

Workplace Harassment after Employee Request for Remedy against Unfair Demotion

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I. Introduction

On May 26, 2023, a high-ranking employee (hereinafter referred to as the "Employee") at OO Research Institute of a foreign company (hereinafter referred to as the "Company") filed a complaint of workplace harassment with the Gyeonggi Provincial Office of Employment and Labor (hereinafter referred to as the "Labor Office") alleging that he had experienced workplace harassment.

The Employee was hired by the Company on July 1, 2020, to head the IT department. Although the Company recognized the Employee's excellent job performance, it dismissed the Employee from the position of IT department head on July 1, 2022, citing a lack of leadership and inadequate collaboration with other departments. They then demoted the Employee to lead a temporary organization within the IT department, known as the Cyber Security Management (CSM) team. The Employee filed a request for remedy with the Labor Relations Commission claiming that the demotion was unfair. Subsequently, the institute's director persuaded the Employee to withdraw the request for remedy, arguing that the cyber security tasks were critical for the Company and that there would be no adverse personnel actions. As a result, the Employee withdrew the remedy request.

The three reasons cited by the Employee for workplace harassment are as follows: (i) During the year-end performance bonus evaluation in 2022, while other department heads received performance bonuses of 16 million won, the Employee did not receive any bonus. Moreover, during the 2023 salary increase, while other colleagues received an 8% raise, the Employee received only a 2% increase, indicating relative discrimination. (ii) On May 1, 2023, the company unilaterally demoted the Employee within the CSM, assigning him to perform employee duties without any title. (iii) The new head of the IT department, who took over the Employee's former position, engaged in ongoing verbal abuse, humiliated the Employee in front of other employees, and unjustifiably reprimanded him, thereby constituting workplace harassment.

The Employee claimed that the Company subjected him to adverse personnel actions in terms of performance bonuses and salary increases, excluded him from

significant responsibilities, and subjected him to workplace harassment. The complaint with the Labor Office was filed against the director of the research institute, the head of the HR department, the head of management, and the head of the IT department. In response, the Labor Office instructed the Company to conduct an objective investigation into the claims of workplace harassment and report the results by July 4, 2023, along with any measures needing to be taken.

II. Company Actions and Criteria for Determining Workplace Harassment

1. Company actions

Upon receiving the order from the Labor Office to begin an objective investigation regarding the claim of workplace harassment, the Company commissioned an external labor law firm to conduct an investigation since the head of the HR department was named in the claim of workplace harassment.

Upon receiving the assignment, this labor law firm initiated the investigation into the incident, conducting interviews with the individuals involved over a period of one week beginning on May 24, 2023. Firstly, they obtained confidentiality agreements from the interviewees to ensure the protection of their identities. Additionally, they requested that the Employee work from home for two weeks during the investigation. The labor law firm thoroughly examined the specific allegations raised by the Employee to the Labor Office, including holding interviews with the Employee, witnesses of the claimed harassment and the individuals accused of engaging in it. After concluding the investigation, this labor law firm analyzed the facts, the types of workplace harassment involved, and the scope of that harassment within the context of job responsibilities, applying legal precedents to reach concrete conclusions.

2. Administrative interpretation and precedents on workplace harassment

Acts considered beyond the reasonable scope of work duties can be classified into the following seven categories:¹

1) Physical Assault and Threats: This refers to acts where direct physical violence or violence towards objects, such as exerting physical force directly or indirectly, is exercised to intimidate or threaten others.

2) Verbal Abuse, Insults, and Rumors: This includes language-based actions,

¹ "Guidelines for Assessing Whether Workplace Harassment Has Occurred and Measures for Prevention," Ministry of Employment and Labor, 2019, pp. 24-27.

such as public insults or rumors that are disseminated to third parties and harm the reputation of the victim.

3) Personal Errands: This involves repeatedly assigning personal errands beyond what would be acceptable in human relations, surpassing the reasonable scope of job-related requests.

4) Social Exclusion and Isolation: Deliberate disregard and exclusion during work processes that deviate from social norms.

5) Repetitive Instructions Unrelated to Work: This involves continuously instructing employees to perform tasks unrelated to the work explicitly stated in the employment contract, without valid reasons for the instructions.

6) Excessive Workload: This includes excessively burdening an employee with tasks, not even allowing the minimum time necessary for completing the assigned work, without genuine work-related justification.

7) Obstruction of Smooth Work Performance: This includes actions that disrupt smooth work execution, such as withholding essential work equipment (computers, telephones, etc.) or blocking access to the company's intranet.

