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WORKPLACE BULLYING: WHAT IT IS AND WHAT TO DO ABOUT IT

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Introduction

They aren't someone else's problem; the senior partner who goes through six assistants per year; the corporate executive who snarls at her subordinate in front of a client; the manager whose employees seem to always be in tears; the physician known for terrorizing nurses and staff members. You know these people, and if you are an employment attorney or a human resources professional, you know the toll they can take on an organization and its people. You also know that it is very difficult to effectively address some of these problem employees and leaders. Most workplace bullies are smart, successful and worthy adversaries; their contributions and talents are unmistakable, and they have a way of creating an enduring impression that without them, the firm, company or clinic would fall to pieces. For years, European, British, Australian and Canadian employers have been bound by statute to prevent workplace bullying in the same manner Title VII has prohibited harassment and discrimination in the US. The problem of non-discriminatory bullying, or bullying insufficient to meet the standards of Title VII however, has only been on the American agenda for a decade, despite the fact that by some estimates 35-50 percent of American workers have experienced bullying behavior in the workplace¹. This article will summarize the problem, its effects, emerging legal approaches and effective employer strategies for dealing with the problem.

What is Workplace Bullying?

Workplace bullying is defined in many ways, depending upon the context. While the legal definition for purposes of pending legislation is being crafted to parallel Title VII descriptions of protected class harassment (see later section on legal issues), the most oft-cited working definition is:

“...the repeated malicious, health-endangering mistreatment of one employee (the target) by one or more employees (the bully, bullies). The mistreatment is psychological violence, a mix of verbal and strategic assaults to prevent the target from performing well. It is illegitimate conduct in that it prevents work getting done. Thus an employer's legitimate business interests are not met.”² Recently, to provide greater guidance in separating true bullying from one-off or isolated bad behavior, Britain adopted definitional criterion stating that bullying occurs when the conduct is persistent and frequent, lasting more than six months and occurring at least once a week.³ Persistence is the most damaging part of bullying, because it is corrosive, and wears down support systems, resistance, attempts to use positive conflict management skills, and coping mechanisms.

¹ Lutgen-Sandvik, P., Tracy, S. J., & Alberts, J. K. (in-press). Burned by bullying in the American workplace: Prevalence, perception, degree, and impact. *Journal of Management Studies*.

² Namie, Gary; *The Bully at Work: What You Can Do to Stop the Hurt and Reclaim Your Dignity on the Job*; Sourcebooks, Naperville, IL, 2003

³ Montalbán, F. Manuel and Durán, Maria Auxiliadora, *Mobbing: A Cultural Approach of Conflict in Work Organizations* (June 1, 2005). IACM 18th Annual Conference. Available at SSRN: <http://ssrn.com/abstract=735105>

The Manifestation of Workplace Bullying:

Workplace bullying occurs in a wide variety of settings. It is particularly prevalent in the professions, where focusing on individual contributions and competitiveness are so integrated into the culture that individuals may become inured to conduct that would be considered unacceptable or abusive in other, more team-based or collaborative professional settings. The lawyer, physician, shareholder, financial advisor and highly compensated sales professional's stereotype of the brilliant-but-volatile producer is just a shade away from a bully who does harm to organizations and employees. Academia, too is a typical incubator of bullying, with the protective shields of academic freedom and tenure often creating a sense of entitlement, even when contrary to ethical or institutional codes. It must be emphasized, however that no workplace is immune from bullying and bullies can be found at every pay grade.

Bullies are effective because they tend to bully along power lines, and sustain productive relationships with superiors and clients. Because their bullying behavior is subtle, hidden, or both, the extent of their abusiveness is only seen by those targeted, or tremulous witnesses who do what is necessary to avoid becoming a target. When the bullying is brought to the attention of superiors or human resources, it is not unusual for the complainant to be told the bully's "bark is worse than his/her bite" or "You just need to stand up to him/her," amplifying the helplessness of the complainant. Most targets believe that upper level leaders are aware of the bullying and don't intend to address it.

Gender: Bullies are both women and men. Women comprise 58 percent of those found to be bullying, while men represent 42 percent. Research also shows that when the targeted person is a woman, she is bullied by a woman in 63 percent of cases; when the target is male, he is bullied by a man in 62 percent of incidents. Overall, women comprise the majority of bullied people (80 percent)⁴. Female bullies tend to use covert techniques, such as spreading rumors, providing conflicting instructions, making negative statements to others and being emotionally intrusive, while male bullies tend to use more overt strategies, such as yelling, public criticism, mocking and direct disparagement. As with any gender difference, however, these tendencies are just that. Bullying strategies vary from individual to individual.

