

**\$600,000 Compensation for Bullied Worker:  
Do YOU Understand How the Anti-Bullying Laws Affect You?**

**Case Study**

The Supreme Court of Victoria recently ordered a company to pay almost \$600,000 in damages after it failed to act on its observations that a manager was bullying a sales assistant. The employee developed severe psychological disorders from the 'established pattern of workplace bullying'.

*Background*

From 2002 to 2007, the employee worked for the employer as a part time sales assistant. The employee alleged that throughout her employment her manager engaged in bullying, harassing and intimidating conduct and that the employer had failed in its duty to take reasonable care for her safety.

The employee first notified the Board of Members of the 'conflict' she was experiencing with her manager in early 2003. This included 'sarcasm, hostility, rudeness, and violent behaviour, [and] threat of termination. However, she told that Board that she believed she could 'cope' with the manager's behaviour, and asked the Board to 'sit on it at this stage and take the comments on notice'.

The Board informed the employee that they would provide written policies in the workplace to deal with the problem. However no such policies were ever implemented and the Board did not confront the manager about what it considered to be acceptable behaviour.

In 2005 the employee informed the Board that tensions had re-emerged during a busy sales period. Again, the Board promised to provide workplace policies but failed to follow through.

Matters came to a head in 2007 when a major conflict occurred between the employee and the manager. As a result, the employee ceased her employment, telling the chair of the Board she'd had enough after five years of the manager's bullying behaviour.

Evidence was led that the conduct caused the employee to go from a 'bubbly and lively' person, to suffering from a moderate to severe major depressive disorder and generalised anxiety disorder, and being continuously unfit for work from 2007 and into the foreseeable future.

*Decision*

The judge said that the risk of injury to the employee was clear to the employer in 2003 and that the employer had failed in its duty of care to the employee by not responding adequately to her complaint in 2003.

The judge rejected the employer's argument that the employee did not complain about any symptoms that might warn it of possible psychiatric injury, and that it would have been inappropriate for it to have spoken with the manager when she had asked the Board not to:

"It was inappropriate for [the employer"], purporting to act as a reasonable employer, to rely on choices made by its employee as to the employer's proper response to the employee's complaint..."

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The judge found that the employers conduct “fell short of the expected standard of an employer” by failing to:

- Investigate properly the complaints in 2003 and 2005;
- Provide clear job descriptions, employment contracts and workplace policies, and repeatedly misrepresenting to the employee that these documents would be immediately provided;
- Monitor, on an ongoing basis, the behaviour of its employees, including by providing training and a complaints procedure;
- Consider informal responses, such as speaking directly with the manager about the nature of the workplace conduct;
- Provide a safe return to work procedure.

The judge also said that the periods of calm in the workplace did not eradicate or alleviate the risks that the board had foreseen in 2003:

“When considering a breach, a reasonable employer...having identified a risk, could not simply assume that a continuing absence of complaint, or renewed complaints, meant that the risk had abated”.

The judge found that the extent of the employee’s psychiatric injury was extremely onerous and would have been mitigated if her complaints had been acted upon earlier.

#### *Lessons for Employers*

- Employers must take a broad perspective on risk, and not rely on an employee’s assertion that they can cope with the behaviour and that the employer should just ‘sit on it at this stage and take the comments on notice’.
- Employers have a positive duty to take reasonable steps to deal with potential bullying and harassment in the workplace, and the consequences for inaction are severe.
  - Highlights some ‘employer’ errors when dealing with employee concerns of this type. In particular, failing to investigate a complaint because the employee says they can ‘cope’, and not implementing recommendations. In this case, this exposed the employer to a \$600,000 damages bill.
- When coupled with the passing of amendments to the Fair Work Act to introduce an ‘anti-bullying’ jurisdiction from 1 January 2014, recent decisions in the space put employers on notice to act when instances or allegations of workplace bullying arise.
- Employers should also take into account codes of practice and guidelines regarding workplace bullying which exist under federal and state workplace health and safety laws when managing issues of bullying in the workplace.
- Employers should develop and maintain a policy regarding bullying and harassment in the workplace, train employees on the policy and ensure complaints of bullying are investigated and acted upon in accordance with such policies.
- It is likely more cases of this kind will be brought against employers, especially with the introduction of the Fair Work Commission’s anti-bullying jurisdiction.

#### ***Are You Prepared to Deal with Workplace Bullying?***

##### *What is Workplace Bullying?*

Workplace bullying is the verbal, physical, social or psychological abuse of an employee by an employer (or manager) or another person or group of people at work.

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Level 9, Dymocks Building, 428 George Street, Sydney NSW 2000  
GPO Box 2577, Sydney NSW 2001  
Tel (02) 9221 7555 Fax (02) 9221 7230  
E-mail: [legal.one@advantagepartnership.net](mailto:legal.one@advantagepartnership.net)  
Web: [www.advantagepartnership.net](http://www.advantagepartnership.net)

An employer has a legal responsibility under Workplace Health and Safety and anti-discrimination law to provide a safe workplace. Employers have a duty of care for the health and wellbeing of all employees whilst at work. An employer that allows bullying to occur in the workplace is not meeting this responsibility.

According to the Australian Human Rights Commission, workplace bullying can include:

- Repeated hurtful remarks or attacks;
- Sexual harassment, such as unwelcome touching and sexually explicit comments and requests;
- Excluding an employee or stopping an employee from work with people or taking part in work-related activities;
- Playing mind games, ganging up on an employee, or other types of psychological harassment;
- Intimidation;
- Giving an employee pointless tasks that have nothing to do with their job;
- Giving an employee impossible jobs that can't be done in the given time or with the resources provided;
- Deliberately changing an employee's work hours or schedule to make it difficult for them;
- Deliberately withholding information from an employee that they need to get their work done properly;
- Pushing, shoving, tripping or grabbing an employee in the workplace;
- Attacking or threatening an employee with equipment, knives, guns, clubs or any other type of object that can be turned into a weapon;
- Initiation or hazing – i.e. making an employee do humiliating or inappropriate things in order to be accepted as part of the team.

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Web: [www.advantagepartnership.net](http://www.advantagepartnership.net)