

A Call to Action for Employers: Changes to Korean Legislation Newly Address Workplace Bullying

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According to a 2018 report by the National Human Rights Commission of Korea, approximately 70 percent of all Korean employees have been bullied by their work superiors and colleagues at least once in their lives. About 60 percent of these victims said they never took any action, fearing possible disadvantages. And some 12 percent of all Korean workers are thought to be facing harassment at work every day.

Applicable Laws & Regulations

Against this kind of public attention and social interest, Korean lawmakers passed the amendment to the Labor Standards Act (the “LSA”) in late 2018. The amendment to the LSA was promulgated on January 15, 2019, and it will go into effect on July 16, 2019 (the “LSA Amendment”). This is the first time that Korea has introduced changes to its legislation requiring employers to take action against workplace bullying and harassment (hereinafter referred to as “workplace harassment”).

In addition, the Korean National Assembly addressed workplace harassment in its partial amendment to the Industrial Accident Compensation Insurance Act (the “IACIA”). In doing so, the South Korean Government has expanded the list of recognized workplace accidents to include health effects of work-related harassment. Specifically, the amendment added the following to the definition and criteria to Article 37 of Korea’s IACIA: “[I]llness caused by work-related mental distress due to harassment in the workplace, such as verbal abuse by customers/clients under Article 76-2 of the LSA.” This is important in our understanding of workplace harassment in Korea in that a victim-employee suffering mental distress or suffering from workplace harassment may be eligible for industrial accident compensation.

Employer Obligations under the LSA

In general, the LSA amendment newly provides a definition of “workplace harassment,” and creates new employer obligations and penalties for violations.

First, the amendment prohibits “workplace harassment” for the first time under the law in Korea. Under Article 76-2 of the LSA, “[a]n employer or employee is prohibited from causing physical or mental suffering[,] or worsen[ing] the working environment of another employee (worker) by taking advantage of his/her (superior) status or (power position or) relationship within the workplace beyond the appropriate scope of work.”

Key employer obligations and penalties for violations include:

1. **Article 76-3 of the LSA:** Employer (business owner) must investigate, take measures, and protect victim-employees upon occurrence of workplace harassment. In particular: □
 - Employer must conduct an investigation if the employer receives a complaint, or is otherwise made of aware of workplace harassment
 - During the investigation process, employer must take appropriate measures to protect

the victim-employee from (further) harassment. If through the investigation, workplace harassment is confirmed: (i) based on the victim-employee's request, take appropriate measures to address it; and (ii) take other necessary action (e.g., disciplinary action against the harasser or change the harasser's workplace/location).

- Employer is prohibited from taking any disadvantageous measures against the victim-employee or the employee who reports the workplace harassment incident(s), such as dismissal: *For a violation of this prohibition, employer (business owner) faces a criminal fine of up to KRW 30 million or imprisonment of up to 3 years.*

2. **Article 93(11) of the LSA:** Employers (business owners) are required to amend/include relevant provisions in the company's "Rules of Employment" (the "ROE") on prevention measures and countermeasures the company will take upon occurrence of workplace harassment. *In case of violation, employer (business owner) faces an administrative fine of up to KRW 5 million.*

Government Guidelines

On February 21, 2019, the Ministry of Employment and Labor (the "MOEL") published its guidelines (the "Manual") to help employers better understand how to determine which acts constitute workplace bullying prohibited by the LSA Amendment. The Manual also provides guidance for employers/business owners in creating their company-specific prevention measures and countermeasures against workplace bullying.

The MOEL recommends that employers/business owners establish their own internal regulation in their Rules of Employment ("ROE") detailing, among others, specific prevention measures and internal procedures to be taken in response to an incident of workplace harassment, as well as prevention education, victim protection measures, and sanctions against the offender.

The Manual also provides other helpful guidance, such as sample message from the top (i.e., CEO anti-workplace bullying message), ways to measure risk of occurrence (e.g., surveys), and internal awareness-raising campaigns to promote anti-harassment and respectful workplace. Further, while employers/business owners should promptly respond to an incident of workplace bullying, the MOEL emphasizes the importance of confidentiality to protect victims and related persons.

Continued Social Interest

We continue to see media and public attention on workplace harassment-related issues. For example, in late February 2019, the media reported that the ruling Democratic Party Rep. Han Jeoung-ae will introduce a bill proposing criminal penalty on workplace harassment committed by the company's top person. This would be a revision to the existing law (as amended), which in current form, penalizes the company/CEO for taking retaliatory action against employees who report on workplace harassment abuse/cases, but not in cases where the harasser is the CEO himself/herself.

Therefore, any company doing business in Korea is strongly advised to conduct the necessary review of its policies and procedures, take the appropriate actions before July 16, 2019, and to continue monitoring related developments.

Should you have any questions or related inquiries, please contact Deok-II SEO and Claudia C. Hong in Kim & Chang's Labor & Employment Practice Group.



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