The Lone Bully: A solo bully is an individual who targets other individuals, usually subordinates. He or she is likely a serial bully with a history of treating others badly until they depart the organization, change jobs, or stand up to the bully effectively (a rarity). Introverted bullies (more likely to be female) may create a tense, fearful or abusive environment for others by spreading misinformation, triangulating information, using nonverbal intimidation, making veiled threats and sharing information about the target inappropriately. More extroverted bullies may yell, publicly criticize, find fault constantly, publicly humiliate and physically threaten targets. While the extroverted bully is easily spotted by observers (and may bring others around to group bullying, see below,) the introverted bully operates below the radar, causing the target to seem to be overreacting or overstating the problem.

Group Bullying, or "Mobbing:" Mob bullying happens when an individual is targeted by one or more people, and other people are enjoined or compelled to engage in similar conduct. Mob bullying often happens when an individual is identified as "expendable" by leaders, has been made a scapegoat for a

⁴ Namie, Gary; Workplace Bullying, Escalated Incivility; Ivey Business Journal Nov-Dec, 2003

problem in the workplace, or is in some manner different from those bullying him or her. The differences inciting the bully need not be related to a protected class⁵. Non protected class differences include weight, social skills, political beliefs, personal style or attire or general physical appearance. The group engaged in bullying may include those who feel their own social status and “insider” position is heightened by joining in the dominant group’s behavior, as well as those who recognize they must join the activity lest they be targeted next. The bullying behavior becomes virtually habitual, and may involve individuals from every level of the organization. At times, HR becomes an agent of the bullying, supporting those engaged in “hyper-supervision” of an employee, not questioning unsupported reprimands, or failing to question Performance Improvement Plans that are objectively unreasonable or disproportionate.

It should be noted that during periods of organizational instability or intentional change, bullying is often a tool used by emerging leadership to devalue previous leaders or to rid the organization of those representing the pre-change regime. Often the pretext for the bullying is prior failures or lack of adequate performance; however *the difference between managing performance and bullying is that the bullied employee will not be coached, counseled or even fired, but belittled, badgered, blamed and ostracized*, usually ending in their resignation.

Bullying Culture: A bullying culture (an organizational culture that is conducive to bullying) can be characterized by certain basic factors, such as internal competitiveness, strong hierarchy, a high level of dissatisfaction with work (i.e. low engagement), unearned privilege and low behavioral accountability. When this culture is made unstable by organizational change, restructuring, or changes in leadership, the propensity for bullying becomes even higher. If such instability causes layoffs, cutbacks or a reallocation of resources, the environment becomes even riper for bullying.⁶ In bullying cultures, bullying flourishes over long periods of time and is subtly or overtly rewarded. The bullying becomes “invisible,” in that the pattern of conduct is so much a part of the fabric of the organization that it does not raise any concerns, and those who cannot “handle it” are viewed as a poor “fit,” rather than a target.

What do Bullies Do?

Bullying can be identified as involving one or more of the following;

- Verbal Abuse
- Physical Intimidation
- Psychological or Emotional Abuse
- Work Sabotage or Performance Sabotage

⁵ This characterization takes note of the fact that bullying may include protected-class motives or targets for bullying that does not meet the standards of “tangible harm,” or the pervasiveness or severity of “hostile work environment,” yet still results in psychological and/or emotional damage.

⁶ Salin, D. (2003). Ways of explaining workplace bullying: A review of enabling, motivating and precipitating structures and processes in the work environment. *Human Relations*, 56 (10), 12131232.

A comprehensive list of bullying behaviors is impossible. It can include everything from verbal abuse to sabotage to violating confidentiality to physical intimidation. While some behaviors, such as screaming, yelling, throwing objects, teasing and harassment are obvious, some are quite insidious, and can include:

- Constant criticism, both public and private and direct and through others - explanations and proof of achievement are ridiculed, overruled, dismissed or ignored
- Undermining, especially in front of others – raising doubts or concerns about someone’s credibility, expertise or knowledge, causing others to doubt their competence.
- Omission from essential conversations, resulting in incomplete work or work that fails to incorporate group decisions.
- Isolation and exclusion from social interaction.
- Discipline for behavior others are not disciplined for.
- Subjection to unrealistic goals and deadlines which are unachievable or which are changed without notice or reason.
- Abandonment by one’s own management, unable to have conversations or speak with their supervisors.
- Denial of resources, even when others have plentiful or an oversupply of same.
- Overwork or denial of meaningful work, sometimes given menial assignments instead.
- Being given direction only in terse, written form.
- Being the subject of complaints by others at the suggestion of management.
- Failure to provide a clear job description, or provide one that is exceedingly long or vague; the bully often deliberately makes the person's role unclear
- Invitations to "informal" meetings which turn out to be harangues or administration of discipline.

