

Workplace bullying around the world by Ellen Pinkos Cobb, JD

- In numerous countries there is a recognition that the psychological risks inherent in the workplace must be prevented and protected as physical ones have been for years.
- An employer's duty of care is frequently seen as encompassing both the physical and mental aspects of work.

EU

- National occupational health and safety legislation in numerous European countries include anti-bullying laws.
- In Europe, EU-OSHA holds the position that Directive on safety and health of workers at work sets forth employers' general obligations to ensure workers' health and safety in every aspect related to work, 'addressing all types of risk'.

European Foundation for the Improvement of Living and Working Conditions Report: *Violence and harassment in European workplaces: in 28 EU countries and Norway*. Published April 23, 2015. The document divides the countries into four main groups, depending on the prevalence of the phenomenon, the policies and procedures in place in businesses, and the level of awareness in society. The report found that there is a **“clear delineation between northern Europe on the one hand, and the southern and eastern countries on the other.”**

“In general, a high share of workers in Scandinavian countries report experiencing violence and harassment, followed by other countries in Northern and Central Europe. Overall, violence and harassment is less reported in southern countries.”

- Scandinavian and Northern EU have the most awareness and laws, with these countries leading the way with regard to their societies and public authorities in recognising the phenomenon as a major problem. As a result, the governments, social partners and businesses have implemented policies to counteract it. Higher level of awareness and reporting by workers.

- France, Germany, Luxembourg: surveys show a growing concern among the population about importance of violence and harassment at work and therefore awareness is increasing. Especially high awareness in France.
- Bulgaria, Croatia, Cyprus, Greece, Hungary, Italy, Poland, Romania, Spain: Violence and harassment not considered to be a major issue in this group. Awareness of it is low or increasing. Low levels of reporting.
- Most Eastern Europe countries demonstrate very little awareness of the issue despite it being more prevalent than in Europe as a whole. Czech Republic, Estonia, Latvia, Lithuania: Awareness low. policies and procedures developing or do not yet exist. Reporting is high.

OHS Laws contain a definition of bullying, harassment, victimisation/psychological violence, or psychosocial workload and requirements for the employer.

- Norway: Efforts to combat bullying are to be part of the systematic health, safety and environment in the workplace. Employees shall not be subject to harassment. Work shall be arranged so that employees' integrity and dignity are safeguarded.
- Finland: in its OHS Act-definitions include "psychological violence" intentional use of power against another person or group that can result in harm to physical, mental, moral or social development. Requires the employer to protect employees from the threat of violence by means which include considering threatening situations ahead of time and drawing up procedural instructions for workplaces where these situations may occur. After becoming aware, employer required to take measures to remedy harassing situations.
- Denmark: Employer shall ensure that work does not involve a risk or physical or mental impairment to health as a result of bullying.
- Belgium—Requires employer to identify situations which may cause harassment at work through doing a risk assessment....on the basis of the risk assessment, determine prevention measures. Appoint an authorized prevention advisor and a confidential

counselor. Ensure workers receive all necessary training. Includes contents and procedure for filing a complaint. Prohibits retaliation for filing complaint.

- Sweden-termed victimisation, the law places the onus on the employer to plan and organize work to prevent victimisation and make it clear to employees that victimisation is not acceptable. The employer is responsible for early detection of the signs of victimisation, prompt counter measures to deal with victimisation, and making support available to employees who have been targeted.
- Netherlands contains the definition 'psychosocial workload (PSW) which includes harassment. The employer must have a policy aimed at preventing PSW, or limiting it if prevention is not possible, as part of the general working conditions policy.
- UK does not have a specific law prohibiting workplace bullying—may be addressed under Protection from Harassment Act, Health and Safety at Work Act, and under protected categories in Equality Act.

Recent Cases

- Sweden (Feb 2014) two supervisors were found guilty by the District Court of violating workplace safety laws by causing another's death, of driving co-worker to suicide. The District Court found that the supervisors had failed to take sufficient measures to stop the bullying: only a minimal investigation had been carried out. Through carelessness and gross negligence they had caused Larsson's depression and later, his suicide.
- France--Court Ruling for Employee on Harassment Nov 2014 : A business may be liable even though the employer has taken effective measures immediately following the occurrence of such harassment; the Court will consider an employer's efforts to remedy the situation in determining compensation awarded for consequences of harassment.
- Finland-first verdict for psychological violence recently
A Finnish Ct of Appeals finding the former director of the Transport Workers Union of assaulting the Union's Communication Director over a six year period by humiliating her in public, shouting at her, and refusing to talk to her. The Ct concluded this amounted to psychological violence and ordered the former director pay fines for assault and occupational safety offenses.

AU

- Australia's Federal Government passed the Fair Work Amendment Bill giving the Fair Work Commission(FWC) power to handle anti-bullying complaints and allows a worker who reasonably believes he/she has been bullied at work to apply to the FWC for an order to stop the bullying. Effective January 1, 2014.
- Any worker who 'reasonably believes he/she is, or has been, the victim of workplace bullying will be able to apply to the FWC to have an investigation conducted into the matter and have their grievances heard.
- If the FWC investigators determine that workplace bullying is currently taking, or has taken place in the past, and there is a risk that bullying will continue in the future, the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the worker from being bullied at work.

