

Workplace bullying: A clear and present danger

Ontario's Workplace Safety and Insurance Appeals Tribunal reconsiders entitlement to traumatic stress benefits

BACKGROUND

Taking no bull from bullies

EMPLOYEES who are abusive towards co-workers in the workplace, whether physically or psychologically, can be costly not only to the subjects of the abuse, but also to the employers. Productivity, workplace culture, reputation and the financial bottom line can all be affected if employees don't feel safe at work. Distraction and emotional trauma can lead to getting less done, high amounts of leave or high turnover. And, as workplace violence and bullying awareness increases in courts and legislative bodies, employers can face legal liability for bullying as well.

Employment law expert David Whitten takes a look at workplace bullying and the importance of HR departments taking proactive action to nip it in the bud before and when it becomes a problem in the workplace.

| BY DAVID WHITTEN |

ROOTING out workplace bullies and minimizing the damage they do is one of the most vexing challenges facing HR professionals today.

Abusers in the workplace are a costly menace. Bullies expose employers to law suits, lengthy and unnecessary disability claims, and higher rates of employee cynicism and absenteeism. They can also significantly erode an organization's performance by dampening productivity, teamwork and innovation.

Bullying in the workplace is often defined as the assertion of power through aggression. It is no accident, therefore, that the vast majority of abusers are in positions of authority over their victims. A U.S. study, by Brunner and Costello 2003, and Namie 2003, for example, found that 81 per cent of workplace bullies are in supervisory roles.

The goal of the abusive boss is control and self-advancement, not improv-

ing performance. According to the Canada Safety Council, bullies typically target high-potential rivals, particularly those who have the very consensus and team-building skills that they lack and which organizations need to achieve their business goals. The bottom line: When a bully strikes, organizations lose valuable human capital.

A bully's primary purpose is to discredit her victim and turn her into a low performer, and her secondary objective is to signal to others in her sphere of influence that they had better get in line or face the consequences.

Bullying can hurt recruitment and retention

Bullies also damage the ability of organizations to keep and attract talent. Why would the best and brightest want to work for an organization with a reputation for tolerating predators or being sued for constructive dismissal due to bullying? As anyone who has

experienced or witnessed workplace abuse knows, when a bully hammers someone, the word spreads like wildfire throughout the organization. And the reputational threat doesn't stop there. Victims and witnesses alike can easily use social media to spread the news far and wide that theirs is a bully-friendly workplace.

Canadian research into the extent of workplace bullying by abusive managers is meagre, but a 2010 study by the U.S.-based Workplace Bullying Institute (WBI) found that 35 per cent of American employees have been bullied, and 50 per cent say they have either experienced abuse or witnessed it.

The WBI study shows that workplaces are as toxic as ever, particularly for women. The survey found that 58 per cent of all bullying victims were female, and that women suffer most at the hands of other women. Eighty per cent of female victims say their abuser was female. Male predators are still in the majority at 62 per cent, but there is clearly no glass ceiling for bullies.

All of this underscores the need for vigilance by HR professionals, and proactive policies and programs to curb workplace abuse. Systemic action to stop bullying is not only sound HR practice, it's the law.

Here in Ontario, for example, the Occupational Health and Safety Act was amended in 2010 to address workplace harassment. Organizations with five or more employees are now obligated to educate staff on their rights and to take reasonable steps to protect them from bullies.

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CASE IN POINT: WORKPLACE BULLYING

Bullies can be skilled at appearing to obey the rules

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Specifically, the act calls on organizations to post their anti-bullying policies in a prominent place, make reasonable efforts to make employees aware of their rights and ensure anti-bullying policies are enforced.

Bullying can lead to constructive dismissal, harassment claims

It is instructive to understand how workplace harassment lawsuits are dealt with in court. Legally, charges of harassment are judged objectively. Judges base their decisions on how they think a normal person would react to the abuse described. If the complainant is deemed to have a weaker-than-average disposition, additional damages will not be forthcoming. Also, the courts typically demand documented medical evidence of psychological- or health-related injury.

The judgement process puts the clear onus on the claimant to prove that the abuse went so far beyond reasonable disciplinary action or performance management that it rendered continued employment intolerable. The claimant must also demonstrate that she suffered injury as a result of the abuse.

The victim takes the position that she was left with no choice but to resign and, as a result, is entitled to severance. This is called constructive dismissal, and damages awarded can be extensive depending on length of service and the lasting nature of the harm inflicted. If, for example, the claimant can demonstrate that her ability to find future employment has been limited by severe psychological or physical injury, long-term disability-related damages can be very expensive indeed.

From a legal perspective, workplace bullying became a much greater financial liability to employers in 2000 with the landmark decision rendered in *Shah v. Xerox Canada Ltd.* The ruling in this case marked the first time a Canadian judge recognized that someone could be bullied to the point where

it was no longer reasonable to expect him to remain in his position. The court ruled that the manager in question went so far beyond performance management as to create a poisoned work environment, and awarded substantial damages.

For HR professionals charged with the creation and maintenance of work environments that enable employees to flourish in terms of their productivity, customer service, creativity and teamwork, such scenarios are truly the stuff of nightmares.

Workplace intimidation is frequently so expertly carried out that victims are left alone and isolated with no alternative other than suffering in silence or being bullied out the door.

What makes policing bullies problematic is differentiating between reasonable discipline, a personality conflict and abuse designed to intimidate, offend, degrade or humiliate. Abusers are often careful planners who are highly skilled at appearing to operate within the rules of an organization. The behavioural patterns of bullies are well known: undervaluing the victim's work, constant criticism, public humiliation, personal insinuations and initiating criticisms from others against the victim are all common.

These behaviours may seem obvious enough, but workplace intimidation is frequently so expertly carried out that victims are left alone and isolated with no alternative other than suffering in silence or being bullied out the door.

It is the job of HR professionals to ensure that this circumstance never arises within their organization. Every employee in Canada has a legal and moral right to protection from workplace bullies. HR professionals should take great pride in their role as guardians against this corrosive form of abuse and, when necessary, act with

purpose to stamp it out.

Take proactive measures against workplace bullying

The best defence against workplace predators is a great offence, and the profession has many proven ways to deter bullies. Workplace culture assessments, 360 degree assessments and sensitivity training programs are all examples of highly effective preventive tools. Nothing will stop a bully faster than the knowledge that her employer is prepared to take swift action to discipline her if she misbehaves.

At the end of day, however, determining if the line between discipline and bullying has been crossed requires a keen eye and good judgement.

In attempting to determine if allegations of workplace bullying are justified, HR professionals should try personalizing the process by applying the Golden Rule. After carefully gathering the facts and weighing them against the organization's anti-bullying policy, one should consider how she would react to being subjected to the pattern of behaviour described. Would one be able to continue to perform the job competently, or would she find the situation intolerable? If the answer is the latter, chances are very good that the employer is dealing with a malicious bully. ■

For more information see:

■ *Shah v. Xerox Canada Ltd.*, 2000 CarswellOnt 831 (Ont. C.A.).



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