

# The Workplace Harassment Case Involving a Dispatched Worker

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### I. Introduction

Workplace harassment Cases occur in various forms during the course of performing duties. When dealing with workplace harassment cases, there are cases where individuals report being harassed in the workplace by peers of equal position due to conflicts during work. Additionally, there are instances where superiors report being harassed in the workplace by subordinates' offensive remarks. However, to be recognized as workplace harassment, it must involve the use of superior status or relationships within the workplace, as specified in the definition of workplace harassment. In this case, the incident involved the issue of whether disrespectful remarks made by a subordinate to a superior constituted workplace harassment.

On October 16, 2023, a manager-level employee (victim, manager Ms. 00 Kang) reported being harassed in the workplace by a dispatched worker (offender, assistant manager Mr. 00 Kim). The conflict arose during a disagreement between the victim and the offender over the victim's job performance, expressed through the company messenger (MS Teams Messenger). The victim reported that the offender's statements constituted workplace harassment.

The victim claimed to have experienced verbal abuse from the dispatched worker, causing significant stress to the point where they could no longer work together. The company, upon receiving this incident report, faced two main issues. Firstly, whether the verbal abuse the victim endured during working hours met the criteria for workplace harassment. Secondly, if the psychological distress experienced by the victim qualifies as workplace harassment, the company needs to address how to take action against the dispatched worker, who is an employee of another company.

### II. Summary and Content of Workplace Harassment

#### 1. Summary of the case

The company has three offices: Gangnam office, Samsung office, and Yeoksam office, each managed by a designated individual. The victim manages the Samsung office, the offender manages the Gangnam office, and another employee is responsible for the Yeoksam office. While all three individuals share office management (OM) responsibilities, their reporting

lines are different. Office management involves overseeing each office's operations, making their tasks independent of each other. However, there are some collaborative tasks such as voucher receipt and distribution, pouch services, etc. They primarily communicate through the company messenger (MS Teams), and face-to-face meetings between the two individuals occur approximately once a month.

The victim, Manager Kang, joined the company in October 2020 and has been working as the Office Manager at the Samsung office. In contrast, the offender, assistant Kim, is a dispatched worker from a service provider and has been working as an Office Administrator at the Gangnam office since July 2023. The communication within the messenger is as follows:

