

Ways to Strengthen Gender-sensitive Labor inspection Administration: Focusing on the Prevention and Correction of Gender-based Discrimination and Sexual Harassment

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I . Introduction

This study aims to develop ways to promote gender sensitivity within labor inspection to prevent and correct gender-based discrimination and sexual harassment at work, noting that in order to prevent and correct gender-based discrimination and sexual harassment, it is necessary to substantiate labor inspection.

Korean society has been working hard to reduce gender-based discrimination and sexual harassment at work, but women's work environment and the organizational culture have not yet developed. One of the reasons is the administration of labor inspection on law-abiding etc. has not played a proper role. The Characteristics of gender inequality and sexual harassment cases result in few legal proceedings such as guiding and inspecting by the local labor office, petition, complaint. The

form of gender-based discrimination has changed from direct discrimination to structural discrimination, i.e., indirect discrimination, which is hard to prove. Sexual harassment cases lack specific physical evidence, making it challenging to judge only by the victim's statement. Therefore, in gender-based discrimination and sexual harassment cases, unlike ordinary labor cases such as unpaid wages, another professionalism -gender sensitivity- is needed. However, current labor inspection has not system taking into account the characteristics of gender-based discrimination and sexual harassment cases. Besides, there is little educational system that labor inspectors to enhance gender sensitivity.

Under these circumstances, the Government announced the "Measures for Women's Employment" on December 27, 2017. The measure included the gradual placement of one or two labor inspectors in 47 local government offices since 2018 and tightening labor inspection on gender-based discrimination. On July 3, 2018, 'Measures to Eradicate Sexual Harassment and Sexual Assault' reported to the Cabinet Council included the following: increase the number of labor inspectors in the private workplace and the number of inspectors dedicated to gender equality; expand the eligibility outside experts to serve as honorary and raise the ratio of female commissioners; amend the Labor Standards Law to record the measures of sexual harassment in rules of employment and labor inspectors regulations to introduce special labor inspection on workplaces which sexual harassment occurred in, besides unpaid wages; set up a 'Committee on Sexual Harassment and Gender Discrimination' involving outside experts in local labor offices; improve counseling functions including deep consultation and consultation with non-governmental organizations and strengthen the ex-post administrative guidance by inspectors on secondary damages. According to these, 47 local labor

offices nationwide now have labor inspectors dedicated to equal employment and committees on sexual harassment and gender discrimination. However, the work of labor inspectors exclusively responsible for equal employment has not yet shaped, and there is no educational system to improve gender-sensitivity. Although every 47 local governments nationwide have a committee on sexual harassment and gender discrimination, there was no committee meeting, except for the Seoul office and Ulsan branch office, as of September 2019.

Therefore, this study aims to investigate and analyze gender-based discrimination and sexual harassment cases in current labor inspection administration and promote gender-sensitive labor inspection administration.

II . Gender-based Discrimination and Sexual Harassment in Employment and Labor Inspection

In this chapter, we will learn about the laws prohibiting gender-based discrimination and sexual harassment in employment, which is the object of labor inspection, and the labor inspection system in Korea.

Laws against gender-based discrimination and sexual harassment in employment are Labor Standards Act and Equal Employment Act. Labor Standards Act lays down the Equal Treatment Principle, whereas Equal Employment Act gender-based discrimination and sexual harassment at work from recruitment to retirement and dismissal.

The labor inspector serves as a judicial police officer in charge of the various administration and investigation into the violations of labor relations laws to ensure the standard of labor conditions. In 2019, There are four main duties of an inspector, workplace guidance and supervision,

treatment of complaint, duties as a judicial police officer, and general administrative duties. The essential function is workplace guidance and control, which includes workplace supervision on a periodical/occasional/special basis, labor management, guidance for unpaid wages, identifying labor trends, and preventing labor disputes. The number of labor inspectors is 1,947 (prescribed 2,213), 845 (43.4 percent) of which are women, as of September 2019.