Bullying can make any employee look like a bad employee. For those attempting to unravel bullying situations, it can be difficult to determine whether or not the behavior being complained of is merely an overstated part of a legitimate attempt to manage performance. The key is that the workplace bully treats his or her targets as incompetent, lazy, ineffective or weak, but *offers no legitimate manner for the employee to ever be viewed as a “good” employee.* Bullies will often suggest that they have done everything they can to help the struggling employee; however this pretense will often crumble if they are pressed to provide specifics details about the manner of such help, such as coaching, training, and mentoring or other positive interventions. Targets will report only criticism, humiliating comments to others, condescension and being further set up to fail.

The Effects of Workplace Bullying

The Individual: Recent research on bullying suggests that the psychiatric diagnosis of Post-Traumatic Stress Disorder (PTSD), the complex of psychological injury resulting from a traumatic event, will hold with many targets of bullying. PTSD focuses on major traumas, rather than the cumulative trauma of workplace bullying. To distinguish the injury resulting from many small events that are not in themselves life threatening, practitioners may refer to this as “Complex Post Traumatic Stress Disorder,”

or Complex PTSD. Interestingly, some newer research suggests that the most traumatic part of workplace bullying may not be the conduct itself, but the sense of being in “captivity,” or unable to escape the situation over a prolonged period of time.⁷ It is not surprising, then, that coworkers of bullies may demonstrate the same syndrome, albeit a milder version.

PTSD symptoms include hyper vigilance, fatigue, persistent anger, fearfulness, fragility, numbness, forgetfulness, hypersensitivity and somatic symptoms such as loss of sleep and heart palpitations. British research suggests targets of bullying use far more sick leave than average workers and are more likely to engage in dysfunctional use of licit or illicit chemicals⁸.

The most pernicious effect, however, is that it takes very little time for a bullied employee to begin to engage in conduct that escalates and appears to give legitimacy to the bullying; they engage in avoidance behaviors such as absenteeism, defensive behaviors such as aggression or hostility or self-preservatory behaviors such as withdrawal. Increasingly, they may become emotionally volatile or demonstrate trait anger, and as such, alienate any peers or superiors who might be otherwise sympathetic. This spiral of self-sabotage quickly causes the target to face skepticism about their claims and shield the bullier from adequate scrutiny.

The Organization: Bullying behavior in the workplace may be isolated or widespread, and as such, the impact on the workplace varies. Certainly, given the emotional and psychological injury to the target, declining productivity, loss of morale and increased absenteeism are logical consequences of bullying. Interestingly, it appears that witnesses to bullying may, in the short term, increase productivity in order to evade being bullied themselves. Nevertheless, the more widespread the bullying, the greater the cost to the organization based on direct harm to individuals.

On a more functional level, bullying by managers or leaders in the corporation creates a climate of fearfulness and distrust which stifles creativity, innovation, risk taking and teamwork. The autocratic bully in a leadership role will find his or her subordinates compliant but short on initiative and highly risk averse. To the extent this is precisely what the bullying leader wishes, this may seem to be a perfect match of the hearty and the timid, but bullying leaders often set up their bullying opportunities by railing against those subordinates who cannot “thinking for themselves.” As such, business can be paralyzed by individuals walking on eggshells and waiting for the next outburst.

Bullying that has been permitted to flourish in organizations can also “leak,” resulting in clients or customers becoming unhappy with the business. As a steady stream of employees departs the bullying environment, organizations get a reputation as a “tough place to work,” affecting recruitment and hiring.

⁷ Teherani, Noreen; *Workplace Trauma: Concepts, Assessments and Interventions*, Brunner Routledge, NY 2004.

⁸ Hoel, H., Sparks, K and Cooper, C; *The Cost of Violence/Stress at Work and the Benefits of a Violence/Stress Free Work Environment* Geneva, International Labor Organization, 2001

Legal Status of Workplace Bullying

There are two predominant legal approaches to workplace bullying. One, supported by the Workplace Bullying Institute and other public policy advocates, is to advocate for specific legislation defining and prohibiting workplace bullying, and the other, largely advocated by the legal community, is to take advantage of laws already in place to litigate when workplace bullies damage others. This document does not propose to fully explain the debate between the two approaches, but to simply familiarize the reader with the two perspectives.

