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Legislation of employers' obligation to prevent power harassment and measures that should be taken by employers to prevent power harassment

1. Introduction

Revisions were made to an act (the “Revised Act Concerning Power Harassment”) on May 29, 2019, to obligate employers to take measures to, among others, prevent workplace bullying (i.e., power harassment). The act is scheduled to become effective by June 5, 2020. This article mainly discusses measures that employers should take in connection with the enforcement of the Revised Act Concerning Workplace Harassment.

2. Circumstances surrounding legislation of revised acts requiring measures to prevent power harassment, etc.

So far, as for sexual harassment and maternity harassment, employers have been obligated to take necessary measures in terms of employment management under both the Act for Equal Employment Opportunity of Men and Women, and the Child Care and Family Care Leave Act, while there was no such obligation applicable to power harassment. However, recent power harassment cases that have been receiving attention and other reasons have led to the development of the Revised Act Concerning Power Harassment.

3. Outline of the Revised Act Concerning Power Harassment

The obligations of employers, among others, are discussed as follows.

A) Definition of power harassment

The Revised Act Concerning Power Harassment defines power harassment as “remarks and behavior in the workplace by people who take advantage of their superior positions which exceed the extent necessary and appropriate in the course of business, thereby harming the working environment of employees.” (Art. 30-2, para 1 of the Act).

This definition is in line with judgments that have been made in previous court cases.

B) Obligations of employers

a. Obligation to take measures related to employment management

The Revised Act Concerning Power Harassment obligates employers to take measures for employment including establishment of structures necessary for properly receiving consultation by employees and giving responses regarding power harassment (Art. 30-2, para 1 of the Act). The Health, Labor and Welfare



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Ministry will set guidelines on specific contents, etc. of measures to be taken by employers (Art. 30-2, para 3 of the Act), but the guidelines have not yet been set as of the date of this article. In this respect, a draft report approved by the Labor Policy Council, an advisory body to the Health, Labor and Welfare Minister, states that, "In obliging employers to take the measures, it is appropriate to set guidelines that present specific content, etc. of measures to be taken by employees by making reference to contents of the guidelines for prevention of sexual harassment at workplaces based on the Act for Equal Employment Opportunity of Men and Women, and relevant precedents." Therefore, based in part on the above, it is anticipated that the guidelines may include the following content.

- i Specifying internal policies for prevention of power harassment, and promoting awareness and enlightenment thereof
 - Specifying contents of power harassment, as well as policies which state that power harassment should not be permitted and that employers do not allow such act.
 - Based on the above-mentioned policy, employers should establish provisions to prevent power harassment in the work rules, etc. Employers should clarify that they will take strict action against employees who breach these provisions by specifically stipulating it as a cause of disciplinary action.
- ii Establish a system to properly respond to requests for consultation and complaints
 - Set up a point of contact for responding to requests for consultation regarding power harassment in advance. Sexual harassment and maternity harassment are anticipated to occur in combination, and so it is considered advisable to establish a centralized system capable of responding to requests for consultation regarding sexual harassment and maternity harassment by setting up an integral point of contact that can respond to such requests for consultation. Therefore, it is expected that employers must also establish a point of contact for consultation services with respect to power harassment, integrally with that of sexual harassment and maternity harassment.
 - In addition, it is expected that employers will be advised to draw up manuals for personnel in charge of consultation services and to provide them with training so that they can respond to requests for consultation appropriately in accordance with the content and situation of the requests.
- iii Make appropriate ex post facto responses
 - Employers should promptly and accurately confirm facts pertaining to the relevant matter and, if an occurrence of power harassment is confirmed, they should promptly and fairly take measures to care for the victim (such as relocating the relevant employees to separate the victim from the perpetrator and considering the victim's health). Employers should deal with the perpetrator by, for example, taking disciplinary action in accordance with the rules of employment.
 - As well as the case where an occurrence of power harassment is confirmed, even when such occurrence is not confirmed, employers should take preventive measures such as providing training to employees.
- iv Make employees thoroughly informed of the necessity of confidentiality and the prohibition of disadvantageous treatment
 - As both the victim and the perpetrator do not want a third party to know about power harassment claims, the employees (including those involved in the consultation, investigation

and disciplinary action concerning power harassment) must be thoroughly informed of the necessity to protect the privacy of the parties involved in the power harassment.

- In addition, employers should stipulate the prohibition of any disadvantageous treatment of persons engaged in consultations or investigations concerning power harassment, and inform employees of such prohibition and educate them on the same, because any such disadvantageous treatment would hinder discovery and proper resolution of the problem.

b. Prohibition of disadvantageous treatment

The Revised Act Concerning Power Harassment prohibits employers from treating employees in a disadvantageous manner, including dismissal, if based on an employee's report of power harassment or stated facts when cooperating in a consultation or investigation regarding power harassment (Art. 30-2, para. 2 of the Act).

c. Duty to make efforts to provide training, etc.

It is stipulated that employers are required to make efforts to implement training, etc. in order to deepen employees' awareness and understanding of power harassment and to cause relevant employees to pay necessary attention regarding their remarks and behavior toward other employees (Art. 30-3, para 2 of the Act).

C) Public announcement by the Director-General of the Prefectural Labor Bureau

The Director-General of any Prefectural Labor Bureau may give advice, instructions or recommendations necessary to assist resolution of disputes, and may make a public announcement about any employer that fails to follow a recommendation (Art. 30-5 and Art. 33, para. 2 of the Act).

4. Summary

Power harassment, as well as sexual harassment and maternity harassment, hurts employees' psychological wellbeing, inflicts significant emotional pain, and causes employers serious loss or damage such as reputational injury; nevertheless, there have been many cases where sufficient measures have not been taken, particularly by small and medium-sized enterprises. It is hoped that legislation requiring employers to take the above-described measures will clarify employers' responsibility to develop systems to prevent power harassment and increase awareness to develop safer and better work environments.