Bullying as an Organizational Safety Issue: Do Different Types of Bullying Lead to Different Litigated Outcomes?

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Chapter 2

**BULLYING AS AN ORGANIZATIONAL SAFETY ISSUE: DO DIFFERENT TYPES OF BULLYING LEAD TO DIFFERENT LITIGATED OUTCOMES?**

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**ABSTRACT**

Workplace bullying is widespread. A recent meta-analysis found that the prevalence rate across 86 independent samples was 14.6% (Nielsen et al., 2010). Bullying occurs often enough for the International Labor Organization (ILO) to emphasize physical and emotional violence as being one of the most serious problems facing the workplace in the new millennium (Canadian Safety Council, 2004). Congress enacted OSHA in 1970 with the stated purpose “to assure safe and healthful working conditions for working men and women.” It is argued in this chapter that workplace bullying poses a threat to safe and healthful working conditions. This workplace safety and health threat is associated with different legal outcomes depending upon whether the victim of bullying files a cause of action based on formal or informal bullying behaviors in the court system in the United States.
LITERATURE REVIEW

Bullying in the workplace has been investigated from a variety of perspectives ranging from the legality of workplace bullying (Yamada, 2005) to the ethics of workplace bullying (LaVan and Martin, 2009). This chapter will examine workplace bullying as an issue of organizational safety. Other researchers have viewed workplace bullying as an organizational safety and health issue (Jenkins et al., 2011) and a public health issue (Lovell and Lee, 2011). Furthermore, Lovell and Lee (2011) regard workplace bullying as an occupational safety hazard. To take an organizational safety perspective of workplace bullying requires that the legal context of bullying be discussed as well as the formal and informal behaviors that constitute workplace bullying. Furthermore, given the legal context of viewing workplace bullying as an organizational safety issue, the outcomes for victims of workplace bullying will also be focused upon in this chapter with particular attention to the litigated outcomes.

Workplace Bullying: A Definition

There are numerous definitions of workplace bullying. In this chapter, workplace bullying is defined as consisting of three qualities: (1) the regularity of bullying over a six-month period; (2) the victim experiences challenges defending himself or herself; and (3) a difference in power between the victim and the bully. This definition is based upon the work of previous researchers (Lindstrom et al., 2000; Law et al., 2011).

Prevalence of Workplace Bullying

The prevalence of workplace bullying is in part related to the definition of workplace bullying. In one of the more rigorous prevalence studies of workplace bullying, it was estimated that 47 million U.S. workers are victims of workplace bullying in any given year, which is equivalent to 41% of the working population in the United States (Schat et al., 2006). In a polling study conducted by The Workplace Bullying Institute (2007), the lifetime prevalence was estimated to be 37% of the working population or 54 million Americans. The precise number and prevalence whether point prevalence, annual prevalence or lifetime prevalence is debatable but the number of workers
exposed to workplace bullying and the number of witnesses exposed to workplace bullying as well as the number of individuals accused of workplace bullying add up to millions in any given year. This is why workplace bullying is considered not only an occupational safety and health issue but also a public health and social issue.

**Workplace Bullying as an Ethical Issue**

Although beyond the scope of this chapter, some have asserted that there is a strong relationship between local ethical climates and workplace safety (Parboteeah and Kapp, 2007). According to Schneider (1990), an ethical climate is the "incumbents' perceptions of the events, practices and procedures and the kinds of behaviors that get rewarded, supported and expected in a setting (page 384)." Hence, the manifestation of workplace bullying behaviors occurs within the context of the ethical climate of a particular organization. Law et al. (2011) refer to such an ethical climate as a psychosocial safety climate and discuss this climate from the point of view of both bullying and harassment.

It has further been argued that ethical climates "serve as a modifier of motive and opportunity, either prompting or discouraging organizations from engaging in illegal behavior (McKendall et al., 2002, page 367)." The apropos law regarding workplace bullying is the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.).

**Legal Context**

Even though workplace bullying is not illegal in the United States, victims of workplace bullying have prevailed in the court system by using other laws and legal theories to restore justice (Martin and LaVan, 2010; Martin, Lopez, and LaVan, 2010). Harthill (2009) references other laws that can be used by victims of workplace bullying ranging from Title VII hostile work environment protection to intentional infliction of emotional distress.

Beyond using other laws and legal theories, commentators have concluded that OSHA could "... be utilized and/or strengthened to incorporate coverage of bullying as a recognized workplace safety and health hazard... (Harthill, 2009)." The OSHA general duty clause is broad enough to cover acts of workplace bullying because it requires employers to maintain safe working
conditions. Section 5 of the OSH Act sets forth a covered employer’s duties. The first clause, section 5(a)(1), is called OSHA’s “general duty clause” and provides that each employer must furnish its employees with a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.” According to Namie and Namie (2004), workplace bullying falls more so under the category of psychological violence but violence nevertheless. As such, any violence occurring at work falls under the purview of OHSA.

