

THE AEL ADVOCATE

Vol. 5, Issue 1

October 2013

NATIONAL FREEDOM FROM WORKPLACE BULLIES WEEK October 20-26, 2013

Bullying and the devastating effects of bullying on children are hot topics in the media and among physicians, psychologists and school systems. Most school systems, including AACPS, have anti-bullying policies and regulations, replete with disciplinary sanctions for violations. Unfortunately, workplace bullying and its equally devastating effects have been, until recently, largely ignored. Thirty-five percent of the U.S. workforce (around 53.5 million) report being bullied at work. Currently, the only workplace abuse that is legally actionable is abuse that is based on race, color, religion, national origin, sex, age, marital status, sexual orientation or disability. Most bullying in the workplace does not violate these protected categories and most victims, therefore, have little legal or administrative recourse at present.

WHAT IS WORKPLACE BULLYING?

“Workplace Bullying” refers to **repeated**, unreasonable actions of individuals directed towards an employee (or group of employees) which intimidate, degrade, humiliate or undermine. Bullying often involves a supervisor’s abuse or misuse of power, causing feelings of defenselessness and injustice in the victim. Even though workplace bullies are usually supervisors, they can be co-workers as well. The term “mobbing” refers to a group of co-workers bullying their peers.

Workplace Bullying is different from aggression. Aggression may involve a single act, whereas bullying involves repeated attacks against the victim, creating an **on-going pattern of behavior**. By way of contrast, tough or demanding supervisors are not necessarily bullies, as long as they are respectful and fair in their methods and their motivation is to obtain high, but reasonable performance standards.

Bullying can be verbal or nonverbal, that is, offensive conduct or work interference. The following are examples of workplace bullying:

- Unwarranted or invalid criticism
- Blame without factual justification
- Being treated differently than the rest of your work group
- Being sworn at
- Exclusion or social isolation
- Being shouted at or being humiliated
- Excessive monitoring or micro-managing
- Being given work unrealistic deadlines

Acts alone, however, do not constitute workplace bullying *per se*. Bullying requires BOTH the aforescribed acts AND a tangible negative effect on the victim. Although tangible harm is a necessary element of workplace bullying, it is important to note that the onset of harm may be delayed as, for example, PTSD. The absence of immediate harm, followed by a delayed response, is still harm. PTSD or, the term used today, PTS, is the result of environments that traumatize. Although it is best known as a war wound, it is actually possible in anyone whose coping abilities have been overwhelmed. For example, it can be seen in childhood abuse cases, domestic violence cases and, as studies have now verified, workplace bullying cases.

Studies have found that being bullied at work resembles the experience of being a battered spouse (spousal battery can be psychological battering, not only physical). The “abuser” inflicts pain when and where he/she chooses, keeping the victim off balance because abuse can happen at any time, for any reason, whenever the abuser chooses. Extrication from abuse is not always feasible due to the nature of the relationship between abuser and victim – husband to wife or boss to subordinate or co-worker to co-worker.

HARM CAUSED BY WORKPLACE BULLYING

Tangible harm caused by workplace bullying is real, it can be debilitating and generally presents itself as physical, psychological and/or economic harm.

A. PHYSICAL HEALTH IMPAIRMENT: HOW BULLYING CAN AFFECT YOUR BODY

Stress-related physical health harm studies by international researchers clearly document evidence that workplace bullying triggers the human stress response which, in turn, causes widespread effect on biological systems. Physical health problems from stress include:

- Cardiovascular Problems: Hypertension (60%) which can lead to strokes and heart attacks
- Adverse Neurological Changes: Neurotransmitter Disruption, Hippocampus Shrinkage
- Fibromyalgia (21%) Chronic Fatigue Syndrome (33%)
- Diabetes (10%)
- Skin Disorders (17%)
- Nausea
- Tremors of the Lips, Hands, etc.
- Feeling Uncoordinated
- Chills
- Profuse Sweating
- Diarrhea
- Rapid Heartbeat
- Rapid Breathing
- Chest Pain
- Uncontrollable Crying
- Headaches

B. MENTAL HEALTH HARM: PSYCHOLOGICAL-EMOTIONAL-MENTAL INJURIES

Workplace Bullying is often described as psychological violence because of its impact on the victim's mental health and sense of well-being. The longer the exposure to the bullying, the more severe the impact. Psychological damages generally associated with workplace bullying are:

- Debilitating Anxiety (80%)
- Panic Attacks (52%)
- Clinical Depression: new to person or exacerbated condition previously controlled (49%)
- Post-traumatic Stress (PTSD) from deliberate human-inflicted abuse (30%)
- Shame (the desired result of humiliating tactics by the bully) – sense of deserving a bad fate
- Guilt (for having “allowed” the bully to control you)
- Overwhelming sense of Injustice (Equity – the unfairness of targeting you, who works so hard; Procedural – the inadequacy of the employer's response to your complaint)

C. ECONOMIC HARM

Studies have shown that victims of Workplace Bullying suffer the following economic harms, often exacerbated by the physical and mental health harms emanating from the same abuse:

