

# Workplace Bullying & Risk Management – Familiar or Unique?

Presented for

NHRMA's Annual Conference,  
Juggling the Generations

October 1, 2009

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# Bullying – What is “it”???



# Bullying – What is “it”???

- ▣ Sarcastic jokes, teasing
- ▣ Criticizing performance in front of coworkers
- ▣ Interrupting in a rude manner
- ▣ Dirty looks
- ▣ Raised voice, yelling
- ▣ Ignoring
- ▣ Personal insults
- ▣ Demeaning/embarrassing statements
- ▣ Spreading rumors/confidential information
- ▣ Inappropriate physical contact

# Bullying – Is “it” generational???

- Personally experienced supervisor/employer abuse?
  - Overall: 44% yes
    - (52% no, 4% undecided)
  - Ages 18 – 24 = 24% yes (gen Y)
  - Ages 25 – 34 = 37% yes (few gen Y, more gen X)
  - Ages 35 – 44 = 49% yes (gen X)
  - Ages 45 – 54 = 49% yes (boomers)
  - Ages 55 – 64 = 56% yes (boomers)

# Bullies – Who are “they”???

- “They all serve to shame, humiliate and treat the Target like a powerless person. This distorted thinking is the only way bullies know how to survive in the work world, at someone else’s expense” – Namies  
(Bullyproof Yourself at Work, 1999)
- A “Laser Focused Interpersonal Campaign of Destruction” – Dallman  
(Washington State Health Professional Services Program)

# Bullies – Who are “they”???

■ From Crawshaw, Taming The Abrasive Manager: How to End Unnecessary Roughness in the Workplace

■ “... rub their coworkers the wrong way, inflicting lasting wounds. ...*damage work relationships to the point of disrupting organizational functioning.* Coworkers report feeling mistreated when they experience aggressive behavior ranging from mild offense to open attack. ... words and actions ...are perceived as harmful and are frequently taken personally, producing intense emotional distress.”

# Bullies – Are “they” a “they”???

- Research by Tripp and Bies, Getting Even: The Truth about Workplace Revenge – And How to Stop it
- “Clearly, we are not unbiased sense makers of our environment. We selectively pay attention to and remember most that which serves our interests best. ...”, Tripp and Bies
  - “Fits” based on my experiences proactively addressing current events
  - Remarkable consistency of research with anecdotal

# Bullies – Are “they” a “they”???

- Research by Tripp and Bies, Getting Even: The Truth about [Workplace Revenge](#) – And How to Stop it
- Some identified perception biases:
  - Biased punctuation of conflict history
  - Hyper-vigilance
  - Obsession
  - Exaggerated self-reference
  - Exaggerated perception of conspiracy
  - Actor – observer bias
  - Sinister attribution error
  - Confirmation bias
  - Social information

# Bullies – Are “they” a “they”???

- Research by Tripp and Bies, Getting Even: The Truth about [Workplace Revenge](#) – And How to Stop it
- Common forms of revenge they identify:
  - Freeze out
  - Private confrontation
  - Bad mouthing
  - Refusal of help
  - Quitting
  - Poor performance appraisals
- Other possible
  - Forgive
  - Reconcile

# WA and OR Cases contain “Bully”, “Bullying”

- ▣ Judicial discipline
- ▣ Lawyers courtroom conduct
- ▣ Lawyer disciplinary actions
- ▣ Negligent Supervision (3<sup>rd</sup> party)
- ▣ Negligence, Sexual Assault (3<sup>rd</sup> party)
- ▣ Social services departments
- ▣ Battery
- ▣ Defamation
- ▣ Sexual Harassment (employment)
- ▣ Abortion clinic protests
- ▣ Criminal cases
- ▣ Immigration cases
- ▣ School settings – students

