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Newsletter

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How Employers Can Comply with the Amendments to the Labor Standards Act Prohibiting Workplace Harassment

The recent amendments to the Labor Standards Act (“LSA”) prohibiting workplace harassment will become effective as of July 16, 2019 (“Anti-harassment LSA Amendment”). In this regard, the Ministry of Employment and Labor (“MOEL”) has published 「Manual for Determining, Preventing and Responding to Workplace Harassment」 (“MOEL Manual”) on February 22, 2019.

The Anti-harassment LSA Amendment focuses on the employer’s responsibility to prevent and respond to workplace harassment rather than directly punishing the harasser. In particular, the Anti-harassment LSA Amendment requires employers to establish an internal system designed to prevent and respond to harassment. Therefore, in order to comply with the Anti-harassment LSA Amendment, corporations need to adopt anti-harassment policies in their rules of employment and also prepare detailed anti-harassment manuals before the Anti-harassment LSA Amendment becomes effective. The Anti-harassment LSA Amendment entails considerable compliance efforts from the employers to maintain a harassment free workplace, as set forth below in further detail.

Set forth below are the Statutory Obligations for Employers under the LSA.

1. Definition and Determination of Workplace Harassment

Under the Anti-harassment LSA Amendment, “workplace harassment” is defined as follows: “an employer or employee inappropriately inflicts physical or mental pain to other employees or disrupts the workplace environment, by abusing his/her status or relations in the company”. With this regard, MOEL Manual explains that not all interpersonal conflicts can be regarded as a workplace harassment but following three key conditions need to be qualified. ① An act of taking advantage of the dominant position or the relationship at a workplace ② in a manner beyond the reasonable scope of work in terms of social norms and not recognized to be necessary for the work ③ which incurs certain physical or mental pain to the victim or deteriorates the work environment to a degree to obstruct the victim’s ability to perform.

2. Anti-Harassment Measures and Procedures

The Anti-harassment LSA Amendment explicitly prohibits workplace harassment and enables anyone to report the workplace harassment to the employer. It also requires employers to include in the rules of employment a list of matters relating to the preventive and remedial measures regarding workplace harassment, such as (i) prohibited acts as harassments in the workplace, (ii) educations for the prevention of the workplace harassment, (iii) procedures to cope with the workplace harassment, (iii) measures to protect the victim, (iv) actions to be taken against the harasser and (v) measures to prevent reoccurrence of any harassments.

Furthermore, the Anti-harassment LSA Amendment imposes on the employer the statutory obligations of investigating immediately when workplace harassment is reported or identified and taking appropriate measures to protect the victim and taking disciplinary actions against the harasser once the investigation concludes that workplace harassment had occurred. Criminal penalties will be imposed if an employer is found to have fired or mistreated an employee due to his/her reports or claims relating to workplace harassment (imprisonment up to 3 years or a fine up to KRW 30 million).

It is important to have the necessary preventive and remedial anti-harassment measures proactively in place.

1. Why Anti-Harassment Measures are necessary

In the event the employer fails to implement appropriate anti-harassment measures, the employer will not only be found legally liable to the victims but will also incur reputational damages and other tangible and intangible loss. According to the research results of the Korea Research Institute for Vocational Education and Training, the financial loss/cost arising from workplace harassment amounts to KRW 16 million per incident (this figure includes loss of working hours due to the victim's absence or decline in concentration plus the resulting labor costs for substitute employees), which shows that the comprehensive anti-harassment measures need to be established in advance, in terms of the effective workforce management as well.

