

The Legal Ramifications of Workplace Bullying

By: Bernadette Starzee April 16, 2014

The much-publicized investigation into alleged bullying on the Miami Dolphins football team has brought workplace bullying into the national spotlight.



More than a third of American workers say they've been bullied at work, according to a survey by the Workplace Bullying Institute, a national organization that defines workplace bullying as repeated, health-harming abusive conduct committed by bosses and/or co-workers. This may include verbal abuse, intimidation, humiliation and sabotage that prevents work from getting done.

While bullying is not healthy for the victim or the workplace, it's not necessarily unlawful. Though so-called "Healthy Workplace" bills have been introduced in 26 states since 2003, including New York, none of these anti-bullying bills have become law.

However, Title VII of the Civil Rights Act prohibits offensive conduct tied to membership in a protected class. If an employee is mistreated or subjected to a hostile work environment because of his or her sex, color, race, religion or national origin, an employer may face a harassment charge.

"A prudent employer will want to eliminate bullying behavior, not only because it's the right thing to do, but also because there's always the argument that could be made the bullying was in fact connected to a protected class," said Jonathan Trafimow, a partner and chairman of the employment law practice group at Moritt Hock & Hamroff in Garden City. In the Miami Dolphins case, for instance, player Jonathan Martin reportedly was called racial slurs as part of the bullying. "Many workplace claims that are filed include allegations that cover both prohibited and non-prohibited conduct," said Jeffrey Schlossberg, counsel in the Melville office of national workplace law firm Jackson Lewis. "Someone may file a claim that says 'my supervisor called me names that were related to my national origin, and in addition he called me 'stupid.'"

Whether or not the abuse is unlawful, it's in an employer's best interest to create a workplace in which bullying is not tolerated.

"Employers want to maintain a positive work environment," Trafimow said.

In addition to bringing down morale, workplace bullying leads to increased absenteeism and job turnover and decreased productivity, said Lauren Chartan, an attorney at the Law Firm of Wisselman, Harounian & Associates in Great Neck. Most employers have an anti-discrimination or anti-harassment policy in place, but most don't go far enough to address bullying, said Arthur Yermash, a senior associate at Campolo, Middleton & McCormick in Ronkonkoma. In the wake of the Miami Dolphins scandal, Yermash has received inquiries from clients about whether they should expand their policies.

"Employers should have a policy addressing bullying," he said. "It should set rules for conduct and provide a path for an employee that feels he has been bullied to report the behavior."

Besides outlining behaviors that won't be tolerated, the policy should include consequences, said Schlossberg, who noted employers can also communicate the message – through training – that unprofessional conduct won't be tolerated.

Bullying often arises when two employees "can't get along for whatever reason," Yermash said. "Or you might have two people doing the same job, and

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one thinks he's better than the other and doesn't want the other person there. He might start messing with the other person's work product or otherwise interfering so it's difficult for that person to do his job."

Typically, the human resources department will handle complaints about mistreatment and follow-up investigations. Companies that don't have an HR department should have a designated person in place to handle issues that arise, Schlossberg said.

When a complaint is filed, the employer should investigate it and take any necessary action immediately, Yermash noted.

"That's the best way an employer can protect itself," he said. "If there's a policy in place and someone acts on that policy, and the employer does nothing about it, it's opening itself up to potential liability."

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