

Appropriate Responses to Workplace Bullying (part II) and Proposed “Healthy Workplace” Legislation (Assembly Bill 894)

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In last month’s column, I described:

- what constitutes bullying
- some reasons why people bully others
- how it affects most people and organizations
- actions to prevent bullying in the first place, and
- what bullying looks like and some warning signs.

As a brief review, there is not currently any legal definition of bullying, but it is generally described as “repeated, unreasonable actions of individuals (or a group) directed towards an employee (or a group of employees) which is intended to intimidate and creates a risk to the health and safety of the employee(s).”

There are many potential reasons for one person bullying another, but triggers can include a feeling of incompetence in handling his or her own job, a feeling of being threatened by a highly competent or popular colleague, a personality clash, and personal problems that make the individual feel insecure and inadequate.

Bullying can affect their “victims” by causing high levels of stress, financial problems due to absence, reduced self-esteem, musculoskeletal and neurological problems, phobias, sleep disorders, digestive problems and depression.

Preventive Actions

The best preventive actions are to create a culture of respect that will not tolerate bullying of any kind and develop a formal policy that employees can turn to if they are concerned about any inappropriate behavior.

What Else You Can Do

In addition to creating a respectful culture and developing a formal anti-bullying policy and complaint procedure, there are related actions you can and should take to address potential bullying.

Identify Potential Bullies

Certain personality traits may indicate a tendency to bully others. Potential warning signs include:

- a changeable personality – someone who can be viciously outspoken in private conversations or on social occasions, but who is “innocent and charming” in front of senior colleagues;
- someone who is excessively charming, complimentary and superficial when in front of an “audience”;
- someone who holds prejudicial views and makes regular, inappropriate jokes about issues relating to sex, disabilities or race;

- someone (often a manager) who is often very controlling of his or her team, displays “perfectionist” tendencies, and is quick to criticize others rather than acknowledging or praising their efforts.
- someone (often a manager) who is impatient and irritable when called upon to deal with personal issues or concerns of a team member;
- someone who, when called to account for an error, missed deadline, mistake or failing, immediately counter-attacks with lies and fabricated criticisms and allegations. Bullies often respond to criticism by appearing very distressed and claiming to be victims themselves in order to avoid accountability for their actions.

Employees Who Are Victims

Regain control by:

- recognizing that you are being bullied;
- realizing that you are NOT the source of the problem, and
- recognizing that bullying is about control, and is likely to have little or nothing to do with your performance.

Take action by:

- reporting your concerns to a supervisor or manager whom you trust and/or HR, if available;
- keeping a diary detailing the nature of the bullying, including dates, times, places, what was said or done and who was present.;
- obtaining copies of harassing/bullying paper trails (e.g. e-mail, etc.); hold onto copies of documents that contradict the bully’s accusations against you (e.g. time sheets, audit reports, etc.);
- using your organization’s Open Door policy, if available, to discuss your concerns with increasingly higher levels of management;
- contacting your Employee Assistance Plan (EAP) provider, if available.

Employers

Nip potential bullying in the bud by:

- creating a “Respectful Workplace” that include zero-tolerance anti-bullying provisions;
- taking complaints seriously and investigating allegations of bullying behavior IMMEDIATELY upon being witnessed or reported;
- educating all employees on the “Respectful Workplace” policy and the anti-bullying provisions and encouraging reporting;
- ensure management has active involvement in the staff they supervise rather than being far removed from them;
- encourage Open Door policies;
- improve management’s ability and sensitivity towards dealing with conflict;
- establish an independent contact (e.g. HR or third-party) for employees, and
- have a demonstrated commitment “from the top” about what is and is not acceptable behavior.

Assembly Bill 894 – The Healthy Workplace Bill

Since 2003, 17 states have introduced proposals to allow legal remedies for workplace bullying, but none have passed, according to the office of Rep. Kelda Roys, a sponsor of the Wisconsin legislation. The legislation was *not* brought out of the Assembly Labor Committee this past April for further debate during the 2010 session. If it eventually passes in some future form, Wisconsin could become the first state to pass a law allowing employees to file suit in circuit court against an employer for workplace bullying.

Currently, workers' compensation (W/C) is typically the exclusive remedy for an employee with such a claim against an employer. But AB 894 provides that an employee would be able to sue over an abusive work environment and potentially recover medical expenses, back pay, front pay, compensation for emotional distress, punitive damages and attorneys' fees.

Mixed Response from Plaintiff's and Defense Lawyers

Plaintiff's Lawyers

According to a recent article by Jack Zemlicka, a Legal Journalist writing in the Wisconsin Law Journal, plaintiff's lawyers quoted in the article view the proposed law as closing a loophole in the law by "providing a way to make employers accountable and provide a legal remedy for those employees who would otherwise have no remedy at law or legal recourse" and a "gap filler" for those employees who do not fall into a protected category.

Defense Lawyers

There seem to be more concerns by defense lawyers over the proposed legislation. One defense attorney quoted in the article suggested "the law would make employers targets for litigation." He questioned the rationale of allowing employees to bring an action in circuit court versus going through an administrative process, which is the standard for other employment discrimination claims. While the law would prohibit an employee from recovering damages through both a W/C claim and a lawsuit (since the plaintiff must choose one or the other), there is still some possibility for overlap.

For example, in a constructive discharge case, an employer might have to fight allegations on multiple fronts if an employee fights a claim with the Equal Rights Division (ERD), but also brings a lawsuit in state court claiming workplace abuse. The plaintiff could not "double-dip" on damages, but the employer would have to defend both the administrative claim over the discharge and the lawsuit over the atmosphere at work. The concern is that the bill would create "multiple avenues and battling on multiple fronts."

Another concern of some defense attorneys is that the legislation could encourage "spite suits" from employees who may be unhappy, but not necessarily victims, of workplace abuse. Currently, an individual seeking to file an administrative claim with the ERD must do so within 300 days of the incident in question or the claim is barred.

The proposed law would require that suits be filed within one year “after the last act constituting the unlawful employment practice occurred”, but it does not limit how far back a plaintiff can then look. The concern is that claimants could sit on claims, let them accrue and then file lawsuits against an employer.

These potential concerns could be moot if the bill is not brought out of the Assembly Labor Committee for consideration by the Assembly in its 2011 session.