The National Institute for Occupational Safety and Health (NIOSH) regards workplace bullying as a subset of workplace violence (2004). Moreover, NIOSH categorizes workplace bullying as a subset of workplace violence. Balducchi et al. (2011) define workplace bullying as “…a prolonged exposure to frequent hostile behaviors at work, which can lead to severe stress reactions (page 499).” Balducchi et al. (2011) in a study of workplace bullying assert that workplace bullying arises from both individual factors, specifically personality, and environmental factors, specifically work environment. Hence, there is an interaction between the individual and the work environment.

Outcomes for Victims of Workplace Bullying

There is a host of outcomes for victims of workplace bullying. The two primary outcomes considered in this chapter are the health and safety effects of bullying as well as the litigated outcomes of those victims who file a cause of action in a court. First, the health effects are numerous and deleterious (Namie and Namie, 2009). Specifically, workplace bullying has been associated with psychosomatic stress symptoms, muscular-skeletal symptoms, anxiety, and depression (Hoel, Rayner, and Cooper, 1999; Kivimaki et al., 2003). Other researchers have found that perceptions of workplace injustice are linked with chronic stress, high blood pressure, and increased risk of coronary heart disease (De Vogli et al., 2007). Second, Namie and Namie (2009) argue that workplace bullying “…can be a lethal form of workplace violence (page 203).”

Although victims suffer the greatest degree of harm, witnesses coworkers are also affected (Lutgen-Sandvik et al., 2007). Not only are victims and those who vicariously experience workplace bullying impacted but so too are those accused of workplace bullying. Specifically, it was found that those accused of workplace bullying also experience negative health consequences particularly anxiety, depression, and stress (Jenkins et al., 2011). Accordingly, a focus on
workplace bullying from a point of view, which embraces occupational safety and health, must be broader than the victim.

Types of Workplace Bullying

Workplace bullying occurs at both an individual (Olweus, 1991) and group level (Einarsen et al., 2003). In addition, workplace bullying has been shown to increase after organizational changes (Skogstad et al., 2007). Ramsay et al. (2011) comment, "Workplace bullying has serious negative implications for individuals, groups, and organizations (page 802)." Bullying is not limited to a single perpetrator and single victim as demonstrated by Leymann (1996) who discovered that "...slightly more than 40% of victims subjected to attacks by two to four persons (page 175)."

In this chapter, we distinguish between formal and informal workplace bullying behaviors. Formal workplace bullying behaviors are those behaviors that occur because of managerial and organizational decisions and actions such as discrimination and unfair pay. Salin (2003) found that workplace bullies are often rewarded for bullying such as in those instances where a promotion results from the productivity effects of bullying. In contrast, informal workplace bullying behaviors are those behaviors that take place because of unsanctioned actions of employees or customers such as harassment or intimidation. With regard to harassment and intimidation, these two types of informal bullying behavior have been categorized as workplace violence (Serantes and Suarez, 2006). According to Serantes and Suarez (2006), following this line of reasoning, "workplace violence can cause health risks for the victims...page 235."

Informal workplace bullying behavior has also been found to exist when employees are ill-treated and subject to hostile behavior (Einarsen et al., 2003; Keashly, 1998; Pearson et al., 2001). Researchers have characterized perpetrators of workplace bullying as "...domineering, vindictive, cold, socially avoidant, and distrustful (Glaso et al., 2009, page 1327)." This description fits with existing research by others (Keashly and Jagatic, 2003). Even if informal workplace bullying behaviors are not part and parcel of the formal organization, organizations and managers have a responsibility to prevent and address workplace bullying formally (Glaso et al., 2009).
Organizational Context

The way in which an employer addresses complaints of workplace bullying will result in perceptions of justice and fairness on the part of both the victim and the alleged bully. Fox and Stallworth (2005) discuss the linkage between workplace bullying and organizational justice particularly in those situations in which the supervisor is the workplace bully. The filing of workers’ compensation claims has been found to be associated with perceptions of workplace injustice (Winefield et al., 2010; Roberts and Markel, 2001) and even wrongful termination suits (Lind et al., 2000).

From an organizational perspective, Lovell and Lee (2011) recommend that worksite wellness programs specifically address workplace bullying as part of mental health promotion. Liefooghe and Davey (2001) assert that top management by focusing upon the culture of the organization can both prevent and remedy workplace bullying. One of the dilemmas of addressing workplace bullying from the perspective of employers is that only 1.6% of U.S. employers believed that workplace bullying occurs frequently in their organizations (Grubb et al., 2004) according to a NIOSH-NORC survey. In short, there is a discrepancy between the perceptions of prevalence among employers and employees. This poses problems because if organizations do not regard workplace bullying as prevalent, then the rational response, especially during times of austerity, is to fail to invest in prevention and remediation programs. Left with no organizational recourse, the rational response for some victims is to seek legal action.

