

# Survey of Gender-Based Harassment in the Workplace and Policy Implications

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## I . Introduction

### 1. Research Background

The Korean anti-discrimination law, which regulates gender discrimination and sexual harassment, is limited in that it excludes gender-based harassment that happens to women in the workplace, such as pressure about masculinity or femininity, and disparaging expressions about gender. Since verbal expressions are not handled in employment rulings, it is difficult to include them as gender discrimination in employment, and precedent and decision, or the effect, has been that if there is no sexual intent, it is not considered to be sexual harassment. However, the experience of female workers has been that of enduring the sexist speech and actions which are prevalent in organizations on an everyday basis, even before they encounter severe incidents of sexual harassment or discrimination in personnel management. The belief that "the workplace

is not a place where women should be, and that the roles of kindness, cuteness, and assistance are more important than their ability to work" inevitably has a negative impact on the working experience of female employees. In addition, sexist beliefs about women existing for sex and being in charge of caretaking, rather than being viewed as co-workers, provide fuel for sexual harassment and employment discrimination.

This study sought to identify the current situation of the degree and impact of sexist speech and behavior in the workplace in the face of a lack of domestic investigation and research and sought to find measures to supplement disciplinary measures in legal systems.

## 2. Research Content and Method

### A. Research Content

#### 1) Current status of Legal Regulations

In this study, we reviewed the current status of legal and institutional rules, and analyzed the reasons why some areas cannot be regulated by current laws on the workplace harassment and sexual harassment. We also reviewed related laws, decision cases of the National Human rights Commission of Korea, and precedents.

#### 2) Overview of International Gender-based Harassment Legislation

We reviewed the content of legislation and the current state of policies by selecting overseas countries that developed related legal systems and accumulated cases, including the United States, England, and France.

#### 3) Survey result of discriminatory harassment in the workplace

We conducted in-depth interviews with workers who had been subjected to harassment to identify specific aspects, factors influencing the victimization, workers' perceptions and responses. Based on the results of the in-depth interviews, we developed question items for a questionnaire survey, then conducted a questionnaire survey of 2,000 workers.

#### 4) Suggestions for measures for improving legal systems

### B. Research Method

#### 1) Literature review

#### 2) Survey of dispute cases related to discriminatory harassment

#### 3) Focus group interview

We conducted focus group interviews with 32 male and female workers to identify the aspects of discriminatory harassment in the workplace, results of victimization, and victims' perceptions.

#### 4) Survey of the present conditions of discriminatory harassment

We performed a web-based questionnaire survey of 2,000 male and female workers ages between 20s and 60s, focusing on the type of industry and the business size.

## II . Definiton of Gender-based Harassment and Legislation

1. Gender-based discrimination: Seeing from the history of anti-discrimination laws in major overseas countries, discriminatory harassment is defined or interpreted as a type of gender-based discrimination in a broad sense.
2. Sexual harassment: The legal principle for precedents on discriminatory harassment in the United States started from racial harassment. Then, the legal principle for precedents and the US Equal Employment Opportunity Commission Policy Guidance on Current Issues of Sexual Harassment (EEOC guidance, for short) were established to prevent harassment for the reasons of race, gender, age, and disability. Regarding sex discriminatory harassment, sexual harassment has been a main object of arguments. For example, controversy over whether sexual harassment can be seen as a kind of gender-based discrimination continued in the 1970s and 1980s.

The U. S. and EU define sexual harassment and sex discriminatory harassment respectively by dividing them based on whether or not they contain sexual speech or conduct. But there is also a critical opinion that understanding sexual harassment and sex discriminatory harassment separately forms a double structure of deliberating sex discriminatory harassment cases more strictly than sexual harassment cases.

Workplace harassment as prescribed in the Labor Standards Act is defined comprehensively to encompass sex discriminatory harassment. But this is not clearly explained as such in the manual of the Ministry



of Employment and Labor.

