

Harassment and bullying in the workplace

Workplace harassment and bullying is likely to affect staff morale, creativity and productivity, and create an unhealthy workplace culture. It can be subtle or overt, sporadic or sustained.

Harassment can be defined as any unwelcome comment, conduct or gesture that is insulting, intimidating, humiliating, malicious, degrading or offensive. It might be repeated or an isolated incident but it is so significant that it adversely affects someone's performance, contribution or work environment. It can include physical, degrading or threatening behaviour, abuse of power, isolation, discrimination, sexual and/or racial harassment. Harassment is behaviour that is unwanted by the recipient even if the recipient does not tell the harasser that the behaviour is unwanted.

Bullying is ongoing unreasonable behaviour which is often intended to humiliate or undermine the recipient but is not specifically unlawful.

Legislation and liability

According to New Zealand law, employers are obliged to create a safe and secure working environment for their employees, and take all reasonable practicable steps to manage hazards and avoid exposing employees to unnecessary risk of physical injury or psychological harm.

The Human Rights Act, Section 62, states that it is unlawful for any person to be sexually harassed, either through a request for some sort of sexual activity with an implied or overt threat of detrimental treatment, or promise of preferential treatment; or through sexual behaviour that is unwelcome or offensive to the recipient, and is either repeated or so significant that the person experiences some form of detriment in their employment.

It goes on to explain in Section 63 that it is also unlawful for anyone to use any behaviour that expresses hostility against, or brings into contempt or ridicules someone on the basis of their race, colour, national or ethnic origins, in such a way that is offensive to the person, and is either repeated or so significant that it has a detrimental effect on their employment.

Section 66 states that it is unlawful to victimise a person for making a complaint of discrimination under this Act, or for making a disclosure under the Protected Disclosures Act 2000.

An external police investigation cannot take the place of an internal disciplinary inquiry.

According to the Employment Relations Act 2000, (Section 108) an employee can take a personal grievance case against their employer if they directly or indirectly subject the employee to behaviour that is unwelcome (whether or not that is conveyed to the employer or their representative) and by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction. An employee can also take a personal

grievance case if they are sexually or racially harassed by another employee, customer or client, and the employer has had the chance to investigate a complaint, but has not taken any practicable steps to prevent the behaviour recurring (Sections 117 & 118). Organisations will be held liable if the harassment takes place during work hours, on work-related activities or at work-related social events.

Employees can take a personal grievance within 90 days of the alleged act. However, if the nature of the act means the Human Rights Act has been contravened, the employee can bring a case against the employer for up to 12 months after it occurs.

[See our legislation overview for other related legislation](#)

References:

www.hrc.co.nz

www.top-drawer.co.nz

www.anthealowe.com.au

www.wave.org.nz

www.acas.org.uk

Effects of harassment and bullying

- Increased absenteeism due to anxiety, panic attacks, fear, depression, stress and ill-health.
- Unaddressed stress can often lead to errors at work, injury, fatigue, illness and disease.
- Reduced performance and productivity caused by isolation, breakdown in work relationships, distraction, and low morale.
- Unhappy, unmotivated staff.
- Increased staff turnover.
- Increased management time spent investigating and dealing with complaints.
- Unhealthy workplace culture and ongoing conflicts.
- Industrial action.
- Damaged reputation.
- Expensive litigation procedures and negative publicity.

Background: your current climate

Harassment and bullying can be subtle and difficult to define. Often victims fear being blamed, ridiculed, disbelieved or retaliated against and may be anxious about losing their jobs, being demoted or escalating the situation. There are some direct ways of measuring harassment and bullying (the number of employee complaints, legal action, feedback from employees' exit or climate surveys about their work experiences), while other measures are less direct (turnover rate, individual or team performance, absenteeism figures).

- ? Is harassment or bullying seen as a joke or trivialised in your workplace?
- ? Do employees understand what harassment or bullying is?
- ? Are employees aware of the legal right to protection?

It is recommended that employers consult lawyers, trained facilitators or mediators who specialise in this area for training, advice and direction.

As a very basic overview, employers can:

- Conduct a confidential workplace survey to find out whether harassment/bullying is an issue for employees?
 - Document noticeable changes in patterns in performance, turnover or sick days for individuals or groups of staff (such as young women or employees in a particular team).
 - Assess how much time is being spent dealing with employee complaints relating to this issue.
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- ? Do your workplace practices comply with the legislation?
 - ? What procedures do you have in place to protect employees from harassment/bullying?
 - ? Is there a clear policy or procedure for victims to make a complaint?

