Workplace Bullying: A Problem for Everyone

States consider specific statutes to bar abusive conduct

By NINA T. PIRROTTI and JOSHUA R. GOODBAUM

John Doe worked in management at ABC Corp. for 19 years, garnering consistently glowing reviews. He planned to work for ABC until he retired. That was before his new manager, Cruella, came along.

About six months into her tenure, Cruella called John into her office. She told him to shut the door and sit down. She looked angry. She told John that she had been very disappointed with his work. John should pack up his office and leave ABC by the close of that day's business. He was fired.

Cruella sat and watched as John's face crumbled and tears came to his eyes. She watched as this sole breadwinner imagined how he would tell his wife that he could no longer support his family. He wondered how he would put his teenage children through college. How had it come to this?

And then Cruella burst out laughing. "It was a joke!" she said.

"That's not funny," he replied.

Her response? "If you can't take a joke, obviously I'm going to have to treat you differently than everyone else."

John told the human resources department about what Cruella had done. But when she got wind of his complaint, she made his work life miserable. John, who had been the paragon of health, started getting migraines, and a therapist diagnosed him with an anxiety disorder.

This is the story of workplace bullying—and a real one at that. John was one of our clients (though, of course, we changed some of the identifying details). Fortunately for John, we were able to secure his transfer to a different division of ABC Corp. by arguing that the transfer to a new supervisor was a reasonable accommodation for the disabling medical conditions he had developed. (The U.S. Court of Appeals for the Second Circuit has allowed for the possibility that the Americans for Disability Act could require a transfer under certain circumstances (*Kennedy v. Dresser Rand*, 193 F.3d 120, 122-23 (2d Cir. 1999)), and the Connecticut Supreme Court has acknowledged that "job restructuring or transfer to an open position may constitute reasonable accommodation." (*Curry v. Allan S. Goodman Inc.*, 286 Conn. 390, 420 (2008).)

You may think what happened to John is an extreme case. This sort of bullying doesn't happen all that much, especially by senior management at sophisticated companies. Most managers are not Cruellas. Right?

Think again.

Health Problems

According to a 2012 survey by CareerBuilder, roughly one in three employees report being bullied at work. And this isn't just a problem for employees; it's a problem for their employers too. Sixteen percent of bullied workers experience health problems, for which employers often end up paying. Seventeen percent of bullied workers quit their jobs as a result of the bullying, leaving employers looking for replacements. Workplace bullying matters.

So what can we do about it?

From the employee advocacy side, the answer—an unfortunate one, from our perspective—is often: not much. Existing anti-discrimination laws prohibit hostility or abuse on the basis of protected characteristics or conduct. And existing common-law protections prohibit unwanted physical touching and truly outrageous conduct. But, in general, no component of existing statutory or common law prohibits employers from creating or permitting the existence of abusive or hostile work environments, so long as the employers' motives for doing so are not based upon their employees' membership in a protected class or those employees' protected actions.


Nina T. Pirrotti


Joshua R. Goodbaum

A new movement, however, is underfoot to change all that. A bill to prohibit workplace bullying—the Healthy Workplace Bill—has now been introduced in 28 state and territorial legislatures. Although it has not yet become law anywhere, that day is coming.

In the interim, employers should be mindful that at least some victims of workplace bullying may be in a position to pursue legal claims against their employers. The Occupational Safety and Health Act (OSHA) guarantees a safe workplace; whistleblower statutes can prohibit retaliation for good faith complaints of unlawful conduct; and National Labor Relations Act (NLRA) procedures may allow employees to bargain for bullying-free environments. Common law claims for intentional infliction of emotional distress (for extreme and outrageous conduct) and promissory estoppel (based on an employer's "open door" anti-retaliation policy) may also be available, as well as tortious interference with contract or business expectancy against the individual manager (where the manager's malicious bullying prevents the victim from doing his or her job). Plus, as John's case demonstrated, an employee's disability as a result of bullying might require a reasonable accommodation, the denial of which could yield liability.

Litigation risk aside, though, we should all be concerned about this growing problem. Responsible employers will get out in front of the issue by implementing status-neutral anti-harassment policies, training management regarding the dangers of workplace abuse, and ensuring that employees who report instances of bullying are free from retaliation.

Responsible employers will get out in front of the issue by implementing status-neutral anti-harassment policies, training management regarding the dangers of workplace abuse, and ensuring that employees who report instances of bullying are free from retaliation.

California's Lead

California—often a thought leader on issues of employee rights and safety—has already taken the first step in this direction. Under recently-signed Assembly Bill No. 2053, starting Jan. 1, employers of more than 50 employees will be required to train all supervisors regarding "the prevention of abusive conduct." The law defines such conduct as workplace conduct, taken "with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests."

The law offers as examples "repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance."

The Connecticut legislature should follow California's lead. After all, who thinks anything described by the California bill belongs in the workplace? Indeed, the Connecticut legislature has already demonstrated leadership on a related issue with the enactment of laws directed at curbing the bullying of students. Under the initial 2011 law, Public Act 11-232, each board of education must "develop and implement a safe school climate plan to address the existence of bullying in its schools." (A recent amendment, Public Act 14-172, clarified the law's notification requirements, among other tweaks.) Why should our state's employers not take similar preventive measures?

John's story had happy ending for both him and his employer. John was able to continue doing the job he loved in a healthy environment, and his employer was able to keep an invaluable employee. Unfortunately, for many other employers and their bullied employees, the story does not end so happily. Even though no law currently requires them to do so, employers may be able to keep their employees from becoming yet another statistic by offering anti-bullying training. Such a proactive approach would be a win-win for both employers and their employees. ■

Nina T. Pirrotti is a partner at Garrison, Levin-Epstein, Richardson, Fitzgerald & Pirrotti in New Haven, where she represents individuals in employment litigation and negotiations. Joshua R. Goodbaum is an associate at the firm, where he represents individuals in litigation, with an emphasis in employment and civil rights.