

Workplace Bullying: The 5 Liability Risks & How to Manage Them



"I'll bash your head in!"

Scary words. . .

Especially when they're shouted. . .

Especially when the person who shouts them also twirls a hammer in your face to heighten the fact. . .

Especially when the shouter is twice your size. . .

Especially when the shouter also happens to be your supervisor. . .

So who could blame the victim, a physically frail woman, for having a mental collapse? Nor is it surprising that she sued her employer for mental distress, a suit she ultimately won. The supervisor's conduct was "outrageous" and the employer was legally responsible for not protecting the employee from him, said the court in awarding the employee \$35,000 in damages [*Boothman v. Canada*].

The Workplace Bullying Challenge

When you think about workplace violence, you think of shooting sprees and acts of physical assault where people are killed and maimed. Although such events do happen far too often, most acts of workplace violence are more subtle than that. But the results can still be devastating.

Workplace bullying doesn't make the headlines. But because it's so widespread, in many ways it represents a greater threat. Workplace bullying is an everyday event that takes place in many if not most workplaces. Acts of bullying can also escalate into physical violence like in the notorious O.C. Transpo case where a transit worker mercilessly teased for his speech impediment finally snapped and

shot 5 co-workers before turning the gun on himself.

Workplace Bullying & the Law

As the *Boothman* case illustrates, companies can be held liable for failing to protect their employees from workplace bullying even if no physical violence takes place.

1. Provincial OHS Laws

Workplace violence and bullying are hazards covered by OHS laws—either expressly or via the so called general duty clause that requires employers to safeguard employees from recognized hazards not named in the OHS statute or regulations.

2. Human Rights Laws

Engaging in or permitting bullying in the workplace may also be deemed an act of employment discrimination to the extent the victim is targeted for his/her race, sex, religion, disability, age, sexual orientation or other grounds protected by provincial human rights laws.

3. Infliction of Mental Distress

Victims of bullying can sue their companies for intentional infliction of mental distress, like the employee in the *Boothman* case. To win, the victim must show that: The conduct was “outrageous;” the bully deliberately tried to hurt the victim; and the victim suffered visible illness as a result of being bullied. For example, an ex-Mountie won a \$88,000 mental distress case against the R.C.M.P. for not responding to calls to the supervisor for help against bullying from fellow officers [*Clark v. Canada*].

4. Constructive Dismissal

If bullying becomes so bad that victims must leave their job, they can claim they were as good as fired. Under the “constructive dismissal” theory, employers have an implied contract to treat employees with respect and dignity so they can do their job. Allowing the employee to be bullied violates that contract and is just like firing the employee.

5. Workers’ Compensation

Workers’ compensation and short- and long-term disability claims for mental health problems have become a major problem for employers. Employees victimized by bullies are apt to suffer mental stress and file such claims.

What To Do

The key to preventing workplace bullying and the liability it can create is to take it seriously. Bullying is, in fact, a problem, something that can’t simply be dismissed as a “personality conflict” or “boys will be boys” mentality.

Measures necessary to combat bullying include, at a minimum:

Performing a hazard assessment to determine if bullying is a problem or potential problem at your workplace;

Adopting a zero tolerance policy outlining your company's commitment to ensure employees aren't bullied at work;

Establishing a procedure for employees to report bullying confidentially;

Establishing a procedure for investigating bullying complaints;

Implementing corrective actions to deal with bullying problems you identify, including disciplining offenders up to the point of termination.