Flexible Labor Market to Enhance Competitiveness

By Haesun Kim

KangNam Labor Law Firm has a number of client requests, and while reviewing numerous cases, we often encounter companies with headquarters abroad that have questions about the Korean labor market. Among many issues, when it comes to dismissing long-term employees, both the headquarters and the Korean branch are concerned about how to handle the termination.

Especially when compared to the United States, where hiring and firing are relatively easy, the Korean labor market is seen as rigid in many aspects. In case of some well-known multinational companies, many seek advice from labor law experts to minimize the impact on the company's image before dismissing their Korean office employees

Let's take a look at the U.S. labor market. In the U.S., while jobs are increasing, layoffs are also easy. According to AP News on February 3, About 5 million people resign or are laid off in the U.S. each month, but more than 5 million new hires are made every month. AP reported that the number of new unemployment claims remains very low, indicating that the U.S. labor market is still considered flexible.

Office workers in tech companies are particularly hit hard in the era of artificial intelligence. Major tech companies like Google, Amazon, Microsoft (MS), Discord, Salesforce, and eBay announced plans for mass layoffs earlier this year. Additionally, The Washington Post emphasized that laying off employees in many tech companies is no longer seen as a sign of weakened competitiveness. It reported that company executives are looking for areas where efficiency can be increased with fewer personnel. Mark Zandi, a senior economist at Moody's Analytics, explained to WP, This is how the American capitalist system operates, stating that companies are aggressive in enhancing profitability and rapidly reallocating resources to the right places. Human resources consulting firm Challenger, Gray & Christmas explained, U.S. companies are restructuring, and layoffs are occurring in this process.

The current fields experiencing mass layoffs in the U.S. are technology, finance, and media. However, other sectors are experiencing rapid employment growth, preventing a mass unemployment crisis. In other words, while the total number of jobs in the U.S. is about 160 million, the creation of approximately 250,000 new jobs per month over

the past six months has kept the unemployment rate at around 3.7%.

In Japan, the employment rate for college graduates this spring was surveyed at a record high of 98.1%, an increase of 0.8% from last year's figure of 97.3%, the highest since 1997.

On the other hand, how is the situation in Korea? According to a survey conducted by the Korean Statistical Office earlier this year, the employment rate for college graduates in Korea is 69.6%, with a strong preference for science and engineering fields. So, why is the employment rate for college graduates in Korea so low compared to the U.S. and Japan? Of course, there are young people choosing entrepreneurship and creating various jobs as self-employed individuals. One possible reason for this low employment rate could be the rigid labor market.

Recently, an international public company's Korean branch sought advice to KangNam Labor Law Firm on dismissing an employee. During this process, their HR team experienced that it is not easy to dismiss employees in the Korean labor market, and the HR manager who are residing outside of Korea expressed difficulties in dismissing a few well-performing employees due to the inability to execute the so-called Managerial Dismissal[1].[1)]

Considering various situations of the company and the status of the target employee who will be dismissed, KangNam Labor Law Firm advised that the employee should be offered an Early Retirement Program (ERP), including severance pay based on years of service, dismissal allowance, and paid leave costs.

From the perspective of a multinational company who are unfamiliar with the local labor law, the situation arises where significant costs, including consulting fees from labor law firms, must be borne to dismiss one or a few employees. Experiencing this makes companies more cautious when hiring a new employee in the future. Compared to the U.S. employment market, where hiring and firing are easy, the Korean labor market's culture is rather rigid in terms of salary, whether the employee is full-time or

1) 'Managerial dismissals' involve terminating some employees due to urgent business needs, and the legitimacy of such dismissals is strictly evaluated based on Article 24 of the Labor Standards Act. First, there must be an urgent business necessity justifying the dismissal. Second, efforts must be made to avoid dismissals, using them only as a last resort. Third, the selection of employees for dismissal must be reasonable and fair. Fourth, the employees must be notified of the dismissal at least 50 days in advance, and sincere consultations with the employees must be conducted. All four of these conditions must be met for a managerial dismissal to be considered legitimate.

temporary, executive status, and the terms and condition of the employment contract.

The frequent resignations and re-employments, and the at-will employment system in the U.S., where workers' job security is unstable, is a downside. However, it is also worth noting that as job security increases, tension decreases, and employees may fall behind in competition, leading to a decline in competitiveness.

The world is currently grappling with a high-tech war. The U.S. is establishing policies based on national priority to maintain its superior competitive edge in this field, even at the expense of allies.

At such times, Korea must strive to create a flexible environment, moving away from the current rigid labor market, to attract prestigious overseas companies with advanced technologies. Rewarding outstanding graduates and ensuring experienced employees in existing workplaces are recognized for their skills in a better working environment is essential for societal progress and international competitiveness. Otherwise, Korea will not only fall behind in the global market, but the future for our descendants will be bleak.

Collective Bargaining Consultation: Case Study

(Workforce restructuring and restoration of management rights)

Bongsoo Jung, Labor Attorney

Ⅰ. Introduction

In August of 2023, I was asked to provide labor consulting for a small manufacturing company in Ulsan with 150 employees (hereafter referred to as “the Company”). The Company wanted to reduce its two-shift production line to a single-shift line. They needed help with restructuring the surplus workforce and revising the collective agreement that seriously restricted their management rights.

This task was quite challenging and could potentially escalate conflict, causing significant damage to the relationship between labor and management. Notably, in the company's 74-year history, the production workforce had never been restructured. The employees on the production line were members of a union with a union shop.

Typically, workers hired by the Company worked until retirement age if there were no major issues that cropped up.

The clauses in the collective agreement that restricted management rights had been conceded by the Company over more than 20 years. Because of these clauses, the Company couldn't employ temporary workers for more than three months. Any new or revised company regulations required prior agreement with the union. Even temporary reassignment of workers during peak production times required prior consultation with the union. These constraints were gradually eroding the Company's competitiveness.

Despite these challenges, I was able to successfully guide the Company through the restructuring and restoration of its management rights as desired. The restructuring was completed through voluntary retirements, offering severance packages to all affected employees without forced layoffs. Additionally, we recovered the management rights through persistent negotiations with the union, ultimately convincing them to agree to the needed changes.

In this article, I will explain the process of this restructuring and the recovery of management rights in detail.

Ⅱ. Consulting on Restructuring

1. Need for Restructuring

The Company was facing a crisis due to hostile changes in both internal and external environments. Externally, the domestic distribution of low-cost Chinese products, rising raw material prices, and the economic downturn caused by COVID-19 led to a continuous buildup of the Company's inventory. Internally, the average age of workers was high, resulting in higher labor costs than for the Company's competitors. The market demand for products from the Company's main AA line had decreased significantly. Without immediate restructuring to reduce labor costs, the Company was at risk. The proposed solution was to convert the two-shift production line to a single-shift system and let go of the excess workforce.

2. Restructuring Process

I was authorized by the Company to engage in collective bargaining with the labor

union. During the first round of negotiations that began on September 7, 2023, the Company suggested finding a mutually agreeable way to deal with the product line in deficit before discussing specific terms. Since January 2023, the Company had not hired any new personnel, had offered voluntary retirement packages to 17 office workers, and adjusted personnel outsourcing. The Company notified the union of its plans to reorganize the two-shift system into a day shift and offer voluntary retirement packages to the surplus workers.

The Company faced a major challenge in determining an appropriate amount for the voluntary retirement package. Office workers, who were also part of the restructuring, received a three-month severance package upon retirement. Therefore, the Company proposed starting negotiations with the labor union on voluntary retirement packages of six months' pay for the excess production workers. However, this labor attorney advised that modifying the severance amount midway would be difficult and considering that the average service period of the current production workers was 20 years, a minimum of one year's pay should be offered as the voluntary retirement package. Following this suggestion, the Company adjusted the severance package to ten months' pay.

On September 11, 2023, the Company posted a notice inviting applications for the voluntary retirement packages. However, the union opposed this unilateral action and, after a month, no one had applied. The Company then explained to the union the necessity of restructuring and sought their input on selecting layoff candidates. The union maintained that the Company's overall sales were not in deficit, only specific production lines were, and thus rejected the restructuring. However, the Company argued that the widening deficit due to its continued production of non-competitive products posed a significant threat to the Company's sustainability.

On October 5, the Company announced a restructuring plan under Article 24 of the Labor Standards Act and sought the union's input on selecting layoff candidates. The criteria for selecting 25 candidates were based on ten years of data, including positive factors like disability status, veteran status, number of dependents, model employee status, contribution to duties, performance evaluations, and essential skills. Negative factors included annual income, unauthorized absences, disciplinary records, performance evaluations, safety incidents, sabotage, and relevant work processes. The union opposed

the unilateral announcement and requested immediate suspension of the restructuring plan, asking that the number of layoffs be reduced from 25 to 15 and to remove “contribution to duties” from the criteria. The Company agreed to reduce the number to 20 and exclude the contribution to duties criterion. The Company and the union jointly decided on the layoff criteria and number.

The Company then informed the selected employees of the criteria and asked them to apply for voluntary retirement. Faced with the possibility of being laid off without compensation by December 10, the employees opted to accept the severance package and resign. Fortunately, all 20 targeted employees accepted voluntary retirement, allowing the restructuring to be completed without forced layoffs.

Ⅲ. Collective Bargaining towards Recovering HR Management Rights

1. The Need to Recover HR Management Rights

The Company faced significant operational difficulties due to numerous clauses in the collective agreement that infringed on its management rights. In the harsh realities of the manufacturing industry, small and medium-sized enterprises must maintain international competitiveness or risk being overtaken by newer competitors. The Company's products, particularly those supplied to shipyards, were increasingly being replaced by cheaper Chinese and Southeast Asian alternatives. Although the Company still maintained a quality edge due to its advanced technology, this advantage was shrinking. Infringement on management rights through the collective agreement posed a critical threat to the Company’s survival.

2. Process of Recovery

The restructuring was completed through collective bargaining between September 7 and October 31, 2023. On November 9, 2023, after restructuring had been agreed upon, the union delegated its collective bargaining authority to the Metal Workers' Federation of the Korean Confederation of Trade Unions (KMWF), whose officials participated in the negotiations. Between November 9 and 30, 2023, the Company held four meetings requesting amendment of the clauses infringing on its management rights, but the union rejected these requests, citing their hard-earned rights over the

past 20 years. Realizing that normal negotiations would not restore its management rights, the Company announced that the collective agreement would be terminated on November 23, 2023. According to Article 32, Paragraph 3 of the Trade Union and Labor Relations Adjustment Act, if collective bargaining for a new agreement is ongoing after the previous agreement's expiration, either party can terminate the old agreement with six months' notice.

