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Workplace Harassment : Current Status and Systematic Measures for Improvement

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I. Institutional Harassment and the Countermeasures against it

In almost every community, human beings tend to form groups. According to studies on human nature, people instinctually “feel close to those who are similar and get uncomfortable with those who are different.” People’s tendency to form groups and the resulting conflicts become “undesirable but inevitable” problem particularly in a community where one becomes a member after growing up (e.g. school, military, workplace) contrary to a community where one was born (e.g. family, race, ethnic group). Furthermore, some experts explain that people use various means of control when power structure of society is established, and it is also a part of human nature

that “violent domination” among those has often been used as an effective means. In this light, we can conclude how difficult it would be to be in an ideal state where all members of society respect one another and honor the rights of others.

It is a well-known fact that discrimination and harassment are pervasive in various segments of Korean society such as school, military and workplace. However, some consider this kind of problem appears as a rite of passage that must be gone through while adjusting to new environment. As the saying goes, “no pain, no gain”. And, in analyzing the issue of harassment occurring in the workplace, some have attributed Korea’s harsh working conditions to the prolonged economic recession and the resulting deterioration in employment following the 1997

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Asian financial crisis. Living in an economically-distressed era when one could be happy just to be employed, many employees are willing to accept any unreasonable treatment that they may get at their workplaces.

There are many factors identified as the cause of workplace harassment in Korea. While some research suggests that it is linked to the employee performance evaluation system, the corporate culture, or the leadership of a company,¹⁾ others point out the global trend of neoliberalism.²⁾ Some researchers suspect that the intense competition in Korean society is worsening the problem of harassment in workplace,³⁾ while others attribute the problem to human nature to form groups.⁴⁾ In particular, the culture in Korean military has been cited as a major factor which has intensified the problem of sexual harassment and bullying in workplace. Korean men usually serve their military duty and experience the military culture in their early 20s—the formative years of personalities. And the military has long been criticized for being a breeding ground of harassment even though most of the case of human rights violations occurring in there often remain suppressed due to the closed nature of the military culture. The problem of the harsh treatment (or violence) in military is that it is learned and passed down through the hierarchy. As we can see from the Lucifer Effect which refers to the findings of the Stanford Prison Experiment, people tend to conform to the roles assigned to them.⁵⁾ Harsh treatment in military is usually inflicted by those of a higher rank, and the victim may later become a perpetrator as he goes up the hierarchy.

Recently, a number of policy and legal measures have been proposed in Korea in response to the institutional harassment as such which occurs in workplace. Many of them focus on enacting regulatory laws with the goal of defining “workplace harassment” as a legal wrong and prohibiting it. Given the difficulty of defining the concept of “workplace harassment” in reality, however, there hasn’t been much progress in establishing it as a legal term, as well as in discussing potential measures to improve the related legal system. And even if the legal basis to impose punishment for workplace harassment is arranged, it would be hard for the victim to go through the proper legal procedures while he/she is employed in practical term. Such a reality calls for more practical and effective mechanisms. As can be seen from the sexual harassment cases that came to light under the #MeToo movement, victims of sexual harassment occurring in hierarchical relationships at work tend to remain silent despite the existence of punishment regulations, and the situation is very much the same with the workplace harassment.

It has been proven that “sanctions” are not everything. While countless sanctions for harassment in labor relations are regulated, they are rarely being used as effective means to curb workplace bullying, suggesting the need for more practical and effective sanction mechanisms. Although there can be new types of workplace harassment that emerge with the changing of the times, the majority of cases involve a traditional superior/subordinate relationship. Currently, such cases as workplace sexual harassment, unfair personnel practices, long working hours,

