

Fact Sheet – Workplace bullying: state system employees

If you are a national system employee, different anti-bullying laws apply from 1 January 2014 so please read our fact sheet “Workplace bullying: national system employees”. This fact sheet is for state system employees only.

If you are unsure whether you are a national system employee or state system employee, you can read our fact sheet “National system employee or state system employee: which one are you?”

1. What is workplace bullying?

Workplace bullying can be described as **repeated** and **unreasonable or inappropriate behaviour** directed at a worker, or group of workers, that creates a **risk to health and safety**.

For state system employees, there is no one piece of legislation prohibiting workplace bullying. Rather, the nature of the bullying behaviour and the effect it has on the employee will determine which law might have been breached and the best course of action to take. For example, workplace bullying may breach the following laws:

- *Occupational Health and Safety Act 1984* (WA) (**OSH Act**);
- *Workers’ Compensation and Injury Management Act 1981* (WA);
- *Equal Opportunity Act 1984* (WA) (**EO Act**);
- *Fair Work Act 2009* (Cth) (**FW Act**); or
- *Industrial Relations Act 1979* (WA) (**IR Act**).

1.1 Repeated behaviour

Generally, the bullying must be persistent for it to be considered ‘repeated behaviour’. It does not matter what form the bullying takes as long as the employee can establish a pattern of bullying.

However, this does not mean that a single incident of workplace bullying should be ignored. Employers have an obligation to ensure the health, safety and welfare of employees and any other person at the workplace. You should report all cases of workplace bullying to your employer.

Physical and sexual assault are criminal matters and should be referred to the police as soon as possible.

1.2 Unreasonable or inappropriate behaviour

There is no specific definition of ‘unreasonable or inappropriate behaviour’. The behaviour which is not allowed is behaviour that a reasonable person, looking at all the circumstances, would consider unwarranted. Some examples of bullying behaviour are given below.

1.3 Risk to health and safety

Bullying has a negative effect on the health and safety of employees and others at the workplace. This presents a hazard in the workplace and is unlawful under the OSH Act.

Under the OSH Act, an employer has a duty to provide and maintain a working environment in which employees are not exposed to hazards. Large penalties may be issued against employers who fail to observe the provisions of the OSH Act. Employees also have obligations under the OSH Act to work in a safe manner and not to endanger themselves or others.

2. Some examples of workplace bullying

Workplace bullying can be verbal abuse or physical violence, but it may also take more subtle forms, such as via emails or telephone text messages. It can be carried out by an individual or by a group. For example, group bullying can occur where a number of workers together carry out bullying behaviour against a manager or supervisor.

Workplace bullying can occur between workers and other workers, managers, supervisors, customers or clients, students, volunteers, contractors or visitors.

Obvious examples of workplace bullying include:

- abusive, insulting or offensive language;
- actual or threatened physical attacks;
- language or behaviour that causes fear or humiliation or which demeans another person;
- teasing or frequently making someone the target of practical jokes;
- constant and unjustified threats of dismissal;
- inappropriate remarks about a person's lifestyle or family; or
- interfering with a person's belongings or work equipment.

Sometimes the bullying is not so obvious. However, the following behaviour can also be workplace bullying:

- withholding information or isolating a person in a way that prevents them from fulfilling their work duties;
- unreasonably overloading a person with work;
- making a person do work that is unrelated to their job or beyond their skill level; or
- treating a person unfairly in relation to their entitlements, such as leave or reasonable training.

3. What is NOT workplace bullying?

Not all conduct in the workplace will amount to bullying. It is important to remember that an employer is allowed to direct and control the manner in which employees complete their work, so long as it is reasonable. For example, if the employer gives an employee feedback about work performance, it should be assessed objectively, and it should be communicated appropriately.

Examples of behaviour that, if carried out reasonably, is **not** bullying include:

- setting reasonable work standards and deadlines;
- performance management processes;

- allocating work to a specific employee;
- not selecting an employee for promotion;
- constructive professional feedback;
- transferring an employee, where reasonable;
- informing an employee about substandard work performance;
- warning an employee about inappropriate behaviour; or
- implementing organisational changes.

4. What are the effects of bullying?

Individual reactions to bullying may vary, but potential health effects of bullying include:

- high stress levels;
- anxiety;
- depression;
- aggression;
- loss of self-esteem and ability to perform work;
- personality and character change;
- ill-health or fatigue;
- physical injury; and
- in extreme cases, risk of suicide.

5. What to do if you are being bullied

This section provides some practical suggestions to assist you in dealing with workplace bullying.

Step 1: Diarise all incidents of workplace bullying

Although it may have been an upsetting experience, it is a good idea to keep detailed written notes if you experience workplace bullying. Keeping a written record can help to show that the bullying behaviour took place, and that it was repeated.

Specifically, you should note:

- the date of the conversation or incident of bullying;
- what time the incident took place;
- who was involved;
- what happened – what the dispute was about; and
- what was said – the actual conversation.

You should be aware that WorkSafe – the WA government authority that handles workplace health and safety – will usually only investigate allegations of workplace bullying if written records have been kept.

Step 2: Verbally notify the bully and your employer about their inappropriate conduct

After you have made a written record of the bullying incident, you should tell the bully that their conduct is inappropriate and must stop. This is an important step because, sometimes, the bully may not realise that their behaviour is offensive.