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| <p>&lt;Dispatched Company Employee, Assistant Mr. 00 Kim&gt;</p> <p>① (Expressing Dissatisfaction with Manager Kang's Work)</p> <p>Manager Kang, please properly handle the modification of the preferred office requests. It's confusing to repeat the same tasks when issuing vouchers, and I'm getting mixed up. Isn't it Manager Kang's responsibility to organize the voucher list? You always ask me to do this and that.</p> <p>② (Getting Angry at Manager Kang's Response and Insulting Manager Kang)</p> <p>Can you (Manager Kang) change things as you please? Do you know how many times I've been confused because of the preferred office? You never apologize for your mistakes. Do you realize how much I have to endure because I work in the same position as you? I try to get along as much as possible. You (Manager Kang) doesn't seem like such a nice person either, and I'm not that nice either. So, let's just be ourselves. It would be more comfortable for both of us when working, right? I won't ask you anything. Don't tell me what to do or not to do in the future. Fix the way you talk, mixing talking-down language and short sentences. If you speak talking-down languages to me again, I will use talking-down language with you.<br/>(Some parts omitted)</p> <p>You don't have the position or qualification to tell me what to do. And you don't have that qualification, right? No, I'm an admin (responsible person), but I'm not the one who does what you (Manager Kang) tell me to do. (Some parts omitted)</p> | <p>&lt;Regular Employee, Manager Ms. Kang&gt;</p> <p>① (Uncooperative Response to Assistant 00 Kim's Work Complaint)</p> <p>Assistant 00 Kim, do it yourself. I'm not sure if you really understand this task and are requesting changes properly. If you speak to the person directly involved in leading this task from the beginning, it's understandable that it's confusing. Instead of requesting updates from me every time, you can update the data directly. (Some parts omitted)</p> <p>② (Manager Kang will ask HR for changing Assistant 00 Kim's Job Changes)</p> <p>Since it doesn't seem like we're in a situation to work together from the start,<br/>go ahead and talk to HR to sort it out. It doesn't seem necessary for us to have a conversation. You came in as a Manager Position, right? When others hear it, they might think you came in as a manager with such competence that you can handle the work alone. It seems to go beyond what I and HR think. You should ask HR about that. Whatever you say (Some parts omitted)</p> <p>I don't know how much I talked down to you, but if you feel bad because I used taking down to you, I apologize. I have things to apologize for and things not to apologize for, and I make that distinction.</p> <p>I'll contact HR, so try to adapt to the work later.</p> |
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| <p>③ (Assistant 00 Kim Expressing Anger for Manager Kang Mentioning Assistant 00 Kim to HR)</p> <p>Please try mentioning it to HR. I've been considerate of what I want. (Some parts omitted) If you've been doing it for three years, stop thinking about passing work to others. What's the point of giving orders if you don't set an example? (Some parts omitted) You can never apologize, can you? You still have your pride.</p> <p>I've been very considerate. You should have felt it by now. Please contact me. You're dense. You express your emotions the most. It's not kindergarten. If I do more, I'll do the same as you (Manager Kang). If someone who has been in the company for a long time is like this now, it's a big problem, isn't it?</p> | <p>③ (Intentional Discontinuation of Conversation Regarding Assistant 00 Kim's Insults)</p> <p>There's really no need for emotional battles at work, so it's quite interesting.</p> <p>Try experiencing corporate life a bit more later on.</p> |
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## 2. Detailed Description of Harassment

Expressions such as "Manager Kang doesn't seem like such a nice person either," "You still have your pride," "You're dense," "You express your emotions the most, what a kindergarten," and "If someone who has been in the company for a long time is like this now, it's a big problem" in the conversation have the potential to be considered insults that go beyond the reasonable scope of work. However, these remarks arose during a disagreement in the process of expressing dissatisfaction with the work style. During the interview, the offender acknowledged his mistakes and mentioned that such incidents would not happen in the future. The offender's behavior of insulting the victim, as in this case, did not show a pattern of repetition or persistence.

The victim is complaining about the psychological distress caused by the messenger conversation. However, this harassment incident was a one-time occurrence, and since then, the victim has voluntarily refused any communication with the offender, including work-related contacts.

### 3. Investigation findings of the company

On October 16, 2023, Manager Kang (the victim) reported being harassed in the workplace by the offender. As evidence of workplace harassment, the victim submitted the content of the MS Teams messenger from 2:20 to 3:15 on the same day.

Following this, the company's HR representative conducted an interview with the offender on October 19, 2023. The offender stated that he received personal insults and rude treatment from the victim due to being a newcomer and decided to address the conversation mentioned earlier via Teams messenger, thinking it should be discussed and moved on. The offender acknowledged his inappropriate behavior but refused to apologize.

On November 1, 2023, the company's HR conducted an investigation through an interview with the victim. The victim stated that the offender's attitude does not align with the company's culture, making it difficult to continue working together. The offender displayed a similar attitude in work-related messages on October 25, 2023. The victim suffered significant stress and health deterioration due to the offender's harassment. The victim requested the separation of duties from the offender and disciplinary action against the offender. After completing the investigation into the harassment report involving the victim and the offender, the company convened a disciplinary committee on November 20, 2023.

## III. Legal Evaluation on Workplace Harassment

### 1. Legal Requirements for Establishing the Occurrence of Workplace Harassment

"Employers and employees shall not engage in conduct that goes beyond the appropriate scope of work and causes physical or mental suffering to other employees in the workplace or deteriorates the working environment by using their superior position or relationship in the workplace" (Article 76-2 of the Labor Standards Act). To determine that workplace harassment has occurred, all three of the following requirements must be met, and the conduct must be thoroughly examined before making an overall judgment.

