
Workplace Harassment, Mental Health, and the Law

Ikuko Mizushima

Osaka University

Human relations are important in the workplace. Many workers spend the majority of their time at work interacting with superiors and co-workers, and are sometimes expected to engage in teamwork as part of their duties. However, human relations in the workplace do not always go well, and poor human relations are a cause of stress. These problems of poor human relations sometimes take the form of harassment. When harassment and friction in human relations are severe or continuous, they can impair the mental health of workers. If a worker develops a mental disorder resulting from his or her work, it could be certified as an occupational disease. New Certification Criteria established in 2011 provide progressive treatment for cases of harassment. Now, if a worker develops a mental disorder as a result of harassment, he or she can claim damages against the employer or perpetrator. A claim for damages is upheld if harassment is proved and a causative relationship with the mental disorder is affirmed. It remains to be seen, however, how far claims for medical costs, damages due to absence from work, and loss of earnings will be admitted.

I. Introduction

Human relations work both positively and negatively. When they are going well, the activity in question also tends to go well. However, doing things with people we don't get along with, or in a relationship that is already complicated, can be a cause of stress.

This also applies to human relations in the workplace. There, human relations are continuous, and are therefore not so simple to resolve. This produces the characteristic that stress tends to persist and accumulate. Besides, human relations in the workplace are inevitably relationships between strong and weak, as in hierarchies of command and subordination or senior and junior. Here, it is the weak who are more likely to accumulate stress. This itself becomes a cause of harassment in the workplace.

According to a 2007 survey on workers' health by the Ministry of Health, Labour and Welfare (MHLW), "Problems of human relations in the workplace" is the biggest contributor (38.4%) to intense anxiety, worries and stress over work and occupational lifestyles. When a worker's health is affected by this kind of stress, it takes the form of mental health problems.

If a worker's mental health problem deteriorates into a mental disorder, the worker will probably receive treatment from a medical practitioner. In some cases, he or she may then be absent from work for long periods. The cost of this treatment and the compensation for loss of earnings during lengthy absences are covered by social insurance. When a worker's mental disorder is not due to his or her work, it is treated as a non-work-related injury and the worker receives medical insurance benefits based on the Health Insurance Act. However, if the mental disorder is deemed to have been caused by work, benefits are paid

from occupational injury insurance based on the Industrial Accident Compensation Insurance Act. In Japan, grounds for receiving occupational injury insurance include cases where a worker suffers severe shock and develops a mental disorder due to some abnormal experience (a robbery at the workplace, or being involved in a fatal accident while driving a vehicle in connection with work, etc.). As well as these, however, insurance can also be paid for mental disorders caused by accumulated fatigue due to working long hours, unduly demanding performance quotas, and harassment in the workplace.

In the case of occupational injury insurance, the insurer is the government, and Labour Standards Inspection Offices are responsible for certifying whether a worker's illness is caused by his or her work (certification of occupational disease). In 1999, the Ministry of Labour (as it was then, ML) established Judgment Guidelines¹ to cope with the increase in suicides due to overwork and the number of occupational injury compensation claims. The Guidelines provided judgment criteria for certifying occupational diseases related to mental illness. Table 1 of the Guidelines, "Workplace Psychological Stress Evaluation Table," showed the degrees of psychological stress that could be received in the workplace. One of the types specified there was "Problems in relations with others." The Guidelines were revised in 2011, when they were renamed "Certification Criteria for Mental Disorders Caused by Psychological Stress."² These are the current criteria for judgment. In the Certification Criteria, sections concerning human relations in Table 1 were also revised.

Mental health problems caused by human relations in the workplace also appear in the form of compensation claims made against employers and perpetrators. Court cases are gradually accumulating, but there are not many cases in which a worker's claim is upheld in its entirety.

In the following, the present status and challenges of workers' mental health problems caused by human relations in the workplace will be discussed from the standpoint of labour law studies. Criteria for certifying mental disorders will be examined in section II, and litigation trends in sections III and IV. Human relations that cause stress culminating in mental health disorders are diverse in both content and degree. Harassment is a typical form of poor human relations under intense psychological stress, to a degree that could cause mental disorders among workers in working relationships. In this paper, therefore, the main focus will be on cases of harassment in the workplace.

II. Certification Criteria for Mental Disorders

1. Background to the Establishment of the 2011 Certification Criteria

Occupational disease certification of mental disorders caused by psychological stress

¹ "Judgment Guidelines on Work-Related and Non-Work-Related Mental Disorders. Caused by Psychological Stress," ML Labour Standards Bureau Chief's Notification on September 14, 1999 (No. 544).

