

No wins with work bullies

Bullying can be a cancer in the workplace, and with complaints growing it's not only the victims who are affected but also the companies they work for, write **Fiona Carruthers and Pip Freebairn.**

Australian Human Resources Institute boss Peter Wilson calls it the "corporate cancer" of our time. For decades, bullying in the workplace has been swept under the carpet — even by many an in-house human resources department.

But as the social and economic cost of the office tyrant mounts, companies are being forced to take the issue more seriously — not least when a woman was awarded \$500,000 by the NSW District Court last year for "mental trauma" suffered at the hands of her supervisor.

The issue moved centre stage last week when Victoria became the first jurisdiction to introduce jail penalties of up to 10 years for bullies. It was a timely move, given serious allegations of bullying are being investigated within WorkCover NSW, where a recent PwC report found 40 per cent of WorkCover staff felt they had been bullied or harassed on the job.

No small irony, since WorkCover is the authority charged with investigating allegations of bullying in the workplace.

"It just goes to show no company is safe," Wilson says. "Research shows up to one in three workers has been affected by bullying at some time. It leaves emotional scars and can totally devastate people. In a thankfully small number of cases, it even results in the victim's suicide. Severe and repeated bullying has 'corporate manslaughter' written all over it. No one likes more legislation in the workplace but in the case of bullying it's warranted, and I hope other states follow in introducing Victoria's new legislation."

WorkCover NSW data indicates that for 2009 and 2010, an estimated 2500 workers' compensation claims were made for workplace bullying, at a cost of more than \$68 million. This equates to an average cost of claim of \$27,000.

In legal circles, the growing employee outcry against distressing work encounters comes as no surprise.

Gadens Lawyers' partner in work relations, Jane Seymour, says: "Even 10 years ago, investigating bullying claims was not a part of my practice. It's definitely a recent development of the past three to five years, over which time the volume of complaints has significantly increased."

"We're often called in by companies to investigate bullying claims, and costs range from about \$15,000 to \$150,000 in legal fees alone. I think because there's been so much media focus on bullying on Facebook and in schools, it's having a snowball effect — more employees are putting their hands up too."

The partner specialising in employment law at Allens Arthur Robinson, Tim Frost, says costs are mounting not only because of more claims but also due to the fact "companies these days are more determined to investigate them properly and get to the bottom of them to find out what's going on".

Aside from potentially large settlement sums and lawyers' fees, Frost says "invisible costs" are another feature of bullying claims.

"These processes take a lot of time to manage and are very distracting for the people involved," he says. "Their teams are damaged and often it's hard for people to return to the workplace."

Where cases are proved, it's not just bullies who should be worried by a potential jail term. Bullying claims come under the occupational health and safety jurisdiction in each state and territory, rather than under discrimination legislation. Accordingly, company directors may be held liable personally if bullying is found to have occurred and they have turned a blind eye.

If proved in court, severe bullying can carry damages claims as high — and in some cases higher — than those of sexual harassment or discrimination.



Photo: Andrew Quilty

The record payout in Australia remains to Fijian-born Australian security guard Devandar Naidu. In March 2006, the NSW Supreme Court awarded him damages of \$1.9 million for suffering repeated bullying and abuse over a period of four years by media outlet News Ltd's security and fire manager, Lance Chaloner.

In the NSW District Court case mentioned earlier, Carol Anne Bailey, a bar tender at Peakhurst Bowling & Recreation Club, was awarded more than \$500,000 last year for suffering severe psychological distress, depression and anxiety after her supervisor, Tony Riley, subjected her to vulgar language, bullying and intimidation over a two-year period.

While there have been many successful prosecutions and large payouts, lawyers find it problematic that Australia still has no statutory definition of "bullying".

Gadens's Jane Seymour says: "The definition of bullying can be quite grey. Victoria has now made it a criminal offence, rather than just an OH&S matter. And yet

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there's no legislated description of bullying.

"We only have guidelines put out by WorkCover in NSW and the other relevant state and territory bodies as to what they consider it to be. Often in the workplace, one person's reasonable management style might constitute another person's perception of excessive, unwarranted criticism and persecution."

Most successful prosecutions or out-of-court settlements feature repeated instances of bullying that follow a distinct pattern. But in the case of corporate bullying, it's most likely to be mind games rather than physical abuse, making it harder to pinpoint.

