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# 60-Second Memo

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## Managing the Office Bully

by Marcie B. Cornfield, Esq.

"What a stupid idea!" She exclaimed, punctuating it with an eye roll.

With a glare *and* a snort, he yelled, "Come on - think! Don't you listen??!"

These are just some of the degrading and hurtful comments that the office bully makes, either in a private meeting or at a staff meeting. We would like to believe that such comments and dismissive tactics are uncommon in the workplace. However, a recent survey suggests that 37 percent of American workers believe they have experienced workplace bullying.[\[1\]](#)

Why is this problematic for employers? First, there is the obvious morale issue. The workplace may become an unhappy place. Second, creativity may be stymied. Those employees with the most resourceful and original new ideas may be so frightened of what the office bully will say, that those ideas will never make it into the workplace. Along these lines is the obvious fact that productivity may decrease, as the more worried employees are about the office bully, the less time they will spend actually working. Third, workplace turnover is sure to increase, with the

best and brightest employees leaving first. Most importantly, there are possible legal ramifications to office bullying. Employees do bring forth complaints of harassment to state and federal agencies where they claim that they have been harassed by the office bully.

We are all familiar with the "equal opportunity" harasser defense whereby the alleged harasser is actually guilty of none other than bad behavior among *all* employees. In *Holman v. State of Indiana*, 211 F.3d 399 (7th Cir. 2000), the Seventh Circuit held that Title VII does not cover the "equal opportunity" harasser, because such a person is not discriminating on the basis of sex; the equal opportunity harasser does not treat one sex better or worse than the other, but treats both sexes the same, albeit badly. However, the employer will need to prove that this is truly the case and will need to defend a harassment suit. This could be especially problematic in light of the fact that by some recent studies, the vast majority of office bullies, 73 percent in fact, are actually bosses, and an employer may be faced with defending a possible harassment suit under a strict liability standard.<sup>[2]</sup>

Furthermore, some states are considering anti-bullying legislation. According to the Workplace Bullying Institute, since 2003, thirteen (13) states have introduced some version of an anti-bullying, pro-employee "Healthy Workplace Bill."<sup>[3]</sup> While such legislation has not yet been successfully passed, such laws would create an entire new set of regulations for employers. For these reasons, it is important for employers to promptly, proactively and adequately address office bullies. So what can an employer do?

- Train managers to watch out for office bullying, not just traditional harassment. Managers can be the first line of defense. Once a manager clearly informs the office bully that his or her behavior will not be tolerated, that warning alone may stop the office bully. Of course, train your manager to document this conversation and the warning.
- Do not reward the behavior. Office bullies are sometimes isolated from their co-workers and given the "choice" corner office which happens to be located far away from others. Other times, office bullies are promoted into a new position requiring less collaboration. These types of solutions do not solve the problem. Rather, they reward the behavior. They are also problematic because often the office bully's behavior leads to the ultimate termination of his or her employment. When the office bully files a charge of discrimination, the bad behavior is not documented. Instead, the office bully's personnel file contains a history of promotions and accolades.

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- Document and discipline. Address the issue with the office bully. If your company has a set of core roles where dignity and respect are part of these core roles, those core roles may be one way to discipline the employee. Another possible solution is including a section in yearly performance evaluations that specifically pertains to an individual's ability to get along with others. If the office bully's performance evaluation somehow factors in their bad behavior, this may be all the incentive the office bully needs to stop.
- Prevent bullying in your harassment policy. Broaden your harassment policy to include *any* conduct that may be viewed as inappropriate. This will not only provide you with an avenue to discipline the bully, but it will also help prepare you in the event that your state is one in which a "Healthy Workplace Bill" is passed.

Above all else, do not ignore the situation. Most often, bullies want power. Ignoring the situation will indicate to the bullies that they do have the power and that their bad behavior is condoned.

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[1] Tara Parker-Pope, *When the Bully Sits in the Next Cubicle*, N.Y. Times, March 25, 2008, available at [http://www.nytimes.com/2008/03/25/health/25well.html?\\_r=1&oref=slogin](http://www.nytimes.com/2008/03/25/health/25well.html?_r=1&oref=slogin) (last visited June 25, 2008).

[2] Workplace Bullying Institute, available at <http://bullyinginstitute.org/education/bbstudies/def.html> (last visited June 25, 2008).

[3] Workplace Bullying Institute Legislative Campaign, available at <http://workplacebullyinglaw.org/index.html> (last visited June 25, 2008).

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