² MHLW Labour Standards Bureau Chief's Notification on December 12, 2011 (No. 1226-1).

was originally based on the 1999 Judgment Guidelines. However, new problems emerged in cases rarely encountered when the Judgment Guidelines were first drawn up. Examples of these were cases where workers were deemed to have suffered intense psychological stress due to remarks and reprimands by a superior (power harassment). After 1999, moreover, significant changes started to appear in workplace environments, partly due to the stagnation of the Japanese economy. These included corporate reorganization, personnel cuts, and the introduction of rewards based on performance or results. However, these very changes also subjected workers to intense stress. In view of this, the Judgment Guidelines were partially revised in 2009.³

The 2009 revision added 12 items related specific events listed in the Psychological Stress Evaluation Table. One of these was “Was subjected to severe harassment, bullying, or violence,” similar to the previous item “Had problems with my superior.” Before the revision, Labour Standards Inspection Offices used to evaluate psychological stress in “harassment” cases based on this item. After the 2009 revision, problems with superiors were evaluated under separate items if their content or degree exceeded the scope of work supervision and the superior denigrated the worker’s personality or human dignity in word or deed.⁴ Besides this, seven items were amended in the 2009 revision. One of these, “Had problems with a subordinate,” was upgraded to a stronger intensity of average psychological stress (from level “I” to “II”). This anticipated cases that had not occurred very much until then, in which a superior might be isolated owing to a dispute with a subordinate. Under “Points when amending the intensity of psychological stress,” the fact that the same psychological stress as in senior-junior relationships may also arise between co-workers (depending on their jobs, the roles of their departments, etc.) was added to the key indicators for events related to “Had problems with a co-worker.” In this way, the 2009 revision contained necessary amendments to deal with newly emerging cases and problems affecting human relations.

While there was a gap of ten years between the initial establishment of the Judgment Guidelines and the 2009 revision, the Guidelines were changed to Certification Criteria only two years later. The purpose of the change was different in these two cases. The aim of the 2009 revision was to amend the criteria in response to changes in the environment surrounding workers. By contrast, the 2011 change to Certification Criteria was designed to deal with the longer screening times needed for certification, due to a vast increase in compensation claims arising from mental disorders. To this end, the Psychological Stress Evaluation Table was revised to make it easier to understand and use.

³ MHLW Labour Standards Bureau Chief’s Notification on April 6, 2009 (No. 0406001). On the amendment, Ikuko Mizushima, “Shokuba ni okeru Shiniriteki Fukahyo no Kaisei to Sono Eikyo [The Amendment of the Workplace Psychological Stress Evaluation Table and its Impact]” *Quarterly Labor Law*, no. 227 (2009): 36–48.

⁴ So-called power harassment, although the term power harassment is not used.

2. Changes from the Judgment Guidelines

MHLW emphasizes three key points in the Certification Criteria. Of these, two are related to increasing the speed and efficiency of certification screening, the purported reason for the change. The first is that Table 1 in the Judgment Guidelines (Workplace Psychological Stress Evaluation Table) has been reorganized as Table 1 of the Certification Criteria (Work-Related Psychological Stress Evaluation Table). The second is that appraisal based on consultation with a psychiatrist, which had previously been necessary in all cases, is now limited to cases where it is difficult to make a judgment.

A particularly noteworthy change in the Psychological Stress Evaluation Table is that it expressly states “Special events” at the outset. When an event falls under the description of a “Special event,” the overall evaluation of psychological stress automatically becomes “Strong,” without any need to consider the various circumstances of the case. “Special events, etc.” were included in the Psychological Stress Evaluation Table of the former Judgment Guidelines, but the treatment was different. That is, under the Judgment Guidelines, an overall evaluation was made on the basis of the Psychological Stress Evaluation Table, and a “Special event, etc.” “could” make the overall evaluation “Strong” when exceptionally corresponding to this. In contrast, under the 2011 Certification Criteria, it is first judged whether an event corresponds to a “Special event,” enabling Labour Standards Inspection Offices to make a quick judgment. “Special events” in the 2011 Psychological Stress Evaluation Table are classified into those of “intense psychological stress” and “extremely long working hours.”⁵ A difference compared to the Judgment Guidelines is that severe sexual harassment was cited and long overtime hours. In both cases, the criteria for judgment have been made easier to understand.

In cases not falling under “Special events,” evaluation was previously based on related items after first appraising the average intensity of psychological stress (“I,” “II” or “III”). This has been revised to a method of making a single overall evaluation of the “event” and “the degree to which the situation has continued after the event.” Besides this, specific cases in which the overall evaluation would be “Strong,” “Medium” and “Weak” are illustrated with a commentary. This makes it easier to match events with the criteria.

The third point in the Certification Criteria is that, for repeated events like bullying and sexual harassment, psychological stress is evaluated with reference to all acts since they first started.

Another interesting point of change is that specific methods of evaluation are stated

⁵ “Intense psychological stress” includes cases of work-related illness or injury that are potentially fatal, are accompanied by extreme pain, or leave residual disability causing permanent incapacity to work; cases of causing the death of, or a potentially fatal severe injury to, a third party in connection with work; and cases of being subjected to rape, obscene acts against the will of the victim, or other forms of sexual harassment. “Extremely long working hours” are cases where more than around 160 overtime hours are worked in the month immediately prior to the onset of the disorder, or the comparable amount of hours within a shorter period.

for overall evaluation when there is more than one event (see III 2 below).

