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Letter seeking the inclusion of “racial harassment” in the draft guidelines on preventing power harassment in workplaces

Japan has seen a rise in the number of foreign workers, which reached a peak in 2018 at 1,460,000 people. This number is expected to increase as the country expands its acceptance of foreign workers, which officially began last year. In addition to this trend, figures for foreign workers will be higher when taking into account Japanese citizens with overseas roots, such as naturalized citizens and children of international marriages, and ethnic minorities.

Foreign workers and ethnic minorities in Japan experience workplace discrimination and harassment on a daily basis. According to a 2016 survey of foreign residents by the Ministry of Health, Labour and Welfare, the percentage of foreigners who had experienced discriminatory treatment, such as insults stemming from their status as foreigners, over the last five years was 29.8%. Of these individuals, 38% reported that they had experienced incidents of discriminatory remarks from clients, subordinates, colleagues, and supervisors in their workplace. Meanwhile, foreign workers who looked for jobs or have worked in the last five years also reported various forms of discrimination. Of these individuals, 25% said that “they were rejected for a job because they are foreigners”, 19.6% said that “they received lower pay than their Japanese counterparts despite doing the same work”, and 17.1% said that “they were ineligible for promotions because they are foreigners and were thus placed at a disadvantage.”

In additions to this data, our organization’s research showed that foreign workers experience many of the six types of workplace misconduct listed in the government’s draft guidelines on power harassment in workplaces (see attached document for reference). Of these cases of power harassment, many can be classified as “racial harassment,” which is based on differences in race, ethnicity, and nationality.

As an organization that seeks to promote respect and protection of foreign workers’ rights in Japan, we request that racial harassment be included in the “Draft Guidelines on Employment Management to Address Actions in Workplaces where Employers Hold an Advantageous Position” (referred to as “Draft Guidelines”). As part of this request, we offer the recommendations below.

- **Three requirements that define what constitutes power harassment in the workplace**

In the draft guidelines, the Ministry of Health, Labour and Welfare have put forth the following definition of power harassment:

- “Power harassment in the workplace are language and conduct that:
1. occur in a relationship where one party holds an advantageous position;
 2. go beyond the boundaries of what is necessary or appropriate from an operational standpoint; and

3. threaten the workplace environment for employees

Power harassment must encompass all three criteria.”

However, it is not unusual for foreign workers and ethnic minorities to encounter disadvantages in the workplace due to several reasons. One reason is the way in which these workers must contend with differences in race, ethnicity, and nationality in relationships not only with their superiors, but also between colleagues and subordinates. Also complicating workplace dynamics is that foreign workers and ethnic minorities often cannot speak Japanese at a native level.

Taking this situation into consideration, the draft guideline’s requirement that all three criteria must be met to recognize power harassment could narrow the possibility of remedy for workers who face an unbearable amount of abuse.

The Draft Guidelines should therefore include “language or conduct in a context where a party has an advantageous position over a worker” in its definition of power harassment. This addition takes into account the disadvantageous position of many foreign workers and ethnic minorities in the workplace.

The Draft Guidelines further explain that “language and conduct in a context where a party has an advantageous position over a worker” are “those from a group comprised of colleagues or subordinates that are difficult for the worker to resist or reject.” **It is possible that foreign workers and ethnic minorities will experience power harassment from not only groups of people, such as colleagues and subordinates, but also individuals. These workers may have difficulty resisting or rejecting actions by individuals because of differences in race, ethnicity, and nationality as well as the inability to speak Japanese at a native level. The Draft Guidelines should thus remove references to language and conduct by “a group comprised of colleagues or subordinates.”**

Another issue with the Draft Guidelines is one of the criteria used to define power harassment: “Language and conduct that threaten the workplace environment for employees.” The draft guidelines state that this criterion is determined on the basis of “how the average worker perceives his or her workplace environment.” In other words, when an average worker in Japanese society experiences the same action under similar conditions, he or she must perceive that this behavior has caused a level of harm that cannot be ignored. This standard is applied to determine whether the third criterion can be used to judge whether a language or conduct is power harassment.

However, the Draft Guidelines are unclear on what kind of worker is considered “an average worker in Japanese society.” This oversight gives the impression that foreign workers and ethnic minorities have been excluded from this document. Furthermore, the Draft Guidelines not only fails to clarify the meaning of “the perception of the average worker”, but also demonstrates **a lack of consideration for foreign workers and ethnic minorities, who may be unfamiliar with Japanese culture and practices. We therefore ask that the Draft Guidelines eliminate the standard of “the perception of the average worker,” instead explaining that workers’ perception of power harassment will differ among individuals.**

- **Examples of what can be considered power harassment in the workplace**

The Draft Guidelines offer six examples of incidents that can be considered power harassment in workplaces. However, these examples are inadequate in covering incidents of power harassment experienced by foreign workers and ethnic minorities in the workplace on a daily basis.