#### (i) Utilization of superior workplace position or relationship

"Workplace position" refers to hierarchical relationship within the workplace, where the actor holds a superior position in a direct or indirect supervisory

capacity. Utilizing one's position, even if not in a direct supervisory relationship, based on factors such as seniority, expertise, personal characteristics, influence within the workplace, being in auditing or HR departments, regular employment status, influence within the labor union or workplace councils, etc., should be considered.<sup>1</sup>

**(ii) Relevance to work necessity and exceeding the appropriate scope of work**

Relevance to work encompasses a broad interpretation of work-relatedness. It is not limited to acts that occur directly during work processes but also includes acts that accompany or arise from work or are related to work. For an action to be deemed exceeding the appropriate scope of work, it must either lack social necessity when viewed from societal norms or, even if necessary, be considered socially inappropriate in terms of its manner. Dissatisfaction with a work-related directive or order, even if it may cause discontent, cannot be considered workplace harassment if the action is deemed necessary from a societal perspective. However, if the behavior accompanying the directive includes physical violence or excessive verbal abuse, it can be considered as exceeding the appropriate scope of work. Furthermore, if the directive, despite its necessity, is unreasonably directed at one employee over others engaged in similar duties without justifiable reasons, it can be considered socially inappropriate.<sup>2</sup>

**(iii) Causing physical or mental suffering or deteriorating the working environment**

“Causing physical or mental suffering” refers to a wide range of following actions. 3

- Physical assault or threatening behavior.
- Verbal acts such as insults, swearing, gossip, etc. Particularly, persistent verbal abuse or swearing can seriously violate the victim's dignity and cause mental distress.
- Repeatedly assigning personal errands to an individual.
- Acts of ostracism within a group, intentional disregard or exclusion during work processes.
- Directing an employee to perform tasks unrelated to the duties specified in the employment contract against the employee's will, with such instructions persisting over a considerable period without a valid reason.

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<sup>1</sup> Supreme Court ruling on July 10, 2008: 2007du22498.

<sup>2</sup> Supreme Court ruling on Dec. 21, 2006: 2005du13414.

<sup>3</sup> Ministry of Employment and Labor, *Workplace Harassment Assessment and Prevention Response Manual* (May 2019),

- Imposing excessive tasks in the workplace, which refers to assigning tasks that should not be assigned unless there are unavoidable work-related circumstances.
- Acts that hinder smooth job performance, such as not providing essential work equipment (computer, phone, etc.) or disrupting access to the internet or the company's intranet.

"Aggravating the working environment" refers to acts that impede the victim's ability to demonstrate their capabilities due to such behavior.

#### **(iv) Comprehensive Judgment**

In summary, for an action to be considered workplace harassment, it must meet all three conditions: i) the action is perpetrated by a person using their superior workplace position or relationship, ii) the action exceeds the appropriate scope of work, and iii) the action results in physical or mental suffering or deterioration of the working environment. In essence, there must be tangible evidence of the victim experiencing physical or mental distress or the working environment being negatively impacted.

## **2. Assessment of Dispatched Workers**

In the case of dispatched workers, they are considered third parties as they do not fall under the categories of 'employer' or 'employee' as defined in Article 76-2 of the Labor Standards Act. Despite this, the relationship in labor dispatch involves a special separation of employment and utilization. Therefore, workplace harassment arising from the employment relationship is jointly attributed to the using employer and the dispatching company as co-employers. Article 34 of the Act on the Protection of Dispatched Workers (hereinafter referred to as the "Employee Dispatch Act") provides a special regulation regarding the application of the Labor Standards Act. The first paragraph of Article 34 stipulates, "For the dispatched work of dispatched workers, both the dispatching employer and the using employer are considered employers under the Labor Standards Act." Furthermore, Article 21 of the Employee Dispatch Act states, "Neither the dispatching employer nor the using employer shall engage in discriminatory treatment towards dispatched workers compared to workers performing the same or similar tasks within the business of the using employer." Therefore, in the case of harassment incidents involving dispatched workers, the using employer must assess the occurrence of harassment against dispatched workers using the