3. Power Harassment under the Certification Criteria

Power harassment is not a legal term. The 2012 “Report of the Working Group for the Roundtable Conference Regarding Workplace Bullying and Harassment” defines power harassment as follows. “Workplace power harassment is any kind of behavior in which a person abuses his or her position* in the workplace (e.g. his or her job position, personal relationships, etc.) to inflict physical pain or emotional distress on a co-worker, or cause the deterioration of the working environment beyond the appropriate scope of business. [*In addition to the actions of a superior toward a subordinate, workplace power harassment includes any interactions between seniors and juniors, between colleagues of equal standing, or from a subordinate toward a superior, based on the various backgrounds of superiority.]” The term “power harassment” does not appear in the Certification Criteria. However, through comparison with definitions in the aforementioned Working Group Report, item 29 in the Evaluation Table (“Was subjected to (severe) harassment, bullying or violence”) is thought to correspond to power harassment. In the Certification Criteria, the average intensity of psychological stress is “III.” In the overall evaluation, attention is paid to the content and degree (among other aspects) of harassment, bullying and violence, as well as the extent of continuation. Seen in specific terms, the overall evaluation is “Strong” when a worker is subjected to severe harassment, bullying or violence. The following are given as examples of this.

- (a) The behavior of a superior toward a subordinate deviates from the scope of work supervision, includes behavior that denigrates the personality and human dignity of the subordinate, and is carried out persistently;
- (b) Behavior by several co-workers and others in collusion that denigrates the personality and human dignity of a worker is carried out persistently; and
- (c) A worker is subjected to a degree of violence requiring medical treatment.

Cases not reaching this level are evaluated as “Medium” or “Weak.” Examples of “Medium” cases are as follows.

- (d) Remarks that deviate from the scope of work supervision are made in the process of a reprimand by a superior, but this is not continued; and
- (e) Co-workers and others collude to engage in harassment, but this is not continued.

Finally, the following is given as an example of a “Weak” evaluation.

- (f) A worker feels emotional distress due to remarks by a plural number of co-workers and others. (including cases that could not objectively be called harassment or bullying).

A worker’s mental disorder is certified as work-related when the overall evaluation is “Strong” and the mental disorder is deemed not to have developed as a result of non-work-related psychological stress or factors inherent in the individual. On the other hand, when the overall evaluation is “Medium” or “Weak,” the worker’s mental disorder is

judged to be non-work-related and is not certified as an occupational disease. Based on these facts, a mental disorder thought to result from power harassment may only be certified as an occupational disease when satisfying three conditions: (1) Behavior that denigrates the personality and human dignity of the worker has been persistently carried out (as in cases [a] and [b] above; except when it is not continued, as in cases [d] and [e] above), or (2) The worker has been subjected to physical violence to a degree requiring medical treatment (as in [c] above; except when the distress is emotional, as in [f] above), and finally (3) The mental disorder has not been caused by non-work-related psychological stress or factors inherent in the individual.

Of these, in cases under condition (1) above where the behavior in question is from a superior to a subordinate, the behavior would need to deviate from the scope of work supervision. Guidance and reprimands within the scope of work supervision are necessary adjuncts to work and do not represent power harassment. Of course, even guidance within the scope of work supervision could still lead to intense psychological stress for the worker, depending on the content and degree, and this could cause a mental disorder to develop. In that case, it would fall under item 30 in the Evaluation Table, "Had problems with a superior." Case (g), in which intense guidance or reprimand within the scope of work supervision is received from a superior, is cited as an example in which the average intensity of psychological stress for item 30 in the Evaluation Table is "II" and the overall evaluation is "Medium." Judging from this, even if the guidance or reprimand from the superior were intense, it would still be evaluated as "Medium" and the mental disorder would not be certified as work-related. An example of "Strong" evaluation in item 30 is (h), a case in which major friction concerning work-related principles, etc., arises with a superior and is even recognized objectively by others nearby, causing major impediment to subsequent work. Since no examples of guidance or reprimand are cited, this is taken to mean that, if intense guidance or reprimand from a superior is within the scope of work supervision, there is no chance of the mental disorder being certified as work-related. This might appear unfair at first, but can be understood as follows. That is, even if it was originally guidance or reprimand necessary for work, or if there was a reason on the worker's part why the guidance or reprimand should be received, the superior is still not entitled to give unconstrained guidance or reprimand; the superior's guidance or reprimand is limited to the necessary and reasonable scope related to the work. For example, if the superior refers to a mistake previously made by a worker under his or her supervision, and repeatedly issues intense reprimands or criticism even though the mistake has been corrected, or repeatedly issues reprimands or abuse that denigrate the personality and human dignity of the worker, this would of course deviate from the scope of work supervision. This kind of case would be judged using item 29 rather than item 30; if satisfying conditions (1) to (3) above, it would be deemed an occupational disease. Items 29 and 30 in the Evaluation Table could be said to accurately distinguish power harassment from guidance or reprimands necessary for work.