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- 1) Yoo, Kyoo-chang, 2017. “Harassment in Workplace: Corporate Response & HR Perspectives”, Monthly Labor Law March Issue, Joong-Ang Economy Co., Ltd.
 - 2) 労働政策研究・研修機構(2012), 「職場のいじめ・嫌がらせ、パワーハラスメント対策に関する労使ヒアリング調査」, According to pp.8-9, the social causes of legal disputes arising from harassment in workplace over the past decade are: ① increased workload due to restructuring influenced by neoliberalism (excessive overtime and work overload); ② increased stress within the workplace due to the application of performance pay systems (pay based on job performance); ③ deterioration in working conditions and diversification of employment types resulting from economic recession; ④ lack of communication within the company, and ⑤ violence in industry-specific apprenticeship relationship.
 - 3) Ma, Kang-rae, 2016. “Competing for a Higher Position”, Kaema Books.
 - 4) Berreby, David, 2007. “Us and Them: Understanding Your Tribal Mind”, Eco Livres..
 - 5) The Stanford Prison Experiment was a psychological experiment conducted in 1971 by Professor Philip Zimbardo, in which ordinary students were selected to take on randomly assigned roles of prisoners and guards in a mock prison. The students began to act like real prisoners and guards, and some guards became authoritarian and even adopted cruel practices.

failure to address the needs of pregnant women and nursing mothers, use of abusive language and violence, intimidation, depression and suicide that have become a serious concern under the existing labor law could be categorized as “workplace harassment”, but there are also the laws that regulate these individually under the current legal system. Under such circumstances, it is necessary to identify what serves as the biggest obstacle to preventing and eliminating harassment in workplace and to seek appropriate legal measures accordingly.

II. Diverse Regulatory Measures to Prevent Workplace Harassment

Until now, the institutional mechanisms aimed at curbing harassment in workplace have focused on enacting regulatory laws with the goal of defining “workplace harassment” as a legal wrong and prohibiting it. However, given the confusion in precisely defining the concept of “workplace harassment”, it has been noted that the difficulty of establishing it as a legal term has slowed the progress in developing potential measures to improve the related legal system. Furthermore, it is necessary to come up with institutional mechanisms that are more realistic since it would be practically hard for workers to go through the legal procedures while employed even if the legal basis to impose punishment for harassment in workplace is established.

According to the standards used to classify countries with regard to workplace harassment in Eurofound (2015),⁶¹ the countries where legal mechanisms are at an early stage conceptualize workplace harassment based on case laws and try to expand upon them (as Germany did), or focus on raising awareness both inside and out-

side companies through guidelines. After that, as they go through conflict resolution procedures, they expand the existing scope of regulating harassment in workplace, strengthen the responsibility of employers, and develop appropriate follow-up measures based on the assessment of the effectiveness of the problem resolution system through legislative measures. Sweden was the first country to enact legislation against workplace harassment in 1993 with the Victimization at Work Ordinance (AFS 1993: 17). The ordinance consists of six paragraphs under three main headings: Scope and Definitions, General Provisions, and Routines. More recently, France also introduced employer’s legal duty to prevent harassment, defined the role of the Hygiene, Safety and Working Conditions Committee (CHSCT) and that of industrial physicians and their right to inform employee representatives, and imposed a duty of good faith in employment contracts in its labor code.

In foreign countries as well as in Korea, workplace harassment is recognized as a legal wrong and various institutional approaches have been made to conceptualize and regulate it. There are different ways to regulate workplace harassment in each country: through existing laws; through enacting new legislations; through ordinances and guidelines; through providing legal principles based on judicial precedents; or through granting authority to labor-management councils or committees so that they can manage, supervise and provide suggestions to companies. The approach may differ depending on the degree of social awareness of harassment in workplace and the direction of regulating the issue. In the 1990s, discussions on workplace harassment first began in European countries. In these countries, countermeasures were discussed early on by the government or social partners, and in the 2000s, they began to legislate specifically on this issue. In countries that do not have their own legal system to reg-

6) Eurofound (2015), “Violence and harassment in European workplaces: Causes, impacts and policies”, Dublin.

ulate workplace harassment, they often impose vicarious liability and obligations on employers to implement preventive measures.

