

## FACT SHEET: What is workplace bullying?

### Bullying can be:

- carried out verbally, physically or in writing (i.e. via email, internet chat rooms, instant messaging and text messaging);
- directed in a range of ways in the workplace i.e. downwards (from managers or supervisors to workers), sideways (between workers or co-workers) and upwards (from workers to managers or supervisors); and
- directed at a single worker or at more than one worker or be carried out by one or more workers.

Legislation generally states that a worker is bullied if a person or group of people repeatedly act unreasonably towards them or a group of workers which the person is a member AND the behaviour creates a risk to their health and safety.

The key here is that the bullying behaviour must be **repeated** and **unreasonable**. This means that there must be more than one occurrence of bullying which amounts to persistent unreasonable behaviour and can include a range of different behaviours that occur over time. Examples of workplace bullying can include, but is not limited to:

- the making of vexatious allegations against a person;
- spreading malicious, rude and/or inaccurate rumours about a person;
- physical or verbal abuse (includes yelling, screaming, offensive language or rudeness);
- aggressive or intimidating conduct;
- belittling or humiliating comments;
- performing offensive acts;
- stalking or making threats;
- teasing, practical jokes or initiation ceremonies;
- pressure to behave in an inappropriate manner;
- deliberately excluding, isolating or marginalising a person from normal work activities;
- unreasonable work expectations, such as overloading a person with work or not providing enough meaningful work, setting tasks that are significantly below or above a person's skill level and setting unreasonable deadlines or constantly changing deadlines;
- undermining work performance by deliberately withholding information vital for effective work performance or deliberately denying access to information, consultation or resources;
- deliberately changing work arrangements such as rosters and leave to inconvenience a particular person;
- unfair treatment in relation to accessing workplace entitlements such as leave or training; or
- conducting an investigation in a grossly unfair manner.

Whether the behaviour will be considered unreasonable is an objective test; that is, having regard to all the circumstances, would the ordinary person on the street view the behaviour as being unreasonable? Therefore, behaviour may not amount to bullying if a person has a more intense internal response or heightened sensitivity/perception of the alleged bullying behaviour than would the average person.

### **What is NOT bullying behaviour?**

Although it may have the potential to escalate into bullying and, therefore, should not be ignored, single instances of inappropriate or negative behaviour will not amount to bullying.

Importantly, behaviour will also not be considered bullying if it is reasonable management action carried out in a reasonable manner. Examples of reasonable management action include:

- establishing reasonable performance goals, standards and deadline;
- conducting performance appraisals or ongoing meetings to address underperformance;
- informing a worker of their unsatisfactory work performance;
- informing workers of their unreasonable or inappropriate behaviour in an objective and confidential way;
- implementing a reasonable performance improvement plan (PIP);
- investigating alleged misconduct and counselling or disciplining a worker for misconduct;
- taking disciplinary action including suspension or termination of employment if a worker's behaviour warrants it;
- rostering and allocating working hours;
- transferring a worker for operational reasons or modifying their duties;
- deciding not to select a worker for promotion where a reasonable process has been followed;
- refusing a worker permission to return to work due to a medical condition;
- implementing organisational change or restructuring; and
- reasonably denying a worker a benefit in relation to their employment, such as annual leave when it is requested at short notice at a busy time.

Interestingly, an informal, spontaneous conversation between a manager and a worker may not be considered management action, even if issues such as those listed above are raised.

According to Commissioner Hampton of the Fair Work Commission, the test for determining whether management action was carried out in a reasonable way is 'whether the management action was reasonable, NOT whether it could have been undertaken in a "more reasonable" or "more acceptable" manner'. This means that:

- management action does not have to be perfect or ideal to be considered reasonable;
- the overall conduct may be reasonable even though particular steps may not be;
- the management action must be a reasonable a proportionate response and commensurate with the behaviour that is the basis of the disciplinary action;
- the management action must be lawful and not 'irrational, absurd or ridiculous';

- any 'unreasonableness' must stem from the actual management action in question, rather than the person's perception of it; and
- adherence or departure from policies and procedures may be relevant in determining reasonableness.

Examples of management action which may be considered unreasonable include:

- standing over the shoulder of a worker for regular, extended periods of time to observe their work;
- berating a worker or making threats to dismiss them in front of co-workers;
- sending a workplace email to all staff disclosing the name and details of a poorly performing worker who has been subject to disciplinary action;
- intentionally embarrassing or belittling a worker;
- making vexatious allegations against a worker and spreading rude or inaccurate rumours;
- taking disciplinary action against a worker purely because their communication style is lengthy and verbose or because they occasionally air differences of opinion;
- conducting disciplinary meetings without warning;
- subjecting a worker to severe criticism during a disciplinary meeting while another person watches in apparent amusement; and
- threatening the security of a worker by taking multiple disciplinary action the worker for extremely minor transgressions, such as their use of punctuation and grammar in work related emails.

Generally, low level workplace conflict will also not be considered workplace bullying as not all conflicts or disagreements will impact negatively on a person's health or present a risk to health and safety. However, if not managed appropriately, low level conflict can spiral to the point where it will meet the definition of workplace bullying.