The union, supported by the KMWF, organized two large-scale demonstrations at the Company's headquarters in Seoul, requesting a meeting with the Company head and withdrawal of the termination notice. The Company refused, stating that negotiations were handled by their labor attorney and clarifying that the termination notice aimed to restore its management rights, not to undermine the union.

During this process, the union applied for mediation three times with the Labor Commission to obtain the right to strike but did not proceed with a strike. From November 20 to December 21, 2023, during the mediation, the union indicated that it might accept some restoration of management rights if the collective agreement included a clause ensuring job security. The Company accepted this, agreeing to the following job security clause: "The Company cannot terminate employees without their consent without a legitimate reason." This concession led the union to adopt a more flexible stance and propose a compromise on management rights. However, the final agreement on specific clauses, including Article 27 (Transfer, Subcontracting, and Conversion to Outsourcing) and Article 30 (Establishment and Amendment of Regulations), was not reached through mediation.

On April 12, 2024, the senior union officials applied for another round of mediation, aiming to finalize the collective agreement. The Company participated in this round of mediation, informing the union that the collective agreement would be terminated on April 23, 2024, and urging the union to cooperate. The union president decided to exclude senior union officials and finalize the collective agreement directly with the Company.

Through this collective bargaining process, the Company successfully recovered its management rights through negotiations with the union. At the same time, the union maintained the existing working conditions and achieved some improvements.

3. Details of Restored Management Rights and Improved Working Conditions

(1) Restored management rights

Restoration of the Company's management rights involved reclaiming its inherent managerial rights that had been conceded to the union over the past 20 years. This was essential for the Company to remain competitive. Here are the specific changes:

	Current	New Agreement
1) Probation Period and Temporary Employees	The Company's 3-month probation period for new hires could not be extended, and temporary employees automatically became regular employees after 3 months.	The Company can set a probation period of up to 3 months for new hires and extend it by another 3 months based on work attitude and performance.
2) HR Principles	The Company had the authority over employee HR decisions, but had to consult with the union before changing employee positions, transferring or promoting employees, or increasing salary.	The Company retains authority over employee HR decisions and will notify the union of any changes in employee position and prior to transferring or promoting employees or increasing salary.
	The Company must consult with the union before temporarily reassigning employees due to short-term vacancies or production plans.	The Company can reassign employees due to short-term vacancies or production plans without prior consultation.
3) Disciplinary Action/Dismissal	Disciplinary actions and dismissals were only possible for listed infractions.	Disciplinary action: For any violation of employment rules or comparable misconduct. Dismissal: For reasons making it socially unacceptable to continue the employment relationship.
4) Downsizing	③ When restructuring, foreign workers were first to be laid off.	Clause ③deleted.
5) Transfer, Outsourcing, and Subcontracting	The Company had to consult with the union before transferring the whole or part of the business, or converting any department to outsourcing or subcontracting, to ensure job and livelihood security.	If the Company intends to transfer all or part of the business to another party, outsource part of a department, or convert it to subcontracting, it must notify the labor union in advance and provide a sufficient explanation regarding the maintenance of related employees' livelihoods. If necessary, the labor union may request additional explanations from the Company regarding this plan.
6) stablishing and Amending Regulations	The Company had to obtain agreement from the union before any regulations related to union members could be established or amended.	The Company must listen to the opinions of the majority of employees before establishing or amending any regulations related to union members and must obtain majority consent if the changes are disadvantageous to employees.

(2) Improved Working Conditions for the Union

Despite not gaining a wage increase due to the restructuring, the union managed to maintain existing working conditions and improve certain benefits.

	Current	New Agreement
1) Salary	-	Wage increase frozen. One-time settlement payment of KRW 1.5 million. Performance bonus: 80% payout.
2) Bonus	Summer vacation allowance: KRW 900,000	Summer vacation allowance: KRW 1 million
3) Welfare Facilities	Annual welfare card: KRW 900,000 -	(Increase) Annual welfare card: KRW 1 million (New) Birthday gift card: KRW 100,000
4) Tuition	Existing full tuition support. -	Existing full tuition support maintained. (New) Enrollment bonus: Elementary (KRW 200,000), Middle school (KRW 300,000), High school (KRW 500,000)

Ⅳ. Evaluation of Collective Bargaining Consultation

1. Implementation of Restructuring

The Company restructured a specific uncompetitive production line, converting the two-shift system to a single-shift system. Restructuring the production workforce was particularly challenging and met significant resistance. The following four factors were crucial to the Company's ultimate success through voluntary retirement: First, there was a shared recognition of the ongoing deficit caused by non-competitive products, which led to the initial restructuring of office staff. Second, despite the financial deficit, the Company offered a generous 10-month severance package for voluntary retirement and provided support through a related outplacement program, including unemployment benefits and tailored career planning. Third, during the selection process for restructuring candidates, the Company considered the union's feedback, reducing the number of targeted employees and adjusting the selection criteria, thereby ensuring mutual agreement on the list of candidates. Fourth, the Company transparently communicated the need for managerial layoffs to all employees and took necessary actions, leading the affected employees to accept voluntary retirement as the best option.

2. Recovery of Management Rights

The union was firmly opposed to relinquishing the management rights it had secured over many years. Despite this, the Company was able to recover its rights due to the following three factors: First, by notifying the union that the collective agreement would be terminated, the Company created a sense of urgency. If no agreement were reached within the six-month period after termination, not only would the management rights be restored, but the union's rights would also be at risk. Second, during the process of letting go of the 20 employees, the union members prioritized job security over improving working conditions or protecting their existing rights through strike action. Third, the Company demonstrated its sincerity by participating diligently in collective bargaining and freezing wages but improving other working conditions, thereby gaining the union’s trust.

Ⅴ. Conclusion

This incident of restructuring and recovering a company’s management rights through collective bargaining highlights the essential role of union cooperation in overcoming crisis within a business. The key to successful resolution of this consultation was the long-standing trust and mutual respect between labor and management. This trust was built over many years of collaborative effort and mutual understanding. It is hoped that, moving forward, this Company will continue to thrive in the global market through enhanced labor-management cooperation and will successfully navigate any future challenges.

Case Study: Violating Company Policy Prohibiting Dual Employment

Bongsoo Jung, Labor Attorney

Ⅰ. Introduction

I would like to look at holding dual employment in breach of company policy, as discussed during a disciplinary review committee meeting at Company A that I attended as a committee member. Company A (hereinafter referred to as "the Company") had confirmed that an employee (hereinafter referred to as "the Employee") in a managerial position engaged in illegal loan sharking as a side business. It had also confirmed that the Employee had sent KakaoTalk text messages to push borrowers

to repay the loans, including during working hours. This information came to light when someone (a borrower who felt threatened by the Employee) reported it on the Company's website.

The Employee's side gig, while a senior executive for the Company, not only involved profit-making activities during working hours but also meant he engaged in illegal activities (illegal loan sharking), causing significant damage to the Company's image as a public enterprise. However, in order to dismiss an employee, a company needs to determine specifically, and according to strict criteria, that an employee's actions warrant dismissal. The Company decided to dismiss the Employee for breach of contract and breach of the obligation to protect the dignity of the civil service. On the other hand, the Employee acknowledged his wrongdoing but refused to accept dismissal as a justified punishment and applied for a disciplinary committee review. Meanwhile, the Company reported the Employee to the police for illegal loan sharking. The disciplinary committee began a review committee on the supplementary materials from the police investigation regarding the Employee and upheld the decision for dismissal. In looking at this labor case, we will provide a case overview and summarize the parties' arguments, Company regulations, and related precedents.

Ⅱ. Details of the Case

1. Confirmation of Facts and Decision to Dismiss for Disciplinary Reasons

In December 2023, the Company received a report, through its website, alleging that an employee in a civil service capacity had engaged in loan sharking and, in the process of collecting loans and interest, engaged in verbal abuse and threats. If this allegation were true, it would amount to the employee engaging in behavior unsuited to a civil servant and would have tarnished the Company's reputation. Consequently, from January 8 to January 15, 2024, the internal audit department conducted written and face-to-face interviews with the Employee. The investigation focused on whether he was involved in illegal loan sharking, particularly whether he had engaged in profit-making activities related to loans during working hours, and whether the Employee had threatened and verbally abused borrowers when seeking to collect interest on the loans.

The Employee was hired by the Company on July 1, 2018, and had been working as Team Leader of the Company's Busan regional management team. Since 2022, the Employee had been affiliated with a loan company under a friend's name. Using his own name, the Employee had issued loan contracts to 12-15 borrowers, for amounts ranging from ₩1 million to ₩5 million, charging 20% interest every three months to be sent to his personal bank account, after the Employee lent the money deducting a 5% initial interest from the principal. If a borrower failed to pay the interest by the

due date, the Employee sent coercive messages and made threatening phone calls. In addition, the defendant exploited borrowers by charging an exorbitant interest rate of 80% per annum, far exceeding the legal limit set by the Interest Limitation Act.[2)]
On March 14, 2024, the Company convened a disciplinary committee meeting and decided to dismiss the Employee, based on his breach of Company policy forbidding dual employment, for engaging in profit-making activities during working hours, and engaging in behavior unsuited to a civil servant (exploiting financially vulnerable individuals, who were ineligible for loans from financial institutions).

2. Basis for the Employer's Decision to Dismiss

The Employee stated that he had received regular training on diligent work and maintaining dignity in accordance with the Company's employment regulations. Meanwhile, Article 5 (Principle of Good Faith) of the employment regulations stipulated, "Employees of the public enterprise must adhere to the company's regulations, fulfill their assigned tasks faithfully and efficiently, cooperate with each other in good faith, and maintain their dignity, ensuring that the company's reputation is not tarnished."

However, despite this, the Employee directly engaged in illegal loan sharking, coercing borrowers to comply with unreasonable loan terms, and directly involving himself in the collection of interest and principal. Threats included statements such as "I will come to your place to collect the money if the interest payment is more than 3 days overdue" made to borrowers who failed to pay the interest on time. Furthermore, the Employee sent multiple KakaoTalk messages and made multiple phone calls during working hours seeking to collect payments and extending loans.

In light of these facts, the Company decided to dismiss the Employee for the following reasons: First, the Employee breached Company policy forbidding dual employment by engaging in profit-making activities with a loan company; Second, the Employee violated the obligation to protect the reputation of the Company by engaging in verbal abuse and threatening borrowers while a civil servant; Third, the Employee breached his duty of diligence by engaging in dual employment-related activities during working hours.

