Workplace Wisdom

AMA (WA) LEGAL

Workplace bullying: more than just bad behaviour

Almost one in three workers surveyed in the healthcare and social assistance sector reported experiencing workplace bullying in the preceding six months, according to Safe Work Australia. But not every difficult workplace interaction constitutes bullying. Understanding where the legal line is drawn is important for medical practitioners, practice owners and employees alike.

What constitutes workplace bullying?

Under section 789FD of the *Fair Work Act 2009* (Cth), workplace bullying occurs when an individual or group repeatedly behaves unreasonably towards a worker, and that behaviour creates a risk to health and safety. Western Australia's State industrial relations system applies substantially the same test.

There are three essential elements:

1. **Repeated behaviour**
   A single incident of unreasonable conduct will generally not constitute workplace bullying. There must be repeated unreasonable behaviour, although the incidents need not involve identical conduct. A serious one-off incident may nevertheless give rise to other legal or workplace health and safety concerns.
2. **Unreasonable conduct**
   The test is objective. The question is not simply whether the conduct caused offence or distress, but whether a reasonable person, considering all the circumstances, would regard the behaviour as unreasonable.
3. **Risk to health and safety**
   The behaviour must create a risk to physical or psychological health and safety. Actual injury is not required; the existence of a risk is sufficient.

Bullying may involve obvious conduct such as intimidation, threats, verbal abuse or humiliation. It can also take more subtle forms, including repeated exclusion from work-related activities, withholding information necessary to perform duties, spreading malicious rumours, or imposing unreasonable work expectations.

What bullying is not

Managing employees is not, in itself, bullying. Employers are entitled to set performance standards, provide feedback, address misconduct, and take disciplinary action where appropriate.

Importantly, the law expressly protects reasonable management action carried out in a reasonable manner.

Examples include:

- implementing performance improvement plans;
- providing constructive or critical performance feedback;
- taking disciplinary action in response to misconduct;
- allocating reasonable duties and responsibilities;
- setting and enforcing reasonable workplace standards;
- investigating complaints or allegations of inappropriate conduct.

However, the distinction lies not only in the management decision itself, but also in how it is implemented. Performance management conducted in a humiliating, intimidating or otherwise unreasonable manner may fall outside this protection.

What should you do if bullying is alleged or experienced?

Whether raising a concern or responding to an allegation, the starting point should be the facts.

Document the relevant incidents, including dates, conduct, witnesses, and supporting correspondence. Consider whether the behaviour is repeated, objectively unreasonable, and creates a risk to health and safety.

Where appropriate, concerns should be raised through the workplace's internal grievance or complaint procedures. For practice owners, complaints should be assessed promptly, impartially and confidentially, with all parties afforded a reasonable opportunity to respond.

Importantly, receiving a bullying complaint does not prevent an employer from undertaking legitimate performance management. However, the complaint and any performance management process should be handled fairly and independently to avoid further disputes.

FWC or WAIRC – which jurisdiction applies?

In Western Australia, the appropriate jurisdiction depends on the workplace relations system covering the business. It is important to obtain expert advice before making a claim.

If you are concerned that workplace conduct may constitute bullying, seek legal advice early to understand your rights, obligations and available options. ■

Need advice or support?

The AMA (WA) Legal team can guide you. Just scan the QR code or visit **amawalegal.com.au**.

The information contained in this article is general in nature and does not constitute legal advice. Readers should obtain independent legal advice specific to their circumstances before making any decisions or taking any action.

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