Noise-induced Hearing Loss Recognized as an Industrial Accident

I. Introduction

I recently took on a case involving noise-induced hearing loss suffered by a civil servant. Although his application to have it recognized as work-related was initially rejected, upon request for a review of the decision, it was accepted. Noise-induced hearing loss is not well recognized as a work-related accident (industrial accident), as the requirements for such recognition are difficult to meet: for permanent recognition of hearing loss being work-related, the employee must have had significant exposure to high-pitched noises (at least 85 decibels) at the workplace for at least 3 years, with the hearing impairment a minimum of 40 decibels (dB) for both the left and right ear. Symptoms like this do not appear immediately after working at the first high-pitched workplace, but occur often after 10 to 20 years, so it is not easy to have such hearing loss recognized as an industrial accident, as it can be relegated easily to simply the result of age. However, recent precedents have relaxed the criteria for determining that noise-induced hearing loss is work-related and recognition of it as an industrial accident is becoming more common.[1)]
According to Rep. Park Nam-chun's 2017 state audit press release,[2)] "The Public Pension Agency does not recognize noise-induced hearing loss, which is the number one condition for firefighters as a result of their occupation. In the last 10 years (2007~2017), only 2 of the 9 firefighters who applied had their hearing loss accepted as workplace-related. Even for these two, the noise-induced hearing loss was recognized only because four explosives detonated simultaneously during training in 2008 and they were taken away in an ambulance. On the other hand, firefighters who have been continuously exposed to sirens and the noise of firefighting equipment while engaged in first aid, rescue, and firefighting were determined to be daydreaming about noise-induced hearing loss." Fortunately, however, the situation has been changing.[3)]

Thanks to these relaxed standards for recognizing noise-induced hearing loss, the Public Pension Agency seems to have had its rejection revoked upon review with the Civil Service Accident Compensation Committee. The main items related to the reexamination and the standards for recognizing noise-induced hearing loss as an occupational injury will be reviewed herein.

II. Noise-induced Hearing Loss of a Maritime Police Officer

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1) Park, Jeong-rae, "A plan to improve the criteria for recognizing noise-induced hearing loss as an occupational injury," Monthly Occupational Health, vol. 387, July 2020.
2) Press release, National Assembly Audit by Rep. Park Nam-chun (Oct. 16, 2017).
3) Gwangju District Court ruling on Mar. 27, 2019: 2017noo1966.

1. Summary of the case

An executive (employee) belonging to the Korea Coast Guard applied to the Public Pension Agency for recognition of his noise-induced hearing loss as an occupational injury when he retired in January 2021, but was rejected. The reason for the rejection was because he was unable to prove a significant causal relationship between the condition and the work because he had been working in an office job without significant noise for the past 17 years. He had, however, worked for 13 years (between 1984 and 2004) in the machinery room of a marine patrol boat, and had not worn any ear protection, where he suffered partial loss of his hearing. Accordingly, this labor attorney received the statements of six colleagues who had worked together with him before 2004, and filed a request for review with related shipboard work data and similar judgments. The Committee then reversed the initial rejection.

2. Details of the request to the Committee for review[4)]

The employee was hired in 1985 and retired in 2020. We divide this career into four stages.

Stage 1: Initial damage to hearing (1985~2004)

The employee was hired in 1985 and served with the Coast Guard until 2004. Of this 19-year period, he spent 13 years and 5 months working in ships. As an engineer in charge of the engine room, his main task was to ensure the engine of the patrol boat was performing for its tasks at all times. When seeking to identify why the engine might be acting up, the safety rules required the use of a stethoscope, but in reality at the time, identification was done with only a screwdriver. The average noise level of the machine room was 110 dB—a level that is accepted as likely damaging to hearing.

Stage 2: Onset of hearing impairment symptoms (2005~2013)

When the employee was about to be promoted from lieutenant to superintendent, preparations for the related exams and interviews for promotion precluded finding the time to even think about treating symptoms for anything, including loss of hearing.

Stage 3: Progression of hearing loss (2014 ~ 2018)

The Sewol Ferry incident, a national disaster, occurred not long after the employee was appointed head of the information department at the main office in January 2014. On April 17, 2014, the day after the Sewol ferry disaster occurred, he went down to Paengmok port as he was in charge of reporting information to the person in charge of handling the accident. In the process, he was subjected to violence, vandalism, and threats from bereaved family members, returning to the office only after 49 days. The employee was under particular stress as the Korea Coast Guard was in the process of dissolution, and he was constantly stressed by prosecutorial investigations related to its handling of the Sewol ferry

4) Jung, BongSoo, "Request for review submitted to the Civil Service Accident Compensation and Pension Commission," Aug. 20, 2021.

sinking and hearings and investigations, etc. from the National Assembly. Accordingly, his health deteriorated significantly.

Stage 4: Confirmation of hearing loss (2018 ~ 2020)

In July 2018, the employee felt great inconvenience in his daily life due to his hearing loss, and went for a checkup at the Police General Hospital. A hearing test confirmed a 46.25 dB loss of hearing (moderate hearing loss) on the left side and a 31.25 dB loss (mild hearing loss) on the right. To reconfirm, in October 2018, he had another hearing test at Seoul Samsung Hospital. Sensory nerve deafness was measured at 48 dB (moderate hearing loss) on the left and 41 dB (mild hearing loss) on the right. Prolonged exposure to loud noise was considered to be the cause. To reconfirm the diagnosis from Samsung Hospital, in December 2020, he went for another test at Gangneung Asan Hospital. While there, the employee was diagnosed with moderate (45 dB) sensory nerve deafness on the left and mild (30.8 dB) on the right. According to the doctor, it was a mix of noise-induced hearing loss from a history of noise exposure and age-related hearing loss, so hearing rehabilitation and use of a hearing aid would be necessary.

3. Details of reversal by the Committee[5)]

(1) Confirmation of facts

Combining the experience of working in the engine room of a ship, the period of exposure to noise on patrol boats, noise measurements, and the doctor's note, the following facts can be considered: First, the employee worked in the engine room for 13 years and 5 months. As confirmed by the statements of colleagues, without hearing protection such as earplugs, they were exposed to engine noise while working and impact noise from firearms during training. Second, according to the ship noise research report, the noise in the engine room of the ship was an average of 110 dB, far exceeding the 85 dB likely to cause hearing loss. Third, two medical institutions diagnosed him with “sensory nerve deafness,” caused by past noise exposure.

(2) New decision by the Committee

“According to Article 4 (1) of the Civil Service Accident Compensation Act, an occupational illness/injury is a condition that occurs in connection with the performance of official duties and is defined as having a significant causal relationship with public service. Looking at the record of one case submitted to this committee at the time of the original disposition and request for examination, along with the employee's claim, the employee worked in the engine room inside patrol boats. It is claimed that the hearing loss was caused and aggravated by the occupation. Accordingly, if we comprehensively review the employee's medical history, medical certificate, and medical record, the employee's history of exposure to noise can be recognized. The results of the hearing test show that the right

5) Decision of the Civil Service Accident Compensation and Pension Committee, Feb. 11, 2022, 22-01-433.

side does not fall within the noise-induced hearing loss range, but the left side is a medical opinion that noise-induced hearing loss can be recognized. If so, the rejection of official medical care given to the employee for his left side hearing on May 24, 2021 is cancelled."

4. Implications

When looking at the history behind recognition of the noise-induced hearing loss as workplace-related, the following two things are important. First, the fact-checking and obtaining of statements from six co-workers. These statements expressed that the machinery room in the Coast Guard craft generated 85 decibels or higher in noise, that during training they were constantly exposed to the high-pitched noise of gunfire or explosions, and worked without earplugs. Second, the employee was diagnosed with noise-induced hearing loss only in 2020—16 years after his field service in a patrol boat ended in 2004, after which he began working in an office without high noise levels. The related statute of limitations also begins when a person is confirmed as having a permanent disability at a hospital within the healing time stipulated in Article 5 of the Industrial Accident Compensation Insurance Act rather than three years from the time of leaving the noisy workplace.[6)]

III. Criteria for Recognizing Hearing Loss as an Industrial Accident

1. The concept of noise-induced hearing loss

Noise-induced hearing loss refers to sensory nerve deafness caused by high-intensity noise that damages the sound-sensing organ, the cochlea. Noise below 75 dB usually does not result in hearing loss, but continuous exposure above 85 dB may. Hearing loss is a risk when a person is exposed for 15 minutes to 100 dB or more without hearing protection and 1 minute or more at 110 dB regularly.[7)]

2. Relevant laws

In Article 37 of the Industrial Accident Compensation Insurance Act, "occupational accident" refers to a worker's injury or illness with a significant causal relationship to the workplace. The causal relationship must be proven by the party making the claim. However, a causal relationship does not necessarily have to be clearly proven medically or scientifically, and when one between work and illness or injury is recognized in consideration of a variety of circumstances, it must be considered that evidence exists.[8)] In judging whether an illness or injury is related to one's public service, the presence or

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6) Supreme Court ruling on Sep. 4, 2014: 2014du7374, which provided the precedent for the previous Korean Labor Welfare Agency regulation, "Standards for handling noise-induced hearing loss" (Jan. 14, 2016).
7) Korean Society of Audiology (www.audiosoc.or.kr)
8) Supreme Court ruling on Jun, 11, 2015: 2011doo32898.

absence of a causal relationship should be judged based on the health and physical condition of the specific employee, not the average.[9)]

According to Paragraph 7 of Article 34 [Attached Table 3] of the Enforcement Decree to the Industrial Accident Compensation Insurance Act, for hearing loss to be considered noise-induced, exposure to continuous sounds of 85 decibels or more for at least 3 years must have occurred, and the resulting hearing loss in one ear must be 40 decibels or more. In addition, all of the following requirements must be satisfied: 1) There should be no obvious damage to the eardrum or middle ear or change due to other causes; 2) As a result of a pure tone hearing test, there should be no clear difference between the airway hearing threshold and the bone conduction hearing threshold, while the hearing impairment should be greater in the high range than in the low range; 3) The hearing loss shall not be attributable to otitis media, drug addiction, febrile disease, Meniere's syndrome, syphilis, head trauma, sudden hearing loss, hereditary hearing loss, genetic hearing loss, age, or catastrophic explosions.

In recent court rulings, when both work-related and non-work-related factors are involved, recognition as an occupational injury tends to be given if the hearing loss caused by non-work-related factors (age, etc.) is accelerated by the exposure to noise. Therefore, even if the hearing loss is due to a mixture of work and non-work causes, it can be recognized as an occupational injury if the noise exposure level meets the criteria for recognition of occupational injury and not hearing loss due to obvious non-operational causes. In addition, even if the hearing loss in one ear is less than 40 dB, or the noise exposure was not for at least 3 years at 85 dB or more, if there is a causal relationship to noise-induced hearing loss, it is recognized as an occupational injury. However, if the hearing loss in both ears is less than 40 dB or the noise exposure level is less than 80 dB during the noise exposure period, occupational injury is not recognized.[10)]

3. Recent court judgments

(1) Noise-induced hearing loss claimed 25 years after leaving the workplace and 8 years after retirement[11)]

The plaintiff retired on August 21, 2008 after serving as a civil servant for the Korea Coast Guard. It was not until August 2016 (when the plaintiff was 66 years old), or about 25 years since the plaintiff finished working in a maritime patrol boat on January 1, 1991, that he was diagnosed with hearing loss, and that it was caused by the natural progression of aging. It is difficult to deny that work influenced the hearing loss. However, while the plaintiff was continuously exposed to a significant level of noise while working on a maritime patrol boat, noise-induced hearing loss occurred, which

9) Supreme Court ruling on Apr. 24, 2014: 2014doo250.

10) Industrial Accident Compensation Bureau, Labor Welfare Corporation, "Improvement of standards for handling noise-induced hearing loss," Feb. 2020, pp 4-5.

11) Seoul Administrative Court ruling on Sep. 19, 2918: 2017goodan22308.

exacerbated the natural hearing loss from aging. Therefore, it can be said that the plaintiff's official duties had a significant causal relationship to the personal injury in this case.

(2) Noise-induced hearing loss claimed 23 years after retirement from a noisy workplace[12)]

The plaintiff operated an excavator in Mine A from October 19, 1980 to February 28, 1986 (about 5 years and 4 months). He was first diagnosed with sensory nerve deafness in 2009 (at age 72), 23 years after his retirement. Regarding the claim that "hearing loss in both ears occurred due to continuous exposure to noise while working in the mine," the lower court stated that it was ruling against the plaintiff, citing that his situation was similar to the average degree of hearing loss over the age of 70 for those who had never been exposed to noise but showed symptoms of hearing loss. However, the court of appeal pointed out that the coal mine where the plaintiff had been engaged in excavation work was a workplace where workers were exposed to continuous noise levels of 85 dB or more for 3 years or more. The court ruled that the plaintiff's sensorineural hearing loss was caused by noise from working in the coal mine for a considerable period of time, and the natural age-related hearing loss had been exacerbated by the noise. It then overturned the lower court's rejection of disability benefits.

Ⅵ. Conclusion

Hearing loss after retirement has generally been deemed by the courts as related to aging, since it appears long after the employee has left the noisy workplace, making it difficult to recognize it as an occupational injury. Recently, however, even if the hearing loss aggravates the occurrence or progression of age-related hearing loss, it can be recognized as an industrial accident, expanding the scope of compensation for workers afflicted by such loss. This is a desirable direction, but also reinforces the need for employers to take preemptive action to protect workers at workplaces with a noise level of 85 dB or higher. Industrial accidents not only cause financial damage to the company, but employers too may be punished if they fail to meet their safety obligations in the future.

12) Seoul High Court ruling on Mar. 6, 2018: 2017noo81733.