The courts have provided the following criteria for determining workplace harassment.² Whether an act constitutes harassment should be assessed by considering the following factors: ① The relationship between the alleged perpetrator and alleged victim regarding the act in question, ② The motive and intention behind the act, ③ The timing, location, and circumstances of the act, ④ The explicit or inferred reactions of the alleged victim, ⑤ The content and severity of the act, ⑥ The repetition or persistence of the act, and other factors to evaluate whether the dignity of the worker has been infringed upon. In summary, the determination centers on whether the alleged perpetrator, leveraging their position (power relationship), engaged in actions (related to work), unwanted by the other party (harassment, offensive behavior), thereby infringing upon human rights and dignity or worsening the work environment.

III. Assessment of the Workplace Harassment Complaint

1. Determining whether the claimed harassment has resulted in adverse personnel actions to performance bonus and salary increase

(1) Employee's claims

In the evaluation for 2022, the Employee received a rating of "Strong" in quantitative evaluation but a rating of "Limited Contribution" in qualitative

² Supreme Court ruling on Feb. 10, 1998, 95da39533.

evaluation. Here, quantitative evaluation refers to the results of job performance, while qualitative evaluation pertains to factors such as leadership, organizational management, and interpersonal relationships. The Employee claims that due to this underwhelming evaluation, he suffered adverse personnel actions. Firstly, he did not receive a performance bonus of 16 million won for 2022. Secondly, during the 2023 salary adjustment, while other employees of the same rank received an average salary increase of approximately 8%, the Employee received a lower increase of only 2%.

(2) Facts and evaluation:

The Employee requested an explanation from the head of HR about the evaluation provided by the Executive and the director of the research institute. In response, the head of HR stated that they could not provide additional information beyond what was documented in the evaluation report. According to that report, the Executive described the Employee's leadership and job performance abilities in managing team members and handling tasks as inadequate. It was also noted that the Employee had difficulty cooperating with other departments and had a tendency to become irritable when faced with challenges. Additionally, the director of the research institute commented that the Employee tended to prioritize personal perspective over considering the Company's perspective in handling tasks. It was further mentioned that the Employee lacked understanding regarding the Company's priorities in handling work, especially when it came to the automotive manufacturing industry.

The Employee argued that the evaluators should have provided objective evaluations using the Company's evaluation criteria. His claim was that the evaluators resorted to emotionally charged evaluations as retaliation for filing a claim with the Labor Office of unfair demotion. Nevertheless, unless there is substantial evidence of significant abuse of discretion, the evaluators, who hold the authority over personnel decisions, are entitled to exercise their discretion in conducting evaluations. It has been determined that the Employee's demotion from the position of IT department head in 2022 was justified, and the performance evaluation was deemed appropriate. Therefore, the differential application of performance bonuses and salary increases based on performance is considered a legitimate exercise of personnel authority.

2. Harassment due to unjust work changes and intentional work reductions

(1) Employee's claims

On July 1, 2022, when the Employee was serving as the IT department head, the director of the research institute made a decision to demote him and appoint him as the team leader of a newly created Cyber Security Management (CSM) team. At the time of the appointment, the research institute director promised to propose the necessary organizational structure by the end of September and create the team accordingly after review. The primary reason for the work change was that the research institute needed an employee with good knowledge of cybersecurity to respond to cybersecurity certification inspections, and since there was no one else in the IT department who possessed such knowledge, the Employee was appointed. The position previously held by the Employee as IT department head was then filled by employee A, who was promoted within the research institute. However, on December 1, 2022, the research institute director issued an additional order, demoting the Employee again, this time from CSM team leader to CSM team project leader. Subsequently, from December 2022 to the middle of February 2023, the Employee received multiple instructions from the new IT department head, A, to transfer CSM duties to another colleague, B, but the Employee refused, stating that there was no valid reason for the transfer. It is worth noting that the Employee successfully performed the cybersecurity management tasks during internal audits conducted in November 2022 and March 2023.

(2) Facts and evaluation:

The Employee was hired by the Company as IT department head in 2020 and received positive performance evaluations until 2021. However, due to issues with teamwork and a lack of leadership in 2022, he was demoted from the department head position. On July 1, 2022, based on his experience in cybersecurity tasks, the Employee was assigned to lead the CSM organization, and he successfully handled internal audits in November 2022 and March 2023. However, on December 1, 2022, the Company moved the Employee from the position of CSM team leader to CSM team project leader, effectively another demotion. Additionally, on May 1, 2023, the Company unilaterally demoted the Employee, this time down to a regular CSM employee and appointed worker B as the CSM team leader, even though B had no experience in cybersecurity tasks.

Considering this sequence of events, it can be concluded that the Employee was intentionally excluded from duties. Despite the Employee demonstrating expertise in the CSM field and successfully handling internal audits, the Company appointed worker B, who had no experience in cybersecurity, as the project

leader and relegated the Employee to a position of regular CSM employee without any specific job responsibilities. This can be interpreted as unjustified downsizing and exclusion, which falls under workplace harassment.

3. Determining whether the continuous verbal abuse, insults, and criticism by the department head qualify as workplace harassment

(1) Employee's claims

The Employee alleged that he was harassed by employee A, who became the new IT department head, in the following five instances.