Ⅲ. Disciplinary Review Hearing and Employee’s Statement

1. Employee’s Assertions

(1) Facts Distorted during Disciplinary Committee Meeting

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2) The maximum interest rate for monetary loans in contracts, as stipulated by Article 2, Paragraph 1 of the Interest Limitation Act, is set at 20% per annum.

The Employee, in applying to the disciplinary committee for a review of the decision for dismissal, submitted the following information as a rebuttal to the decision.

1) Breach of Company policy prohibiting dual employment: The Employee argued that he did not knowingly breach Company policy against dual employment. He had found it difficult to refuse his friend's request for assistance, and he had been involved only about a year. Considering the relatively minor financial gain, the disciplinary committee's decision to dismiss is unfairly harsh.
2) Verbal abuse of and threats to borrowers: The Employee claimed that he had never met the borrowers in person and only communicated with them via KakaoTalk or phone. Therefore, there had been no actual coercion or violence towards the borrowers. While the Employee did use profanity when borrowers failed to meet their obligations, the borrowers promptly apologized and acknowledged their failure to keep the agreement.
3) Profit-making activities during working hours: The Employee admitted to communicating with borrowers via phone or KakaoTalk during working hours. However, he argued that he had not neglected his duties while contacting borrowers, especially considering that most contact occurred before or after working hours or during lunch breaks. The Employee also emphasized that his communication with borrowers during working hours lasted only a few minutes of the 8-hour workday and should not be considered engaging in continuous profit-making activities during working hours. Additionally, the Company did not consider the fact that the Employee had never neglected his duties while communicating with borrowers.

(2) Weak Justification for Disciplinary Dismissal

According to the Company's disciplinary standards, in order to dismiss an employee for engaging in dual employment and for breaching the obligation to protect the Company's reputation, the action(s) must amount to "severe misconduct with intent." In relation to this, the Employee admitted that he provided loans and contacted borrowers during work hours. However, his involvement in these actions had lasted less than a year (10-11 months), and the communication with borrowers was brief and did not disrupt his core managerial duties. Furthermore, there was no exercise of violence; he only exerted pressure on borrowers who failed to keep their loan obligations, and there was no evidence of coercion. The decision to dismiss him was therefore excessively harsh. Moreover, the Employee deeply regrets his actions and seeks cancellation of the

decision to dismiss, expressing a desire for leniency so he can return to working for the Company.

2. Company's Confirmation of Facts and Decision of the Disciplinary Review Committee

The Company convened a disciplinary review committee meeting for the Employee and presented additional evidence obtained by the audit team.

(1) Employee's Statements

The Employee stated that he had engaged in loan sharking for about a year after a friend asked him to do so, violating the Company's regulations against dual employment. He promised not to engage in loan sharking any further after realizing it amounted to such violation. The Employee stated, "In reality, there are only about 10 individuals involved in the loans I am currently handling, and I only spend a few minutes during working hours on loan management tasks. Most of the interactions occur during lunch break or after work. I have never threatened people who borrowed money from me, and I have never visited their homes or offices." However, it was confirmed that most of the Employee's statements were untrue.

(2) Disclosure of Additional Investigation by the Audit Team

The audit team reported the Employee's involvement in illegal loan sharking to the police and requested an investigation. Subsequently, the police conducted an investigation on the Employee and notified the Company of some of the findings. It was revealed that the Employee had engaged in loan transactions with approximately 40 individuals in the past and was currently engaged in loan transactions with about 20 individuals. Additionally, the transcripts provided by a witness contained conversations between the Employee and the witness. In these conversations, the Employee verbally abused the witness for not meeting the payment deadline and threatened to visit the witness's office, uttering clearly audible threats.

(3) Decision of the Disciplinary Review Committee

After confirming the additional facts and circumstances thus revealed, the disciplinary review committee made its final decision, which was to uphold the disciplinary dismissal. The primary reason for this decision was the Employee's continued dishonesty and failure to provide truthful answers. Furthermore, when asked to provide evidence regarding the current list of borrowers and the amounts loaned, the Employee responded with nonsensical answers, claiming ignorance due to his having to manage the bank accounts directly through the loan company. Additionally, the Employee

falsely claimed ignorance about drafting loan contracts in his own name and managing interest payments through the bank account. Therefore, the disciplinary review committee confirmed that the Employee had indeed violated the Company's policy against dual employment, engaged in verbal abuse and threats towards borrowers, and engaged in personal profit-making activities during working hours over an extended period.

Ⅳ. Details of Relevant Precedents

1. Violation of Agreement against Dual Employment

It is unfair to entirely and comprehensively prohibit dual employment, which falls within the realm of an employee's personal capabilities and private life, as long as it does not disrupt corporate order or provision of labor. However, prolonged dual employment that significantly impedes labor provision or instances such as serving as a director in a competing company may be subject to prohibition, and dismissing an employee for such reasons can be deemed justifiable.[3)]

2. Breach of Duty to Avoid Damaging Company Reputation

Even if an employee's real estate speculation is merely a personal matter, when considering various factors such as the purpose for establishment of the urban development corporation aimed at stabilizing and improving citizens' living conditions through land development and supply, which are the duties of the employee responsible for real estate compensation-related tasks, it can be evaluated that real estate speculation by an employee of the urban development corporation has a significantly adverse impact on social evaluation of the corporation.[4)]

3. Employer's Discretion in Disciplinary Action

The dismissal of an employee is considered justified when there are reasons for which the employer cannot continue the employment relationship and for which the employee has responsibility, as recognized by societal norms. Whether the employer has reached the point where they cannot continue the employment relationship with the employee is determined by considering various factors such as the nature and purpose of the employer's business, conditions at the workplace, the employee's position and job duties, the motive and circumstances of misconduct, the potential impact on the

3) Supreme Court ruling on Dec. 13, 1994, Case number 93nu23275.
4) Supreme Court ruling on Dec. 13, 1994, Case number 93nu23275.

company's organizational structure, past work attitudes, and other relevant factors in a comprehensive manner. In cases where there are various allegations against the employee, judgment should not be based solely on one or some of the reasons for disciplinary action, but rather on a holistic consideration of all factors. Moreover, even if misconduct does not amount to a reason for disciplinary action, it can serve as evidence for selecting the type of disciplinary action, considering the employee's past conduct, work performance, and other relevant circumstances before and after the disciplinary decision.[5)]

Ⅴ. Conclusion

This case involves a senior-level employee of a state-owned enterprise engaging in illegal loan sharking on the side, blatantly violating the policy against dual employment. While holding a public position, the Employee disregarded professional ethics and engaged in illegal activities. In response, the Company decided on disciplinary dismissal against the Employee. Despite the Employee's appeal for a review of the decision and leniency, the disciplinary panel realized that there was no justification for leniency due to the Employee's dishonesty during the initial investigation and his failure to protect the Company's reputation and upheld the decision for disciplinary dismissal.

In line with the proverb, "excessive or unnecessary actions can be counterproductive or harmful" [과유불급(過猶不及)], this case serves as a warning for civil servants against prioritizing their own interests above the public's. If they do, they risk not only their own dignity as civil servants but also, in an instant, the loss of their hard-earned reputation. To prevent such things from happening, it is essential for state-owned enterprises to provide ethics training to their employees on a regular basis and periodically monitor for any misconduct.

Lockout due to Union Strikes

Bongsoo Jung, Labor Attorney

An employer may declare lockout to counteract an industrial act taken by the labor union (Article 46 of the Trade Union and Labor Relations Adjustment Act, hereinafter

5) Suprme Court ruling on Mar 24, 2011, 2010da21962.

the “TULRAA”). According to Article 46, lockout refers to "an employer's act of refusing to accept work provided by its employees." It is a type of industrial action that an employer is allowed to take in order to guarantee an equal playing field in labor relations. A lockout may not be done in a preemptive or aggressive way. It may be declared only once the union has taken industrial action. This means that a lockout declared before any industrial action by the union is unlawful. If a lockout is not withdrawn even after the union has genuinely declared a halt to the industrial action, the lockout shall be considered an aggressive one and so shall be deemed unjustifiable. The following explains the conditions and methods required to justify a lockout, and the effects of such an action.

1. Concept

Lockout is a situation in which the employer refuses to receive employees' labor as a counteraction to their industrial action and to prevent their entry onto the work premises. The lockout sustains the balance of power between labor and management. Case law states that a lockout must be conducted in a confrontational and defensive manner in response to a labor union strike.

If a lockout is deemed a reasonable defensive measure against an industrial action by the union, it can be recognized as a legitimate industrial action by the employer, which would then mean the employer has no obligation to pay wages to the affected workers during the period of the lockout.[6] However, even if initiation of the lockout itself is justified given the specific circumstances of the workers' industrial action, if at some point the workers cease their industrial action and express a genuine intention to return to work, yet the employer continues the lockout, the lockout then moves from being a defensive measure to an aggressive one, thereby losing its legitimacy from that point onwards. In such cases, the employer is not free from the obligation to pay wages, from that point on.[7]

2. Requirement (defensive lockout)

The employer usually implements a defensive lockout after inception of an industrial action.[8] Therefore, the employer may only implement a lockout after the labor union

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6) Supreme Court ruling on May 26, 2000, Case No. 98da34331.
7) Court ruling on May 24, 2016, Case No. 2012da85335.
8) Ministry of Employment and Labor (MOEL) Guidelines, June 24, 1998, Labor-Management No. 32281-1703.

takes a justifying industrial action. In principle, the law prohibits preemptive lockouts or any measures that exceed the scope and method of an industrial action to a considerable degree.[9)]

As a related case, even before the labor union of a bus company held a “strike rally,” the company closed its main gate and initiated a lockout. Despite the clear expression of willingness to work by only three union members, the company refused to assign them to buses and, the following day, filed a report of partial lockout limited only to a few vehicles operated by union members in a certain city. The company continued its operations by assigning vehicles only to non-union members. This indicates that the lockout went beyond a defensive action against a labor union's industrial actions and became a preemptive, aggressive lockout aimed at actively weakening the organizational strength of the labor union. Such a lockout has no legitimacy.[10)]

3. Method

(1) Practical measures

A lockout is not legitimate if the labor union is notified only once it has begun. Other actions must be taken before refusing employees’ work. Employers must announce their intention to initiate a lockout by posting notices detailing the timing and the subjects of the lockout before it is implemented, ensuring that workers are aware of the possibility. The notice must be posted in a place accessible to workers prior to the start date of the lockout. If there is a practice of communication between labor and management occurring online, announcing through the company intranet or website, or sending individual emails to the workers subject to the lockout is also possible.