4. Sexual Harassment under the Certification Criteria

Sexual harassment is not a legal term, either. A description of sexual harassment is given in Guidelines based on Article 11 of the Equal Employment Opportunity Act.⁶ According to these Guidelines, sexual harassment in the workplace is defined as harassment causing a worker to suffer a disadvantage in his or her working conditions as a result of his or her response to sexual behavior in the workplace (“quid pro quo sexual harassment”), on the one hand, and harassment in which such sexual behavior impairs the worker’s work environment (“hostile work environment sexual harassment”). The Guidelines mention the victim’s working conditions, improvement of relations and privacy, but not the victim’s physical or mental health. As such, the problem of sexual harassment and mental health appears not so much in the field of sexual harassment as in that of mental health.

Sexual harassment was already cited as one of the events classified under “Problems with interpersonal relations” in the old Judgment Guidelines. In this context, it was clearly open to compensation claims for occupational injury, but in reality this fact was not generally known.⁷ Sexual harassment also involves circumstances unique to the case in question. For example, whether consciously or not, victims are sometimes reluctant to talk about the sexual harassment they have suffered, or the details of it; they may try to hide it. In some cases, they may have sought advice in connection with sexual harassment but omit to mention their mental health disorder. Circumstances like this can be one factor making it difficult for sexual harassment counselors or mental health practitioners to suggest the possibility of claiming damages for occupational injury to the victim. They also make it hard to investigate the factual relationships after a claim. Based on these realities of sexual harassment cases, the Certification Criteria have not only made the criteria in the Psychological Stress Evaluation Table easier to understand, but also include important notes.

In the Psychological Stress Evaluation Table attached to the Certification Criteria, sexual harassment appears among both “Special events” and “Non-special events.” Rape, obscene acts committed against the will of the victim and other types of sexual harassment fall under “Special events”; these events alone cause the psychological stress evaluated as “Strong.” Even under the old Judgment Guidelines, this kind of sexual harassment was basically evaluated as “Strong,” and occupational injury was certified. To facilitate this, however, the average intensity of psychological stress arising from sexual harassment had to be revised to “II” and then judged as “Strong.” The 2011 Psychological Stress Evaluation Table clearly prescribes that this kind of sexual harassment should correspond to a “Special

⁶ “Guidelines on Measures to Be Taken by Employers for Employment Management Concerning Problems Caused by Sexual Harassment in the Workplace,” MHLW Notification on October 11, 2006 (No. 615).

⁷ In the past, sexual harassment was often seen as resulting from “personal friction with superiors, etc., temperament, and other problems of the individual,” or “not caused by work.” Hideo Mizutani, *Shokuba no Ijime: Pawahara to Ho* [Bullying in the workplace: power harassment and the law] (Tokyo: Shinzansha, 2006), 197 onwards.

event,” enabling Labour Standards Inspection Offices to make quick and easy judgments.

Under the Judgment Guidelines, sexual harassment was included among problems with interpersonal relations. In the 2011 Psychological Stress Evaluation Table, however, “sexual harassment” has been established as a category independent from that of “interpersonal relations.” The only case belonging to the category of “sexual harassment” is “Was subjected to sexual harassment” in item 36 of the Evaluation Table. The average intensity of psychological stress for item 36 of the Evaluation Table is “II.” In the overall evaluation, attention is paid to the content and degree, of the sexual harassment, as well as the extent of continuation, whether or not the company has taken action and the content thereof, the degree of improvement, and human relations in the workplace, among other aspects. Comparing this to power harassment (see item 29 of the Evaluation Table and section 3 above), they differ in two aspects. The first is that while the intensity of power harassment is “III,” that of sexual harassment is “II.” This is no doubt because severe sexual harassment is evaluated as a “Special event,” and, as such, is not included under item 36 of the Evaluation Table. The other is that, in cases of sexual harassment, attention is also paid to the company’s response, the degree of improvement, etc. This is based on the fact that, although the direct cause of the mental disorder is sexual harassment, an inappropriate response by the company after the sexual harassment could have caused or aggravated the mental disorder.

Cases for which the overall evaluation in item 36 of the Evaluation Table is “Strong” are as follows:

- (a) Sexual harassment including physical contact to the chest, waist, etc., when it is carried out continuously;
- (b) Sexual harassment including physical contact to the chest, waist, etc., when it is not carried out continuously, but is not dealt with appropriately or improved even after the company has been consulted, or when human relations in the workplace deteriorate after the company has been consulted;
- (c) Sexual harassment with no physical contact but consisting only of sexual remarks, when it includes remarks that denigrate the victim’s personality and are made continuously; and
- (d) Sexual harassment with no physical contact but consisting only of sexual remarks, when sexual remarks are made continuously, and the company fails to respond appropriately even after ascertaining that there has been sexual harassment, and no improvement is made.

