

# FAILING TO DEAL WITH WORKPLACE BULLYING CAN BE EXPENSIVE!

By Chris Delaney\*

*Employers who ignore claims of bullying and/or harassment by employees do so at their peril. In a recent case a court ordered the employer to pay fines and damages totaling \$330,000, giving employers a clear message that they must act to deal with these issues professionally and quickly. For all of those we hear about there are many others that are detrimental to morale, efficiency and profitability.*

## So, what constitutes workplace bullying?

Workplace bullying means any behaviour that is repeated, systematic and directed towards an employee or group of employees that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety.

Bullying behaviour can be overt and aggressive, it can also be covert behaviour that undermines, treats less favourably or disempowers others.

Examples of overt behaviour include:

- Abusive, insulting or offensive language;
- Behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling or raised voice;
- Teasing or regularly making someone the brunt of practical jokes;
- Displaying material that is degrading or offending;
- Spreading gossip, rumours and innuendo of a malicious nature.

Violence, assault and stalking are extreme forms of bullying that may constitute a criminal offence and should be reported to the police. Examples include:

- Harmful or offensive initiation practices;
- Physical assault or unlawful threats.

Workplace bullying can also be subtle and may include behaviour such as:

- Deliberately excluding, isolating or marginalising a person from normal workplace activities;
- Intruding on a person's space by pestering, spying or tampering with their personal effects or work equipment;
- Intimidating a person through inappropriate personal comments, belittling opinions or unjustified criticism.

Covert behaviour that undermines, treats less favourably or disempowers others is also bullying.

For example:

- Overloading a person with work;
- Setting timelines that are very difficult to achieve, or constantly changing deadlines;
- Setting tasks that are unreasonably beyond a person's ability;
- Ignoring or isolating a person;
- Deliberately denying access to information, consultation or resources;
- Unfair treatment in relation to accessing workplace.

## BEHAVIOUR THAT ISN'T BULLYING

The following are examples of behaviour that does not constitute bullying:

- Reasonable action taken in a reasonable manner by an employer to transfer, discipline, counsel, retrench or dismiss an employee;
- A decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with an employee's employment (other than a statutory entitlement);
- Reasonable administrative action taken in a reasonable manner by an employer in connection with an employee's employment; or
- Reasonable action taken in a reasonable manner under legislation affecting an employee.

## EFFECTS OF WORKPLACE BULLYING ON THE VICTIM

Workplace bullying may cause extensive health problems for employees exposed to this hazard, including physical and psychological illnesses and injuries. It can impact on co-workers, clients, customers, business associates, family and friends. The reaction of individual employees will vary according to the nature of the bullying. It is possible that employees who are bullied may experience some of the following effects:

- Stress, anxiety or sleep disturbance;
- Panic attacks or impaired ability to make decisions;
- Incapacity to work, concentration problems, loss of self-confidence and self-esteem or reduced output and performance;
- Depression or a sense of isolation;
- Physical injury;

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- Reduced quality of home and family life;
- Suicide.

### EFFECTS OF BULLYING ON THE ORGANISATION

The costs to the organisation include reduced efficiency, unsafe work environment, increased absenteeism, poor morale, workers compensation claims and civil action.

Employers can find themselves embroiled in litigation and may be liable for any discrimination, harassment or bullying that is committed by any employee that breaches any of the many pieces of legislation (both State and Federal) dealing with workplace bullying – UNLESS the organisation has taken “all reasonable steps” or done everything “reasonably practicable”, to:

- Prevent the discrimination, harassment, or bullying from happening in the first place, and
- Resolve, fairly and appropriately, any alleged discrimination, harassment or bullying that is

suspected or known by any line manager or appointed grievance adviser or resolver.

Other adverse effects include:

- Increased work error rate
- Increased workers compensation claims and associated rehabilitation costs and likely increase in your workers’ compensation premium
- Low morale
- Decrease in the quality of work
- Sabotage or other forms of aggressive or destructive behaviour
- Loss of reputation/public image
- Unnecessary resignations
- Wrong employees being appointed, trained and/or promoted, and the best ones being lost/missed
- Breakdowns in communication ability and trust
- Industrial problems
- Internal grievances and external legal challenges.

### WHAT THE LAW EXPECTS EMPLOYERS TO DO

Decisions of courts, tribunals and commissions provide clear indications of what they believe organisations must do.

