

## **Workplace Moral Harassment (\*1) Found in Legal Cases in Japan**

This report describes the present legal situation of workplace bullying and harassment in Japan by presenting the courses of important court cases.

(A) Harassment court precedents regarding workmen's compensation in Japan

### 1. The system of workmen's compensation approval in Japan

This section reports the realities of moral harassment by introducing cases where company employees had developed work-related depression and committed suicide. The examples shown in this paper are about administrative lawsuits for workmen's compensation approval, and not cases in which perpetrator companies or employers were punished for their moral harassment responsibilities.

To begin, I would like to explain the system of workmen's compensation approval. When a worker (or bereaved family) insists that (s)he has developed a mental disease such as depression due to work-related causes, the sufferer can claim workmen's compensation to a Labour Standards Supervision Office with jurisdiction over the workplace of the victim. Then the relevant Labour Standards Supervision Office judges whether the claimed case should be approved as a workmen's compensation based on a notice called "Judgment guidance for on and off-the-job mental illness caused by mental distress" (message No. 544, Sept. 14, 1999). The following is a brief description about the "Judgment Guidance".

1. Having been strongly distressed through work before onset of mental illness
2. Psychological distress can be identified solely caused by a specific work
3. Other specific factors (such as previous history of depression) cannot be identified in the person who is affected

The mental illness is deemed to be caused by work (and acceptable as workmen's compensation), only when these three criteria are satisfied.

When it is judged that the three requirements have not been met by a party applying for workmen's compensation, the worker (or his/her bereaved family) may appeal the ruling through an administrative proceeding. If workmen's compensation is still not approved, then (s)he may institute an administrative lawsuit for nullification of the previous rejection of workmen's compensation in the administrative disposition.

Since I introduce administrative suit decisions below, you may notice that none of the below cases were approved as workmen's compensation through administrative proceedings. Therefore, it took more than 4 and a half years in the 1<sup>st</sup> case, more than 8 years for the 2<sup>nd</sup>, and more than 5 years for the 3<sup>rd</sup> for families to win their cases and ensure approval of workmen's compensation following the death of the victim (in case 2 in particular, it took many years because the government

appealed a ruling even workmen's compensation had been approved initially; thus, the approval was verified in the second instance). Nonetheless, it is difficult for me to understand why none of the cases was approved during administrative proceedings. I sincerely hope that improvements will soon be instituted in the administrative proceedings process for workmen's compensation approval regarding mental illness.

## 2. Introduction of cases

(1) Case 1 (Tokyo district court decision on 15<sup>th</sup> Oct. 2007, page 60, early Dec, No.1661 "Labour Law 10 Day Report")

### a. Brief overview of the case

Victim A (man born in 1967) joined a company (hereinafter called "company") that manufactures and sells pharmaceutical products in 1990 after graduating from university. A was placed in 2<sup>nd</sup> division of sales and marketing in 1997. Due to poor sales performance of 2<sup>nd</sup> division, Company assigned a new assistant manager, G, for internal reform.

After being placed in his new position, G often had harsh words about A, blaming his sales performance and work practices.

Before dawn on 7<sup>th</sup> March 2003, nearly a year after G was made assistant manager, A died from hanging by a branch of tree in a park. He left a farewell note addressed to his family and his boss.

### b. Remarks made by G, assistant manager, towards A, which is certified by the court (abridged)

- Your being is an eyesore to me. Everyone is annoyed with your being here. Your wife should be mad, too. Please disappear.
- Paying for gas for your car is a waste of money (Note: A used the company's commercial vehicle for sales).
- I will tell people that A doesn't work wherever he is transferred to.
- You exploit our company. You're a wage-snatcher.
- You must be sociophobic (assuming that G thought A cannot exchange information with client medical doctors though A is no longer a new recruit).
- You don't know how to go round client hospitals. Give me a break. Do I have to teach you that, too?
- You have gungy dandruff on your shoulder. You're sick, aren't you?

Some of those remarks were made head-to-head between A and G, while other words were uttered in front of other employees in the company's year-end dinner party.

Some employees seemed to recognise that G's words and behaviour presented problems, and an ex-colleague who attended A's funeral service said "I thought G would pull off something shameful. We want to change the company's entire character. Otherwise, we'll have another victim like A".

