

Korean labor law: A Case of Workplace Harassment and the Criteria for Recognizing Consequent Mental Illness as an Occupational Accident

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I. Introduction

The most common consequences of bullying at work are mental illness such as depression, anxiety disorders, and adjustment disorders. As these mental disorders worsen, they are diagnosed by a psychiatrist, and if recognized as having a significant causal relationship to work, they can be recognized as occupational accidents and the person recognized as eligible for medical care benefits and suspension benefits under the Industrial Accident Compensation Insurance Act (IACI Act). In order to be recognized as an occupational accident, the mental disorders must be an illness recognized under the IACI Act, and the worker must prove that the illness occurred as a result of work. It is, in fact, difficult to prove this, but two methods make it easier: (i) the company recognizes that workplace harassment has occurred, or (ii) the Labor Office recognizes that workplace harassment has occurred. However, it is not easy for someone to get the employer to recognize they have been the recipient of workplace harassment, even with a psychiatric diagnosis of mental illness, and it takes a considerable amount of time for the Labor Office to recognize that workplace bullying has occurred. Recently, the Korea Workers' Compensation and Welfare Corporation has significantly revised its Guidelines for Investigation of whether a Mental Illness is related to Work, suggesting a detailed method for investigation of whether a mental illness is the result of workplace bullying. The following describes a case in which a female employee developed a mental illness due to bullying by her workplace superior. In this case, I will review in detail the requirements for the worker's mental illness due to workplace bullying to be recognized as an occupational accident.

II. A Case of Mental Illness Caused by Workplace Bullying

1. Workplace bullying

Eun-joo Kim (hereinafter referred to as “Eunjoo”) joined company A with about 100 employees on May 25, 2020, and was in charge of mechanical design in the machine team, and the team leader was a foreigner. The perpetrator was Mr. Kang (hereinafter referred to as “Manager Kang”), the head of the sales development team, who was intentionally involved in Eunjoo’s work and

constantly harassed her, even though he was not in her specific department. The harassment started on November 10, 2021. Manager Kang called Eunjoo at 08:54 before work started and asked, "Where are you?" She said that she was on the 1st floor. He said, "Why are you there now?" When she returned to her desk, he shook with his finger at her and he said, "Don't leave your seat empty." She had gone out to buy a coffee and was with several co-workers, but he scolded her only.

The second was on December 23, 2021, and a few employees on the same floor as Eunjoo worked overtime and had to eat dinner, but Manager Kang ordered a late-night meal for all employees excluding Eunjoo, saying, "Eunjoo will not eat." A few days later, Eunjoo was about to leave for the day when Manager Kang shouted to the managing director next to her, "Who's going to work overtime during this busy time? Who's leaving so early?" Eunjoo did not respond, but his critical remarks remained with her for a long time.

The third time was on January 5, 2022, while Eunjoo was talking to Section Chief Jin of the Electricity Team. Manager Kang interrupted their conversation and said, "Chief Jin, do you have any work for Eunjoo?" Eunjoo felt uncomfortable about Manager Kang trying to instruct Eunjoo on tasks even though he was not a senior in her department.

The fourth time was on May 23, 2022, when Eunjoo heard that Manager Kang called her team leader and asked, "This is urgent, but will Eunjoo work overtime?" She felt very uncomfortable when the team leader of another department essentially ordered her to work overtime.

The fifth incident was on July 20, 2022, when Eunjoo made a purchase request without a price quotation. Manager Kang called her to his desk and asked, "Where did the purchase order come from? If we pay that much, how are we going to eat? Will you be responsible, Eunjoo? Don't do these things without asking your superiors first." Manager Kang verbally mocked and rebuked her. After a while, Eunjoo sent another email to Manager Kang saying, "I checked the quotation and requested the purchase again." Then, Manager Kang sent a group email to employees who had no relation to the purchase, in the Technical Sales, Electrical Management, and Machine departments, mentioning that Eunjoo was not to make the same mistake and greatly exaggerated her error of failing to include a price quotation. It would have been enough for Manager Kang to scold her over the phone, but instead he humiliated and embarrassed her in front of many employees

by email. Because of this, Eunjoo felt uncomfortable while working with people in other departments, and was under a lot of stress.