The qualifications, appointment and dismissal, placement of inspectors are governed by the provisions of the labor inspectors regulations. Labor inspection functional category was first created in the 1980s that the Minister of Labor appointed labor inspectors among an executive officer, deputy executive officer, secretary officers, class V administrative officials, class VI inspectors, and class VII inspectors. The functional category was abolished in the 1990s because it did not fit the purpose of introducing due to various institutional problems. Instead, inspectors were appointed among class 2 to 5 grades or class 6 or 7 (with 7+years exp. required/3+ years of labor administrative experience). In the 2000s, there were ex officio and appointed labor inspectors. Ex officio inspectors were among class 3 to 7 officials of the Ministry of Labor in charge of labor-management adjustment, labor unions, labor standards, and industrial safety, whereas the appointed selected from among those who completed courses determined by the minister of labor and the judicial police who assisted the labor inspectors at least six months. In the 2010s, almost the same 2000s, ex officio eligibility increased to employment equality, protection of female workers, labor unions, labor disputes, labor standards, wages, industrial health, and industrial safety. The newly selected labor inspectors need to take a 6-week training course at the Employment and Labor Training Institute and the local government

offices, in the first and second half. Otherwise, the selected could not conduct inspecting duties.

The administrative organization of labor inspection has two sections: the central government and the local authorities. In the central government, heads of the Women's Employment Policy Division and the Equal Policy Office in the Planning and Adjustment Office are currently in charge of gender equality in employment.

Equality Division originated from Working Women Division, was abolished and merged into the Labor Improvement Division by revision of the rule on April 30, 2009. Therefore in the local labor offices, an independent system about compliance and violation of Labor Standards Act and Chapter 5 (Women and Child) of Equal Employment Law has vanished.

The labor inspectors exclusively responsible for equal employment are solely responsible for equal employment. They are in charge of preventing sexual harassment in the workplace and gender-based discrimination in employment, guiding and supervising equal employment, commendation of equal employment between men and women, affirmative actions, equal employment consult, honorary labor supervisors, and supporting the establishment of workplace daycare centers.

Meanwhile, there is a Committee on Sexual Harassment and Sexual Discrimination, mainly composed of outside experts in every 47 local offices. Its function is to make the first judgment (opinion) about cases and to advise on current issues, but it has no binding force. No committee meeting was found to be held except for the Seoul Metropolitan Office, Iksan, and Ulsan branch offices.

III. The Operation status of Labor Inspection of gender-based discrimination and sexual harassment in employment

In this chapter, we have learned Labor Inspection of gender-based discrimination and sexual harassment in employment, as follows.

Inspection of the workplaces is conducted on a periodical, occasional, special basis. The local labor offices annually guide and inspect companies hiring a number of women to find Equal Employment violations, such as whether or not sexual harassment prevention education was actually carried out in the workplace. According to the inspection results, the number of employment inequality is low, whereas the number of sexual harassment cases is overwhelmingly high. In particular, gender-based discrimination cases continued to decline after 20 were recorded in 2010, with only two as of 2018.

On the contrary, although sexual harassment cases dropped from 533 in 2010 to 387 in 2018, they remained high compared to gender-based discrimination cases. It might be because sexual harassment in the workplace is relatively easy to decide whether the employer failed to carry out its obligations, while gender-based discrimination is difficult to prove because it is of structural form.

The number of workplaces under labor inspection for employment equality and sexual harassment decreased from 1,095 in 2010 to 659 in 2018. It has resulted in a decrease in the number of violations. Of the whole 34,594 workplaces, only 555 or 2 percent are targets of labor inspection. It is necessary to increase the number of workplaces under inspection.

A person who has suffered from a violation of Equal Employment Act or any other person at a business or workplace may file a petition, complaint, or accusation to the local labor offices. Where a local labor office receives a petition, complaint, or accusation, the labor inspector shall process the procedures prescribed in Labor Inspectors Regulations.

Analysis of reported cases shows that the proportion of sexual harassment in the workplace is highest in cases and continuously increasing. In 2018, 1,372 cases were recorded, up 775 percent from 174 in 2010. The number of overall reported cases also increased from 218 cases in 2010 to 1,805 by 2018, along with sexual harassment cases. As of 2018, 1,372 cases (76.0 percent) of 1,805 reported cases are sexual harassment, followed by 100 cases of gender-based discrimination (5.5 percent), 164 cases of childcare leave (9.1 percent), and other 169 cases (9.4 percent) of women's protection provisions under the Labor Standards Act.