On December 14, 2022, during a small meeting in the conference room, employee A made the Employee uncomfortable by stating with a displeased expression and tone, "Don't sit there arrogantly, sit up straight." When the shocked Employee asked, "What do you mean by arrogantly?" employee A replied, "Sitting like that is arrogant," leaving the Employee surprised. Employee A further added, "That's how I perceive it."

On December 20, 2022, during a Teams online meeting with more than ten employees present, employee A publicly reprimanded the Employee, saying, "I'll change the color of your report from red to green as per my instruction." When the Employee responded, "Alright, I'll let it be changed," Employee A criticized him in front of many employees, saying, "‘Yes, I'll change it.’ That's what you should have said."

On January 16, 2023, in an email involving employee A, the Employee, and employee B, the Employee gave his opinion on some work matters. In response, employee A made the following remark: "When you think the directions from superiors are different from what you believe, please do not comment like you're expressing your thoughts to your colleagues. Instead, I urge you to ask questions based on your thoughts and show basic courtesy toward your superiors."

On January 20, 2023, during email correspondence with a headquarters representative while preparing for a second-round review for CSM certification, employee A and employee B criticized the Employee for their not being included in the email conversation as they were not cc list. However, the invitation recipients were decided by the headquarters representative—the Employee had nothing to do with it.

On January 27, 2023, during a Teams video conference at 11 a.m., attended by employee A, the Employee, and three other employees, the Employee was publicly criticized by the supervisor for not finding a work file. Employee A then

insulted the Employee, saying, "Don't speak in a voice filled with complaints, and don't reject work." Even though the Employee did not reject any tasks, employee A criticized and humiliated him in front of other employees, falsely accusing him of refusing to work.

(2) Facts and evaluation

Workplace harassment occurred intensively between December 14, 2022 and January 27, 2023. The actions described above by the newly appointed department head towards the demoted Employee could be regarded as workplace harassment. These actions were unreasonable attempts to exert authority over the Employee, who was demoted from his previous responsibilities. It is noted that such behavior was not reported after January 27, 2023, which indicates that it may have been a temporary and short-lived situation of a power struggle. Nevertheless, the verbal abuse and near-humiliating reproach by employee A in front of other employees were undesirable actions. While the harassment appeared to be limited to a specific period and did not recur after that time, a written warning to employee A about refraining from any similar verbal abuse or insults that could be considered workplace harassment would be necessary.

IV. Determination of Workplace Harassment and Preventive Actions

1. Determination of workplace harassment

The Employee argued that the Company's unfairness in not granting him an incentive bonus in 2022 and giving him a relatively low salary increase in 2023 were in response to his filing for remedy due to unfair demotion. Additionally, the Employee alleged that the performance evaluations by the top management and the research institute head were not in line with personnel principles and were retaliatory evaluations. However, based on the investigation results, performance evaluations are within the Company's exclusive authority and are made based on independent and autonomous criteria, which does not fall under the scope of workplace harassment.

The second issue raised is the unfair exclusion and downsizing of responsibilities. Despite the Employee demonstrating expertise in cybersecurity and successfully completing audits in November 2022 and March 2023, the Company intentionally assigned his cybersecurity tasks to another employee starting from January 2023. The Company's decision to exclude the Employee from responsibilities without reasonable grounds qualifies as workplace harassment.

Thirdly, the cases of workplace harassment from December 14, 2022 to January 27, 2023 include actions that go beyond the appropriate scope of a superior's duties in the workplace, leading to humiliation for the Employee. Intentional verbal abuse and similar behaviors can be interpreted as workplace harassment. However, apart from these five instances, there is no other evidence supporting claims of workplace harassment. Moreover, the incidents were concentrated within a 40-day period and did not occur subsequently. Therefore, a written warning to the perpetrator, IT department head A, is necessary to prevent recurrence and raise awareness about workplace harassment.

2. Preventive actions by the Company

Upon receiving the results of the investigation on workplace harassment from the labor law firm, the company took the following actions.

Firstly, the Employee's lack of incentive bonus and low salary increase due to the qualitative evaluation in the performance review was deemed a reasonable autonomous decision by the Company, and no need for rectification was identified.

Secondly, concerning the exclusion and downsizing of responsibilities, the Company realized these were not justifiable personnel actions. Therefore, the Company decided to adjust the duties to continue assigning cybersecurity tasks to the Employee, who had been performing them well.

Thirdly, regarding the verbal abuse, humiliation, and excessive reprimanding, it was recognized that these actions were limited to a specific period when the Employee had assumed a new position. As there were no subsequent instances of workplace harassment, it was concluded that the perpetrator, as a superior, engaged in intentional workplace harassment to assert his authority. As a final decision, a written warning to the superior was the chosen measure to prevent recurrence and resolve the issue of workplace harassment.