(2) Applicable to any industrial action

A lockout can be implemented in response to all forms of industrial action. This includes slow-downs and work-to-rule actions, where workers are technically performing their duties.[11)] If a labor union aims to maximize the effect of a strike or strategically

9) Daejeon District Court ruling on Feb. 9, 1995, Case No. 93gahap566.
10) Supreme Court ruling on June 13, 2003, Case No. 2003du1097.
11) MOEL Guidelines, Oct. 26, 1995, Cooperation 68107-333.

conducts industrial actions for certain hours each day, the employer can counter this by implementing a defensive lockout. As long as the lockout is deemed a reasonable action against the labor union's repeated industrial actions, there is no need to repeatedly start and end the lockout in response to each action. Therefore, unless the labor union expresses an intention to withdraw its industrial actions, the employer can maintain the lockout throughout the period of industrial action, including times when no industrial actions are taking place.[12)]

(3) Partial and total lockouts

An industrial action refers to acts such as strikes, work slowdowns, and lockouts, which are undertaken by parties in labor relations to assert their demands, and the actions taken in response to them. Similarly to how a labor union can conduct either a general or partial strike as part of its industrial action toolkit, employers can also counteract with either a total or partial lockout.[13)] A partial lockout means closing down certain operations (departments) or locking out certain personnel while continuing operations elsewhere, whereas a total lockout means halting operations across the entire workplace, similar in appearance to a suspension of business.

In principle, a partial strike should be met with a partial lockout. However, if a partial strike leads to the stoppage or closure of the entire workplace's operations, then a total lockout may be implemented.

The subjects of a lockout, in principle, can include both union and non-union members, depending on the form of the industrial action. That is, the targets can be limited to strike participants, all union members, or all workers, depending on whether some union members fully refuse to provide labor, or all union members are providing incomplete labor, such as in work slowdowns or intermittent strikes.

In a partial lockout, employers have the freedom to continue operations by accepting labor from workers not participating in the industrial action, so assigning non-striking non-union members to operate vehicles previously operated by striking union members does not constitute a violation of the prohibition against replacement labor during a strike.[14)]

Generally, a partial strike achieves a similar effect as a total strike while minimizing the risk of wage loss. Even if employers accept labor from these workers, practically

12) MOEL Guidelines, Nov. 7, 2008, Labor Law Division-1019.
13) MOEL Guidelines, Aug. 31, 1998, Cooperation 68140-327.
14) MOEL Guidelines, Sept. 14, 1999, Cooperation 68140-14.

combining this labor force is challenging, leading to the dual burdens of operation stoppages and wage payments. In such cases, employers can implement a total lockout against the union, even if the union has only conducted a partial strike.[15)]

As a related case, even if the labor union of a bus company declared a partial strike and conducted industrial actions for 1-2 days, such as operating only once as per the predetermined number of trips or refusing to drive, the substantial impact of such erratic operations and the unpredictability of their duration mean that the mere refusal of employers to assign work to the participating union members does not constitute an unfair labor practice.[16)]

4. Effect

(1) Employer exempt from obligation to receive labor services and pay wages

An employer has the right to refuse to receive labor services from employees during a lockout. In addition, the employer is not obligated to pay wages to employees who do not provide labor services due to a lockout, since wages are remuneration for work. This applies not only to union members subject to lockout, but also to all other non-union employees. However, if an employee who is not subject to the lockout provides regular work for the company, contractual wages shall be paid for the services provided.[17)]

(2) Holidays and leave

As an employer can legitimately refuse to receive labor services from the employees subject to the lockout, there is no longer any obligation for the employer to honor the statutory holiday and leave stipulations outlined in the Labor Standards Act.[18)]

(3) Premises off-limits to employees

A lockout allows the employer to prevent employees from entering the workplace, by closing the company entrance gates or withdrawing employees from production facilities and precluding their provision of labor service. Accordingly, employee refusal to leave the workplace during a legitimate lockout may be subjected to criminal charges such as failure to comply with a deportation order. Provided that, a lockout shall be limited to production facilities or office facilities as “lockout” refers to

15) Supreme Court ruling on Mar. 9, 2001, Case No. 2000da63813.
16) Supreme Court ruling on Sept. 29, 2003, Case No. 2003du5792.
17) MOEL Guidelines, Nov. 21, 1994, Nosa 68107-338.
18) MOEL Guidelines, Nov. 10, 1994, Kungi 68040-1769.

prohibiting employees from production and service. Nevertheless, the employer may allow union members entry to certain facilities necessary for union activities or welfare under a reasonable scope, such as the union office, dormitory, canteen, and other facilities not related to production or work.[19)]

Despite the employees' legitimate occupancy of a workplace before a lockout is declared, once a lockout has been declared, the employer has full control of the workplace and may order all employees to leave the work facilities during that lockout. Sustained occupancy at this time is illegal and persons engaging in such actions will be subject to punishment under the law for failure to comply with a deportation order.[20)]

(4) The possibility of partial operations

Even during a lockout, it is not mandatory to completely halt operations. It is merely necessary to restrict the entry of striking workers; non-striking workers may be allowed to continue operations.[21)] The freedom to operate is guaranteed independently of industrial actions, meaning that employers can continue operations during a lockout using non-union workers or those not targeted by the lockout.

Case #1: In a partial lockout, employers have the freedom to continue operations by accepting labor from workers not participating in the industrial action. It cannot be considered a violation of the replacement prohibition rules for an employer to have non-union members who did not participate in the strike perform the duties of striking union members who were drivers.[22)]

Case #2: The prohibition of replacement labor during industrial actions is a rule that restricts hiring or replacing workers unrelated to the business for the performance of work halted by the union's actions. Therefore, using non-union workers from within the same business, including headquarters and technical departments, for replacement labor in operations halted due to industrial actions is permitted.[23)]

(5) Effects of an unlawful lockout

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19) MOEL Guidelines, Oct. 30, 1998, Cooperation 68140-409.
20) Supreme Court ruling on Jan. 27, 2004, Case No. 2003do6026; Supreme Court ruling June 9, 2005, Case No. 2004do7218.
21) MOEL Guidelines, Sept. 9, 1997, Cooperation 68140-368.
22) MOEL Guidelines, Sept. 14, 1999, Cooperation 68140-14.
23) MOEL Guidelines, May 13, 2010, LaborDept-383.

If an employer's lockout is unjustifiable, workers entering the workplace where they are usually allowed does not constitute trespassing, unless there are special circumstances otherwise.[24] Additionally, while an employer is not obligated to pay wages if the workplace is legally closed in response to union industrial actions (such as strikes or work slowdowns), if a preemptive or aggressive lockout is taken to suspend work, the employer must pay wages (suspension allowance).[25]

Case #1: A lockout initiated abruptly after three days of legal action is not a passive or defensive measure taken out of necessity. Therefore, the company's lockout lacks justification, and the employer is not exempt from the obligation to pay wages during the lockout period.[26]

Case #2: If an employer's lockout is not recognized as a legitimate industrial action, workers who refuse to vacate the parts of the workplace they have occupied as part of a lawful industrial action, even if the employer has initiated a lockout, are not committing any crime in refusing to vacate those premises.[27]

Case #3: Even when an employer's lockout is considered a legitimate industrial action, access to facilities necessary for normal union activities within the workplace, such as union offices, and basic living facilities like dormitories, shall be allowed. However, considering the nature of the dispute, lockout, and subsequent developments, if the union uses the union office itself as a location for dispute, or if the office and production facilities are inseparably located or structured such that the union's access and potential occupation of production facilities are reasonably foreseeable, and the employer provides an alternative location for the union office that is recognized as a reasonable alternative for normal union activities as the original location, it is permissible to restrict access to the union office within reasonable limits.[28]

5. Reporting

When conducting a lockout, employers must report in advance to the administrative authorities and the Labor Commission. However, the reporting of a lockout is not a requirement for its validity but a procedural requirement, demanded by administrative

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24) Supreme Court ruling on Sep 24, 2002, 2002do2243.
25) MOEL Guidelines, Oct. 30, 1969 Kijoon 1455.9-11349.
26) Supreme Court ruling on May 26, 2000, Case No. 98da34331.
27) Supreme Court ruling on Dec. 28, 2007, Case No. 2007du5204; Supreme Court ruling on Mar. 29, 2007, Case No. 2006du9307.
28) Supreme Court ruling on June 10, 2010, Case No. 2009do12180.

necessity. Therefore, failure to report does not invalidate the lockout.

Employers are required to report the lockout to both the competent administrative authorities and the Labor Commission. The competent administrative authority is the administrative agency that handles union establishment reports, i.e., it is the same as the entity that has jurisdiction over the main office of the labor union. The Labor Commission refers to the branch of the Labor Commission with jurisdiction over the area where the lockout occurs. If the report of a lockout is filed with the competent administrative authority, a local government entity, this local government must send a copy of the lockout report to the local employment and labor office that oversees the jurisdiction of the main office of the labor union involved in the lockout. Administrative authorities, upon a lockout being conducted without prior reporting, must immediately order corrective actions and may impose a fine for non-compliance.[29)]

6. Lifting the Lockout

When a labor union withdraws its strike, the employer must lift the lockout. If the labor union stops its ongoing industrial actions and clearly expresses its intention to return to work, the employer must withdraw the lockout. If workers genuinely express their intention to return to work but the employer continues the lockout, the lockout loses its justification. In this case, the employer will not be exempt from the obligation to pay wages for period after the related strike is lifted.[30)]

Since the labor union's industrial action is both a condition for initiating and maintaining a lockout, if the union's intention to return to work is genuine and there is objectively no urgency to continue the lockout, the employer must stop the lockout. However, if there is a high likelihood of the labor union resuming industrial actions and the intention to return to work isn't considered genuine, maintaining the lockout is not deemed unlawful.[31)]

Case #1: After a temporary strike ended, the labor union immediately expressed its intention to return to normal duties. Despite reaching an agreement on the dispute's issues right after the lockout, the employer continued the lockout and sent individual withdrawal forms to union members. In this case, the lockout lacked urgency, necessity, and reasonableness, and seemed more aggressive than defensive against the labor union's industrial actions.[32)]

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29) Enforcement Decree to the TULRAA, Article 12-3; TULRAA Article 96 (Penalty fine).
30) Supreme Court ruling on May 24, 2016, Case No. 2012da85335.
31) MOEL Guidelines, Oct. 30, 1998, Cooperation 68140-409.