The number of gender-based discrimination cases, though the proportion is small, has increased 23 in 2010, 18 in 2012, 20 in 2014, 46 in 2016, and 100 in 2018. As of 2018, of overall 100 reported gender-based discrimination cases, 47 were closed, 18 prosecuted, and 35 cases ongoing. Of 1,087 reported sexual harassment cases, meanwhile, there were 196 cases of penalties, 87 cases prosecuted, and two cases still in progress.

Anonymous report channel for gender-based discrimination was set up that a person who has been discriminated based on gender regarding the entire process of employment (including recruitment, appointment, education, posting, promotion, payment of wage and any other money or valuables, age limit, retirement, dismissal, etc.) may report anonymously. This channel is on the homepage of the Ministry of Employment and

Labor since September 10, 2018.

Of a total of 312 cases reported to the channel for gender-based discrimination in employment, 115 of administrative guidance, 24 transferred to petition cases, 8 cases of labor inspection on the workplaces, and 124 cases closed, withdrawn, etc. from September 10, 2018, to August 31, 2019. Since its establishment, there were 312 reports in just one year, slightly lower than the previous 338 reported cases under the Employment Equality Act 2010-2018. The largest number in recruitment reached 177 cases (46.6 percent), followed by 76 cases (20.0 percent) of education, posting, promotion, 66 cases (17.4 percent) of payment of wage and any other money or valuables, and 61 cases (16.1 percent) of age limit, retirement, and dismissal.

Meanwhile, there has been a total of 717 cases reported to the anonymous channel for sexual harassment in the workplace, from March 8, 2018, to March 7, 2019, 305 cases of administrative guidance, 1 case prosecuted, 25 of penalties, and the other 274 cases, including withdrawal. Real name reports (59.0 percent) were more than anonymous (41.0 percent). The number of reports of employees is highest (16.2 percent) in business or workplaces regularly employing between 5 and less than 50 employees except unidentified. The reason is supposed that victims are difficult to unveil damages because the business or workplaces are small where the offender is superior in power relations such as an employer. The offenders mostly worked for the same company of the victims (90.8 percent), and most offenders were immediate supervisors, directors, employers (about 80 percent). This implies that sexual harassment in workplaces is based on power relationships. Physical contact and sexual assault are most common (48.5 percent), followed by sexual jokes (42.0 percent), comment about a

person's physical characteristics (18.8 percent), and demanding dates (9.5 percent). The highest rate of physical contact indicates that the damage is quite considerable.

Finally, we have analyzed ADR for gender-based discrimination and sexual harassment. Honorary Supervisors for Equal Employment was first established with the fourth revision of the Equal Employment Act (August 14, 2001). So far, it has not changed much. Honorary Supervisors shall perform the duties such as counseling and advising employees who are victims upon the incidence of discrimination or sexual harassment on the job at the relevant workplace; counseling and advice to employees becoming victims upon the occurrence of discrimination or sexual harassment on the job at the relevant workplace; recommendations to the employer on the improvement of the matters involving violations of statutes or regulations, and report thereon to the supervisory agency; publicity and enlightenment concerning the equal employment system for both genders; other duties determined by the Minister of Employment and Labor in order to realize equal employment for both genders (Art. 24(2)).

In 2001, when first implemented, supervisors were commissioned only in 63 workplaces in 2001 and now, 4,790 in 2018. Along with that, the number of Honorary Supervisors has increased from 90 in 2001 to 5,238 in 2018. The ratio of women among the Supervisors, however, reached only 26.0 percent in 2018 compared to 47.7 percent in 2001. It is necessary to find ways to increase this ratio.

On the other hand, the Government provides the part of the expenses for non-governmental organizations' consulting rooms on Equal Employment to support the employees suffered from gender-based discrimination and sexual harassment in the workplace, and prevent

disputes in advance through the spread of the sense of Equal Employment in the region. As of 2019, there are 21 non-governmental organizations' consulting rooms on Equal Employment.