To summarize these, (1) cases where severe sexual harassment (including physical contact or remarks that denigrate the victim’s personality) is continuous (as in [a] and [c] above), and (2) cases where sexual harassment not meeting condition (1) above (non-continuous harassment including physical contact, or continuous harassment with remarks that denigrate the victim’s personality) is not appropriately dealt with by the company (as in [b] and [d] above) are classified as “Strong.” Both (1) and (2) illustrate cases where the continuation of a problematic situation results in intense psychological stress for

the victim. By contrast, cases where sexual harassment is not continuous or the company has responded appropriately and swiftly to resolve the problem before a mental disorder develops are evaluated as “Medium.”⁸

The 2011 Certification Criteria also include important notes to bear in mind when considering cases of sexual harassment. These state that the victim may have unintentionally sent the perpetrator compliant emails, or accepted an invitation from the perpetrator, but that these do not provide grounds for simply denying that the victim was subjected to sexual harassment; again, the victim may sometimes not immediately seek advice after suffering harassment, but this does not provide grounds for simply judging the psychological stress to be weak. In judgments certifying cases of sexual harassment, similarly, the Criteria reaffirm the importance of making accurate judgments on the degree of psychological stress, rather than searching out reasons to deny that the mental disorder is work-related.

III. Trends in Court Cases concerning Certification of Occupational Disease

1. Compensation for Occupational Injury in Harassment and Mental Health Cases

MHLW publishes data on compensation for occupational mental diseases every year. These include the number of decisions and the number of payment decisions (certifications of occupational disease) for each event in the Psychological Stress Evaluation Table. Data on compensation paid when the victim “Was subjected to severe harassment, bullying or violence” (power harassment) and “Was subjected to sexual harassment” over the last three years are shown in the Table.

Power harassment cases are in an increasing trend, both in the number of decisions and in the number of payment decisions; the ratio of occupational disease certifications is also on the high side compared to other cases in general. By contrast, there have been fewer cases of sexual harassment, and the ratio of occupational disease certifications is also lower.

2. Power Harassment Cases and the Judgment Guidelines/the Certification Criteria

When a decision not to pay occupational injury compensation is made, appeals are sometimes brought to the court in an attempt to overturn the decision. In cases of pure

⁸ “Medium” examples are (e) cases where, although there has been sexual harassment including physical contact to the chest, waist, etc., the behavior was not continued, the company responded appropriately and swiftly and the case was resolved before the onset of any disorder, (f) cases where sexual harassment consisted only of sexual remarks with no physical contact, and the remarks were not continued, and (g) cases where sexual harassment consisted only of sexual remarks with no physical contact, which was committed on more than one occasion, but the company responded appropriately and swiftly and the harassment was terminated before the onset of any disorder. “Weak” examples are (h) cases where remarks such as the use of inappropriate nicknames equivalent to sexual harassment have been made, and (i) cases in which posters and other pictures of women in swimwear have been put up in the workplace.

Number of Decisions (D) and Payment Decisions (PD)
on Occupational Mental Disease Compensation

	FY2009		FY2010		FY2011	
	D	PD	D	PD	D	PD
Power harassment cases	42	16	58	39	69	40
Sexual harassment cases	16	4	27	8	17	6
Total	852	234	1,061	308	1,074	324

power harassment,⁹ courts have been empowered to overturn non-payment decisions since 2007; this triggered the 2009 amendment to the Judgment Guidelines (see section II 1 above).

In the Government/Chief of Shizuoka Labour Standards Inspection Office (Nikken Chemicals) case,¹⁰ a worker committed suicide after relations with his superior (a chief clerk) deteriorated to the point of frequent verbal abuse from the superior. In this case, an excessive workload caused by long working hours was not recognized. It was a case of “pure power harassment.” The characteristics of this judgment and its significance as a precedent lie in the fact that it showed that a significant causal relationship between work (power harassment) and the onset of a mental disorder can be affirmed, and that it is possible to judge a disorder to be work-related in this kind of case. In this judgment, psychological stress was evaluated to be “arguably of a level of intensity that is rarely experienced in a person’s lifetime, and was so excessive that, seen objectively in terms of social norms, it would have caused a mental disorder to develop in any ordinary person.” This evaluation was supported by the fact that (1) the actual remarks made by the superior to the worker were excessively harsh (including remarks that denigrated the worker’s career and his value to the company, and others that denigrated the worker’s personality and very existence), (2) the superior’s attitude to the worker included feelings of loathing toward the worker, (3) the superior used an extremely blunt way of talking to the worker, and (4) the employment format in the workplace created an environment in which it was difficult for problems with superiors to be resolved smoothly.