Proposed Legislation: *The Healthy Workplace Bill*, introduced, but not yet passed in 16 states, defines workplace bullying in the context of an “abusive work environment,” defined as follows:

“...an abusive work environment exists when the defendant, acting with *malice*, subjects an employee to *abusive conduct* so severe that it causes *tangible harm* to the employee.”⁹

Abusive Conduct is defined as

“..conduct, including acts, omissions or both that a reasonable person would find hostile based on the severity, nature and frequency of the defendant’s conduct. Abusive conduct may include but is not limited to: repeated infliction of verbal abuse such as the use of derogatory remarks, insults and epithets; verbal or physical conduct of a threatening, intimidating or humiliating nature; the sabotage or undermining of an employee’s work performance; or attempts to exploit an employee’s known psychological or physical vulnerability. A single act normally will not constitute abusive conduct, but an especially severe and egregious act may meet this standard.”¹⁰

The reasonableness standard is drawn from the Supreme Court’s 1993 decision in *Harris v., Forklift Systems, Inc.*,¹¹ which is intended by drafters to overcome the severe strictures of the tort of intentional infliction of emotional distress, which requires the complained-of-behavior to be “outrageous” and “beyond the bounds of civilized society in order to be actionable.”¹²

Existing Law: The Healthy Workplace Bill is controversial. Some argue its passage will increase frivolous litigation and result in every disciplined or terminated employee bringing claims against employers. Others argue it will chill employer capacity to demand fair performance from employees. A less ideological argument posits that protections already exist via workers compensation, common law remedies for negligent of emotional distress, assault, battery, negligent hiring and supervision and other related claims as well as state and federal prohibitions against discrimination and harassment. Some point out that courts have already recognized that “rude, overbearing, obnoxious, loud, vulgar and

⁹ An act addressing workplace bullying, mobbing and harassment, without regard to protected class status, Mass Senate Bill no. 699 (Joan M. Menard, sponsor, 2009-10 session) (hereinafter Mass. Senate No. 699).

¹⁰ *Id.* Section 2(a)(1)

¹¹ *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993)

¹² AMERICAN LAW INSTITUTE, RESTATEMENT (SECOND) OF TORTS < SEC 46CMT.J(1965) in Yamada, David C., Workplace Bullying and American Employment Law: A Ten-Year Progress Report and Assessment (November 17, 2009). *Comparative Labor Law & Policy Journal*, Forthcoming; Suffolk University Law School Research Paper No. 09-49. Available at SSRN: <http://ssrn.com/abstract=1507950>

generally unpleasant” conduct directed at both male and female employees can be actionable as employment discrimination under Title VII when a particular protected class is disproportionately harmed by the conduct.¹³

Workplace bullying is becoming an issue with an increasingly high profile in the legal sphere, potentially leading to more tort claims. In 2008, the Supreme Court of Indiana upheld a \$325,000 jury verdict awarded to an employee who claimed to have been subjected to workplace bullying. The plaintiff sued his employer for assault, testifying that during an argument at work, his employer became red faced and angry, walked towards him with his fists balled up, and walked out after yelling, “You’re over, you’re history. You’re finished.” The employer appealed the jury verdict, in part arguing that the trial court should not have permitted an expert witness to testify that the employer was a “workplace bully,” On appeal, the court rejected the employer’s challenge and upheld the jury verdict for the plaintiff.¹⁴ This case is viewed by some as opening the door to a more aggressive, non-statutory approach to bullying, and represents recognition by the court that the term “workplace bullying” is a recognizable phenomenon.

In Minnesota, a novel approach was taken in in Absey v. Echosphere LLC, Dish Net-work Services LLC, and Marshall Hood, Civil No. 62 CV-10-6691. A jury awarded Absey \$270,000 after he was retaliated against for reporting his supervisor’s bullying and abusive conduct. While this verdict was subsequently overturned on reasons unrelated to the facts in the case, it demonstrates alternative routes to legal claims by victims of bullying. Absey’s supervisor, Marshall Hood, engaged in repeated verbal and physical abuse in the workplace. For example, he brought a satellite dish into the office and threw it down near two employees while screaming at them. On several occasions Absey witnessed Hood with his arms crossed, appearing hostile, yelling and screaming at employees to the point he would turn red and purple with rage. On another occasion, Absey witnessed Hood punch a hole through a plywood door. Absey reported Hood’s conduct to human resources several times but they did not act effectively. Absey subsequently lost his job in a reduction in force, despite having greater seniority than others who were retained. The court found that Absey was a whistleblower under Minn. Stat. §181.932 because he reported a violation of Minn. Stat. § 1.5 which states that “The State of Minnesota hereby adopts a policy of zero tolerance of violence. It is state policy that every person in the state has a right to live free from violence.” The court pointed to the public policy interests of a violence free workplace in the state. Minn. Stat. § 609.72 Subd. 1.