2. Anti-Harassment Measures Checklist

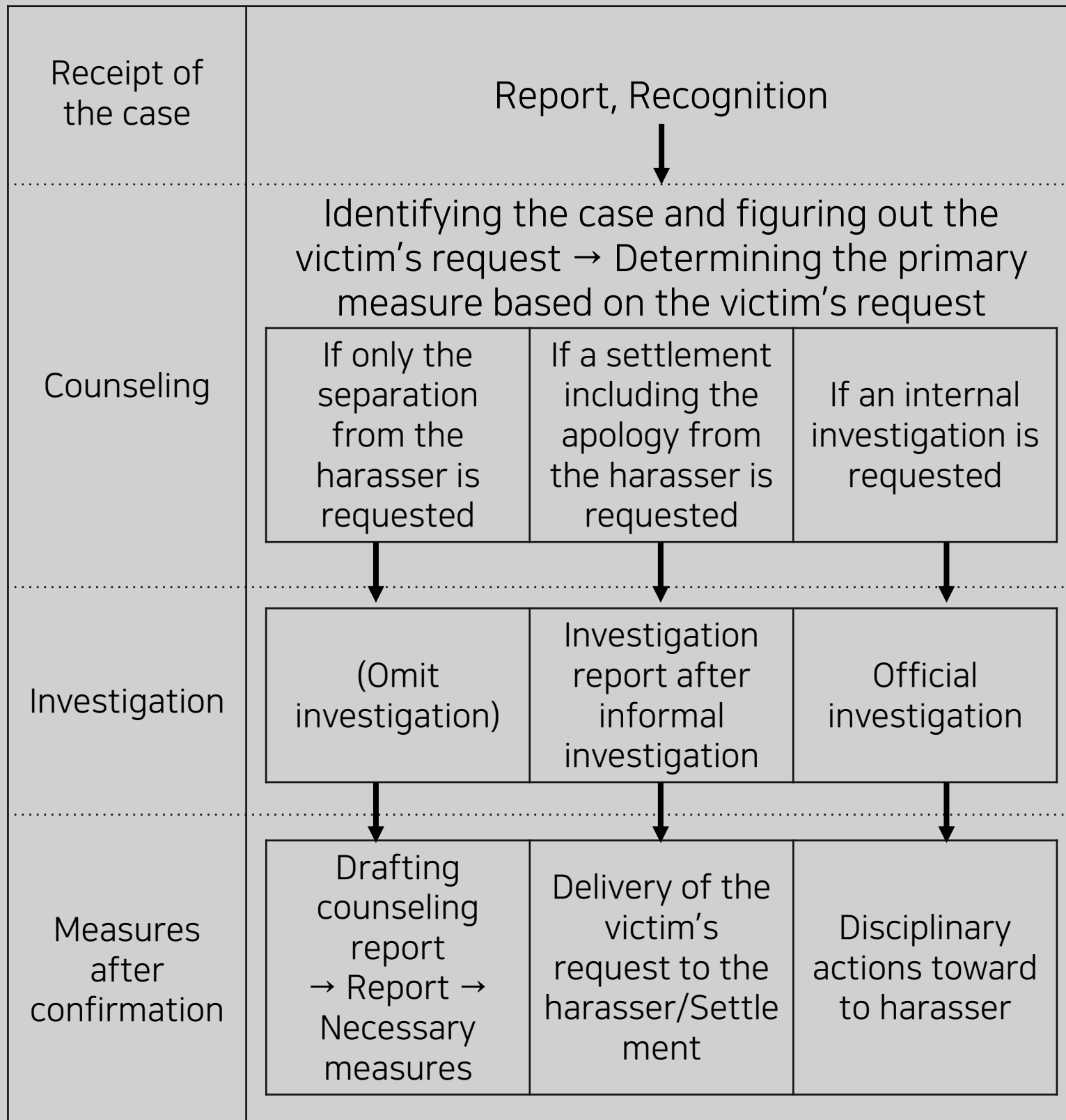
Based on the MOEL Manual, we provide below a comprehensive checklist for corporate anti-harassment measures that can be implemented.

Anti-Harassment Measures		LSA Article
1	<p>Have the rules of employment or other relevant regulations been revised to set out (i) the prohibited acts as workplace harassment, (ii) preventive educations, (iii) procedures to cope with the harassment, (iv) actions to be taken to the harasser and (v) the measures to prevent re-occurrence of any harassments?</p> <ul style="list-style-type: none"> – When the rules of employment are amended for stronger disciplinary actions against the harassers, certain procedures are required in relation to such change disadvantageous to the employees. 	Article 93 Subparagraph 11 (Mandatory)
2	<p>Is there a designated department and person in charge of preventing and dealing with the workplace harassment?</p> <ul style="list-style-type: none"> – A designated department is necessary to take on anti-harassment measures such as drafting manuals, preparation of training material and relevant campaigns, receiving harassment reports, counseling, investigations and the promotion of those procedures. 	Article 76-3 ①

3 Is there an internal procedure ready in place, appropriate for the size and characteristic of the respective workplace?