Case #2: If workers cease their industrial actions and genuinely express their intention to return to work, but the employer continues the lockout, the lockout transitions from being a defensive measure to an aggressive one aimed at weakening the labor union's organizational strength. In such cases, the lockout loses justification, and the employer is obligated to pay wages for the period beginning immediately upon the lockout losing its justification.[33)]

Case #3: The labor union notified the company of its intentions to change its strike from a general strike to a partial strike, with all members except the deputy head of the union branch returning to work. However, the labor union did not comply with the company's request to sign a strike termination confirmation document to verify the withdrawal of the strike, requested given the high likelihood of the union returning to a general strike based on its past strike behavior and the employer's (a financial institution) necessity for continuity and strict security. Therefore, requesting a strike termination confirmation document to verify union members' genuine intentions wasn't seen as an unreasonable demand or interference with the union's organization and operation. Continuation of the lockout upon not receiving the requested verification of the workers' genuine intention to return to work was therefore deemed lawful.[34)]

Case #4: Considering the workers merely expressed their intention to return to work without indicating they would stop the legal action that resulted in the lockout, maintaining the lockout as a defensive measure against the workers' industrial action is justified.[35)]

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32) Daejeon High Court ruling on Dec. 19, 1995, Case No. 95na1697.
33) Supreme Court ruling on May 24, 2016, Case No. 2012da85335.
34) Supreme Court ruling on June 9, 2005, Case No. 2004do7218.
35) Changwon District Court ruling on Oct. 18, 2002, Case No. 2000gahap297.

Feature Articles

Workplace Harassment Cases

Case Study: Appropriate Employer Response to Workplace Harassment Reports

Bongsoo Jung, Labor Attorney

Ⅰ. Introduction

○○○ The Korean ○○○ Company (hereinafter referred to as "the Company") received notification from the Ministry of Employment and Labor on July 26, 2023, regarding a report of workplace harassment. The details of the notification stated that, in accordance with Article 76-3 of the Labor Standards Act, the employer is required to conduct an investigation into reports of workplace harassment, take measures against the alleged perpetrator, provide protection for the alleged victimized employee(s), take appropriate actions regarding workplace harassment, and report the outcomes to the Ministry of Employment and Labor.

The Company consists of five employees, including one office manager, two team leaders, and two staff members. The alleged perpetrator of the workplace harassment in this case was the office manager, and the alleged victim (the petitioner) was the planning team leader. From the perspective of the petitioner, there are five claims of harassment by the alleged perpetrator:

First, the petitioner was instructed to report his commuting details via personal messaging due to alleged poor attendance;

Second, the alleged perpetrator caused significant stress for the petitioner by instructing him to obtain direct signatures from the company's president without the immediate supervisor's signature;

Third, the alleged perpetrator verbally abused the petitioner for refusing excessive work orders;

Fourth, the alleged perpetrator engaged in actions to exclude the petitioner from work tasks;

Fifth, the alleged perpetrator humiliated the petitioner by verbally abusing him in the presence of other employees at a cafe.

The Company conducted an investigation into these five alleged instances of harassment involving relevant parties and concluded that "the alleged perpetrator's actions do not constitute workplace harassment." In response, the petitioner submitted to the Ministry of Employment and Labor additional evidence for reconsideration, prompting the Ministry to request a re-investigation of the workplace harassment claim on October 26, 2023. In response, the Company conducted a re-investigation of the alleged perpetrator's actions and concluded that they did indeed constitute workplace harassment. Accordingly, the Company took disciplinary action against the perpetrator, including a salary reduction and harassment prevention education. The Ministry of Employment and Labor then deemed the Company's actions regarding the reported workplace harassment to be appropriate and concluded the case. Considering the possibility of this leading to secondary victimization, it is important to examine the specifics of this case alongside the employer's prudent judgment.

Ⅱ. Employee's Complaint and Employer's Response (Initial Complaint)

1. Details of the Employee's Complaint

The employee's allegations of workplace harassment are as follows:

(1) Instruction to report commuting via Personal KakaoTalk messages:

The Company has a system where all employees are required to check in and out using groupware. However, from March 24, 2023, to May 2, 2023, at the perpetrator's instruction, the petitioner exclusively reported his commuting details via personal KakaoTalk messages. On March 24, 2023, just before an event where temporary employees were to work together, the perpetrator instructed the petitioner to report his commuting via KakaoTalk. The petitioner initially forgot to report and was reminded to do so, but stopped reporting from May 3, 2023, onwards. On April 28, 2023, in the afternoon, when the petitioner asked the perpetrator, "Why am I the only one reporting commuting via KakaoTalk?" the perpetrator responded, "How can I trust you?"

(2) Rejection of Approval Documents:

In early May 2023, when the perpetrator assigned additional tasks to the petitioner, he refused due to the overwhelming workload. The perpetrator suggested the petitioner consult the company president about these additional tasks, to which the petitioner agreed. Angered, the perpetrator instructed that henceforth, all tasks should be approved directly by the company president, bypassing the petitioner. Subsequently, when the petitioner submitted approval requests to the perpetrator, he was rejected with the reason "Report directly to the company president." Following this, when the petitioner directly submitted requests to the president, he was instructed to go through the proper approval channels. After resubmitting to the perpetrator, he reluctantly approved. Despite the petitioner's inquiries as to why approvals were being withheld, the perpetrator only repeated, "Report directly to the company president." This lack of proper approvals caused significant difficulties, especially with many pending tasks before an upcoming event. Even after sending KakaoTalk messages and emails requesting approval after drafting documents, the perpetrator ignored them.

(3) Unfair Task Assignment and Verbal Abuse:

When the perpetrator instructed the petitioner to handle all tasks except for media publicity duties, and the petitioner expressed difficulty due to existing workload, the perpetrator angrily accused the petitioner of disobedience and violating orders. They belittled the petitioner, using disrespectful language, and humiliated them.

(4) Exclusion from work meetings:

The perpetrator excluded the petitioner from departmental event meetings by not sharing the schedule, forcing the petitioner to rely on other colleagues to receive information about meeting outcomes, thus unfairly excluding him from work-related discussions.

(5) Verbal Abuse in Public Places:

When the petitioner reported work matters to the perpetrator at a caf near the company, the perpetrator, dissatisfied with the report, verbally abused the petitioner. He criticized the petitioner's position as team leader, questioned his duties, and expressed a preference for this office manager working alone. Despite the cafe being quiet and no one else raising their voice, the perpetrator's actions embarrassed the petitioner in front of others, causing humiliation.

2. Employer's Investigation Results:

After conducting interviews with the perpetrator and relevant witnesses, the Company reported the following findings to the labor inspector. During the investigation period, the company implemented separation measures by allowing the petitioner and the perpetrator to work remotely in the morning and afternoon, respectively. The employer conducted an investigation and convened a disciplinary committee on August 25, 2023, ultimately reaching a decision of non-guilt regarding the perpetrator.

Ⅲ. Labor Ministry's Reinvestigation Directive (Second Complaint)

1. Content of the Labor Ministry's Reinvestigation Directive:

After the company concluded its investigation on August 25, 2023, stating that the reported workplace harassment could not be recognized, and ultimately reporting "no suspicion" regarding the perpetrator, the Labor Ministry issued a reinvestigation directive to the company on October 26, 2024. The directive outlined concerns about

certain facts not being properly verified. The contents are as follows:

The objectivity, fairness, and rationality should be ensured in the process and content of the workplace harassment investigation. However, upon review, it appears that objective investigation was not achieved in the following matters (①~④), necessitating a reassessment of whether workplace harassment occurred.

① Informing the petitioner of the investigation on short notice (informing the petitioner orally 30 minutes before the investigation, leaving him unprepared).

② Receiving only the respondent's answers before the petitioner's interview, and conducting the investigation based on the respondent's answers to verify the petitioner's facts.

③ Concerns about potential secondary harm, such as remarks made by investigation committee members during the petitioner's interview, such as "The petitioner's content seems ambiguous as harassment" or "Isn't reporting commuting via KakaoTalk not a difficult task?"

④ Insufficient evidence to prove the investigation results (judgment content). For instance, mentioning the lack of evidence to determine whether reporting commuting via KakaoTalk due to low work diligence was within the appropriate scope of work responsibilities.

2. Company's Reinvestigation and Disciplinary Committee Proceedings:

The company conducted a reinvestigation into the workplace harassment incident. On November 12, 2023, a disciplinary committee meeting was held, and disciplinary action of demotion was taken against the perpetrator in accordance with Article 16 of the Employment Regulations. The details are as follows:

(1) Personal KakaoTalk Reporting of Commute Times Due to Instructions from the Perpetrator:

Since March 24, 2023, when the petitioner began using a separate office space, the perpetrator instructed him to report his commute times via KakaoTalk as the perpetrator couldn't verify the petitioner's commute due to the separate office. Despite the fact that all other colleagues were reporting their commutes through the company's groupware, the perpetrator required the petitioner to report via KakaoTalk until May 2, 2023. This was used as a means by the superior to control a specific employee through abnormal methods, and by assigning tasks beyond the scope of the petitioner's duties, it can be inferred that it would have caused significant humiliation and damage to their self-esteem.

(2) Rejection of Approval Documents:

The petitioner reported work plans to the immediate supervisor, the perpetrator, and

received approval. Subsequently, the petitioner processed the work after obtaining final approval from the higher-level supervisor, the company president. Despite this procedure, the perpetrator disregarded it and instructed the petitioner to directly obtain approval from the second-level higher supervisor, the company president. While the second-level higher supervisor was instructing to obtain the immediate supervisor's signature first, it was apparent that the supervisor was intentionally harassing the petitioner.

(3) Unfair Work Assignments and Verbal Abuse:

When a vacancy occurred in the publicity team, the perpetrator assigned the workload to the petitioner without any consultation. When the petitioner protested against this unfair decision, the perpetrator responded by shouting and using disrespectful language, stating that refusing to comply with the order was insubordination and disobedience. Since other employees witnessed this incident, it constitutes workplace harassment through verbal abuse.

(4) Exclusion from Work Meetings:

Since May 4, 2023, the petitioner was excluded from meetings or conferences related to a specific project overseen by the office manager, the perpetrator. Consequently, the petitioner had to learn about the relevant information from third parties. However, in reality, as the petitioner's duties were excluded from this project and he was no longer involved in its execution, it cannot be acknowledged as work exclusion.

(5) Verbal Abuse in Public Places:

Regarding the claim that the perpetrator verbally abused the petitioner loudly in a caf adjacent to the company premises, since there is no evidence to substantiate this claim, it is difficult to acknowledge it.

The employer acknowledged workplace harassment for the following three out of five claims: (1) KakaoTalk reporting of commute times, (2) review or refusal of approval for the petitioner's drafts, and (3) unfair work assignments and verbal abuse. However, for claims (4) work exclusion and (5) verbal abuse in public places, since there is no evidence to substantiate them, they were dismissed.