Methodology

The data for this research was acquired by using BNA database of litigated cases. All usable cases for the years 2006 to 2008 were retrieved using the search strategy (bully OR bullying AND employee). The timeframe of three years was selected in order to discern a relatively recent perspective on litigation relating to bullying, i.e., what is going on currently in the legal arena? This search resulted in 522 usable cases, which comprise the data.

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Content analysis was done on the cases and if a particular characteristic was present, it was coded as 1 and if absent it was coded as 0.

RESULTS

Types of characteristics, as suggested by the literature, include legal context, type of bullying behavior, and case outcomes. Legal context included both legislation and possible tort actions. Legislation included constitutional amendments, federal EEO laws, federal laws-other than EEO and state laws. Important frequencies for the cases are as follows: discrimination including Title VII, the Americans with Disabilities Act, and hostile work environment were the bases of 272 of the 522 cases. This accounts for 52% of the cases. Constitutional amendments were the basis for 114 or 22% of the cases. State laws were involved in 72 or 14% of the cases. Retaliation was formally involved in 343 or 67% of the cases. Possible tort action included intentional infliction of emotional distress, defamation, privacy, and breach of contract. Thirteen of the cases involve intentional infliction of emotional distress, eight involved intimidation and 11 involved tort action in general. There were breach of contract issues in eight cases, defamation in seven cases and privacy in an additional eight cases. With respect to case outcomes, the individual prevailed in 15.9% of the cases, the case outcome was split in 22.8% of the cases and in 56.5% of the cases, the employer prevailed. Note that these percentages do not total 100% due to some missing data.

Bullying behavior was classified as formal or informal. Formal bullying types are ones that the organization can control through managerial actions, at least to some extent. Informal types, not as easy to manage, are more the result of interpersonal dynamics. Table 1 summarizes the formal and informal bullying behaviors that existed in the litigated cases that were analyzed. The most prevalent forms of bullying behavior are discrimination and retaliation, which occurred in 52% and 65.8% respectively. The next most prevalent form was unlawful termination, which occurred in 11.8% of the cases. With respect to informal behaviors, harassment occurred in 16.8% of the cases. Table 1 below categorizes the types of formal and informal behaviors involved in bullying.
Table 1. Formal and Informal Bullying Behaviors

<table>
<thead>
<tr>
<th>Formal Behaviors</th>
<th>Frequency of occurrence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrimination</td>
<td>52.0</td>
</tr>
<tr>
<td>Retaliation</td>
<td>65.8</td>
</tr>
<tr>
<td>Discipline/suspension</td>
<td>5.7</td>
</tr>
<tr>
<td>Unfair pay</td>
<td>1.7</td>
</tr>
<tr>
<td>Failure to reinstate</td>
<td>0.2</td>
</tr>
<tr>
<td>Breach of contract</td>
<td>1.5</td>
</tr>
<tr>
<td>Unlawful termination</td>
<td>11.8</td>
</tr>
<tr>
<td>Benefits and compensation</td>
<td>6.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Informal Behaviors</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Harassment</td>
<td>16.8</td>
</tr>
<tr>
<td>Intimidation</td>
<td>1.5</td>
</tr>
<tr>
<td>Interference</td>
<td>2.1</td>
</tr>
<tr>
<td>Defamation</td>
<td>1.3</td>
</tr>
<tr>
<td>Intentional infliction of emotional distress</td>
<td>2.5</td>
</tr>
<tr>
<td>Invasion of privacy</td>
<td>1.5</td>
</tr>
</tbody>
</table>

One research question was whether the outcome of formal or informal types of bullying behaviors could be predicted by the use of logistic regression modeling. A logistic regression analysis was performed with individual and split outcomes in one category of the dependent variable and organizational outcomes in the other category. A total of 522 cases were analyzed. See Table 2.

