

Chapter 5

Bullying and harassment



What is the hazard?

“bullying corrodes dignity, self-esteem, job satisfaction, motivation and ultimately mental and physical health. In particularly bad cases, employees who experience bullying are so damaged they are unable to return to the labour market. Years of workers’ compensation or social security payments await them.....”

Josh Bornstein, an industrial lawyer, Australian Financial Review (August 30, 2011)

Workplace bullying is repeated, unreasonable behaviour directed toward an employee or group of employees that creates a risk to health and safety:

- **Unreasonable behaviour** means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten
- **Behaviour** includes actions of individuals or a group and may involve using a system of work as a means of victimising, humiliating, undermining or threatening
- **Risk to health and safety** includes risk to the mental or physical health of the employee.

The following types of behaviour, **where repeated or occurring as part of a pattern of behaviour**, could be considered bullying:

- Verbal abuse
- Exclusion or isolation of individuals i.e. ‘sending them to Coventry’
- Psychological harassment, including constant ‘put-downs’, persistent and unreasonable criticism of work performance or inappropriate comments about personal appearance
- Intimidation or aggression
- The assignment of meaningless tasks unrelated to the job
- Assignment of impossible tasks
- Deliberate changing of work rosters or positioning within the office to inconvenience some individuals

- The deliberate withholding of information that is vital for effective work performance
- Threats of sacking or prejudice in employment
- Assignment of unpleasant tasks to certain individuals or the allocation of a workload unequally etc.

Other types of behaviour (including some forms of practical jokes or the lodging of vexatious complaints of either sexual harassment or workplace bullying) may also constitute bullying or unreasonable behaviour.

Harassment

Involves unwelcome behaviour that intimidates, offends or humiliates a person because of a personal characteristic such as race, age, gender, disability, religion or sexuality.

Single incident

A single incident of negative behaviour is not considered to be workplace bullying; however, it may have the potential to escalate and so it should not be ignored.

Low level workplace conflict is not considered to be workplace bullying because not all conflicts or disagreements have negative health effects or pose a risk to health and safety. However, if the low-level conflict is not managed properly, it can escalate to the point where it is damaging to workers health.

Reasonable management actions are also not considered to be workplace bullying. Managers and supervisors are sometimes required to undertake management actions to effectively direct and control the way that work is carried out and to provide feedback on a worker’s performance. But these actions must be conducted in a fair and reasonable manner.

Impact of bullying/harassment

When a person is bullied it can have significant effect on their health e.g.

- Physical illness, for example muscular tension, headaches, fatigue and digestive problems
- Loss of self-esteem and self-confidence
- Deteriorating relationships with colleagues, family and friends
- Negative impact on work performance, concentration and decision-making ability
- Depression
- Feelings of isolation, thoughts of suicide.

Workplace bullying can also have a negative impact on the workplace. Low morale, increased absenteeism and high staff turnover are just some of the effects on a business.

5. Bullying and harassment

Increased likelihood of bullying and harassment

Many workplaces regard bullying and harassment as nothing more than “people behaving badly”. The only solutions suggested are more policies or procedures. The latter are important when dealing with complaints but are of little use when trying to prevent bullying and harassment.

When thinking about bullying it is helpful to divide it into direct and indirect bullying

Direct

Leadership styles:

- Autocratic behaviour that is strict and directive and does not allow workers to be involved in decision making
- Behaviour where little or no guidance is provided to workers or responsibilities are inappropriately and informally delegated to subordinates
- Abusive and demeaning behaviour that may include inappropriate or derogatory language, or malicious criticism and feedback.

Poor workplace relationships:

- Poor communication
- Isolation
- Low levels of support
- Work group hostility.

Indirect

Stressful work:

- High job demands
- Limited job control
- Organisational change, such as restructuring or significant technological change
- Role conflict and ambiguity
- Job insecurity
- An acceptance of unreasonable workplace behaviours or lack of behavioural standards
- Unreasonable expectations of clients or customers.

Poor systems of work:

- Lack of resources
- Lack of training
- Inappropriate work scheduling or shift work and poorly designed rostering
- Unreasonable performance measures or timeframes.