The employer conducted an investigation into additional issues raised during the reinvestigation of the workplace harassment claim, interviewed relevant parties, and concluded that there was workplace harassment by the perpetrator in this case. As a result, the company reconvened the disciplinary committee to impose wage reduction measure on the perpetrator and issued a disciplinary notice to the perpetrator stating

that if there is a recurrence of harassment, it will result in heavier penalties.

Ⅳ. Handling by the Ministry of Employment and Labor and Implications

1. Handling by the Ministry of Employment and Labor:

After investigating the incident, it was difficult to find clear unreasonable circumstances in the execution of necessary measures regarding the recognized workplace harassment under the Labor Standards Act. Therefore, the case was concluded administratively as "no violation." However, recommendations were made to the workplace to adequately consider the future situation of targeted employees and take necessary appropriate measures. Additionally, recommendations were given for special preventive activities and organizational culture diagnosis to establish a culture of mutual respect and prevention of conflicts related to workplace harassment at the company level.

2. Implications:

The issue of workplace harassment can arise at any time, and employees of the company must be aware of this fact and make efforts to prevent it. While superiors may not perceive their actions as harassment, employees who must accept and live with them may perceive them as such. Therefore, superiors need to consider whether their directives or behaviors fall within the appropriate scope of work. Superiors should reflect on their own conduct to ensure that workplace harassment does not occur. Preventing workplace harassment can serve as an important starting point for creating a company culture where mutual respect and a desire to work are fostered. The intention behind preventing workplace harassment is not to diminish the authority or status of superiors but to create a workplace culture that respects the dignity of all individuals involved. In other words, establishing a workplace culture where adults respect and recognize each other can lead to a place where individuals can realize themselves through work. Furthermore, in cases of workplace harassment, punishing the perpetrator alone may not be the best solution; it should also serve as an opportunity to re-educate employees and re-establish a culture of mutual respect.

Is Insulting Language by a Subordinate towards a Superior considered Harassment?

Bongsoo Jung / Labor Attorney

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:

<Dispatched Company Employee, Assistant Mr. 00 Kim>	**<Regular Employee, Manager Ms. Kang>**
① (Expressing Dissatisfaction with Manager Kang's Work) 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.	① (Uncooperative Response to Assistant 00 Kim's Work Complaint) 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)
② (Getting Angry at Manager Kang's Response and Insulting Manager Kang) 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	② (Manager Kang will ask HR for changing Assistant 00 Kim's Job Changes) Since it doesn't seem like we're in a situation to work together from the start, 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) 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

talking-down languages to me again, I will use talking-down language with you. (Some parts omitted) 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)	distinction. I'll contact HR, so try to adapt to the work later.
③ (Assistant 00 Kim Expressing Anger for Manager Kang Mentioning Assistant 00 Kim to HR) 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. 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?	③ (Intentional Discontinuation of Conversation Regarding Assistant 00 Kim's Insults) There's really no need for emotional battles at work, so it's quite interesting. Try experiencing corporate life a bit more later on.

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.

II. Legal Evaluation on Workplace Harassment

1. 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) 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.

2. Opinions

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.

Workplace Harassment Cases Arising from Excessive Work by a Superior

Bongsoo Jung, Labor Attorney

Ⅰ. Introduction

It has been four years since the legislative introduction of workplace harassment prevention measures in 2019. Initially, the provisions only included voluntary improvement efforts by employers, with no specific punitive regulations. In essence, employers were required to incorporate provisions related to workplace harassment into their employment regulations and ensure that appropriate investigations and disciplinary actions were taken by the employer in the event harassment was reported. However, effective prevention and proper actions in response to actual incidents were not consistently carried out in practice. In response to these issues, new legislation was introduced to include punitive provisions for incidents of workplace harassment, similar to those for workplace sexual harassment cases. These legislative changes mandated objective investigations by employers, obligations to provide protective measures, enforce appropriate disciplinary actions, maintain confidentiality, and prevent any adverse actions for reporting.

Employers are diligent in conducting thorough investigations and implementing protective measures and preventive actions for employees who report workplace harassment incidents. However, they appear to be hesitant to impose appropriate penalties on competent employees who engage in harassment. The reasons for this reluctance are threefold:

Firstly, lenient penalties are applied to the harassing manager who is a high-performing employee since the harassment was driven by the desire to achieve greater results.

Secondly, the organization itself is primarily focused on achieving its operational goals, and employee protection is considered a secondary responsibility for the employer.

Thirdly, imposing severe penalties on the harassing manager could negatively impact the motivation of other managers and their commitment to achieving organizational objectives.

In this context, we aim to examine specific cases of workplace harassment and delve into the company's handling procedures in greater detail.

Ⅱ. Workplace Harassment Incidents: Some Details

1. Incident Summary

A female department head at a foreign pharmaceutical company engaged in excessive

work demands and, as a result, subjected a specific female employee from another department to workplace harassment. Jung Ha-eun, a member of the Technical Support Team (referred to as "Ms. Jung"), reported to the branch manager and the HR department that she had been subjected to workplace harassment by Team Leader Lee OO, the Logistics Department Team Leader (referred to as "Ms. Lee"), on several occasions starting from June 10, 2023. In response to the complaint, the HR department promptly initiated an objective investigation. They altered Ms. Jung's work arrangement from the original schedule of three office days and two remote work days to full remote work. The HR team conducted a comprehensive fact-finding investigation based on the details of the complaint and interviewed relevant witnesses. Ultimately, they interviewed Ms. Lee regarding the allegations. However, she consistently denied that she had been involved in any workplace harassment.

2. Specific Allegations of Workplace Harassment

(1) In the fall of 2022, Ms. Jung mistakenly designated the wrong warehouse for a specific product, which was promptly rectified by a member of Ms. Lee's department. Ms. Lee, the team leader, called Ms. Jung via Teams and berated her for approximately 20 minutes, saying, "Don't you know how to do your job yet? I won't let you off the hook next time if this happens again." However, Ms. Lee denied that such an incident had occurred.

(2) On January 20, 2023, Ms. Jung expressed a difference of opinion in email response to an email from Ms. Lee. This led to her being summoned to Ms. Lee's office, where Ms. Lee allegedly criticized her for about 30 minutes, not only for her email response but also for her method of handling emails in general. During this time, Ms. Lee used derogatory language, repeatedly shouting at Ms. Jung, saying, "Haven't you learned anything from working in society? Do you have no common sense?" Two witnesses backed up the fact that Ms. Jung had been called into Ms. Lee's office, which Ms. Lee acknowledged, but she denied using offensive language.

(3) On February 7, 2023, Ms. Jung was reprimanded by Ms. Lee for approximately 40 minutes in her office because her response to Ms. Lee's email was delayed. Three witnesses confirmed this incident. Ms. Lee stated that her intent was to provide constructive feedback and guidance on Ms. Jung's work performance and denied that it amounted to workplace harassment.

(4) On May 15, 2023, Ms. Lee summoned Ms. Jung to her office because Ms. Jung failed to greet her in the hallway. During this encounter, Ms. Lee used informal language (which is inappropriate in a professional situation in Korea) and criticized her for not following workplace etiquette, stating, "You have no workplace manners. You must not have had a proper upbringing." For the sake of

non-Korean readers of this article, it's important to point out that the latter statement is particularly offensive within Korean culture, as it greatly insults the target's family as well. On that day, Ms. Jung verbally reported workplace harassment to the HR department and expressed her grievances about being insulted by Ms. Lee to her own team leader. These claims are considered factual. Ms. Lee acknowledged using informal language but denied making the comment about her upbringing.

(5) In 2022 and 2023, Ms. Lee allegedly and frequently used profanity, calling her "bitch" and using "fuck" while talking on the phone during office hours in the open office space. Additionally, she often used informal language and failed to address team members by their names, instead saying "hey," "you," and "you there." Ms. Jung and the witnesses attested that they had heard Ms. Lee using such offensive language on multiple occasions. Ms. Lee admitted to addressing people by saying only "you" but denied calling people simply with "hey" and claimed that she had never used profanity during personal phone calls.

3. Decision on whether Workplace Harassment Occurred, Based on the Investigation

According to the internal investigation report, specific actions reported about the accused (the team leader, Ms. Lee) include: 1) On January 20, 2023, the accused criticized the alleged victim (Ms. Jung) for expressing a difference of opinion regarding the method of receiving emails, stating, "Have you never lived in society? Have you not learned anything all this time? Do you not have common sense?" 2) On February 7, 2023, Ms. Jung was called out for a delay in responding to emails, for which Ms. Lee engaged in a 40-minute reprimand.

Reviewing the aforementioned actions, it can be observed that the superior engaged in: ▲ unilateral calls to Ms. Jung and harshly criticized her, causing significant humiliation; ▲ reprimanded Ms. Jung extensively during a unilateral call, failed to provide specific advice on improving work-related issues, but rather simply reprimanded Ms. Jung for a prolonged period; and ▲ according to the statements of witnesses, the superior had ongoing feelings of discontent with the team to which Ms. Jung belonged and exhibited particularly aggressive behavior towards Ms. Jung, which indicates that the actions were not spontaneous. Considering these factors, it can be concluded that the superior's conduct, although possibly related to work necessity, exceeded the appropriate scope of work and was carried out to an excessive degree, thus causing Ms. Jung significant mental distress. Consequently, this behavior can be deemed workplace harassment and a basis for disciplinary action.

However, concerning the action in which Ms. Lee criticized Ms. Jung for a

warehouse designation mistake in the fall of 2022 during a Teams call when Ms. Lee is alleged to have stated, "Have you never lived in society? Have you not learned anything all this time? Do you not have common sense?" There was insufficient concrete evidence or witnesses to confirm these statements, making it difficult to establish it as a basis for disciplinary action.

As for the action on May 15, 2023, when the accused called Ms. Jung to her office and criticized her for not following "workplace etiquette," it is confirmed that there were remarks made by both the accuser and the accused regarding greeting each other. The reprimand extended for a lengthy period of time regarding workplace etiquette, which has no direct relevance to work performance. This can be considered workplace harassment.

Based on the internal investigation report, it is confirmed that the accused repeatedly used offensive language such as profanity, such as "fuck(씨발!)," towards colleagues during phone calls, as stated by Ms. Jung and other witnesses. This occurred in the presence of several colleagues in a shared office space. Such verbal abuse created a hostile work environment and violated the dignity and integrity of fellow employees, even if it was uttered in private. This can be considered workplace harassment.

