

Workplace Bullying: A Review of Its Impact on Businesses, Employees, and the Law

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Abstract

The purpose of this paper is to address why and how businesses should promote healthy work environments, to stimulate awareness of workplace bullying and its negative impact on employee health, to explore current and prospective anti-workplace bullying laws, and to present employer and employee responsive strategies to combat this business challenge. Despite the plethora of information about bullying and the adverse effect that it has on individuals, incidents of workplace bullying still persist. Principal research results reveal that effectively handling workplace issues which disrupt employee productivity, morale, and attendance is paramount to fostering a physically, psychologically, and financially sound work environment and business. Major research conclusions find that state legislatures and business managers should be proactive in safeguarding healthy work environments by enacting laws and employer policies that prohibit workplace bullying. By ignoring these situations, management may face countless adverse consequences stemming from bullying at work.

Keywords: Workplace bullying, organizational management, work environment, employment law

1. Introduction

Workplace bullying is not a novel issue in the employment arena. The term denotes a topic that was conceived when Heinz Leymann conducted a pioneer study on challenges in work environments in Sweden in the 1980s. Other nations, such as England, have been researching this theory and evaluating the impact of workplace bullying since the 1980s and the beginning of the 1990s. In the mid to late 1990s, Drs. Gary and Ruth Namie began research on this concept (Yamada, 2010, p. 252-254). Committed to helping employees targeted by workplace bullying, they established the Workplace Bullying Institute. Pursuant to their research, the Namies defined workplace bullying as “the repeated, malicious, health-endangering mistreatment of one employee ... by one or more employees” (Yamada, 2008, p. 49). Targets of workplace bullying may also experience a range of destructive behaviors that are abusive and promote the use of power from those who bully. Some of the most widespread behaviors include “yelling, shouting, and screaming; false accusations of mistakes and errors; hostile glares and other intimidating non-verbal behaviors; covert criticism, sabotage, and undermining of one’s reputation ... use of put downs, insults, ... and unreasonably heavy work demands” (Yamada, 2008, p. 51).

Careful analysis of workplace bullying incidents has revealed significant commonalities among them. Generally, workplace bullying consists of three essential components: 1. regularity of incidents; 2. consequences to employee health and morale; and 3. business standards for the treatment of personnel (Martin and LaVan, 2010, p. 178). Even though research on workplace bullying has expanded since the 1990s, state laws and employer policies are not largely available to counter such behaviors or to adequately address resolutions for them. Furthermore, the lack of federal or state workplace bullying laws leave targeted employees without applicable legal recourse that is intentionally designed to prosecute offending parties and their employers. The purpose of this paper entails considering the importance of healthy work environments and the negative consequences of workplace bullying, fostering greater awareness of workplace bullying and the employer-employee roles in combating it, and exploring current and potential legal options for workplace bullying claims.

2. Employee Health Concerns in the Workplace

2.1 Employer Preventive Health Measures

It is a well settled issue that employers have a vested interest in the overall physical and psychological health of their employees. In order to address employee health concerns, some U.S. businesses have implemented preventive health measures for employee wellness by providing medical services at their respective places of employment. These progressive employers proceed in part with the hope of offsetting rising health care employee costs (Suk, 2011, p. 1091). Serving as a model for other businesses, Mitsubishi Polyester Film, Inc. in Greer, South Carolina has an onsite family medical center created precisely to meet employee health demands. Accordingly, Michelin also instituted the Michelin Family Health Center in support of its employee wellness program (Livengood, 2011).

2.2 Workplace Health Model of the Centers for Disease Control and Prevention

Employee wellness programs receive further promotion from the Centers for Disease Control and Prevention (CDC), the U.S. Department of Health and Human Services, and other U.S. government entities. In fact, the CDC asserts that if employers sustain a health-conscious work environment, their actions may not only reduce worker compensation suits and insurance-related costs but also increase employee attendance and production. Businesses that are alarmed about the impact of healthcare, wellness expenses, and compensation on their bottom line profits may be extremely interested in workplace health programs like the CDC's Workplace Health Model ("Workplace Health," 2014). The Workplace Health Model includes four principal steps, namely assessment, planning, implementation, and evaluation, for both small and large businesses to execute. This model deals with a host of health-related issues, including depression, blood pressure, and alcohol and substance misuse, thereby encompassing common stress-related health concerns ("Workplace Health," 2014).