If the bully is a co-worker (rather than your employer) you should also notify your employer of the bullying behaviour. You should then wait to see if the employer takes steps to address the problem. If the bullying stops, you may not need to take any further action.

You should also make written records about these conversations.

Step 3: Notify your employer in writing about the workplace bullying

If the bullying continues or if your employer does not take any steps in response to your complaint, you should notify the employer about the bullying in writing. Your written records will help demonstrate specific incidents, rather than merely alleging general bullying conduct. Your letter should also make specific references to any verbal conversations you had with the bully directly to try and resolve the problem.

Notifying the employer in writing will be written proof of your attempts to resolve the dispute. At the end of this fact sheet is a sample letter to give you an idea of what to include.

Make sure you keep copies of all correspondence

It is important that you keep dated copies of all correspondence which you send and receive. If the bullying cannot be resolved through discussions, the correspondence will be useful to give other parties a summary of what happened. It also demonstrates your efforts to resolve the problem and will assist you if you decide to pursue further action against your employer.

Step 4: If your attempts at negotiation fail, get further advice about other legal options

A few of the more common legal options you might have are mentioned below. But not all of these may be available. It will depend on your own circumstances. If you are thinking about making a claim, you should get further advice on the legal options which are available to you.

Some of the places you can contact for advice include:

- your union for assistance;
- the Employment Law Centre of WA Advice Line;
- one of the agencies listed in the 'Further Information' section of this document.

6. Types of legal protections against bullying behaviour

6.1 Bullying under the *Equal Opportunity Act 1984* (WA)

If the nature of the bullying or inappropriate behaviour involves discrimination on one or more of the following grounds, you might be able to make a discrimination claim against your employer:

- sex, marital status or pregnancy;
- gender history;
- family responsibility or family status;
- sexual orientation;
- race;

- religious or political conviction;
- physical or mental impairment;
- age; or
- having a spent conviction.

The Equal Opportunity Commission of Western Australia (**EOC**) handles claims of discrimination based on these grounds. A claim for discrimination with the EOC can *only* be made on one of the grounds listed above.

6.2 Workers' compensation

Workers' compensation protects injured workers by providing for loss of earning capacity, payment of medical expenses and vocational rehabilitation to assist employees to remain in or return to work.

If you have an injury or illness at work, you might want to think about making an application to WorkCover for workers' compensation. Anxiety or stress as a result of workplace bullying can sometimes be considered an illness or injury for the purposes of workers' compensation claims.

The Employment Law Centre of WA does not advise on workers' compensation. You should contact WorkCover for information.

7. Forced resignation: "constructive dismissal"

There are some legal claims that you can only make if you have been dismissed from your employment. A dismissal is where your employer ends your employment. Usually if you resign you will not be eligible to bring a claim which requires you to have been dismissed.

But sometimes, your employer's actions might leave you feeling like you have no other choice but to resign. In these situations, a court will say that a forced resignation was a dismissal which means that you will be eligible to make those claims. In these situations, your resignation is called a "constructive dismissal".

In some cases, workplace bullying can make you feel like you have no other choice but to resign. If you resign because of workplace bullying, it is possible that you may still be able to bring a legal claim which requires you to have been dismissed. But you should be aware that constructive dismissal is not an easy argument to establish. If you resign and you don't succeed in arguing that you were constructively dismissed, you may have limited options as to what you can do.

We strongly suggest that, if possible, you seek legal advice before resigning because of bullying behaviour. For more information, you can read our fact sheet "Constructive dismissal: when you are forced to resign".

8. Further information

The Employment Law Centre of WA (Inc)

Advice Line 1300 130 956 or 08 9227 0111

Web www.elcwa.org.au

Equal Opportunity Commission

Address Level 1, Albert Facey House,
469 Wellington St, Perth 6000
Tel 1800 198 149 / 08 9216 3900
TTY (hearing impaired) 08 9216 3936
Web www.eoc.wa.gov.au

Unions WA

Tel 08 6313 6000
Web www.unionswa.com.au
Email unionsyes@unionswa.com.au

Wageline

Tel 1300 655 266
Web www.dmirs.wa.gov.au/wageline

WorkCover WA

Advisory Service 1300 794 744
TTY (hearing impaired) 08 9388 5537
Web www.workcover.wa.gov.au

WorkSafe

Tel 1300 307 877
Web www.dmirs.wa.gov.au/worksafe

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If you have concerns or questions about any of the above, you should contact ELC for assistance on 1300 130 956.

*Information includes any and all data, documents, pages and images.

Your Name
Address line 1
Address line 2

Your Employer
Address line 1
Address line 2

Date

Dear [Mr or Ms Employer],

Incidents of workplace bullying

I wish to formally inform you that I have experienced bullying while working at your company, [insert company name].

The following are specific incidents of bullying I wish to bring to your attention. These examples come from detailed written records I have kept for my own reference.

[Refer to your written records and include some examples from those records]

I also confirm our meeting on [insert date and time of when you verbally notified your employer about the bullying], where I verbally told you about the workplace bullying and asked for your support and assistance in stopping it. Since that meeting, the bullying has not stopped.

I find this conduct to be unacceptable. On top of that, it is [insert impact of conduct on you – eg. upsetting, stressful, distressing, etc]. I would like to discuss this matter with you further in the presence of a witness. If the bullying conduct does not stop, I intend to get legal advice on the matter.

Yours sincerely,

[Your name]