

Bullying in the Workplace

Sticks, stones, and words can hurt employees, employers, and insurers

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Bullying has become a point of focus for parents and school administrators due to its documented harmful effects on adolescents. Unfortunately, bullying does not end with childhood.

The Workplace Bullying Institute (WBI) defines bullying as “repeated, health-harming mistreatment of others in the workplace via one or more forms of verbal abuse, threats, humiliation, intimidation, work interference, or sabotage/exploitation of psychological or physical vulnerability.” Though this is a helpful definition, it leaves open for interpretation whether covert or subversive acts are, in fact, workplace bullying.

According to a 2021 study by WBI, 30% of workers have direct experience of being bullied at work. With so many individuals continuing to work from home due to the COVID-19 pandemic, one would expect a reduction in workplace bullying. However, the WBI study indicates that 43% of remote workers are bullied. Such bullying during remote work happens most in virtual meetings. The average age of the typical bullying target is 41, and 61.3% of bullying is same-gender bullying. According to the study, when bullying is reported, American employers tend to react negatively.

Such a response is troubling—and a mistake—as bullying contributes to a hostile and intimidating work environment for employees. It can also have a significant impact on an employer’s bottom line, including workers’ compensation costs. Employees who suffer from aggressive behavior in the workplace can suffer injuries, which can be physical, mental, or both. An employee may be intimidated by an employer to not report a valid work injury or be reluctant to return to a job with modified duty due to legitimate fears of harassment.

Due to the prevalence of workplace bullying, 31 states around the country are seeking to pass healthy workplace laws. These laws are designed to deter bullying in the workplace by allowing a direct cause of action against the offender, and restoration of lost wages and benefits. For instance, in Pennsylvania, the proposed Healthy Workplace Act states, “An employee may not be subjected to an abusive work environment by an employer or other employee.” It prohibits retaliation against the employee for reporting bullying while also holding both employers and other employees liable for violations of the act, and it allows for relief to the abused employee, including damages for pain and suffering, emotional distress, punitive damages, and attorney’s fees. If approved,

the act would remove workplace bullying from the workers' compensation realm, allowing for a much different remedy for employees. As of now, however, this bill has not been approved, so workplace bullying that results in injury would, in most instances, still fall under a state's Workers' Compensation Act.

A recent case in California barred a wrongful-death cause of action by the family of a worker who alleged that the worker committed suicide after experiencing workplace bullying. The wrongful-death claim against the employer and supervisor was denied because workers' compensation was the exclusive remedy. The decedent employee had worked for the employer since the early 2000s and, starting in 2002, had written numerous complaints alleging workplace violence until his death in 2015. The lawsuit alleged the decedent employee was bullied, ridiculed, and harassed at work by a number of co-workers, and his employer and supervisor failed to prevent those acts, causing his death. The employer and supervisor moved for summary judgment on the basis of their affirmative defense that the claims were barred by workers' compensation exclusivity. The trial court granted the motion, and the appellate court affirmed. Most states have similar exclusive remedy provisions.

The exclusive remedy provision is a section in most states' Workers' Compensation Acts that provides how injured workers can seek compensation from their employers after an on-the-job injury. Most situations provide that workers' compensation is the remedy, and typically bar a third-party claim seeking personal injury unless an exception attaches. In most situations, a

co-employee is similarly immune from civil actions, with similar exceptions to the employer.

In the California case, the courts held that the exclusive remedy precludes lawsuits based on employers' actions that are a normal part of the employment relationship. This includes yelling, humiliation, and the use of insults and profanities by an employer against an employee, if the conduct involved conflicts arising from the employment relationship. Accordingly, the court determined that workers' compensation was the exclusive remedy, affirming the trial court's decision to dismiss the lawsuit.

So how does workplace bullying fit into the workers' compensation system? The injuries typically result in psychological or mental injuries rather than physical injuries. There are typically three categories of mental or psychological injuries in workers' compensation:

1. Physical/mental: Involves a physical stimulus resulting in a mental injury.
2. Mental/physical: Involves a mental stimulus resulting in a physical injury.
3. Mental/mental: Involves a mental stimulus resulting in a mental injury.

Most workplace bullying involves verbal abuse of one employee by another. Accordingly, most injuries suffered by the employee would likely fall into the mental/mental category, which involves psychiatric or psychological injuries or conditions that result from a non-physical stimulus. For example, verbal harassment of employee

“A” by employee “B,” or by a supervisor, may cause employee “A” to develop fear, anxiety, depression, or other psychological issues without a physical manifestation of an injury. There is typically a higher burden of proof for these cases in terms of requiring a need to prove an abnormal working circumstance to succeed on a mental/mental injury.

Mental/physical cases are typically easier to prove, as actual physical symptoms develop as a result of the bullying, such as nausea, vomiting, and tremors. Thus, they have a lower burden than mental/mental cases and do not require an abnormal working circumstance.

Physical/mental is the most unlikely category, as it would require a physical stimulus that resulted in a mental injury. Though bullying could certainly include physical contact, it would, at that point, be considered more of an assault and the employer would likely take immediate action to terminate the employment of the aggressor in the assault, thereby lessening any psychological impact on the injured worker.

In mental/mental cases, it is difficult to determine what conduct would rise to the level of an abnormal condition in the workplace. Each individual case has to be examined based upon the specific facts involved. The employer would need to present testimony and evidence from co-workers, supervisors, or human resources to rebut the testimony and evidence presented by the injured worker who

alleges they were the victim of workplace bullying. If the injured worker can establish a pattern of bullying or verbal abuse, they are more likely to succeed.

On the other hand, if the employer can present evidence that such conduct was never reported to a supervisor or human resources, the employer will likely have a good chance of defeating the claim. In all three scenarios, an expert psychiatric evaluation should be conducted, and the expert should be provided with all information from both sides so that a well-reasoned opinion can be obtained regarding whether the claimant is truly suffering from a psychiatric or psychological injury caused by the alleged workplace bullying.

Unfortunately, unless witnessed by other employees, bullying often comes down to one employee’s word against another’s. Employees who are truly being bullied are best served by making continual complaints to supervisors or human resources so that a record is kept. Employers must be careful to not appear to trivialize an employee’s complaints and take all complaints seriously. Like school districts across the country, employers should make workplace bullying risk management a priority in an effort to avoid or mitigate employee harm and eliminate exposure to future potential claims.



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