

A Case Study on Workplace Harassment against a New Employee

Bongsoo Jung / KangNam Labor Law Firm

I. Introduction

Since the Workplace Harassment Prevention Act was introduced in the Labor Standards Act and enforced for employers in April 2021, many companies have experienced claims of workplace harassment. In the past, the general workplace atmosphere (in which new employees or lower-level employees accepted it as part of adapting to the existing workplace) is no longer placed on the individual alone, but the onus is now on organizations to improve. The employer's obligation introduced in April 2021 means an objective investigation must be conducted without delay if a worker reports workplace harassment to the company. If workplace harassment is confirmed, measures must be taken that are appropriate to the harassment of the victim, and disciplinary action must be taken against the perpetrator (offender). The claimant shall not be treated unfavorably because of the claim of workplace harassment. Of particular note is that all those involved in a claim of workplace harassment are obligated to maintain the confidentiality of the claim. If the employer fails to comply with these obligations, the fine for negligence shall be not more than 5 million won.¹

A report was received that an employee recently hired by a foreign IT company had been harassed several times at the workplace by the team leader. Through the company's appropriate handling of this case, we can take a detailed look at how employers have dealt with such incidents. I would also like to take a look at what constitutes workplace bullying, the standard for determining whether workplace bullying has occurred and how the company's disciplinary procedures are to be conducted.

II. Criteria for Determining Workplace Harassment

“No employer or employee shall (i) cause physical or mental suffering to other employees or deteriorate the work environment (ii) beyond the appropriate scope of work (iii) by taking advantage of superiority in rank, relationship, etc. in the

¹ However, unfavorable treatment of the complainant or the victimized worker by the employer shall be punished by imprisonment for not more than three years or by a fine not exceeding 30 million won (Labor Standards Act, Article 76-3 (6)).

workplace.” (The Labor Standards Act Article 76-2). Any judgment that workplace harassment (bullying) has occurred must be made only if the above three requirements are met.²

1. Taking advantage of one’s position or relationship in the workplace

“Position in the workplace” refers to cases where the accused is of a higher position than the victim in the workplace organizational structure. Even if the employee is not higher, this component can be fulfilled if the accused perpetrator has taken advantage of his/her higher standing in terms of work performance (number of service years etc.) or is higher in the seniority ranking system.³

Dominance within workplace relations includes just about any relationship where advantage is deemed to exist for the accused perpetrator. The following can be used to judge advantage: (i) stronger job competency, professional knowledge, or higher number of service years, (ii) Personal attributes such as age, academic background, gender, region of origin, race, (iii) Influence in the workplace, such as working for the auditing or human resources department, (iv) Employment status (full-time vs. part-time etc.), and (v) Influence within organizations such as labor unions or workplace councils. Workplace harassment has not occurred unless the act involved taking advantage of one's position or relationship at work.

2. Exceeding the appropriate scope of work

The relevance to work must be comprehensive. Even if the incident does not occur directly in the course of performing work, work relevance is recognized if it occurs while carrying out work duties and requires the claimant having to perform more than required by the job position, or under the guise of performing work.⁴

In order to be recognized as exceeding the appropriate scope for work, it must be recognized that social norms would not see the incident as a business necessity, or that, even if business necessity is recognized, the behavior of the person in higher position would not, according to social norms, be deemed appropriate. Even if the employee is unhappy with some instructions, it is difficult to recognize it as workplace harassment if it is deemed that the act is necessary

² Ministry of Employment and Labor, “Manual on Judgment, Prevention and Handling of Workplace Harassment,” Feb. 2019, pp. 10-14.

³ Supreme Court ruling on July 10, 2008, 2007du22498.

⁴ Supreme Court ruling on Dec. 21, 2006, 2005du13414.

for work in accordance with social norms. However, if the instruction or command is accompanied by violence or verbal abuse, it can be deemed as exceeding the appropriate scope for work, and thus fall under workplace harassment. In addition, even if the act in question is recognized as necessary for work, if the target worker is designated without reasonable cause when compared to workers performing the same and similar work in the workplace, it can be considered as an inappropriate act in the conventional social sense.

3. Acts that inflict physical or mental pain or aggravate the working environment;

Inflicting physical or mental pain occurs from a variety of actions, such as:

- 1) Assault or intimidation;
- 2) Abusive language, profanity, gossip, particularly continuous and repeated violent or abusive language that could seriously impinge on the victim's personal rights and cause psychological pain;
- 3) Repeatedly requiring the employee to run personal errands;
- 4) Bullying in a group, intentionally ignoring or excluding the employee in the course of ordinary work;
- 5) Ordering the employee to do something repeatedly or over a considerable period of time that has no relation to the job description specified at the time the relevant labor contract was signed, and there is no justifiable reason for the instruction;
- 6) Requiring excessive amounts of work from the employee where no unavoidable circumstance to do so exists at the time the work is assigned;
- 7) Intentionally interfering with the employee's smooth business performance, such as not providing major equipment (computers, telephones, etc.) necessary for business or blocking access to the Internet or intranet.

“Aggravating the working environment” means that the act impedes the victim's ability to perform his or her work duties. Here, the intention of the accused perpetrator is not taken into account.

III. Facts of the Case

On May 15, 2022, at the end of a company dinner, a new employee (the claimant) approached the CEO and reported that he was being bullied in the workplace. Accordingly, the head of the personnel department conducted an interview with the claimant on May 17 and instructed him to submit the relevant details in writing

with specific evidence. The new employee had been hired in December 2021 and had been assigned to the technical sales team. He submitted the facts in writing that he had been harassed at least 10 times by the team leader (the perpetrator) and provided the relevant body of evidence.