3. The Impact of Workplace Bullying

3.1 Workplace Bullying Incidents

Employment research analyses have revealed personal employee perspectives on workplace bullying. In the context of the Workplace Bullying Institute's 2014 U.S. Workplace Bullying Report, respondent data in part is as follows: 27% have previously and are still undergoing incidents of workplace bullying; 72% of businesses minimize workplace bullying; and 93% advocate for the implementation of workplace bullying laws like the Healthy Workplace Bill. Similarly, *Parade Magazine*, *Career Builder*, and *Yahoo* have accumulated workplace bullying statistics via nationwide surveys and other research; *New York Times* and *Wall Street Journal* set forth accounts of applicable workplace incidents (Yamada, 2008, p. 51). In fact, a 2014 *TIME Magazine* article commented on the gender demographics of workplace bullying, most notably that approximately two-thirds of men are workplace bullies while about two-thirds of women are targeted (White, 2014). The accumulated research exposes the breadth of employee apprehension over workplace bullying incidents, ineffective employer responses, and legal options for filing suits.

3.2 The Physical and Psychological Impact of Employee Health

Regardless of the preventive health measures instituted at the workplace, employers must fairly assess whether the culture of their work environments may lead to various health issues that would negatively impact their employees and businesses. "A growing body of empirical evidence demonstrates that workplace bullying has deleterious health effects both physically and psychologically" (Martin and LaVan, 2010, p. 178). Health professionals also indicate medical concern regarding work environments and employee health. When employees are bullied, they often feel depressed and hopeless, suffer from loss of appetite, and generally receive poor nutrition (Ingram, 2005, p. 70-74). Dr. Ingram (2005), in his book entitled *How to Eat Right and Live Longer*, discusses that a poor diet is a primary cause of heart disease, stroke, heart attack, hardening of the arteries, high blood pressure, cancer, diabetes, and arthritis as well as other numerous diseases (p. 70-74). Equally as wide-ranging, the psychological effects of abusive workplace environments on employees contrast greatly but are commonly detrimental to mental health. Employees may become fearful and less innovative, undergo mood swings, have emotional distress, and experience difficulty concentrating (Cortina, 2008, p. 56).

3.3 The Financial Impact on the Employer

Employers, as a result of workplace bullying and related malfeasance, may suffer financially. First, employers may bear direct expenses in the defense of lawsuits as well as additional worker's compensation and health-related complaints filed by employees. Second, indirect expenses may be expended in association with increased employee turnover, internal sabotage, and absenteeism because of conflict, a reduction in worker motivation, and health problems (Yamada, 2008, p. 53).

In consequence, if a culture of permissive workplace bullying exists, then the financial costs of utilizing a work preventive health program to address employee health problems may indeed be ineffective when employees work within this type of stressful environment. Within an internal management assessment, employers must initially determine that if workplace bullying is intentionally or unintentionally permitted and could lead to a number of health issues, then they may also conclude that by inadequately addressing these situations, designated preventive health measures may be offset and render health-related funding of minimal effect.

3.4 The Impact on Employee Behavior

Workplace bullying could foster further undesirable work environment situations, such as violence and severe incivility. In particular, deviant behavior is a potential result when employees perceive injustice or a lack of resolution in their employment circumstances. Furthermore, studies reveal that anger may be a collective workplace emotion, and thus, link anger to a host of unproductive workplace experiences that create a hostile work environment (Fitness, 2000, p. 149). Researchers connect these harmful experiences to negative employee actions.

[R]esearch suggests that although workers who feel unjustly treated may not take direct or confrontational action to remedy the situation, they may take covert retaliatory action, such as theft or sabotage, in an attempt to 'get even' or to balance an apparently inequitable situation (Fitness, 2000, p. 149).

Likewise, Penney and Spector (2005), in a research study on work-related stress and incivility, discovered a strong correlation between workplace incivility and job satisfaction and performance (p. 789-791). These results support the premise that workplace bullying may lead to reduced employee productivity. With countless workplace cultural concerns, employers must seriously consider executing internal organizational policies to combat bullying within their businesses.