Special Bullying Issues in Academia

While bullies can be found in every profession, there are certain types of bullying behavior and bullies more likely to be found in academia. This is perhaps because graduate study is one of the very few remaining professional environments where one individual can gain nearly complete control over another individual’s current and future success. Within the doctoral program and within the laboratory, methods of supervision are left entirely to the discretion of the faculty dissertation advisor. Given that little training in supervision is provided to most academicians, and given the dependence of these

¹³ EEOC v National Education Association, 422 F. 3d 840 (9th Cir. 2005)

¹⁴ Raess v. Doescher, 883 N.E. 2d 790 (2008)

academics on the labors of their protégés, there is ample room for problem behavior. In one matter this author handled, a professor went so far as to require his PhD students to wash his feet and scrub the toilets at his home. Asked why the student waited (literally) ten years to report this, she noted that the faculty member in question was considered one of the most accomplished scholars in her field and easily could have prevented her from getting the scarce teaching appointment she subsequently got (and for which she received tenure, eventuating the report a decade later.)

Not limited to academia, but still rare is the privilege of “eminence.” In academia, as in certain professions, star-quality professionals are afforded a great deal of privilege. They are wooed by organizations that will extend offers of compensation, accommodation, flexibility and institutional support vastly greater than that offered to “mere mortal” faculty members. This will be based on the institutional belief that the individual will draw financial and reputational benefit to the institution and to help them attract others who might benefit from the association. Many, if not most of these gifted individuals accept these rewards as a deserved part of their accomplishments and serve their institutions well. Some, however, fold into this privilege the unearned privilege to treat others poorly. When this happens, the complaints often fall upon deaf ears, as their deans are wary of upsetting the golden calf, and the Provosts and Presidents cannot afford to lose the good will of their prominent faculty member. Thus, the bad behavior of the “eminent” academician is a persistent problem, particularly in research universities.

Finally, the academic environment encourages scrutiny of one’s work, sometimes under very harsh light. Providing feedback on one’s scholarship in a respectful and professional way does not necessarily come naturally to all invited to do so, and the open criticism can quickly become both personal and competitive. This can invite incivility which, with proper care and nourishment, becomes bullying.

Preventing Workplace Bullying

Anti-Bullying Policies: Policies for the workplace can take the form of a specific anti-bullying policy or the promulgation of a general non-harassment or “Respectful Workplace Policy.” Proponents of a specific anti-bullying policy argue the approach supports a specific discussion of workplace bullying with employees and prompts subject-specific training and education on the subject, rather than simply encouraging people to be civil.

The importance of a policy protecting people from hostility and intimidation that is NOT protected class based is important not only for employees, but for those who might make a distinction between behavior that violates policy and behavior that is simply unpleasant.

A template for an anti bullying policy is on the following page.

A more comprehensive approach would involve the establishment of a policy that affirmatively supports respectful conduct or expands a workplace anti-harassment policy to include abusive treatment not based on protected class status. Formatted in a manner similar to the bullying specific policy, above, “Respectful Workplace Policies” incorporate a statement of positive expectations and culture, a prohibition against harassing, abusive and violent conduct, both unlawful (i.e. protected class

harassment, assault) and unacceptable (workplace bullying, abusive language), and the means to address such conduct. In essence, if an organization states that no one will be harassed or treated abusively for any reason or for no reason, the organization has promulgated an anti-bullying policy without specifically naming it such.

Some campuses have stopped short of a specific policy, but have found language elsewhere in their institutional codes which poses the fundamental expectation that no one on a given campus should be harassed for any reason or no reason, but rather that each member of the campus community is obligated to treat others in a manner that promotes their full participation in campus life. Many campuses have statements supporting this in their charters, Board of Regents mission statements or other foundational documents.

Anti-bullying Policy Section 1: Purpose, Statement, & Examples

Purpose of policy. The purpose of the policy should clearly reflect the values of the organization.

Statement. Describe the definition of workplace bullying. Also include the organization's position and how the behavior hinders company goals and negatively affects employee health.

Examples. Indicate examples such as (humiliation, character attacks, isolating an employee, name calling, etc.), but be sure to acknowledge that this type of workplace abuse is not limited to the behaviors listed.

Anti-bullying Policy Section 2: Complaint and Resolution Process

Identify appropriate contact people. Identify the people to contact if there is a problem. The contact list should be across all levels of the organization. It should also include confidential resources if such resources exist (i.e. EAP)

Informal resolution. This should be an option as long as all parties involved agree to it. It can be an open dialogue between parties to work through the problem. This option would require the person charged to be receptive to information about the effects of their abusive behavior.