In the overview, the Draft Guidelines states, “It is necessary to respond appropriately to allegations of power harassment through such measures as holding in-depth discussions...and by recognizing that determination of misconduct may differ on an individual basis and that power harassment is not limited to the examples provided.” However, if the Draft Guidelines do not include examples that anticipate forms of power harassment experienced by foreign workers and ethnic minorities, these workers will not be able to recognize certain types of language and conduct as power harassment and thus seek remedy. Regarding the examples of power harassment, we offer the recommendations below.

1. Examples of emotional attacks (threats, defamation, humiliation, and severe verbal abuse)

The Draft Guidelines gives the example of language and conduct that is disrespectful of a person’s personality. Such language and conduct include those that humiliate a person’s sexual orientation and gender identity. **This example should include a reference to “personal attributes”** along with “individuality.” **The example should also include references to “race, ethnicity, and nationality”** along with “sexual orientation and gender identity.”

2. The above example should also include **using Japanese language proficiency as a reason for defaming, humiliating, and inflicting severe verbal abuse.**

3. The above example should also include **using a worker’s visa status to threaten a worker.**

4. The Draft Guidelines give the example of giving a task that underestimates a worker’s ability—i.e. giving him/her responsibilities that are far below one’s knowledge and experiences beyond a reasonable level. This example should also include **using race, ethnicity, nationality, and/or differences in native language as a reason to remove a worker from his/her main job responsibilities or to reduce workplace responsibilities, thereby impacting his/her treatment at work.**

5. Regarding invasion of privacy (excessively interfering in a worker’s personal life), the Draft Guidelines give the example of continuously monitoring workers outside of the workplace, such as taking photos of their personal items. **This example should also include confiscation of workers’ passports and residence cards.**

6. Regarding invasion of privacy (excessively interfering in a worker’s personal life), the Draft Guidelines give the example of revealing a worker’s sensitive personal information, such as his/her sexual orientation, gender identity, history of illness, and infertility treatments, to colleagues without his/her permission. This example should include **race, ethnicity, and nationality along with sexual orientation, political and medical history, and infertility treatments.**

- **Examples that are not included in the Draft Guidelines**

In addition to the incidents illustrated in the examples from the Draft Guidelines, foreign workers and those who identify as ethnic minorities face other forms of serious harassment on a daily basis.

From our research, we found examples—as indicated under “Others” in the document, “Examples of Power Harassment (Racial Harassment) Experienced by Foreign Workers”—

where nationality was given as a reason for discriminatory treatment. We also learned of instances where the employer rationalized discriminatory remarks or separated bathrooms for Japanese and non-Japanese workers. In Japanese society, **“foreigners” are not allowed to use bathrooms for “Japanese” people or are rebuked for doing so—a situation that recalls the Civil Rights Movement in the U.S.**

Furthermore, it is difficult to prove in certain cases whether harassment experienced by foreign workers and ethnic minorities is caused by race, ethnicity, and nationality.

Even if the harassment takes the form of violent behavior, **it can difficult to determine whether the abuse was perpetrated because of the victim’s personal attributes. It is therefore important and necessary to sufficiently provide examples where Japanese people exhibit a sense of superiority or supremacy towards foreign workers and ethnic minorities.**

To raise awareness about this issue, the Draft Guidelines should include examples on racial harassment and preventive measures that employers should take against this type of harassment.

- **The guidelines on power harassment should be a scheme that supplements other measures to protect the rights of foreign workers.**

Regardless of workers’ race, ethnicity, or nationality, their rights are protected under the law (Labour Standards Act Article 3, Article 22.4, and Industrial Safety and Health Law Article 3 Reference). In reality, however, foreign workers and those who identify as ethnic minorities face discrimination and harassment on a daily basis, and labor management regulations are unable to protect their rights.

Japan does not currently have a law, such as the laws that protect the rights of foreign residents, that recognizes the basic rights of foreign residents in a clear manner. Furthermore, damages caused by discrimination and harassment against foreign residents and ethnic minorities remain unremedied because the government has not established a legal system or measures that regulate and prohibit this type of discrimination.

An issue that impacts foreign workers and those that identify as ethnic minorities is an issue that affects society as a whole. In the guidelines, we strongly ask that the definition of power harassment as well as the content related to examples and preventive measures be reconsidered to ensure that each and every foreign resident and members of ethnic minority groups can seek remedy for discrimination and harassment.