The provision on the harassment of persons with disabilities in the Act on the Prohibition of Discrimination Against Persons with Disabilities and Remedy Against Infringement of their Rights, etc. is the only example of protection against harassment among the current laws in Korea. Only the bill of the Equality Act proposed by the National Human Rights Commission of Korea includes an applicable provision that can regulate sex discriminatory harassment. Probably because of such legislative vacuum, it is difficult to find decisions or precedents that chiefly deal with sex discriminatory harassment. We could find applicable cases of sex discriminatory harassment mainly from the sexual harassment petition cases of the National Human Rights Commission. Whether or not the problematic action was ‘sexual speech or conduct’ tended to emerge as a main controversy in those cases.

Asking for pouring wine into glass in staff dinner, criticizing a staff’s appearance based on femininity, disparaging a particular gender, pointing out the way a staff looks are matters of concern. But these matters cannot be easily recognized as sexual harassment if ‘sexual speech or conduct’ is interpreted with a focus on sexuality. Regarding this, it is necessary to prepare interpretative or legislative measures i) by expanding the scope of sexual speech or conduct when interpreting the concept of sexual harassment or ii) by encompassing these matters in sex discriminatory harassment to judge them as discrimination.

	Harassment	Gender-based discrimination in employment	Sexual harassment	sex discriminatory harassment
Applicability of discrimination in employment	Not applicable	Countries advanced with anti-discrimination laws tend to encompass sexual harassment as a type of discrimination in employment.		
Offenders	Encompass not only employers but also co-workers, supervisors, and subordinates	Restricted to employers	Encompass not only employers but also co-workers, supervisors, and subordinates	
Objects of regulation	Both treatment in employment and factual acts	Discrimination arising from treatment in employment including recruitment, employment, placement, and promotion → Occurrence of disadvantage in employment	Sexual speech or conduct	Factual acts which are not treatment in employment nor sexual speech or conduct
Category	Infringement on the personality right and the right to health	Discrimination in employment	Have the nature of discrimination in employment and workplace gender-based violence as well	
Current regulations by law	The Labor Standards Act and the Occupational Safety and Health Act	Applicable are the prevention and remedy procedures in the Act on Equal Employment and Support for Work-Family Reconciliation and the National Human Rights Commission Act.		Not regulated by discrimination-related laws

### III. Survey Results of Gender-Based Harassment

#### 1. Sampling and Survey Methods

We used the results of the Labor Force Survey at Establishments (2018), and conducted a survey of 2,000 male and female workers focusing on the type of industry and the business size.

We examined whether there was any difference in sex discriminatory harassment between male and female workers by dividing the business size into businesses with fewer than 30 employees, 30 to fewer than 100 employees, 100 to fewer than 300 employees, and 300 workers or more, and by allocating 50 percent of men and women, respectively, from each business size.

#### 2. sexist Speech or Conduct, and its Impacts

##### A. Experience of being subjected to sexist speech or conduct by type: current workplace

Of the respondents, 26.1% answered they experienced ‘generalization and stigmatization of their job competencies based on gender,’ 32.6% experienced ‘stereotypes of gender roles,’ 23.6% ‘disparage or hate remarks based on gender,’ 32.2% ‘inappropriate addressing or calling,’ 22.1% ‘forced charming or kind act,’ and 28.3% ‘criticism or evaluation of their appearance.’ Of the respondents, 24.4% experienced ‘exclusion from main job duties based on gender,’ 35.3% ‘request for doing trivial work or chores,’ 36.3% ‘invasion of privacy,’ 28.3% ‘criticism or pressure on using childcare/childbirth/work-life balance systems.’ The proportions of experiencing invasion of privacy, request for doing trivial work or chores, stereotype of gender roles, and inappropriate addressing

or calling were among the highest responses. As such, these responses were found to be the types of sexist speech or conduct workers generally experienced.