Article 76-3 ②

- Example of the Procedure in the MOEL Manual



4 Have you prepared and scheduled employee training regarding the definition, type, prevention measures, remedial measures and examples of workplace harassment?

- Since the training by a manual will have limited impact, it is necessary to customize the training material to cover specific examples of harassment that could occur during working hours in your workplace (i.e., simulation from the start of the day to the close of business).

5 Have you prepared an employee survey or other internal procedures to identify the risk factors for the workplace harassment for early identification of workplace harassment?

6	<p>Have you set an internal communication to prevent the workplace harassment?</p> <ul style="list-style-type: none"> – Declaration by CEO of the harassment free workplace through special message or ethics code is necessary. 	
7	<p>Is there an overall investigation procedure in place (such as appointing an investigator, selecting targets for relevant-party-investigations, sorting out the investigation results and determining appropriate level of punishment)?</p> <ul style="list-style-type: none"> – It is advisable to have an external expert to proceed with the investigation when the CEO is the suspected harasser or in case of group isolation since workplace colleagues are often, collectively or implicitly, complicit or sympathetic to the harasser in these cases. 	Article 76-3 ②
8	<p>Has a protective measure been taken for the alleged victims or the cooperators after the investigation and the release of the investigation results?</p> <ul style="list-style-type: none"> – Whether certain measures to protect the victim (appropriate measure in terms of the intention of the victim and the characteristics of the workplace such as change of the place of work, order of paid leave or relocation) have been taken. – Whether the confidentiality obligation has been notified and the undertaking has been signed during the investigation in order to protect the victim and involved persons. – Even though the relevant act is not considered as a workplace harassment upon investigation, the employer needs to pay close attention to the alleged physical and mental pain and manage them. 	Article 76-3 ③, ④
9	<p>Is there a procedure and remedial measure that will be taken against the harasser once the investigation finds workplace harassment occurred (disciplinary action, change of work place etc.)?</p> <ul style="list-style-type: none"> – It is necessary to build a consensus among the management and employees of the company in advance to determine certain matters regarding workplace harassment such as the degree of disciplinary action and measures for the victim and the harasser. 	Article 76-3 ⑤

10	<p>Have any directives for an internal communication been set with respect to a workplace harassment?</p> <ul style="list-style-type: none"> - In order to prevent any re-occurrence of similar harassment cases and improve the working environment as well as the organizational culture and system, the content and method of internal communication need to be determined. 	
11	<p>Is there an appropriate monitoring after the workplace harassment investigation?</p> <ul style="list-style-type: none"> - Continued interest and monitoring are needed on the fulfillment of the agreement by the harasser, prevention of any subsequent harassment, recovery of the victim's condition and the establishment of workplace protective of human rights. 	

During the workplace harassment investigation period, a company can be exposed to various risks such as: (i) damages to the victim's reputation internally and secondary damages resulting from internal dissemination of the harassment report contents, (ii) issue raising regarding the due process and procedural fairness of the investigation and (iii) reputational damages to the employer due to the disclosure and leakage of unconfirmed facts. In order to mitigate these risks, the investigation procedure needs to be conducted by the designated department or external experts. By doing so, the employer will be able to respond to subsequent sanctions, legal measures and disputes or litigation with objective evidence such as investigation records procured during such process.

LAB PARTNERS Labor/Employment team has extensive experience and know-how in advising clients on internal investigations, disputes and litigation in relation to workplace harassment, including sexual harassment. Through our expertise in internal investigations, we help corporations conduct meticulous fact-finding interviews, analyze legal and corporate risks and determine the appropriate level of disciplinary action. Should you need further advice on the Anti-harassment LSA Amendment or other aspects of workplace harassment, please contact us.

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