The number of consultations has decreased since 2004 at its highest. Consultations on maternal protection were the most between 2001 and 2004, whereas the number of sexual harassment in the workplace was equally high to the maternal protection between 2005 and 2007. Since then, there has been an increase again in maternal counseling from 2008 to 2014. By 2018, however, other consultations had the largest number of cases (47.8 percent), followed by 3493 cases of sexual harassment in the workplace (35.2 percent), 1465 cases of maternity protection (14.8 percent), and 211 cases of discrimination (2.2 percent). Among the actions taken by the rooms, the advice in 7,038 cases (71.0 percent), resolution directly through the rooms 978 (9.8 percent) have been directly resolved through the negotiation room, and transference to the local labor offices in 935 cases (9.4 percent).

IV. Problems of Labor Inspection of gender-based discrimination and sexual harassment in employment: based on In-depth Interviews

The findings in this chapter are based on in-depth interviews with actors who had a certain relationship with labor inspection. The interviewees were "Labor Inspectors", "Honorary Supervisors for Equal Employment", "Service workers of non-governmental organizations' consulting rooms Equality Supervisor," and "Petitioners," who filed a petition to be redressed damages of sexual harassment in the workplace.

Since January 2018, along with the Me Too movement, the awareness of gender-based discrimination and sexual harassment has been raised. This has thus led to an increase in consultations and reports, so the number of reported cases has skyrocketed. In particular, people are more likely to be legally redressed damages of sexual harassment in the workplace. As sexual harassment cases reported to the Minister of Employment and Labor increase, the amount of work of the labor inspectors, the role and tasks of them, and the professionalism required for dealing with cases have come up as significant issues.

As the number of sexual harassment cases reported to the Ministry of Employment and Labor increases, and the number of cases in which labor inspectors lack experience or related knowledge has increased. The Ministry of Employment and Labor has requested 47 local labor offices nationwide to provide and operate the workforce exclusively responsible for that work. However, the local labor offices operated the workforce in different ways. Only a small number of local offices have workers exclusive for gender-based discrimination and sexual harassment, while in most offices, it is difficult for workers to focus exclusively on gender-based discrimination and sexual harassment.

Not only sexual harassment but other violation cases of the labor-relations law are also increasing, the workload of the labor inspectors has grown so that labor supervisor has to focus only on reported cases. Despite a gradual increase in the number of inspectors, there are still limits. The characteristics of gender-based discrimination and sexual harassment cases, as well as lack of education, office space and investigation rooms are difficulties that inspectors suffer. Offenders' statements are often contrary to the victim's, or there is not enough clear evidence in sexual harassment cases. It makes the inspectors hard to find the facts. More and more

victims and offenders challenge the results of the inquiry. Moreover, inspectors often encounter abuse, anger, or sexual harassment during the investigation. Labor inspectors were confused over the gender sensitivity and the victim's point of view, required for the sexual harassment cases, and did not get the education and information necessary for the duties. Although Committees on sexual harassment and gender-based discrimination were established, labor offices are not operating them properly. Only seven out of 47 local labor offices held one or two meetings.

There were also many problems from the petitioners' point of view. Although she/he filed a petition to be redressed damages of sexual harassment, she/he is often not informed of procedures and did not have an isolated room during the investigation so and had difficulties in the statement process. The degree of faith differs because there are differences in attitude and professionalism among labor inspectors. The number of cases reported has increased along with the Me Too movement, but many petitioners did not get good results. Some petitioners got frustrated again due to the amateurism and bad attitude of inspectors, or the fact that the offender cannot be punished.

Workers of non-governmental organizations' consulting rooms on Equal Employment had hard times due to increasing gender-based discrimination and sexual harassment cases. It was partly because of the increase of consultant episodes and the lack of material and human resources to a greater or lesser degree between regions and groups. Meantime, new challenges have emerged. Victims often reported cases five to ten years ago. Some victims tried active actions as well as consultation. The number of inquiries from employers is also on the rise.

Though grown in quantity, Honorary Supervisors for Equal Employment

remains only in name and does not function properly. Most honorary supervisors are appointed by the instructions of the direction of the Ministry of Employment and Labor. Neither the companies nor appointed supervisors are informed of the institution.

In order to develop the labor inspection administration in a gender-sensitive way, it is necessary to overcome the current administration's problems. Continuous training and systematic management are needed for enhancing professionalism and capabilities. It is essential to strengthen skills that inspectors deal with matters based on a deep understanding of gender-based discrimination and sexual harassment and to work on ways to reduce the difficulties and burdens that inspectors face.

