



THE WORKPLACE WORD

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Employers Should Protect Themselves Now from Workplace Bullying

Workplace bullying is the intentional, hurtful mistreatment of an employee by a co-worker or co-workers. It may include humiliating comments and gestures, intimidation tactics, harsh and constant criticism, excessive yelling, belittling remarks, as well as setting impossible deadlines, undermining work product, failing to give credit, making threats, and even physical assault. Workplace bullying behavior may be verbal or non-verbal, overt or hidden. It may be motivated by traditional protected class categories, such as gender, race, sexual orientation, religion, or national origin, or it may fall completely outside those categories traditionally recognized in discrimination and harassment law.

Regardless of the motivation, workplace bullying has become so commonplace that 37% of U.S. workers report having been bullied at work.¹ According to Gary Namie, a social psychologist and founder of the Workplace Bullying and Trauma Institute in Bellingham, Washington, workplace bullying is "a silent epidemic." While workplace bullying (per a study by Zogby International) is four times more prevalent than illegal forms of "harassment," there are currently no laws that prohibit protected class-blind harassment in the workforce. Nevertheless, a movement aimed at curbing workplace bullying has been gaining steam for the past few years, with legislation being introduced in thirteen states since 2003. However, none of these anti-bullying bills have yet been passed.

Effects of Workplace Bullying

According to the 2007 Zogby International survey, an estimated 54 million people have suffered from workplace bullying and about 45% of those targeted by bullies suffer stress-related health problems. The emotional toll caused by

¹ See, 2007 study of 7440 online interviews of respondents selected to represent the adult U.S. population, by Zogby International.



this bullying costs both the bullied employee as well as the employer. Workplace bullying leads to increased absenteeism and employee turnover, which in turn affects an employer's bottom line, productivity, and morale. According to the 2007 survey, 40% of bullied workers voluntarily leave or otherwise lose their jobs to make the bullying stop.

Employers pay for bullying through higher turnover costs, litigation costs if the employee brings suit, stress-related payments for workers' compensation awards and disability benefits, increased accidents as a result of staff being more fatigued (from sleep loss related to stress and anxiety arising from bullying), loss of the best and brightest as they seek bully-free workplaces, and bad public relations.

Intentional Tort Theories of Liability

Currently, as protected class-blind harassment is not recognized by legislation, claims arising from this type of conduct generally take the form of emotional distress, intentional interference with the employment relationship, and assault.

On April 8, 2008, the "first bullying trial" was held in the United States. The Indiana State Supreme Court, in a vote of 4 to 1, upheld the original trial verdict of \$325,000 for a bullied employee on his claims of emotional distress and assault arising from the bullying he experienced at the hands of another employee. The court specifically held that workplace bullying could "be considered a form of intentional infliction of emotional distress."

Proposed Legislation

Generally, the proposed legislation would not forbid workplace bullying outright, but would instead ask employers to correct and prevent abuses and give victims the right to sue for limited damages. The proposed legislation contains a number of important provisions: (1) it provides compensation to targets of workplace bullying who can demonstrate actual physical or psychological harm; (2) it imposes liability on both individual perpetrators and their employers, but it includes incentives for employers that allow them to avoid liability by engaging in preventive measure and by responding fairly and promptly to allegations of bullying; and (3) it includes provisions that reduce the likelihood of frivolous or weak lawsuits. California was the first state to propose anti-bullying legislation in 2003. Again, however, this bill (along with the other twelve states' anti-bullying legislation) has not been passed into law. At this point, a bullied employee's legal recourse for a claim for harassment does not exist unless the employee can prove that the abuse was related to a traditionally "protected status," such as age, race, disability, or gender.

Conclusion

Employers need to be aware of this expanding area of law, stay up to date on the proposed anti-bullying legislation, and consider being proactive in preventing workplace bullying, despite the fact that there is no current legislation specifically prohibiting workplace bullying. For questions regarding the content of this newsletter, please contact a Snell & Wilmer attorney.

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