"Corporate bullying tends to be far more psychological than the 'initiation rites' type of thing you see many apprentices or cadets go through — such as being strung up and having glue and sawdust forced in your mouth, as was the case in 2004."

Seymour is referring to the shocking case of a 16-year-old apprentice whose fellow workers wrapped him in cling wrap, threatened violence and forced sawdust and glue into his mouth. Management did nothing to prevent the initiation and the company was fined \$24,000 under NSW's OH&S laws.

On appeal, the company's directors were

fined \$12,000 and \$9000 for failing to provide a workplace free from bullying. Employees involved were either fined \$500 or placed on 12-month good behaviour bonds.

White-collar bullying might tend to be less physically gruelling and dramatic but can prove equally devastating to an employee's long-term mental health.

"In the white-collar environment, it's more focused around teasing, undermining and isolating someone, or humiliating them in front of other workers," Seymour says.

"We all know the natural cut and thrust of corporate life can be tough, and you have to roll with the punches. But with harsher penalties and increasing litigation, managers are becoming more cautious about the way they interact with their people."

Michele Grow, chief executive at Davidson Trahaire Corpsych — Australia's largest employee assistance program provider — offers confidential counselling for employees.

Her company sees up to 50,000 new clients a year, and has recorded an 18 per cent rise in bullying complaints over the past year. Cases rose by about 80 per cent between 2003 and 2007, Grow estimates.

Workers typically have little faith in their company's human resource procedures and feel management doesn't care. "I've seen big, beefy blokes working in transport feeling intimidated and like they can't leave," she says. "They feel they'll be laughed out of the office if they make a complaint."

In the end, many victims of workplace bullying vote with their feet. Grow estimates about 40 per cent leave their employer, 15 per cent transfer to a new role within the company and a sizeable number end up being terminated due to poor performance as they become absent from work more frequently.

The number of genuine bullying incidents being reported is undoubtedly rising. But so too are the more lightweight claims designed to elicit a quick out-of-court settlement from companies with a reputation to protect and which are terrified of a damaging public spat.

Along with serious claims, Malleons Stephen Jaques partner in employment law Andrew Gray is also seeing bullying allegations against companies — especially investment banks — that would probably not stand up in court.

"Lawyers acting for employees make these types of allegations because of the potential brand damage associated with it — and are looking to get settlements," he says. "There have certainly been settlements in the hundreds of thousands of dollars by companies looking to avoid reputational risk associated with bullying claims."

It seems when it comes to bullying, there are few winners.

SISTERS ARE DOING IT TO THEMSELVES

For one senior solicitor working in employment law, it was "horrifyingly embarrassing" when she became a victim of bullying herself.

The perpetrator was a female colleague at the Melbourne law office who would lie to partners about the victim and undermine everything she said in front of clients.

"I got really depressed, anxious, it ended up really affecting my whole life," the victim says.

Addressing the issue through the proper channels was pointless as well.

"They have all these policies in place that look really good but when it comes down to it, human resources can't do anything," she says. "They say the right things but ultimately it is management that decides."

The woman, in her 30s, ended up leaving the company along with two colleagues who were also being bullied by the same woman.

Cynthia Logan, principal consultant and counsellor at LifeWorks, a Melbourne counselling agency, says bullying between females is "insidious". "A lot of the bullying I see is female to female and it can be very subtle and constant," she says. "And particularly where there are male managers; they don't recognise it or understand it necessarily. In the end, that kind of behaviour can be just as dangerous as the more dramatic bullying men tend to engage in."

Another bullying victim, a Sydney public servant, says that for a long time she felt like she had nowhere to turn after starting in a new role where her direct manager instantly disliked her. "It was such a tricky situation for me because other people couldn't see it," she says. "It wasn't like she was screaming and yelling at me, but she would come and sit at my desk and speak in a very quiet voice, telling me how incompetent I was. It happened pretty much every day."

The victim, who is in her 20s, was given work direction only via brief emails and the manager would not allow her to clarify any instructions. "Inevitably, I would make small mistakes and she would run straight up the chain to tell them I hadn't done my job properly without even speaking to me first."

Human resources ended up transferring the victim to another division within the organisation. "It was only then that I realised how terrible those months of my life had been," she says. "I also got my confidence back because I realised I wasn't as crap as she made me believe I was."

The bully subsequently faced another more serious allegation of bullying and ended up leaving the organisation, she says.

Pip Freebairn