Vulnerable groups

Some groups of workers that may be more at risk, however many of these workers are also more likely to be exposed to the hazards listed above:

- Young workers
- Apprentices/trainees
- Workers in a minority group because of ethnicity, religion, disability, gender or sexual preferences
- Casual workers
- New workers
- Injured workers and workers on return to work plans.

Bullying and harassment occur more often in workplaces with the characteristics above. The solutions are to reduce these risks, not more policies!

Regulations or Code

Unions have been arguing for a Regulation and Codes on Prevention of Bullying and Harassment at Work for nearly two decades. So far, industry bodies and governments have not supported our position. Currently there are only Guides. Government H&S inspectors can be reluctant to act to prevent bullying. There is the ability to take a complaint to the Fair Work Commission, but this has not been as helpful as unions had hoped and does nothing to prevent bullying from occurring.

HSR(s) can act to ensure PCBU/employer prevents bullying

Although there are no Regulations/Code, health and safety laws apply to both physical and psychological health; so HSRs should refer to the H&S Acts when raising concerns with management.

Bullying and harassment are easier to address if HSR and delegates work together. This is essential as often the victims of harassment and bullying are afraid to speak up and need support and co-workers are nervous about supporting a victim. See the sub-heading Investigating a Complaint.

The most effective way of dealing with workplace bullying is for PCBU/employers to take steps to prevent it from occurring and respond to it quickly if it does occur.

5. Bullying and harassment

Act early

The longer bullying behaviour continues, the more difficult it becomes to address and satisfactorily resolve. Therefore, HSRs and delegates need to raise the concerns at the earliest stage. If raised early the individual complainants don't need to be named and you can try to get management focused on the risk factors and the broad issue of bullying and harassment.

How to prevent bullying and harassment

To reduce the risk of bullying, workplaces need to address the risk factors listed above. Use these questions to assist in deciding whether there is an increased risk.

Is this your workplace?	Yes	No
Unreasonable demands or impossible targets		
Restrictive and petty work rules		
Being required to perform tasks without adequate training		
Being forced to stay back to finish work or additional tasks		
Compulsory overtime, unfair rosters or allocation of work		
Constant, intrusive surveillance or monitoring		
No say in how your job is done		
Interference with personal belongings or sabotage of work		
Shouting or abusive language		
Open or implied threat of the sack or demotion		
People afraid to speak up about conditions, behaviours, health and safety		

If you answered yes to any of these questions, you may have an increased risk of bullying or harassment occurring.

Preventing bullying

Like any other issue, the risks need to be controlled and management needs to act to reduce the likelihood of harm. For example - if workers are fatigued from long shifts without reasonable breaks, bullying and harassment are more likely to occur. The solution involves improving the shift roster system. It is very important that for delegates and HSRs to work together and talk to the member about possible solutions. Management are likely to require significant prodding about their obligations to provide psychologically safe workplaces.

Policies and procedures are important, but make sure that there is commitment to address the risk factors, [see above] and:

- State expected standards of behaviour,
- Emphasise that bullying behaviours will not be tolerated
- Affirm the organisation's commitment to prevent bullying
- Use all forms of communication, including face to face, phone, emails, text messages and social media.

All policies and procedures need to be reviewed regularly. The following are useful to consider in the review:

- Have managers and supervisors been effectively trained to recognise and address bullying?
- Is there adequate awareness among staff about workplace bullying?
- Are workers empowered to speak up about negative behaviours?
- Have there been changes to the work environment - workloads, staffing levels, changes in staff morale? Have reports of bullying been responded to quickly and effectively?
- Are the bullying policy and procedures for responding to bullying issues relevant and effective?

Some ideas about how to address bullying

Bullying and harassment can be a good organising tool. Sometimes behaviours can stop when people are no longer silent witnesses. Some real-life examples:

- HSRs and delegates recorded in a note book whenever incidents occurred, other workers did the same - everyone knew that notes were being taken and the level of bullying decreased
- Workers in a warehouse used Soccer Red Cards whenever anyone witnessed bullying or harassment, i.e. the harassment/bullying was "called out"
- Workers had whistles and every time someone witnessed what could have been bullying or harassment, they blew the whistle. Again, the behaviour was "called out".