Since it has been noted that workers' working environment and health are negatively affected by workplace harassment, most governments obligate employers to promote safety of employees and remove any factors that harm the working environment as part of their preventive efforts through their occupational safety and health acts, and the related rules stipulate that employers must also protect the mental health of employees. It can be learned from the cases of major countries that legislative and policy effectiveness is ensured only when the government, corporate and social partners play a leading role in this effort either jointly or in a complementary way.

These countries usually have procedures in place to come up with complementary and systematic legislation and policy alternatives through long-term discussions among governments, companies, trade unions and social partners. Although, it is hard to point to any country as a "model case" for the problem of workplace harassment at this stage, it should be noted that many countries are settling this issue through a public process within the framework of long-term social dialogue. After all, the problem of workplace harassment is unique in each country and it is thus difficult to uniformly explain what kind of behavior should be regulated using standardized definitions. However, the higher the awareness level of workplace violence and harassment, the more information can be accumulated to make institutional and political countermeasures. And in turn, that would facilitate specifying the nature and the scope of harassment, which may lead to the establishment of policy as well as clear legal definitions. Therefore, active public discussions must take precedence before seeking appropriate systematic countermeasures.

It can be said that harassment in workplace would be closest to workplace sexual harassment in terms of the legal system it is governed by. Therefore, the possibility

of expanding the law on workplace sexual harassment should be sought. Among the subjects of the law on workplace sexual harassment, a superior who is the actor of workplace sexual harassment (perpetrator) may refer to anyone who can utilize his/her position in the workplace (including CEO, director, part-time executive). The victim of workplace sexual harassment can either be a male or a female employee. Also, regular employees, non-regular employees including part-time workers, as well as those in the process of recruitment and employment may also fall in the scope of the victim. In addition, employees of contractors may also fall in the scope of the victim if there is continuity of work and they work in the same physical space. Those who are now retired but were employed at the time of sexual harassment can also be considered victims of workplace sexual harassment. The examples of "sexual words or actions" which define workplace sexual harassment under the current law include both physical and verbal acts, visual acts, as well as other sexually harassing acts. And, there are two types of damage suffered by the victim: sexual humiliation or repulsion (environment-related harassment); and disadvantages in employment such as disqualification in recruitment, reduction of wages, disqualification in promotion, disciplinary measures, demotion, transfer, suspension, laying off or dismissal on account of disregard for sexual demands (condition-related harassment). All of these types are not yet legally defined. Rather, awareness about them is currently being raised by means of the guidelines based on the existing court decisions. It is considered that a similar approach should be taken in conceptualizing workplace harassment.

There are foreign cases in which government guidelines containing preventive measures were issued and distributed prior to legal response, sparking social interest in the issue. In Denmark, for example, the Working Environment Authority (WEA) in 2012 issued guidelines on workplace mobbing and harassment. The guidelines cover

mobbing and sexual harassment between employees and between employees and managers. They also describe how to prevent mobbing and harassment—for example, by using conflict resolution and having clear rules for acceptable behaviour at work. In view of this case, it would be desirable that the government implements the process of establishing workplace harassment-related policies and distributes guidelines (of the Ministry of Employment and Labor) on prevention and response. That would not only allow employers, workers, and trade unions to effectively respond to relevant issues but also induce autonomous regulatory measures.

In addition to the government-led proactive measures, companies and organizations can come up with autonomous regulatory schemes. The most common approaches include: adopting a strong declaration and establishing tough policies against harassment in workplace by the management; conducting campaigns through individual organizations and trade unions; conducting surveys on employees or union members; holding seminars and briefings to enhance awareness and to explain remedial procedures related to workplace harassment; and distributing books.

