workplace Harassment Incidents: Some Details**

## **1. Incident Summary**

A female department head at a foreign pharmaceutical company engaged in excessive work demands and, as a result, subjected a specific female employee from another department to workplace harassment. Jung Ha-eun, a member of the Technical Support Team (referred to as "Ms. Jung"), reported to the branch manager and the HR department that she had been subjected to workplace harassment by Team Leader Lee OO, the Logistics Department Team Leader (referred to as "Ms. Lee"), on several occasions starting from June 10, 2023. In response to the complaint, the HR department promptly initiated an objective investigation. They altered Ms. Jung's work arrangement from the original schedule of three office days and two remote work days to full remote work. The HR team conducted a comprehensive fact-finding investigation based on the details of the complaint and interviewed relevant witnesses. Ultimately, they interviewed Ms. Lee regarding the allegations. However, she consistently denied that she had been involved in any workplace harassment.

## **2. Specific Allegations of Workplace Harassment**

(1) In the fall of 2022, Ms. Jung mistakenly designated the wrong warehouse for a specific product, which was promptly rectified by a member of Ms. Lee's department. Ms. Lee, the team leader, called Ms. Jung via Teams and berated her for approximately 20 minutes, saying, "Don't you know how to do your job yet? I won't let you off the hook next time if this happens again." However, Ms. Lee denied that such an incident had occurred.

(2) On January 20, 2023, Ms. Jung expressed a difference of opinion in email response to an email from Ms. Lee. This led to her being summoned to Ms. Lee's office, where Ms. Lee allegedly criticized her for about 30 minutes, not only for her email response but also for her method of handling emails in general. During this time, Ms. Lee used derogatory language, repeatedly shouting at Ms. Jung, saying, "Haven't you learned anything from working in society? Do you have no common sense?" Two witnesses backed up the fact that Ms. Jung had been called into Ms. Lee's office, which Ms. Lee acknowledged, but she denied using offensive language.

(3) On February 7, 2023, Ms. Jung was reprimanded by Ms. Lee for approximately 40 minutes in her office because her response to Ms. Lee's email was delayed. Three witnesses confirmed this incident. Ms. Lee stated that her intent was to

provide constructive feedback and guidance on Ms. Jung's work performance and denied that it amounted to workplace harassment.

(4) On May 15, 2023, Ms. Lee summoned Ms. Jung to her office because Ms. Jung failed to greet her in the hallway. During this encounter, Ms. Lee used informal language (which is inappropriate in a professional situation in Korea) and criticized her for not following workplace etiquette, stating, "You have no workplace manners. You must not have had a proper upbringing." For the sake of non-Korean readers of this article, it's important to point out that the latter statement is particularly offensive within Korean culture, as it greatly insults the target's family as well. On that day, Ms. Jung verbally reported workplace harassment to the HR department and expressed her grievances about being insulted by Ms. Lee to her own team leader. These claims are considered factual. Ms. Lee acknowledged using informal language but denied making the comment about her upbringing.

(5) In 2022 and 2023, Ms. Lee allegedly and frequently used profanity, calling her "bitch" and using "fuck" while talking on the phone during office hours in the open office space. Additionally, she often used informal language and failed to address team members by their names, instead saying "hey," "you," and "you there." Ms. Jung and the witnesses attested that they had heard Ms. Lee using such offensive language on multiple occasions. Ms. Lee admitted to addressing people by saying only "you" but denied calling people simply with "hey" and claimed that she had never used profanity during personal phone calls.

### **III. Legal Evaluation on Workplace Harassment**

#### **1. Legal Requirements for Establishing the Occurrence of Workplace Harassment**

"Employers and employees shall not engage in conduct that goes beyond the appropriate scope of work and causes physical or mental suffering to other employees in the workplace or deteriorates the working environment by using their superior position or relationship in the workplace" (Article 76-2 of the Labor Standards Act). To determine that workplace harassment has occurred, all three of the following requirements must be met, and the conduct must be thoroughly examined before making an overall judgment.