# Employer Liabilities that May Result Under Existing Employment Laws

- Common law torts
  - Wrongful Discharge
  - Defamation
  - Invasion of Privacy
  - Outrage/Intentional Infliction of Emotional Distress
  - Assault
  - Battery
- Statutes
  - WISHA, OrOSHA (general duty to provide safe workplace)
  - Workers compensation, maybe
  - Unemployment compensation, maybe
  - Oregon Civil Rights Act
  - Washington Law Against Discrimination
  - Title VII of Equal Employment Opportunity Act
  - Americans with Disabilities Act
  - Age Discrimination in Employment Act

# Court Struggles with Existing Claims

- ▣ Under existing statutes, Courts struggle
- ▣ How much/what kinds of “bad” conduct is *necessary* for employer to be liable
- ▣ How much/what kinds of “bad” conduct is *sufficient* for employer to be liable; numerous considerations
  - ▣ Severity of conduct
  - ▣ Pervasiveness of conduct
  - ▣ Employee reaction: “reasonable person,” “reasonable ♀”
  - ▣ One event usually insufficient
  - ▣ Interface with employee performance/conduct issues

# Generalization about Cases

- **Discrimination Statutes:** Supreme Court has tended to apply lower thresholds
  - With conduct
  - With causation
  - Could argue a different conclusion in trial/appellate courts, especially federal courts
- **Tort Cases:** WA Courts have tended to apply higher threshold (Outrage)
- **Outrage requires:**
  - Extreme and outrageous conduct
  - Intentionally or recklessly caused distress
  - Severe emotional distress

# Court Decisions with Existing Tort Claims – Indiana Case

- Recent Indiana Supreme Court decision (April 8, 2008) allowed of bully label into courtroom
- Jury instruction advanced two concepts
  - That ‘bullying’ was not an issue
    - But “behavior of the defendant was very much an issue” therefore appropriate for court to decline to give instruction
  - That jury need not decide whether defendant was a ‘bully’ to decide case
    - Instruction unnecessary because other instructions said what was necessary
- Majority: trial court did not abuse its discretion in refusing to give this instruction
- Dissent: “... without any context the ‘bullying’ label is nothing more than highly prejudicial name-calling of no help to the jury. Dr. Namie’s labeling was not harmless error.”

# Potential Future

- Movement internationally and in U.S. to pass general 'do not bully' statutes that would provide claims (lawsuits) against
  - The bully
  - The employer
- In Washington, SHB 2142 (2008)
  - Not passed
- In Oregon, SB 1035 (2007)
  - Not passed
- Expect these bills to be back

# Potential Future

- Conflicts among legal obligations exist
- Can present challenging balancing acts for employers
- Examples
  - Feb. 2008, 1<sup>st</sup> Circuit Court of Appeals (Mass.)
    - Sexual harassment with disability accommodation
  - June 2008, (unpublished) Wa. State court of appeal
    - Abrasive behaviors with national origin discrimination

# Considerations about Future

## Should “WE” ADDRESS BULLYING VIA more LAWSUITS??

1. Passing a law does not mean those affected have awareness
  - ▣ Of existence of the law
  - ▣ Of meaning of bullying (even after reading the proposed law?)
2. Imperfection of memory and testimony
3. Imperfection of using one person’s (target ’s) feelings as the measure of another person’s (bully ’s) motivation
4. Time lines – when both bully and target remain in same workplace
5. Shift that occurs when there is a suit or claim, from addressing conduct/finding solution to winning (attorney is often immediately there, clients shift over time), e.g.,
  - ▣ importance of portraying the ‘other person’ as bad enough or the ‘wicked stepmother’
  - ▣ importance of ‘proving’ that I’m not the ‘wicked step mother’
6. Range of honesty in testimony
7. Complexity: various legal rights and protections conflict
8. Unintended consequences of litigation
  - ▣ Increased value of expert witnesses
  - ▣ Increased value of ‘muddy’ definitions to accomplish money judgments
9. Proper role of government – legislature, judges – and litigation in defining acceptable, unacceptable conduct?
  - ▣ Plaintiff’s attorney?
  - ▣ Employer’s attorney?
  - ▣ Jury: how much second-guessing whether voice was too loud, eye contact too little (ignored), etc.?
10. Role of courts differ for core societal statuses (consider constitutional: race, creed, color, religion, voting, etc.)
11. How to create incentive (carrot) versus punitive (stick)?