### c. Court Appraisal on Harassment

The court ruled the above-mentioned harassment remarks were “sufficiently excessive to produce mental disorder from an objective viewpoint under normal social conventions based on general public standards”. It gave as its reasons the following points.

- The content of words uttered by G to A was excessively harsh.

It denied A’s career of more than 10 years of working. It not only condemned A’s work in the company, but also insulted A’s personality and existence.

- Aspects of feelings of dislike can be found in G’s attitude towards A.

There are strong doubts about whether the psychological burden on A could be reduced, even when considering the intentions from the viewpoint of a person who receives such remarks with an assumption of significance as boss’s instructions, and even if the remarks that condemned A’s career and personality had been subjectively uttered with intention of instructing A from a supervisor’s position.

- G uttered extremely blunt remarks to A.
- The Shizuoka 2<sup>nd</sup> division presents a difficult environment for the smooth resolution of troubles with superiors.

## (2) Case 2 (Nagoya high court decision on 31<sup>st</sup> Oct. ’07, Supreme court HP)

### a. Brief overview of the case

Victim B (a man born in 1963) joined an electrical power company (hereinafter called “company”) in 1982 after graduating from high school.

B was promoted to supervisor in August 1990. While B used to work consistently as a technician in a field site after joining the company, he needed to start desk work for the first time after being promoted. He was required to take on difficult cases. Thereafter, B’s working hours became prolonged, requiring 93 hours of over-time work in September and 117 hours and 12 minutes in October. During this time, B was often sharply rebuked by his boss F, the departmental chief.

In the morning of 8<sup>th</sup> November in the same year, he left for work by his own car but called in to the office en route, saying he had the flu and would not go to work that day. About half past one in the afternoon, B was discovered burned to death near his car, which had been destroyed by fire, according to a passerby’s report.

### b. F’s harassment identified by court decision

- F used to harshly supervise B, and F sometimes condemned B saying “You’re a washout as a supervisor” or “What good are you?”
- F ordered B to submit to him a statement regarding his mental attitude as supervisor reasoning B’s awareness-raising. When B submitted it, F asked B to add to it a sentence that emphasises B’s poor experience and insufficient

knowledge as supervisor.

- F ordered B to take off B's wedding ring several times, adding "your ring is unpleasant to the eye. Don't wear that showy stuff. Take off it". B was the only employee ordered by F to remove a wedding ring, although there were other co-workers wearing wedding rings.

In addition to those orders, F said to B "you're slacking off" and "you should get well in the office, don't bring family problems to work".

Those remarks were uttered loudly enough to be heard by other co-workers.

c. Court Appraisal on Harassment

The court certified the decision that psychological distress induced by F's verbal harassment, in addition to the fact that B had been engaged in excessive work and forced into long work hours. It reasoned according to the following points.

- It is an emotional reproof and goes beyond a category of supervision to utter such rebukes as "you're a failure as a supervisor" or "as for you, it doesn't matter whether you are here or not". If a person is reprimanded in front of other personnel clerks, such remarks should be judged as a denial of a person's very being (*jinkaku*), thus we must say that F's instructions presented problems.
- Besides those rebukes, F ordered only B to take off his wedding ring, and did so on several occasions, an action with no logical reason and beyond the needs of merely harsh supervision. This should be regarded as so-called power harassment and as a type of action causing strong psychological distress to a respectable degree in general.
- It is found that B was strongly distressed until onset of depression or death, given that the above rebukes and the order to remove the wedding ring were not made once by F but continuously ordered from the time B was promoted to supervisor until his death.

(3) Case 3 (Osaka district court decision on 12<sup>th</sup> Nov. 2007)

a. Brief overview of the case

Victim C (a man born in 1954) joined a company (hereinafter called "company") that deals with the operation and maintenance of an environmental plant in 1977 after graduating from university. C worked as center president of a filter plant from April 1997.

C also came to hold the additional post of service center chief (hereinafter called "SC chief") as a result of the company's reorganisation in September 2002. C needed to start sales and marketing, areas in which he had no previous experience, which caused a doubling of his workload as filter plant center president. Therefore, C undertook the double posts under the condition that he would be promptly released from duties as filter plant center president. However, he was not released from the duties because there was no successor for the

position.

