

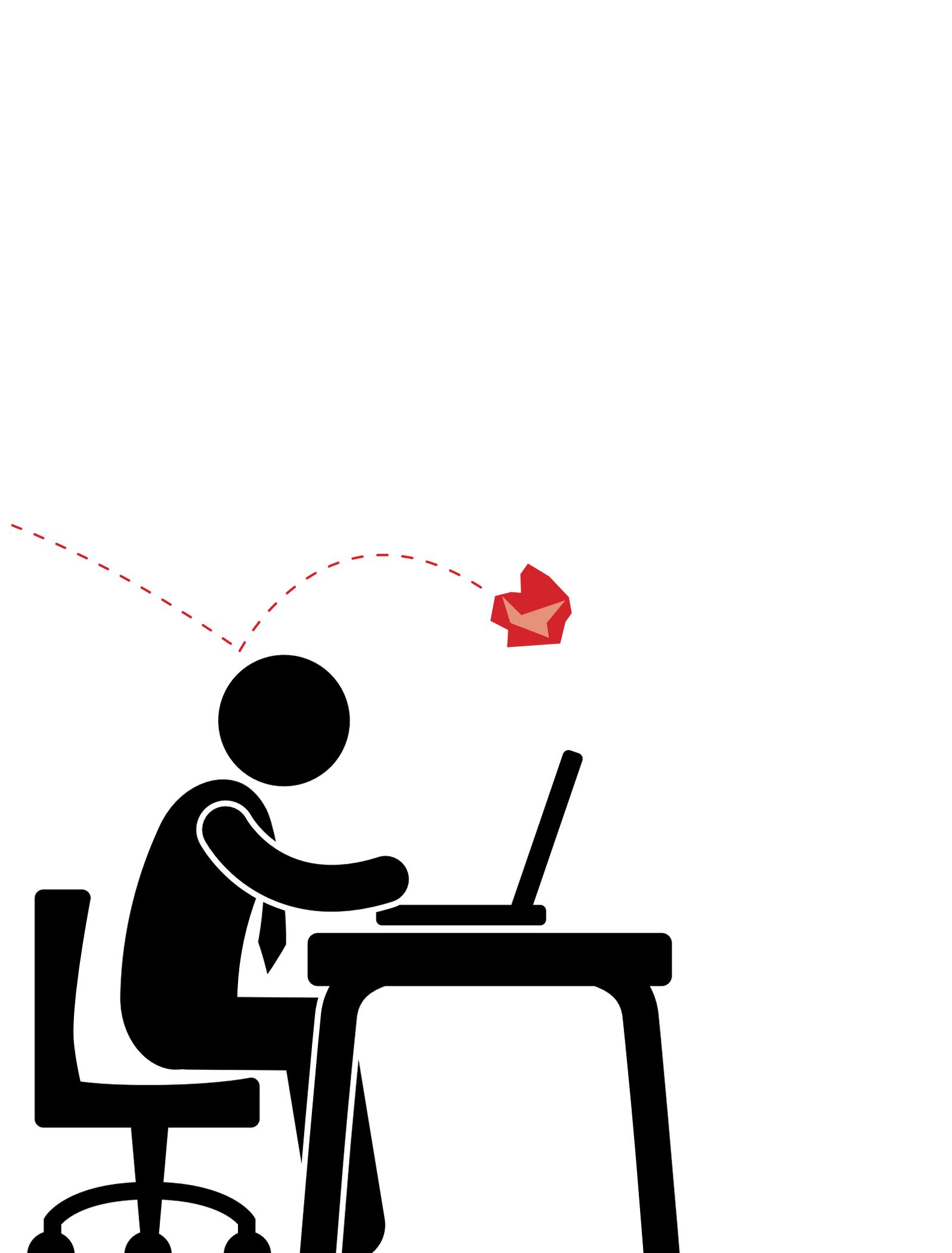
BEYOND HARASSMENT —  
TAMING THE WORKPLACE

# BULLY

BY JOHN W. BENCIVENGA AND LINDA BOND EDWARDS



No one has been able to escape the recent increase in media and legislative focus on school bullying. But bullying also occurs between adults and is becoming more prevalent in the workplace. Workplace relationships that are overly aggressive and border on being abusive can have a devastating impact on productivity, employee morale and the organization's bottom line.



