

HOW TO RESPOND TO BULLYING IN THE WORKPLACE

A GUIDE FOR EMPLOYERS, MANAGERS AND TEAM LEADERS

AN E-BOOK BY:



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ABOUT WISE WORKPLACE AND THIS E-BOOK

WISE Workplace has provided investigations services and advice on workplace misconduct to government and private organisations in Australia since 2002. This e-book is based on our experience of investigating numerous cases of bullying and discrimination during that time.

Purpose

Creating awareness through education is the best approach to preventing bullying. However, it's also critical that when such behaviour does occur it is recognised and dealt with promptly, effectively and fairly.

This e-book is primarily intended to help organisations make the right decisions when bullying behaviour has been identified, usually when an employee lodges a complaint, and especially when an investigation is required.

We also aim to ensure this document reflects current legal and administrative approaches to dealing with the issue of bullying at work. It is based on the Guide to Preventing and Responding to Workplace Bullying Nov 2013 from Safe Work Australia and incorporates explanations from the Fair Work Commission Anti-Bullying Benchbook dated 8 January 2014, as well as a sample report of an investigation into workplace bullying.

The author

After a career in law enforcement and investigations in the UK and Australia Harriet Stacey founded WISE Workplace, a firm specialising in the provision of independent investigations for the management of workplace misconduct in 2001. Harriet is a former academic and has qualifications in psychology and social sciences. She has specialised in investigative interviewing, investigating workplace misconduct, managing bullying and harassment and regularly presents and provides training in these areas.

Since 2001 Harriet has conducted numerous complex workplace investigations, many into allegations of bullying, harassment and discrimination.

UNDERSTANDING WORKPLACE BULLYING

The following is a summary from Safe Work Australia's Guide for Preventing and Responding to Workplace Bullying released in November 2013.

DEFINITION OF BULLYING Fair Work Act s.789FD(1)

- ▶ *Repeated and unreasonable behaviour*
- ▶ *directed towards a worker or a group of workers*
- ▶ *that creates a risk to health and safety.*

Repeated behaviour *refers to the persistent nature of the behaviour and can involve a range of behaviours over time.*

Unreasonable behaviour *means behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.*

Examples

Examples of bullying behaviour include:

- ▶ *abusive, insulting or offensive language or comments*
- ▶ *unjustified criticism or complaints*
- ▶ *deliberately excluding someone from workplace activities*
- ▶ *withholding information that is vital for effective work performance*
- ▶ *setting unreasonable timelines or constantly changing deadlines*
- ▶ *setting tasks that are unreasonably below or beyond a person's skill level*
- ▶ *denying access to information, supervision, consultation or resources to the detriment of the worker*
- ▶ *spreading misinformation or malicious rumours*
- ▶ *changing work arrangements, such as rosters and leave, to deliberately inconvenience a particular worker or workers*

A single incident of unreasonable behaviour is not considered to be workplace bullying. However, it may have the potential to escalate and should not be ignored.

Workplace bullying can be carried out in a variety of ways, including through email or text messaging, internet chat rooms, instant messaging or other social media channels.

Workplace bullying can be directed at a single worker or group of workers and be carried out by one or more workers. It can occur:

- ▶ *sideways between workers*
- ▶ *downwards from managers to workers*
- ▶ *upwards from workers to supervisors or managers*

Workplace bullying can also be directed at or perpetrated by other people at the workplace such as clients, patients, students, customers and members of the public.

Reasonable management action

Expressly excluded from bullying conduct is 'reasonable management action taken in a reasonable way, the Fair Work Act s.789FD(1) also excludes reasonable management action.

The exclusion under the Act contains 3 elements:

- 1. Behaviour must be management action,*
- 2. It must be reasonable for the management action to be taken,*
- 3. It must be carried out in a reasonable manner.*

Because the Anti-Bullying jurisdiction is new to the Fair Work Commission(FWC), case law specific to this jurisdiction is not available yet. However, the concept of what the FWC Benchbook goes on to explain:

- ▶ *That the reasonable management action does not need to be perfect,*
- ▶ *the course of action may be reasonable even if individual steps are not,*
- ▶ *unreasonableness is based on the action not the perception of the action,*
- ▶ *was the action a significant departure from established policies or procedures and if so was that departure reasonable?*

Reasonable management action has been discussed in workers compensation courts and can provide some guidance be it that the legislation is slightly different.

The Guide includes the following examples:

- ▶ *setting reasonable performance goals, standards and deadlines*
- ▶ *rostering and allocating working hours where the requirements are reasonable*
- ▶ *transferring a worker for operational reasons*
- ▶ *deciding not to select a worker for promotion where a reasonable process is followed*
- ▶ *informing a worker about unsatisfactory work performance in an honest, fair and constructive way*
- ▶ *informing a worker about inappropriate behaviour in an objective and confidential way*
- ▶ *implementing organisational changes or restructuring*
- ▶ *taking disciplinary action , including suspension or termination of employment.*

The Benchbook on workplace bullying provided by the Fair Work Commission states:

“an informed, spontaneous conversation between a manager and a worker may not be considered management action” even if the following issues are raised:

- ▶ Performance appraisals,
- ▶ ongoing meetings to address underperformance,
- ▶ counselling or discipline
- ▶ Modifying a worker’s duties including by transferring or re-deploying the worker
- ▶ Investigating alleged misconduct
- ▶ Denying a worker a benefit in relation to their employment
- ▶ Refusing an employee permission to return to work due to a medical condition