Assuming that the facts uncovered in the investigation are based on objective evidence, the actions of the accused, including verbal harassment, extended reprimands, and the use of derogatory language, disrupted the company's harmony and order and therefore largely fall within the grounds for disciplinary action.

III. Decision of the Disciplinary Committee

1. Legal Standards for Disciplinary Measures and Review of Opinions on this Case

The determination of what disciplinary action should be taken against an employee subject to disciplinary measures is at the discretion of the disciplinary authority. However, disciplinary action taken by the disciplinary authority is considered unlawful when it is recognized as an abuse of discretion, significantly deviating from societal norms.[36] In the event of termination as a disciplinary measure, it is considered legitimate only when there are reasons for which the employee can be held responsible to an extent that continuing the employment relationship would be impractical in the eyes of society. This should be determined by comprehensively reviewing various factors, including the purpose and nature of the employer's business, workplace conditions, the employee's position and job responsibilities, the motivation and circumstances of the misconduct, its impact on the corporate order, past work attitudes,

36) Supreme Court ruling on Nov. 26, 1999: 98du6951.

and other relevant circumstances.[37)]

Therefore, the employee subject to disciplinary measures can be subject to a significant disciplinary action if: ? repeated misconduct is perceived to be ongoing over a substantial period, and ? there is persistent use of verbal abuse beyond the scope of normal work duties, which is related to personal conflicts with the alleged victim. However, considering the employee's clean disciplinary record and the presumed situation of interdepartmental conflict and work overload, imposing significant disciplinary measures is not advisable. Given the recurring and persistent nature, if the person subject to disciplinary action were to be found to have committed similar incidents of workplace harassment in the future, termination as a disciplinary measure could be considered.

2. Decision of the Disciplinary Committee

In October 2023, a disciplinary committee was convened to address the workplace harassment involving the perpetrator, Team Leader Lee, within the organization. The disciplinary committee was chaired by this labor attorney, and its members included the branch manager and a labor representative from the labor-management council. The head of the HR department explained the disciplinary issues to Ms. Lee and provided her with an opportunity to present her side of the story.

During this process, Ms. Lee stated that she had provided guidance and training to subordinates regarding proper work methods as part of her commitment to achieving perfection in the performance of her duties. She denied engaging in workplace harassment and did not display any signs of remorse. In response, the chairman of the disciplinary committee emphasized that assessments of workplace harassment should be made from the perspective of the victim. If a third party experienced the same behavior from the victim's standpoint, the actions would likely be perceived as going beyond the reasonable scope of work and thus constitute harassment.

The disciplinary committee chairman recommended a 1-month unpaid suspension due to Ms. Lee's lack of remorse and the high likelihood of a recurrence of such behavior. However, the branch manager explained that Ms. Lee's actions stemmed from her desire to achieve perfection in the company's workflow, although recognizing that there was ample room for improvement. The branch manager proposed a 3-month salary reduction as a disciplinary measure. The other disciplinary committee member was in agreement, ultimately confirming a 3-month salary reduction as the determined disciplinary action.

IV. Conclusion

37) Supreme Court ruling Nov. 10, 1998: 97nu18189.

The workplace is one of the foundations in an individual's life, and is where most people spend a significant portion of their day. Employees seek happiness and personal fulfillment through their work, making it a vital space for their well-being. As such, employees hope for workplaces where they are treated with respect and dignity, fostering an environment of mutual respect. However, it's not uncommon for superiors, especially in the pursuit of excessive work demands, to prioritize tasks over the well-being of their subordinates. They might unintentionally issue excessive work directives or treat subordinates in an inhumane manner. The cases described earlier represent forms of workplace harassment that can frequently be found in workplace culture. Employers must put in their best efforts to create a workplace culture that values and respects the dignity of all employees. In cases where workplace harassment occurs, thorough investigations are essential. Employers should provide protection and support for the victims while also imposing appropriate consequences on the perpetrators to establish a desirable workplace environment.

Workplace Harassment after Employee Request for Remedy against Unfair Demotion

Bongsoo Jung, Labor Attorney

Ⅰ. Introduction

On May 26, 2023, a high-ranking employee (hereinafter referred to as the "Employee") at 00 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. 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.

Probationary Employee and Workplace Harassment

Bongsoo Jung, Labor Attorney

Ⅰ. Introduction

Foreign company A (hereinafter referred to as "the Company"), located in Seoul, received notification from the Seoul Regional Employment and Labor Office (hereinafter referred to as the "Labor Office") regarding the Labor Office receiving a complaint of workplace harassment. The Company was instructed to conduct an investigation into the related incident and report its findings.

What follows is a summary of the relevant details: On October 1, 2022, the Company hired employee B (hereinafter referred to as the "Employee") as a mid-level manager in the Accounting Department, with a probationary period of three months. During the hiring process, the Company had high expectations for the Employee,

considering her fluent English skills and prior experience working in the accounting department of a foreign-owned company. However, during the probationary period, the Employee's job-related performance was seen to be inadequate and she lacked the expected accounting abilities, which hindered her ability to independently execute tasks. As a result, the Company planned to terminate the Employee due to her displayed unsuitability during the probationary period. However, during the subsequent interview process, the Employee stated that she would improve if given another chance. Consequently, the Company agreed to extend the probationary period an additional three months, upon mutual consent with the Employee. However, despite receiving sufficient opportunities, the Employee's accounting skills and job performance did not improve, leading to her termination on March 31, 2023, during the extended probationary period.

In April 2023, the Employee filed a complaint with the Labor Office, alleging workplace and sexual harassment by the Accounting Department Manager. The Labor Office instructed the Company to conduct an investigation into the alleged harassment and submit a report on the findings. Subsequently, the Company engaged this labor law firm to conduct an objective and fair investigation into the allegations of workplace harassment and sexual harassment.

II. Investigator's Determination and Recommendations

1. Investigator's determination

Regarding workplace harassment, the Employee expressed that she was deeply hurt by the alleged perpetrator's actions, such as interrupting her phone calls, pressuring her to drink alcohol, mentioning alcohol, and criticizing her goal setting. However, from the perspective of an average person in a similar position as the Employee, it is difficult to conclude that the actions reached a level of causing mental distress and deteriorating the work environment.

Regarding workplace sexual harassment, concerning the perpetrator's mention of "moolbong" in relation to the Employee, the lack of objective evidence makes it challenging to confirm the exact conversation. Even if we assume that the alleged perpetrator made remarks related to "moolbong" as claimed by the Employee, it needs to be considered from an adult perspective whether such remarks could cause sexual humiliation or disgust for a person in a similar position to the victim. Considering the absence of explicit descriptions of physical relationships between men and women, the possibility that the remarks were related to recent news and issues surrounding drug cases, the presence of another female employee of a similar age nearby, and the frequency and context of the remarks, it is difficult to conclude that they would have caused sexual humiliation or discomfort for an average person in a similar situation.[38)]

2. Investigator's recommendations

Taking into account the statements of the Employee, the involved parties, and witnesses, it can be inferred that the alleged perpetrator's actions did not directly constitute workplace harassment or sexual harassment but rather created a strong perception of workplace harassment or sexual harassment for the Employee due to preexisting conflicts between the department manager and team members, as well as dissatisfaction related to recent agreements to extend the Employee's probationary period and later termination of employment. Therefore, the following measures are recommended to prevent incidents of workplace harassment and sexual harassment:

(1) Measures to protect the Employee:

According to the LSA, "necessary measures, such as changing the workplace or ordering paid leave, should be taken to protect the victimized employee during the investigation period." However, in the case of the Employee, whose employment relationship ended on March 31, 2023, such measures are not necessary.

(2) Improvement measures for the alleged perpetrator, although not constituting harassment:

Considering that the Company prohibits workplace harassment and sexual harassment in its employment rules and that disciplinary action can be taken when acts of sexual harassment are committed, it can be interpreted that such acts are considered significantly serious disciplinary offenses. Therefore, although the investigator did not recognize the alleged perpetrator's actions as workplace harassment or sexual harassment, there are aspects that should be improved, considering the potential for the mentioned remarks to be interpreted as sexual harassment when taken together, despite being related to social issues. It is important to be mindful that engaging in conversations with employees on certain topics may cause discomfort to the other party (such as "moolbong," body weight, alcohol-related mentions) and ensure that such incidents are not repeated. If they occur again, appropriate sanctions or disciplinary action should be taken.

(3) Necessity for organizational-level measures and education:

Since this is the first reported case of workplace sexual harassment and harassment within the Company, it is crucial to take this opportunity to raise awareness among employees, including the alleged perpetrator, about the potential for such remarks to be perceived as sexual harassment when targeting women. Thorough implementation of education on preventing workplace sexual harassment is necessary.

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38) Quoting the advisory content of Professor Kim Elim from the Department of Law at KNOU University regarding the related incident (June 2, 2023).

Workplace Harassment Resolved through Recognition of an Accident as Related to Work

Bongsoo Jung / Labor Attorney

Ⅰ. Introduction

Until recently, workplace harassment was resolved through workplace grievance handling, but if this did not work, the victim had no choice but to put up with such harassment or quit his or her job. However, since the procedures for remedy against harassment in the workplace were legislated on April 2021, now constituting a compulsory regulation that punishes employers if they do not comply with the required procedures, employers are much more involved in resolving things.[39)]

According to a report by the Kyunghyang daily paper on June 29, 2022, one of every four office workers has experienced harassment at work, with 31% of that number saying the harassment had been serious, and 7.3% said they were contemplating the extreme response of suicide.[40)] When someone is bullied for a long period of time, the mental strain can lead to depression and adjustment disorder, and finally to extreme choices.

This article will look at a case of harassment against an employee who had to avoid working overtime. This employee worked shifts at a production site and avoided working overtime due to a work-related injury and its long-term effects, and received psychiatric treatment over harassment from his colleagues. In this case, this labor attorney provided a reasonable solution through interviews with the victim.

Ⅱ. Details of the Related Workplace Harassment

1. Harassment occurring after injury at work

Hong Gil-dong (hereinafter referred to as Gil-dong) worked one of three shifts as a production worker for a large manufacturing company. At around 2:00 am on June 2, 2019 while working in the workroom, the old chair he was sitting on fell backwards, causing him to hit the handle of the chair with his back. Gil-dong had severe back pain, but he thought it was just a bruise from the bump and did nothing about it until his shift was over. He was barely able to get on the bus home from work due to the severe back pain he was enduring, and went to emergency and had an X-ray taken. The orthopedic surgeon in charge diagnosed that the 1st, 2nd, 3rd, and 4th transverse

39) On April 13, 2021, Article 76-3 of the Labor Standards Act (Measures in case of harassment at work) was introduced as an obligatory regulation for employers.