Application of the Vacation Savings Account System under Current Law

I. Introduction

While providing legal advisory services on labor law, I have been asked which is the better working condition: monetary compensation or guaranteed vacation for annual leave. I always explain that the use of vacation is better than monetary compensation, as the purpose for annual leave is to protect employee mental and physical health through rest, not to simply give employees more money. Even in the ILO (International Labour Organization) Paid Leave Convention (Article 132), guaranteed annual leave is the basic principle, and monetary compensation is allowed only upon resignation, etc. Korea's revised Labor Standards Act (LSA) of 2003 introduced that leave could be given in lieu of paying wages for overtime, holiday work, and night work, upon written agreement with the workers' representative. The Government Employee Service Regulations also introduced in 2015 that a certain number of unused annual leave days for which annual leave compensation is granted can be carried over to the year following their accumulation and used then.[13)]

In line with this trend, a bill to expand and reorganize the compensation leave system under the Labor Standards Act into a vacation savings account system for working hours was submitted in 2016.[14)] This bill supplements the current 'compensatory leave system' to allow workers to accumulate time equivalent to paid leave in addition to extended, night and holiday work and use it as leave if necessary, or supplement it with work after using the leave first. Unlike the existing compensatory leave system, this bill would see vacation used first and then repaying that vacation time with extended, holiday and night work, like paying off a credit card bill.[15)] Difficulties are expected in getting such a bill passed, as it may take on the form of a flexible working system. I would like to explain the way to convert, under the existing Labor Standards Act, the compensatory leave system for extended, night, and holiday work to the vacation savings account system for annual leave being carried over to the following year.

II. The Compensatory Leave System and the Vacation Savings Account System for Working Hours under Current Law

1. The compensatory leave system under current law

13) Article 16-3 of the National Government Employee Service Regulations (Banking Up Annual Leave)

14) Kim, Ki-seon, "Introduction of the Compensatory Leave System for Working Hours," Journal of Law No. 37, Hanyang University Law Research Institute, 2020, p. 128.

15) Kim, Seong-tae (Nat'l Assembly rep.—Liberty Korea Party), A Bill Proposed on Partial Amendment to the Labor Standards Act, May 30, 2016, Bill No.: 2000028.

The compensatory leave system is introduced only upon written agreement with the workers' representative, and involves vacation being granted in lieu of the wages that normally must be paid for overtime work, night work, and holiday work. The specifics of implementation must also be agreed upon in writing with the employee representative, and can be decided freely by labor and management within the scope of the existing Labor Standards Act.[16] The details of the written agreement with the workers' representative should include ① the scope of eligible workers, ② the scope of compensatory working hours, ③ the settlement period, and ④ how compensatory leave is to be used.

(1) Scope of eligible workers: The system can apply uniformly to all workers or only to specific workers.
(2) Scope of compensatory working hours: Overtime, holiday, and night work shall be subject to the system. What needs to be decided is whether or not any additional wage will be paid for the working hours subject to the compensatory leave system.
(3) Settlement period: This is where the length of time for which compensatory leave can be banked, which shall be no more than three years, in consideration of the extinctive prescription for wages.
(4) How compensatory leave is to be used: Does accumulated compensatory leave have to be used at once or is it divisible? In addition, measures necessary for the company to guarantee long-term leave need to be described, as do details on monetary compensation for the compensatory leave not used during the settlement period.

2. Vacation savings account for working hours

In order for a workplace to change the compensatory leave system to a vacation savings account system for working hours, the accumulated vacation savings must be used within the framework of current law on the premise of a labor-management agreement. The most problematic areas are deciding how long additional wages can be saved and the company's long-term vacation guarantee policy. Current law requires a settlement period be decided for vacation and monetary compensation for unused vacation. The Ministry of Employment and Labor (MOEL) considers the saving and use of overtime, holiday work and night work hours positively, and considers it legal for an employer to allow employees to use all the compensatory leave gained for working overtime, nights and holidays during a one-year period, the following year. If it is not used the following year, a written agreement must already be in place with the workers' representative that employees are to be financially compensated for the unused portion on the first regular wage payment date of the year following the year during which the leave was to be used.[17] Otherwise, the employer must ensure that the compensatory leave accumulated in lieu of overtime, holiday and night work

16) Kim, Ki-seon, "Introduction of the Vacation Savings Account System for Working Hours," Monthly Labor Review, June 2018, p. 24.
17) Ministry of Employment and Labor Guidelines on Sept. 23, 2019: Retirement Welfare Dept.-4046.

performed by an employee in a specific year can be properly used up to three years after it is gained. In consideration of the extinctive prescription for wage claims, employees must be compensated for leave that has not been used within 3 years, even if leave has not been used due to reasons attributable to the employee.[18] Even if labor and management agree that the employer is not obligated to pay wages for any compensatory leave not used by the employee for causes not attributable to the employer within the settlement period for compensatory leave, such agreement has no effect.[19]

III. Annual Leave and the Vacation Savings Account System under Current Law

1. Annual paid leave system under current law

The purpose of the annual paid leave system is to guarantee sufficient leave to workers to help them recharge in the interest of protecting their mental and physical health, while at the same time guaranteeing social and cultural opportunities for workers.[20] ILO Convention No. 132 requires that two weeks of undivided annual leave be secured for each worker. The use of consecutive annual leave is guaranteed in Korea, for civil servants as well. In addition, if an application is made at least three months in advance for the use of consecutive annual leave of more than 10 days, the head of an administrative agency must approve it unless there are special circumstances dictating otherwise.[21]

Under the annual paid leave system, workers with less than 1 year of employment receive 1 paid leave day every month, while workers with at least 1 year of employment receive 15 paid leave days if they attend 80% or more of their work days in 1 year. In addition, one accrued leave day is granted for every 2 years of continuous work, to a maximum of 25 leave days a year. If the vacation is not used within one year after it accrues, it is extinguished and converted into a right to claim monetary compensation (Article 60 of the Labor Standards Act, or LSA).

A system to promote the use of annual paid leave (Article 61 of the LSA) has been introduced so that all leave can be used within one year of the annual leave accruing. Promoting the use of annual paid leave in this way is designed to highlight that the purpose for annual leave is to help maintain employee mental and physical health, and that additional financial compensation is not preferable. Employees shall notify their employers of their vacation plans 6 months prior to the period in which the annual leave can be used and use it. Employers can designate the time of leave for any unused leave for which two months or less remains before expiry. The employee would then have to use his/her unused

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18) Ministry of Employment and Labor Guidelines on Feb. 20, 2020: Wage & Working Hours Dept.-376.

19) Ministry of Employment and Labor Guidelines on Dec. 10, 2004: Labor Standards Dept.-6641.

20) Kim, Hong-Young, "Theory on Improving the System of Annual Leave for Guaranteed Rest," Labor Law Study, 1st half of 2016, No. 40, Seoul National University Labor Law Research Society, p. 165.

21) Article 16-4 of the National Government Employee Service Regulations (Guaranteed use of at least 10 consecutive annual leave days).

leave within that period. If the employee still does not use the leave despite these employer measures, the unused leave expires.

2. The vacation savings account system for annual leave

The current period for use of annual paid leave is one year, after which it is converted into monetary compensation. The vacation savings account system would allow unused annual leave to be carried over to the following year. In this regard, the MOEL provides guidelines that allow the use of unused annual leave during the following year. It would be a violation of the law to pay vacation allowance before the right to claim annual paid leave expires, as it would be to fail to grant the earned vacation leave. However, it is legal for two parties (employer and employee) to agree to carry over any unused annual leave instead of converting it to monetary compensation.[22] In addition, the Labor Standards Act stipulates that unused annual leave will expire if the employee comes to work on a designated vacation day and provides work. However, even if an employer has taken measures to promote the use of annual leave, the court holds that the employer has an obligation to compensate for unused annual paid leave if the employer has received the worker's labor provision without any objection related to the unused annual paid leave.[23]

Therefore, according to administrative interpretations and judicial rulings, the vacation savings account system for annual leave is sufficiently possible even under current law. However, in its implementation, individual consent by the employee is required, not a written agreement with the workers' representative. Carried-over unused annual leave is equivalent to an individual worker’s wage claim, so the consent of the individual worker is required. At the end of the period of use of annual leave, the annual leave can be converted into wage bonds, which can be accumulated for 3 years and used as long-term leave.

A method that should be taken into consideration when introducing this system is the vacation savings account system for civil servants. In addition to the recommended number of annual leave days, unused annual leave can be deposited in a “savings account” for up to three years, allowing for long-term vacations. For example, civil servants who have been employed for 6 years or more receive 21 days of annual vacation. If they take the recommended minimum of 10 days as vacation, and then save 11 days a year for 3 years, depositing a total of 33 days over those 3 years, they can go on vacation for more than a month at a time.[24] Because of this attractive outcome, this vacation savings account system has been expanded from government organizations to public institutions and is in wide use.

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22) Ministry of Employment and Labor Guidelines on Feb. 20, 2009: Labor Condition Dept.-1047.
23) Supreme Court ruling on Feb. 27, 2020: 2019da279283.
24) Hwang, Soo-yeon, "Civil servants can take more than a month’s leave due to ‘annual leave savings,’" Joongang Ilbo, Sept. 30, 2015.

IV. Applications

1. Introducing a vacation savings account system for working hours

In accordance with Article 57 (Compensatory Leave System) of the Labor Standards Act, the vacation savings account system for working hours can be introduced through a written agreement between labor and management, with the application as follows.

<Sample Labor-Management Agreement to Introduce a Vacation Savings Account System for Working Hours>

Representative Director 000 of AA Co., Ltd. and Worker Representative 000 of AA Co., Ltd. agree to implement the compensatory leave system pursuant to Article 57 of the Labor Standards Act as follows.

1. Scope of eligible workers: All regular employees of the company are covered.
2. Scope of compensatory working hours: Overtime work that exceeds contractual working hours, or holiday work in which work is provided on a statutory holiday or contractual holiday. However, this does not include night work allowances for field workers.
3. Settlement period: The settlement period is from January 1 to December 31, while the period for use of the leave days to be within one year of the year following the date the leave is accumulated. Leave that remains unused after this settlement period shall be converted to financial compensation for the employee by the first month after the end of the settlement period.
4. How compensator leave is to be used: The company guarantees 10 days of summer vacation for workers to ensure a lengthy time away from work. If a request is to be made for other long-term leave, it must be made at least 3 months in advance. In return, the company guarantees the timing of the requested leave unless special circumstances exist otherwise.

April 1, 2022

AA Co., Ltd. CEO 000 / AA Co., Ltd. employee representative 000

2. The vacation savings account system for annual leave and the long-term annual leave guarantee regulations introduced by public institutions

<Introduction through the Rules of Employment>

Article 21 (Banking up annual leave) ① Employees may save a portion of their unused annual leave for later use, for up to three years as of the last day of the year it was accumulated.

② Any banked up annual leave shall expire if it is not used within two years after the three-year period in paragraph (1).

③ Annual leave allowance shall not be paid for annual leave saved pursuant to paragraph (1) and annual leave that has expired pursuant to paragraph (2).

④ In addition to the matters stipulated in Paragraphs 1 through 3, matters concerning the procedure for saving up and using annual leave, etc. shall be determined by the company president.

Article 22 (Guaranteed Use of Annual Leave of at least 10 Consecutive Days) If an employee applies for annual leave for 10 or more consecutive days 3 months in advance and shall use the

banked up annual leave under Article 21, it shall be approved if doing so will not unduly impede the employee's performance of his or her duties. In this case, the company shall make the necessary efforts to ensure smooth operation and free use of annual leave, such as by designating a business agent to handle the employee's work during his or her use of the annual leave.

② In addition to the matters stipulated in Paragraph 1, the president shall determine any other matters necessary in regards to the application procedure for the use of annual leave for 10 consecutive days or more.

V. Conclusion

The ILO's Paid Leave Convention (No. 132) also stipulates that 3 weeks of leave must be guaranteed for a one-year working period, and that at least 2 consecutive weeks must be allowed to be used as leave (Articles 3 and 8). Through long-term leave used in return for work, workers can better maintain their mental and physical health and their dignity as human beings through social and cultural activities. Therefore, it is necessary to recognize that guaranteeing long-term leave is more desirable for workers than monetary compensation in lieu of leave. In addition, guaranteeing long-term leave is virtually impossible unless it is systematically implemented through a company's collective leave policy or introducing the employer's obligation to make such a guarantee through the rules of employment. Therefore, a long-term leave guarantee policy is very much needed, along with a vacation savings account system for working hours and annual paid leave.

A Workplace Harassment Case and the Responsibilities of the Employer

I. Introduction

The Workplace Harassment Prevention Act was introduced in January 2009 as a revision to the Labor Standards Act. At that time the purpose of the legislation was to prevent workplace harassment and to suggest voluntary measures to prevent recurrence by rationally handling harassment incidents within the company. The definition of workplace harassment and the employer's obligations to deal with it were stipulated through the introduction of Chapter 76-2 of the Labor Standards Act. In Article 93 of the Labor Standards Act "⑪ Matters concerning the prevention of workplace harassment and measures to be taken in case of occurrence" were introduced as essential items in the rules of employment. There was a penalty provision only for cases where the employer disadvantageously treated a worker or victim who reported the fact of harassment. After

examining the effectiveness of prevention of workplace harassment for the previous two years, this law was found to be not effective, as the procedures and methods of dealing with workplace harassment were left entirely to the discretion of the employer.[25)]

In order to correct this, in April 2021, the Workplace Harassment Prevention Act was reinforced with provisions to punish employers who violate their duty to take measures when workplace harassment occurs. A new regulation was established to impose a fine of up to 10 million won in cases where an employer or relative family member is a perpetrator of workplace harassment (Article 116 of the LSA). In particular, Article 76-3 of the Labor Standards Act specifically describes the employer's obligations in case of harassment, with provisions for fines in cases of non-compliance. In an instance of workplace harassment, ① there must be objective investigation to confirm the facts, ② protective measures on behalf of the victim must be established if the issue is recognized as harassment, ③ necessary disciplinary measures against offenders must be taken, and ④ there is a prohibition of adverse treatment to prevent secondary damage, along with an obligation to maintain confidentiality. Practical measures for these steps are suggested. With these standards in mind, I would like to review the judgment of a harassment case as it applies to the legal responsibility of the employer.