##### **(i) Utilization of superior workplace position or relationship**

"Workplace position" refers to hierarchical relationship within the workplace, where the actor holds a superior position in a direct or indirect supervisory

capacity. Utilizing one's position, even if not in a direct supervisory relationship, based on factors such as seniority, expertise, personal characteristics, influence within the workplace, being in auditing or HR departments, regular employment status, influence within the labor union or workplace councils, etc., should be considered.<sup>1</sup>

(ii) Relevance to work necessity and exceeding the appropriate scope of work

Relevance to work encompasses a broad interpretation of work-relatedness. It is not limited to acts that occur directly during work processes but also includes acts that accompany or arise from work or are related to work. For an action to be deemed exceeding the appropriate scope of work, it must either lack social necessity when viewed from societal norms or, even if necessary, be considered socially inappropriate in terms of its manner. Dissatisfaction with a work-related directive or order, even if it may cause discontent, cannot be considered workplace harassment if the action is deemed necessary from a societal perspective. However, if the behavior accompanying the directive includes physical violence or excessive verbal abuse, it can be considered as exceeding the appropriate scope of work. Furthermore, if the directive, despite its necessity, is unreasonably directed at one employee over others engaged in similar duties without justifiable reasons, it can be considered socially inappropriate.<sup>2</sup>

(iii) Causing physical or mental suffering or deteriorating the working environment

“Causing physical or mental suffering” refers to a wide range of actions,<sup>3</sup> including physical violence, threats, continuous verbal abuse, or any act that seriously infringes upon a person's dignity and causes mental suffering. Actions causing emotional distress or fear and anxiety in an individual fall under this category. Actions that deteriorate the working environment are those that hinder an individual's ability to function optimally. Intent is not considered in this context. Thus, the act of the person causing the harm is not relevant; instead, what is essential is whether the victim has suffered.

In summary, for an action to be considered workplace harassment, it must meet all three conditions: i) the action is perpetrated by a person using their superior workplace position or relationship, ii) the action exceeds the appropriate scope

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<sup>1</sup> Supreme Court ruling on July 10, 2008: 2007du22498.

<sup>2</sup> Supreme Court ruling on Dec. 21, 2006: 2005du13414.

<sup>3</sup> Ministry of Employment and Labor, *Workplace Harassment Assessment and Prevention Response Manual* (May 2019),

of work, and iii) the action results in physical or mental suffering or deterioration of the working environment. In essence, there must be tangible evidence of the victim experiencing physical or mental distress or the working environment being negatively impacted.

## **2. Decision on whether Workplace Harassment Occurred, Based on the Investigation**

According to the Ministry of Employment and Labor's *Workplace Harassment Determination and Prevention Response Manual* (May 2019), the specific criteria for judgment include ① the relationship between the parties involved, ② the location and circumstances of the actions, ③ the victim's response to the actions, ④ the nature and degree of the actions, and ⑤ the duration of the actions (single occurrence, short-term, or continuous). The manual emphasizes that even if the immediate superior is not the perpetrator of workplace harassment, if they exercise their workplace influence and negatively affect the work capacity (e.g., seniority) and workplace impact of the alleged victim, this can be considered as "using a superior position or relationship."

According to the internal investigation report, specific actions reported about the accused (the team leader, Ms. Lee) include: 1) On January 20, 2023, the accused criticized the alleged victim (Ms. Jung) for expressing a difference of opinion regarding the method of receiving emails, stating, "Have you never lived in society? Have you not learned anything all this time? Do you not have common sense?" 2) On February 7, 2023, Ms. Jung was called out for a delay in responding to emails, for which Ms. Lee engaged in a 40-minute reprimand.

Reviewing the aforementioned actions, it can be observed that the superior engaged in: ▲ unilateral calls to Ms. Jung and harshly criticized her, causing significant humiliation; ▲ reprimanded Ms. Jung extensively during a unilateral call, failed to provide specific advice on improving work-related issues, but rather simply reprimanded Ms. Jung for a prolonged period; and ▲ according to the statements of witnesses, the superior had ongoing feelings of discontent with the team to which Ms. Jung belonged and exhibited particularly aggressive behavior towards Ms. Jung, which indicates that the actions were not spontaneous. Considering these factors, it can be concluded that the superior's conduct, although possibly related to work necessity, exceeded the appropriate scope of work and was carried out to an excessive degree, thus causing Ms. Jung significant mental distress. Consequently, this behavior can be deemed workplace

harassment and a basis for disciplinary action.

However, concerning the action in which Ms. Lee criticized Ms. Jung for a warehouse designation mistake in the fall of 2022 during a Teams call when Ms. Lee is alleged to have stated, "Have you never lived in society? Have you not learned anything all this time? Do you not have common sense?" There was insufficient concrete evidence or witnesses to confirm these statements, making it difficult to establish it as a basis for disciplinary action.

As for the action on May 15, 2023, when the accused called Ms. Jung to her office and criticized her for not following "workplace etiquette," it is confirmed that there were remarks made by both the accuser and the accused regarding greeting each other. The reprimand extended for a lengthy period of time regarding workplace etiquette, which has no direct relevance to work performance. This can be considered workplace harassment.