For protecting petitioners, full confidentiality and human rights guaranteed throughout the process is essential. What is more, we shall consider further to provide petitioners with information friendly and professionally so that they be more comfortable and respected and understand the process.

Although the Committee on Sexual Harassment and Sexual Discrimination was already set to resolve the problem, it does not play its role. Labor inspection and administration will be working effectively only if there are an organic connection and cooperation between the non-governmental organizations' consulting rooms and the related government departments.

Gender-sensitive labor inspection administration begins by understanding all the issues in employment have different effects based on gender. To resolve not only sexual harassment but gender-based discrimination in the workplace and to change the male-centered organizational culture, an “active” labor inspection administration is needed.

V. Measures to promote gender sensitivity of Labor Inspection of gender-based discrimination and sexual harassment in employment

1. measures to enhance the labor inspecting administrative organization in terms of gender sensitivity

1) to implement the Division of Equal Employment in local labor offices

Because the Labor improvement division is even in charge of gender-based discrimination and sexual harassment in employment, it is difficult dealing with the cases given the characteristics. Labor inspectors also tend to avoid sexual harassment duties because of the difficulties in dealing with sexual harassment cases. As the number of sexual harassment cases increases, it is urgent to understand the characteristics of sexual harassment cases and ensure expertise such as knowledge, experience, and opinions to deal with them.

The local labor office has a labor inspector exclusively responsible for equal employment, but it is not formally recognized in the official organization. The public organization refers to an operating system of related duties, and it commonly reflects priorities. For the effective labor inspection based on the characteristics of equal employment duty, it is necessary to set up administrative organizations in six local labor offices that are exclusively responsible for equal employment and to establish an integrated, systematic government system. We strongly recommend revising the current decree of the organization of the Ministry of Employment to set up the Equal Employment Division in local offices. Its duties shall include as follows: correct employment discrimination

between men and women; provide assistance and guidance for childcare leave, workplace child care center; guide the operation of welfare facilities for female employees and minors; protect female employees minors; select and support excellent enterprises in equal employment for both genders; commission persons as honorary supervisors for equal employment and operation; operate specialized committee on sexual harassment and gender-based discrimination.

2) Expand the function and strengthen the role of Committee on sexual harassment and gender-based discrimination

In 2005, as the National Human Rights Commission became the only discrimination-correcting agency, the Commission on Equality of Employment between Men and Women was abolished. The specialized committee on sexual harassment and gender-based discrimination's functions should include the committee's functions previously mentioned, as follows.

First, as is currently, the Special Committee consisted of all external experts, including the head of the local offices, shall particularly include the person of consulting rooms. Since the consulting room is an organization supporting victims in the whole course from consultation to remedial procedures, there has to be a co-operating system with the local labor office. Second, in terms of its functions, it should have not only consultation as it stands, but also mediation and submission of opinion where there is a request of head of local labor offices. Any one of the parties concerned applies to mediation, Committee can recommend the parties accept mediation proposal after mediation meeting. Since the recommendation of medication is not binding, however, local authorities must monitor whether or not fulfilling agreement and impose sanctions

if the agreement is not fulfilled. Finally, the committee shall be convened in the first half and the second half of the year in order to make it permanent.

To expand and strengthen the special committee's functions, the guideline for composition and operation of the committee should be revised as follows: re-standardize the composition, functions and mode of operation of committees; strengthen the status and functions of special committees; and ensure a stable budget. In addition, if the Equal Employment Division is established in six local labor offices, its duty will include the special committee's operation, thereby forming a system at the organizational level.

2. Measures to promote gender sensitivity of Labor Inspection of gender-based discrimination and sexual harassment in employment

1) visit by request for gender-based discrimination and sexual harassment cases

As reported cases to Anonymous report channel for gender-based discrimination, even if counselee did not file a petition, complaint, or accusation, inspectors sometimes launch investigations on the workplace led to measures to correct and prevent. This implies the necessity of inspection based on reports. The inspection based on reports refers to the immediate on-site inspection of workplaces suspected of violating the laws. As not only can the reported cases be dealt with, but the inspection on the workplace carried out, pre and post measures will be strengthened.