2. The company's poor investigation and secondary damage

After the email incident on July 20, 2022, Eunjoo suffered extreme mental anguish, and she received a flood of work assignments. On October 20, 2022, Eunjoo experienced severe anxiety and physical pain and found it difficult to endure any longer, so she consulted a psychiatrist and was diagnosed with an adjustment disorder, a kind of mental illness. The diagnosis stated that recuperation for the next three months was required. Eunjoo applied directly to the company president, as the company had no HR head, for paid leave with a written opinion from a psychiatrist. In a meeting with the president on October 24, 2022, she stated her mental illness was due to Manager Kang's workplace harassment. She also requested a leave of absence with pay, as this case constituted an occupational accident. Regarding this, the president asked her to bring evidence, and so she submitted the email document that she received from Manager Kang and a psychiatric diagnosis as evidence. The president then told Eunjoo, "This is more like paranoia." He repeatedly asked, "Are you not normal?" When Eunjoo asked, "Shouldn't it be paid leave because (leave) is due to bullying at work?" the president said, "Go find a company that would give you paid vacation for this."

After the meeting with the president, Eunjoo submitted an additional statement related to Manager Kang on October 31, 2022. In response, the president called in the relevant witnesses to investigate. Eunjoo hoped that the bullying case would be resolved within the company quietly, without making the problem bigger, and only receiving an apology from Manager Kang and preventing recurrence. However, rumors spread to everyone in the office when the president summoned the employees for an investigation, and the summoned employees became uncomfortable with the president's attitude toward Eunjoo. For her part, Eunjoo found it more and more difficult to work and wondered why she was working so hard if this was going to be the result, feeling it was all unfair and futile.

On November 17, 2022, Eunjoo applied for two months of unpaid leave, and the next day the unpaid leave was approved. Eunjoo is about to file for an occupational accident claim for bullying at work. Hereby I would like to review what she needs to consider when doing this.

III. Mental Illness-related Occupational Labor Laws, Precedents, and Guidelines

We will review the standards of laws and precedents regarding the requirements for bullying-induced mental illness to be recognized as an occupational accident.

1. Criteria for recognition of mental illness as an occupational accident under the IACI Act

On July 16, 2019, as the Workplace Harassment Prevention law was introduced pursuant to revision of the Labor Standards Act (Article 76-2), the IACI Act stipulates that “illnesses caused by work-related mental stress, such as bullying at work and verbal abuse by customers,” are recognized as occupational accidents.¹ The specific criteria for mental illness are listed in Table 3 of the Enforcement Decree to the IACI Act, which are “(f) Post-traumatic stress disorder caused by an event that can cause mental shock in relation to work; (g) An incident that may cause psychological shock, such as violence or verbal abuse from customers in relation to work, or an adjustment disorder or depressive episode caused by stress directly related to work.”²

2. Related precedents

A ruling in 2016 stated that an adjustment disorder caused by stress due to workplace bullying constitutes an occupational illness.³ This court ruling stated the standard criteria for judging the case as follows. “Occupational accidents, as stipulated in Article 5, Item 1 of the IACI Act, refer to illnesses caused by work while a worker is performing his or her job, so there must be a substantial causal relationship between work and the illness. However, (i) even if the main cause of the illness is not directly related to work performance, at least if work-related overwork or stress overlaps with the main cause of the illness and causes or aggravates the illness, it must be seen that there is a causal relationship between them. (ii) The causal relationship does not necessarily have to be clearly proven medically or scientifically, and considering all circumstances, even if a substantial causal relationship can be presumed between the work and the illness, the proof must be admitted as verified. (iii) The presence or absence of a causal

¹ Article 37 of the IACI Act (Criteria for Recognition of Occupational Accidents).

² Enforcement Decree (Table 3) of the IACI Act (Specific criteria for recognition of occupational illness) Art. 34, Para. 3.

³ Seoul Administrative Court ruling on Mar. 30, 2016. 2014gudan 2112.

relationship between work and illness shall be judged based on the health and physical condition of the worker concerned, not of the average person.”⁴

3. Types of mental illness

Occupational mental illness does not apply to illnesses caused by congenital physical disorders, but refers to mental illnesses related to work-related psychological stress. Representative mental illnesses related to workplace bullying include (i) depressive episodes (depression), (ii) anxiety disorder, and (iii) adjustment disorder.⁵

① Workers with depression have reduced concentration, increased fatigue, and increased accident rates and absenteeism, which affects work efficiency. This depression impairs workers' social behavior, making them less likely to participate in conversation and less cooperative, affecting interpersonal relationships and even leading to suicide.