These include:

- Initiating clear, written policies and procedures that explain exactly what is expected from employees in relation to behaviour towards each other, customers, clients and with anyone else employees have to interact with in the course of their work.
- Having an equal employment opportunity (EEO) and discrimination policy and an effective bullying and harassment risk prevention policy.
- Having a clear, written, grievance procedure, backed by a fair, appropriate and followed counselling and discipline procedure ensuring procedural fairness, confidentiality and record keeping procedures.



**“Bullying behaviour can be overt and aggressive, it can also be covert behaviour that undermines, treats less favourably or disempowers others.”**

- Providing all employees with copies of policies and procedures including new employees as part of their induction.
- Ensuring all your employees understand the policies and procedures and that they have the knowledge and skills to follow them.
- Providing training to all employees especially line managers in EEO, diversity, discrimination, bullying and harassment, grievance management and counselling and discipline on a regular basis.

Without this in place, not only are you leaving your organisation exposed to justifiable and costly legal challenges, but also your organisation is not getting the best out of its employees.

## PREVENTING WORKPLACE BULLYING AND HARASSMENT

It is legally, morally and financially negligent for employers and line managers not to do everything they can to prevent bullying and harassment.

Employers should:

- Ensure that the work environment is not conducive for bullies and harassers, and
- Take swift and appropriate action to deal with people proven to have bullied or harassed, and
- Where necessary, terminate the employment of and/or stop doing business with those who can't be stopped or who have committed very serious acts of bullying or harassment.

All employees should follow simple rules of respect and treat others with unconditional positive regard. All employees should:

- Treat others the way they would like to be treated;
- Respect and understand others' values – know who is comfortable with what;
- Be particularly careful if behaviours or statements could be construed as sexual, personally invasive, racist, sexist, anti-gay, or stereotyping in any other way;
- Be careful of repetition - know when to stop – when others have had enough
- Stop doing it if someone indicates they don't like what you're doing; and

- Apologise for any hurt or upset that may have been caused;
- Don't do it again, and don't talk about others in a negative way.

### **Systems Implemented to deter or eliminate workplace should involve:**

- Policies dealing specifically with bullying and harassment in any form including cyber bullying;
- Induction, training and regular refresher training;
- Specific management training in procedures for investigating, dealing with and reporting bullying and harassment;
- Procedures for continuous review to improve policies and procedures; and
- Intervention strategies for management when bullying and/or harassment allegations are made or an incident comes to their attention.
- Education for employees in what amounts to acceptable conduct in the workplace;
- A risk assessment for workplace bullying and harassment;
- An incident management system identifying and reporting on workplace bullying and harassment;
- Adequate levels of confidentiality for both alleged bullies and victims during the investigative process.

### **An effective complaints procedure should:**

- Be simple and easy to follow by employees and managers;
- Detail the step by step process by which complaints will be handled;
- Contain achievable time limits for each stage of the process;
- Guarantee that all complaints will be handled in line with 'procedural fairness' principles - that is, with impartiality, fairness, confidentiality, and appropriate protection from victimisation (payback action), and with full provision for all parties to have access to support and/or representation as desired/necessary;
- Ensure that people feel safe to come forward for advice, for advocacy, and for a solution to the problem;
- Provide details on the way(s) in which grievances can be resolved and actions

which may be taken, e.g. by investigation, conciliation/mediation and/or discipline, depending on the seriousness of the allegation. All complaints and actions arising out of investigations should be determined on their individual merits;

- Identify which resolutions may be expected, e.g. apologies or written warnings or dismissal, and that such resolutions will be imposed fairly and consistently across the organisation;
- Explain that confidential records will be kept of all incidents ;
- Provide for an internal appeal system, wherever practical.
- Give details of external avenues of help and appeal/review.
- Allow for training of all Managers and employees, as well as opportunities to review the effectiveness of the procedures.

**Because of their duties and responsibilities Managers need to be particularly careful to avoid being seen as bullying or harassing employees. They should:**

- Always treat others with respect;
- Avoid any form of preferential treatment;
- Allocate work fairly and with regards to an employee's skill, competence and training;
- Concentrate on the requirements of the job, as opposed to the personality of the employee – in other words separate the person from the problem.
- Do not over supervise
- Attend to problems, employee requests and complaints in a fair and timely manner;
- Consult with and consider employee opinions;
- Value diversity; and
- Create a work environment conducive to honesty.

***Workplace bullying should not be tolerated and organisations must take steps to ensure policies, procedures and training are implemented in order to, wherever possible, create a workplace free from bullying and harassment and if it does occur to deal with it quickly, fairly and adequately.***

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