



Bullying and Harassment in the Workplace

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Housekeeping

This webinar presentation, speaker notes and recording will be uploaded to the AMIC Members Only Portal



Bullying and Harassment

Introduction

- Definition of Bullying and Harassment,
- Framework to eliminate or reduce,
- Consequences,
- Relevant Legislation,
- Investigating Bullying and Harassment in the Workplace.



Bullying and Harassment

Questions

Q. Have you dealt with a case of Bullying or Harassment in your workplace?



Bullying and Harassment

Preventing or reducing

- Company culture-modelling for zero tolerance,
- Pro-active resolution,
- Training,
- Policies,
- Procedures,
- Open communication.



Bullying and Harassment

Key indicators and implications

- Increased absenteeism,
- Replacement staff - short and long term,
- Lost productivity,
- Workers Compensation – increased premiums,
- Disputation,
- Damage to business reputation.



Bullying and Harassment

Definition of Bullying

“Repeated unreasonable behaviour towards another person or group which creates a risk to health and safety.”

Fair Work Act 2009 Part 6 – 4B



Bullying and Harassment Legislation

Bullying:

Fair Work Act 2009.

- PART 6-4B Workers Bullied at Work Cl. 789FA – 789FL,
- Application for a FWC order to stop bullying Cl.789FC.



Bullying and Harassment

Definition of Harassment

Harassment:

Targets a characteristic of a person or a group of people with the same or similar characteristics,

- Discrimination is at the core of harassment,
- The characteristics are collectively called Protected Attributes,
- Numerous legislations against Harassment/Discrimination,
- May be a one of incident.



Bullying and Harassment

Definition of Harassment

Under discrimination law, it is unlawful to treat a person less favourably based on protected attributes such as:

- A person's sex, or sexual preference,
- Race,
- Disability,
- Age, or
- Religion.



Bullying and Harassment Legislation

Harassment – Discrimination

Each of the following is an anti-discrimination law:

- Federal Age Discrimination Act 2004,
- Federal Disability Discrimination Act 1992,
- Federal Racial Discrimination Act 1975,
- Federal Sex Discrimination Act 1984,
- Anti-Discrimination Act 1977 - New South Wales,
- Equal Opportunity Act 2010 -Victoria,
- Anti-Discrimination Act 1991 - Queensland,
- Equal Opportunity Act 1984 - Western Australia,
- Equal Opportunity Act 1984 - South Australia,
- Anti-Discrimination Act 1998 - Tasmania,
- Discrimination Act 1991 - Australian Capital Territory,
- Anti-Discrimination Act of - Northern Territory.



Bullying and Harassment

Consequences

- Creates a divisive working environment,
- Increase in staff absenteeism and turnover,
- Lost productivity,
- May result in episodes of workplace violence,
- An increase in Workers Compensation claims,
- Loss of Business reputation,
- Legal costs of disputation and litigation.



Bullying and Harassment

Age related

The Bullying and Harassment of a person under the age of 16 years may be considered Child Abuse under your State or Territory Child Protection Legislation.



Bullying and Harassment

Age related legislation

- ACT: Children and Young People Act 2008 (ACT)
- NSW: Children and Young Persons (Care and Protection) Act 1998 (NSW)
- NT: Care and Protection of Children Act 2007 (NT)
- QLD: Child Protection Act 1999 (Qld)
- Tas: Children, Young Persons and their Families Act 1997 (Tas.)
- SA: Children's Protection Act 1993 (SA)
- Vic: Children, Youth and Families Act 2005 (Vic.)
- WA: Children and Community Services Act 2004 (WA)



Bullying and Harassment

Summary

- Eliminating or reducing,
- Definitions,
- Relevant legislation,
- Consequences,
- Employees under 16 years of age.





Bullying and Harassment **INVESTIGATION**

Bullying and Harassment

Why investigate?

Your duty of care and reducing disputation



Bullying and Harassment

The complaint

Yunez has provided a verbal complaint about a colleague, Joe. She alleges that Joe has:

- Said in front of colleagues that Yunez food smells weird and looks like dog food, has offered her a pork roll,
- Tried to get other staff to join in which they sometimes do,
- Belittles Yunez in front of other staff,
- Says she is slow and that he is always fixing her mistakes,
- Tells her to "go back where you came from" if she does not like his jokes

Other colleagues have supported Yunez and told Joe to stop but he has refused.



Bullying and Harassment

Background

Yunez is:

- A single mother,
- A recent immigrant - 9 months,
- A war refugee,
- A Muslim,
- English is a second language.



Bullying and Harassment

Investigation

Complaint in Writing

- Gives the complainant time to clarify the points and make the complaint chronological and succinct,
- Provides ownership of the complaint,
- Allows for a better understanding,
- Provides consistency to the complaint.



Bullying and Harassment Investigation

An investigation has 3 stages:

Stage 1: Receiving the complaint and determining its merits,

Stage 2: Interviewing all parties involved in the complaint,

Stage 3: Determine if company policy has been breached and the level of disciplinary action proportionate to the breach(s).



Bullying and Harassment

Stage 1: Clarify and confirm

- Determined the key points of the complaint,
- Has there been a breach of company policy and procedures?
- Does the issue appear serious?
- Does the complaint warrant an investigation? Internal or External
- How will staff be supported during the investigation? For example can they be relocated or suspended on pay?
- How will the company ensure confidentiality? Limit the staff involved,
- Inform the accused verbally and in writing.



Bullying and Harassment

Stage 2: Interviews

1. Ask open ended questions for example what did you see and hear? Were others involved?
2. Listen (a lot) and notes - consider recording,
3. Let them tell their account with few interruptions,
4. Ask specific questions and seek confirmation after they have finished their first account,
5. Be cautious of influencing the witnesses account,
6. Avoid assumptions – maintain confidentiality,
7. Interview the accused last. Why?



Bullying and Harassment

Stage 3: Conclusion

1. Compare investigation findings to company policy and procedures,
2. Are the allegations, unsubstantiated, partly or wholly substantiated. Write a report.
3. Provide the report to the decision maker to determine if and what disciplinary action will occur. Impartiality.



Bullying and Harassment

The outcome

Factors to consider:

1. Take into consideration the complaine's previous performance,
2. Consider any extenuating circumstances,
3. Is the employee contrite?
4. Inform the complaine at a meeting and in writing, the findings and the disciplinary action to be taken.

Confidentiality: The complainant has a right to know the outcome but NOT the disciplinary action to be taken.



Bullying and Harassment

Actions

Place on the employee's file:

1. A caution,
2. Training,
3. Temporary or Permanent Demotion,
4. A transfer, (must be reasonable)
5. Letter of Warning,
6. Termination.



Bullying and Harassment

Summary

1. Duty of care to all employees,
2. Complaint in writing,
3. Clarify and Confirm,
4. Interviews,
5. Outcome,
6. Action(s).





Questions

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