The workplace environment becomes hostile when an employee finds that intimidation, ridicule and insulting behavior is severe or pervasive enough to have altered the conditions of employment. In these situations, the workplace environment can be classified as “abusive” and oftentimes leads to harmful consequences for an employee’s health. A legally defined “hostile work environment” occurs when the insulting, intimidating conduct is because of an employee’s gender, race, national origin, disability, religion or other protected class status. See e.g., *Smith v. Lockheed Martin*, 644 F.3d 1321 (11<sup>th</sup> Cir, 2011). Most corporate policies prohibit this illegal behavior; however, there is also disruptive behavior that does not register on the harassment Richter scale. While it may not be legally actionable, this behavior can be extremely disruptive to individuals and the work environment.

Because workplace bullying is generally more loosely defined as compared to “hostile work environment” discrimination, which has been litigated and defined for more than two decades, organizations are more apt to overlook this type of behavior because it is not illegal and may not even be discriminatory. The workplace bully may be “an equal opportunity” wrongdoer, treating everyone in a ridiculing, sometimes obnoxious manner. The effect of the conduct, however, may be no less lethal to the organization than a discrimination claim. Employers should consider addressing the bully head-on, but here lies the paradox: Most employees find door slamming, sarcastic comments, condescending remarks and emails in all caps to be unprofessional, and may use the term “hostile work environment” because it seems to describe what they are experiencing. Yet employers seem unwilling, or seem to think they are unable, to do anything about it.

Consider the following story. Ann is a newly hired employee, wanting to make a great first impression. After attending new-hire orientation, she has a meeting with her immediate supervisor, Bob, whom she met briefly during the interview process. During this initial meeting, Bob tells Ann that “today could be your last day here,” and that her number one responsibility is to “make me look good.” As the weeks progress, Bob unnecessarily scolds Ann and the other team members in “his” department for minor errors that most supervisors would have handled with a simple comment such as “Please proofread this document first.” Bob sometimes spends several days away from the office attending to personal matters, only to return with a new, fast-approaching project deadline. After



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surveying the situation, Bob sends out flurries of emails demanding late nights and weekend production “or else.” These messages are coupled with meetings suggesting that if Ann or her coworkers were not so incompetent, they would not be in this situation. Ann eventually complains to the Human Resources staff members, who tell her that Bob is just a perfectionist who demands a lot from his staff. The demeaning conversations, threatening emails and personal jabs are just “Bob’s way of getting the most out of his people.”

After a few months, like most of her counterparts, Ann leaves the company for a new job. The department and company’s leadership unfortunately remain in denial, simply stating the company’s position to the remaining employees: “Ann could not handle the demanding pressure, high expectations and exacting standards of the department.”

This fictional account is an amalgamation of multiple common scenarios, and may unfortunately be all too familiar to in-house counsel who are consulted by a human resources professional, who after reviewing turnover ratios in a particular department, finally wonders if there is anything that can be done to rein in the supervisor who bullies the staff rather than leading them.

### Prevalence of bullying in the workplace

The boss as a bully has long been portrayed in movies and television programs. The doctor who yells at a nurse, calling her names and ridiculing her intelligence; or the radio station manager who slams doors, throws things and assigns insanely ridiculous tasks to workers are just two personas that readily come to mind. Think back to Murphy Brown and her inability to keep a secretary. Would anyone really want to have Dwight Schrute as the boss of his office? While these scenarios were often offered as comedic relief, true instances of bullying in the workplace occur way too often and are not at all funny.

Research commissioned by the Workplace Bullying Institute (WBI) and conducted by Zogby International brings to light the prevalence of bullying in today’s workplaces, reporting that “35 percent of the US workforce (an estimated 53.5 million Americans) report being bullied at work; an additional 15 percent witness it. Half of all Americans have directly experienced it.”

What is at the root of this problem that plagues nearly half of today’s workforce? Bullies share several common traits and are typically subservient to higher-ranking individuals, while displaying brutal behaviors toward peers and

people who report to them. The average age of a bully is 41 and he or she has accumulated eight years of service with the organization. While males are more likely to exhibit bullying behaviors, females also exhibit aggressive behaviors, and the majority of bullying is same-gender harassment. The WBI-Zogby research indicates that, while fewer women engage in bullying behavior, “What tends to make news (based on the 2007 WBI findings) is that women bullies target women in 79.8 percent of cases; men in 20.2 percent. In 2007, the woman-on-woman bullying prevalence was 71 percent. Now it is 80 percent. Looks like the American workplace is growing ever more toxic for women, at the hands of women.”

## Consider for a moment departments in your organization where employees are constantly either being terminated or are quitting.

It doesn't help matters when high-profile bullies are celebrated and offered plum assignments. Noted for his aggressive stance with other countries and his attempts to end the careers of people who did not agree with his policies, John Bolton was appointed to Ambassador to the United Nations by President Bush in 2008. Bolton was even reported to have chased an employee down a hotel hallway, yelling and throwing things at her and pounding on her door.