The details were as follows: ① On March 16, 2022, the team leader was having a serious conversation with another employee when the claimant went into the team leader's office and watered the flowerpots there. The team leader, who was angry, said to the claimant at lunchtime, "(Omitted) You have to run when others are walking, you have to climb three steps at a time when others are going up one at a time, and when others are running, you have to run faster. Understand? If you don't, we know you'll be a do-nothing later." ② On March 21, the victim had to give a PowerPoint presentation after completing the three-month probationary period. Here, as feedback, the team leader remarked, "This is not a place to consult with your psychiatrist," "Your English is not good enough, and your presentation was like what you presented in university. This is not school." ③ On April 1, the claimant was ordered to drive more than 5 hours round trip to and from a funeral for someone the team leader knew. During this trip in the car, the team leader scolded him, saying, "How many months have I been telling you about your clothes?" ④ On April 22, the claimant's team received an email from another department, complaining about the work of the technical sales team. In response, the team leader summoned everyone on the team and criticized the claimant in front of them for an hour for his incompetence in handling work. Here, thinking that the claimant had ignored the team leader's orders, the team leader stared at the claimant angrily, and slapped the victim's left thigh with his hand. In response, the victim apologized, "Team leader, I wasn't ignoring you, and I had no intention to do so. I'm sorry." The claimant stated in the claim, "For an hour I choked up, feeling as if I were a criminal, and after coming out of the team leader's office, my head hurt and I felt very dizzy."

⑤ On April 29, the team leader had a meeting with the team and took issue with the work attitude of the claimant. "I can't understand you guys born in the '90s these days. Work and life balance? Such a rotten thought. Isn't it really a rotten attitude?" "You work with the mindset that you will only give as much as you receive, all while the company has to pick up the slack from the new employee, who receives as much as 34 million won a year." The team leader looked at the claimant and said that the minds of kids born in the '90s are rotten and that he could not understand them. "If you don't take your work seriously, just leave. I

still have a lot of people to work with. There's no need for you to start here. Right?" ⑥ On May 17, the claimant had a meal with three new employees and team members, but didn't say a word. In response, the team leader said, "If you don't feel good, is it okay to show your feelings here? Are you expressing your anger?" "Do what you want. If you're going to show your temper and not talk, fine. I'll have nothing to do with you anymore. Just get out of here!" After that, the team leader didn't respond to any greetings from the claimant. However, he called other employees from the department for a meeting over the claimant drinking too much the night before and coming late to work. The claimant had to write a letter of apology and submit it to the team leader.

The statements used to demean the claimant included: ⑦ "Dress properly. Don't you have any shirts? Buy some. Where is your salary going? When you have some money, buy some pants and new shoes. ⑧ "If you don't pass the OJT exam, you will be cut loose, you know that? If you're not serious about your work, you'll just be fired. If you don't come to your senses by the end of the three-month probation period, you'll be fired, you know? ⑨ "Your English skills aren't that good. Your language skills are very poor. You can't speak English anywhere. Your English skills are terrible." ⑩ During a team meeting, "Why are you wearing a mask? You bastard! You only care about yourself, about not getting infected." ⑪ The team leader never called the claimant by his title, instead calling the claimant by name directly (which is rude in Korea), or "Hey!" "You" and "Ni" (which are also rude in Korea).

IV. Decisions on this Case and Actions Taken by the Company

1. Harassment in the workplace confirmed

The claimant was deemed a victim after the evidence was reviewed and all parties were interviewed. In fact, the team leader, who was the perpetrator, did not recognize the victim's personal rights in the process of performing his duties and concentrated only on the work process. Here, the superior (the team leader) used his superior position as the team leader to continue inflicting mental and physical pain on the new employee beyond the proper scope of work. Inappropriate terms and derogatory remarks were used repeatedly, and the victim was excluded from work and inflicted with psychological pain that was beyond acceptable. Therefore, protective measures were taken with the claimant, including a change of location to allow him to continue to work for the company,

while disciplinary actions were taken against the team leader. The company is also working hard to prevent recurrence in the workplace where superiors infringe on the personal rights of their subordinates in the process of performing their duties.

2. Company actions upon receipt of claim

The company received a claim of workplace harassment on May 15. In response, the HR team leader realized harassment had likely taken place at work through interviews from May 17-19, and asked the claimant to provide additional evidence. On May 27, the company decided that an objective investigation into workplace harassment was necessary, to which it brought in an external expert: in this case, this author's firm, KangNam Labor Law Firm. After investigating the claimant, the related persons, and the perpetrator, the labor law firm reported its findings and determination of workplace harassment on July 10. Accordingly, as stipulated in the rules of employment, the company notified the perpetrator, seven days in advance, of a planned disciplinary committee meeting related to workplace harassment to be held on July 20, 2022. At the disciplinary meeting, the company notified the perpetrator of the facts that had been confirmed, and listened to the perpetrator's response. After that, the company imposed a six-month wage reduction in consideration of the severity, including excluding the offender from pay-for-performance for one year and suspending promotion for one year. In addition, after listening to the claimant, it was decided to assign the victimized worker to the development team where he would perform similar tasks as he had for the technical sales team.

V. Conclusion

The Workplace Harassment Prevention Act was introduced to bolster the personal rights of employees. It was enacted due to the conviction that Korea's long tradition of seniority-based personnel management was deeply rooted and that abuses could not be prevented by the introduction of voluntary rules of employment alone. Therefore, as in the case we've looked at here, acts that exceed the appropriate scope of work violate the company's duty to protect workers, and companies need to be aware that they may find themselves compensating recipients of workplace harassment in the future. The case herein looked at the most frequent type of workplace harassment, bullying, which

involved a new employee and that employee's superior. The resulting consequences show the significant implications of such bullying, even if done with the intent to "mentor."