<Obligation of employer to take action for workplace harassment (Article 76-3 of the LSA)>

Contents	Penalty
1: Anyone can report if anyone becomes aware of workplace harassment	None
2: When an employer receives a report or recognizes that workplace harassment has occurred, an objective investigation must be conducted without delay to confirm the facts. A fine of not more than 5 million won for non-compliance.	Not more than 5mil. KRW
3: The employer shall take appropriate measures to protect the victim or the alleged victim during the investigation period.	None
4: When workplace harassment is confirmed, the employer shall take appropriate measures upon the request of the victim.	Not more than 5mil. KRW
5: When it is confirmed that workplace harassment has occurred, the employer must take necessary measures against the offender without delay. In this case, the opinion of the injured worker must be heard before taking any measures such as disciplinary action.	Not more than 5mil. KRW
6: Article 6: Employers shall not dismiss or otherwise adversely treat workers or victims who report workplace harassment.	Imprisonment for less than 3 years or up to 30mil. KRW
7: A person who has investigated the occurrence of workplace harassment, a person who has received a report on the investigation, and any other person who has participated in the investigation process shall not divulge the information learned during the investigation process to others against the will of the victim.	Not more than 5mil. KRW

25) Lee Sang-gon, "A Study on Improvements to the Workplace Harassment Law", Ajou Graduate School Ph.D. thesis, August 2020. Page 116.

II. An Example of Punishment of the Employer for Violating Workplace Harassment Measures[26)]

1. Summary

Employer A is a business owner who operates consignment restaurants on hospital premises and employs 30 full-time workers. On July 27, 2019, worker B reported to A via certified mail that she had been harassed in the workplace by superior C. According to the report, C forced B to pay for dinners from July 12 to 24, 2019 under the pretext of a declaration ceremony, and abused his work organization authority to reduce work hours so that employees who did not listen to him received less pay. The report also included incidents of swearing and use of abusive language in the course of work if superior C was not pleased. In particular, around July 24, 2019, C said to B: “You son of a bitch, and your son too!”, “Go and get crushed by a car!”, “You dirty dog!”, “Fuck you!”, etc. The premise of the report was that superior C used his position to inflict physical and mental pain or worsen the working environment for worker B, be yond the proper scope for work, such as forcing her to write a resignation letter without justifiable cause.

On July 27, 2019, when worker B reported workplace harassment and did not go to work, employer A dismissed worker B on July 29, 2019 on the grounds of absence without permission. Subsequently, employer A held a personnel committee meeting on August 27, 2019 and changed the disposition of dismissal of worker B to a reinstatement order, while the one-month period was treated as unpaid. The personnel committee listened only to the opinion of superior C regarding harassment in the workplace by superior C, and did not hear the opinions of worker B, who made the complaint. Superior C received only a written warning (reprimand) to the effect that he misunderstood the business instructions. In employer A’s opinion, the complaint was not laid because of harassment at work, but because of “communication that could be misunderstood.” On September 2, employer A ordered a workplace transfer for worker B to another cafeteria operated by the company. However, the newly-assigned restaurant was located far away, so it was impossible for worker B to commute to the workplace. Although the company was aware that worker B had a sick spouse who needed care, the company did not take this into consideration and issued an unfavorable workplace transfer order. On November 14, 2019, when the Labor Commission accepted worker B's request for remedy for unfair transfer, the company reinstated the worker to her original position.

The public prosecutor demanded a fine of 2 million won as punishment for employer A for unfavorable treatment when reporting workplace harassment pursuant to Article 76-3, Paragraph 6 of the Labor Standards Act. However, the court sentenced employer A to a heavier punishment of six months imprisonment suspended for two years, probation, and 120 hours of community service.

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26) Chungjoo District Court ruling on April 6, 2021: 2020kodan 245.

2. Judgment criteria of the court

The court's decision in this case has two points of note. First, the criteria for better working conditions were determined specifically by reflecting the particular circumstances of individual workers, not general standards. The second is that in this case, a meaningful standard is being presented via the sentence of a heavier punishment than the prosecution's original request.

First, in dealing with a workplace transfer due to protective measures against workplace harassment, this was considered from the subjective viewpoint of the worker concerned, not the standards of general workplace transfers. From an objective point of view, the employer claimed that the new workplace had better working conditions than the original cafeteria because the workload was not heavy, provided dormitory apartments, and ran the restaurant directly. However, there is a subjective position that the worker could not respond to the transfer because she could not commute from her current residence and had a family member to take care of. In addition, in Article 76-3, Paragraph 4 of the Labor Standards Act, if workplace harassment is confirmed, appropriate measures such as a change of workplace and an order for paid leave shall be taken on behalf of the victim if necessary to protect the worker. In other words, it is necessary to reflect the individual situation of the worker concerned, not the general working environment as perceived by the employer. [27)]

Second, in this case, the prosecutor requested a fine of 2 million won as punishment, but the court revised it to 6 months in prison, suspended for 2 years, probation, and 120 hours of community service. The reason for this heavier punishment is that the employer has the duty of protection or safety considerations to ensure that the life, body, and health of workers are not harmed. In the modern working environment, life, body, and health include protection from tangible and physical dangers and safety considerations, as well as protection from intangible and mental dangers. In this case, punishment was not determined based on only one unfair transfer, but the company's handling of a series of workplace harassments did not find any consideration for workers, and as a result, it was concluded that workplace harassment similar to this case may occur again. Because of this, the accused was sentenced to imprisonment, which exceeded the fine of 2 million won originally requested. However, considering inexperience as an aspect of handling a small or medium-sized business, the execution of the sentence was postponed, and probation was ordered with special rules to prevent recidivism. The sentence provided upholds the concept that social service is imposed in order to make the CEO of a company aware of the meaning of labor from the viewpoint of the worker.

3. Implications

In this case, a worker who had been bullied at the workplace filed a report for a

27) Yang, Seung-yeop, "Interpretation of Employer's Unfavorable Treatment of Victims of Workplace Harassment", Labor Law No. 79, Sep. 2021.

workplace remedy. This has significant implications as a case in which the court sentenced the employer to a prison sentence for reasons such as dismissing the victim due to her absence after she complained of workplace harassment. In particular, since this case was judged before the introduction of legal punishment regulations on the employer's obligation to take measures for the prevention of workplace harassment, it is considered that it will greatly affect the direction of the employer's handling of the newly-revised workplace harassment measures in the future.

In this case, it is contemplated that the employer's duty to consider safety in instances of workplace harassment requires safety considerations that protect not only the physical safety but also the personal rights of workers. I think this is a meaningful ruling in that the court provided a standard for judgment on the employer's obligation to comply with the amended Act on the prevention of workplace harassment.

III. Application of the Revised Workplace Harassment Prevention Act

1. Obligation of objective investigation

When a report of workplace harassment is received by or recognized by the employer, a duty of objective investigation is imposed on the employer (Article 76-3 of the LSA, Paragraph 2). This is a mandatory rule that imposes a fine for negligence when violated. The purpose here is to prevent the employer from conducting biased research.[28)]

In the above case, worker B applied for remedy to the company, saying that she had been harassed in the workplace. However, the company held a personnel committee meeting to hear only the opinion of the offender, superior C, and not the opinion of the victim, worker B. As a result, among the reprimands available, the lowest disciplinary measure was decided upon for the offender, superior C. The court recognized this as 'procedural flaws and poor fact-finding' because the personnel committee gave no one but the offender the opportunity to explain his or her opinion and there was no procedure to ensure attendance and opinion presentation for the victim or other workers who complained of harassment.

2. Obligation to take appropriate measures for victims when workplace harassment is confirmed

In the provision of fines for negligence of workplace harassment, Chapter 76-3, paragraph 4 stipulates that if it is necessary to protect the victim when workplace harassment is confirmed, for orders changing the place of work, change of job, and paid leave to the victim, etc., appropriate measures should be taken.

In the above case, employer A dismissed a victim who reported workplace harassment because of her absence without permission. A month later the personnel committee issued an

28) Ministry of Employment and Labor, March 24, 2021 press release, "Seven amendment bills including the Wage Bond Guarantee Act passed by the National Assembly plenary session"

order for reinstatement of B, but no wages were paid for the one-month dismissal period. In addition, the company issued a transfer order to B, but the workplace she was transferred to was a place where commuting was impossible. Worker B filed an unfair transfer relief application with the Labor Commission and was only able to return to her original job after receiving a disposition to cancel the transfer order from the Labor Commission.

3. Obligation to prohibit unfavorable treatment

Employers shall not dismiss or give other unfavorable treatment to workers, victims, etc. who have reported the occurrence of workplace harassment (Article 76-3 of the LSA, paragraph 6). Violation of this rule is punishable by imprisonment for not more than 3 years or a fine not exceeding 30 million won. Paragraph 6 of Article 14 of the Equal Employment Act prohibits unfavorable punishment for workers or victims who report sexual harassment in the workplace, and describes possible prohibition in detail as follows below. This also applies to workplace harassment.[29)]

1. Dismissal, removal from office, discharge or any other disadvantageous treatment corresponding to the loss of status;
2. Inappropriate personnel actions, such as disciplinary punishment, suspension from office, salary reduction, demotion, or restrictions on promotion;
3. Failure to assign duties, reassignment of duties, or any other personnel actions against the wishes of the relevant person;
4. Discrimination in performance evaluations or peer reviews, or differential payment of wages, bonuses, etc. following such discrimination;
5. Restrictions on opportunities of education and training for the development and improvement of vocational skills;
6. Engagement in any act of causing mental or physical harm, such as group bullying, assault, or verbal abuse, or neglect of an occurrence of such act;
7. Any other disadvantageous treatment against the employee who reports the occurrence of sexual harassment or the harassed employee, etc.

In the above case employer A gave a disadvantage to the worker by issuing a transfer that did not take into account the circumstances of the victim. This was unfavorable treatment to a worker who reported workplace harassment, and the court's severe punishment for this was because it violated Paragraph 6 of Article 75-3 of the Labor Standards Act.

4. Confidentiality Obligation

The Act stipulates that a person who has investigated the occurrence of workplace harassment, a person who has received a report on the investigation, and a person who has participated in any other investigation process shall not divulge the information

29) Lee, Jaehyun, "Establishment of a system for countermeasures against workplace harassment and improvement of organizational culture", Labor Law Forum, No. 34, Nov. 2021, page 239.

learned in the course of the investigation to other persons against the will of the victim, etc. (Article 76-3 of the LSA, paragraph 6). In the case of sexual harassment at work and related incidents, it was judged that the person carrying out the investigation had the obligation to compensate for non-compliance with the duty of confidentiality. This is in consideration of the fact that, if the person conducting the investigation does not comply with confidentiality, there is a high probability of secondary damage, which may lead to the victim being unable to even report sexual harassment.[30)]

IV. Conclusion

Due to the introduction of strong punishment regulations to prevent workplace harassment, effective appropriate handling is required when a report of workplace harassment occurs in a company. The precedent mentioned above is an instance in which a strict court decision was made against an employer due to inappropriate response to a workplace harassment case. In instances of workplace harassment, a fine for violating the employer's duty to take action is imposed, which reinforces a strict obligation to comply. Because of this, employers should strive to promote a happy work life by preventing workplace harassment and guaranteeing the personal rights of workers.

30) Seoul High Court ruling on December 18, 2015: 2015na2003264.

The Workplace Harassment Prevention Law and the Employer's Duty

I. Introduction

Recently workplace harassment within large corporations has become a social problem. Every day it seems that the executives of these companies are reported by the media on issues such as abusive language, assault, and inhumane treatment of their employees, but these acts which are revealed to the public are but the tip of the iceberg. According to a survey by the Korea Labor Institute,[31] 66.3% of respondents said that they had experienced direct harassment at their workplace in the past five years. Also, according to the Human Rights Commission's survey,[32] 73.3% of respondents experienced workplace harassment over the past year. The average number of harassment was 10.0 cases, the experience of personal harassment was 39.0%, and the experience of collective harassment was 5.6%. These workplace harassments have resulted in negative reactions such as consideration of resignation (66.9%), less confidence in the company and its senior officials (64.9%), a decline in work performance and concentration (64.9%), and a reluctance to relate with peers (33.3%).

The damage due to workplace harassment continues to grow and so the Workplace Harassment Prevention Law was enacted because of public demand for improvement. This Law, as it was finalized, was a considerable retreat from the original legislative initiatives. When first suggested in April 2018,[33] it included very strong articles: (1) the obligation of the employer to provide training on harassment prevention in the workplace, and (2) a victim of workplace harassment could seek remedy through the labor relations commission. These were both deleted in the final draft. Nevertheless, it is meaningful that it was introduced into the Labor Standards Act. The details are described below.

II. Content of the Workplace Harassment Prevention Law

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31) Keunjoo Kim/Kyunghee Lee, 「A Survey of Workplace Harassment and The Countermeasures」, Korean Labor Institute, December 2017.

32) Sungsoo Hong et al, 「A Survey of Workplace Harassment」, The National Human Rights Commission of Korea, November 2017.

33) Byungwon Kang and 23 other lawmakers' legislative initiative, 「A Draft of the Workplace Harassment Prevention Act」, No. 13290, April 27, 2018.

1. Amendments to the Labor Standards Act

(1) The employer's obligation to prohibit workplace harassment

Article 76-2 (Prohibition of Workplace Harassment) The employer or an employee shall not cause physical or mental suffering or deteriorate the working environment, exceeding the appropriate level of bearable limits, by taking advantage of his or her position or relationship in the workplace (hereinafter referred to as " workplace harassment").

(2) Obligations of the employer in case of an occurrence of workplace harassment

Article 76-3 (Measures in case of bullying in the workplace) ① Any employee who has been informed of the occurrence of workplace harassment can report the fact to the employer.

② The employer shall conduct an investigation to confirm the facts without delay if the employer acknowledges the occurrence of harassment in the workplace or accepts a notification under Paragraph 1 above.

③ The employer shall, when necessary for the protection of workers who have suffered damage related to workplace harassment within the period of investigation pursuant to paragraph 2 (hereinafter referred to as "victims"), implement appropriate measures such as a change of place of work, paid leave order, etc. In this case, the employer shall not take such measures against the will of the victim.