Another court case from around the same time was that of the Chief of the Nagoya-Minami Labour Standards Inspection Office (Chubu Electric Power).¹¹ In this case, a worker who had been promoted to assistant manager committed suicide after becoming depressed because of the increase in workload resulting long overtime hours, the behavior of his superior (a section manager), and other factors. In the judgment, it was recognized that

⁹ Most power harassment cases come combined with other problems, such as long working hours or unfair persuasion to take redundancy. There are not so many cases where power harassment alone is the problem.

¹⁰ Tokyo District Court, October 15, 2007, 950 Rodo Hanrei 5.

¹¹ Nagoya High Court, October 31, 2007, 954 Rodo Hanrei 31.

the relationship with the superior had placed considerable psychological stress on the worker before the onset of depression and just before his death. Of course, in this case, a major factor in the onset of depression and its progression is taken to lie in the fact that, even though the work allotted to the worker had changed considerably (i.e. had increased) in both volume and content, the system of support and cooperation from the superior and others was inadequate, and the worker was forced to work long overtime hours. Therefore, power harassment was not recognized to have been the sole or direct cause of this worker's mental disorder. Nevertheless, the significance of this judgment lies in the statement that, in view of the superior's excessively emotional reprimands and personal point of view, the fact that the superior repeatedly ordered the worker to remove his wedding ring "is judged to be so-called power harassment that has no rational reason whatever, goes beyond the scope of mere harsh guidance, and should generally be evaluated as an event of considerably intense psychological stress." It is also significant in that it indicates a judgment on the kinds of reprimands or orders corresponding to power harassment, and the intensity of psychological stress they exert. In the process, another point to bear in mind is that this judgment states that "ways of coping with events differ from person to person, and it goes without saying that, just because a worker subjected to such an event does not explicitly express his or her discomfort, it does not mean that the psychological stress can be judged to be minor."

These judgments lead to a view that excessive reprimands and behavior by a superior place undue psychological stress on a worker, and that this has the effect of developing or aggravating mental disorders. Moreover, cases of this sort should be handled as problems distinct from ordinary problems with superiors, and this had an impact on the 2009 amendment of the Judgment Guidelines.

In judgments by Labour Standards Inspection Offices when certifying occupational disease, the technique adopted is to focus on separate events and judge the intensity of psychological stress in each. The courts, by contrast, tend to judge various events within the relevant period as a whole. For example, in the Government/Chief of Nara Labour Standards Inspection Office (Nihon Hets Industry Corporation) case,¹² it was recognized that a worker who committed suicide while on a business trip had been suffering from undue work-related psychological stress to a degree that caused a mental disorder to develop or be significantly aggravated, judging from the worker's age, experience, work content, working hours, size of responsibility, powers of discretion, etc. In addition to this, however, certain remarks concerning the worker made by a director of the company who had also acted as the worker's go-between (statements which, albeit prompted by drink, exposed matters of a private nature in the presence of the president and other company officers, to the effect that the worker was incompetent) were also taken into account. These were evaluated as "remarks that could be seen as distinct from workplace stress normally found in the workplace, and from the viewpoint of the person about whom they are said, could not be easily forgot-

¹² Osaka District Court, November 12, 2007, 958 Rodo Hanrei 54.

ten, are a clear cause of stress, and, in terms of social norms, cause undue psychological stress to the degree that could cause a mental disorder to develop or be aggravated.” The remarks made by the company director in this case were inappropriate, but did not denigrate the worker’s personality or existence, and were only made once. Although the court recognized that there had been undue psychological stress in the victim’s work content, etc., this was a case where it was difficult to recognize undue psychological stress in single events. Nevertheless, consideration was also given to the fact that the various events occurred in close temporal proximity to each other, and that “the burden caused by circumstances had a cumulative effect and became enlarged.” A similar method of judgment was clearly shown by the Government/Chief of Isahaya Labour Standards Inspection Office (Daihatsu Nagasaki Sales) case.¹³ The court in this case stated that “the intensity of stress in cases where several events that have probably contributed to mental disorder are recognized cumulatively should be evaluated collectively.” In other words, it took a comprehensive view of the harsh performance targets imposed on the worker and the worker’s failure to meet them, as well as harsh reprimands by the superior (department manager) that exceeded the scope of guidance, and thus recognized the work-related nature of the worker’s mental disorder.

Although there are some forms of power harassment in which the superior simply abuses his or her position, many cases are in fact related to job. A lack of leeway or available capacity in the workplace is also a factor that causes power harassment and friction in the workplace. Judging from this, it is also considered appropriate to make judgments in which several events are linked in cases of power harassment, as the courts have shown in the cases mentioned above. On this point, the 2011 Certification Criteria adopt the method of making an overall evaluation of psychological stress when there are several events, namely, judging the work-related psychological stress to be “Strong” if the event is “Strong”; when connected events occur, they refer the first-occurring event to the Psychological Stress Evaluation Table, then make overall evaluation of other connected events, regarding them as the situation pertaining after the events (e.g. when single events are “Medium” and “Medium,” evaluating them overall as “Strong” or “Medium”). This may be seen as incorporating the comprehensive evaluation practiced by the courts, as long as the consistency and clarity of criteria used in occupational disease certification judgments are not compromised.