Anti-bullying Policy Section 3: Action

Formal process. Clarify the procedures on how workplace abuse complaints are handled by the organization from beginning to end.

Privacy. Ensure that complaints will be handled in a manner respectful of individual privacy.

Timing. Indicate that the investigation will be conducted in the shortest time possible and will be neutral.

Anti-bullying Policy Section 4: Consequences

Accountability. Discuss the personal and organizational consequences when an investigation has confirmed workplace abuse.

Workplace Bullying-Specific Policy Template

Leadership Behaviors and Competencies:

As with any workplace conduct, the most powerful form of shaping or extinguishing behavior is through the establishment of clear expectations, modeling appropriate behavior and aligning recognition and reward with the standards set. As such, leaders set the tone for the workplace by declaring an expectation of civility and respect, but can quickly undermine their own moral authority if bullies are ignored or explained away.

In particular, academic departments which rely on individual production or professorial “eminence” are at risk for bullying when there is a tradition or practice of allowing these highly valued individuals to behave in an uncivil manner on a regular basis, turning a blind eye when incivility turns into tantrums or abusive conduct. The individual talent or unique value to the institution is often cited as a reason to excuse or override any attempt to address the behavior. This “privilege bully” often is managed by carefully screening his or her direct reports for thick skinnedness, but rarely does this completely insulate the organization from the negative effects of the individual’s behavior and reputation. Excusing the conduct because the individual is a “genius” or “demanding” serves to demonstrate to those bullied by this individual sends a clear message that bullying will, at least in this case, be tolerated. It takes extraordinary institutional courage to look past the reputational and financial contributions of this individual to hold them accountable for the havoc they wreak, yet when an institution can do so, the faith in the institution is bolstered tremendously.

Leaders must be visible and vocal about a climate of respect or civility, acknowledge and address visible lapses in such policies, and promote the seeking and giving of feedback through implementation of 360 evaluation process, listening sessions and/or open door policies. Promotion of emotional intelligence, including self-awareness and empathy build the competencies which will have the effect of extinguishing disrespectful conduct before it escalates to bullying.

Training

Training about bullying behavior in the workplace can be worked into regular training on workplace harassment, or dealt with separately. Most important is that the training give examples of bullying behavior that are not so outrageous as to suggest the conduct is outlandish, nor so subtle that it confuses people. As with harassment training, it is often best to begin with the impact of bullying behavior and elicit from employees conduct they have seen or heard about in the workplace that can elicit those results. Training should also provide strategies for direct and indirect self-help as well as seeking assistance from others.

Training about bullying, like training about harassment, can give employees and supervisors a working understanding of organizational expectations and processes, but training does not change behavior. Even the most powerful and memorable training is a small step towards what is necessary. Essential skills and training that should be part of a comprehensive bullying and harassment prevention strategy include coaching and training on how to have difficult conversations, assertiveness, giving and getting feedback, and listening skills.

Effective Interventions

Supervisory Guidelines: The following guidelines demonstrate that supervisors must take concerns seriously and “sort out” the nature of workplace conflicts to ferret out possible bullying:

Supervisory Guide to Responding to Concerns about Bullying

- 1) Receive the complaint
 - a. Listen carefully to the concerns being raised, but do not challenge, probe or solicit details while the person is providing their own narrative. Take minimal notes, and instead focus on the person’s concerns and affect.
 - b. It is appropriate and helpful to demonstrate empathy by noting the person’s emotions (I can see this is upsetting you. I imagine this has been hard for you) without verifying any facts (do not say “I am sorry this has happened to you.)
 - c. After listening to the narrative, go through the concerns again, this time asking questions about each incident in detail
 - i. What happened?
 - ii. How many times has this or similar conduct occurred?
 - iii. Where and when has it happened?
 - iv. Are there others who were present or who may have seen or overheard this?
 - v. What action did the complainant take at the time, if any?
 - vi. Did the complainant discuss this with anyone when it happened?
 - vii. Did the complainant write anything down at the time?
- 2) Do a preliminary analysis: **if everything you have been told is true**
 - a. Is this conduct possibly unlawful (i.e. harassment based on protected class such as age, gender, race, sexual orientation, religion or national origin?)
 - i. If so, you will want to facilitate a referral to your EEO officer.
 - ii. You are responsible to make sure the information gets to the proper EEO authority and to work with them to take interim actions.
 - b. Is this conduct repeated, serious, abusive behavior (psychologically abusive, physically intimidating, humiliating or sabotaging) that likely is affecting the target’s ability to do his or her job? If so, you will need to investigate further.
 - c. Is this an isolated incident, personality conflict, personal disagreement, performance issue or other management concern that needs to be addressed? If so, it will need to be addressed with appropriate resources.
- 3) If you found that “b” above was the case, you are responsible for gathering facts to determine if bullying is taking place
 - a. Consider interim actions. If the complainant is saying he or she has reached the end of their rope or “can’t take it anymore,” temporary means to separate the parties may be needed. This can be a short term leave for the complainant or alleged bully, instructions to minimize contact, or practical arrangements to reduce opportunities for the alleged behavior to recur.