④ The employer shall take appropriate measures such as changing the place of work, job transfer, order of paid leave etc. when the victim requests it, if the fact of workplace harassment is confirmed as a result of the investigation pursuant to Paragraph 2 above.

⑤ The employer shall take all necessary measures such as disciplinary punishment, change of work place, etc. without delay when it is confirmed that workplace harassment has occurred. In this case, the employer shall consider the opinion of the victim about the proposed measures prior to taking any action, such as disciplinary action.

⑥ The employer shall not dismiss or take any other unfavorable steps against the employee who reported the occurrence of harassment in the workplace or the victim.

(3) Addition of required items listed in the Rules of Employment

Article 93 (Preparation and Filing of Rules of Employment) 11. Matters concerning prevention of and measures to handle an occurrence of workplace harassment

(4) Prohibition of disadvantaged treatment of complainant or victim

Article 109 (Penalty) The employer shall be punished by imprisonment for not more than three years or a fine of not more than KRW 30 million if found in violation of Paragraph 6 of Articles 76-3 of this Act.

2. Amendment to the Industrial Accident Compensation Insurance Act

Article 37 (1) of the IACI Act, which lists reasons for acceptance as occupational diseases, has added "illness caused by work-related mental stress, such as workplace harassment and abuse of the worker pursuant to Article 76-2 of the Labor Standards Act".

3. Amendments to the Industrial Safety and Health Act

Article 4 of the ISH Act (Government obligations) added a new item: “10. Establishment, guidance and support of measures to prevent workplace harassment pursuant to Article 76-2 of the Labor Standards Act”.

III. Explanation of Workplace Harassment

1. Definition of workplace harassment

It is meaningful that the definition of workplace harassment clearly defines the obligations of the related employer and the standard of related harassment incidents. Until this concept was established, the labor law had no legal obligation or liability for workplace harassment. Therefore, under the existing legal system, the measures that a victim who had been harassed in the workplace could take to the employer included (1) a claim for damages based on the liability of the victim for illegal acts (Article 750 of the Civil Act); 2) a suit for damages (violation of the obligation of safety considerations by labor contract) (Article 390 of the Civil Act), and (3) a complaint under Article 30 (Human Rights Violation) of the National Human Rights Commission Act. In general, it is very meaningful that the Labor Standards Act has stipulated a definition of workplace harassment in order to strengthen the obligations of employers and to protect the workers with measures to receive remedy for workplace harassment.

2. Establishment of the employer's duty for action in case of workplace harassment

In case of workplace harassment, the victim or a third party can notify the employer. An employer who has been informed of the occurrence of workplace harassment must conduct an investigation to confirm the fact. In the course of this investigation, measures should be taken to protect the victim and, if the investigation confirms the workplace harassment, disciplinary action should be taken without delay.

In the event of such workplace harassment, the rules for reporting and the processing procedures in the workplace apply equally to the sexual harassment remedy procedures under Article 14 of the Equal Employment Act. Nevertheless, the Equal Employment Act enforces a fine of up to KRW 10 million if a company does not investigate and take appropriate measures when sexual harassment occurs in the workplace, but there is no similar penalty clause in the Workplace Harassment Prohibition Law. In addition, even if the employer has sexual harassment in the workplace, there is a penalty in the Equal

Employment Act, but there is no fine in the amendment bill of the Labor Standards Law prohibiting workplace harassment if the employer becomes a perpetrator. Provided, in the same way as the Equal Employment Act, if the employer gives unfavorable treatment to employees and victims who have reported workplace harassment, the employer can be punished by imprisonment for up to three years or a fine of up to KRW 30 million.

3. The addition of 'workplace harassment' in the required items of the Rules of Employment

An employer who routinely employs 10 or more workers must fill out the 12 required items in the Rules of Employment and report them to the Minister of Employment and Labor (Article 93 of the LSA). Here is the required item added in relation to workplace harassment: "11. Matters concerning prevention and measures in case of occurrence of workplace harassment." In other words, it is stipulated in the Rules of Employment that the company has implemented measures related to workplace harassment.[34)]

4. Penalties applicable for unfavorable treatment by an employer

It is regulated as the employer's duty, in the self-governing rules, that the employer should explore preventive measures against workplace harassment and take appropriate measures. However, if disadvantageous treatment of victims is taken, the employer should and can be severely punished, similar to the Equal Employment Act. In other words, Article 110 of the Labor Standards Act stipulates "imprisonment for up to three years or a fine of not more than KRW 30 million in violation of Article 76-3 (Paragraph 6) of this Act".

5. Amendment to the Industrial Accident Compensation Insurance Act

The current Article 37 (1) of the IACI Act did not recognize occupational accidents caused by workplace harassment, but the revised law does recognize an occupational accident due to "illness caused by work-related mental stress such as workplace harassment", and so this article will provide a legal basis to occupational accidents. Diseases caused by workplace harassment were difficult to have recognized as a work-related injury by the Korea Workers' Welfare Corporation, and were accepted exceptionally only after complicated legal disputes. However, with the revised law, the Welfare Corporation has opened the way for victims to be recognized more quickly in the first work-related accident assessment stage.

6. Amendments to the Industrial Safety and Health Act

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34) Labor Ministry Guideline: "Operational Guides for the Rules of Employment", LSA Dept-1119, April 24, 2009.

Workplace harassment has an adverse effect on the mental and physical health of the workers, undermining their opportunity to work in a healthy environment. Therefore, the amendment to Article 4 of the ISH Act, to prevent illness caused by workplace harassment, imposes upon the government an obligation to act. In this regard, the Ministry of Employment and Labor has prepared 'A Practical Manual for the Prevention of Workplace Harassment and Countermeasures Against It', which will be distributed to all companies. Unfortunately, this obligation to prevent workplace harassment is defined as an obligation of the state rather than a direct obligation of the employer, so that the employer is not responsible for violations of the ISH Act.

IV. The Effect and Limitations of the Workplace Harassment Prevention Law

1. Effect of the Workplace Harassment Prevention Law

It is not easy for ordinary workers to take legal action for harassment against a workplace because such matters take a considerable amount of time and money. However, the amendment to the Labor Standards Act clarifies the concept of workplace harassment, and in particular the obligation of prohibition of workplace harassment by an employer, along with the obligation to implement relief procedures that will enable victims to receive protection and relief from workplace harassment more quickly.

2. Limitations of the Workplace Harassment Prevention Law

Although this law will contribute greatly to the improvement of the human rights of workers, there are some shortcomings.

First, there is no provision for legal sanction against an employer's workplace harassment. New amendments to the workplace harassment law do not specify penalties against the company or penalties for the offender him/herself'. In general, as workplace harassment is often the result of a high-ranking official becoming the perpetrator in a power relationship, this revision of the Labor Standards Law is insufficient.

Second, there is no legal sanction if an employer does not to take reasonable action when a complaint of workplace harassment occurs in the workplace. The revised bill stipulates that in the event of harassment within the workplace, the Act on the Equal Employment between Men and Women is the same as the obligation to implement measures related to the occurrence of sexual harassment in the workplace. However, in the case of sexual harassment in the workplace, the employer will be punished if the employer does not take reasonable measures. As the amendment to the Labor Standards Act does not require the employer to assume legal responsibility for undertaking any necessary investigation or other reasonable action in case of an occurrence of workplace harassment, it is limited in its protection of workers.

V. Conclusion

Even if there are many deficiencies, it is meaningful that the introduction of the Workplace Harassment Prevention Law stipulates the duty of the employer to prevent workplace harassment, whether within the company or between workers. Although there are no direct penalties for the employer, we expect that this new law will contribute to creating a fair and desirable workplace culture.

Criteria for Determining Whether Workplace Harassment Has Occurred

I. Introduction

The Workplace Anti-Bullying Act was enacted in January 2019 and came into effect in July of the same year. Three incidents contributed to enactment of this law. The first case is known as the “nut rage” incident involving an executive of Korean Air in 2014. Vice President Cho 00, a daughter of Korean Air’s owners, exploded in rage that her Macadamia nuts were served in a bag, not on a plate, verbally abusing the flight attendant and the chief flight attendant and forcing both to kneel and apologize to her. Ms. Cho then ordered the plane—heading for a runway at New York’s John F. Kennedy Airport to fly to Seoul—to return to the boarding gate where she ordered the chief flight attendant to get out. Then the plane departed.[35] In 2019, Korean Air was ordered by the court to pay 70 million won to former chief flight attendant Park 00, for the personnel disadvantages received as a result of the incident.[36] The second case involves a nurse who killed herself, leaving a suicide note that said, "Workplace harassment makes it difficult to work." In March 2019, the Labor Welfare Corporation's Disease Judgment Committee recognized the incident as an industrial accident caused by workplace harassment. In the third case, at the end of 2018, a video surfaced of Yang 00, chairman of WeDisk, a start-up IT company, calling in an ex-employee and brutally assaulting in the office. Yang is currently in prison for this and illegal business activities.[37]

Until recently, investigation and treatment of workplace harassment has been entirely up to companies.[38] There were only two related rules when the Workplace Anti-Bullying Act

35) Moon, Kangboon, “Is this workplace harassment?” 2020. Gadian, p. 34.
36) Seoul High Court ruling on Nov. 5, 2019.
37) Moon, Kangboon, “Is this workplace harassment?” 2020. Gadian, pp. 35-36.
38) Shin, Kwonchul, “Legal Concepts and Criteria for Determining the Occurrence of Bullying in the Workplace,” Labor Law (69), Korean Labor Law Association, Mar. 2019, p. 228.

was enacted. First, rules of employment had to include procedures for dealing with workplace harassment and for remedy. Second, employers were to be punished if they disadvantage those who report harassment in the workplace. The procedures for handling reports of bullying were entirely up to the employer, which did little to actually resolve the problem. Accordingly, in April 2021, the following five employer obligations were added in amendments to the relevant laws. Employers are now obligated to: 1) Prohibit bullying in the workplace, 2) Conduct objective investigations of reported bullying incidents in the workplace, 3) Take appropriate actions to protect alleged victims, 4) Establish and carry out disciplinary action in response to bullying in the workplace, and 5) Comply with confidentiality requirements related to harassment investigations in the workplace, with fines levied for negligence.

When determining whether bullying has occurred in the workplace, the criteria are somewhat complex given the blur between the employer's discretionary personnel rights and the employee's personal rights. I will take a look at the related details and criteria for judgement herein.

II. Factors in Determining Whether Workplace Harassment Has Occurred

1. Concept of workplace harassment

The Labor Standards Act (Article 76-2) prohibits harassment in the workplace, which is defined as "an act of inflicting physical or mental pain on other workers or worsening the working environment through an abuse of the superior position of the employer or relationships in the workplace." There are four components to workplace harassment: (i) Defined target: employer or employee, (ii) Abuse of position: Using position or work relationship against the target, (iii) Repeated actions towards the target, or assigning of tasks, unnecessary for performance of contracted work: Actions beyond the appropriate scope of work, (iv) Infringements of human rights and/or degradation of the working environment: Any action that causes physical or mental pain or worsens the working environment. All four factors above must be met for an incident to qualify as workplace harassment.

2. Explanation of the factors in harassment[39)]

(1) Defined target: Employer or employee

The Labor Standards Act (Article 2 (2)), defines an employer as someone in charge of managing the business, or a person who acts on behalf of the employer with respect to matters related to workers. Someone in charge of managing the business does not have to

39) Ministry of Employment and Labor, "Manual for Judgment and Prevention of Harassment in the Workplace," 2019, pp. 24-27.

be the business owner but is in charge of general business management, and refers to someone who represents a business externally after comprehensive delegation from the business owner for all or part of the business management. Anyone who acts on matters related to workers for the business owner is delegated authority from the business owner or the person in charge of business management and is involved in making personnel decisions, such as hiring and dismissal of those within their own realm of responsibility, and directing and supervising the workers on the job, and working conditions. It also refers to someone who can decide and execute matters related to working conditions. Relatives of the employer are included in the scope of "employer" with revision of the Labor Standards Act in 2021 (Article 116). "Employer" includes those with an advantage over other workers, such as via position or work relationship.

In the worker dispatch relationship, according to the Act on the Protection, etc., of Dispatched Workers, a bullying agent in the workplace can also include an employer who directly supervises and directs the work of a dispatched worker.

(2) Abuse of position: Using position or work relationship, etc., against the target

Harassment in the workplace mainly occurs in places where there is a strong organizational culture or authoritarian hierarchy. It occurs mainly in the form of actions by people with superior social or economic status using their power and superior status against those less socially privileged[40)]

A superior relationship refers to one in which it is likely to be difficult for those in lower positions to resist any bullying behavior. An abuse of position refers to an offender using their superiority against someone in a command-and-control relationship, or even if it is not a direct command-order relationship, it is to use the higher position or rank system. Workplace harassment does not occur unless it involves the abuse of superiority in position or relationship.

(3) Repeated actions towards the target, or assigning of tasks, unnecessary for performance of contracted work: Actions beyond the appropriate scope of work

Actions that are inappropriate and recognized as exceeding the scope of work can be classified into the following seven categories.

1) Violence and intimidation: Actions that involve direct physical force or the threat of physical force, such as directly or indirectly inflicting violence on an object.
2) Verbal behavior, such as violent, abusive language or gossip: If it is determined that gossip is spread to a third party, such as in an open place, to damage the victim's reputation, it is beyond the appropriate scope for work. In particular, continuous and

40) Lee, Soo-Yeon, "The Concept of Workplace Harassment and Judgment Criteria", Ewha Gender Law 10(2), Ewha Womans University Gender Law Research Institute, Aug. 2018, p. 119.

repetitive verbal abuse or abusive language can seriously harm the victim's personal rights and cause mental pain, so engaging in it constitutes an act beyond the appropriate scope for work.