C took a business trip to Tokyo for job training from 11<sup>th</sup> November the same year, and threw himself off the hotel he was staying at early in the morning on 12<sup>th</sup> November.

b. The court ruled harassment

- C's direct superior was I, who rebuked him, saying "What are you doing to escape from it?" although C was distressed by overwork. At other times he brushed off C without entering into discussion. I also called C incompetent in front of many co-workers in company's "convivial party" (*konshinkai*).
- Another convivial party was held with trainees in the evening on 11<sup>th</sup> November (this was a large party which the head of the company also attended).

In the party, J, one of the board members and C's former boss, said "C is clever but behind", "C does whatever he does badly", and "As evidence, C's wife telephoned me in secret asking me, 'Could you give me a helping hand?' in his speech. (Note: C used to show signs of worry about doubled load from his two posts to his wife almost every day, and to display symptoms such as sleeplessness and lack of appetite. C's wife was worried about this and enquired anxiously of J that he eliminate C's double assignment. She requested that J "keep it secret between us" being concerned that C did not want her to contact his superior.)

c. The Court's Judgment Regarding Harassment

The court ruled on C's relationship as follows, ruling that C's psychological distress was induced by the double-posting and lack of organisational support.

- Although I gave sometimes urges on C, who asked I to reduce his workload, we cannot say their relationships was always good. Rather, I scolded and condemned C even in front of C's subordinates. Therefore, I could not sufficiently contribute to reducing C's psychological burden.

The court also evaluated J's speech made the day before C committed suicide, judging that it, in addition to the double-posting and overwork, contributed to C's psychological distress.

- We must say that J made inappropriate remarks that should be normally interpreted as "calling C incompetent", considering that C was also told "C is behind", "C does whatever he does badly". Moreover, J revealed in front of the head of that company, board members, and other many SC chiefs private matters, such as "his wife called me in secret", that are normally inappropriate to reveal publicly.
- It can be understood that C was extremely psychologically shocked by the speech made by J, whom he had trusted as his marriage go-between and "fallback person" (*tanomi no tsuna*), in front of the head of the company and other SC chiefs.

- Therefore, we can say that J's remarks crossed the line toward daily workplace stress. It is difficult for someone subject to such remarks to soon forget them, and is a clear stress factor. It can be understood under normal social conventions that such incidents cause psychological distress, sufficiently excessive to produce or worsen mental illness.

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Footnote\*1: **Moral Harassment**

According to French psychotherapist Marie-France Hirigoyen, "moral harassment involves the assertion of psychological dominance over another individual in the workplace, so as to undermine the psychological and physical integrity of the individual, ultimately poisoning workplace relationships."

From her second book, "*Malaise dans le travail: harcèlement moral, démêler le vrai du faux*" (Paris: Syros, 2001)

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## **(B) Other harassment legal cases**

There are not many court cases regarding workplace power harassment (\*2) in Japan. However, their number has increased slightly recently as our society has become more attentive to this issue. Following are court precedents regarding power harassment and workplace bullying.

1. Waterworks department in Kawasaki city case (suicide caused by bullying), Tokyo High Court, 25<sup>th</sup> Mar. 2003

This is a case in which an office staff in a waterworks department committed suicide because of distress brought on by workplace bullying and harassment. His bereaved family appealed the obligation of security breach against the employer, Kawasaki City, to demand damages.

The late employee used to be teased and ridiculed. He was called “swollen Asahara” by his three superiors and had been bullied and even threatened with a knifing from June 1995. Later, he frequently was absent from work. The Court ruled that Kawasaki City had not taken appropriate actions to stop bullying and ordered it to apologise and to pay 23 million JPY in compensation under the national redress law.

2. Seishokai Kitamoto Kyosai hospital case, Saitama district court, 24<sup>th</sup> Sep. 2004.

A hospital nurse was forced to accompany his senior associate for pleasure, work on weekends, and to drink under dress, the latter causing him to suffer from acute alcohol poisoning. He also received a “kill you” message mail from the senior associate, and he suffered from continuous bullying for three years, which drove him to kill himself. This case regarded responsibility for the suicide.

The Court ordered the perpetrator nurse to pay 10 million JPY and the employer hospital to pay 5 million JPY in compensation for failure to perform its obligation to provide security.