- b. Notify the person who is accused of bullying that concerns have been raised about their conduct. Tell them that you will be looking into it, and they should avoid any behavior that might be perceived as retaliatory or attempted influence of those who might be witnesses.
 - c. Interview witnesses identified by the complainant and other employees who are similarly situated to the complainant. Let them know that you are attempting to determine facts, and that you will share information only on a need to know basis.
 - d. Make sure witnesses are aware that they are protected from reprisal and ask them to tell you if they feel they are being retaliated against.
 - e. Begin each interview by asking the witnesses if they have observed or experienced conduct in the workplace they viewed as offensive, upsetting or improper in any way.
 - f. If they do not spontaneously describe conduct, you can ask more specific questions.
 - g. Make careful note of their responses.
 - h. Avoid the use of terms like “harassment” or “bullying.”
- 4) Interview the person alleged to be engaged in improper behavior
- a. Ask if they know why someone may have brought a complaint
 - b. Ask them to respond to the allegations and explain their perspective on the behavior.
 - c. Do not characterize the behavior, just describe it.
 - d. Determine if there are underlying issues that may affect the credibility of the respondent, complainant or witnesses.
- 5) Evaluate the situation based upon what you have learned and your own determination of credibility.
- a. If there is behavior happening that should not be happening, establish a strategy to ensure it stops:
 - i. Instruct the person who has engaged in misconduct to discontinue the conduct.
 1. Consider requiring coaching or counseling as part of the remediation.
 - ii. Discipline up to and including discharge for violating your institutional policy
 - iii. Mediated discussion between the target and alleged bad actor to determine “rules of engagement” going forward.
 - iv. Other personnel action that will minimize risk for the people involved and the university.
 - v. Referrals for support and counseling for those who have been targeted.
 - vi. Training and education for all involved and affected.
 - b. If there is no behavior that rises to the level of a need for intervention, provide notice to the complainant that you have not found violations of University policies, and provide support and recommendations for ways the complainant might address the situation going forward.
 - i. If the findings are based on performance issues, discuss those issues directly with the complainant and ensure that proper performance management strategy is in place.
 - ii. If the findings established a mutual conflict, “personality clash,” or other problem that does not rise to a violation of institutional policy, make

appropriate referrals and recommendations to address them, or put a plan in place to do so.

Prompt Response to Early Warnings: It is far better to issue a verbal warning to or coach someone being overly stern or vulgar than to have to conduct a full blown investigation into behavior alleged to recur frequently and have a significant duration. Supervisors and managers must address minor infractions in a progressive manner and document all incidents, counseling and coaching, reprimand and further discipline. This is akin to New York City's remarkable reduction of crime in the 80's by emphasizing arrests for misdemeanors, and by doing so, greatly reducing the number of felonies committed.

Coaching Some bullies are coachable. Even those who are coachable are unlikely to make significant changes in their behavior without a credible employment threat, such as demotion, loss of income, loss of eligibility for bonus or even termination in the case of additional incidents. Employers should carefully explore the experience of professional coaches, selecting someone who has had success with bullies, and particularly bullies in academia. The coaching should be conducted in accordance with a written coaching plan based on the employer's investigative findings and the coach's assessment of the bullying individual. It is an essential prerequisite that the individual whose behavior has been a problem acknowledges a need to change. The plan should include the coach seeking feedback from the superiors, colleagues, and subordinates of the bullying person. The challenge of coaching a bullying individual is to find ways to understand how the bullying occurs and how the individual behaves in the context of the bullying, not in a controlled, one on one setting. While bullies may agree that they occasionally lose their temper or can be difficult to deal with, they often are largely unaware of many of their nonverbal behaviors, the impact of their vocal tone and their use of power, status and authority. Since those things are unlikely to be on display in the coaching context, feedback and detailed descriptions from targets are very valuable.

