

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.¹

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

¹ Lee Sang-gon, "A Study on Improvements to the Workplace Harassment Law", Ajou Graduate School Ph.D. thesis, August 2020. Page 116.

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

II. An Example of Punishment of the Employer for Violating Workplace Harassment Measures²

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

² Chungjoo District Court ruling on April 6, 2021: 2020kodan 245.

worsen the working environment for worker B, beyond 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.

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.³

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

³ Yang, Seung-yeop, "Interpretation of Employer's Unfavorable Treatment of Victims of Workplace Harassment", Labor Law No. 79, Sep. 2021.

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 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.⁴

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

⁴ 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"

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 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.⁵

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;

⁵ 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.

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 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.⁶

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

⁶ Seoul High Court ruling on December 18, 2015: 2015na2003264.

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.