- Forced to transfer from job, often a punitive transfer (13%)
- Constructively discharged without reasonable cause (24%)
- Target quits to reverse decline in health and sanity (40%)

COMBATTING WORKPLACE BULLYING

A. POSSIBLE LEGISLATIVE RELIEF

Cognizant of the seriousness of workplace bullying, more than twenty state legislatures, including Maryland, have been moving towards finding statutory solutions to the problem. As discussed in the AEL Advocate, Volume 3, Issue 2, Senator Jamie Raskin introduced Senate Bill 600 in the Maryland State Legislature in the 2011 Legislative Session. Although it didn't become law at that time, it should be considered a blueprint for effective legislative action in the hopefully near future. AEL has the opportunity to “become involved” in this fight for employee rights. A summary of the Bill from the referenced AEL Advocate is reproduced as follows:

“SENATE BILL 600

***LABOR AND EMPLOYMENT – ABUSIVE WORK
ENVIRONMENT – EMPLOYEE REMEDIES***

This Bill, if passed, would be included in the Labor and Employment Article of the Maryland Code and would be applicable to employees and employers of a government unit. It would define “abusive conduct” as “acts of an employer or employee targeted at an individual employee that a reasonable individual would experience as creating a hostile work environment based on the severity, nature, and frequency of the employer or

employee's conduct." Abusive conduct would include, "repeated verbal abuse, including the use of derogatory and disparaging remarks, insults, and epithets, verbal or physical conduct of a threatening, intimidating, humiliating, or cruel nature or the sabotage or undermining of another employee's work performance."

Employees who have been harmed psychologically, physically or financially by deliberate abusive conduct and a hostile work environment would be able to file a civil action in Circuit Court against the employer or another employee. Employers could be held vicariously liable for the acts of their employees, but not if the employer exercised reasonable care to prevent and promptly correct the abusive conduct. A court would be able to grant the following relief if the law passes:

- 1) enjoin the employer or employee from engaging in the abusive conduct,*
- 2) reinstatement and back pay (if applicable),*
- 3) removal of the employee who violated the abusive workplace law from the work environment of the employee who filed the action,*
- 4) reimbursement of medical expenses,*
- 5) compensation for emotional distress,*
- 6) punitive damages,*
- 7) attorney's fees.*

Washington State Department of Labor and Industries has also been proactive in the fight against Workplace Bullying. It commissioned an extensive study and published Anti-Bullying Guidelines to be distributed to state employers (www.NoBullying.Lni.wa.gov). Among other proscriptions, it counsels employers to:

- "1) Create a zero tolerance anti-bullying policy. This policy should be part of the wider commitment to a safe and healthful working environment and should have the full support of top management.
- 2) When witnessed or reported, the bullying behavior should be addressed IMMEDIATELY.
- 3) If bullying is entrenched in the organization, complaints need to be taken seriously and investigated promptly. Reassignment of the bully may be necessary.
- 4) Hold awareness campaigns for EVERYONE on what bullying is. Encourage reporting.
- 5) Encourage open door policies.
- 6) Investigate the extent and nature of the problem.
- 7) Establish an independent contact for employees (e.g., Human Resources contact)."

B. JUDICIAL RELIEF THROUGH THE COURT SYSTEM

In a 2012 groundbreaking case in Montgomery County, Maryland, a group of teachers at a Silver Spring elementary school filed a lawsuit against their principal and the school board for intentional infliction of emotional distress, gross negligence and negligence due to ongoing bullying and harassment by the principal. (The teachers had exhausted administrative remedies prior to filing suit, as required, but the school board refused to intervene.) The case was set for trial in May 2013. The school board filed a Motion to Dismiss the claims (intentional infliction

of emotional distress is very difficult to prove and as to all counts, courts are reluctant to intervene in public school personnel matters). The Motion to Dismiss was, however, denied by the Circuit Court Judge and in May 2013 the parties reached an out-of-court settlement, which included a confidentiality agreement. Because this case was never decided in court and later appealed to the Maryland Appeal Courts, the case has no precedential value or force of law, but it does provide hope for potential recoveries in tort.

C. AMERICAN WITH DISABILITIES ACT (“ADA”) AND WORKERS’ COMPENSATION

If bullying is severe enough to either cause or aggravate a mental illness, an employee may be able to invoke the ADA. The ADA forces employers to make reasonable accommodations to employees with disabilities. In theory, therefore, an employee may be able to request an end to bullying by the co-worker or “boss” as the reasonable accommodation.

It should be noted, however, that the use of the ADA as an anti-bullying tool is in uncharted territory. Proof would be required that the alleged bullying was not, in reality, a mere personality conflict or excuse for poor performance. Psychologists could be necessary witnesses, as well as confirmation of the bullying from co-workers. As stated previously, at this point in time, the ADA as a source of relief is largely hypothetical.

Worker’s Compensation as an anti-bullying tool would carry the same burdens of proof as the ADA. Most Workers’ Compensation attorneys consider it disability based on Workplace Bullying being difficult to prove.