Among the most types, the proportion of women who experienced sexist speech or conduct was high compared to that of men. The biggest gender difference was the fixed idea of job competencies or exclusion from main duties based on gender. As the proportion of experiencing sexist speech or conduct was high in the age group of 20 to 35 years old among all types, there was a big difference in the experience of victimization by gender and age.

#### B. sexist speech or conduct, and feelings of displeasure or insult

Even if the proportion of experiencing sexist speech or conduct was similar by gender, that of feeling displeasure or insult was higher with women than with men. In the types of remarks based on the stereotype of gender role or disparage/ hate remarks based on gender, the proportion of men's experience was higher than women's, or there was a minor gender difference. Even if so, the proportion of feeling displeasure or insult was 10 percentage points higher with women. In the types of invasion of privacy, forced charming or kind act, criticism or pressure on using childcare/childbirth/work-life balance systems, the gender difference in the percentage of feeling displeasure or insult was almost 20 percentage points. This shows that even the same type of sexist speech or conduct may have a different impact on each gender.

#### C. Actual experiences of being subjected to sexist speech or conduct by type and responses to the experience

According to the result of asking questions about the most disgusting or shocking case the respondents experienced, the largest portion of the responses was request for doing trivial work or chores, followed by invasion of privacy and inappropriate addressing or calling.

According to the result of asking who did the most disgusting or shocking behavior, supervisors accounted for the largest portion of 54.8%, followed by co-workers and the management (business owner/CEO) making up 23.5% and 23.3%, respectively.

Regarding the period when the most disgusting or shocking case took place, 19.4% responded that it was during their internship, training, or trial employment period, and the rest answered the other periods.

After experiencing the most disgusting or shocking case, 66.5% took no measure, 15.0% consulted co-workers, 12.4% directly raised the issue to offenders, 7.8% appealed to supervisors concerning their difficulties, 2.9% requested counseling or reported the case to a counseling center in the workplace, 0.9% had counseling at a private counseling center outside the workplace, and 0.4% submitted a report/petition/lawsuit to public agencies.

Compared to regular workers, a very high proportion of non-regular workers took no measure, while a low proportion of them raised the issue to offenders or appealed to supervisors.

According to the result of asking the reasons for taking no measure, 48.5% answered it was not serious enough to the extent of raising the issue, followed by 47.1% who said the issue was unlikely to be resolved, 29.2% who answered they were likely to be criticized as being too sensitive or to suffer a disadvantage, 9.4% who said they were unlikely to get support from others, 9.0% who did not know how to respond to

the situation, and 2.9% who said there was no channel in the workplace to request counseling or to report their difficulties.

The largest proportion of men replied that it was not serious enough to the extent of raising the issue. But a high percentage of women ages between 20 and 34 working at small-sized enterprises with fewer than 30 employees answered that the issue was unlikely to be resolved.

#### D. Experience of being subjected to sexist speech or conduct (previous workplace) and indirect experience

It was found that more women experienced gender-based discriminative speech or conduct in the previous workplace than men did. Compared to men, a very high portion of women experienced each type of discriminative speech or conduct too.

When asked whether their experience of sexist speech or conduct had an impact on changing their jobs, 53.1% answered in the affirmative. Of men, 42.9% said such experience had an impact on changing their jobs, but the proportion was 59.9% of women. This shows that women's experience of sexist speech or conduct had a greater impact on changing their jobs. Compared to other age groups, ages between 20 and 35 were high in the proportion of having an impact on changing their jobs. Workers at businesses with 100 to fewer than 300 employees and non-regular workers showed a high proportion of having such an impact compared to regular workers.

Although there was not much difference between direct and indirect experiences, respondents had more difficulties in work life when they directly experienced than when they indirectly did in all types of sexist speech or conduct.

