Understanding, Preventing and Correcting Bullying, Harassment, Discrimination, and Retaliation
WANTED

REWARD FOR LAWMAKERS WHO STOP WORKPLACE BULLYING

No person deserves to be traumatized or stressed to death by work. Current laws do not address interpersonal cruelty at work.

THERE OUGHTA BE A LAW!

* Prove that you represent working people
* Sponsor/co-sponsor the WBI anti-bullying Healthy Workplace Bill
* Join the hundreds of legislators in many states who have done the same

HEALTHY WORKPLACE BILL
www.healthyworkplacebill.org
Workers Deserve It

Appreciative Voters

© 2011 Workplace Bullying Institute

Source:
www.healthyworkplacebill.org
Learning Goals

• What does bullying really mean?
• How are harassment and bullying the same and different?
• When does bullying become illegal harassment?
• How should your organization respond to incidents of bullying and harassment?
• What steps can your organization take to protect against legal claims for bullying and harassment?
Bullies Are Everywhere!

New Bill Targets Workplace Bullying

By Alan Rogers / Published July 12, 2011 - 10:25Business

Americans face bullying long after they have left the playground with a starting 35% of adults either being bullied or currently experiencing bullying at work, according to the Workplace Bullying Institute.

Workplace bullying is defined by the WBI as “repeated, health-harming mistreatment of one or more persons by one or more perpetrators,” and includes verbal abuse, offensive conduct and behaviors (including nonverbal) that are threatening, humiliating or intimidating and cause work interference or sabotage, which prevents workers from getting done.

These actions have serious side effects for victims, according to the WBI, including heart disease and post-traumatic stress disorder. Now lobbyist are increasing their calls for state lawmakers to pass anti-bullying in the workplace legislation.
44% Of Employees have worked for a boss who they consider abusive.

64% Of Workers believe an abused worker should have the right to sue to recover damages.

- The National Law Journal
2017 Workplace Bullying Institute Survey

- 19% of Americans report being bullied in the workplace
- 61% of Americans are aware of abusive conduct in the workplace
- 70% of perpetrators are men; 60% of targets are women
- Hispanics are the most frequently bullied race
- 61% of bullies are bosses; the majority (63%) operate alone
- 40% of bullied targets are believed to suffer adverse health effects
- 29% of targets remain silent about their experiences
- 71% of employer reactions are harmful to targets
- 60% of coworker reactions are harmful to targets
- 65% of targets lose their original jobs as part of the employer’s “remedy”
- 77% of Americans support enacting a new law to prohibit bullying

www.workplacebullying.org
What Is “Bullying”? 

- Verbal abuse (yelling, offensive language, insults, belittling)
- Unwarranted isolation from normal work interaction, development or career opportunities
- Undermining performance, withholding information or resources, supplying incorrect information
- Tampering with personal effects or work equipment
- Direct or via social media
More Examples of Bullying

- Intimidating or undermining employees by demeaning their work standards, not giving them credit, setting them up for failure and constantly reminding them of old mistakes.
- Threatening employees’ personal self-esteem and work status.
- Giving impossible deadlines, creating undue pressure and stress, and overworking employees.
- Constant and unfair criticism.
- Blaming without factual justification.
- Making unreasonable demands.
- Hostile glares and other intimidating gestures.
- Sending aggressive emails, texts or notes.
- Monopolizing supplies and other resources.
- Engaging in excessive social bantering, teasing, and humiliation.
- Deliberately insulting others and taking part in behind-the-back put downs.
- Monitoring excessively.
- Stealing credit for others’ work.
Why Is Bullying So Difficult to Manage?