III. Current Status of Workplace Harassment: Analysis of Victims/Perpetrators of Workplace Harassment

The 2017 harassment in workplace survey was conducted on 2,500 respondents among men and women aged 20 to 50 employed in 17 different industries who experienced harassment in workplace directly (victim or perpetrator)

or indirectly (witnessed or consulted) in the last five years (2013-2017).⁷⁾

The survey results indicate that the workplace harassment experiences and their effects, as well as the preventive and resolution efforts vary according to respondents' personal characteristics and the characteristics of workplace. Based on the answers of the victims of workplace harassment in the past five years, most of the perpetrators were superiors such as supervisors and seniors. However, most victims had a passive response to the damage they had suffered, and the biggest reason cited was that they thought "No matter what I do, I won't be able to resolve this problem." In the next part, the major findings of the 2017 survey will be examined in the following order: characteristics of victims, characteristics of perpetrators, and lack of proper procedures.⁸⁾

1. Characteristics of Victims

Among the direct experiences of inappropriate behaviors by immediate supervisors in the last 5 years, 46.1% answered "contacting me several times after work or during non-working days"; 43.3% said "giving unclear work instructions causing difficulties in performing my job"; and 37.5% said "forcing me to attend company dinners or other social gatherings."

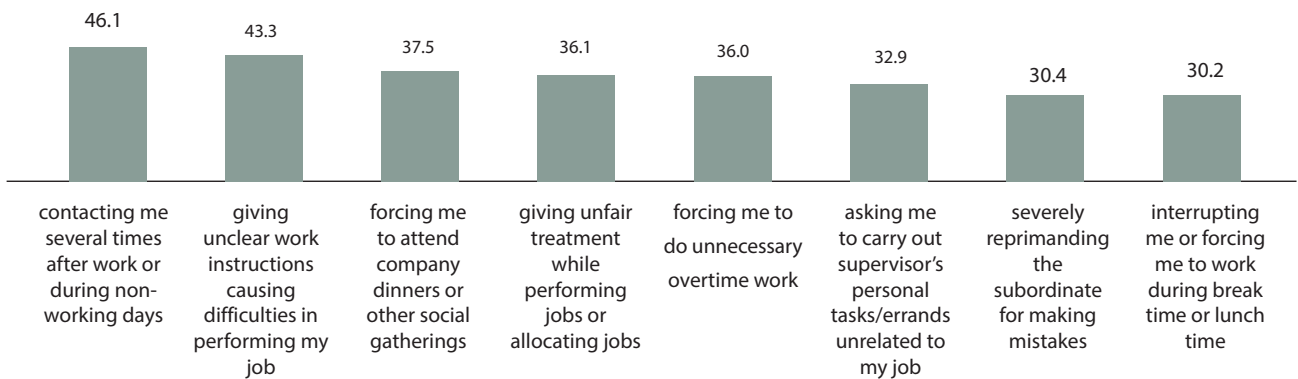
By analyzing the characteristics of the victims, it was found that women were more likely to experience workplace harassment in the form of social isolation or sexual assault than men. And, in companies where there was no adequate communication between supervisors and subordinates, employees were more likely to be subjected to mental assaults. While workers were likely to be victim-

7) When examining the survey results, it should be noted that the results may differ if the survey includes workers who have not experienced harassment in workplace (direct or indirect) at all during the last five years.

8) The following are excerpts from the 2017 survey results, and the entire survey results can be found in Chapter 3 (Survey on Current Status of Harassment in workplace) and Chapter 4 (Analysis of Survey Results on Current Status of Harassment in workplace) of "Current Status of Harassment in Workplace and Legal Measures to Prevent It" by Kim, Keun-Ju and Lee, Kyung Hee (2017).

Figure 1. Direct Experience in a Relationship with Immediate Supervisors in the Last 5 years

(Base : All (n=2,500), Unit: %, multiple answers)



ized by physical/mental assaults and under-demand in low-performing companies, those employed by firms with a low or no tolerance for failure were more likely to experience physical/mental assaults and social isolation. In the case of companies that have frequent dinners or that force attendance in such dinners, many employees experienced harassment in workplace in the form of physical/mental assault, over-demand, invasion of privacy, and sexual assault.