② Anxiety disorder refers to a mental illness that interferes with daily life due to various forms of abnormal or pathological anxiety and fear. Anxiety disorders include panic disorder and various phobias (fear of heights, agoraphobia, social phobia, etc.). Panic disorder has physical symptoms such as shortness of breath, a feeling of staggering, sweating, and choking. In particular, cognitive symptoms can include feeling like one is dying or going crazy and are characteristic of “panic attacks.”

③ Adjustment disorder can be diagnosed as anxiety disorder or depression depending on the pattern of accompanying major symptoms. It is characterized by the presence of symptoms, either emotional or behavioral, in response to a recognizable stressor. Adjustment disorder appears within 3 months of the onset of an identifiable stressor and does not persist for more than 6 months once the stressor is resolved. Adjustment disorder is one of the most commonly used diagnoses in psychiatry, and tends to be given when the symptoms do not meet the diagnostic criteria for other mental disorders.

4. Work-related mental illness investigation procedure (Guideline No. 2021-05)

When the Korea Workers' Compensation and Welfare Corporation (hereafter referred to as “the Welfare Corporation”) receives an occupational accident

⁴ Supreme Court ruling on July 25, 2013. 2011du10874.

⁵ Korea Workers' Compensation and Welfare Service, “Guidelines for Investigation of whether a Mental Illness is related to Work,” No. 2021-05, Jan. 13, 2021.

application for workplace harassment, it determines whether to recognize an incident as an occupational accident through the following procedure: ① Receipt of medical care benefit application → ② Confirmation of illness name and clinical psychological test result → ③ Incident investigation → ④ Preparation of incident investigation report → ⑤ Confirmation of medical opinion by a medical doctor working for the Welfare Corporation → ⑥ Request for deliberation by the Occupational Illness Judgment Committee.

It needs to be noted here that the applicant's treatment in a psychiatric clinic is not enough for the name of the illness to be determined and the results of the clinical psychological test. A psychiatric diagnosis at a Welfare Corporation-affiliated occupational accident hospital or general hospitals must be submitted. The name of the illness must include depression, anxiety disorder, or adjustment disorder to be considered a mental illness.

During the incident investigation, the circumstances of the incident, work-related matters, confirmation of major work-related stress factors, and evidence must be collected. The circumstances of the incident are confirmed through statements from the applicant, the applicant's employer, and fellow workers. For work-related matters, the workplace should be observed and daily work stressors checked. "Daily work stressors" shall be checked according to a checklist of 11 items to determine the major work stress factors, with each item including answers to Who, What, Where, When, Why and How. The 11 items on the checklist are: ① Assess the severity of work-related incidents, ② Assess the severity of verbal abuse/violence/sexual harassment, ③ Assess the severity of changes in the quantity and quality of work, ④ Assess the severity of work mistakes/responsibility, ⑤ Assess the severity of complaints/conflicts with customers, ⑥ Assess the severity of conflict(s) with the company, ⑦ Assess the severity of placement change(s), ⑧ Assess the severity of conflict(s) in the workplace, ⑨ Assess the severity of maladjustment to work, ⑩ Assess the viewpoints of bullying and discrimination, and ⑪ Assess the severity of other work-related stressors.

VI. Conclusion

In order for Eunjoo's case mentioned above to be recognized as an occupational accident, evidence must be gathered in accordance with the Welfare Corporation's Guidelines for Investigation of whether a Mental Illness is related to Work. First, a recent diagnosis of mental illness must be issued for the specific

illness by a general hospital. Second, a specific description of the incident(s) of bullying at the workplace must be made and answer Who, What, Where, When, Why and How. Particularly in this case, the company's inappropriate investigation into the report of workplace harassment and the resulting secondary damage must be described in detail. These occurrences worsened Eunjoo's mental state and made it difficult for her to continue working, so she had no choice but to take a leave of absence. In this way, if it is proven that her mental illness occurred from and was exacerbated by bullying at work, it will be recognized as an occupational accident.

The workplace not only provides a means of income for workers, but is also an important place where workers spend most of their time. Workers form interpersonal relationships through work and achieve self-realization through personal growth. In such an important place, workplace bullying is not only a violation of workers' personal rights, it can also cause a variety of mental disorders. Therefore, the employer must ensure a safe environment for workers in accordance with the principle of good faith accompanying the labor contract, and bear in mind that failure to uphold the duty to protect workers will incur liability for criminal⁶ and civil⁷ violations.

⁶ For violations of Article 76-2 of the Labor Standards Act, an administrative fine of up to KRW 10 million is charged.

⁷ Supreme Court ruling on Feb. 23, 1999, 97da12082.