40) The Kyunghyang Daily Paper, Harassment at work has resulted in the extreme choice to commit suicide...Industrial accident applications have almost doubled, June 19, 2022.

processes near the lumbar region (backbone) had been fractured.[41] However, he returned to work after a few days of treatment because the atmosphere at the workplace was chaotic due to personnel appointments between departments within the company. The severe pain continued, but he worked hard and simply took painkillers and wore an abdominal belt to support his back. He continued to receive treatment and work at the same time. On April 12, 2021, Gil-dong felt pain in his neck and shoulders, so he visited the hospital, where the doctor told him he needed surgery on his cervical disc after a thorough examination.

The harassment began on July 26, 2021, when one of the employees organized for the shift system was absent from work for a long time for personal reasons. Workers on the same shift had to fill in for the absent employee by working overtime. Gil-dong conveyed to the HR manager that he would not be able to work overtime as he was scheduled for back surgery. On August 3, he noticed on the shiftwork handover board a note saying, Move Hong Gil-dong to another shift team. Gil-dong felt a deep sense of humiliation, as he had never seen a person's name written on the shiftwork handover board which was posted in a public place. It was the first time he would be moved in his 27 years working on that production line.

On September 7, 2021, Gildong experienced neck and shoulder spasms (pain) due to deterioration of the cervical disc, so he was hospitalized for surgery, and after 10 days of treatment, he returned to work. When he got back to work, his shift co-workers kept asking, "Why isn't he working overtime?" and began to harass him. However, as Gil-dong had back pain and thought it best not to engage in physical contact with his co-workers, he kept his distance from them as much as possible.

2. Persistent harassment

During a short break around 6:00 pm on November 15, 2021, Gil-dong told three colleagues who were complaining about him, "Don't swear at me behind my back." In response, colleague A began a tirade of abusive language: Hey, you son of a b*tch! You aren't the only one having a hard time. I'm very sick too. Aren't you the only one who isn't working overtime? You b*stard, you should say sorry to your seniors

41) Doctor Sujin Jang's Introduction to Spine, Naver Blog, Mar. 7, 2022. Transverse process fractures: The transverse process is a bone that extends from the backbone horizontally on both sides. Its appearance resembles the side-wings extending to both sides of the official hat of the Joseon Dynasty. It is 1 cm long and wide, and 3-4 mm thick. The symptoms of a transverse process fracture are that even breathing or moving the body causes intense pain.

who have to work overtime because you won't. Everyone knows how lazy you are! This was followed by several curse words. In response, Gil-dong explained to colleague A that he couldn't work overtime because he had been injured and needed time to recover, but colleague A continued to insult him in the presence of several of his colleagues. Gil-dong then protested to Manager A, his senior, saying Sir, you need to say something. Manager A apologized for the three other workers, to which Gil-dong also apologized to those three. However, the three workers continued to act very self-righteously, as if the insults had been justified. From that time, these three workers continued to harass and blame Gil-dong for their problems at work.

On November 19, 2021, Gil-dong left early because his head hurt and he felt so dizzy that he could not work. At the recommendation of a counselor, he saw a psychiatrist who prescribed him medication. Gil-dong used two weeks of his personal annual leave in lieu of sick leave from December 14, 2021 due to his back pain and extreme stress. On December 29th, Gil-dong returned to work with a strong sense of responsibility as a worker and as the head of a household. The harassment from his co-workers continued even though he was working hard. He had to continue taking painkillers and the psychiatrist's prescribed medications. Overheard statements included That guy doesn't work overtime, and There's something wrong with him mentally, which of course added to Gil-dong's work difficulties.

Ⅲ. Application for the Chair Accident to be Recognized as an Occupational Accident to Stop the Workplace Harassment

1. Fights between employees due to continued workplace harassment

From January 2022, Gil-dong continued to work even though it was difficult due to the group harassing him. This included colleague B humming in front of Gil-dong (which is rude in Korea) continuously during handover meetings before the next shift started. Colleague B continued the noisy humming in front of Gil-dong for several months during every shift handover time. On May 5, 2022 at 6:45 am during another shift handover, colleague B began humming in a childish way to provoke Gil-dong, who found it too much on top of everything else over the past few months. When he shouted, Quit humming like an idiot in front of me! colleague B retorted, What? Now you're hearing things too?

Gil-dong was very angry at being treated like a psychopath in front of many people.

He felt he had been harassed for no reason, resulting in him having to take psychiatric medication, counseling, and sick leave. In frustration and anger, he kicked colleague B and a fight ensued which had to be stopped by their colleagues. The company then ordered them to submit a report about their fight. Gil-dong then prepared and handed in a report on the harassment and contacted this labor attorney to ask for help.

2. Labor attorney's view and application for accident to be recognized as an occupational accident

On May 13, 2022, Gil-dong contacted this labor attorney to help him report the workplace harassment to the Ministry of Employment and Labor. This labor attorney said that in order to solve the problem of harassment at work, it must be officially acknowledged that the reason Gil-dong did not work overtime was simply due to the aftereffects of a work-related accident. This labor attorney explained that if Gil-dong's back pain were recognized as the result of an occupational accident, his colleagues would have to accept that he had to avoid overtime due to the pain and difficulties he had. In addition, it was explained that filing a complaint with the Ministry of Employment and Labor on the grounds of workplace harassment is done when the procedure in Article 76-3 of the Labor Standards Act has not been carried out properly or when the company has not investigated the report fairly nor put in place the remedy procedure for workplace harassment. Since Gil-dong's occupational accident occurred on June 2, 2019, there were only about 20 days left until expiration of the statute of limitations for the application. Even if Gil-dong's back injury was caused by a work-related accident, once the 3-year statute of limitations expired, there would be no way for his injuries to be recognized as from the occupational accident, so the labor attorney submitted the application right away.

On May 19, 2022, this labor attorney submitted an application for medical treatment stating that Gil-dong's back injury was caused by a work accident and submitted a report on the accident itself. This report described the details of what happened that day and the measures taken in the emergency room, with medical records, details of his application for sick leave, and eyewitness statements regarding the accident at the time as proof. The competent Labor Welfare Corporation office acknowledged the fact that Gil-dong's back injury was caused by a work-related accident through the related data and company verification procedures, and three months later, at the end of September 2022, Gil-dong's back injury was recognized as due to an occupational accident.

Ⅳ. Appropriate Actions and Lessons Learned

1. Actions taken by the company

The company acknowledged the physical violence between Gil-dong and colleague B on May 5, 2022 as due to temporary conditions, and the parties also showed an attitude of reflection and the incident was concluded with a written warning. On October 1, 2022, Gil-dong reported to the HR team in writing that he had been harassed at work by colleagues A and B and handed over an official confirmation letter from the Labor Welfare Corporation that the back injury that occurred three years ago was recognized as due to an occupational accident. In response, the company held its own personnel committee meeting, recognized that harassment at work had taken place, and admonished colleague A and colleague B with a disciplinary salary reduction. Judging that Gil-dong's current shift work was negatively impacting recovery from his back injury, the company transferred him to a new workplace in the quality control department, which is not physically demanding.

Under current law, workplace harassment is, in principle, resolved autonomously within a company through its internal procedures. Article 93 of the Labor Standards Act stipulates matters concerning the prevention of workplace harassment and measures to be taken when it occurs as mandatory items in the employment rules, allowing voluntary regulation. On the other hand, Article 76-3 of the Labor Standards Act specifies measures an employer must take in the event of workplace harassment, and includes a punishment clause if the employer fails to take such measures. As such, the current law requires that workplace harassment be reported to and dealt with by the employer, but in cases where it is difficult to expect fairness from the employer, the victim shall file a complaint with the Ministry of Employment and Labor.

2. Lessons from this workplace harassment

Employers have an obligation not only to provide a safe workplace, but also to prepare institutional devices for preventing workplace harassment and taking follow-up measures against it.[42] Therefore, employers need to regularly carry out activities to prevent harassment through the introduction of prevention and follow-up measures through their employment rules, periodic anti-harassment education, and a grievance-handling system.

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42) 2019. 2. 91~99면. Ministry of Employment and Labor, Manual on Judging and Preventing Workplace Harassment, Feb. 2019, pp. 91-99.

인사관리 앱 개발 (Mobile App Development)

기본서 Basic Guides	1. 노동법전 2. 노동법 해설 3. 노동 사건 사례	1. Labor Law 2. Labor Law Guide 3. Labor Cases
동영상 (Video)	YouTube GO	Korean and English videos (each 20 categories)
매뉴얼 Manual	1. 구조조정 2. 해고 3. 외국인 고용과 비자 4. 노동조합 5. 임금 6. 근로시간, 휴일, 휴가, 7. 비정규직 근로자 8. 근로계약 9. 산업재해보상보험 10. 직장내 괴롭힘&성희롱 예방	1. Workplace Restructuring 2. Dismissal 3. Foreign Employment and Visa 4. Labor Union 5. Wage 6. Working Hours, Holiday, Leave 7. Irregular Workers 8. Employment Contract 9. Industrial Accident Compensation 10. Workplace Harassment Prevention 11. Labor Inspection Preparation
취업규칙 Rules of Employment	취업규칙 작성 (3개의 모범 취업규칙을 가지고 작성)	Establishing rules of employment (Self-making the ROE based upon three standard templates)
판례500선 500 labor precedents	기준 판례 500선 선정하여 내용별 게시	500 labor precedent cases – uploaded in different categories
Auditing	Self-Assessment for Labor Inspection	근로감독 자가진단 앱 추가 제작
외국인 Foreigner	출입국관리법과 외국인 (기고글, 동영상, 비자36가지)	Immigration Laws and Foreigner Workers (Law, Articles, Video, Visa)
근로계약 Employmt Contract	근로계약 자동작성 (5가지 기본 틀을 가지고 작성) (정규직, 기간직, 시간제)	Making Employment Contracts based on 5 basic templates (Regular, fixed-term, and part-time)
자동계산 Automatic Calculation	1. 임금명세서, 2. 연차휴가, 3. 퇴직금 4. 4대보험, 5. 퇴직소득세 6. 산재보상 (장해보상, 유족보상, 민사상 손해배상)	1. Payslip, 2. Annual Leave, 3. Severance Pay 4. Social Insurance Premiums 5. Retirement Income Tax 6. Industrial accident benefits and civil compensation
Labor Auditing	1. 주요 질문/답변 2. 인사감사	1. FAQ 2. Labor Auditing

● "___" underlined parts are being prepared, and other parts are completed and posted.
● "___" 표시는 준비 중임. 나머지는 완료 되었음.