

EMPLOYMENT LAW FOCUS

Workplace Bullying Tricky to Address

Claims of bullying in the workplace are not uncommon, but what should an employer do when a bullying claim is made?

In a research study published in 2010, 17.8 per cent of New Zealand employees claimed to have been the victims of bullying in the workplace.

The international range in this study was between 5 per cent and 20 per cent, indicating New Zealand had one of the highest rates in the world.

Dealing with bullies in the workplace is a complex and delicate problem, but one that employers would be unwise to throw into the "too hard basket".

Failure to investigate or take action when allegations of workplace bullying arise has seen some employers on the proverbial hiding to nothing if the victim raises a personal grievance and proceeds to the Employment Relations Authority. An employer's legal obligation to address bullying allegations arises under the Health and Safety in Employment Act 1992 where stress is identified as a workplace hazard and stress is a likely outcome for a bullying victim.

If complaints are ignored, the employer is failing

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to take all practicable steps to ensure a safe workplace environment.

However, investigating matters can be problematic. First, victims may lay a complaint but be reluctant to have their name disclosed for fear of increased retaliation. One of the principles of natural justice is that the accused gets all the information relevant to the allegations and that includes who has made the complaint and when the alleged incidents occurred.

Even where a victim is prepared to disclose their name, it can be difficult to get concrete evidence.

An effective bullying strategy is to isolate their victim even further by being particularly nice to those around them. This ensures that the victim's isolation is more keenly felt while conveniently providing the bully with numerous witnesses who, if interviewed, vouch for the bully as a "stand up" person.

There may further be a sense of relief for those around the victim that they are not targeted, but may become so if they say anything unfavourable.

While there is no legal definition of what constitutes bullying, the relevant ERA cases indicate that the conduct complained of needs to be repeated (not a one-off event) and includes any action intended to cause fear and distress such as threats or action designed to gain power and dominance over another.

Employers should always investigate allegations in a procedurally fair manner and inform the complainant of the outcome and any action that will be taken.

For further information on dealing with bullying in the workplace please contact:

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