

Sexual harassment in the Korean workplace



By **Seon-Ae Choi** and **John Min**

Unfortunately, in every workplace, the issue of sexual harassment cannot be ignored. In Korea, the Act on the Equal Employment for Both Sexes and Support for Compatibility between Work and Household (the Equal Employment Act) prohibits an employer, supervisor or co-worker from committing an act of sexual harassment on the job against another employee. Article 2, Paragraph 2 of the Equal Employment Act defines 'sexual harassment on the job' as follows:

"An employer, supervisor or co-worker causes another worker to feel sexual humiliation or revulsion through sexual words or actions by (i) utilizing a position within the workplace or in relation to duties, or (ii) causing employment disadvantages on account of refusal to comply with sexual demands or actions."

Sexual humiliation or revulsion through sexual words or actions

Sexual humiliation or revulsion through sexual words or actions is required in any finding of sexual harassment on the job. The personal feelings of the victim would be the decisive factor in determining whether he or she suffered from any such sexual humiliation or revulsion, though what a reasonable person would feel under such circumstances would also be taken into consideration. There is no requirement that the sexual words or actions be repetitive, as a single sexual word or action may suffice if deemed to be severe enough.

Utilizing a position within the workplace or in relation to duties

Another factor to consider in determining whether sexual harassment on the job took place is whether an employer, supervisor or co-worker utilized his or her position within the workplace to do so, or whether the sexual words or actions related to the duties of the workplace. The mere fact that the violator is an employer, supervisor or co-worker of the employee would satisfy

this requirement. Further, there is no requirement that the sexual words or actions occur at the workplace or during business hours (e.g., sexual humiliation caused by sexual words or actions at a company outing would qualify as they would be considered to be related to the duties of the workplace).

Causing employment disadvantages on account of refusal to comply with sexual demands or actions

Even if none of the circumstances set forth in the previous paragraph apply, sexual harassment on the job may still be found if a worker refuses to comply with sexual demands or actions and unilaterally experiences disadvantages in hiring or employment conditions as a result (e.g., salary cut, suspension, dismissal, etc.).

Duties of employer; remedies and fines

Pursuant to Articles 12 and 39 of the Equal Employment Act, if an employer, supervisor or co-worker commits an act of sexual harassment on the job, he or she may be subject to an administrative fine not exceeding KRW 10 million. Furthermore, under Article 14, Paragraph 1 of the same act, an employer must take disciplinary measures against a violator without delay if the employer confirms that he or she has committed sexual harassment on the job. If the employer fails to take such measures, it may be subject to an administrative fine not exceeding KRW 5 million.

Pursuant to Article 13 of the Equal Employment Act, employers must provide training to all employees to prevent sexual harassment on the job and to create a safe working environment for employees at least once between January 1 and December 31 of each year (the Sexual Harassment Training). If the employer offers the Sexual Harassment Training only once a year, it must be offered to all employees. If the employer fails to provide the Sexual Harassment Training, the employer may be subject to an administrative fine not exceeding KRW 3 million.

Lee International IP & Law Group

14F Kukdong Bldg., Chungmuro 3-Ka
Chung-Ku, Seoul 100-705, Korea

Tel: (82) 2 2262 6013

Fax: (82) 2 2279 5020

Email: sachoi@leeinternational.com

jkmin@leeinternational.com

www.leeinternational.com