

BULLYING - DON'T LET IT HAPPEN IN YOUR WORKPLACE!

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Both the WorkCover authority of NSW and WorkSafe authority in Victoria have shown that they are taking a 'get tough approach' with employers, employees, directors and managers for breaches of occupational health and safety laws which involve workplace bullying.

WHAT IS WORKPLACE BULLYING?

The Victorian WorkSafe authority defines workplace bullying as:

'repeated unreasonable behaviour, directed toward a workplace participant or group of workplace participants, that creates a risk to health and safety.'

Workplace bullying can take many forms. It can constitute, for example, a:

- physical assault or threats;
- initiation rituals;
- verbal abuse or name calling;
- practical jokes;
- teasing or making inappropriate comments to another worker; and
- psychological harassment.

Workplace bullying should not however, be confused with:

- reasonable and legitimate performance management of an employee by an employer;
- disciplinary action;
- bad or poor management practices;
- managerial prerogative; or
- the legitimate and reasonable allocation of work in compliance with business needs and systems.

CASE STUDIES

Inspector Gregory Maddaford v Graham Gerard Coleman & Anor [2004] NSWIRComm 317 (3 November 2004)

WorkCover NSW has recently appealed the penalties imposed on two directors, Brian and Graham Coleman, who were prosecuted for failing to ensure the health, safety and welfare of one of its employees. As reported in the ACLN Issue #98, this case involved a shocking initiation ritual, in which a number of Company employees bound a 16 year old labourer with cling wrap and physically abused him for half an hour.

The Company was fined \$24,000 and each director \$1,000 each. WorkCover NSW then appealed the decision to the Industrial Relations Commission of NSW ('the NSWIRC'), claiming that in the circumstances the penalties imposed on the directors were too lenient. The NSWIRC agreed, increasing the penalties imposed to \$9,000 and \$12,000, respectively.

The NSWIRC was extremely critical of the Company and its directors for allowing a 'culture of initiation' to run rife through the Company. Their Honours, in delivering their judgement, indicated the tough stance the Commission is prepared to take in relation to workplace bullying matters:

'In our view, given that workplace bullying is usually a clandestine activity, there is a significant potential for employers to either deny its existence or ignore its occurrence. In those circumstances, there is a need for this Court to impose sentences which compel attention to occupational health and safety.'

Victorian WorkSafe Authority v Ballarat Radio Pty Ltd (2004) Ballarat Magistrate's Court (Magistrate Coburn Case no. SO1292475, 12 August 2004)

In another recent case involving workplace bullying, WorkSafe Victoria, prosecuted Ballarat Radio Pty Ltd for failing to provide a safe workplace for its employees. Between February 2000 and October 2003, a radio announcer, Mr Mowat, subjected his fellow employees to both verbal and physical abuse. The Company pleaded guilty to a failure to fulfil its duties under the occupational health and safety laws. The Company was convicted and fined \$50,000 and ordered to pay costs of \$5,000. The radio station was also ordered to broadcast information about preventing and dealing with workplace bullying on its network.

The Court was extremely critical of the apathy the Company had shown toward the plight of its other employees who were subjected to sustained physical and verbal abuse, over a long period. The Court indicated that the bullying should have been stamped out as soon as the Company became aware of it. In retaining Mr Mowat, the Company breached its occupational health and safety obligations to its other employees.

In separate proceedings, WorkSafe also charged Mr Mowat, on two counts of intimidating co-workers and failing to take care for the health and safety of others in the workplace. Mr Mowat, was convicted and fined \$10,000 and ordered to pay court costs of \$1,700.

This case is significant as it is the first time the Occupational Health and Safety Act in Victoria has been used to successfully prosecute an employee for verbally abusing fellow employees in the workplace.

HR TIP

These cases show the tough stance WorkCover and WorkSafe are taking to incidents of workplace bullying. Companies, their employees, directors and managers cannot turn a blind eye to their responsibilities. Bullying, whether it is of a physical or psychological nature, is an occupational health and safety hazard. As such, employers must assess workplace bullying as a risk, and work toward eliminating it from the workplace.

As part of an effective strategy to control workplace bullying, employers should:

- Prepare and implement a policy which prohibits bullying in the workplace. The policy should, amongst other things, explain what workplace bullying is and explain its effects.
- Distribute the policy to the workforce.
- Educate and train their workforce about the risks of workplace bullying.
- Ensure that grievance procedures are put in place to effectively and efficiently deal with complaints of workplace bullying.

- Reinforce to the workforce at regular intervals, the inappropriateness of bullying conduct, for example, by conducting refresher training for staff in the inappropriateness of workplace bullying.

- Conduct regular audits of the workplace to monitor whether there is any bullying activity.

- Act promptly to thoroughly and properly investigate any complaint of bullying and discipline employees involved in proven complaints of bullying conduct.

- Review the effectiveness of the policy at regular intervals and update the policy if required. Whenever the policy is updated, the workforce should be provided with an up-to-date copy and provided with education and training in relation to any amendments.

If compliance with occupational, health and safety laws does not provide a sufficient incentive in itself to encourage employers to stamp out workplace bullying, then employers should also consider the other economic costs workplace bullying causes to the business. Workplace bullying not only reduces morale, leading to a greater turnover of staff, it also reduces productivity. Therefore, apart from occupational health and safety reasons, it also makes good commercial sense for employers to remain vigilant about bullying issues.