#### E. Experience of offending (others) with sexist speech or conduct

Of the respondents, 24.2% answered they offended (others) with ‘generalization and stigmatization of their job competencies based on gender,’ 23.1% with ‘stereotype of gender roles,’ 21.2% with ‘disparage or hate remarks based on gender,’ 21.5% with ‘inappropriate addressing or calling,’ 18.2% with ‘forcing charming or kind act,’ and 21.5% with ‘criticism or evaluation of their appearance,’ 21.1% with ‘exclusion from main job duties based on gender,’ 21.9% with ‘request for doing trivial work or chores,’ 22.6% with ‘invasion of privacy,’ and 18.4% with ‘criticism or pressure on using childcare/childbirth/work-life balance systems.’

More men experienced offending others than women did in all cases. In particular, a high proportion of men experienced generalizing and stigmatizing (others’) job competencies based on gender and excluding (others) from main job duties based on gender.

A relatively high proportion of women invaded the privacy of others. As the proportion of offending experiences was high with higher age groups, we found that there was a fairly wide range of sexist speech or conduct in the previous workplaces.

Non-regular workers had a higher proportion of offending experiences than regular workers did.

When asked about the reasons for offending the other party, the largest proportion of 24.7% answered that there was a difference in situations or job competencies according to gender, followed by 22.5% who answered that there was a natural mode of speech or practices in the workplace, 16.4% what they said was true or they believed it right, 14.5% that they did so to teach the other party to adjust to the

organization, 11.4% that they did so to express friendliness, and 10.5% that they did so to respond to gender-based discrimination they suffered.

#### F. Impacts of being subjected to sexist speech or conduct

When we measured nine types of impacts of being subjected to sexist speech or conduct on work life on a four-point scale, the most negative type was related to the decrease in their sense of belonging to and trust in the company and the desire to change their jobs. In all measuring instruments, women and younger people had more negative evaluations, and the business size had no clear effect.

### 3. Experience of gender-based harassment and its impacts

#### A. Actual situations of gender-based harassment

Based on the definitions of previous studies at home and abroad and the results of focus group interview, this study defines gender-based harassment as follows: Among those who experienced one of the 10 sexist speech or conduct types in the last year, it is when a person ‘feels that work life is unbearable or wants to leave from the workplace due to feelings of displeasure or insult’ from such experience. **This study is distinctive from previous studies in that the study added to the survey the negative impacts of experiencing gender-based discriminative speech or conduct on the work environment.**

According to this definition, the result of the analysis was that the ratio of victims is 35.7 percent, with women and men at 42.2 percent and 29.1 percent, respectively, confirming gender differences. More than 40 percent of women feel that their working environment is hindered by sexist speech and behavior. In addition, the results of the evaluation of



organizational culture were analyzed, and it was confirmed that the victim's level of consent was higher than that of non-victims, so that there is a considerable degree of correlation between sexist speech and actions and negative organizational culture in the workplace.

It was confirmed in the results that the experience of being victimized by sexual harassment in the workplace has a very definite impact on the level of immersion in the organization, the level of immersion in work, and the level of satisfaction with work. This shows that gender-based harassment is not just a problem of courtesy in the workplace, but a factor that can affect the productivity of the organization.

#### B. Impacts of gender-based harassment

According to the results of measuring work life in the categories of organizational commitment and work engagement, non-victims answered positively to both categories. This means that victims of gender-based harassment have a low level of organizational commitment and work engagement.

In the category of organizational commitment, respondents who were 'satisfied, overall, with the current workplace' scored 2.19 points on average, those who 'intend to recommend this workplace to a job-seeker' 2.43 points, and those who 'want to keep going to this workplace' 2.02 points. Respondents who were female and higher in age, and who worked in businesses with 300 employees or more and in the public sector and societies or associations scored high points.

In the category of work engagement, respondents who were 'satisfied with the current work' scored 2.15 points, those who were 'engaged in the current work with enthusiasm' 2.15 points, and those who 'want to

keep doing the current work' 2.07 points. When their age was higher, when the business size was larger, and when workers were engaged in the public sector and societies or associations, they gave positive responses to work engagement.