3. Sexual Harassment Cases and the Impact of the Certification Criteria

In sexual harassment cases, decisions not to pay occupational injury compensation are not uncommon (see the Table shown in page 49). So far, however, no judgments have been found to involve a revocation of a non-payment decision in a pure sexual harassment case.¹⁴

¹³ Nagasaki District Court, October 26, 2010, 1022 Rodo Hanrei 46.

¹⁴ There have been cases combined with other problems, i.e. cases where the existence of more than one psychological stress is claimed and one of these is sexual harassment.

A suit seeking revocation of a non-payment decision¹⁵ was brought to the Tokyo District Court in 2010; this is said to be the first case where an attempt was made to overturn a non-payment decision in a sexual harassment case.

The 2011 Certification Criteria cite examples in which the overall evaluation of psychological stress in sexual harassment cases is “Strong” in the Psychological Stress Evaluation Table. This will probably lead to a trend for workers who are not satisfied with non-payment decisions to seek revocation.

IV. Trends in Compensation Cases

1. Harassment and Liability for Damages

Workers who have suffered harassment may claim compensation for damages from the employer or the perpetrator. If the existence of harassment is recognized and the employer or perpetrator is deemed to have tort liability, or the employer to have liability for debt default, the next problem is how and on what scale compensation will be awarded. The courts recognize solatium payments, but a cautious stance tends to be taken, particularly in sexual harassment cases, on claims for medical costs and damages due to absence from work associated with the worker’s psychological symptoms or mental disorder. The following are cases in which the fact of harassment as well as the worker’s psychological symptoms and mental disorder were recognized. These will be studied with attention to the scale of compensation.

2. Power Harassment Cases

Power harassment is sometimes carried out in connection with job, and sometimes in connection with the worker’s treatment (e.g. job transfers or redundancy). If the worker were to develop a mental disorder in this kind of case, it would be difficult to know whether the disorder resulted from power harassment, or from long working hours or unfair persuasion to take redundancy. Although cases of pure power harassment cases are not so common, two cases in which the relationship between power harassment and mental disorder is relatively clear will be cited below.

In the *Nihon Fund* case,¹⁶ three workers claimed compensation from their superior (a department manager) and their employer (the company) on grounds that the superior had subjected them to violence and verbal abuse when he directed the air flow of an electric fan toward them. The superior’s violence and verbal abuse were taken to fall under tort. One of the workers had attended a psychiatric clinic and a general clinic as an outpatient, and had been prevented from working for one month due to depression. The court recognized a significant causative relationship, in that the outpatient hospital visits and absence from work

¹⁵ Terminated when the state withdrew its case.

¹⁶ Tokyo District Court, July 27, 2010, 1016 Rodo Hanrei 35.

were due to the superior directing the fan at the workers, upholding the claim for medical costs (circa 5,000 yen) and damages due to absence from work (around 350,000 yen). A separate solatium payment (600,000 yen) was also awarded.

In the *Fast Retailing et al. (Uniqlo Stores)* case,¹⁷ a worker was subjected to physical violence by a superior (store manager), was subsequently subjected to unfair remarks and others, and developed a delusional disorder. The court affirmed a significant causative relationship between the violence and remarks and the disorder. Damages were awarded for nine years' absence from work, together with a solatium payment. However, this was subject to a primary cause reduction of 60%. The worker cited the *Dentsu* case,¹⁸ asserting that the primary cause should not be considered since no impediment had arisen in social life. However, the court upheld the primary cause reduction in that, although a point shared with the *Dentsu* case was the fact that the worker's character tendency had contributed to the occurrence or expansion of damages, it had not been caused by continuous acts by the employer et al. (such as an unduly large work load on the worker), but that one-off acts of violence and statements had caused the occurrence and expansion, and that the action in receiving medical treatment had been left to the judgment of the worker.

In these two cases, the court awarded damages due to absence from work, as distinct from solatium payments. The length of absence from work that would be judged to have a significant causative relationship with a mental disorder is difficult to define in reality. In the *Nihon Fund* case, it was a short period of one month; here, it is reasonable that the claim for damages due to absence from work was upheld for the whole period of absence from work. However, a careful judgment is required when temporary leave or absence from work becomes protracted. In the *Fast Retailing et al. (Uniqlo Stores)* case, damages due to nine years' absence from work were awarded, but a significant primary cause reduction was made because the absence occurred due to one-off acts, and was subsequently thought to have expanded due to the worker's character tendencies. One could say that the primary cause reduction essentially resulted in a balance. Although difficulties are expected in judging this kind of case, judgments should take account of the nature and continuousness of the act of harassment and the subsequent response of the perpetrator and employer, as well as the worker's treatment attitude (which is not a problem if the worker has received reasonable and appropriate treatment).