3) Orders to perform tasks related to assistance with non-work affairs: These are orders that exceed the appropriate scope of work and beyond what is considered normally acceptable in human relations. Examples include continuous and repetitive instructions to run personal errands related to daily life.
4) Bullying and exclusion: Intentional disregard and exclusion in the process of performing work are acts that are beyond the appropriate scope of work and beyond the social norm. Examples include intentionally not providing important information related to work or excluding someone entitled to participation in the decision-making process without justifiable reason, forcing someone to move or leave the department without good reason, discriminating against someone in training, promotion, rewards, or routine benefits without good reason, etc.
5) Repetitive instructions for work unrelated to the employment contract: If instructions are given to an employee repeatedly to do work that is unrelated to that specified at the time the labor contract was signed, and if a justifiable reason is not recognized, it amounts to an act beyond the appropriate scope for work. Examples including menial tasks only when an employee was hired for specific other tasks, or giving the employee little work without justifiable reason.
6) Assigning an excessive amount of work: If the action is judged to be inappropriate, such as not allowing even the minimum amount of time physically necessary for the task, without unavoidable reasons, it is beyond the appropriate scope of work.
7) Interfering with smooth business performance: Actions that interfere with smooth business performance, such as not providing essential equipment (computers, telephones, etc.) necessary for business, or blocking access to the Internet or company intranet, are beyond social norms and inappropriate for business.

(4) Infringements of human rights and/or degradation of the working environment

This refers to actions of an employer or a worker that inflict physical or mental pain on another worker through harassment in the workplace or worsening the working environment. It can be said that the working environment has been degraded if an employer intentionally moves certain workers to work in front of the washroom, embarrassing them or creating an environment in which workers cannot perform their duties properly. Intention of the offender is not a prerequisite to determining that actions directly cause physical or mental pain or worsen the working environment.

III. Criteria for Determining Workplace Harassment

1. Conflict between the employer's right to order work and the employee's personal rights

In determining whether or not bullying has occurred in the workplace, there are cases in which the employer's right to order work and the employee's personal rights are in conflict. In labor disputes, an employer's exercise of personnel rights in a way that violates the employee's personal rights is often viewed as illegal under the Civil Act.

The employer's right to command work is one of the personnel rights, which is an authority unique to the employer and necessary to maintain and establish corporate order. The courts have ruled that employers have considerable discretion in determining the extent of personnel management necessary for business, as they are responsible for personnel.[41] In contrast, the Constitutional Court argues that the right to work includes not only the "right to a place to work" but also "the right to a reasonable environment in which to work," with the latter a basic right to protect against infringement on human dignity. It has ruled that this right includes the right to demand a healthy working environment, fair compensation for work, and guarantee of reasonable working conditions.[42]

Here, in determining the appropriate scope of work, it is necessary to determine whether the employer's right to order the work or the worker's personal rights should take precedence. In this case, it is necessary to determine whether or not it is illegal to determine certain work as falling within the appropriate scope for a job through an "evaluation of conflicting fundamental rights."[43] Of the requirements for determining whether an action constitutes workplace harassment, whether or not it departs from the appropriate scope of work needs to be determined so that conflicts over the basic rights of the employer and employee can be harmoniously resolved.[44] This is determined in the light of sound common sense and practices of the social community, and whether there is rationality or substantiality in common social concepts, etc., which shall be judged individually and in relationship to each other.[45] However, since the problem of workplace harassment arises on the premise of an imbalance of opwer and infringes on the personal rights of workers, an evaluation of conflicting fundamental rights is required from the perspective of the victim, and should focus more on the protection of personal rights.[46]

2. Criteria for determining whether workplace harassment has occurred

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41) Supreme Court ruling on July 22, 2003: 2002do7225, and many similar rulings.

42) Constitutional Court decision on Nov. 28, 2002: 2001hunba50; Constitution Court decision on Aug. 30, 2007: 2004hunma670.

43) Naver Korean dictionary: An evaluation to compare and judge the legal interests of conflicting fundamental rights.

44) Lee, Sang-Gon, "A Study on Improvement of the Law on Bullying in the Workplace," PhD Thesis, Graduate School of Ajou University, Aug 2020, pp. 163-164.

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

46) Lee, Sang-Gon, "A Study on Improvement of the Law on Bullying in the Workplace," PhD Thesis, Graduate School of Ajou University, Aug. 2020, p. 165.

The factors and criteria suggested by the court can be used to determine whether workplace harassment has occurred. This shall be decided by considering and evaluating the following collectively: "① the relationship between the offender and victim, ② the motive and intention of the act, ③ the timing, place, and situation, ④ the details of the victim's explicit or presumed reaction, ⑤ the content and extent of the act, and ⑥ the repetition or continuity of the act."[47] Simply put, it is possible for an employer to infringe on human and personal rights or worsen the employment environment with position (power relations), related work (work relations), or other actions unwanted by the receiving party that are outside the scope of the relevant work (harassment, abusive language, etc.).[48]

The employer is the exerciser of authority, while the employee has voluntarily consented to perform subordinate duties. Therefore, it is not easy to distinguish if harassment has occurred or if the employee is simply unhappy with work duties.[49] Nevertheless, if the above criteria are individually reviewed and judged comprehensively, it is believed that clarity will emerge in each individual case as to whether or not workplace harassment has occurred.

IV. Conclusion

The Workplace Anti-Bullying Act, introduced in July 2019, is a major influence on reducing the existing patriarchal authoritarian culture in the workplace and guaranteeing the personal rights of workers. Nevertheless, if resolving workplace harassment is left up to companies, there will be no effective results any time an employer deals with bullying half-heartedly. Amendment to the Workplace Anti-Bullying Act in April 2021 includes provisions to punish employers for engaging in or failing to take the appropriate action for workplace harassment, and obligate employers to conduct an objective investigation if they become aware of workplace harassment. This amendment is particularly helpful to workers. In the future, when harassment occurs in the workplace, the Ministry of Employment and Labor will thoroughly review the incident and actively intervene and punish any employers who fail to take appropriate action, which will work to drastically reduce recurrence. Actions to prevent workplace harassment and provide practical remedies when it does happen can be expected to occur at the same time.

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47) Supreme Court ruling on Feb. 10, 1998: 95da39533.
48) Kim, Elim, "Gender Equality and Law," Korea National Open University Press and Culture Center, 2013, p. 242.
49) Shin, Kwonchul, "Legal Concepts and Criteria for Determining the Occurrence of Bullying in the Workplace," p. 243.

Sexual Harassment at Work: Concept and the Judgment

"Sexual harassment at work" refers to a situation where an employer, a senior, or an employee sexually humiliates or offends another employee with sexually charged behavior or language using status at work or in relation to work, or gives disadvantages in employment on account of a failure respond positively to sexual advances or other sexual requests.

Sexual harassment can occur anywhere within or outside the company premises. If a superior takes advantage of his/her position, it counts as sexual harassment. Sexual harassment can also occur inside a vehicle during a business trip, or during a collective dinner, etc.

1. Concept

> Act on Equal Employment and Work-Family Reconciliation
> Article 2 (Definition)
> (2) "Sexual harassment at work" in this Act refers to a situation where an employer, a senior, or an employee makes another employee feel sexually humiliated or offended by using sexually charged behavior or language using their high status at work or in relation to work, or provides a disadvantage in employment on account of a rejection of a sexual gesture or other requests.

(1) Using their high status at work or in relation to work

① This applies to an employer or employee using their status at work or in connection to work, whether the situation takes place inside the workplace or in a public area.

② Although it occurs outside working hours and outside the workplace, it is sexual harassment if it is connected to work performance.

③ The concept of workplace includes a customer's office, dinner with a business partner, business partner's or customer's house, etc., if there is a connection to work.

④ Although there is no connection in regards to rank in the workplace, there is a connection with the counterpart of a customer company that the employee has to contact in connection with work.

(2) Environmental and conditional sexual harassment

1) Environmental sexual harassment

Environmental sexual harassment is where an employer, a senior, or an employee sexually humiliates or offends another employee with sexually charged behavior or language using a higher status at work or in connection to work, or creates a disadvantage in their employment.

2) Conditional sexual harassment

Conditional sexual harassment is where an employer, a senior, or an employee disadvantages another employee by using their higher status at work or in connection to work on account of rejection to sexual advances or demands.

2. Types of Sexual Harassment and Criteria for Determining its Occurrence

(1) Types of sexual harassment

1) Physical behaviors

① Physical contact like kissing, hugging from in front or behind
② Touching the body, like the breast, backside, etc.
③ Behaviors such as forcing a massage or caressing

2) Verbal behaviors

① Sying a filthy joke or speaking lustful and indecent words, including in telephone conversations
② Likening appearance to sexual things
③ Asking about sexual relationships or facts, or intentionally distributing information of a sexual nature
④ Forcing or requesting sexual relations
⑤ Forcing a woman to sit close and fill glasses at a dinner meeting, etc.

3) Visual behaviors

① Putting up or displaying lustful photos, pictures, drawings, etc., including distribution by email or fax
② Intentionally exposing or touching one's own physical parts in a sexual manner

4) Other language or behavior which makes other workers feel sexually humiliated or offended as a socially accepted notion.

(2) Criteria for determining whether an action amounts to sexual harassment

1) Concept

In evaluating sexual harassment, the victim's subjective conditions must be considered. As a socially accepted idea, how a reasonable person evaluates or copes with a situation against the particular controversial behaviors involved must also be considered in the victim's case. Accordingly, you should review whether the situation created a threatening and hostile employment environment as a result and hindered work efficiency.

2) Concrete details in evaluating what amounts to sexual harassment

① Undesired behaviors

Whether a certain behavior is considered sexual harassment shall be determined for each case after totally considering all situations and a record of the characteristics of the sexual language or behavior involved and the incident-occurring background. Of course, it is not sexual harassment when two parties want or agree to have a sexual relationship. However, it is sexual harassment when one party does not want such behavior. An undesired act shall not require repeating or recurring. A one-time sexual act can be regarded as sexual harassment.

② Victim's perspective

Evaluating whether sexual harassment has occurred at work is to determine if the situation made the victim feel sexually humiliated or offended. In this case, whether or not the offender intended to sexually harass does not matter. That is, the criteria for determining whether sexual harassment has occurred at work is important, and how the victim was affected by the sexual language or behavior.

③ No clear expression of intention required

Recognition of sexual harassment does not require that the alleged victim prove that the alleged offender intended to sexually harass. The undesired behavior in practice shall be estimated objectively in consideration of the victim's language and behavior or surrounding circumstances.

④ Whole circumstances considered during the incident

Whether sexual harassment was or was not committed shall be reviewed by considering totally the recorded events and all surrounding circumstances. All facts and circumstances related to the work environment where the sexual harassment occurred shall be organized and recorded totally and synthetically. Also, a review of the records shall be implemented from all points of view and considering all circumstances.

3) Judicial ruling[50)]

Sexual language and behaviors equating to ‘workplace sexual harassment’ in accordance with Article 2(2) of the Equal Employment Act refer to physical relations between a man and a woman or physical, linguistic and visual behaviors in relation to the male or female physical appearance. These behaviors mean that a normal and average person would feel sexually humiliated or offended if that person were in the victim employee’s situation in view of the social community’s healthy common sense and socially accepted notions. The condition in which these behaviors are considered sexual

50) Judgment of sexual harassment: Supreme Court ruling on June 14, 2007, 2005Du6461

harassment does not require intention from the offender, but shall consider the relation with the victim employee, place and situation where such behaviors happened, the counterpart's explicit and presumptive reactions and details of such behaviors, characteristics and degree of the behavior, whether such behavior was one time only or repeated, and other concrete situations. So, such behaviors should be ones during which a normal and average person in the same situation would also feel sexually humiliated or offended in an objective sense. In such cases, these behaviors should be admitted as sexual harassment that resulted in the counterparty feeling sexually humiliated and offended.

3. Employer's Duty to Prevent Sexual Harassment

(1) Prohibition against sexual harassment at work

Employers, senior workers, or workers shall not engage in sexual harassment at work (Article 12).

※ Article 39 (Fine for Negligence) ① An employer who commits an action in violation of Article 12 shall be punished by a fine for negligence of ten million won or less.

(2) Education to prevent sexual harassment at work

An employer shall implement an educational program one or more times per year to prevent sexual harassment at work and create a safe work environment for workers. Employers and employees shall be required to take education to prevent sexual harassment (Article 13 ①, ②).

The preventive program shall include the following items: ① Laws concerning sexual harassment; ② Procedures or criteria for remedy in the event of sexual harassment at work; ③ Consultation for grievances and procedures for remedy for victims of sexual harassment at work; ④ Other items necessary to prevent sexual harassment at work.

A preventive program can be implemented through employee seminars, morning meetings, conferences in consideration of the size of the business and the situation. Simply distributing or putting up educational materials cannot be deemed as implementation of preventive training.

※ Article 39 (Fine for Negligence) ③ Any employer who failed to implement the measures prescribed in Article 13(1) shall be punished by a fine for negligence of 3 million won or less.

(3) Measures to be taken when sexual harassment is reported at work

The employer shall take disciplinary action and other equivalent measures without delay upon the confirmation of sexual harassment at work (Article 14).

1) Upon receiving a report or discovering an occurrence of sexual harassment in the workplace, the employer shall immediately conduct an investigation to confirm the facts. In such cases, the employer must ensure that the worker who has reportedly suffered from sexual harassment on the job or who has claimed that sexual harassment occurred (hereinafter referred to as the "alleged employee victim etc.") does not feel sexually humiliated during the investigation process.
2) In protecting an alleged employee victim etc. during the investigation, the employer shall take appropriate measures such as changing that person's place of work or providing paid leave if necessary. In any case, the employer shall not take action that goes against the will of the alleged employee victim, etc.
3) If the investigation confirms that sexual harassment has occurred on the job against the alleged employee victim (upon confirmation, hereafter referred to as the "employee victim"), the employer shall take measures as necessary and as requested by the employee victim, such as changing the place of work, transferring, or providing the employee victim with paid leave.
4) If the investigation identifies the perpetrator of sexual harassment on the job, the employer shall immediately change the perpetrator's place of work or take other disciplinary actions. In such cases, the employer shall listen to the view of the employee victim on the disciplinary action before carrying it out.
5) Persons who investigate the report of sexual harassment on the job as prescribed in paragraph 2), who receive such a report, or who participate in the investigation process shall not divulge the confidential information they learn during the investigation against the will of the employee victim etc.: Provided, that this shall not apply to cases where they are reporting information relevant to the investigation to the employer or providing necessary information upon request from relevant institutions.