• Societal Factors
  – Stereotypical responses / sensitivities
  – Heightened focus on awareness
• Media Impact
  – Mixed signals
  – Media bullying?
  – “Entertainment”?
• Social Media
  – Peer pressure
  – Lemmings to the sea?
• Individual Sensitivities
  – Socio-economic background
  – Religious beliefs
Bullying

- Does NOT have to be related to protected status
- Does NOT have to be the result of a tangible job action
- May be “in the eye of the beholder”
Forms of Bullying in the Workplace

- Gossip
- Unjustified Criticism
- Favorite
- Undermining Performance
- Stressed
A Proposed Definition of “Bullying”

The repeated less favorable treatment of a person by another or others in the workplace, which may be considered unreasonable and inappropriate workplace practice. It includes behavior that intimidates, offends, degrades or humiliates a worker, possibly in front of coworkers, clients, or customers.

• Bullies can be supervisors, subordinates, co-workers, and colleagues
• Bullies often operate within the established rules and policies of their organization
What is NOT “Bullying”?

- Expressing differences of opinion
- Offering constructive feedback
- Making a legitimate complaint about another worker’s conduct
- Reasonable management action, including decisions about:
  - Job duties and/or work to be performed
  - Workloads and deadlines
  - Layoffs, transfers, promotions, and reorganizations
  - Work instruction, supervision, or feedback
  - Work evaluation
  - Performance management
  - Discipline, suspensions, or terminations
IMPACT of BULLYING
The Costs Of Workplace Bullying

$200 billion annually

CA Assembly Committee on Labor and Employment
Impact of Bullying in the Workplace

- Employee complaints
- Client complaints
- Adverse publicity
- Costs (i.e., weakened profits)
- Legal counsel to resolve formal complaints
- Turnover
- Absenteeism
- Loss of trained and effective workers

- Engagement
- Morale
- Attendance
- Client satisfaction
- Reputation and organization’s image
The Damage Caused by Bullying

- Damage to victims and witnesses
  - Distraction
  - Morale
  - Absenteeism
  - Turnover
- Damage to the employer
  - Costs and resources associated with investigating and addressing
  - Integrity with workforce
  - Inviting unions
- Damage to bully
  - Avoidance
  - Lack of communication
  - Career damage
The Future - Bullying

- Does not currently violate state or federal law
- But... “breeding ground” for legal claims
- Most victims are in a protected class
- Judges/juries not sympathetic to equal opportunity abusers
Finding a Way to Punish Bullying

• E.E.O.C. v. Nat’l Educ. Ass’n, 422 F.3d 840 (9th Cir. 2005)
  – Numerous episodes of shouting in a loud and hostile manner at female employees -- frequent, profane, and often public -- little or no provocation for these episodes
  – Regularly came up behind female employee as she was working, silently stood over her, and watched her for no apparent reason
  – Behavior put employee in a "state of panic"
  – **No direct evidence** that the conduct or the intent that produced it was because of sex
  – **Held** – conduct may be sex-based discrimination if women at work find the behavior more intimidating than men do
Is Bullying “Malicious Harassment?”

• T.C.A. 4-21-701. Creation of civil action -- Damages
  a) There is hereby created a civil cause of action for malicious harassment
  b) A person may be liable to the victim of malicious harassment for both special and general damages, including, but not limited to, damages for emotional distress, reasonable attorney's fees and costs, and punitive damages
Is Bullying “Malicious Harassment?”

Malicious Harassment requires:

• Person acted maliciously (ill-will, hatred or spite)
• Person unlawfully intimidated another from the free exercise or enjoyment of a constitutional right by injuring or threatening to injure or coercing another person or by damaging, destroying or defacing any real or personal property of another person
• The harassment must be based on the victim's "race, color, ancestry, religion or national origin"
The “Healthy Workplace Bill”

- Defines and prohibits an "abusive work environment"
- Requires proof of health harm by licensed health or mental health professionals
- Protects conscientious employers from vicarious liability risk when internal correction and prevention mechanisms are in effect
- Gives employers the reason to terminate or sanction offenders
- Requires plaintiffs to use private attorneys
- Provides an avenue for legal redress for health harming cruelty at work
- Allows suit against the bully as an individual
- Holds the employer accountable for workplace bullying
- Affords restoration of lost wages and benefits
- Compels employers to prevent and correct future instances
Tennessee Healthy Workplace Act

