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WORKPLACE BULLYING/HARASSMENT/INTIMIDATION

Frequently Asked Questions | National HR Council, July 2018

Overview

It's no secret that we are at a critical inflection point in today's workplace, as headline after headline speaks to yet another executive departure due to bad behavior regarding workplace bullying, harassment, and intimidation. Bullying is a core underpinning of harassment and intimidation.

Most of us know about physical bullying: threats, intimidation, hitting, shoving, and tripping, But what about emotional bullying: humiliation, gossiping, exclusion, sabotage, and isolation? This is the kind of bullying that shows up most often in the workplace. We can't see it, but, we can feel it.

But how does emotional bullying start? It starts with workplace incivility: rude, disrespectful, and inappropriate behavior that creates an environment that allows emotional bullying to thrive. This behavior can and often progresses to harassment and intimidation.

The 2017 U.S. Workplace Bullying Survey, conducted by the Workplace Bullying Institute, revealed alarming statistics. The study also uncovered disturbing statistics on the intersectionality of gender and race in incidents of bullying across the U.S. You can access the full survey [here](#):

Below, are key statistics on current workplace bullying trends in the U.S.:

- 63% of Americans are aware of abusive conduct in the workplace
- 19% of Americans are bullied at work
- 19% witness bullying
- 70% of bullies are managers
- 66% of targets are women
- 39% of Hispanics are affected by bullying¹
- 43% of African-Americans are affected by bullying

WORKPLACE BULLYING/ HARASSMENT/INTIMIDATION FREQUENTLY ASKED QUESTIONS

Q1. What is the official definition of workplace bullying?

The Workplace Bullying Institute defines workplace bullying as repeated mistreatment of an employee by one or more employees, by one or more perpetrators. It includes, but is not limited to, abusive conduct that is: threatening, humiliating, or intimidating; work interference/sabotage; or verbal abuse.

Q2. What are some examples of workplace bullying behavior?

Bullying can be obvious like screaming, cursing at someone in private, or humiliating someone in public. It can also be very subtle, such as purposeful inaction (passive-aggressive behavior) or workplace sabotage. Specific examples of this would be repeated refusal to meet or speak to a coworker or an employee when that person has a reasonable expectation of a meeting with you or speaking to you. It can be physical intimidation, such as a gesture or expressions (e.g., cold glares, stares, and sneers). Standing too close to someone can also be considered bullying. It can also be hidden from the intended target of the bully. For instance, spreading rumors or gossip to damage someone's reputation behind their back is recognized as bullying. Gossiping and spreading rumors are considered a form of verbal bullying, but it may not be known to the victim. It is intended to hurt someone, and it does, whether they know it or not.

Q3. Is there a law against workplace bullying?

No. Unfortunately, workplace bullying *per se* is not illegal, unless it crosses the line into creating a hostile work environment or becomes part of harassment, both of which are unlawful. The boundary between legal and illegal behavior is sensitive, which only serves to highlight the need for preventive measures for workplace bullying. Bullying is legal in every U.S. state, which makes it all the more important that agency leadership play an effective role in explaining expected conduct. Nearly 30 states and two territories have introduced some version of the anti-bullying legislation called the Healthy Workplace Bill. Its current status can be found at [the Healthy Workplace Campaign website](#).

Q4. Should you have a specific workplace bullying policy or can it be part of a larger workplace policy, such as an Anti-Harassment or Workplace Conduct policy?

Most companies embed workplace bullying policies into broader policies regarding anti-harassment, which typically describes varying forms of harassment behavior that create a hostile work environment. 4A's strongly recommends that agencies create stand-alone policies for the following:

- Workplace Anti-Bullying (see sample policy on page 9)
- Workplace Civility and Respect (see sample policy [here](#))
- Workplace Anti-Harassment

Q5. What are the key components of an effective workplace bullying/harassment/intimidation policy?

A strong anti-bullying/harassment/intimidation policy will set the tone for the behaviors that create the agency culture and will include detailed information regarding unacceptable behavior and consequences. It will also take into account the responsibility of management and staff in reporting such incidents and the procedure and process for investigation of formal complaints. Further, it should explicitly set forth the agency's policy against retaliation among those who complain about or participate in investigations or procedures involving workplace harassment and bullying. It is important to note that many states and localities have passed legislation that legally prescribes certain elements to such policies. Agencies should be mindful of any components that are required under state or local laws, regulations, or codes.