Classic bullies, ruling with fear, lead some very successful companies. In 2010, *Forbes.com* posted its "Bully Bosses of Fame," which heralded the likes of the late Steve Jobs of Apple and *Vogue* Editor in Chief Anna Wintour, who inspired the best-selling novel and resulting movie, "The Devil Wears Prada." Young workers exposed to this type of management style may attempt to emulate it as they progress to positions of authority, without realizing the nuances that separate the perceived bullying management styles of these inspirational leaders from the insidious nastiness of the typical workplace bully who only leaves harm in his wake.

Consider for a moment departments in your organization where employees are constantly either being terminated or are quitting. Is this unit or department with a high turnover ratio led by a bully manager and one or two bully subordinates? If so, are these bully subordinates nothing more than junior versions or “mini-me's” of their “Dr. Evil” boss? The

answer to these questions may be that this department is comprised of a core group of employees who collectively fit into this bullying persona, and a revolving door of other employees who never seem to be able to meet the expectations of the bullies.

### Identifying the workplace bully

Closely related to harassment, discrimination and stalking, bullying differs in that the focus of the behavior is not race, gender or disability. Rather, bullies tend to focus on competence and popularity. A manager who demands exceptional work from all employees and holds them accountable may not be a bully. However, if that same manager resorts to specific aggressive behaviors aimed at individuals and sets unreasonable goals without providing support, she likely is crossing the line.

While the problem has been acknowledged, there is still debate on the definition of workplace bullying, making it difficult for employers and employees to identify and address instances of bullying. Among the many available definitions, the most concise comes from Catherine Mattice and Karen Garman, who have defined workplace bullying as “systematic aggressive communication, manipulation of work and acts aimed at humiliating or degrading one or more individuals that create an unhealthy and unprofessional power imbalance between bully and target(s), result[ing] in psychological consequences for targets and coworkers, and cost[ing] enormous monetary damage to an organization's bottom line.” The term “workplace bully” has even found its way into court opinions. In *Yancick v. Hanna Steel Corporation* (7<sup>th</sup> Cir., Aug. 3, 2011), the court declined to accept bullying as harassment but specifically used the term in the opinion. The court described the “workplace bully” as “confrontational, rude and disruptive in the workplace.”

A number of behaviors considered to be workplace bullying include:

- Being rude and disrespectful;
- Resorting to name-calling and yelling;
- Making insulting remarks or giving people the silent treatment;
- Issuing threats of a job loss or assigning unreasonable tasks;
- Constantly highlighting employees' mistakes and criticizing their work;
- Ignoring or excluding employees and spreading rumors;
- Engaging in verbal or physical aggression and arguments;
- Commenting or making jokes about a person's appearance, lifestyle or background;
- Engaging in social isolation or retaliation; and
- Tampering with personal effects or work materials.

## ACC Extras on... Taming the Workplace Bully

### ACC Docket

- Workplace Bullies: How Employers Can Detect and Prevent Workplace Bullying Before It Escalates to Violence (April 2012). [www.acc.com/docket/workplace-bullies\\_apr12](http://www.acc.com/docket/workplace-bullies_apr12)

### Top Ten

- Top Ten Tips for Formulating an Anti-Discrimination and Harassment Policy (Aug. 2010). [www.acc.com/topten/anti-disc&harass\\_aug10](http://www.acc.com/topten/anti-disc&harass_aug10) 

### QuickCounsel

- Preventing Discrimination and Harassment in the Workplace (June 2010). [www.acc.com/prevent-discrim\\_jun10](http://www.acc.com/prevent-discrim_jun10) 

### Forms & Policies

- Workplace Bullying Policy (Oct. 2011). [www.acc.com/forms/workplace-bullying\\_oct11](http://www.acc.com/forms/workplace-bullying_oct11)
- Sample Anti-harassment Certification (Oct. 2010). [www.acc.com/forms/anti-harassment\\_oct10](http://www.acc.com/forms/anti-harassment_oct10)

### Presentations

- Preventing Discrimination and Harassment Training Course (Dec. 2010). [www.acc.com/d&h-training\\_dec10](http://www.acc.com/d&h-training_dec10)
- Preventing Workplace Violence Training Course (Dec. 2010). [www.acc.com/workplace-violence-training\\_dec10A](http://www.acc.com/workplace-violence-training_dec10A)



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Most experts agree that aggressive behavior must be repetitive in order to be classified as bullying. The behaviors generally escalate, and the person being targeted typically lacks the resources to mount a defense. The WBI-Zogby study reported the top five reasons that an individual is targeted by a bully are:

“(1) refusal to be subservient (being independent), (2) being more technically skilled than the bully, (3) being liked by coworkers/customers (being the go-to expert), (4) being ethical and honest and (5) not being sufficiently political.”