4. Workplace Bullying Legal Considerations

4.1 State Legislative Efforts

In the face of widespread research detailing the destructive effects of unhealthy work environments, state workplace bullying laws still remain mostly nonexistent, rendering the majority of targeted employees without appropriate legal recourse. Over the last several years, supporters of the proposed Healthy Workplace Bill, which was authored by law professor David Yamada, have spearheaded efforts to spread awareness and to enact state legislation of anti-workplace bullying statutes. For instance, in 2010, advocates in New York and Illinois introduced the Healthy Workplace Bill into their corresponding state legislatures; both state senate bodies approved it, but the bills did not pass other voting mandates (Yamada, 2010, p. 255-257). Notwithstanding these setbacks, the Healthy Workplace Bill and other anti-workplace bullying legislation gained national notice and support. In 2014, California and Tennessee passed state laws prohibiting abusive conduct at work. As of 2015, the Healthy Workplace Bill has been presented in variable forms in twenty-nine U.S. states and territories ("Healthy Workplace Bill", 2015). See Table 1.1.

Currently, modest progression is found in North Dakota and Connecticut via House Bill 1428 and Senate Bill 432 respectively. House Bill 1428 asserts anti-harassment language to protect public sector employees while the focus of Senate Bill 432 mandates additional employee safeguards against workplace bullying. Utah progresses even further in House Bill 216, requiring training for employees on workplace bullying, its impact on health, and available damages for successful claims. New York makes a strong anti-bullying stand through Assembly Bill 3250, which mimics the Healthy Workplace Bill in its entirety. ("Healthy Workplace Bill", 2015).

4.2 The Healthy Workplace Bill

In general, the Healthy Workplace Bill aims to serve as the leading status-blind legislation that would provide a legal means for employees to sue in state trial courts for legitimate, damaging workplace bullying that is conducted with malice. State trial court petitions are desirable in lieu of filing with government administrative agencies due in part to case volumes and potential backlog (Yamada, 2013, p. 337). For those asserting claims of workplace bullying, this bill proposes that:

[I]t shall be an unlawful employment practice...to subject an employee to an abusive work environment... [An abusive work environment] exists when the defendant, acting with malice, subjects an employee to abusive conduct so severe that it causes tangible harm to the employee. [While malice is]... the desire to cause pain, injury, or distress to another (Yamada, 2010, p. 257).

Purposefully omitting a definition for workplace bullying and electing to define an abusive work environment, the Healthy Workplace Bill moves to separate simple incivility or unprofessional workplace behavior from abusive conduct and practices that create a hostile work environment. Due to its framework, the bill parallels with the meaning of an hostile work environment in discrimination suits under Title VII of the Civil Rights Act of 1964 (Title VII) as well as various tort laws (Yamada, 2010, p. 259-265).

Under the Healthy Workplace Bill, the aggrieved employees must successfully demonstrate that they have sustained tangible harm, meaning psychological or physical harm. Employers may assert affirmative defenses alleging that they exercised reasonable care in preventive and corrective measures in which the plaintiff did not utilize. If the plaintiff wins the case, then, as the injured party, the plaintiff may receive compensatory and punitive damages, injunctive relief, and attorney's fees. In certain circumstances, injunctive relief may require that the defendant, as the workplace harassing party, be barred from the plaintiff's employment area (Yamada, 2010, p. 259-265).

4.3 Discrimination and Tort Suits against Workplace Bullying

The success of abusive work conduct laws passed in 2014 in California and Tennessee is presently undetermined. Since workplace bullying claims began, targeted employees have generally filed actions against employers through existing tort and discrimination laws, such as intentional infliction of emotional distress (IIED), intentional interference with the employment relationship (IIER), disability discrimination and harassment laws, and the Occupational Safety and Health Law (OSHL). Each of these legal assertions maintains individual challenges in winning claims for bullied employees (Yamada, 2010, p. 259-265).

First, consider IIED. This tort occurs when one is "intentionally doing an outrageous act toward another which goes outside the bounds of common decency and causes the victim severe emotional distress" (Bennett-Alexander and Harrison, 2012, p. 137). From the court's perspective, the key difficulty with basing workplace bullying suits using IIED lies with inadequate proof of the extreme and outrageous standard, which requires an exceptionally indecent act that leads to a reasonable person undergoing severe emotional distress. Second, under IIER, if circumstances permit an employee to sue a co-worker, the state court in which the suit is filed may not acknowledge that a co-worker can be classified as a legitimate third-party. This must be done to meet the requirements for the suit (Bennett-Alexander and Harrison, 2012, p. 137-141).

