

JAPANESE TRANSGENDER WORKER'S HARASSMENT CASE VICTORY COULD SIGNAL CHANGE: 4 STEPS TO CONSIDER

Insights
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In what has been deemed a rare and landmark case, Japanese labor authorities have recognized Sexual Orientation and Gender Identity (SOGI) harassment as a work-related disease eligible for workers' compensation benefits for the first time. Although sexual orientation and gender identity-based discrimination is not technically illegal in Japan, companies with employees in Japan should take notice of this case as it may be a sign of things to come. This Insight also provides four steps you should consider in light of this groundbreaking decision.

SOGI Harassment Recognized as a Work Accident in Japan

Treatment of LGBTQ+ individuals in Japan has come under scrutiny in recent years. Historically, transgender individuals, for example, have not enjoyed legislative or other protections that other groups have.

In 2003, the legislature passed the Gender Identity Disorder Special Cases Act, which outlines the process transgender individuals must follow in order to legally change their gender. The process, which has been criticized as archaic because it assumes transgender identity is a form of psychosis, requires applicants to undergo a psychiatric evaluation and become surgically sterilized in order for their petition to be considered.

In November 2017, the employee of a major manufacturing firm located in Kanagawa Prefecture came out as a transgender woman to her colleagues and supervisor. Though the employee was listed as a male in her family

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register, she explicitly requested that her supervisor and colleagues address her with only female pronouns.

Yet, the supervisor continuously referred to the employee using male pronouns and routinely made insulting remarks, such as "If you want to be treated as a woman, you should just get surgery right away" and "I can't see you as a woman." By April 2018, the employee pleaded with the supervisor to stop making derogatory comments, to which the supervisor responded, "Change your name on the register first before talking back."

In December 2018, the employee took a leave of absence after being diagnosed with clinical depression. In September 2021, she filed a workers' compensation claim with the labor standards inspection office, which awarded her workplace compensation after recognizing her depression was the result of harassment she faced from her supervisor. The labor standards office said the supervisor's comments were "insulting speech or behavior against gender identity" and that his "mental assaults that deny her personality were carried out relentlessly."

4 Takeaways for Companies with Employees in Japan

Although Japan has yet to pass legislation that prohibits discrimination based on sexual orientation and gender identity, employers with employees in Japan should take heed of this new decision, as it could signal changes that are on the way in Japan. Many large corporations have already implemented policies that prevent SOGI and other forms of harassment, as well as investigation and response procedures in the event such incidents occur in the workplace.

Thus, if your company has employees in Japan, we recommend you consider the following:

1. Review company policies and consider extending protections to sexual and gender minority groups. "Power harassment" or harassment arising from power imbalances between people in the workplace is illegal in Japan. This includes harassment based on sexual orientation and gender identity by a superior against an employee reporting to them.
2. Implement policies that respect the privacy of employees and employment candidates by prohibiting questions

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related to sexual orientation and gender identity.

3. Ensure employees, especially those in managerial and human resources positions, respect the needs, wishes, and privacy of transgender employees regarding their transition. This includes permitting name and other changes in internal personnel systems and providing health insurance and paid leave for any related medical procedures.
4. Conduct anti-discrimination training to raise awareness and educate all employees about SOGI issues and create a more inclusive environment for all employees, including those belonging to sexual and gender minority groups.

Conclusion

As attitudes regarding LGBTQ+ individuals and other minority groups are changing around the globe, employers must review and update their policies and practices to keep up with these developments, whether legal, social, or cultural. Please contact your Fisher Phillips attorney, any attorney in our [International Practice Group](#), or the authors of this insight with any questions. To stay current with the latest developments, make sure you are subscribed to the [Fisher Phillips Insight system](#).