Management must understand that people don't typically exhibit bullying behaviors in the presence of their superiors, so managers must pay attention to reports from other employees. A confidential 360-degree performance review, which includes reviews from subordinates, peers and supervisors, can be a valuable tool in identifying troubling behaviors. Watch for the more subtle signs, such as a person frequently taking credit for accomplishments that others have shared in, or pointedly ignoring one person's requests to be included in meetings, effectively ostracizing him.

Additionally, as bullying behavior can result in high turnover rates, conducting exit interviews can assist in identifying these individuals. While it is natural that some exiting employees may not wish to burn any bridges, often, these employees will provide valuable commentary on how a specific individual treats a co-worker.

### Bullying takes its toll

The most obvious result of workplace bullying is its effect upon the health and productivity of those people who are targets of bullying. According to the WBI-Zogby research, 45 percent of targets suffer stress-related health problems. Victims have reported fatigue, anxiety, depression and panic attacks. Reported physical symptoms have included a reduced immunity to infection, leading to more cases of colds and flu, and higher rates of skin irritations, high blood pressure, headaches and migraines.

The long-range toll on victims includes an increase in hypersensitivity and a shattered self-confidence, leading to low self-esteem and self-worth. The negative effects can also lead to post-traumatic stress disorder and, in some cases, suicide.

Businesses find that the financial implications of bullying can be costly — up to billions<sup>1</sup> of dollars per year in lost profits. Not only is there an increase in sick leave, but companies are being denied high-quality work by employees who are constantly on the defensive, ever fearful of the next outburst. Turnover is high when employees choose to leave rather than continue to face their tormenter. Christine Person, Ph.D., published the results of a survey, finding that after a bullying incident, “28 percent lost work time avoiding the instigator, 53 percent lost work time worrying about the incident or future incidents, 37 percent believed their com-

mitment to the organization declined, 22 percent decreased their effort at work, 10 percent decreased the amount of time spent at work, 46 percent contemplated changing jobs to avoid the instigator and 12 percent actually changed jobs to avoid the instigator.”

A business’s reputation is also at stake. Word can get around and a company may find itself unable to lure quality job candidates while experiencing higher than normal turnover rates. While some employers may not consider this risk as a significant factor given current unemployment levels, the most sought-after talent often does the most research on a particular company. If your company is known to tolerate bullying behavior, you may be unable to find that key employee for a critical position.

Businesses also face the risk of litigation related to bullying. While there are currently no laws governing workplace bullying, the National Institute for Occupational Safety and Health (NIOSH) recognizes bullying as a form of violence at work. Workers have successfully sued employers for workplace violence, including a case where the Indiana Supreme Court upheld a \$325,000 jury verdict for an assault claim brought against a doctor. The case, *Daniel H. Raess, MD, v. Joseph E. Doescher*, was related to an incident that occurred when Raess became angry and physically threatened Doescher.

In another case, a judge found that Helen Green, a former London Deutsche Bank employee, was subjected to “a relentless campaign of mean and spiteful behavior designed to cause her distress” and cited coworkers for a “deliberate and concerted campaign of bullying,” isolating her and subjecting her to “offensive, abusive, intimidating, denigrating humiliation, patronizing, infantile and insulting words and behavior.” The court awarded Green \$1.5 million in damages.

It is not uncommon for former employees — who have been subjected to bullying activities and want to “get back” at a company — to file EEOC charges and discrimination lawsuits. While there are currently no laws prohibiting bullying in the workplace, if the bully is of a different gender, race or age than the subject of the bullying (or some other protected class), it is not difficult to see how this offensive conduct, combined with an allegation that the offensive conduct was based on a protected class, can morph into a discrimination claim. The employer is then placed into the unenviable position of defending a discrimination claim using an “equal opportunity offender” defense. That is, the bully was not mean to the former employee claiming discrimination because of some protected characteristic, but rather, the bully is mean to everyone equally. While this position may be accurate, it is an extremely risky position to take, as it possesses absolutely zero jury appeal. So while the underlying discrimination claim may be completely meritless, an employer may be forced into a settlement position

simply out of fear that if this particular case ever got to a jury, the jury could be so upset by the bully’s acts that it would find for the plaintiff, based primarily on sympathy for having to put up with the offensive behavior.