※ In violation of 1), 3), 4) and 5) above: Article 39 (Fine for Negligence) (2) An employer who commits an action in violation of Article 14(1) shall be punished by a fine for negligence of five million won or less.

6) Employers shall not take any of the disadvantageous actions listed in the following subparagraphs against an employee who reports sexual harassment or against an (alleged) employee victim etc.:
   1. Expulsion, dismissal or any disadvantageous measures corresponding to rejection of the worker's status;
   2. Unfair personnel actions such as levying penalties, suspending, reducing wages, demoting, or limiting promotion;
   3. Unfair personnel actions such as relieving of all duties or reassigning duties against the worker's will;
   4. Discriminative evaluations of achievement, peer evaluations or unfair payment of wages or bonuses based on such unfair evaluations;

5. Limiting educational or training opportunities to develop and/or improve vocational abilities;
6. Perpetrating actions such as bullying, physical or verbal abuse which inflict emotional or physical damage, or neglecting to stop the occurrence of such actions;
7. Any other disadvantageous measures against the will of the worker who reported the sexual harassment or against the employee victim etc.

※ Article 37 (Penal Provisions) (2) An employer who commits an act in violation of Article 14(6) shall be punished by imprisonment of three years or less or a penalty of 30 million won or less.

(4) Application to dispatch employees

When the provision of Article 13(1) is applied to a workplace where dispatch employees are used pursuant to the Act relating to Protection, etc. of Dispatch Employees, the using employer prescribed in Article 2(4) of the Act relating to Protection, etc. of Dispatch Employees shall be regarded as the employer prescribed in this Act.

4. Employer's Procedures in Dealing with Sexual Harassment Cases

Upon receiving a complaint of sexual harassment, the employer shall conduct interviews, investigate the facts, implement appropriate measures, such as disciplinary punishment, etc. and then inform the alleged victim-employee.

- 1st stage: Receipt of sexual harassment report
  The person-in-charge of a help organization in the company, personnel or labor department receives the case.
- 2nd stage: Interviews and investigation
  Upon receiving the report, the person-in-charge shall quickly interview and thoroughly investigate. If necessary, the investigator can hear the suspect's testimony instead by organizing a face-to-face meeting between the alleged victim and the suspect.
  The person-in-charge shall weigh the collected information obtained during investigations. As soon as the person-in-charge draws an official opinion, it shall be reported to the employer.
- 3rd stage: Confirmation and disciplinary action
  Upon confirming that sexual harassment has occurred, the employer shall take appropriate measures such as transferring the offender to a different department or position, issuing a warning or reprimand, suspending from work, or dismissing the offender. If light disciplinary punishment such as a warning fails to deter the offender from repeating the sexual harassment, the employer shall take harsher disciplinary measures. Also, the victim may request a transfer to another department.
- 4th stage: Report of the results
  Upon closing the investigation, the company shall notify the (alleged) victim and the (alleged) offender of the results.
- 5th stage: Preventative actions
  The employer shall pay special concern to the victim employee after the closure of a confirmed case of sexual harassment to prevent further harassment of that employee.

Sexual Harassment at Work and its related cases (Administrative Interpretations and Judicial Rulings)

I. Questions and Answers concerning Sexual Harassment at Work[51)]

1. Q&A designed to understand the concept of sexual harassment at work

Q) Does sexual behaviors of the customer's agents or employees from the affiliate company constitute sexual harassment at work?

A) It is difficult to define sexual harassment by people, that is, by those related to customer's companies or by those within the company in which one works in. However, if an employer, a senior, or an employee makes the environment conducive for sexual harassment or demands the victimized employee to tolerate sexual harassment, it can constitute sexual harassment at work and the employer may be held liable.

Q) Is it possible for sexual harassment to occur in the process of job interview before an employee is formally hired?

A) Yes, it is possible. An interviewee in the process of job interview for employment is a potential employee. It can thus constitute sexual harassment when the interviewer causes the interviewee to feel sexually humiliated, when the interviewer make any verbal or physical conduct of a sexual nature to the interviewee or makes sexual approaches/requests to interviewee.

Q) Is it possible for a female to be a sexual harasser?

A) Generally sexual harassment at work is committed by male rather than female but it may also be possible at times for such offences to be committed by a female to a male, a female to a female and a male to a male. For example, it can constitute sexual harassment when a female superior sexually harasses a male subordinator against his wishes.

Q) Can an hourly or daily rated employee be protected against sexual harassment at work?

A) The Equal Employment Act is applicable to all employees, including hourly and daily rated employees, working at a business or workplace with five or more employees. As such, hourly or daily rated employees working in a workplace with five or more employees can be protected against sexual harassment at work. For hourly or daily rated employees working in a workplace with four or less employees, the 'Gender Discrimination Prohibition and Remedy Act' which applies to workplace with four or less employees provides them with such protection.

Q) If the victimized employee reacts to verbal or physical conducts of sexual nature passively / silently, can it still be regarded as sexual harassment?

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51) Publication of the Ministry of Labor 『Sexual Harassment at Work, from its preventions to countermeasures』(June 2019)

A) Yes, it can. For an example, due to lack of social experience, a victimized employee may be under the impression that sexual harassment is generally acceptable and thus tolerated passively without apparent sign of rejection. But as he/she gradually felt sexually humiliated and raised contention against such acts, it can still be regarded as sexual harassment. However it may not be regarded as sexual harassment if the victimized employee explicitly permits the continuance of such verbal or physical conducts of a sexual nature.

Q) If a senior employee displays pictures of overly exposed women on his desktop computer screen, is it regarded as sexual harassment?

A) Except for special circumstances, visual conduct of sexual nature is also regarded as sexual harassment so long as there is a victim resulting from such conducts. Having obscene pictures on one's own desktop computer screen placed on one's own table is a personal inclination. Although such a personal lifestyle shows inconsideration to others and hence immaturity, it does not suffice for relation to sexual harassment. However, when such behaviors cause others to feel uneasy and when the harasser pays no heed to victim's explicit expression of such uneasiness but continues with such behavior, it can be regarded as sexual harassment at work. In that respect, hanging of obscene calendar at a location meant to be seen by women is definitely regarded as sexual harassment.

Q) Does sexual harassment exists only when the harasser carries intention of causing sexual harassment?

A) No, even though the sexual harasser may not be conscious of his sexual harassment act, the victim may feel sexually harassed. Hence, whether sexual harassment exists or not should not be judged based on the harasser's intention but from the point of view of the victim. However, since victim's response differs from person to person, the standard of judgment should therefore be based on socially accepted norm of how a reasonable person would react towards such verbal and physical conduct of sexual nature if he/she is in the victim's situation.

Q) If there is no specifically targeted person for sexual jokes, does it still constitute sexual harassment?

A) Yes, it does. Even though verbal and physical conduct of sexual nature may not be targeted at specific person, it still constitutes sexual harassment if it invokes sexual humiliation or contributes to hostile environment.

Q) Does demand for errands such as delivery of beverages and photocopying of document targeted restrictively at female employees constitute sexual harassment?

A) Sexual discrimination acts, as below, may be regarded as sexual harassment ① Degrading female employees by addressing them as 'Halmony(grand mother)', 'Ajumma', 'Yah', etc. ② Discrimination of roles between the genders such as degrading females' roles to homemaking, husband-supporting or child-raising whilst

glorifying males' roles as master and authority of home ③ Restricting certain task to be performed by a certain sex, for instance, only female employees are demanded to perform errands such as delivery of tea and photocopying of document.

Notwithstanding the type of job the victimized employee is engaged in, 'sexual discrimination type of sexual harassment' basically affects the victim's will to work and her work efficiency by degrading female employees to roles of home-making and child-raising whilst glorifying male employees to more superior status as home master.

Whether such acts constitute sexual harassment or not very much depends subjectively on the victim's individual feeling in addition to a standard of judgment based on socially accepted norm of how a reasonable person would react towards such sexual discrimination if he/she is in the victim's situation. With such a perspective, it remains difficult for Koreans to perceive sex discrimination as a form of sex harassment because until now sex discrimination has been our nation's socially accepted norm.

Q) Does a one-time verbal abuse of sexual nature constitute sexual harassment?

A) Yes, it does. Under conditional sexual harassment, when such one-time verbal abuse of sexual nature resulted in the victimized employee showing rejection or expressing feeling of displeasure or suffering disadvantages in personnel-related matters, it undoubtedly constitutes sexual harassment. Also, even if the verbal abuse is trivial but if such unwanted behavior is repeated to the extent of causing sexual humiliation or affecting work efficiency, it can constitute sexual harassment.

2. Q&A concerning employer's duties in relation to sexual harassment at work

Q) Does distribution of company's papers or brochures suffice as training on preventing sexual harassment?

A) In implementing training on preventing sexual harassment, it is a good method to create awareness about sexual harassment to company's managers or employees by distributing company's papers or brochures. However, such method should be used as a supplementary measure. At the very least, there should be various forms of trainings such as employee seminars, regular meetings, department-level trainings and audiovisual educational trainings. If possible, it is also important to have many dialogue and discussion sessions for sharing and exchange of opinions with one another.

Q) As trivial sexual jokes may also be regarded as sexual harassment at work, should employer adopt personnel measures such as department transfer and disciplinary punishment when such harassment occurs?

A) There should at least be measures such as light warnings. Even if a verbal or physical conduct of sexual nature appears trivial from a third party's objective point of view but from the point of view of the victim, it may be felt as a severe sexual humiliation. As such, so long as the employer agrees that the offence constitutes sexual harassment, the employer should pursue it and serve disciplinary warnings to the harasser in order to prevent the recurrence of such harassment. Accordingly, the employer should, through the use of punishments such as warnings, try to ensure that harassments akin do not recur.

Q) Can an employer impose heavy disciplinary punishment such as dismissal for trivial sexual harassment offence?

A) If a light disciplinary punishment such as warning fails to stop sexual harassment behaviors, the employer may impose heavier disciplinary punishment. However, if heavy disciplinary punishment is resorted without attempting light disciplinary punishment for even once or if heavy disciplinary punishment is resorted after the harasser has already stopped its sexual harassment behaviors after a light disciplinary warning, it would then have to be deemed as not acting in line with socially accepted norm.

Q) In the event there are harasser and victim parties to a case of sexual harassment, is it regarded as unfair to transfer only the victimized employee?

A) In general, workplace transfer can be used as a disciplinary punishment against the sexual harasser. However, if the victimized employee voluntarily requests for or agrees to the transfer and there is no problem arising from doing so, transfer of victimized employee may also be the case. However, if there is no business necessity in making such transfer or if there is no consideration to the victimized employee's opinion, or if it is done against the victim's will, such transfer would be treated as transfer without appropriate reason according to Article 30 of the Labor Standards Act.

Q) When a dispatched employee committed sexual harassment at work, does the employer who uses his/her services have to impose disciplinary punishment?

A) In the event a dispatched employee initiates sexual harassment at work, the employer who uses his/her services will have to take the responsibility to conduct fact-finding and organize the formation of dispute dissolution committee. However, as such employer does not have the authority to discipline the dispatched employee, direct disciplining would be impossible. Nevertheless if the dispatched staff's sexual harassment act is confirmed to be true, the employer who uses his/her services may recommend to the employer who dispatched him/her to take disciplinary punishment against him/her. If the dispatched employer does not respond, the using employer can request for termination of seconding contract.

3. Q&A concerning the rights of the victimized employee to seek help

Q) Is it possible to punish sexual harasser by the Equal Employment Act?

A) It is not possible to directly punish sexual harassers by the Equal Employment Act. This is because in order to punish the sexual harasser by an act that does not differentiates between his/her acts inside and outside of the company, it would have to be regulated by a general law that apply to all nationals instead of a law such as the Equal Employment Act which is specific to employment. As the Equal Employment Act entrusts employers with the responsibility of prohibiting and preventing discrimination, there is no provision stipulated in the administrative legal structure to

punish the sexual harasser. However, as there are provisions for employer to implement measures such as department transfer, disciplinary punishment, etc. against sexual harassers, the victimized employee may therefore request to a grievance handling committee for help to resolve problems of sexual harassment and may also request for disciplinary punishments to be imposed on the sexual harasser. If such requests are not accepted by the employer, the employee may lodge with the Labor Office for remedial action against the employer. In addition, the victimized employee may also bring a civil suit against the sexual harasser so as to claim for compensation.

Q) For sexual harassment case happened 2 years ago, is it still possible to appeal for an internal solution by the company or to lodge complaint with the Labor Office?

A) Yes, it is possible. Extinctive prescription of labor laws generally allows for three years and extinctive prescription of general rights in the Equal Employment Act also allows for three years. As such, for sexual harassment occurring within 3 years the Equal Employment Act is absolutely applicable and the victimized employee may lodge such complaint with the Labor Office.

Q) When there is sexual harassment, must the victimized employee personally lodge her appeal or complain in order for her right to seek help to be effective?

A) No. In the event an employer disadvantages an employee in her employment or did not take appropriate measures against the sexual harasser, it is also possible for a third party such as a consulting body to seek redress or to complain to the Labor Office. However, as sexual issues are likely to infringe on characters and rights of both the victimized employee and the sexual harasser, the representing third party will have to sufficiently consider the victimized employee's opinion before appealing or complaining to the labor office

II. Cases of Sexual Harassment at Work

[Case 1] This was a case affirmed as sexual harassment at work as the assistant manager demanded his subordinate to fill the glass of the managers with liqueur.

Details of the case

- The victimized employee (A), a nurse of a hospital supervised by a Manager of Nurse of the same hospital, attended a company's dinner on March 26 1999 and was told by an Assistant Manager of the General Affairs team (B) at the company's dinner to fill the glass of the Director of General Affairs and that of the General Manager of Treatment team with liqueur. When (A) rejected that suggestion, (B) grasped her arm and took her to the table of the director and the general manager, and forced her to fill the glass with liqueur. Because of this incident, the victimized employee (A) felt severely humiliated.