Because each case is unique, HR agency leadership may want to consider a tiered approach to managing these types of workplace incidents (i.e., direct approach, intermediary, and formal complaint). Additionally, consider including a process to manage behavior that does not rise to formal action, but clearly demonstrates behavior that can be a pathway to egregious behavior (i.e., coaching).

Every complaint should be considered and investigated seriously, but different circumstances may call for different remedial action. Agencies should work with their counsel to create proper mechanisms for these evaluations. Below, are suggested key elements of a policy:

1. Agency Management Commitment
2. Management/Staff Responsibility
3. Bystander Responsibility
4. Complaint Procedure
5. Investigation/Resolution Process
6. Anti-Retaliation Provision
7. Examples of Unacceptable/Inappropriate Behavior

Q6. What is the difference between incivility and bullying?

Incivility is distinguished from bullying in that incivility is subtle and ambiguous in intent to harm; that is, it's hard to put a finger on incivility. Bullying is repeated and shows a pattern of abuse.

Q7. How is workplace bullying different than harassment?

Bullying certainly looks and feels like harassment. It is harassing, as commonly defined as systematic, severe, pervasive, and continued actions which include threats and demands; and which create a hostile situation by uninvited and unwelcome verbal or physical conduct. But at work, harassment is a special term. Often, workplace harassment connotes, for example, sexual misconduct or a hostile work environment. State and federal civil rights laws are designed to protect workers from discriminatory, harassing, or disparate treatment. Certain individuals who are members of protected groups of people may assert a claim of harassment against their employers. The types and numbers of protected groups in different localities vary and are dictated by federal, state, and local law. A complaint of harassment and/or discrimination should be addressed through the appropriate procedure. Illegal discriminatory harassment occurs in only 20% of bullying cases. That means that 80% of bullying may not rise to the level of a legal claim! 61% of bullying occurs within the same gender. Women bullies often target other women in 80% of cases, and it is completely legal unless race, age, or another status group membership characteristic can be claimed.

Q8. How do you determine if an incident(s) constitutes workplace bullying?

Use the reasonable person standard rule. In other words, would a reasonable person find the behavior severe enough to create an uncomfortable work environment or is the behavior demeaning, insulting, intimidating, or work sabotage?

Q9. What steps should HR/talent leaders take to ensure their agency is adequately implementing prevention and intervention strategies that effectively manage and remediate incidents of workplace bullying/harassment/intimidation?

1. Implement and widely communicate a zero tolerance bullying/harassment/intimidation policy. These policies should be easily accessible and ascertainable by all employees.
2. Provide company-wide interactive training that includes specific examples of unacceptable behavior, situational role-playing, a review of company policies, and ways to mitigate these behaviors directly pursuant to company policy.
3. Address the role of the bystander intervention.
4. Provide a step-by-step guide to the complaint/grievance process.
5. Make it clear to whom employees should report complaints (this should typically be one person, and is commonly their immediate supervisor, unless the employee feels uncomfortable going to the immediate supervisor).
6. Provide official training for HR on how to conduct legally compliant workplace investigations to include:
 - Who to interview and appropriate questions to ask
 - Importance of accurate information
 - How to correctly document an incident
 - How to correctly identify volatile behavior
 - Remedial actions
7. Ensure neutrality and potential bias does not seep into investigations.
8. Hold all employees at all levels accountable for bad behavior with no exceptions.
9. Collaborate with the leadership and staff to implement guiding principles, codes of conduct, core values, and standards of behavior.

Q10. What training should you provide to staff?

Along with mandatory Harassment/Sexual Harassment/Discrimination training, we suggest all new hires receive the additional training listed below within 30 to 60 days of hire.

- Workplace Civility Training
- Anti-Bullying & Bystander Training

Existing staff should be provided training every year and be required to provide signed acknowledgement of training and receipt of policy. Please note that certain states and localities require specific content and frequency for such training. All agencies should be aware of these requirements and consult with counsel on how to properly conduct the training.

Q11. What training should you provide to management?

Some states have legislation requiring training for all employees, including management; for example, California and now New York. Per new legislation, training must be interactive and should include varying examples of inappropriate behavior, how to recognize unacceptable behavior, leader/manager responsibility to stop inappropriate behavior, and ways to handle these situations and company liability for management negligence. The content of such training varies by state and locality, and all agencies should be aware of what is required of them and consult with counsel to conduct compliant training.

Q12. How do HR/talent leaders gain support from their executive leadership team in creating a workplace that is free from bullying/harassment/intimidation?