- Applies to public employers only
- Effective June 2014
- Defines “abusive conduct” as acts or omissions that would cause a reasonable person, based on the severity, nature, and frequency of the conduct, to believe that an employee was subject to an abusive work environment, such as:
  - Repeated verbal abuse in the workplace, including derogatory remarks, insults, and epithets;
  - Verbal, non-verbal, or physical conduct of a threatening, intimidating, or humiliating nature in the workplace; or
  - The sabotage or undermining of an employee’s work performance in the workplace.
- Requires development of a model policy that:
  - Assists employers in recognizing and responding to abusive conduct in the workplace; and
  - Prevents retaliation against any employee who has reported abusive conduct in the workplace.
• **June 2016** - EEOC Select Task Force released its **Report on the Study of Harassment in the Workplace**
  – Acting Chair Victoria Lipnic was one of the Co-Chairs of the Select Task Force

Harassment Task Force Report

Recommendations Focus On:

• Prevalence of Harassment in Workplace
• Workplace Leadership and Accountability
• Harassment Prevention Policies and Procedures
• Anti-Harassment Compliance Training
• Workplace Civility and Bystander Intervention Training
• Targeted Outreach to Youth
• An It’s on Us Campaign

See https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm
EEOC Harassment Task Force

Report Recommends that an Employer’s Policy Include:
• A clear explanation of prohibited conduct, including examples;
• Clear assurance that employees who make complaints or provide information related to complaints, witnesses, and others who participate in the investigation will be protected against retaliation;
• A clearly described complaint process that provides multiple, accessible avenues of complaint;
• Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible;
• A complaint process that provides a prompt, thorough, and impartial investigation; and
• Assurance that the employer will take immediate and proportionate corrective action when it determines that harassment has occurred, and respond appropriately to behavior which may not be legally-actionable "harassment" but which, left unchecked, may lead to same.

See [https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm](https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm)
• “EEOC and the National Labor Relations Board should confer, consult, and attempt to jointly clarify and harmonize the interplay of the National Labor Relations Act and federal EEO statutes with regard to the permissible confidentiality of workplace investigations, and the permissible scope of policies regulating workplace social media usage.”

• “EEOC and the National Labor Relations Board should confer, consult, and attempt to jointly clarify and harmonize the interplay of the National Labor Relations Act and federal EEO statutes with regard to the permissible content of workplace ‘civility codes.’”
A Closer Look At Abusive Conduct In The Workplace
Jack is always calling the new guy stupid, and saying he doesn’t know anything. “Don’t ask him! He won’t know the answer anyway!” he says when anyone asks the new employee something. Jack says, “You’re an idiot” every time the new guy asks questions about procedures. Sometimes Jack hides paperwork, or plays other little jokes on the new guy, just to watch him fumble around. Some of the other employees laugh when they see this happen.

- Is this bullying?
- What if Jack said he was “just joking”?
- Is the new guy being set up to succeed or to fail?
Slight Overreaction?
“The new guy” has not been meeting performance standards during his 90-day orientation period. You and his supervisor meet with him to inform him that he has not successfully completed his orientation and his employment is to be terminated. He tells you that he cannot perform his job because Jack is always calling him “stupid,” and saying he doesn’t know anything. Jack says, “You’re an idiot” every time the new guy asks questions about procedures. He claims that Jack hides paperwork and does other things to interfere with his performance and other employees allow it to happen.

Does “the new guy” get a pass?