Steps to take

- Define what harassment and bullying means to your workplace, and communicate it clearly to all staff.
- Introduce a no bullying and harassment policy.
- Take all reasonable steps to prevent harassment occurring.
- Ensure there are no inappropriate posters, calendars, screensavers, or other material in the workplace.
- Monitor staff behaviour as this may tell you whether harassment or bullying is occurring. These could include changes in morale, mood, personality, avoidance of particular individuals, patterns of absenteeism, significant drops in performance, isolating from others.
Create a formal complaints procedure to investigate and remove offending behaviour.
- Increase awareness of the issue/procedures in place by displaying posters, pamphlets, and including information in newsletters or on the intranet.
- Train managers and staff on their rights, responsibilities and definitions of acceptable behaviour.
- Set up training sessions using a professional organisation with expertise in harassment and bullying prevention training.
- Appoint a support person/mediator (in-house or external consultant) who staff can approach confidentially to discuss any harassment/bullying issues.

- Take all complaints seriously, respond quickly and immediately using the procedures that are in place. Depending on the issue you may need to use an external mediator or contact the police.
 - Be aware that an external police investigation cannot replace an internal disciplinary investigation.
 - Ensure that the agreements made to resolve complaints are kept and followed up.
 - Check that the harassment/bullying has stopped.
- ? Do employees feel safe in the workplace?
 - ? Is there a level of professionalism and respect within the workplace culture?
 - ? Is the workplace's anti-bullying stance discussed in appraisals, reviews, recruitment?
 - ? Do employees know who to go to if they want to talk about bullying/harassment issues?
 - ? Are the contact people aware of the steps they need to take in response to complaints?

Emotional support

Employee Assistance Programmes (EAP) are professional counselling services offered to employees and/or their families to help with work or personal issues. Whether employers offer an in-house or contracted service, it is important to ensure that employees' confidentiality is guaranteed.

Domestic violence

Domestic violence can often overflow into the workplace affecting working relationships as well as employees' health and wellness. Employees can be in physical danger and may be dealing with custody/police issues as well as coping with injuries and fear. Domestic violence can manifest in the form of physical, psychological, emotional or sexual abuse. It is illegal regardless of where it happens and employers are responsible for the safety of employees on work premises.

For further support, advice and training on domestic violence:

National network of stopping violence: 04 802 5402

Preventing violence in the home: www.preventingviolence.org.nz

Citizens Advice Bureau www.cab.org.nz/information/Domestic_Violence_Act.html

The Police www.police.govt.nz/safety/home.domesticviolence.php

Women's Refuge 0800 REFUGE, www.womensrefuge.org.nz/understand01a.asp

For training on harassment or bullying:

Wave: 0800ZEROBULLY www.wave.org.nz

Top Drawer Consultants: www.top-drawer.co.nz

Jan Eggleton Training: jan.eggleton@clear.net.nz

For training on mental wellness:

Courses are run either as public seminars or in-house sessions. Topics include anxiety, depression in the workplace, supporting staff, a manager's guide to mental illness, and building mentally healthy workplaces. For further information call 0800 496 754 or visit www.workingwell.co.nz.

Information and resources

www.hrc.co.nz

www.ers.dol.govt.nz

www.acc.co.nz/injury-prevention/safe-at-work/worksafe

www.informedbusinesstraining.com

Lowe, Anthea. (2002) *Bullying and harassment: risk prevention guidelines for employers*. This Australian publication offers very detailed and useful guidelines, including a 12-step bullying and harassment prevention programme, a model policy, complaints procedure/guidelines and employee climate survey. Publisher Anthea Lowe and Associates, ISBN 0-6-4641558-1.

Needham, Andrea. (2003). *Workplace bullying: the costly business secret*. Publisher Penguin Books NZ Ltd, ISBN 0-14-301881-7.

Olsen, Hadyn. (2005). *Workplace bullying and harassment: A toolbox for managers and supervisors*. This book defines workplace bullying and harassment, legal responsibilities, effects on organisations and control measures. Publisher CCH NZ limited, ISBN 08-6475635-6.

Olsen, Hadyn. (2008) *Oh no you don't!* This book outlines how to recognise bullies at work, the environment bullying creates, what makes bullies tick and what happens to targets and victims. The second section looks at how to address bullying at work. Publisher Zenith Print, ISBN 978-0-473-1345.

Top Drawer Consultants. (1998). *Safe and Sound: preventing harassment in New Zealand workplaces* by Top Drawer Consultants. This resource is an excellent guide for any organisation seeking to address harassment in the workplace.

[Refer to the on-line EEO Library catalogue](#) for more publications on this subject.