Next, and potentially more successful, are those workplace bullying lawsuits firmly connected to protected class discrimination concerning race, color, national origin, religion, and gender under Title VII, a recognized disability classified in the Americans with Disabilities Act of 1990 (ADA), age under the Age Discrimination in Employment Act, or state anti-discrimination laws. These discrimination-based suits could yield damages for plaintiffs on both federal and state levels. (Yamada, 2010, p. 259-265).

Based on a sample of 45 litigated cases spanning 5 years, ... it was discovered that Title VII race discrimination occurred in one-third (35.6%) of the cases; Title VII gender discrimination in nearly one-third (28.9%) of the cases; Title VII national origin discrimination in less than one-tenth (6.7%) of the cases tied with Title VII age discrimination; ... and Title VII religious discrimination in 2.2% of the cases ... The effects of the workplace bullying ... were stress (53.3%), retaliation (17.8%), reduced productivity (13.3%), Post Traumatic Stress Disorder (4.4%), and violence (4.4%). The organizational effects of workplace bullying ... were reduced morale (31.1%), decreased productivity (13.3%), safety (6.7%), and voluntary turnover (2.2%) (Martin and LaVan, 2010, p. 186).

Then similar to Title VII and ADA, other federal and state regulations, like the OSHL, may also afford potential success for workplace bullying claims. However, one major drawback is that “the absence of direct compensation to injured parties makes” this law “a less than ideal frontline weapon in the legal struggle against workplace bullying” (Yamada, 2010, p. 259). Finally, one additional option that has not yet been tested is a governor-issued executive order, which could mandate state organizations to abide by anti-workplace bullying policies (Yamada, 2010, p. 256-265). In spite of the diverse set of laws presently used to prosecute workplace bullying actions, the majority of plaintiffs have not experienced notable success in court holdings for these cases.

5. Responses to Workplace Bullying

5.1 Organizational Responses

Business leadership and management set the cultural climate for actions fostering worker dignity, respect, and civility in the work environment. To formulate such a cultural climate, organizations must design and create internal policies that promote these desired goals. Places of employment should aim to have annual training on workplace bullying, its impact, and the potential consequences for bullies and their targets through the human resources and/or legal departments. Once implemented, it is incumbent upon management to indorse and encourage appropriate workplace behavior through modeling appropriate actions and reinforcement of such policies. Furthermore, employers have the option of implementing and enforcing more stringent workplace rules and bylaws in efforts to combat workplace bullying. Workplace bullying expert Dr. Gary Namie strongly suggests that employers incorporate and follow a four-tier model, categorized as the “values-driven policy, credible enforcement processes, restorative interventions . . . , and general and specialized education,” (Yamada, 2008, p. 55-56) to assist with the beginning stages of this process. When leadership and management entities do not implement and/or follow employment policies for the protection of its employees and its business, opportunities exist for employee conflict and employer apathy.

5.2 Individual Responses

According to workplace bullying consultants, employees must be diligent in their responses to workplace bullying. Possibly the most important suggestion for targets who encounter bullying is to maintain detailed documentation of an incident in close proximity to its occurrence. Other suggestions are to avoid being overly accommodating or friendly and to find and sustain a solid support system that is not affiliated with the workplace. Lastly, employees should address workplace bullying concerns with management with a focus on how these incidents impede productivity in the workplace. In total, targets of workplace bullying are encouraged to be proactive in their own defense (White, 2014).

6. Conclusion

Within the management assessment framework, the reasons for the continuation of workplace bullying must be evaluated. Although none are conclusive, a few interesting points regarding this dilemma are worthy of consideration. One reason may be the perception that adults can not be bullied. This perception dilutes the reality of workplace bullying and tends to cause business managers to handle it in a nonchalant manner or to equate it as a lesser workplace issue. This is a critical point, especially if management does not take action or appropriately address workplace incivility or behaviors that are described as excessively assertive, autocratic behavioral styles, pushy attitudes, rude demeanor, and brash, tactless engagements. In fact, these behaviors may often be considered as personality or managerial style differences (Yamada, 2008, p. 51- 56).

Another major area of concern centers on gender bias. Prior to reporting incidents of workplace bullying, employees will likely ponder the internal workplace consequences of such actions. A male employee who complains about being bullied may be viewed as weak or lacking the fortitude to spearhead a solid leadership base at work. On the other hand, a female who files a workplace bullying complaint might be labeled as being too emotional or sensitive. Contrastingly, if a woman is in fact the workplace bully, she may be dismissed as being bossy or assertive while the actions of a male counterpart may be ignored and discounted completely (Yamada, 2008, p. 51-54).