3. A superior in an insurance company (compensation for damages) case, Tokyo high court, 20<sup>th</sup> Apr. 2005.

A center president sent to his subordinate (appellant), an assistant-section chief who didn't improve his performance, a message stating, “I think you should quit the company if you are not ambitious or motivated to work. Do you know any operations personnel we can hire for your salary?” In this case, the appellant brought a suit asking for compensation of 1 million JPY against the center president, alleging that his conduct was legally defined as defamation or power harassment.

The Court ruled that “the subject mail message is unnecessarily detrimental to his emotional state (*meiyo kanjo*) and should be regarded as an offensive statement. Even if the mail transmission was intended to instruct and press the appellant, its

expression exceeds tolerable limit and is remarkably unreasonable, which constitutes illegal act”.

However, it is decided that “we cannot say there is intention to commit so-called power harassment”, hence, a compensation payment of 50,000 JPY was deemed adequate for defamation.

The demand was rejected in the first trial with statement that “the mail was sent as part of work instructions to the appellant, thus we cannot identify it as bullying driven by personal emotion. The mail content is also limited to pointing out his business activities. Therefore, it cannot be recognised as injuring his personality, though the content is harsh in expression”.

This case was appealed to a final court, and the court decision was made after refusal of receipt of final appeal under section 1, provision 318 of the code of civil procedure by the 1st Petite Bench of the Supreme Court.

#### 4. Sunday Paint case, Osaka district court, 15<sup>th</sup> July 2005

An employee who used to work in domestic paint sales company had been bullied by being forced to work for point allocations and to transfer for unnecessary business reasons. The intent was to compel his retirement. In this case, F brought a suit asking for compensation against the company.

In this case, he refused to accept pressure to retire from the company in 1997, and was ordered to continuously reside in service center A in 2000 (a unit where there were no other employees), and then ordered to continuously reside in service center B in 2002 after being continuously assigned to factory jobs. Moreover, he was not given any work nearly for a month after returning back to headquarter in 2003. Then he was assigned to sort pay slips for worked that no one had performed.

The demand was dismissed by the court, which ruled that it was not a breach of law. The court stated more than three years had passed since the encouragement to retire in 1997, and the assignment to point allocation in 2000, and that the transfer to a factory job in 2002 was ordered under the reasonable conditions of a decrease in tasks, considering that the state of the relationship between the appellant and the company worsened. That facilitated giving him no assignment for nearly a month after he returned to the head office in 2003.

#### 5. Lettuce Card case, Kyoto district court, 8<sup>th</sup> Aug. 2006

The head of a company had repetitively verbally abused the appellant, and thrust a burning cigarette at him. He was a former employee in a consumer finance company. The president also called up to compel the appellant to come to office when he was absent from work due to depression, and said, “Quit if you cannot come to work”. This is a case to sue for payment of damage for illegal act.

While it became a point of issue whether the president’s acts are defined as power



harassment in this case, the court judged “his pattern of conduct injures his personality and even a boss cannot be allowed to rebuke his subordinate with such offensive words. Repetitive verbal abuse itself can be recognised as an illegal act”. The court agreed with the causal association between his worsening depression and being compelled to come to work, despite its denial of causal correlation to onset of depression, and ordered the company to pay 6.7 million JPY in compensation for mental suffering.

Reviewing several court precedents related to power harassment indicates that the court rulings vary one case from another, partly because the legal interpretation has not been clearly fixed yet. Whether a certain conduct falls under the category of power harassment relies on whether it is performed in relation to the business necessity, whether there is any illegal act, etc. Therefore, under current conditions, it is necessary to make decisions case by case.

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Footnote\*2: **Power Harassment**

“Harassment or unwelcome attention of a political nature, often deriving from the environment of a workplace. It includes a range of behavior from mild irritation and annoyances to serious abuses which can even involve forced activity beyond the boundaries of the job description. Power harassment is considered a form of illegal discrimination and is a form of political and psychological abuse, and bullying”

Definition given on the web: [http://en.wikipedia.org/wiki/Power\\_harassment](http://en.wikipedia.org/wiki/Power_harassment)

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\*We are a voluntary civic organization that provides information and consultations regarding moral harassment in workplaces.