

Recognizing and Identifying Workplace Bullying



The recognition that bullying occurs far beyond the playground is now so widespread that an entire episode of *The Simpsons* was dedicated to the topic earlier this year. However, despite the recognition of its occurrence, even the most seasoned human resources professionals often still shy away from dealing with serious interpersonal conflicts between coworkers or between superiors and subordinates.

Most Canadian provinces (the only exceptions are New Brunswick, Nunavut, Northwest Territories, and Yukon) have legislation addressing workplace violence and/or harassment. Further, if your workforce is unionized, your applicable collective agreement(s) may require you, as the employer, to provide a workplace free of harassment and similar conduct. If harassment relates to a protected ground under human rights legislation, such legislation imposes requirements on employers in this context as well.

Regardless of the form of bullying, employers are responsible, even if specific legislative or collective agreement requirements are absent or inapplicable. There are important legal and practical reasons to take workplace bullying/harassment seriously and to respond to it accordingly.

Recognizing and identifying workplace bullying

Some examples of what is not workplace bullying are discussed elsewhere in this issue. Certainly, conduct that may constitute workplace bullying falls on a wide spectrum, from isolated incidents to prolonged campaigns, from the seemingly innocuous to the extreme and vicious. Bullying may occur between superiors and subordinates (and may flow in either direction), between coworkers unconnected by any reporting structure, through direct or virtual (online) conduct, and within or even outside the workplace itself.

However, Employers are responsible for taking appropriate action to provide a safe workplace and for instituting and enforcing related policies. Some of the many forms of bullying that employers should watch out for include:

- Interfering with the work of others;
- Disregarding or criticizing work done by others;
- Falsely accusing subordinates or coworkers of errors;
- Insulting, belittling, demeaning or threatening others;
- Using non-verbal tactics to intimidate others (e.g. glaring);
- Discounting the thoughts or feelings of others;
- Deliberately excluding others from work or social activities at work;
- Encouraging others to turn against someone;
- Making up or changing standards “on the fly”; and
- Starting, or perpetuating, destructive rumours or gossip.

Another example of bullying that is rapidly becoming an employer’s concern is online bullying – whether the bullying is done at, or outside of, work. Much can be said about this topic, and many cases have recently been published about employees being disciplined or terminated for bullying or threatening coworkers, supervisors or subordinates via social media, even if the behavior occurred during off-hours, because the online conduct was somehow connected (or thought to be connected) to the employee’s employment.

Why address workplace bullying?

Aside from any requirements to address bullying that may (or may not) be prescribed by legislation or collective agreements, employers have a vested interest in doing so:

Employees who feel bullied are less productive

Statistics from the Canada Safety Council show that bullied employees lose between 10% and 52% of work time from spending time defending themselves against the bully, networking with friends and coworkers for support and thinking about the situation. They often feel demotivated and stressed as a result of the situation, sometimes leading to sick leave due to stress-related illnesses.

Significant damages may be awarded when an employer fails to act in face of bullying

Last summer, the Ontario Court of Appeal released a decision which (although it significantly reduced the damages awarded by the court below) imposed a hefty damages award on the employer and the manager who bullied an employee until she left work and never returned.

In ***Boucher v. Wal-Mart Canada Corp.***, 2014 ONCA 419, after refusing to falsify a record at the request of her manager, the employee was disciplined and then subjected to a campaign of ridicule, disrespect and humiliation by her manager, often in front of her coworkers. The manager regularly used profane language towards her and even pulled Boucher’s subordinates in to meetings to witness him telling her how “stupid” she was and to otherwise demean her. Boucher complained to senior management under the employer’s “open door communication” policy but her concerns were dismissed as being “unsubstantiated” and she was informed that she would be held accountable for complaining. Shortly thereafter, the manager grabbed Boucher by the elbow in front of a group of coworkers and again berated

her by making her prove she could count to ten. Boucher was so humiliated that she left the store. She later emailed the employer saying that she would not return to work until her complaints about the manager were resolved. They never were and she never returned to work.

Boucher's action for constructive dismissal and damages was tried before a judge and jury, who found that Boucher had been constructively dismissed and awarded her severance totalling 20 weeks' pay in accordance with her employment contract. The jury awarded damages against the manager personally in the amount of \$100,000 for intentional infliction of mental suffering, which the Court of Appeal upheld, as well as \$150,000 in punitive damages, which the Court of Appeal reduced to \$10,000 (for a total of \$110,000 in damages against the manager). As against the employer, the Court of Appeal upheld the jury's award of \$200,000 in aggravated damages but reduced the award of \$1,000,000 to \$100,000 for punitive damages (for a total of \$300,000 in damages against the employer, in addition to the salary continuation Boucher had received).

This case is certainly an example of flagrant misconduct by a workplace bully, and blatant disregard and inaction by the employer to end the manager's conduct. However, despite these extremes, this case serves as a reminder and a warning to employers (and managers/supervisors) that they may be held accountable for bullying behaviour – for failing to enforce workplace policies designed to protect employees, and/or for failing to take seriously the complaints of bullied employees (or in this case, for threatening retaliation for complaining).

Some do's and don'ts of addressing workplace bullying

- Employers should implement a workplace bullying/harassment policy, either as a stand-alone policy or as an element of their existing policies (e.g. social media policies, general codes of conduct). Review and update the policy periodically. Then, make the policy known to employees and enforce it!
- Listen to employees who claim they are being bullied.
- Pay attention to conduct that seems off-side or inappropriate.
- Investigate complaints to determine if allegations of bullying are legitimate.
- Take appropriate action – this may or may not involve disciplining the bully. Discipline may not always be required under the circumstances. Evaluate each situation on a case-by-case basis and, if the circumstances warrant, don't be afraid to (reasonably and proportionately) discipline the workplace bully.
- Ignore conduct that amounts to bullying in the hopes that it will "just go away".
- Impose negative consequences on a complainant if your investigation shows the complaint is not substantiated – this may discourage future complainants from coming forward, and could attract liability on the part of the employer.

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