same standards applied to regular employees within the workplace.<sup>4</sup>

Consequently, both the dispatching employer and the using employer are considered employers under the Labor Standards Act, sharing the joint responsibility and obligation stipulated by the workplace harassment provisions of the Labor Standards Act. While, in principle, both the dispatching employer and the using employer should conduct a joint investigation and take necessary measures, in cases where the incident occurs during the provision of labor at the user workplace, the using employer is responsible for the investigation and measures, and the nature of these actions should be communicated to the dispatching employer.<sup>5</sup>

### 3. Determination of Workplace Harassment

Upon comparing the factual circumstances described earlier with the legal principles of workplace harassment, the following conclusions can be drawn. The offender is a non-regular employee (dispatched worker) and holds a lower position compared to the victim. In contrast, the victim holds a higher position and is a regular employee with the ability to influence the offender's future regular employment or job evaluation. Therefore, the offender cannot be considered to have a superior position in terms of the victim's workplace status or work relationship.

The statements made by the offender, such as "You still have your pride," "If someone who has been in the company for a long time is like this now, it's a big problem," and "What a kindergarten," are derogatory remarks targeting the victim and can be considered verbal abuse, a form of workplace harassment. Additionally, irrespective of the determination of workplace harassment, it is unacceptable for a subordinate to use verbal abuse towards a superior in a hierarchical and respectful organizational society.

The dialogues constituting verbal abuse by the offender can be deemed as causing psychological harassment to the victim. As a result, the victim has expressed psychological distress and avoidance of the offender in work-related matters, leading to significant mental suffering and a deterioration in the working environment associated with job performance.

In assessing workplace harassment, all three elements must be satisfied: 1)

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<sup>4</sup> Lee Sangkon, "A Study on the Improvement of Workplace Harassment Legislation," Doctoral Dissertation, Ajou University Graduate School of Law, 2020, pp. 122-125.

<sup>5</sup> Ministry of Employment and Labor, "Prevention and Response Manual for Workplace Harassment" (April 2023), p. 54.

the use of a superior position or relationship, 2) excessive behavior beyond the appropriate scope of work, and 3) resulting in psychological or physical suffering or worsening of the work environment. In this case, elements 2) and 3) are met, but since the offender is a lower-ranking employee, a non-regular employee (dispatched worker), and lacks superiority in the relationship, element 1) is not satisfied. Therefore, it can be concluded that the offender's actions do not constitute workplace harassment in relation to the victim.

#### **IV. Conclusion**

The company only assessed whether the actions of the dispatched worker, who is also a lower-ranking employee, constituted workplace harassment by exceeding the appropriate scope of duties towards the superior employee. In this context, it did not address disciplinary measures such as warnings or other punishment for inappropriate behavior by the subordinate employee in the future.

This workplace harassment case has two notable features. Firstly, it revolves around determining whether the inappropriate verbal abuse from the subordinate to the superior exceeded the appropriate scope of workplace harassment. The text concludes that inappropriate language violence from a subordinate to a superior does not qualify as workplace harassment because the requirements for workplace harassment involve actions from someone in a superior position using their authority over a subordinate employee. Secondly, it raises the question of whether a dispatched worker can be either the offender or victim of workplace harassment. In cases involving workplace harassment related to dispatched workers, the using employer is obligated to take necessary measures for addressing workplace harassment. As mentioned earlier, the employer must fulfill the obligations outlined in Article 76-3 of the Labor Standards Act as the using employer for the dispatched worker.