



Workplace Bullying

It's obvious, a PCBU must ensure their workers are safe while at work – but do we really understand the extent of those obligations?

The new Health and Safety at Work Act 2015 places important obligations on PCBU's in relation to their workers' health. A PCBU has a key duty to provide and maintain an environment for workers that does not risk anyone's health and safety.

Workplace bullying is something that can happen under the radar, but can lead to unforeseen and in some cases, tragic consequences. In this regard, PCBU's have specific health and safety obligations, and as a PCBU, you need to be aware of and eliminate the hazards in your workers' workspace.

If you receive a complaint about workplace bullying, you have a duty to address it and eliminate it from your workspace. By failing to do so, you could create further risk for your workers as well as exposing yourself to potential litigation proceedings which can be costly and time-consuming. Recent employment case law shows us that employees who have their complaints of workplace bullying ignored by their employer, are often successful in the legal system with personal grievance claims. A successful or strong claim by an employee will not only cost money, but you may also lose a valuable team member. Unhappy employees often impact business productivity.

What exactly is 'workplace bullying'?

The law around workplace bullying has always been vague – the legislation has not defined it, and the courts have been reluctant to do so. However, WorkSafe New Zealand has issued "Bullying Guidelines" in an attempt to give PCBU's some assistance in recognising and dealing with workplace bullying. In these Guidelines, workplace bullying is defined as "repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm".

What can you do to eliminate the risk of workplace bullying?

1. Implement a bullying and harassment policy which complies with current law. Make sure your employees are aware of, and understand, the policy.
2. Understand that the way in which you communicate to your employees is important. Although you may not intend your comments to bully your employees, an employee may feel bullied as a result of your manner of communication. Remember every employee is different!
3. Provide a culture where individuals are accepting of each other's differences.
4. Ensure your employees feel empowered to raise personal concerns with their manager, or even a superior who they might not report to.
5. If you receive a complaint – act!

I've received a complaint, now what should I do?

If you receive a workplace bullying complaint, *Sloggett v Taranaki Health Care Limited* identifies the process you must follow:

1. Conduct a full and fair investigation of the complaint (we suggest obtaining legal advice from the outset to ensure this investigation follows the legal requirements);
2. Inform the complainant of the investigation's outcome; and
3. If you are satisfied bullying has occurred, then you must advise the complainant of what processes you have put in place to ensure such behaviour does not happen again.
4. If you receive a workplace bullying complaint from an employee we recommend you seek legal advice immediately to ensure you are following the correct process. Likewise, if you believe you are the victim of workplace bullying then we recommend you obtain advice regarding your rights and the appropriate steps to remedy the situation.

If you require any assistance in preparing suspension clauses or conducting suspension and disciplinary action, please contact The Engine.

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