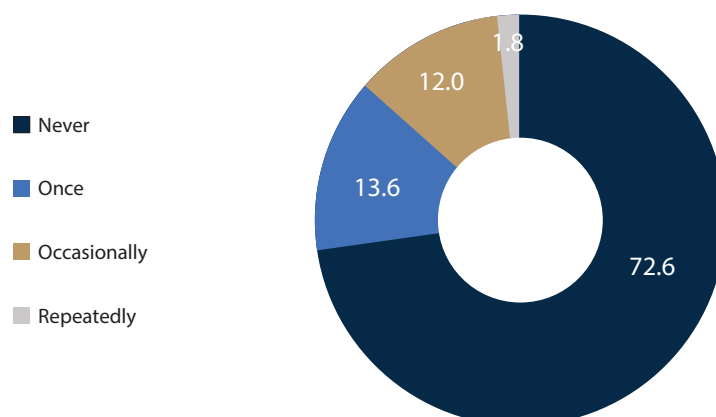
2. Characteristics of Perpetrators

When asked to report on direct perpetration of ha-

arrassment in workplace in the past 5 years, 27.4% (684 persons) of the 2,500 respondents answered that they had inflicted harassment in workplace on others. Of the 684 workers, 57.3% answered they were aware that what they were doing was workplace harassment, while 42.7% said that they were not aware of it. It should be noted that the percentage of answering yes to “both the perpetrator and the workplace were not aware of perpetration and did not point out the fact” was higher in female respondents than in male respondents. By analyzing the characteristics of perpetrators, it was discovered that, as their age and their tenure with the current workplace increase, the likelihood and the frequency of their perpetration of harassment in

Figure 2. Self-reported Harassment in Workplace Perpetration in the Last 5 years

(Base : All (n=2,500), Unit: %)



workplace tended to rise among service workers, craft and related trade workers compared to managers. On the other hand, in the case of non-regular workers or temporary agency workers, the likelihood and the frequency of their perpetration were estimated to be significantly lower than those of other positions.

3. Lack of Proper Procedures

When asked whether or not the current workplace has set up a counseling desk to handle the grievances, complaints, and conflicts of employees, the percentage of answering “No” was the highest at 40.1%. In addition, among the 1,135 respondents who answered “Yes”, their main purpose of using the counseling desk in the workplace was as follows: stress and emotional problems (36.1%); working conditions (33%); HR assessment, career counseling (26.4%); harassment in workplace (25.7%); and sexual harassment (15.0%). In terms of job title, the most-discussed subject of executives, managers, and regular employees was stress and emotional problems, while that of non-regular workers was working conditions and that of temporary agency workers was harassment in workplace.

IV. Systematic Countermeasures against Workplace Harassment

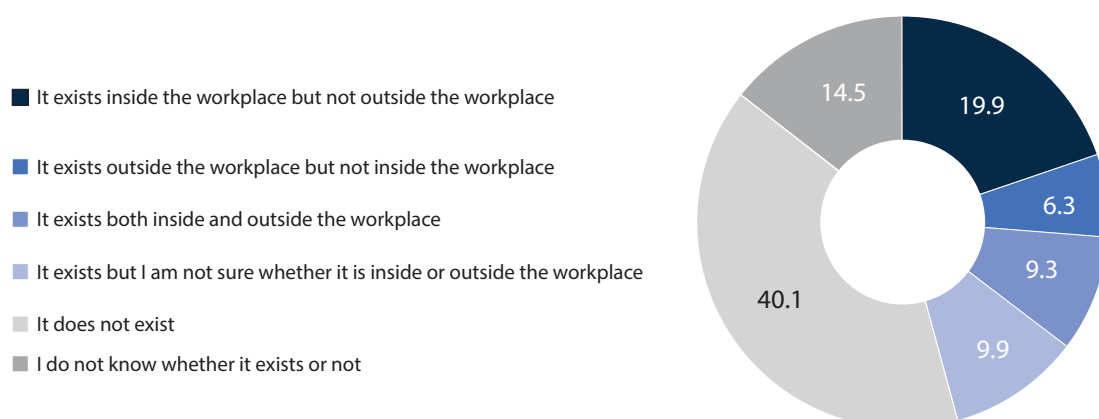
1. How to Enhance Effectiveness of Regulations on Workplace Sexual Harassment