## IV. Conclusions

### 1. Necessity for Policy Measures

The study's fact-finding survey and the results of research that was done previously in other countries confirmed that gender-based harassment cannot be seen as a one-time happening or as the behavioral deviation of only a few members. gender-based harassment is a gender-based pattern in which women have an overall higher rate of victimization experiences, regardless of the workplace's size and nature, industry, or employment patterns. During the course of research, we heard a case in which only women were ordered to clean up desks in the office, even though they were of the same rank as men, and when one resisted this practice, she was accused of having an inconsiderate attitude and not working. In this case, the female worker was criticized for "not working," even though cleaning desks was not her original job, and she was evaluated as a "selfish" employee who did not perform her given duties. If these kinds of experiences continue to accumulate, they will naturally have a negative effect on women's willingness to continue to work in the labor market. An interesting point in the survey results is that the difference between male and female responses widen in response to the question about whether experiences with sexist speech and behavior undermine the working environment. In Korea's

authoritarian corporate culture, men also experience sexist speech and behavior, but this impacts women more in the working environment. In fact, there was a clear difference between those who experienced gender-based harassment and those who did not in terms of immersion in the organization, immersion in work, and the level of satisfaction with work.

This kind of reality is about gender-based harassment, and the face of it is sexist speech and behavior.

It shows the need to clarify the point that gender-based harassment is an illegal act that violates women's right to work and their personal rights. About 70 percent of respondents who participated in the survey said that gender-based harassment should be banned at work, and that it constitutes gender discrimination. Regarding this part, it can be confirmed that there is minimum social consensus that disparaging, insulting, excluding, and stigmatizing words and actions on the grounds of gender should not be allowed. The fact that legislative and judicial precedents of other countries such as the US, the UK, and France regulate gender-based harassment as a type of gender discrimination also implies what Korea's anti-discrimination law has omitted.

## 2. Policy Suggestions

### A. Legal and institutional regulations on gender-based harassment

As mentioned in the above, the fact that legislation cases or precedents of foreign countries stipulate gender-based harassment as a type of gender-based discrimination implies what anti-discrimination laws omitted in Korea. Also, the fact that there are more frequent cases of

gender-based harassment with less sexual attributes is a basis of the necessity for taking policy measures. It should be made clear that not only sexual speech or conduct is an illegal behavior in the workplace but also speech or conduct of disparaging, insulting, or ignoring women goes against the law as a form of gender-based discrimination. For this reason, it is necessary to make up for the current law that regulates sexual harassment only, focusing on sexual words or actions.

It is also necessary to consider regulating not just gender-based harassment but also harassment for the reasons of race, age, nationality, and so on. Even among women, there are various multiple attributes, like foreign women or women with disabilities. Therefore, it is necessary to prescribe harassment separately from sexual harassment so as to deal with the issue of discriminative speech or conduct women suffer for other reasons than gender.

If harassment is separately stipulated like in the bill of the Equality Act proposed by the National Human Rights Commission of Korea, it is possible to regulate a more diverse and extensive range of gender-based discriminative speech or conduct while interpreting ‘sexual words and actions’ not too narrowly in sexual harassment cases. It is also possible to separately regulate less sexual speech or conduct as gender-based harassment, while encompassing what can be included in sexual harassment by expanding the existing concept of sexual words and actions, including forced wine-pouring cases or swear words referring to reproductive organs. Separately prescribing gender-based harassment has the following practical gains: i) it can encompass gender-based discriminative speech or conduct that cannot be encompassed by the provision on workplace harassment or sexual harassment, ii) it can raise the effectiveness of the remedy for victimization in that it can use the

remedy procedures for gender-based discrimination and enjoy the advantage of shifting the burden of proof in the litigation procedures, and iii) if gender-based harassment is stipulated in a separate anti-discrimination law, it can be incorporated into guidelines or preventive education materials in an enterprise, including rules of employment to prevent discrimination in employment and sexual harassment.