Investigating a complaint

An allegation of bullying or harassment must be taken seriously. All complaints need to be investigated. An investigation must be conducted properly to ensure no further damage is done to relationships:

- Reports should be dealt with quickly, courteously, fairly and within established timelines
- Everyone should be advised of how long it will take to deal with the report and should be kept informed of the progress
- Ensure everyone is protected from victimisation: the person who raises an issue of bullying, the person(s) accused of bullying and any witnesses

5. Bullying and harassment

- Involved worker(s) are given the following information:
 - what support is available
 - the option for representation at any discussion or interview (e.g. HSR, union delegate)
 - offered to have a support person present at interviews or meetings
- Impartiality is critical
- The person in charge of an investigation must never have been directly involved in the incident they are investigating or attempting to address
- All parties should be informed of the process: how long it will take, what to expect during the process and at the end. Everyone must be given clear reasons for any actions taken or not taken
- Confidentiality is essential for all involved. Details of the matter should only be known by those directly concerned
- Documentation is important to any formal or informal investigation
- A record should be made of all meetings and interviews, i.e. who was present and what was agreed.

Industrial law

In general employment law, there is little protection against bullying except when it has a sexual element, some forms of prohibited discrimination or where “adverse action” occurs.

The anti-bullying provisions in the Fair Work Act provide a mechanism to obtain orders which direct a person to stop bullying. The Fair Work Act does not provide for compensation.

A clause in an Enterprise Agreement is a very useful way to get management to commit to good processes when dealing with bullying.

If there is an anti-bullying clause in an agreement, we can seek to resolve and/or enforce situations:

- Through the courts by the worker or our union, or
- As part of the agreements dispute settlement procedure.

The clause below ensures any jurisdiction such as the Fair Work, is not excluded and it provides for a clear policy and process to be established to deal with bullying if it arises.

Enterprise Agreement Clause

Bullying

1. All employees are entitled to be treated with respect and dignity in their employment. The employer has a duty of care to provide a workplace that is free of bullying and harassment and to eliminate a hazard, or if that is not possible, control those risk factors, which increase the risk of bullying occurring.

2. “Bullying” is defined as repeated and unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety. Single incidents of unreasonable behaviour can also create a risk to health and safety and are also not acceptable.
3. The employer must take appropriate measures to prevent employees being subjected to bullying in their employment. Such measures include, but are not limited to:
 - a. Ensuring that all persons at the workplace are aware of this agreement’s prohibition of bullying and victimisation;
 - b. Ensuring that all persons at the workplace are made aware of relevant legislation or other law, (such as those regulating health and safety, workers’ compensation, anti-discrimination, and equal opportunity etc.) and their rights and responsibilities under such legislation or law;
 - c. Providing training that informs all employees and supervisors of types of behaviour that constitute bullying, including identifying and recognising any working arrangements or workplace cultural activities that are considered normal but may comprise or lead to bullying;
 - d. Providing training to health and safety representatives and other health and safety personnel on the risk factors and relevant control measures to address the potential of bullying occurring;
 - e. Ensuring access to an internal procedure for dealing with complaints about alleged bullying. The internal procedure will be set up by agreement and will:
 - i. Be procedurally fair;
 - ii. Be enforceable;
 - iii. Be timely;
 - iv. Allow for confidentiality where appropriate;
 - v. Provide the right for union representation; and
 - vi. If requested by any party, require a qualified and agreed independent person to:
 - investigate, establish the facts, make findings and develop recommendations for the resolution of the complaint; and
 - provide a written report to the complainant.
4. Any person covered by this agreement, has the right to take any complaint to the Fair Work Commission or relevant industrial commission for resolution by mediation, conciliation or arbitration.

5. Bullying and harassment

Useful documents

- A Guide for Preventing and Responding to Workplace Bullying
- Workplace Bullying - A workers Guide. <http://www.safeworkaustralia.gov.au/>

The Fair Work Commission can order individuals and employers to stop the bullying and to make other changes to prevent the recurrence of bullying.

If you are considering applying to the Fair Work Commission (FWC), please contact your union organiser or the helpdesk on 1300 732 698. **It is essential to get assistance before applying to the FWC.**