
New Legislation on ‘Power Harassment’ in Japan

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In brief

On May 29, 2019, the revised Act on Comprehensive Promotion of Labor Policies (the “Revised Act”) was enacted. One of the key features of the Revised Act is prevention of abuse of power in the workplace (known as ‘power harassment’ or ‘pawahara’ in Japan) which is a growing problem in Japan. This newsletter briefly illustrates the main points of the regulations.

In detail

1. Overview

While employers have been assuming legal obligations to take actions to prevent sexual harassment (known as ‘*sekuhara*’ in Japan) and maternity harassment (known as ‘*matahara*’ in Japan), there were no such obligations with regard to power harassment. The Revised Act introduces new legal obligations for employers to take preventive measures against power harassment in the workplace (the “**Pawahara Preventive Measures**”).

In principle, the Revised Act is scheduled to come into effect on a date to be determined within one year from the promulgation of the Revised Act (i.e., June 5, 2019). However, there is a two-year moratorium for small- and medium-sized companies which are only obligated to make efforts to take the Pawahara Preventive Measures during that period.

1.1. Definition of Power Harassment

The Revised Act defines workplace power harassment as the circumstance in which the work environment is harmed by behaviors that go beyond the extent necessary and proper for the conduct of business and which are made against the background of relationships in the workplace in which there is a power differential.

The relationships here include not only the hierarchical relationship of work positions (i.e., actions of a superior toward a subordinate) but also relationships based on business knowledge and experience. Therefore, interactions between equal colleagues and even the actions of a subordinate toward a superior may be relevant.

According to a report issued prior to the legislation in March 2018 by a study group established by the Ministry of Health, Labor and Welfare (“**MHLW**”), the following are examples of power harassment in the workplace: (i) physical attack (such as assault); (ii) mental attack (such as intimidation, defamation, insulting and severe violent language); (iii) separation from human relations

(such as segregation, ignoring, and ostracism); (iv) excessive demands (such as assigning work that is clearly unnecessary or impossible to perform); (v) underutilization of an employee (such as assigning work that is clearly below an employee's capability or leaving an employee idle); and (vi) infringement on individuals (such as intrusion into private matters).

Even if the person receiving the action feels dissatisfied, the behavior will not be deemed power harassment if it is necessary or proper for the business. However, it is not always easy to judge the necessity and properness in the business context. Such judgement should be based on individual circumstances such as the type of industry and job, and the content, purpose, method, and degree of the behavior. In addition, a certain level of objectivity is required in order to judge whether "the working environment is harmed."

It is stipulated in the Revised Act that MHLW will establish guidelines necessary for the appropriate and effective implementation of Pawahara Preventive Measures (the "Guidelines"). It is expected that some guidance will be given for the definition of power harassment in the Guidelines.

1.2. Obligations to take Pawahara Preventive Measures

The Revised Act obligates employers to take Pawahara Preventive Measures. In addition, employers are prohibited from dismissing or treating unfavorably employees who seek consultation with their employers regarding power harassment or who provide factual information in cooperation with an employer's investigation of alleged power harassment. It is expected that details of Pawahara Preventive Measures will be provided in the Guidelines.

While the Guidelines have not yet been released, in light of the contents of existing guidelines for preventive measures for sexual harassment and maternity harassment, it is anticipated that the following measures will be proposed as Pawahara Preventive Measures: (i) announcement of the employer's policy that power harassment will not be tolerated; (ii) provision in the work rules of disciplinary actions against power harassment actors; (iii) establishment of appropriate internal and/or external consultation desks with consideration for privacy; (iv) prompt and accurate fact finding and appropriate action in response to a request for consultation (depending on the individual circumstances, for example, assistance in improving the relationship between the victim and the actor, intercompany transfer to separate the victim and the actor, and disciplinary action against the actor); and (v) raising employee awareness via training, intranet, in-house newsletter, and company brochure.

2. Effect of Violations and Legal Liability for Power Harassment

2.1. Legal liability under the current law

Depending on individual facts, a power harassment actor may be liable for damages in tort against a victim and may be subject to criminal punishment (e.g., in cases involving defamation, insult, intimidation, assault, and injury).

Even if an employer is not directly involved in power harassment actions, it may still be liable for damages by reason of (i) failure to fulfill the obligation under the employment contract to ensure a good working environment; and (ii) vicarious liability in tort for actions taken in connection with the performance of the employer's business.

2.2. Treatment under the Revised Act

Neither the form of criminal punishment for the actor nor the specific grounds for the right to claim damages against the actor and the employer have been established under the Revised Act and these matters have been left to future discussions. Therefore, the legal liability under the current law will continue to apply.

Furthermore, the Revised Act stipulates that MHLW is authorized to (i) give advice, guidance, or recommendations to employers regarding the obligation to take Pawahara Preventive Measures, and (ii) publicly disclose the fact that an employer has not followed MHLW recommendations. In addition, the Revised Act provides that MHLW is authorized to request an employer to report on the status of its implementation of Pawahara Preventive Measures. A fine (*karyo*) of up to JPY 200,000 may be imposed on any employer who fails to report or makes a false report in response to such request.

Accordingly, employers must be aware of these disclosure obligations and fines in addition to potential claims for damages under the current law.

3. Conclusion

Power harassment is a serious problem that can lead to mental and physical health problems for affected workers that in turn can result in workers leaving or retiring. It may even lead to life-threatening situations for the affected workers. In addition, unresolved power harassment can also lead to significant losses for employers, such as a decline in productivity and motivation in the workplace, deterioration of the company reputation, and obstacles to securing human resources.

On the other hand, appropriate prevention and resolution of harassment may improve the working environment and improve the productivity and motivation of individual workers and the entire workplace. Therefore, it is an urgent task for employers to implement preventive measures for all types of harassment, including power harassment, in addition to sexual harassment and maternity harassment.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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