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Best Management Practices

Workplace Bullying Jeopardizes Workplace Safety (Part One)

By Karen A. Callanan, Esq.

Overview

Local ordinances, state statutes, and federal laws prohibit workplace discrimination when the discriminatory behavior is directed at an individual employee who is a member of a protected class, as defined by the laws. As these laws were developed, they were designed to eliminate discrimination based upon particular personal characteristics or the status of the victim.

For example, Title VII of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex (including pregnancy), national origin, age (over age 40), disability, or genetic information. Obviously, no one is able to change any of these characteristics. In addition to these laws, there is a well developed body of court decisions that have been rendered by state and federal courts interpreting these anti-discrimination laws.

Court decisions, over the years, resulted in a specific form of illegal sex discrimination referred to as "hostile environment" sexual harassment. "Hostile environment" sexual harassment is characterized by verbal or physical conduct of a sexual nature that creates an intimidating, hostile or offending work environment.



In addition to "hostile environment" sexual harassment claims, research indicates that a notable percentage of employees claim to be victims of activity described as general workplace harassment. This is hostile or offensive behavior resulting in a hostile work environment that is unrelated to their sex. For purposes of this discussion, this type of behavior is referred to as "workplace bullying."

Although workplace bullying appears to be a significant concern in the workplace, there are currently no laws in the United States prohibiting such behavior. It does not fall under the sex discrimination prohibitions because the offending behavior is not related to sex or based upon the victim's gender; it is considered a status-blind offense. Nevertheless, risks associated with workplace bullying affect all employers. Failure to recognize and manage this exposure can result in physical, mental, or emotional harm to your employees, a disruption in productivity, a decline in overall employee morale, and an impaired ability to succeed in your organizational mission.

Since 2002, approximately 16 states have introduced legislation to make workplace bullying illegal. Thus, if any of these efforts succeed, some employers in the United States will have a future risk of legal liability for workplace bullying. Currently, workplace bullying is against the law in some foreign countries, including Australia, parts of Canada, Ireland, and Sweden. Therefore, if your organization has operations in these places, you may have a current risk of exposure to liability for workplace bullying.

Hostile Environment Sexual Harassment vs. Workplace Bullying

"Hostile environment" sexual harassment and workplace bullying both involve verbal or physical conduct that result in a hostile work environment. Additionally, although to the casual observer they may appear to be the same thing, they are two distinct problems. To manage these risks effectively, it is important to recognize the differences between the two types of behaviors.

Examples of behavior that may involve the risk of "hostile environment" sexual harassment include, but are not limited to, the following:

- discussing sexual activities;
- telling off-color jokes in person or via e-mail or other electronic communication;
- unnecessary touching;
- commenting on physical attributes;
- displaying sexually suggestive pictures in person or electronically;
- using demeaning or inappropriate terms, such as "Babe";
- using indecent gestures;
- sabotaging the victim's work;
- engaging in hostile physical conduct;
- granting job favors to those who participate in consensual sexual activity; and/or
- using crude and offensive language.

Although there are currently no laws prohibiting workplace bullying in the United States, and therefore less legal guidance for employers, the subject has been the topic of much research, both here and abroad. Through this research and the efforts of those advocating for the creation of legal standards to address the problem, some common understandings of the behavior and tactics that comprise workplace bullying are developing.

Examples of behavior that may involve the risk of workplace bullying include, but are not limited to, the following:

- engaging in nonverbal intimidating behavior such as staring and glaring and clearly showing hostility;
- singling out and isolating one person from coworkers, either socially or physically;
- exhibiting presumably uncontrollable mood swings in front of the group;
- yelling, screaming, throwing tantrums in front of others to humiliate a person;
- harshly and constantly criticizing while having a different standard for the target;
- starting, or failing to stop, destructive rumors or gossip about the person;
- publicly displaying gross, undignified, but not illegal, behavior;
- disregarding satisfactory or exemplary quality of completed work despite evidence;
- falsely accusing someone of "errors" not actually made;
- stealing credit for work done by others;
- assigning undesirable work as punishment;
- declaring the target "insubordinate" for failing to follow arbitrary commands; and/or
- retaliating against the person after a complaint was filed.

In Part Two of this article series, we will consider how bullying effects the safety of your workplace and ways in which to manage the risk.