To gain support and buy-in from the CEO, leadership, and managers, HR/talent leads should provide education and awareness to the entire leadership team about Vicarious Liability. *Vicarious liability, in the context of the workplace, means that an employer can be liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment.* Many employers are unaware that they can be liable for a range of actions committed by their employees in the course of their employment - these can include bullying and harassment, violent or discriminatory acts, or even libel and breach of copyright.

It's also possible to take action against an employer for the behavior of third parties, such as clients, customers, and consultants, provided these parties are deemed to be under the control of the employer.

Q13. What can the CEO do to hold leadership accountable for creating and sustaining a workplace culture that is free from bullying/harassment/intimidation?

Best practices indicate that CEOs enforce a zero tolerance policy for any instance of bullying/harassment/intimidation and serve as a role model for behavior that create a culture of workplace civility and respect.

The CEO should set clear expectations for acceptable behavior and clear consequences for inappropriate behavior regardless of the employee's role in the company, including executive leadership. Management and supervisors are not immune from discipline for failure to act on a complaint of harassment.

The CEO and agency leadership should attend mandated training to learn how to recognize the behaviors that lead to bullying, harassment, and intimidation, how to respond, and how to take action to remediate. Agency leadership should also learn what it means to model the right workplace behaviors that support a healthy and respectful workplace.

The 4A's has produced the Workplace Bullying/Harassment/Intimidation Frequently Asked Questions to help guide our member agencies on how to create workplace policies that stop bad behaviors and create healthy workplaces that allow all employees of all differences to thrive.

Thank You!
4A's National HR Council

SAMPLE WORKPLACE ANTI-BULLYING POLICY²

Disclaimer

This policy template is meant to provide general guidelines and should be used as a reference. It may not take into account all relevant local, state, and federal laws and is not a legal document. Neither the authors nor 4A's will assume any legal liability that may rise from the use of this policy.

Note

Below, is a sample workplace bullying policy that applies to all employees, including supervisors, managers, and company executives. It defines bullying and provides examples of behavior that would be a violation of the policy.

The sample policy is for consideration purposes only. It can be adopted by your agency or used to complement an existing policy. Agencies should be aware of their specific workplace needs. You should consult with your legal counsel to determine the best policy for your agency.

Agency Management Commitment

It is the commitment of this company and its management to ensure this place of work is free from bullying, harassment, and intimidation, and that the environment is aimed at providing high quality products and services in an atmosphere of respect, collaboration, openness, safety, and equality.

All employees have the right to be treated with dignity and respect.
(Terms are used interchangeably throughout this policy.)

All complaints of workplace bullying/harassment/intimidation will be taken seriously and followed through to resolution, and employees who file complaints will not be subject to retaliation for reporting inappropriate behavior or participating in an investigation or procedure regarding harassment.

Purpose

The purpose of this policy is to communicate to all employees, including supervisors, managers, and executives, that [Agency Name] will not in any instance tolerate bullying behavior. Employees, including supervisors, found in violation of this policy will be disciplined, up to and including termination.

Definition

[Agency Name] defines workplace bullying as repeated mistreatment of an employee by one or more employees including, but not limited to, abusive conduct that is threatening, humiliating, or intimidating, work interference/sabotage, or physical/verbal abuse.

Types of Bullying Defined

Bullying may be intentional or unintentional. However, it must be noted that when an allegation of bullying is made, the intention of the alleged bully is irrelevant, and will not be given consideration. As in sexual harassment/discrimination, it is the effect of the behavior on the individual that is important. [Agency Name] considers the following types of behavior examples of bullying:

- **Verbal bullying:** Slandering, ridiculing or maligning a person or his or her family; persistent name-calling that is hurtful, insulting, or humiliating; using a person as a target of jokes; abusive and offensive remark
- **Physical bullying:** Pushing, shoving, kicking, poking, tripping, assault or threat of physical assault, damage to a person's work area or property
- **Gesture bullying:** Nonverbal threatening gestures; glances that can convey threatening messages/meaning
- **Exclusion:** Socially or physically excluding or disregarding a person in work-related activities

Unacceptable Behaviors Defined

In addition, the following examples may constitute or contribute to evidence of bullying in the workplace:

- Persistent singling out of one person
- Shouting or raising voice at an individual in public or in private
- Using verbal or obscene gestures
- Not allowing the person to speak or express himself or herself (i.e., ignoring or interrupting)
- Personal insults and use of offensive nicknames
- Public humiliation in any form
- Constant criticism on matters unrelated or minimally related to the person's job performance or description
- Ignoring or interrupting an individual at meetings
- Public reprimands
- Repeatedly accusing someone of errors that cannot be documented
- Deliberately interfering with mail and other communications
- Spreading rumors and gossip regarding individuals
- Encouraging others to disregard a supervisor's instructions
- Manipulating the ability of someone to do his or her work (e.g., overloading, under loading, withholding information, assigning meaningless tasks, setting deadlines that cannot be met, giving deliberately ambiguous instructions)
- Inflicting menial tasks not in keeping with the normal responsibilities of the job
- Taking credit for another person's ideas
- Deliberately excluding an individual or isolating him or her from work-related activities, such as meetings, team communications, and work-related social activities
- Unwanted physical contact, physical abuse or threats of abuse to an individual or an individual's property (defacing or marking up property)

Management Responsibility

Management and others in positions of authority and workplace representatives have a particular responsibility to identify any workplace bullying, intervene, and address their observations or received complaints expeditiously. Managers must be aware of, and utilize, the complaint and notification process contained in the policy to inform the appropriate person about any incidents. Management will:

- Promote awareness of the policy and complaint procedures
- Be vigilant for signs of workplace bullying at work through observation and information seeking, and take action to resolve the behavior before it escalates
- Deal sensitively with employees involved in a complaint, whether as complainant or alleged aggressor
- Explain the procedures to be followed if a complaint of workplace bullying is made
- Ensure that an employee making a complaint is not subject to retaliation for doing so, and seek resolution of such behavior if it occurs
- Monitor and follow up the situation after a complaint is made so as to prevent recurrence of the behavior.

Employee/Bystander Responsibility

Employees can contribute to achieving a work environment that does not tolerate bullying. Employees should report what they see in the workplace as it relates to bullying behaviors defined as unacceptable.

Employees should also cooperate with preventive measures introduced by management, and recognize that a finding of bullying behaviors at work will be dealt with through appropriate disciplinary procedures. Equally, a finding of vexatious complaints will also be dealt with through appropriate disciplinary procedures.

Training Programs

As part of its commitment to encouraging positive and healthy behaviors, the company has established training programs for all employees and managers. Training is included as part of the new hire orientation, and thereafter annually as scheduled by the company. Training will identify factors which contribute to a bully-free environment, familiarize participants with responsibilities under this policy, and provide steps to overcoming a bullying incident, including filing an adequate and informed report to the appropriate party.

Process for Investigation of Complaints

The aim and objectives of a formal complaint process include a prompt and thorough investigation of negative, aggressive, and inappropriate behaviors, allegations, potential collection of documentation from all parties involved, and resolution in a timely manner. Resolution will include any number and combination of possibilities, depending upon the outcome of the complaint process (e.g., training, disciplinary actions, transfer of employees involved, possibly termination, etc.).

Any employee or manager seeking to file a complaint against an alleged aggressor should take special care to ensure the complaint is confined to and consists of precise details of each incident of negative, aggressive, and inappropriate behaviors, including dates, times, locations, and any witnesses. Formal complaints should be filed with your manager, or, in the instance where an employee is uncomfortable filing such complaint with his or her manager, with Human Resources, and can be documented orally or in writing.

The person complained against will be notified by HR that an allegation has been made against him or her, and assured of the organization's presumption of innocence at this juncture.

Human Resources will act as an investigator, unless otherwise specified by management. The objective of the investigation is to ascertain whether or not the behaviors complained of rise to the level of actionable conduct, and therefore will include interviewing the alleged victim and perpetrator, witnesses, managers, and any other party that may be involved with or had witness to the alleged behaviors. All interviews will be documented in writing in order to maintain clarity throughout the investigation. The investigation will be conducted thoroughly, objectively, with sensitivity and confidentiality to the extent possible, and with due respect for the rights of both the complainant and the alleged perpetrator. The investigation will be completed as quickly as possible.

Upon completion of the investigation, the investigator will notify the parties of his or her conclusions.

The employer will decide in light of the investigator's conclusions what, if any, action will be taken. HR will inform the complainant and the person complained against in writing of the action plan, and each will have the opportunity to appeal the report and/or the action plan. Appeals should include a detailed outline of the reason for the appeal in writing, and should be submitted to and heard by another party that did not participate in the initial report or investigation as designated by management.

Where a complaint has been upheld, management will follow appropriate disciplinary procedures and decide what action in regards to the complaint is necessary. The employer will continue to keep the situation under review, and may provide counseling for the complainant where appropriate.

Preventive measures will also be taken to ensure elimination of the hazard in the future and reduce effects of the prior exposure.

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