Judgment

- Sexual harassment at work can occur in a company's dinner related to work. This case was in relation to work as the company's dinner was held under the supervision of the

Manager of Nurse.

- The Assistant Manager of General Affairs team (B) took advantage of his position as a superior in the company to verbally compel the victimized employee (A) to fill the glass regardless of her dislike. From the perspective that the employee felt sexually humiliated, such an act therefore constitutes sexual harassment at work.

[Case 2] Disciplinary dismissal due to sexual harassment behavior at work is an exercise of justifiable rights of personnel, but disciplinary dismissal out of sympathy for the offender is unfair dismissal.

Details of the case

- Applicant A and B worked as Manager and Assistant manager of the Planning team in a hospital respectively and attended the department's dinner at a restaurant near the hospital. At the dinner, applicant A went to the extent of making physical abuse of a sexual nature by fumbling the thigh of a female employee and touching her breast, but applicant B just looked on such sexual harassment behaviors and somewhat expressed sympathy.
- After this incident, the employer dismissed applicant A on grounds of sexual harassment and also dismissed applicant B for not upholding morals at work. Both applicants A and B sought remedial help to the Labor Relations Commissions against unfair dismissal by the employer.

Judgment

- Depending on the severity of the sexual harassment and the continuity of such acts, the employer would have to take reasonable disciplinary measures such as department transfer, warning, reprimand, salary reduction, job transfer, suspension from work, being placed on the waiting list, suspension from office, etc.,
- Article 10 of enforcement decree of the Equal Employment Act regulates that 'in cases where the employer takes disciplinary measures such as department transfer, disciplinary punishment, etc., he shall consider the severity of sexual harassment and its continuity. Accordingly, the employer shall determine a reasonable level of disciplinary punishment, considering ① whether the sexual harasser is aware of the fact that the victim employee did not want the behavior? ② were the behaviors repeated somehow? (for example, the level of sexual harassment, its continuity, etc.) ③ Is there any difference in power (authority) between the sexual harasser and the victimized employee? and ④ the legal ambit which the victimized employee comes under.
- In this respect, as dismissal is the heaviest disciplinary punishment causing severe threat of the employee's survival right, Article 30 (1) of the Labor Standards Act regulates that it shall be implemented only in the case where there is a reasonable grounds. In this case, reasonable grounds imply that the employee's violation was so severe that it would be difficult to continue his employment with the company. And the employer will have to consider the gravity of the employee's violations and equality compared with other employees, and shall not abuse the rights of employer in imposing punishment.

- It follows that the disciplinary dismissal imposed on A, who had at the dinner gone to the extent of physical sexual abuse by fumbling the thigh of the female employee and touching on her breast, was an appropriate exercise of personnel management's rights as it had considered the severity of applicant A's sexual harassment conducts. However, for applicant B who had just looked on such sexual harassment behaviors and who somewhat showed sympathy, the imposing of disciplinary dismissal similar to the punishment received by applicant A would be deemed as an abuse of the employer's right in considering the severity of the employee's violations and in maintaining equality amongst employees.

[Case 3] A case difficult to be affirmed as sexual harassment based on the harasser's verbal and physical conduct.

Details of the case

- Applicant and defendant were both hospital employees. The applicant worked as a Service Manager in charge of receiving patients, while the defendant worked as a Planning Director in charge of personnel management of all employees and was a senior manager to the applicant.
- On August 16 2000, the applicant was waiting for an elevator together with her superior, a Nursing Manager, on their way to work. The defendant got on the elevator at the underground first floor, and the applicant and her superior joined in from the first floor to the fifth floor. On the way to the fifth floor, the defendant said to the applicant "Ms. Kim, you should try to greet" and he tapped the hip of the applicant twice with a folded newspaper. The Nursing Manager got himself involved at this juncture, but the defendant said, "I wonder whether people still know their workplace manners after marriage." The applicant felt embarrassed and sexually humiliated to have her hip tapped in the presence of many employees working together in the same building and therefore claimed this incident to be a case of sexual harassment rather than a case of plain assault.

Judgment

- In judging sexual harassment, the victim's subjectivity should be considered. At the same time, socially accepted norms on how a reasonable person, in the victim's circumstances, would evaluate or react to such a controversial situation should also be considered.
- The applicant claimed that she felt embarrassed and sexually humiliated when the right-hand side of her hip was hit by the defendant's newspaper.
- Even though she was tapped on the hip, it was only an indirect contact with the newspaper held by the defendant. There was no verbal abuse of a sexual nature except for an advisory remark," Ms. Kim, you should try to greet" and there was also no disadvantage in employment to the applicant. The main fault lies with the defendant's behavior in using an advisory method in front of other people. As it was hard to find

sexual factors in the incident, what the applicant felt was judged as plain humiliation rather than sexual humiliation. As such, it could not constitute sexual harassment.

Adjudicated to compensate 30 million won for compelling a subordinate to drink (May 5, 2007, Seoul Appellate Court 2006 na 109669)

A married male manager at an internet game development company had very often organized drinking sessions after work on the reason of promoting teamwork, and he also included the female unmarried employees. At such drinking sessions, he would compel female employees who could not drink alcoholic liqueur for physical and health reasons to drink. Such drinking events often went on till dawn disabling the female employees from returning home early. He had also often used sexual remarks of sexual harassment nature to the female employees at the drinking place or office. The manager's aforementioned behaviors which are infringement of the autonomous expression of opinion and behavior of his younger employees and violations of their personality freedom are damage to others' humane dignity. And if confirm to have caused others severe sufferings in their state of mind, it can also constitute illegal behavior.

Vice-Principal's verbal and physical conduct at official dinner meeting of expecting female teachers to fill the glass of the male principal did not constitute sexual harassment. (Feb. 11, 2004, Seoul Administrative Court 2003 guhap 23387)

The dinner meeting was arranged by the 3rd grade elementary school teachers to welcome a newly appointed vice-principal (plaintiff) and they invited the principal and vice-principal. So, it was a place where the plaintiff and the teachers met for the first time. At the dinner meeting, participants were mainly discussing about teachings when some female teachers were given liqueur-filled glass by the principal and were suggested to toast. However, neither did they empty their glass nor did they reciprocate by filling the glass of the principal. The plaintiff, on seeing this situation, suggested that the female teachers should fill the glass of the principal. The plaintiff claimed that it would be more correct to view his verbal and physical conduct in this case as a recommendation for subordinates to reciprocate their superior's toasting rather than an intention to discriminate against the female and asking them to pour liqueur for the principal just because they are females. Other female teachers who heard the plaintiff's suggestion to those female teachers about pouring the liqueur for the principal felt unpleasantness but did not feel a sense of sexual humiliation or dislike. Integrating all the points in this testimony about the characteristics of the dinner meeting, relationships of the participants, place, the situation under which the plaintiff's remarks were made, and whether there had been any sexual motives or intention etc., the verbal and physical conduct of the plaintiff in this case, strictly speaking, is in line with our nation's common sound knowledge and customary practices, and hence it is difficult to conclude his remarks and behaviors as intolerable or are violations of kind mannerism or social order.

A Case of Sexual Harassment in the Workplace & Lessons Learned

I. Introduction

The most important step to handling workplace sexual harassment is to prevent it in advance. When it happens in reality, it is also important to deal with it appropriately in accordance with on-the-spot situations. There is a legal procedure for handling sexual harassment cases, but the particular case in this article was greatly influenced by the emotional state of the victim and the offending employee. Accordingly, it is necessary to seek a reasonable solution through appropriate actions, rather than only following the legal procedures by the letter.

The case discussed herein was not well handled and resulted in resignation of both the victim and the offending employee, causing direct loss to the related parties through the loss of their jobs, and to the company through the loss of the personnel in question. In the interest of preventing this kind of disruptive outcome, we will look at the problem-solving procedures in the case, review the lessons learned and consider methods of improvement.

II. Sexual Harassment Case

1. Summary of the case

On August 5, 2014, a woman who had been employed by the company in April 2012 and had worked at the company's Suwon site since then submitted a written complaint of sexual harassment by her supervisor. The Personnel Manager asked for legal opinion from a labor attorney, who read the female employee's statement and advised problem-solving procedures for the company to follow.

The labor attorney did not recognize the seriousness of the case, and focused upon prevention of recurrence through protection of both the offender and the victim. In the meantime, the female employee and her colleague submitted their resignations as they were afraid of revenge from the offending supervisor (the site manager). Then, because of their resignations, the offending supervisor was also forced to resign. As a result, the company lost significant resources: two female staff employees and one site manager.

2. Details of sexual harassment

The sexual harassment consisted of physical and verbal harassment, as detailed in the female employee's statement as follows.

(1) Physical sexual harassment

At the end of 2013, my hair was down and hanging to my shoulders, and the site manager, saying my hair needed trimming, touched my neck with his fingers and combed them through my hair. It felt instantly creepy and I felt sexually humiliated.

(2) Verbal sexual harassment

- Not long time after being hired by the company, a male colleague and I were sweeping the building in preparations for auditing, when the site manager came over to us, looked at me and said to my colleague, "You guys are sweeping like feeling a virgin's breast." His remark really shocked me.
- The site manager often commented about my make-up "You need to put on more make-up and wear more lipstick." Recently he said to me in front of some other colleagues, "You seem to have let everything go. I mean since you got married, you really don't put on make-up nor dress well at all. Put on some make-up before you come to work." He even said to other female colleagues with a laugh, "Please teach her how to put on make-up properly." I felt very displeased and angry.
- Two months ago, while a female worker in the same office was listening, the site manager said smilingly to a male worker, "Women in the US air force do everything by themselves. In the hot summer some women only wear undershirts, moving oil drums and swinging their full breasts."
- On August 5, 2014, while the female employees were talking to each other, the female victim of the harassment said to her supervisor, "I have a headache and feel sick." The site manager responded, "You must feel sick because you're having your period." Both my colleague and I were shocked at his statement.

III. Handling of the Case by the Company

1. Questions and answers regarding the issue

The company asked three questions of the advising labor attorney regarding this sexual harassment on August 6, 2014.

<Question 1> Can sexual language or unnecessary physical contact used by this site manager be considered workplace sexual harassment?

<Response> Judgment of sexual harassment (Supreme Court ruling on June 14, 2007, 2005 du 6461): 'Sexual language and behaviors in becoming 'workplace sexual harassment' in accordance with Article 2(2) of the Equal Employment Act refer to physical relations between a man and a woman or physical, linguistic and visual behaviors in relation to the male or female physical appearance. These behaviors mean that a normal and average person would feel sexually humiliated or offended if that person were in the victim employee's situation in view of the social community's healthy common sense and socially accepted notions. The condition in which these behaviors are considered sexual harassment does not require the offender's sexual motivation or intention, but shall consider the relation

with the victim employee, place and situation where such behaviors happened, the counterpart's explicit and presumptive reactions and details of such behaviors, characteristics and degree of the behavior, whether such behavior was one time only or repeated, and other concrete situations. So, such behaviors should be ones which a normal and average person in the same situation would also feel sexually humiliated or offended objectively. In such cases, these behaviors should be admitted as sexual harassment that resulted in the counterparty feeling sexually humiliated and offended.

In this sexual harassment case, the victim employee felt humiliated by her supervisor's sexual language and behavior, which furthermore caused a feeling of inferiority and disgust by the victim. In considering a normal person's reaction, such language and physical behavior would cause similar feelings. Therefore, the sexual language and other details mentioned by the female employee would be considered workplace sexual harassment.

<Question 2> How can the company deal with a reported case of workplace sexual harassment?

<Response> According to the Equal Employment Act, "1) An employer shall take without delay disciplinary measures or other equivalent actions against the sexual harasser if an occurrence of sexual harassment at work has been verified. 2) No employer shall dismiss or take any other disadvantageous measures against a worker who has been the victim of sexual harassment at work or has claimed to have been sexually harassed (Article 14). If the Company violates the aforementioned items, the employer shall be punished by a fine for negligence not exceeding 5 million won (Article 39)." Accordingly, when receiving information on sexual harassment at work, the employer shall interview the parties concerned, investigate the case, confirm the actual facts, and then take appropriate measures such as disciplinary action and report the outcome to the employee who was sexually harassed.

<Question 3> How can the company deal with this case in a reasonable manner?

<Response> The company shall take appropriate action for cases of sexual harassment in which the victim employee shall be protected from any further damage and the offender punished through acceptable disciplinary action. The company shall also work to prevent recurrence through employee education on sexual harassment.

I would like to suggest a level of disciplinary action for this case as salary reduction (10% of one month's salary) and a written warning letter stipulating that any repeat will result in serious disciplinary action like dismissal. It is also advisable to have the labor attorney who is handling this case to give a presentation on prevention of sexual harassment at your Suwon site.

2. Email conversations between the victim employee and the Labor Attorney

From: Victim employee; To: Labor Attorney; Sent: August 20, 2014 (Wednesday)

On August 12 I submitted my resignation, and on Thursday, August 14, the site manager held a general meeting in an attempt to excuse his behaviors and said to all attending employees that he did not have any intention to harass the female employees. At that meeting, he outlined point by point what I explained in my statement, explaining that he did not mean to harass me.

What angered me is that the site manager apologized to me and even sent a message that he was a stupid man and he was so sorry for his behaviors, but in front of other employees, he excused himself by skipping over the worst incidents and telling people that I was hypersensitive about nothing out of the ordinary.

From: Labor Attorney; To: Victim employee; Sent: August 20, 2014 (Wednesday)

I apologize that I have been unable to protect you better. I think the company made mistakes in handling this case. First of all, the most important thing is to protect the victim employee…. I wish you had contacted me before submitting your resignation.

From: Victim employee; To: Labor Attorney; Sent: August 20, 2014 (Wednesday)

The Personnel Team continuously recommended that I not submit my resignation. However, frankly speaking, I was disappointed to hear that the level of punishment would only be salary reduction (10% of one month's pay). I was not sure whether I could continue to work with the site manager, so, after discussing it with my family, I decided to resign.