Accountability: Evidence demonstrates that bullies will pay attention to directives about conduct when they truly believe there will be a consequence for their inappropriate conduct. Consequences can include reduction or denial of bonus, reduction of salary, requiring the bully to reimburse the institution for legal fees necessary to address the conduct, or status change, such as demotion or removal of a title. Evidence also demonstrates that absent such consequences, the bullying behavior may go underground or be extinguished for a short while, but is highly likely to recur. Employers must therefore carefully consider whether their hesitancy to anger a productive contributor is likely to result in ongoing, potentially significant costs to the organization, and whether those costs might cumulatively exceed the value of the bullying employee's contribution. Incorporated into those costs are the increased awareness of "spectators" to the bullying that the organization will not protect them should they be the next target. This will reduce a willingness to raise issues and the likelihood of another "crisis" down the road.

Investigations: Because bullies are notoriously effective at “managing up,” and are often held in great esteem by their leaders and advisors, complaints of bullying may be brushed aside or minimized. This is particularly important because **bullying managers and supervisors make any employee look like a ‘bad’ employee.** Bullying is, in essence, about undermining confidence, finding fault, sabotage and creating failures. Thus, an employee who has been badly bullied may appear paranoid, may have demonstrated excessive absenteeism, poor work performance or erratic behavior.

Because, as discussed earlier, bullies are often producing effective results and are shrewd about presenting themselves in the best light, executives overseeing the bully or outside boards may believe the complainants to be ‘outliers,’ or the motivation for the complaint to be politically motivated or even intransigence. It is essential the organization conduct a **neutral** and impartial investigation into the concerns of the employee without prejudging based on the comparative credibility of the complainant and subject of the complaint. The organization must also be prepared to accept the results of that investigation despite the preconceptions of high level leaders who might resist negative findings. Conversely, investigators must avoid getting caught up in the emotional state of a complainant to focus on the specific behavior they are alleging and the evidence that supports or refutes their claims. The following is a tool that can be useful to investigators in designing their questions for investigating bullying matters:

Bullying Analytic

What has the effect on the complainant been?

- Performance effect
- Emotional effect
- Psychological effect
- Physical Effect
- No major effect

What behavior has occurred?

- Physical assault or intimidation
- Verbal Abuse
- Emotional Abuse
- Work Sabotage or Destabilization

This behavior was characterized by

- Frequency (persistence over time)
- Intensity (multiple events on any given day)
- Severity (offensive to a reasonable person)
- Targeting (complainant treated badly compared to others similarly situated)
- A power imbalance

The respondent was

- Intentionally abusive
- Habitually abusive
- Inadvertently abusive
- Not abusive

The situation was

- One way
- Two way
- Part of the work culture for a long time
- Previously reported and not addressed
- Previously reported and found not to violate policy
- An ongoing dispute between two or more people

Factors to Consider

- Attended Anti-Bullying Training

Distinguishing Bullying from non-bullying behavior

In order to help organizations attempting to clarify bullying behavior for purposes of appropriate personnel responses, the following bullying analytic can be helpful to distinguish bullying behavior from poor management, performance issues, mere rude behavior or interpersonal conflict.

Threshold Analysis For Bullying: **PRELIMINARY DETERMINATION CHECKLIST**

Alleged behavior is

- Repeated and/or Persistent or Severe
- Targeted towards one or more people, but not targeted towards others (i.e. not a “bad manager)
- Involves one or more of the following
 - Verbal abuse (yelling, belittling, name calling)
 - Physical threats or intimidation (standing very close, balling fists, pushing or shoving)
 - Work sabotage (destroying work product, “bombarding” with impossible assignments, withdrawing resources to do work, interfering with work activity)
 - Humiliation or emotional abuse (mocking, intentionally embarrassing, sharing information inappropriately, public harsh criticism, badgering or shunning)
- Has had a demonstrable impact on the ability of the complainant to do his or her job

The alleged behavior is not **apparently**

- Legitimate efforts to manage, discipline or correct the respondent’s own conduct
- A mutual conflict between peers
- Directed at or perceived to be directed at the complainant due to protected class status.
- Outside of the context of the parties’ employment

The complaint involves

- Individuals who by necessity have contact in the workplace

Conclusion

As the understanding of workplace bullying and its effect on organizational and individual performance increases, and as tolerance for such behavior declines, employers need to be mindful of both cultural norm setting and policy development as important tools to prevent and address workplace bullying. The likelihood of workplace bullying claims leading to litigation seems to be increasing, even in the absence of specific legislative prohibitions. The problem is preventable, and the behavior can be addressed by focusing on the importance of human dignity and respect in all aspects of employment.

