

Workplace Harassment in Korea

Korea has experienced rapid industrialization and economic growth as well as democratization for decades. Employees in Korea are putting more emphasis on their individual human rights and well-being, and we are beginning to see an increase in awareness by employees and employers. However, both employers and employees are unfamiliar with how to effectively comply with the legal requirements while acting in accordance with such changed values and trend, and this has become one of the main concerns of the management.

Strict regulations on workplace harassment are enforced. Employers are required to include relevant provisions in the company's "rules of employment" (i.e., work rules) on prevention measures and countermeasures the company will take upon occurrence of workplace harassment.

No employer or employee shall cause physical suffering or emotional distress to other employees or deteriorate the working environment beyond a reasonable scope of work by taking advantage of superiority in position or relationship in the workplace (the "workplace harassment"). The test for "beyond the reasonable scope of work" is not clear-cut, but construed to be either unrelated to the work or even if related, to go beyond the social norm based on totality of circumstances.

Any act that causes physical or mental suffering to the victim employee, or worsens the employee's working condition would be categorized as workplace harassment. Typical examples of prohibited workplace harassment would include: (i) assaulting or physically threatening a victim employee; (ii) repeatedly and/or continuously making an offensive statement(s); (iii) damaging an employee's reputation by humiliating the employee or spreading rumors regarding personal matters; (iv) ordering an employee to perform personal chores unrelated to the employee's work; (v) excluding an employee with respect to important work-related information without any justifiable grounds; and (vi) assigning no work or little

to an employee for a considerable period of time without any justifiable grounds.

Anyone who has learned the occurrence of workplace harassment may report such fact to the employer. The employer would be required to establish a convenient and reliable method for reporting incidents of workplace harassment. Any employee who feels that he or she has been or is being harassed or has witnessed an





incident of harassment, can immediately report it to the appropriate department which is authorized to handle the complaints.

When the employer receives a report of workplace harassment or recognizes the occurrence of workplace harassment, the employer must, without delay or prejudice, investigate the case to ascertain the facts. The employer should conduct a timely, fair and impartial investigation of the alleged harassment. It can be conducted by qualified employees of the company or by an outside investigator such as a law-firm or consulting firm. The investigation should provide all relevant parties with appropriate due process, and it is advisable that all stages of the investigation are documented.

When the occurrence of workplace harassment is verified, the employer must, without delay, take appropriate measures, such as disciplinary measures against the perpetrator of workplace harassment or changing his or her place of work. The employer must obtain opinions of the victim employees regarding such measures before taking them.

The law imposes strict obligations on the employer to protect employees who suffer or claim to suffer workplace harassment. During the period when the investigation is conducted, the employer must take appropriate measures to protect the victim employees such as changing their place of work or granting them paid leave of

absence. The employer cannot take measures contrary to the will of the victim employees.

Furthermore, when the occurrence of workplace harassment is verified as a result of investigation, the employer must take appropriate measures for the victim employees such as relocating them to a different work place, giving them a lateral transfer or granting a paid leave of absence, if the victim employees make such requests.

The participants in the investigation procedures, including persons who have investigated the case and received the report of the investigation, are subject to a strict confidentiality obligation not to divulge any secrets or confidential information.

Retaliation is strictly prohibited. No employer may dismiss employees who reported the occurrence of workplace harassment in good faith or victim employees, nor treat them unfavorably. If the employer takes an adverse action in violation of the law, the employer would be subject to criminal liability. Examples of adverse actions include, but are not limited to termination, denial of promotion, unjustified negative evaluations, increased surveillance and any other action that would lead to deterring reasonable employees from whistleblowing or otherwise pursuing their rights.

An employee who is found to have engaged in unlawful workplace harassment will be held personally liable to the victim employee in a civil lawsuit, and the company will be vicariously liable for it. Diseases caused by mental stress due to harassment in the workplace may fall within the scope of occupational diseases and covered by the relevant laws.



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