In the past, the victims of workplace sexual harassment were not able to raise their voices despite the prevalence of such abuse. However, that social climate has been changing with the #MeToo movement. The #MeToo movement not only aims to change the perception of society by encouraging countless victims to raise their voices, “I have also been subjected to sexual harassment,” but also serves the purpose of accusing the irrationality of organizations that responded poorly to the sexual harassment cases in the past. The legal liability for “workplace sexual harassment” can be largely divided into “sanctions for the conduct” and “appropriateness of follow-up actions.” So far, social interest has been focused on the occurrence of workplace sexual harassment, but in reality, it is frequently observed that victims who openly raise the issue of workplace sexual harassment end up suffering disadvantages.

Article 14(2) of the Equal Employment Opportunity and Work Family Balance Assistance Act (“the Equal

Figure 3. Whether or not the Current Workplace has a Counseling Desk for Employees

(Base : All (n=2,500), Unit: %)



Employment Opportunity Act”) which regulates workplace sexual harassment, “The employer shall not dismiss, or take any other disadvantageous measures against, a worker who has suffered damage with regard to sexual harassment on the job or who has claimed that damage from sexual harassment occurred.” And, according to the penalty provision mentioned in Article 37(2)(2), when an employer violates Article 14(2), he/she shall be punished by imprisonment with labor for not more than three years or by a fine not exceeding 20 million won. Apart from this penalty provision, the employer can also be held accountable for losses he caused (torts) under Article 750 of the Korean Civil Act. If workplace sexual harassment is not settled fairly at the workplace and disadvantageous actions are taken against the victim who claims that sexual harassment on the job occurred, the preventive effect will not be achieved and it would give wrong signals to the entire workplace. However, since Article 14(2) in the Equal Employment Opportunity Act stipulates “criminal punishment” as a means of enforcing the duty on the employer, stringent judicial judgment is made in its actual application. Therefore, the legal procedures surrounding any disadvantageous measures against victims of workplace sexual harassment and the subsequent liabilities are related to compensation for damages resulting from the violation of Article 14(2) of the Equal Employment Opportunity Act.

Discussions on improving the effectiveness of such penalties have been going on continuously surrounding the Sexual Violence Prevention and Victims Protection Act, the Equal Employment Opportunity Act, and the Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes. Some of the suggestions include: 1. strengthening the obligations and liabilities of the employer; 2. expanding the scope of application of sexual harassment; and 3. strengthening the punishment for a person who commits an indecent act (violence) by abusing occupational authority or position in the workplace.

As a result, with some amendments to the Equal Employment Opportunity Act on November 28, 2017, an employer’s obligation to take action against workplace sexual harassment will be strengthened. The provision which prohibits “taking disadvantageous measures” under Article 14(2) of the same act was amended to include the following six items: 1. Dismissal, release from office, discharge, or other disadvantageous measures against a person’s social position equivalent to the loss of social position; 2. Disciplinary punishment, suspension from office, curtailment of salary, demotion, restrictions on advancement, or other unfair personnel measures; 3. Withholding duties, reassignment of duties, or other personnel measures against the intention of the person himself/herself; 4. Discrimination in performance evaluation, colleague evaluation, etc., and discriminative payment of wages, bonuses, etc. attendant thereon; 5. Restriction of opportunities for vocational competency development/enhancement such as education or training; and 6. bullying, violence or threatening language, other acts that cause physical or mental harm, or neglecting the occurrence of such acts. And, with the amendment to the penalty provision of Article 37(2), an employer who violates Article 14(2) will be punished by imprisonment with labor for not more than three years or by a fine not exceeding 30 million won (increased from 20 million won). These amendments will take effect May 29, 2018.

