



Redfern Legal Centre

Bullying, harassment and discrimination at work



Linda Tucker

Employment & Discrimination Solicitor
Redfern Legal Centre



Acknowledgement of Country

Bullying, harassment and discrimination at work

1. Bullying

2. Work Health & Safety

3. Sexual harassment & discrimination

4. Questions, where to get legal advice.

RESOURCES: www.rlc.org.au/training/resources/bullying

Workplace bullying

Repeated and unreasonable behaviour directed towards a worker or workers that creates a risk to health and safety

Case study: Seniors Activity Centre



STOCK PHOTO

Case study: Seniors Activity Centre

- Worker raises it with manager, then with Board
- Neither Manager nor Board take any action



STOCK PHOTO

Who is the bully
in this situation?

Who can perpetrate bullying

- Bullying can be the actions of colleagues, supervisors, clients, visitors, or staff of other agencies with whom you deal.
- It can go up or down the supervisory chain.
- Bullying can be the actions of the client as well as the actions of staff or managers – multiple breaches of WH&S legislation are possible.

Case study:

What can the worker do about it?

- Anti-bullying Order
- If resigns – constructive dismissal/ general protections claim
- Workers Compensation if injured



STOCK PHOTO

Banter or bullying

- *“Can’t you take a joke?” “That’s how we work here”*
- Behaviour of colleagues: insults or other demeaning comments, exclusion, ‘jokes’ at expense of a colleague.
- Common source of distress: reminiscent of ‘playground bullying’ where ostensibly minor actions can accumulate and become hurtful to the victim.
- Difficult to prove – diffuse nature of the offence – but evidence that something going wrong in the workplace.
- Complaints that are not clear but indicate some level of discomfort or distress require a response.
- How would a reasonable observer view the behaviour?

When is management bullying?

- The very personal aspect of bullying – how can we objectively assess what is a reasonable direction by management?
- Performance management

Change management

- Coping with uncertainty – some thrive on it but many don't.
- Example: Redundancy provisions in Awards and Enterprise Agreements can be breached where there has not been sufficient consultation with staff. Those provisions recognise the impact of redundancy for particularly long term and/or older employees who fear unemployment.
- Applied to the bullying provisions

Prevention & quick reactions

Work Health & Safety (WH&S) law requires that workplaces eliminate or minimize risks - so preventative work and quick reactive work is crucial.

Preventative steps

Procedures in place:

- to identify
- to report
- to encourage feedback
- to consult

Appropriate reactive steps

- To **act** – don't shoot the messenger
- To assess when it is performance management – reasonable actions – and when is bullying
- To assess when it is reasonable worker interaction and when it is bullying
- Toxic workplaces – is outside help needed?

Impact of bullying in the workplace

- Not just legal consequences
- Lost productivity
- High turnover of staff or volunteers
- Distress for all involved
- Reputational damage – in your sector, your community and potentially funding bodies

Bullying, harassment and discrimination at work

1. Bullying
- 2. Work Health & Safety**
3. Sexual harassment & discrimination
4. Questions, where to get legal advice.

RESOURCES: www.rlc.org.au/training/resources/bullying

Work Health & Safety

- Why have WHS:
 - * For staff and volunteers
 - * For clients
 - * For management
- Work Health and Safety Act – object:
to protect workers and other persons
against harm to their health, safety and
welfare through the elimination or
minimisation of risks arising from work

Work Health & Safety

- **Where does it apply:** A workplace where there are any employees – even if agency primarily run by volunteers
- **What is a workplace?** Where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work
- **Employees' duty:** to do what is reasonably practicable to prevent injury
- **Volunteers** are workers for health and safety purposes

Duties of managers & board members under WH&S law

At any workplace with at least one employee (even if primarily run by volunteers):

- Paid directors and officers are personally liable
- Volunteer directors and officers are not.

Bullying, harassment and discrimination at work

1. Bullying
2. Work Health & Safety
- 3. Sexual harassment & discrimination**
4. Questions, where to get legal advice.

RESOURCES: www.rlc.org.au/training/resources/bullying

Case study: Do you want to go out?



STOCK PHOTO

Case study:

Do you want to go out?

- Worker asks supervisor for a transfer
- Supervisor says a transfer is too difficult
- Worker accuses supervisor of bullying and colleague of sexual harassment



STOCK PHOTO

Case study:

Do you want to go out?

- If unwelcome, then it may be sexual harassment – may need to demonstrate the perpetrator was aware that the advances were unwelcome, and the behaviour continued
- Explicit sexual references in the workplace
- Unwelcome conduct that could be expected to make a person feel offended, humiliated or intimidated.

Case study:

Do you want to go out?

A sexual harassment (discrimination) claim:

- Sex Discrimination Act
- Anti-Discrimination Act
- Fair Work Act

Anti-Discrimination Board/
Australian Human Rights Commission/
Fair Work Commission

Serious sexual harassment case

- Bullying via repeated offensive comments and behaviour of sexual nature in the workplace – perpetuated by inaction of management
- Injury to the worker
- Police complaint for assault
- Discrimination claim
- Vicarious liability of employer

Other forms of discrimination

- race or ethnicity
- age
- sex
- marital status
- disability
- pregnancy;
breastfeeding
- carer / family
responsibilities
- homosexuality
- transgender status

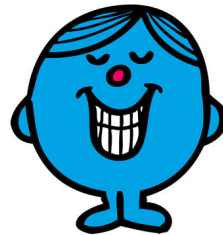
Bullying, harassment and discrimination at work

1. Bullying
2. Work Health & Safety
3. Sexual harassment & discrimination
- 4. Wrap-up, questions, legal advice.**

RESOURCES: www.rlc.org.au/training/resources/bullying

Nobody's perfect!

MR. PERFECT



The law acknowledges good faith efforts to address breaches and this can also mitigate penalties.

Legal process: Pros & cons



Questions?

Linda Tucker



Employment & Discrimination
Solicitor

Redfern Legal Centre

RESOURCES: www.rlc.org.au/training/resources/bullying

This workshop is a guide to the law in NSW, Australia. It is not a substitute for legal advice. If you have a legal problem, seek legal advice from a legal centre or Legal Aid.

Free confidential legal advice

- Most community legal centres
http://www.legalanswers.sl.nsw.gov.au/advice/about_clcs.html
- Legal Aid
www.legalaid.nsw.gov.au/contact-us/legal-aid-nsw-offices

ALL LINKS ARE AT: www.rlc.org.au/training/resources/bullying

Before you go...

Future webinars:

rlc.org.au/training

Your feedback helps us improve our training... So please stay online for 30 seconds more.



Training: rlc.org.au/training

Enquiries: Nick Manning

education@rlc.org.au

RLC can come to you

We can present this workshop at your staff training or interagency... or we can customise training to suit your needs.



Enquiries:

Nick Manning
(02) 9698 7277

education@rlc.org.au

Our law training topics

- Tenancy
- Social housing
- Domestic violence
- Fines
- Debts
- Police complaints
- Discrimination
- Employment
- Navigating the legal assistance sector

rlc.org.au/training



Redfern Legal Centre