In the medium to long term, further research and case studies are needed to establish criteria for deciding whether any gender-based discriminative speech or conduct falls under harassment. To prevent restrictive interpretation of gender-based discriminative speech or conduct simply as a ‘mistake while intending to express friendliness,’ or ‘customary words or actions without malice,’ more surveys and studies are needed on their impacts on workers’ lives at workplace. In addition, follow-up studies need focusing on the criteria for judging a hostile and threatening work environment by reference to overseas precedents.

#### B. Soft-law approach

Gender-based harassment is a topic that has not been discussed for a long time in Korean society due to the absence of legislation. As such, it is necessary to take a prudent and flexible approach to the topic in establishing anti-discrimination as a workplace norm. The recent amendment of the Labor Standards Act related to workplace harassment can be a good reference for this: The amendment is significant for taking a phased approach, which encourages businesses to make a voluntary improvement by means of a soft-law approach. Therefore, this study proposes that legal sanctions be restricted to retaliation against victims

and then gradually reinforced, while amending laws to expressly stipulate the prevention of harassment in the Act on Equal Employment and Support for Work-Family Reconciliation and the Equality Act.

#### C. Short-term task: application of the provision on harassment in the Labor Standards Act

As discussed in Section 2, the concept of workplace harassment in Article 76 (2) of the Labor Standards Act is defined as including gender-based harassment. If gender is construed as gender hierarchy, it is possible to meet the requirement for ‘dominance in position or relationship.’ Therefore, as a short-term task, it is necessary to consider applying the provision on harassment in the Labor Standards Act as part of strategies for preventing gender-based harassment in the workplace and improving awareness of the issue.

As can be seen in the case of France, both the provision on (general) workplace harassment in the Labor Code and the provision on the prohibition of harassment in the Anti-Discrimination Act are applicable to gender-based harassment. In this regard, it is necessary to add ‘discriminatory harassment’ as a type of harassment to the workplace harassment manual (2019) of the Ministry of Employment and Labor, and to explain that harassment or discriminative speech or conduct for the reasons of gender, race, disability, nationality, etc. falls under harassment.

Category	Applicable law	Policy Agenda	Remedy	Remarks
Short-term task	<ul style="list-style-type: none"> <li>Apply the provision on the prevention of harassment in the Labor Standards Act.</li> </ul>	<ul style="list-style-type: none"> <li>Add 'discriminatory harassment' as a type of harassment to the workplace harassment manual and guidelines for civil complaints issued by the Ministry of Employment and Labor.</li> <li>Add 'discriminatory harassment' as a type of harassment to education and public relations materials on workplace harassment.</li> <li>Analyze cases of workplace harassment reporting and counseling centers from a gender perspective, and present policy implications.</li> </ul>	<ul style="list-style-type: none"> <li>Available are the remedy procedures for harassment in the Labor Standards Act.</li> </ul>	
Mid-to long-term task	<ul style="list-style-type: none"> <li>Amend individual anti-discrimination laws, including the Act on Equal Employment and Support for Work-Family Reconciliation and the Act on the Prohibition of Age Discrimination in Employment.</li> </ul>	<ul style="list-style-type: none"> <li>Conduct a survey of gender-based discriminative speech or conduct and its impacts on the work environment, gendered aspects, etc.</li> <li>Add content on discriminatory harassment to education and public relations materials related to equality in employment.</li> </ul>	<ul style="list-style-type: none"> <li>Available are the remedy procedures of petition to the National Human Rights Commission of Korea and the Regional Employment and Labor Administration.</li> </ul>	<ul style="list-style-type: none"> <li>Apply the remedy procedures in the Labor Standards Act and the anti-discrimination law as well.</li> </ul>

Source: Prepared by the Korean Women's Development Institute.