Table 2 Multivariate Analysis: Logistic Regression

<table>
<thead>
<tr>
<th>Overall classification – percent correctly identified</th>
<th>Formal methods</th>
<th>Informal methods</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accurate predictions for individual split Block 1</td>
<td>6.0 percent</td>
<td>8.5 percent</td>
</tr>
<tr>
<td>Omnibus test</td>
<td>Chi-square 9.594, df=5, p=.295</td>
<td>Chi-square 13.486, df=6, p &lt;.05</td>
</tr>
<tr>
<td>Hosmer and Lemeshow</td>
<td>Chi-square 3.736, df=5, p=.588</td>
<td>Chi-square .732, df=2, p=.694</td>
</tr>
</tbody>
</table>
The formal types of workplace bullying behaviors, which were entered into the first model were discrimination, retaliation, discipline/suspension, unfair pay, failure to reinstate, breach of contract, unlawful termination and benefits and compensation. The full model does not significantly predict outcomes for the individual/split (omnibus chi-square = 9.594, df = 8, p = .295). It classifies 60% of the cases. The Hosmer and Lemeshow statistic is a test of the null hypothesis. Results indicate that the model is a good model as indicated by a high p value. This model has a p value of .588, showing that the model is a good, but not ideal, fit. The informal types of workplace bullying behaviors were entered into the second model and were harassment, intimidation, interference, defamation, intentional infliction of emotional distress and invasion of privacy. The full model significantly predicted outcomes for the individual/split (omnibus chi-square = 13.486, df = 6, p < .05). It accurately classifies 62% of the cases. The Hosmer and Lemeshow statistic is a test of the null hypothesis. Results indicate that the model is a good model with a high p value of .694. This model is a better fit than the modeling of the formal types of workplace bullying behaviors. Hence, while there is only a small difference in the percentage of cases classified correctly by the formal and informal types of workplace bullying behavior, the informal types are more parsimonious.

CONCLUSION

A key finding in this chapter was that informal types of workplace bully behaviors are a more statistically significant predictor of court decisions involving workplace bullying than the formal types of workplace bullying. This fits with existing evidence regarding the interpersonal aspects of workplace bullying (Einarsen et al., 2003; Keashly, 1998; Pearson et al., 2001).

About one-half of our cases involved discrimination based upon Title VII, ADA, and other civil rights legislation. This fits with existing findings from other studies (Harthill, 2009). On the other hand, our findings are not consistent with previous research with regard to managerial responses to bullying in the form of retaliation, which is higher in our study than other studies. Moreover, harassment was not as high in our study as previous studies (Serantes and Suarez, 2006). The implications of our findings for human resources professionals, managers, and attorneys will be discussed below.
It is important for management to understand the legal consequences of bullying in the workplace. The current findings suggest that when there are more informal types for bullying, it can be predicted that the individual will prevail in litigation or at least prevail in part of his or her lawsuit. These informal types are more likely to occur in that laws prohibiting such behaviors are nonexistent. It is precisely in these contexts of interpersonal dynamics that workers’ safety becomes jeopardized. It thus becomes imperative that managers manage to control interpersonal dynamics so that individuals are not bullied. Formal methods of bullying are more explicitly prohibited by a variety of laws including EEO laws, equal pay laws, and the expectation of procedural justice.

HUMAN RESOURCES PROFESSIONALS

Given the empirical finding that informal types of workplace bullying behavior were statistically associated with litigated case outcomes, it is essential that human resources professionals enlist the knowledge and skills of not only legal and employee relations but also training, organization development and even coaches. It is within the expertise of training and development professionals that these informal workplace bullying behaviors can be prevented and addressed. In addition, for those involving harassment and intimidation with a gender, racial, religious or other dimension of diversity, then it is critical that appropriately trained and credentialed diversity practitioners be sought for their expertise.

MANAGERS

Managers should balance their attention to the legal/regulator environment with the climate and culture of their respective departments. In fact, managers should be very sensitive to group dynamics, team dynamics, and how individual employees are treated not only by management but by other members of the team, co-workers in other functions and departments as well as treated by customers.
ATTORNEYS

Attorneys representing the plaintiff or defendant can use the findings from this investigation to best represent their client. As an attorney for the plaintiff, evidence should be collected regarding the safety climate and culture of the organization with a particular focus on harassing and intimidating behaviors, which rise to meet the standard of workplace violence. If the evidence is present, then the plaintiff’s attorney may be able to use the OSHA General Duty Clause as a cornerstone to the case against the defendant, the employer and the alleged workplace bullying perpetrator. On the other hand, as an attorney for the defense, evidence should be gathered regarding how the manager and the employer offered workplace violence, bullying and anti-harassment training and education for all employees, including management, and how the employer has a policy, procedure and practice to report such instances and investigate such instances as well as appropriate language in all pertinent policies about sanctions for those who are found to have bullied others in the workplace.

In closing, workplace bullying continues to attract the attention of researchers, policy makers, and human resources professionals not to mention attorneys. Yet, the framing of workplace bullying as an legitimate occupational safety and health concern has not been fully embraced in the United States but there is mounting evidence, including this investigation, that workplace bullying should be viewed as an occupational safety and health hazard that needs to be eliminated from the workplace. Future research should continue to investigate workplace bullying using theories and constructs from then occupational safety and health literature and conduct investigations employing qualitative, quantitative and mixed methods research designs to understand fully the nature of workplace bullying with the ultimate aim to reduce or eliminate the prevalence and associated harms of workplace bullying.

REFERENCES