From: Labor Attorney; To: Victim employee; August 20, 2014 (Wednesday)

It is very sad. Now, the site manager has resigned and you also quit. So, everyone related to this has become a victim. My expectations were that I could protect both him and you, but I was unable to protect anyone at all. I think that I should take more preventive action to avoid a repeat of this case.

As time passes, it will be difficult for people to adjust to the changed environment. I would like to recommend that you reconsider your decision to quit.

From: Victim employee; To: Labor Attorney; Sent: August 26, 2014 (Tuesday)

The reason why I quit was not because the Labor Attorney could not protect me. When I officially submitted my statement to the Personnel Team, the other female employee was also planning to submit her statement, but the Head Office persuaded me not to make this case public until obtaining more tangible evidence, because the company needed the site manager during contract-renewal with the client company. As I understood the company's situation, I felt it would be hard to continue to work for this company.

From: Labor Attorney; To: Victim employee; Sent: August 26, 2014 (Tuesday)

I feel very unhappy to see the tragic results of this sexual harassment case. I have always thought that the offender should be given a chance and punished lightly, but now I think this is not always best. Because of this case, I realize I need to consider the victim employee's situation and try to help the victim employee more.

IV. Lessons Learned & Opportunities for Improvement

Sexual harassment cases cause considerable damage not only to the individual employees concerned, but also the company. This company has also turned to annual education to prevent sexual harassment, but this has not prevented it effectively. Rather, this company spent energy on covering up the case more than on dealing with it appropriately.

The labor attorney in charge could not give sufficient advice as he did not fully understand the situation. His advice was designed to protect both the victim and the offender together, but could not protect anyone as three persons related to this case resigned. As the company failed to adequately consider the victim's position and requests, two victim employees resigned. The offender too was forced to resign due to his moral responsibility. As can be seen by reviewing the email conversations between the victim employee and the labor attorney handling the case, it is regrettable that the company failed to handle things effectively, and that the labor attorney did not fully appreciate the victim employee's situation.

On August 27, 2014, the labor attorney in the case above gave a presentation on prevention of workplace sexual harassment at the Suwon site where the sexual harassment occurred. He explained the definition, the types, the judgment criteria for determining sexual harassment, and the employer's legal obligations, all of which was taken very seriously in light of the case the participants all knew about. As the outcome of this case reveals, preventive action through education on sexual harassment is the best policy, while knowing how to appropriately handle any cases that do occur will do much to realize as little disruption as possible to both the company and the victim employees.

Sexual Harassment Case, and Procedures for Handling a Sexual Harassment Case

I. Summary (Introduction)[52)]

Incidents of sexual harassment occurred in a Korean branch office (hereinafter referred to as “the Company”) of a foreign company. The female employee victimized by the sexual harassment (hereinafter, “the victim-employee”) submitted a petition to the National Human Rights Commission over the incidents. The victim-employee then informed the company of the petition she had submitted, and details within her statement to the Human Rights Commission. From this, the Company investigated the senior sales manager concerned (hereinafter, “Offender A”), estimated that his actions were sexual harassment, and then took appropriate disciplinary action against him. Shortly after, the Human Rights Commission transferred this case to the Gangnam Labor Office of the Ministry of Employment and Labor. On June 16, 2011, the Company received a written notice from the Labor Inspector in charge of sexual harassment cases, that there would be an investigative hearing. The Labor Inspector also informed the Company that there were two more alleged offenders that the victim-employee had not mentioned to the Company. After being informed of the additional alleged sexual harassment, the Company investigated the sales director (hereinafter, “Offender B”) and the country manager (hereinafter, “Offender C”), and after evaluation, determined their behaviors were also sexual harassment, based upon their statements and the victim’s, and took appropriate disciplinary actions against Offenders B and C. On June 28, 2011, the Company attended the investigative hearing at the Labor Office and explained the measures that it had taken appropriately according to related law. The Labor Inspector in charge agreed that the Company had taken the proper actions and closed the petition. However, the Labor Inspector discovered that the Company had not given any education to its employees to prevent sexual harassment at work in 2008 and 2009, but had started only in 2010. For this non-fulfillment of the Company’s legal duty to provide education on sexual harassment prevention, the Company was fined 2 million won.

According to the ‘Equal Employment and Work-Home Balance Assistance Act,’ sexual harassment at work refers to “a situation where a person’s superior or colleague harasses him/her with sexually-charged behavior or language,” and it is the employer who is responsible to prevent sexual harassment at work and take appropriate measures if such harassment occurs. I would like to review the appropriate measures taken by the Company.

II. Details of the Sexual Harassment Case at Work

1. Sexual Harassment by Offender A

52) A sexual harassment petition case at GangNam Labor Office from Apr to Jun 2011

On April 27, 2011, during a team-building event at a company workshop with all employees (about 30), the victim-employee had to do something as a penalty in a game. The penalty was that she had to write her name with her backside. Before doing so, she told everybody that they couldn't take any video with their cameras or cell phones. The sales manager (Offender A) took a video of her with his cell phone secretly, saved it and forgot about it. On May 19, 2011, at a company dinner, Offender A remembered the video he had secretly recorded, and showed the video to his colleagues in turn. The conversation among those employees was sexually humiliating for the victim-employee, and included such expressions as "It would be fun to show this as a highlight at a Sales Kick-Off event," and "Since we can't see her face, send her ID picture to me with the video." The victim-employee demanded Offender A to delete the video, but Offender A did not do so. At this, the victim-employee informed the personnel team of her displeasure and requested a formal apology from him. Offender A would not offer a formal apology, and simply showed his displeasure at her informing the personnel team.

2. Sexual Harassment by Offender B

On May 19, 2011, at the same company dinner, Offender B wandered around, pouring traditional wine for his colleagues. When he came to the victim-employee's seat, he said to her, "Ms. Lee, you sat in my seat. You must like me" and sat beside her. He then said, "Shall we have a love shot?" The victim-employee was humiliated as he was suggesting that she was a "bar hostess" (a position which sometimes involves sexual behavior). The victim-employee very obviously did not like his suggestion, saying "That is a very dangerous thing to say." To which Offender B replied, "I'm not dangerous."

On March 29, 2011, at a company dinner, all the employees went to a Singing Room after dinner. There, while the victim-employee was singing a song by Sym Subong at someone's request, Offender B approached the victim-employee with a gesture in blue dancing, but the victim-employee avoided looking at him. After the song was finished, she sang another song by Ju Hyunme, which talked about a 'confession of love' many times. When she returned to her seat, Offender B said to her, "You were talking to me. That story was about me, right?"

On February 11, 2011, at a company dinner, Offender B approached the victim-employee and said, "Let's hug each other!" It was hard for the victim-employee to refuse in front of all her colleagues, so she patted his shoulder from a distance. The victim-employee began to wonder seriously how she could continue working with her manager (Offender B) who, without hesitation, had shown sexually-charged behavior and caused this humiliation to a married employee at a company dinner with their colleagues.

3. Sexual Harassment by Offender C

On March 29, 2011, the victim-employee was trying to get out of the company dinner because she was humiliated by Offender B's sexual behavior, but after giving it more thought, she went to the country manager (Offender C) to say 'good-bye'. When she said to him, "I have to go home early," Offender C offered his hand to shake hers. Shortly after they shook, Offender C said goodbye again, wanted to shake hands again, and attempted to kiss her hand. Surprised, the victim-employee took her hand back quickly, but some of her fingers touched Offender C's lips. The victim-employee was very embarrassed, shocked, and humiliated.

III. Company Recognition of Sexual Harassment and Handling Procedures

1. Employer procedures in dealing with sexual harassment complaints

Upon receiving a complaint of sexual harassment, the employer will conduct interviews, investigate the facts, implement appropriate measures such as disciplinary punishment, etc. and then inform the victim-employee.

-1st Stage: Receipt of the sexual harassment complaint (HR or Labor Department)

-2nd Stage: Interview and investigation

Upon receiving the complaint, the person-in-charge is to quickly set up an interview and begin a thorough investigation. If necessary, the investigator can hear the defendant's testimony instead by organizing a face-to-face meeting between him/her and the victim.

The person-in-charge shall weigh the collected information obtained during the investigation. As soon as the person-in-charge reaches a final conclusion, it shall be reported to the employer.

-3rd Stage: Confirmation and disciplinary measures

If it is confirmed that sexual harassment has occurred, the employer shall take appropriate action against the offender, such as a transfer to another department or position, warning, reprimand, work suspension, or dismissal, etc.

-4th Stage: Report of the results

Upon closing the investigation, the company shall notify the victim and the offender of the results.

-5th Stage: Preventative action

The employer shall pay special attention to the victim-employee after the closure of the sexual harassment case to prevent further sexual harassment of that employee.

2. The Company's handling of the above cases of sexual harassment

When it recognized the victim-employee's accusations regarding sexual harassment, the Company immediately requested statements from the victim-employee and the alleged offenders. As the country manager (Offender C) was involved in this case, the Company used a labor attorney to interview the victim-employee and the alleged offenders and receive their statements, to ensure fair conclusions. After receiving their statements and

witness accounts, the Company determined the related behaviors were sexual harassment according to the criteria for evaluating whether certain behavior is sexual harassment at work. In this process, the Company handled the investigations quickly and confidentially, in order to protect the alleged offenders and the victim-employee at the same time. The alleged offenders resisted this investigation, saying they did not intend to harass her sexually. However, the Company explained to them seriously of the criteria for determining the existence of sexual harassment, “In evaluating whether certain behavior is sexual harassment or not, the victim's subjective conditions must be considered. As a socially accepted idea, how a reasonable person evaluates or copes with a situation against the particular controversial behaviors involved must also be considered in the victim's case.” The Company concluded that the three men’s behaviors were sexual harassment and they were disciplined in accordance with the level of their violations. After this, the Company invited an external expert, (a labor attorney), and implemented training for all employees towards preventing sexual harassment at work. The Company also strove to prevent the reoccurrence of any sexual harassment by posting a notification on the bulletin board, detailing ways to prevent any further sexual harassment in the work environment.

The Company held a Disciplinary Action Committee composed of three members designated by the Company in accordance with the disciplinary regulations in the Rules of Employment, and took disciplinary action after reviewing the disciplinary details. There are five types of discipline: 1) written warning, 2) wage reduction, 3) suspension from work, 4) recommended resignation, and 5) dismissal. The Company decided the level of discipline according to the level of violation as follows.

A. Offender A: ① 10% wage reduction from one month’s salary; ② Suspension of promotion for six months; ③ Official apology to the victim in front of company directors
B. Offender B: ① Written warning; ② 2.5% wage reduction from one month’s salary (July)
C. Offender C: Written warning

IV. Conclusion

These cases of sexual harassment at work were related to environmental sexual harassment, and the employees recognized that their behavior at company dinners could be interpreted as sexual harassment even if they didn’t think much about it. These cases brought some educational benefit to the Company as well as the employees realized that their unintentional behavior could be interpreted as sexual harassment because the criteria for determining sexual harassment is partly judged from the victim’s perspective, rather than the offender’s intention. In addition, this case contributes to the building of healthy relationships between employees. The Company was able to protect the victim from being further humiliated, through appropriate measures against sexual harassment. The Company also took appropriate action to prevent a repeat of sexual harassment by determining acceptable discipline for the offenders, carrying that discipline out, and providing education to prevent sexual harassment of other employees.

Due to the victim-employee's complaint of sexual harassment to the Labor Office, the Company was investigated to determine whether or not it had followed the employer procedures for handling sexual harassment complaints. The Labor Office found that the Company had carried out its duties as employer very well according to the Equal Employment Act, except for one, which was skipping its obligation for two years before setting up sexual harassment education last year. As already mentioned, the Company was fined 2 million won for two occurrences of failing to provide education to prevent sexual harassment. Beyond this, the victim-employee's petition to the Labor Office was concluded without any further penalty or demand.

인사관리 앱 개발 (Mobile App)

기본서 Basic Guides	1. 노동법전 2. 노동법 해설 3. 노동 사건 사례	1. Labor Law 2. Labor Law Guide 3. Labor Cases
동영상 (Video)	YouTube GO	Korean and English videos (each 20 categories)
매뉴얼 Manual	1. 구조조정 2. 해고 3. 외국인 고용과 비자 4. 노동조합 5. 임금 6. 근로시간, 휴일, 휴가, 7. 비정규직 근로자 8. 근로계약 9. 근로감독 준비 10. 산업재해보상보험 11. 고용보험 12. 노동위원회 13. 취업규칙 14. 남녀고용평등 15. 직장내 괴롭힘 방지 16. 노사협의회 17. 산업안전보건법 18. 부당노동행위 19. 국민연금, 국민건강보험 20. 근로감독 체크리스트	1. Workplace Restructuring 2. Dismissal 3. Foreign Employment and Visa 4. Labor Union 5. Wage 6. Working Hours, Holiday, Leave 7. Irregular Workers 8. Employment Contract 9. Labor Inspection Preparation 10. Industrial Accident Compensation Insurance 11. Employment Insurance 12. Labor Relations Commission 13. Rules of Employment 14. Equal Employment Act 15. Workplace Harassment Prevention 16. Labor Management Council 17. Industrial Safety and Health Act 18. Unfair Labor Practices 19. National Pension, Health Insurance 20. Labor Inspection Checklists
외국인 Foreigner	출입국관리법과 외국인 (기고글, 동영상, 비자36가지)	Immigration Laws and Foreigner Workers (Law, Articles, Video, Visa)
근로계약 Employmt Contract	근로계약 자동작성 (5가지 기본 틀을 가지고 작성) (정규직, 기간직, 시간제)	Making Employment Contracts based on 5 basic templates (Regular, fixed-term, and part-time)
자동계산 Automatic Calculation	1. 연차휴가, 2. 퇴직금 3. 4대보험, 4. 퇴직소득세 5. 산재보상 (장해보상, 유족보상)	1. Annual Leave, 2. Severance Pay 3. Social Insurance Premiums 4. Retirement(Severance) Income Tax 5. Industrial acc
Labor Auditing	1. 주요 질문/답변 2. 인사감사	1. FAQ 2. Labor Auditing

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