3. Sexual Harassment Cases

The following are examples of court cases that deny a relationship between harassment and the worker's psychological symptoms or mental disorder, in cases where there has been sexual harassment and the worker is thought to have suffered psychological symptoms or mental disorders.

¹⁷ Nagoya High Court, January 29, 2008, 967 Rodo Hanrei 62.

¹⁸ Second Petty Bench of the Supreme Court, March 24, 2000, 54 Minshu 3, 1155.

In the Hiroshima Sexual Harassment (life assurance company) case,¹⁹ seven workers claimed compensation for acts of sexual harassment by their superiors at an end-of-year party. Of the compensation claimed, a causative relationship between harassment and mental disorder was denied in relation to counseling fees and medical costs paid by the workers, in that the acts of sexual harassment in this case were one-off events. However, the court deduced that the workers' psychological symptoms (such as irascibility and fear of men) had been caused by the harassment to a certain extent, and made allowance for this with solatium payments.²⁰ As is symbolized in this case, there are some sexual harassment cases where, even if a significant causative relationship between the harassment and the worker's mental disorder, etc., is not affirmed, a balance is achieved by allowing for the worker's mental disorder, etc., with solatium payments. In fact, there have also been several cases where the workers themselves have only claimed inclusive solatium payments.

In the claim for medical costs by one of the workers in the Hiroshima Sexual Harassment (life assurance company), the court did not recognize a significant causative relationship between the harassment and the damages. This appears to have been significantly impacted by the fact that the worker first received diagnosis from a psychiatrist more than two years after the end-of-year party in question. Of course, it would be too simplistic to say that psychological symptoms will immediately become apparent, and that the victim will become aware of them and receive treatment. Nevertheless, the longer the time until the first diagnosis, the more it would appear that the need for diagnosis was not pressing. This would work toward a denial of the significant causative relationship. In this case, moreover, sexual harassment took place at an end-of-year party and the worker in question was not the only victim. In cases of sexual harassment cases behind closed doors, the victim could be expected to be hesitant in accepting diagnosis, as he or she would be reluctant to talk about or acknowledge the fact of the sexual harassment. As such, another consideration would be necessary.

The following are some examples of sexual harassment cases where a significant causative relationship between the harassment and a mental disorder, has been affirmed. In each of these cases, the claims have been partially upheld.

In the Saitama Sexual Harassment (pharmaceutical company) case,²¹ a worker who was subjected to sexual harassment by a co-worker suffered mental and physical disorders, leading to absence from work and eventually quitting the company. Here, the court stated

¹⁹ Hiroshima District Court, March 13, 2007, 943 Rodo Hanrei 52.

²⁰ In a case of sexual harassment at a university, the court did not recognize that a student subjected to harassment had suffered from PTSD and thus denied the claim for medical costs. When calculating the solatium payment, however, it stated that "Although aggravation as far as PTSD is not recognized, it is clear that immense psychological distress has been suffered," thereby making allowance for the mental state of the student in question. Tokyo District Court, April 27, 2005, 1181 Hanrei Times 244. The method of allowing for solatium payments is the same as in the Hiroshima Sexual Harassment (life assurance company) case.

²¹ Saitama District Court, December 21, 2007, LEX/DB28140445.

that it was foreseeable that the harassment would cause a mental disorder that could not be disregarded as temporary, and thus recognized the perpetrator's liability for damages. The scope of these damages was assumed to be the physical and mental impact that would normally have been exerted by the psychological shock on the worker in question. Assuming the circumstances and aspects leading to the harassment and the general sensitivity toward harassment, damages were only to be awarded if there was a significant causative relationship with the harassment, to the extent of its psychological impact. Meanwhile, in view of certain circumstances (such as that, in recent years, opportunities to receive medical advice on mental problems have been increasing, thanks partly to the spread of psychiatric clinics, and that the period of time needed for recovery is often fixed), the court awarded medical costs for one year's treatment at a psychiatric clinic as damages. Besides this, it also upheld a separate claim for a solatium payment. Loss of earnings, however, was denied, in that it was not foreseeable that the worker would quit.

In the Saitama Sexual Harassment (school meal catering company) case,²² a part-time worker was forced to quit after being subjected to sexual harassment by a superior. The onset and aggravation of the worker's depression were recognized as having been caused by acts of harassment, and the worker's claims for medical costs, loss of earnings and solatium payment were partially upheld. However, the compensation claim was only awarded up to a limit of 60%, in that the worker's temperamental disposition and stress factors in the home also contributed to the degree of mental disorder and prolongation of treatment.

Compared to other illnesses, with mental disorders it is difficult to define a range of damage in which there is a significant causative relationship. Although it would be logical to decide compensation amounts from damages that can be calculated, i.e. medical costs and loss of earnings, it is extremely difficult to decide to what degree, within what scope and within what period of time a significant causative relationship between harassment and mental disorder can be confirmed. Allowing for this with solatium payments, albeit somewhat vague, may be one reasonable method.

²² Saitama District Court, August 31, 2009, LEX/DB25441387.