Since most of the existing administrative and legal options for those subjected to workplace bullying are not specifically tailored to meet relevant bullying cases, they still do not provide the most favorable outcomes. Consequently, targeted employees may remain in undesirable employment conditions.

Empirical research data strongly suggests that stress, depression, feelings of injustice, and anger may be the result for not only the targets of workplace bullying but also their co-workers and families (Cortina, 2008, p. 56). More far-reaching consequences are those in which the community is negatively affected by bullied employees who may engage in violent actions to deal with unfair workplace situations. Ultimately, whether an advocate or opponent of the Healthy Workplace Bill, one must acknowledge that historically and civilly the law has been an avenue through which societal issues are eventually mediated. It appears that the rising tide of workplace bullying concerns will not peak and fall. A plausible means of properly handling such matters must be designed for the benefit of all stakeholders in this growing societal challenge.

Table 1.1 - U.S. States and Territories with Anti-Workplace Bullying Legislative Action

California*	Maine	Nevada	Oklahoma	Washington
Connecticut**	Maryland	New Hampshire	Oregon	West Virginia
Florida	Massachusetts	New Jersey	Pennsylvania	Wisconsin
Hawaii	Minnesota	New Mexico	Tennessee*	Puerto Rico
Illinois	Missouri	New York**	Utah**	US Virgin Islands
Kansas	Montana	North Dakota**	Vermont	

Note: * indicates states that created laws against abusive work conduct in 2014 and ** are states with 2015 bills before their state legislatures (“Healthy Workplace Bill”, 2015).

References

- Bennett-Alexander, D. and Harrison, L. (2012). Torts. In L. Kueter (Special Edition.), *The Legal, Ethical, and Regulatory Environment of Business in a Diverse Society* (pp.137-141). Boston: McGraw-Hill Companies.
- Cortina, L. (2008). Unseen Injustice: Incivility as Modern Discrimination in Organizations. *The Academy of Management Review*, 33, 55-75.
- Fitness, J. (2000). Anger in the workplace: an emotion script approach to anger episodes between workers and their superiors, co-workers and subordinates. *Journal of Organizational Behavior*, 21, 147-162.
- Healthy Workplace Bill. (2015, February 10). [State of the Union: State Activity]. Retrieved from <http://www.healthyworkplacebill.org/index.php>
- Ingram, C. (2005). *How to Eat Right and Live Longer*. Buffalo Grove: Knowledge House Publishers.
- Livengood, Nichole. (2011). Employers Turn to Preventive Health. *Greenville Business Magazine*.
- Martin, W. and H. LaVan. (2010). Workplace Bullying: A Review of Litigated Cases. *Employee Responsibilities and Rights Journal*, 22(3), 175-194.
- Penney, L. and P. Spector. (2005). Job Stress, Incivility, and Counterproductive Work Behavior (CWB): The Moderating Role of Negative Affectivity. *Journal of Organizational Behavior*, 26(7), 777-796.
- Suk, J. (2011). Preventive Health at Work: A Comparative Approach. *The American Journal of Comparative Law*, 59, 1089-1134.
- White, M. (2014, March). Bullying at Work: How to Make It Stop. *Time*, 183(9). Retrieved from <http://time.com/17168/bullying-at-work-how-to-make-it-stop/>
- Workplace Bullying Institute. (2014, October 1). 2014 WBI U.S. Workplace Bullying Survey. Retrieved from <http://www.workplacebullying.org/wbiresearch/wbi-2014-us-survey/>
- Workplace Health Promotion: Making a Business Case. (2014, October 23). Centers for Disease Control and Prevention. Retrieved from <http://www.cdc.gov/workplacehealthpromotion/businesscase/index.html>
- Yamada, D. (2013). Emerging American Legal Responses to Workplace Bullying. *Temple Political and Civil Rights Law Review*, 22(2), 329-354.
- Yamada, D. (2010). Workplace Bullying and American Employment Law: A Ten-Year Progress Report and Assessment. *Comparative Labor Law and Policy Journal*, 32(1), 251-284.
- Yamada, D. (2008). Workplace Bullying and Ethical Leadership. *Journal of Values-Based Leadership*, 1(2), 49-62.