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## MANAGING BULLYING IN THE WORKPLACE

BY LAURA BLANDTHORN, GRADUATE INDUSTRIAL & EMPLOYMENT

Research suggests that nearly 50% of all employees have experienced workplace bullying at some stage in their career.<sup>1</sup> Bullying and harassment seriously affects mental health and wellbeing, impacts upon performance at work and job retention. It is common to see bullying and harassment intersect with and be excused by performance management. Therefore, it is important to know the difference and equip yourself with the knowledge required to take effective action.

### *What is bullying and harassment?*

The *Fair Work Act 2009* (Cth) contains anti-bullying laws that are intended to protect workers. The Act defines bullying and harassment as:

- a. repeated unreasonable behaviour that is directed towards a worker (or a group of workers);
- b. that occurs in the workplace; and
- c. that creates a risk to health.

Generally, to be successful in demonstrating that bullying and harassment has occurred all three elements above need to be present. Examples of bullying and harassment include:

- Spreading malicious rumours
- Making derogatory comments (including via social media)
- Practical jokes or intimidation
- Exclusion from work related events
- Emotional abuse
- Physical abuse
- Threats
- Shouting
- Victimisation
- The imposition of **unreasonable** work expectations

### What is reasonable management action?

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<sup>1</sup> Beyond Blue, *Workplace Bullying in Australia* (Final Report) 30 May 2014, 9.

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‘Reasonable management action carried out in a reasonable manner’ is **not** considered bullying and harassment. Therefore, it is important to be aware of this difference when considering bullying and harassment by managers and supervisors.

The key questions to consider are whether you are being directed to do a reasonable task and whether the manner in which you are directed is reasonable.

For example, it would not be reasonable to critique work or performance where there was no basis for doing so. Equally, it would not be reasonable to be abused for poor work performance. Although, ‘*some degree of humiliation*’ may be the consequence of a manager engaging in reasonable management action.<sup>2</sup> In one case, a manager was found to have bullied and harassed two employees by finding faults with work when there was none, directing the workers to complete work records incorrectly, hiding equipment and acting in a confrontational manner.<sup>3</sup>

### ***What should I do if I am bullied at work?***

If you think that you are being subject to bullying and harassment in the workplace it is **very** important that you keep a record of the incidents in a format that can be accessed outside the workplace. For example, you could take notes in a notebook, make notes on your personal phone and take screen shots of messages.

If the bullying takes the form of performance management or criticisms of your work, you should record the action and an explanation as to why it is unreasonable.

Sometimes, workplaces will have policies that specifically deal with bullying and harassment. It is important for workers to become aware of these policies and use them to protect themselves. The remedies available at the Fair Work Commission are limited to a negotiated resolution or a stop bullying order.

You should contact HACSU if you think you are being bullied and harassed as they are best placed to provide practical on the ground assistance in the first instance. In some cases, the impact of bullying and harassment can give rise to a WorkCover claim. HACSU can assist you with a referral to Slater and Gordon Lawyers for claims such as this.

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The Author: Laura Blandthorn is Graduate in Slater and Gordon’s Industrial and Employment team in Melbourne. Laura is passionate about helping people get the justice and support they need and deserve.

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<sup>2</sup> *Comcare v Martinez (No 2) [2013] FCA 439 (17 May 2013) [73] [76]*.

<sup>3</sup> *Lacey and Kandelaars v Murrays and Cullen [2017] FWC 3136*.

# HACSU FACT SHEETS



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