It can be said that these measures are introduced to complement the weaknesses of the existing legal system under which workplace sexual harassment was limited to the problem of the relevant parties in the past, and as result of the social atmosphere that workplace sexual harassment is now perceived as an issue of the entire workplace. Now, the challenge is to build an HR management system that allows these institutional changes to be applied in the actual workplace. In line with such changes, an in-house system should be constructed in the workplace to prevent and resolve the problem of workplace sexual harassment

in a fair manner, and more proactive responses against workplace sexual harassment should be made at the workplace level.

2. Systematic Approach to Workplace Harassment

While the status of harassment in workplace in Korea is very serious, the existing measures and systems both inside and outside the workplace to address this problem are inadequate and insufficient. Until now, there have been active discussions on implementing a “one-shot approach” through legislation. However, for the current legal system to be equipped with proper external factors such as sanctions through legal conceptualization, diverse social experiences need to be accumulated first. Basically, harassment in workplace is a general term describing the phenomena occurring around the workplace. Discussing what types of acts occurring regarding the workplace should be punished requires “aging time” in order to reflect social awareness.

A phased approach is required when developing legislations related to prohibiting and punishing the acts of harassment in workplace. Germany went through a 20-year period of the conceptualization process on the matter of regulating harassment in workplace (prohibiting the acts) in line with legal precedents. Japan focused on corporate efforts on prevention and remedy through providing guidelines. Sweden and Finland enacted a separate law on workplace harassment. All of these cases confirm that various long-term efforts to tackle harassment in workplace eventually lead to the enactment of legislations that are more compatible with the reality. Therefore, it is necessary to establish legislative grounds for regulating of acts in a stepwise manner by allowing a certain period of time, rather than take a simple punishment-based approach. To curb harassment in workplace, systematic measures for improvement need to be taken to shift the perspective from individual to society. The results of this

study indicate that a high percentage of victims responded to harassment in workplace by personal means (counseling with a colleague, a family member or a friend) or did not respond at all, which suggests the general distrust among victims toward the formal solutions. Therefore, while seeking solutions through the available in-house procedure first, it is necessary to make efforts to raise social awareness about what can be done under the current legal system—for example, civil liabilities for damages as part of the remedial procedure or criminal punishment for serious acts.

The first step in improving the system should be applying regulatory measures through administrative methods such as providing the government guidelines (MOEL) and informing workplaces of the plans to offer education on the prevention of harassment in workplace. Based on the results of the survey so far, the guidelines should include ① the types of harassment in workplace, ② an employer’s duties and in-house settlement procedures, ③ the details and procedures of remedy for victims, and ④ the information on counseling centers both inside and outside the workplaces. The guidelines will provide necessary information and serve as an administrative means to prevent and settle harassment in workplace. And, in the process of establishing such guidelines, it is necessary to clarify how the current legal systems and procedures will be applied to the matter of harassment in workplace. The survey results indicate that more than half of the respondents answered either they do not have a counseling desk set up in the workplace (40.1%) or they do not know whether they have a counseling desk in the workplace (14.5%). Given that the matter of harassment in workplace is one of the most common types of workers’ grievances to be settled under the Act on the Promotion of Workers’ Participation and Cooperation, it can be seen that the response measures under the current legal system are not effective in reality.

In conclusion, the political countermeasures to harassment in workplace should begin with a review of the

overall system of regulating workplace harassment based on the guidelines provided by the administration, and systematic measures for improvement should be imple-

mented step by step under the roadmap for expanding the regulations on workplace sexual harassment to cover the broader issue of harassment in workplace.

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