

Reforms to Commonwealth Workplace Laws: New Anti-Bullying Amendments *Fair Work Act 2009 (Cth)*

On 27 June 2013 Federal parliament passed new anti-bullying laws and the Fair Work Amendment Act No. 73 2013 (Cth) received Royal Assent on 28 June 2013. These changes will come into effect 1 January 2014.

What are the changes?

Any worker who reasonably believes they have been bullied can now apply to Fair Work Commission (FWC) for an order to stop the bullying.

This will now put pressure on employers to ensure processes are thorough and transparent and a paper trail to support the action taken.

Who can apply?

Any worker. That is, anyone who carries out work in any capacity in a business or undertaking. This also includes:

- Contractors, subcontractors and their employees
- Labour hire workers
- Outworkers
- Apprentices and trainees
- Work experience students
- Volunteers

What is bullying?

A worker is bullied at work if 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 behaviour creates a *risk to health and safety*.

The reform has made it clear however that reasonable management actions carried out in a reasonable manner will NOT constitute bullying under the new measures.

What happens once an application has been made to FWC?

The FWC has 14 days to deal with the application. This response could include seeking further information, conducting a conference, or holding a hearing.

If the Commission is satisfied that the worker has been bullied and there is a risk the bullying will continue then any order the Commission sees appropriate is available.

The only two things that Commission cannot order is:

- A monetary penalty or compensation; and
- the reinstatement of an employee who has left the business

Type of orders could be, but are not limited to:

- that the individual or group stop the specified behaviour;
- that regular monitoring of behaviour in the workplace by the person conducting the business be mandatory;
- compliance with an existing workplace bullying policy;
- review of existing workplace bullying policies;

- provision of information, training and/or support to workers; and
- a business may be ordered to discipline or sack a worker or group of workers engaged in bullying.

When making any order the FWC must have regard to:

- The preliminary or final outcomes of any investigation being conducted by another person or body, such as an internal investigation conducted by an employer;
- investigations conducted by a work health and safety regulator; and/or
- procedures available to the worker to resolve grievances or disputes and the outcomes arising from any such procedures.

What happens if the company or an employee breaches any order occurs?

A court may impose a penalty of up to \$51,000 for a *corporation* or \$10,200 for an *individual*, or take other steps to require compliance e.g. compensation to the victim.

What we can do to help you ensure your business and employees comply with the new laws:

- Write or help update anti-bullying policies in place
- Write training manuals for managers and others who may receive complaints
- Write information booklets for all employees on what is and what is not workplace bullying and the complaints process under the anti-bullying policy in place
- Update the employee manual to ensure appropriate processes are in place to assist officers of organisations to exercise due diligence to inform themselves of the bullying safety processes in their organisations.

If you have any questions or require further information, please do not hesitate to contact our office on (02) 92217555 or by email at legal.one@advantagepartnership.net

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