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Best Management Practices

Workplace Bullying Jeopardizes Workplace Safety (Part Two)

By Karen A. Callanan, Esq.

In Part One of this bulletin series, we considered general background issues related to workplace bullying. In Part Two, we consider how bullying effects the safety of your workplace and ways in which to manage the risk.

How Workplace Bullying Effects Workplace Safety

Workplace bullying generally involves subtle, continuous, and recurring verbal or non-verbal actions carried out in such a way that the victim is belittled, threatened, or humiliated—although, in some cases, it involves physical harm. More often than not, the perpetrator is a manager or supervisor; someone who has more power in the workplace than the victim. Bullies use many and varied tactics impacting many aspects of the victim's work life to inflict their harm.

Victims are often threatened in their professional or personal status, isolated and overworked and, in general, made to feel as if the perpetrator intends to make them appear to be incompetent and unstable. Examples include: (1) continual accusations that the victim fails to produce a competent work product or successfully complete assignments, even though his or her work quality is fine; (2) constant verbal insulting of the victim both individually and during team meetings; (3) restricting or prohibiting the victim from working with individuals/clients/partners or on assignments that would lead to advancement for the victim; (4) failing to keep the victim apprised of critical job related information; and/or (5) continually assigning more work to the victim, even though, if reasonably considered, it would be unreasonable for the victim or anyone else, to handle the assigned work load successfully.



Because workplace bullying involves a continual pattern of harmful behavior, the cumulative affect can cause mental, emotional, and psychological harm. If tolerated, it can also impact co-workers, who may not be targets, but who are aware of the bullying and are also forced to work in a toxic environment. Studies indicate that victims of workplace bullying suffer stress related injuries (including physical, mental, and emotional problems) more frequently than other workers.

Stress related injuries manifest themselves in a number of ways that impact workplace safety. Symptoms can include sleeplessness and an inability to focus. Workers responsible for operating machinery and equipment who suffer from stress induced sleeplessness or the inability to focus may become more accident prone while performing their duties—exposing themselves, co-workers, and the general public to harm from improperly operating machinery or equipment. Victims of workplace bullying may also suffer personality changes that can impair their ability to work cooperatively and effectively. In extreme situations, such personality changes may result in the victim becoming violent in the workplace.

Employees suffering the effects of workplace bullying also tend to have greater absentee rates and access healthcare more frequently than other employees. Both add cost to your overall operations. Increased absenteeism can also force an organization to make do with an unreasonably low number of employees to handle the work safely or to double up or increase the workload of employees who are at work—adding to their stress level. Either situation jeopardizes workplace safety.

Office workers suffering from stress induced sleeplessness and/or the inability to remain focused on the tasks at hand are more prone to making critical mistakes on the job—some of which may cause an organization financial harm. And, if an organization tolerates a hostile work environment, it risks losing talented workers who may choose to go elsewhere. If this happens, the reputation of the organization is at risk.

The Statistics

In 2010, The Workplace Bullying Institute published the results of a second study they commissioned on the topic of workplace bullying. Samplings of some of the key results of the study include the following:

- 35 percent of workers have been bullied (9 percent currently, 26 percent, previously)
- 15 percent of workers have witnessed bullying
- 62 percent of the bullies were men
- 58 percent of the targets were women
- 68 percent of bullying involves same-gender harassment

Managing the Risk

A quick review of the statistics noted above indicates that approximately 50 percent of workers in the United States report that they have either been a victim of or have witnessed workplace bullying. Although, currently such behavior is not illegal in the United States, it is prudent for all employers to recognize this significant exposure and take steps to minimize it.

Because, in some circumstances, it may have a similar look and feel to “hostile environment” sexual harassment, it is a best practice to make sure your written policies and procedures clearly address workplace bullying as a distinct problem. Include specific examples for managers, supervisors, and employees so they understand the difference. As the statistics indicate, a significant percentage of perpetrators are managers or supervisors. Therefore, it is prudent to provide training for supervisors focused on those behaviors they may consider appropriate and effective management, but which, in fact, may constitute workplace bullying. It is also critical to provide a well thought out grievance process for any employee who feels they are the victim of workplace bullying; insure it is widely communicated to all employees.