Would the answer be different if he worked with Jack only very infrequently?
Just Holding You Accountable?
Bullying and Social Media

- If “horseplay” or “joking” becomes too pervasive at work, the thin line between “banter” and “harassment” can easily be crossed.
- Social networking (even if done at home) can have major consequences, even at work.
- Electronic activity, such as e-mail or texting…exists forever.
Personal Conduct Outside The Workplace

• Possible fodder for a harassment policy violation:
• Sending inappropriate texts, Facebook messages, jokes, etc. – even from a personal e-mail account or phone
• Always remember your role ...even outside of the workplace
“Happy Birthday…”
Employees (and managers) seem to lose some of their good judgment when it comes to “joking”.

Beware special events such as birthday parties or other special-purpose events where one or a small group of employees bear the brunt of the “jokes”.

When the Jokes Stop Being Funny
Responding to Bullying in the Workplace
Employer Strategies: Eliminating Workplace Bullying

• Prepare and enforce anti-bullying or civil behavior policies
• Train managers and employees
  – Focus on respect
  – Understand popular culture issues
  – Avoid stereotyping
  – Avoid favoritism
  – Foster an environment of open communication
  – Get to know your team
  – Lead by example
  – Show appreciation to all employees
• Report and investigate bullying reports promptly -- similar to the way traditional harassment or discrimination complaints are investigated and managed
• Conduct climate surveys or audits
• Be vigilant – do not tolerate jerks as they are often ticking time bombs
Employer Strategies: Eliminating Workplace Bullying

Manage bullying behavior proactively

- Discipline the bully (i.e. write-ups, performance management tools, termination)
- Monitor the environment – check the temperature periodically, do “walk-bys” unexpectedly to determine what is occurring in the work area
- Ensure policies are developed and distributed to all employees and managers re-enforcing expectations
- Consider data (i.e. number of departures, costs to the company, marketplace reputation, etc.)
- Prohibit retaliation
Expanding Workplace Standards...

Make “getting along with others” one of the measures of satisfactory performance.
Preventing Workplace Bullying

**Sensitize** employees about appropriate workplace behavior

**Talk** the talk ... walk the walk ... be a model of proper conduct at all times

**Enforce** policies consistently and using sound judgment (“zero tolerance” only sounds good)

**Partner** with operational leadership to ensure the proper response is implemented
Does this issue merit a response?

Yourself from participation or assent.

Conversation to express your disapproval.

As to the offense, risk and policy.

What, if any, “formal” response is needed?

“You need more than policies ... you need a culture that on a daily basis feels welcoming, and the only way you change corporate culture is through education.”

—Consultant Brian McNaught
Respond To Concerns

When Your Managers Receive a Report, Do They Know How To Respond?
When A Manager is Made Aware of Potential Bullying

**MANAGE IT!**
Know what to do/say directly in response to the incident.

**MITIGATE IT!**
Help the organization best protect its long-term interests.

**MAINTAIN IT!**
What do you need to do to follow up?
EEOC Recommendations for Leadership

- Foster an organizational culture in which respect and civility are promoted. Communicate and model a consistent commitment to that goal.
- Regularly assess the workplace for risk factors associated with abusive conduct and explore ideas for minimizing those risks.
- Assess the extent to which abusive conduct is a problem.
- Devote sufficient resources to prevention efforts.
- Ensure that discipline is prompt and proportionate, is consistent, and does not create the appearance of favoritism or retaliation.
- Hold supervisors accountable for preventing and/or responding to abusive conduct, including through the use of metrics and performance reviews.
Policy Tips
Policy Ideas

Statement of Commitment, Values, and Purpose

- Provide an overall statement of intent for workplace behavior
- Describe the processes for addressing complaints, and state explicitly that retaliation will not be tolerated
- Define who will be covered by the policy
Definition of Abusive Conduct

• Description and examples
• What does NOT constitute abusive conduct
• Clarify that a single act generally is not a violation, unless severe and egregious
Policy Ideas

- Employer Responsibilities
- Employee Responsibilities
- Training (EEOC recommends “workplace civility” training as part of a holistic approach)
- Complaint Process, Investigation and Remedial Action
- Confidentiality
- No Retaliation
Thank You!