AU Bullying –first year review

- Workplace bullying is defined as where an individual or group of individuals: Repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member and that behavior creates a risk to health and safety. The Commission has defined the concept of a "reasonable management action"
- According to the FWC January to March 2014 quarterly report, the Commission received 151 applications for orders to stop bullying in the first three months of operation, with the majority from employees of large organizations alleging unreasonable behavior by their managers. Only 8 applications were finalized with a decision and order issued only once on the basis that the worker faced a risk of continued bullying.
- Employees made 133 of the 151 applications. The overwhelming majority of workers (109) alleged bullying by their managers; with another worker the next greatest source of complaint (27); followed by a group of workers (20); and a subordinate (3).
- The workers came from a broad range of sectors, highest in the clerical industry.
- The FWC's Annual Report 2013-14 indicates that while the numbers of bullying claims still much lower than expected overall, they were gradually increasing month-to-month.

Canada

- British Columbia--The Workers Compensation sets out the general duties of employers, workers, and supervisors to ensure or protect the health and safety of workers. This includes preventing and addressing workplace bullying and harassment.
- In 2013, WorkSafeBC issued Occupational Health and Safety (OHS) on policies relating to workplace bullying and harassment. The policies provide a legal framework that identifies the steps WorkSafeBC considers reasonable for workplace parties to take to meet their legal obligations to prevent and address workplace bullying and harassment as follows:
 - An employer must, in order to proactively prevent bullying and harassment, have done the following by November 1, 2013: Implement a policy; train workers and managers on the policy; and create a complaint and complaint resolution procedure.
- **Manitoba OHS** (workplace health and safety) regulations to deal with bullying. Feb. 1, 2011. Harassment means objectionable conduct that creates a risk to the health of a worker; or severe conduct that adversely affects a worker's psychological or physical well-being.

Provisions regarding harassment include the following:

- Defining workplace-related harassment, and requiring employers to prepare and annually review policies respecting workplace-related harassment;
- Requiring employers to take steps to prevent occurrences of workplace-related harassment;
- Requiring allegations of workplace-related harassment be investigated; and
- Giving workers the right to refuse to work in certain circumstances after workplace-related harassment has occurred.
- Providing training on how to prevent workplace-related harassment to every supervisor employed by the employer.

Key requirements include that the employer:

- Promote and maintain, as far as is reasonably practical, a working environment that is free of workplace-related harassment;
- Prepare a written policy respecting workplace-related harassment; and
- Implement policies for dealing with and preventing incidents of workplace-related harassment.

An employer who knows or ought reasonably to know that workplace-related harassment is occurring must ensure that the source of the harassment is identified and stopped; and adequate steps are taken to remedy the effects of the harassment.

On the hiring of a worker, an employer must provide information to the worker on workplace-related harassment. On the hiring of a supervisor, an employer must provide the supervisor with training on how to prevent workplace related harassment and must provide additional training or refresher courses.

Asia/Japan

- Asia has been slower to acknowledge bullying but starting to come onto the radar.
- In Japan, bullying is referred to as Power Harassment, defined as any kind of behavior aimed at a person in the same workplace that, taking advantage of one's superior position and going beyond the appropriate scope of duties, inflicts physical or psychological pain on that person or negatively impacts the working environment. Although "power harassment" is not a cause of action in itself, an employee who has been power harassed may potentially bring a civil claim against the employer for failing in its duties to supervise and create a safe working environment.
- Japan's Ministry of Health, Labour and Welfare of Japan released figures in June 2014 showing a 12% year on year rise in reported work-related illness claims. In a third of these cases, employees were awarded compensation after claims of 'power harassment' or "dramatic and uncompensated rise in workload" were upheld.
- Japan's legislation Promoting Measures to Prevent Death from Karoushi, meaning death due to overwork, came into force on November 1, 2014. There are generally two types of karoushi – death caused by health problems, and suicide as a result of stress.
- November 4, 2014, the Tokyo District Court awarded JPY 58 million to the aggrieved family members of a young employee who committed suicide. The Court found that the suicide was caused by power harassment and overworking, one of the highest awards for this type of claim. A 24 year old shop manager of a fast food chain had committed suicide as a result of overwork and power harassment by his supervisor. The claim was brought by his bereaved parents against the company operating the fast food chain, the company president, and the supervisor. The Court found that for almost 3 years prior to the shop manager's death, he regularly worked over 12.5 hours a day, and was often verbally and physically abused by his supervisor by being called derogatory names, hit with a rice paddle, and giving him work orders on a rest day. The Court found that the shop manager only had 2 rest days for the 6 months immediately prior to his death, and that he was essentially being treated as an errand boy.

Turkey

- Article 417 of the Debts Law, amended in 2011, requires employers to protect all workers from psychological abuse. Psychological abuse in the workplace is defined as including verbal insults, belittling, leaving a person alone on purpose, excluding an employee from company activities, and assigning a worker either too little or too much work. Explicitly regulates employers' liability regarding mobbing for the first time.

An employer is responsible for:

- Protecting and respecting the personality of the employee within the employment relationship;
 - Keeping order in the workplace in accordance with the principles of honesty; and
 - Taking measures to guarantee that employees do not encounter sexual or emotional abuse and protecting those who have encountered such abuse from further suffering.
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- Top Turkish Court Sets Precedent in Favor of Mobbing Victim, April 16, 2014: A Turkish court ruling made clear that it is the employer, rather than the employee, who must prove that harassment did not take place.