

Tips for tackling the new Workplace Bullying Laws

Workplace bullying has been a hot topic in recent times following some extreme, tragic cases which highlighted that the law was not adequately protecting victims or penalising the perpetrators. Statistics released by the Productivity Commission earlier this year show that workplace bullying not only affects the victims, but also costs businesses around \$36 billion in productivity annually.

In response, the *Fair Work Amendment Bill 2013* (**the Amendments**) was introduced into Parliament earlier this year. Amongst the many proposed changes to industrial relations practices, the Amendments included an "anti-bullying measure". Here, we tell you all you need to know about the new bullying laws before they take effect on 1 January 2014, as well as providing some tips for managing employees who just can't get along.

The "anti-bullying measure"

The anti-bullying measure will allow a worker to apply to the Fair Work Commission for an order to stop any bullying occurring in the workplace. The Commission will be required to consider whether the conduct complained of falls within the definition of being "bullied at work", where an individual or group of individuals:

- repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and
- that behaviour creates a risk to health and safety.

Employers need to be aware of their far reaching obligations in this respect. Specifically, the anti-bullying measure adopts the definition of "worker" as used in the *Work Health and Safety Act 2012* (**the WHS Act**), which extends to any individual who performs work in any capacity, including as an employee, a contractor, a subcontractor, an outworker, an apprentice, a trainee, a student gaining work experience or a volunteer.

To further highlight that workplace bullying is not an issue to be swept under the rug, the Commission will be bound to deal with an application of this type within 14 days. Where a bullying complaint is substantiated, the Commission may then make any order it considers appropriate to prevent the worker from being bullied at work by the individual or group. If an order is breached, the offender may be penalised – up to \$51,000 for corporations and \$10,200 for individuals.

The Bill makes it clear that reasonable management action carried out in a reasonable manner will not amount to bullying.

It is noteworthy that the Bill will not prohibit a worker also taking action under the WHS Act for the same act(s) of bullying. The WHS Act incorporates Codes of Practice which are admissible as evidence that an employer/officer should have known how to appropriately handle various workplace issues.

There is currently a draft Code for “Preventing and Responding to Bullying in the Workplace” being circulated which, once finalised, will consequently introduce further, even heftier penalties where bullying is proven.

What employers need to do

Prepare your managers

Ensure that all managers are educated to look for signs of behaviour that may be in breach of the anti-bullying measure before it commences in a few months.

Review your policies

It is important that you have policies in place which set a code of conduct for your workers, strictly prohibiting any unsociable behaviour in the workplace. Make sure that you continually review these policies so that they accurately reflect the Code or any other specific requirements with respect to workplace bullying. Your workers should be provided with a copy of any such policy and be provided with training on it – this will assist you in justifying any disciplinary action taken against a worker.

Take all complaints seriously

Establish a system for making complaints and ensure that each one is followed up. This will provide an initial option for employees rather than them having to seek the assistance of the Commission.

Take action!

If it becomes clear that one of your workers is bullying another, you should act quickly. Whether this means reconfiguring your rosters so that certain employees don't cross paths, issuing warnings or terminating an offending worker, the steps you take are crucial in mitigating any potential claim against you and in keeping your business on track.

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