Based on the internal investigation report, it is confirmed that the accused repeatedly used offensive language such as profanity, such as "fuck(씨발!)," towards colleagues during phone calls, as stated by Ms. Jung and other witnesses. This occurred in the presence of several colleagues in a shared office space. Such verbal abuse created a hostile work environment and violated the dignity and integrity of fellow employees, even if it was uttered in private. This can be considered workplace harassment.

Assuming that the facts uncovered in the investigation are based on objective evidence, the actions of the accused, including verbal harassment, extended reprimands, and the use of derogatory language, disrupted the company's harmony and order and therefore largely fall within the grounds for disciplinary action.

#### **IV. Evaluation of Disciplinary Measures and Decision of the Disciplinary Committee**

##### **1. Legal Standards for Disciplinary Measures and Review of Opinions on this Case**

The determination of what disciplinary action should be taken against an employee subject to disciplinary measures is at the discretion of the disciplinary authority. However, disciplinary action taken by the disciplinary authority is considered unlawful when it is recognized as an abuse of discretion, significantly deviating from societal norms.<sup>4</sup> In the event of termination as a disciplinary measure, it is considered legitimate only when there are reasons for which the

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<sup>4</sup> Supreme Court ruling on Nov. 26, 1999: 98du6951.

employee can be held responsible to an extent that continuing the employment relationship would be impractical in the eyes of society. This should be determined by comprehensively reviewing various factors, including the purpose and nature of the employer's business, workplace conditions, the employee's position and job responsibilities, the motivation and circumstances of the misconduct, its impact on the corporate order, past work attitudes, and other relevant circumstances.<sup>5</sup>

Therefore, the employee subject to disciplinary measures can be subject to a significant disciplinary action if: ① repeated misconduct is perceived to be ongoing over a substantial period, and ② there is persistent use of verbal abuse beyond the scope of normal work duties, which is related to personal conflicts with the alleged victim. However, considering the employee's clean disciplinary record and the presumed situation of interdepartmental conflict and work overload, imposing significant disciplinary measures is not advisable. Given the recurring and persistent nature, if the person subject to disciplinary action were to be found to have committed similar incidents of workplace harassment in the future, termination as a disciplinary measure could be considered.

## **2. Decision of the Disciplinary Committee**

In October 2023, a disciplinary committee was convened to address the workplace harassment involving the perpetrator, Team Leader Lee, within the organization. The disciplinary committee was chaired by this labor attorney, and its members included the branch manager and a labor representative from the labor-management council. The head of the HR department explained the disciplinary issues to Ms. Lee and provided her with an opportunity to present her side of the story.

During this process, Ms. Lee stated that she had provided guidance and training to subordinates regarding proper work methods as part of her commitment to achieving perfection in the performance of her duties. She denied engaging in workplace harassment and did not display any signs of remorse. In response, the chairman of the disciplinary committee emphasized that assessments of workplace harassment should be made from the perspective of the victim. If a third party experienced the same behavior from the victim's standpoint, the actions would likely be perceived as going beyond the reasonable scope of work and thus constitute harassment.

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<sup>5</sup> Supreme Court ruling Nov. 10, 1998: 97nu18189.

The disciplinary committee chairman recommended a 1-month unpaid suspension due to Ms. Lee's lack of remorse and the high likelihood of a recurrence of such behavior. However, the branch manager explained that Ms. Lee's actions stemmed from her desire to achieve perfection in the company's workflow, although recognizing that there was ample room for improvement. The branch manager proposed a 3-month salary reduction as a disciplinary measure. The other disciplinary committee member was in agreement, ultimately confirming a 3-month salary reduction as the determined disciplinary action.

## **V. Conclusion**

The workplace is one of the foundations in an individual's life, and is where most people spend a significant portion of their day. Employees seek happiness and personal fulfillment through their work, making it a vital space for their well-being. As such, employees hope for workplaces where they are treated with respect and dignity, fostering an environment of mutual respect. However, it's not uncommon for superiors, especially in the pursuit of excessive work demands, to prioritize tasks over the well-being of their subordinates. They might unintentionally issue excessive work directives or treat subordinates in an inhumane manner. The cases described earlier represent forms of workplace harassment that can frequently be found in workplace culture. Employers must put in their best efforts to create a workplace culture that values and respects the dignity of all employees. In cases where workplace harassment occurs, thorough investigations are essential. Employers should provide protection and support for the victims while also imposing appropriate consequences on the perpetrators to establish a desirable workplace environment.