



Bullying In the Workplace: Employers Must Be Prepared for Change

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When we think of bullying we often think of a lunch money shakedown or of mean girl middle school antics. Bullying is a prevalent topic of conversation in the legal world particularly in the context of schools and school system liability. We most often associate the term “bullying” with children especially now that torment in the classroom can follow a child home and stay with him 24 hours a day via social media. What happens, however, when bullying behaviors leave the playground and enter the workplace?

According to anti-bullying advocates, well over a quarter of employees report some form of bullying at work and as many as half of employees have witnessed bullying.¹ Adults are now calling for law which protect from bullying behavior in the workplace, and the movement is gaining traction across the country. Is your company ready to defend against anti-bullying lawsuits? We can help you prepare.

The Law Today

The law currently does not protect employees from bullying harassment which is not based on a protected trait such as gender or race. Title VII, the Age Discrimination in Employment Act, and the Americans with Disabilities Act protect workers against harassment on the basis of protected characteristics. The law as it is applied now does not protect against general nasty behavior at work. As the Supreme Court famously said in an employment law case, “Title VII is not a civility code.” While that may be true, the proposal of anti-bullying legislation is a reality in over half the states. Many people believe bullying is an issue reserved for childhood and find the prospect of an anti-bullying law unlikely. Forward thinking employers, however, know that the climate around this issue is changing and that such a law is a very real possibility. Employers must be prepared to understand and comply with an anti-bullying law in their state and even someday at the federal level.

Proposed Workplace Civility Legislation

Across the country, 31 legislatures have introduced versions of a law referred to as the “Healthy Workplace Bill” or “HWB.” Three more states have introduced similar legislation. In Pennsylvania, the HWB was introduced in the House during the 2013-14 session. In New Jersey, the HWB was introduced in five separate years and has been introduced every year since 2010. New Jersey employers should especially be prepared for the passage of this law and ready to respond to potential lawsuits arising from this law’s enactment. While the HWB is not law in any state at this time, an increase in introductions and the continued acceleration of the anti-bullying movement, employers should expect to see a law allowing a cause of action for workplace bullying in the near future.

The HWB describes bullying as health-harming mistreatment of another person in the form of verbal abuse, offensive conduct and behaviors which are threatening, humiliating, or

¹“Why Is Workplace Bullying a Problem?”, [HealthyWorkplaceBill.org](http://www.healthyworkplacebill.org/problem.php#problem), available at <http://www.healthyworkplacebill.org/problem.php#problem>.

intimidating, and work interference or sabotage which prevents productivity. The HWB purports to set a high bar for an employee to be able to bring a lawsuit. The proposed law also states that employers can protect themselves from liability by maintaining an appropriate complaint procedure.

Unlike its predecessor anti-discrimination laws, the HWB does not require an employee to proceed through the administrative level by presenting a case to the Equal Opportunity Employment Commission or its state affiliate. Should the law pass, an employee will be able to proceed directly to court and bring a costly action necessitating motions and discovery and extensive legal fees for the employer regardless of the merits of the case. The law, however necessary to improve workplace stability and productivity, will inevitably lead to an uptick in legal action against employers and they must be ready for those new demands.

Employer Preparedness

What then can an employer do to create best practices for preventing and addressing potential bullying claims going forward? Fortunately, many current employer practices can be tailored to this new legal landscape.

Employers should start now in developing anti-bullying policies to compliment existing anti-discrimination, harassment, and retaliation policies. Employers should also design and provide anti-bullying training for current and new employees so that all are aware of the anti-bullying policy.

Companies must make clear to employees that bullying will not be tolerated and set forth a transparent and accessible complaint procedure for employees to use in reporting inappropriate conduct. Employers must be as vigilant in investigating bullying allegations as they are in investigating claims of sexual harassment or other employee misconduct. Each complaint should be documented, each investigation effort recorded, and each employee found in violation of the policy disciplined. Every effort should be made to ensure that employee's complaints are addressed thoroughly and in a timely fashion. Employee personnel files should be diligently maintained and all complaints and investigations noted in the file. Should an employer later be sued, all necessary paperwork for setting forth a defense will already be in place.

There are many positive aspects to a bullying-free workplace and this may soon be made a reality in all workplaces through the passage of an workplace anti-bullying law. Employers must be ready to make that reality possible while minimizing legal risk by setting forth straightforward policies and procedures of which all employees are made aware and then following through.



Laurel Gaither Grbach's practice concentrates on employment law and litigation. Laurel's practice focuses on representation of employers in a variety of litigation matters including sexual harassment, race, national origin, disability and age discrimination cases as well as other state law and constitutional claims. She also counsels employers on matters involving workplace discrimination, employment policies, employment contracts, wage payment, Family Medical Leave Act, WARN, whistleblowing, and employee benefit issues.