### Keeping bullies at bay

Employers can effectively reduce the likelihood of bullying in the workplace by implementing preventive measures, including developing policies and boosting employee education. More important, reinforcing an environment that celebrates the dignity of all employees and doesn’t tolerate bullying behaviors will support a climate of respect and create a civilized workplace. The company’s values must start at the top. The CEO and key managers must lead by example, showing respect and encouraging open communication. Sometimes, organizations will excuse bullying behavior because the bully



**Don't be afraid to define bullying so that all employees can recognize the behavior.**

brings in a lot of business, bills a lot of hours, has high sales or has been with the organization for a long time. Rewarding employees who also work together and share responsibilities for reaching goals is a powerful reinforcement.

For instance, setting impossible deadlines or unreasonable demands while not providing adequate resources can lead to stress between employees. It’s also not a good idea to inspire a competitive work environment that places employees in conflict.

Developing a policy that demands respect and dignity for all employees is one of the most important steps a company can take. By stating in your policy that certain behaviors are not acceptable, including intimidation, threats, screaming and any other behaviors that undermine the dignity of a colleague, you will provide employees with a way to report incidents without fear of retaliation. Don’t be afraid to define bullying so that all employees can recognize the behavior.

Given today’s proliferation of social media sites and online forums encouraging people to sound out their frustrations, a company’s policies and procedures should include clear guidelines to acceptable Internet behaviors.

Provide specific examples and ensure that policies are not overly broad, potentially violating an employee's right to free speech.

Employees should be educated in the same way that companies now require all employees to attend classes on sexual harassment. By teaching employees about behaviors they should avoid, and providing them with tools that help them to better handle confrontation, companies set the stage for a more congenial work environment.

Hiring managers should also be taught how to better screen job applicants. It pays to go beyond carefully checking job references, and watch a candidate as he interacts with administrative staff. Receptionists and other administrative staff should be encouraged to report rude behavior. It's also a good idea to take a team approach to interviewing job candidates, including people who will report to and work side-by-side with the person. Tailor questions

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to probe into how a person might handle a frustrating scenario, or ask how she would handle an incompetent employee. Learn how to read body language and look for compassion. Generally, individuals who present themselves in a cold manner and do not appear to value others (on either a professional or personal level) are more likely to exhibit bullying behaviors. More obviously, aggressive behaviors and comments that demean the contributions of others may be indications that a person may have bullying tendencies.

### Confronting the issue

Address bullying behaviors immediately. If an employee is seen behaving inappropriately, pull them aside and let them know that these types of behaviors are not tolerated. When a report of bad behavior is received, management should act immediately and not let things escalate into a crisis. Making excuses such as "That's just John or Sue's personality," is unacceptable. The employer's policy must define the bullying behavior; otherwise, trying to tie the behavior to the harassment policy will cause the employer to conclude that the employee has not violated a policy. Talk

with the person. Be specific about the behavior in question, but don't be confrontational. Ask for his side of the story and pay close attention to the response. His reaction will tell you a lot.

When bullying behaviors become repetitive, engage your human resources department, including them in meetings with the perpetrator. Together with HR, you should target the behavior, letting the person know that these behaviors must stop. The company's policies and procedures will provide guidance for dealing with the employee and discipline should be consistent. For instance, should the employee be written up? Is counseling or additional training in avoiding confrontation provided? Is continued employment contingent upon a change in behavior?

Consider the value the employee brings to the organization. It may be wise to consider anger management classes or executive coaching. In other cases, termination may be the best choice. Keeping him on, or just transferring him to another department, will continue to cost the company money in lost productivity and poor employee morale. Just be sure to apply your discipline policy consistently. Continuing to employ a high-performing sales person who is also a bully may be a short-term solution, but eventually, exceptions can become the organizational mission and values, replacing those that are proudly displayed on the company website.

Your documentation should be specific. Avoid labeling behaviors as bullying. Rather, say that the employee called a colleague an idiot. Quantify the time spent managing complaints. Document warnings, an ongoing pattern of behaviors, abuses of power and the employee's responses when confronted. The goal is to protect the organization in the event of a lawsuit. Employers should be proactive in identifying and addressing workplace bullies before they have to. 🚫

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#### NOTES

- 1 Georgakopoulos, Alexia, LeVena Wilkin, and Brianna Kent. "Workplace Bullying: A Complex Problem in Contemporary Organizations." *International Journal of Business and Social Science* Special Issue 2.3 (Jan. 2011): n. pag. Print. [www.ijbssnet.com/journals/Vol.\\_2\\_No.\\_3\\_\[Special\\_Issue\\_-\\_January\\_2011\]/1.pdf](http://www.ijbssnet.com/journals/Vol._2_No._3_[Special_Issue_-_January_2011]/1.pdf).