Under Art. 12 of the current Regulations on Labor Inspectors' duties, in dealing with reported cases, workplaces suspected of violating

labor-related laws against multiple workers may be under inspection on an occasional basis. In the case of reports, the workplace can be inspected can on the premise that "multiple victims." However, unlike unpaid wage cases, gender-based discrimination and sexual harassment cases hardly meet the requirement of multiple victims. Considering the need to remedy victims, prevent secondary injuries, and establish a culture of the organization for gender equality, it is necessary to conduct labor inspection over workplaces reported. The inspection based on reports for gender-based discrimination and sexual harassment in employment should include Anonymous reports.

2) Publication of Labor Inspection of gender-based discrimination and sexual harassment in employment

According to Equal Employment Act, where an employer discriminates in recruiting and employing, welfare except for wages, education, assignment, and promotion, he/she shall be fined of not exceeding five million won. Where an employer discriminates in age limit, retirement, and dismissal of his/her employees, he/she shall be punished by imprisonment with labor for not more than five years or by a fine not exceeding 30 million won.

However, criminal punishment from Equal Employment Act is not only working properly. It also has problems depending on judicial judgment. Besides, fines of less than 5 million won for gender-based discrimination in recruitment and employment are too weak as sanctions against non-compliance with related laws. Therefore, this study highly recommends Publication of Labor Inspection, a system to publicize the results of labor inspection, if the employer was found to violate the law. It could enhance the effectiveness of labor inspection as social sanctions.

3) Create Regulations on duties of Labor Inspectors (Discrimination and Equal Employment)

Under Regulations on duties of Labor Inspectors, duties include as follows: functions related to the proper operation of temporary work agency business, the protection of temporary agency workers, and correction of discriminatory treatment under 「Act on the Protection, etc. of Temporary Agency Workers」, measures to correct gender-based discrimination in employment of under Equal Employment Act, duties related to the protection of fixed-term and part-time employees under the 「Act on the Protection, etc. of Fixed-Term and Part-Time Employees」, applications and measures for violations under the chapter I-2 Prohibition on Age Discrimination in Employment of the 「Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion」, etc. Nonetheless, there are no rules expressly provided on the duties of labor inspectors responsible for correcting discrimination. Duties of correcting discrimination, different from unpaid wages, need sensitivity to discrimination and expertise to judge discrimination. There have to be the independent Regulations on duties of Labor Inspectors (Discrimination and Equal Employment), as of the Regulations on duties of Labor Inspectors (the Occupational Safety and Health) under the Occupational Safety and Health Act and the Act on the Prevention of Pneumoconiosis and Protection, etc. of Workers Suffering from Pneumoconiosis.

3. Build Capability and Enhance Professionalism of Labor Inspectors

1) Construction of Educational System to enhance gender sensitivity

A training system is needed to build capability and enhance professionalism for equal employment duties. Education programs should be developed

and operated focusing on investigating techniques that reflect the characteristics of sexual harassment cases and improving gender sensitivity.

Training must include contents actually helping inspectors perform their duties well such as gender sensitivity, characteristics of sexual harassment cases, things to be cautious in the course of an investigation. In order to strengthen labor inspectors' expertise on gender-based discrimination and sexual harassment in employment, it is necessary to develop a systematic education program that includes relevant information and include it in the new labor inspector curriculum so that they cannot perform their duties unless completing this curriculum. There must also be gender-based discrimination and sexual harassment program for the incumbent.

2) Consultative Group of Labor Inspectors exclusively responsible for Equal Employment

Gender-based discrimination and sexual harassment cases have different characteristics from other violations of labor relations law. Sexual harassment cases, in particular, often lack concrete physical evidence, making it difficult to find facts. That makes it difficult to take over a case without sufficient time of preparation, cost, and perspectives needed to investigate and judge the cases.

Also, there is a lot of work pressures during the investigation. The problem is, inspectors exclusively responsible for Equal Employment have to solve the difficulties alone. To solve this problem, it is necessary to establish a consultative group where inspectors can share their difficulties and experiences and create synergy so they promote their own expertise and work efficiency for themselves.



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