### **What is a risk to health and safety?**

Unreasonable behaviour in the workplace must create a risk to health and safety for it to be considered bullying. The risk may be physical, although more often than not it will be psychological. For instance, the following injuries and illness can result from bullying:

- stress
- anxiety
- depression
- emotional exhaustion
- insomnia
- self harm
- eating disorders
- in extreme cases, suicide

Unfortunately, a person who suffers from a mental or psychological illness caused by workplace bullying is also more likely to develop a physical illness (such as the flu).

As the bullying behaviour must 'create a risk' to health and safety, there must be a causal link between the behaviour and the risk. This means that the behaviour does not have to be the only cause of the risk provided that, viewed from a common sense and practical perspective, it was a substantial cause. In effect, this means that a person must be able to prove that the health and safety of the person was negatively impacted by the unreasonable work-related behaviour.

A 'risk' to health and safety is not confined to actual danger but is satisfied by the mere possibility of danger to health and safety. However, the risk must be real and not simply conceptual.

### Case studies

The following case studies demonstrate how the definition of bullying can work in practice:

Case Study	Repeated unreasonable behaviour	Risk to health and safety
<p><b>Keith –</b> direct bullying</p>	<p>Keith, a registered nurse, was subjected to bullying by Peter, a co-worker, over a number of months. The behaviour Keith was subjected to included:</p> <ul style="list-style-type: none"> <li>• Peter consistently telling him his work was not up to scratch (Peter had no role supervising Keith and they were employed in different work areas)</li> <li>• offensive verbal abuse</li> <li>• threats to get him sacked;</li> <li>• telling him that his family would end up in the gutter</li> <li>• making insulting comments about his relationship with his wife in front of others.</li> </ul>	<p>The behaviour that Keith was subjected to humiliated and intimidated him. He became severely stressed and anxious and was unable to continue working for the hospital due to the bullying.</p>
<p><b>Sally –</b> direct bullying</p>	<p>Sally, a registered nurse, was subjected to bullying by Therese, her line-manager, over a number of months. Therese was consistently telling Sally that her professional association was not able to provide support and she would have to join the union. Sally had mentioned her professional association amongst colleagues so that they too knew they had a choice.</p> <p>She was subjected to:</p> <ul style="list-style-type: none"> <li>• exclusion from workplace meetings</li> <li>• offensive verbal abuse</li> <li>• threats to get her sacked</li> <li>• insulting comments about not supporting the union.</li> </ul>	<p>Sally felt humiliated, intimidated, threatened, isolated and marginalised as a consequence of Therese's behaviour.</p> <p>Sally became severely stressed and anxious and was unable to continue working for the hospital due to the bullying.</p>

Case Study	Repeated unreasonable behaviour	Risk to health and safety
<p><b>Sarah</b> – indirect bullying</p>	<p>Sarah worked for 3 years as an AIN at a private hospital with 60 workers. For the last 6 months, Vicki had been her new supervisor. Vicki changed the time of the staff meetings to 8.30am, which Vicki couldn't attend because she had to drop her kids off at school. Vicki told Sarah she didn't have the time to update her on what happened at the team meetings, so Sarah would only find out about the introduction of new equipment or changes to work procedures by trial and error. Sarah used to mentor and train new AIN's on the job, but found other workers were given that role. Newer casual workers were given set shifts, while Sarah had to ring Vicki every week to find out if and when she would be working.</p>	<p>Sarah felt humiliated and distressed by the treatment she received and ended up leaving the hospital once she found another job.</p>
<p><b>Roger</b> – bullying by multiple persons</p>	<p>Roger was a team leader working at an aged care facility undergoing restructuring. The change process had taken over 8 months to complete and during that time Roger felt that he was put under pressure by a number of staff who were more senior to him. The behaviour he was subject to included:</p> <ul style="list-style-type: none"> <li>• having his and his team's performance requirements repeatedly changed by different managers at very short notice</li> <li>• being told that reports he had submitted were not up to scratch and being told 'don't bother, I'll fix it' when he asked how he could improve the reports</li> <li>•</li> <li>• being belittled by a co-worker who said in front of a number of senior managers 'do you have any idea how to do your job?'</li> <li>• being told at a meeting to 'stop asking questions – just get on with it!'</li> <li>• not being included in regular meetings to which he was previously invited</li> <li>• having the CEO look out the window and ignore him when he spoke to her during meetings</li> <li>• finding out that he was no longer being invited to work social functions.</li> </ul>	<p>Roger felt distressed, had trouble sleeping and felt nauseous before starting work. He left his employer once he found a suitable job.</p>

Case Study	Repeated unreasonable behaviour	Risk to health and safety
<p><b>Joanne</b> – reasonable management action</p>	<p>Joanne works in the obstetrics unit of a small rural hospital. She has been there for 6 months and works with 12 other staff. The unit is busy and the work is relatively routine and shared among the staff. On a regular basis, Joanne falls behind schedule with her tasks. To help develop her admin skills and improve her work performance, the NUM asked Joanne to attend a two-day training course.</p>	<p>Joanne feels humiliated and singled out, even though her NUM assures her that her job is not under threat.</p>