

Lawyers and Employers Take The Fight to 'Workplace Bullies'

By CARI TUNA

A recent U.S. court case and new research are focusing attention on "workplace bullying," prompting some employers to take steps to curb aggressive behavior.

Experts define workplace bullying as subtle, persistent and often nondiscriminatory harassment of co-workers. Unlike sexual or racial harassment, workplace bullying isn't necessarily illegal. But bullying can contribute to absenteeism and turnover and escalate into illegal behavior if left unchecked, experts say.

In April, the Indiana Supreme Court reinstated a \$325,000 verdict for Joseph Doescher, a former medical technician who had sued Daniel Raess, a cardiovascular surgeon, for assault in 2002.

Mr. Doescher's attorneys portrayed Dr. Raess as a verbally abusive workplace bully. In the 2002 incident, Mr. Doescher claimed Dr. Raess yelled at and advanced toward him with clenched fists. Dr. Raess's lawyers argued that the bully label was irrelevant and the surgeon's actions didn't amount to assault. But four of the five justices disagreed, deeming workplace bullying an "entirely appropriate" term.

The ruling doesn't mean that employees can sue for workplace bullying alone. But Kevin Betz, who represented Mr. Doescher, calls the ruling "a major breakthrough," as the first time a court recognized bullying as an issue. Dr. Raess couldn't be reached for comment, and his lawyer, Karl Mulvaney, declined to comment.

The Indiana decision came amid growing concern about workplace bullying. Garry Mathiason, a senior partner at Littler Mendelson, a leading employment-law firm, says more corporate clients are raising the issue, motivated by legal questions, as well as concerns about the impact on productivity. Littler Mendelson featured bullying among its "breaking trends" in labor law at a conference for U.S. employers this year.

Angela Cornell, an associate professor at Cornell Law School who specializes in employment law, says workplace bullying is common enough that employers should "nip it in the bud before it becomes a problem."

Graniterock, a Watsonville, Calif., construction-materials distributor, is trying to do just that. In June, Graniterock added nondiscriminatory bullying to its list of prohibited conduct in the workplace, which already included harassment based on gender, ethnicity and other protected statuses.

Graniterock Chief Executive Bruce Woolpert says the policy grew out of events at the company. He says bullying and intimidation are common in the construction industry. At Graniterock, he says, one employee made repeated off-color jokes about another employee's girlfriend; he also has seen veteran workers harshly criticize younger employees.

Emotionally abusive co-workers can hurt a company's reputation with customers and employees and poison a work environment, Mr. Woolpert says. "It's not just the person who is being attacked, it's the entire company."

New research highlights the prevalence and dangers of workplace bullying. In a 2007 survey of 1,000 U.S. workers, 44% said they had worked for a boss they considered abusive. The survey was sponsored by the Employment Law Alliance, an association of 3,000 employment lawyers.

In a 2004 survey by the National Institute for Occupational Safety and Health, 25% of companies reported bullying incidents in the previous year. More incidents were attributed to co-workers than to supervisors. The study was part of the institute's research on work-related stress.

This year, two Canadian professors concluded bullying can take a more severe emotional and physical toll than sexual harassment, perhaps because companies provide greater support for victims of the latter. In a review of 110 studies spanning two decades, the researchers found that bullied employees were more likely than sexually harassed employees to quit, report physical and mental health problems, and be dissatisfied with their jobs.

Since 2003, lawmakers in 13 U.S. states have introduced bills that would ban workplace bullying, but nearly all have failed. Hawaii passed a resolution that encourages employers to adopt antibullying policies. Proposed legislation is pending in New York. In Connecticut, state Sen. Edith Prague says she plans to introduce a measure in January that would ban bullying in government workplaces.

Most of the bills reflect the influence of the Workplace Bullying Institute, an employee-rights group founded by psychology specialists Gary and Ruth Namie in 1998 after Dr. Namie felt she was bullied at work. The institute is supported by the couple's consulting company, Work Doctor Inc., which advises companies and victims of bullying. Mr. Doescher's attorneys called Dr. Namie as an expert witness in the Indiana case.

Some business groups and lawmakers say workplace bullying is too difficult to define, and a poorly worded law would expose businesses to unnecessary lawsuits.

Mr. Woolpert says Graniterock executives reworked their antibullying policy several times to clarify its message. The company now forbids "unnecessary and rude behavior intended to be offensive and cause emotional distress, including 'workplace bullying.'"

CORRALLING BULLIES

"Workplace bullying" can include sarcastic comments, social exclusion or work sabotage. Lawyers offer these tips for employers:

- Prohibit intimidation and harassment
- In company policies, emphasize cooperation and respect
- Have a clear, publicized internal complaint procedure
- Observe how employees treat each other
- Address problems quickly

Sources: Garry Mathiason, Littler Mendelson P.C.; Jon Meer, Seyfarth Shaw LLP