# Considerations about Future

- From Crawshaw, Taming The Abrasive Manager: How to End Unnecessary Roughness in the Workplace
- Definition of an “adequate” boss
  - Interpersonal competence range from good enough to great
  - Enough emotional intelligence to know how to relate to coworkers in socially acceptable ways that promote smooth working relationships
  - Aren’t perfect, but insightful enough to consistently behave in ways that coworkers perceive as respectful
- “... these skills help them maneuver successfully through the inevitable interpersonal rough patches present in any workplace, keeping emotional distress to a minimum.”

# Considerations about Future

- Research by Tripp and Bies, Getting Even: The Truth about Workplace Revenge – And How to Stop it
- “...and how to stop it”
  - Re manager or supervisor decisions, employees need to know
    - Rules apply consistently
    - Employees have a voice
    - Information is accurate
    - No conflicts of interest
    - Decision is correctable
  - Re employee-employee actions – official grievance mechanisms
    - Investigate, restore justice
    - Victim mostly wrong, help her/him understand
    - Offender really did offend,
      - Offender repent and apologize or make amends, or
      - Punish the offender

# Considerations about Future

## Speaker's Thoughts about HOW TO ADDRESS "BULLYING" UNDER EXISTING LAWS?

- Good conduct policies
  - Let go of historic connection of policies to avoiding specific legal claims
  - Use policies to achieve civil workplace
  - For this, use "at will" as ally, friend, helper, tool
- Incent better behavior
  - Expect civil
  - Distinguish civil from not truthful or not direct
- Avoid name calling
- Invest (time, resources) in workplace conduct
- Avoid giving in to threats
- Performance review topic
- Supervisory topic: expect and coach to adequate bosses
- Job references content
  - Consider WA immunity statute
  - Recognize "fit" counts
- Alternative to 'new' lawsuits: clarifying what is necessary/sufficient for a claim under existing laws

# Thoughts – Post-Boomer Generations

- Veterans = respect for authority, sense of duty, comfortable w/ directive management
  - Mostly historic, directive management includes challenges for dealing with “offenders” w/in bully schematic
- Boomers = move toward individualism, generally comfortable w/directive management
  - Source of today’s “targets” (optimistic, uncomfortable w/ conflict) and “offenders” (can be judgmental) w/in bully schematic
- Gen X = value independence, latest technology, not value corporate structure for own sake, will question, but respect legitimate authority (not so team oriented)
- Gen Y = love challenge, ambitious, confident, move fast, want “it” – now!, less ethnic or gender role awareness (function as team members)

# Thoughts – Post-Boomer Generations

- Perspective from Generations: The History of America's Future, 1584 to 2069 by Strauss & Howe
  - 4 generational types:
    - Idealist
    - Reactive
    - Civic
    - Adaptive
  - The four types recur in a fixed order
  - As a generation ages, inner beliefs retain certain consistency
  - Beliefs and behavior never uniform across all members of a generation
    - Those who differ, generally are aware of nonconformity
  - Categories (generations) are imprecise at the boundaries

# Thoughts - Post-Boomer Generations

- Gen X and Gen Y are likely to be less imbued with historic “legal” context (less accepting of legal historic framework and more willing to question its effects) – times may change with this
- Will be a while before we see many Gen X judges, Gen Y legislators
- Keep general reference frames handy, but MOSTLY
  - ASK
  - LISTEN
  - Align workplace tasks, perks with individuals
  - Useful contributions from employment law history
    - INDIVIDUALIZED ASSESSMENTS
    - AVOID STEREOTYPES
    - ARTICULATE and PRESERVE decision-making along the way
- Keep both Crawshaw approach and Tripp and Bies “research” results handy as assets to assist with communications

# Considerations about Future – Final Thought

The Golden rule of conduct is mutual toleration, seeing that we never all will think alike and that we shall always see Truth in fragment and from different angles of vision.

Mohandes Ghandi