



Difference between workplace bullying and reasonable management action

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What is workplace bullying?

Workplace bullying is conduct directed towards one or more persons which is unreasonable, repeated, and of such a nature as to create a risk to the health and safety of the employee (or employees) in question.

Definitions of workplace bullying vary somewhat between different jurisdictions, but those three elements:

1. unreasonable conduct;
2. repetition; and
3. risk to safety,

are widely regarded as the fundamental requirements to establish bullying in the workplace.

There is one frequent exception or clarification to the definition of workplace bullying, namely, that it is not constituted by reasonable management action taken in a reasonable way.

Let's first look at the three elements necessary to prove workplace bullying.

1. What is “unreasonable behaviour” in workplace bullying?

Unreasonable behaviour involves an objective test, i.e., that which a reasonable person, having regard to the circumstances, sees as unreasonable. In other words, the personal views of the alleged bully and victim as to how the behaviour should be characterised are not directly relevant.

For behaviour to be regarded as unreasonable, it need not be irrational or bizarre behaviour. In assessing what amounts to workplace bullying, the courts will also consider the broad range of human affairs and behaviours. It has been said that caution is needed against creating a workplace environment of excessive sensitivity to every misplaced word or act.

In one widely reported case from 2013, the Fair Work Commission said:

"The Commission should guard against creating a workplace environment of excessive sensitivity to every misplaced word or conduct. The workplace comprises of persons of different ages, workplace experience and personalities – not divine angels. Employers are required to pursue inappropriate behaviour but need to be mindful that every employee who claims to have been hurt, embarrassed or humiliated does not automatically mean the offending employee is “guilty of bullying” and “gross misconduct”."

2. Determining “repeated behaviour” in workplace bullying

To be *repeated*, there must be more than one occurrence of unreasonable behaviour, although it need not be the same specific behaviour.

Furthermore, two or more incidents of unreasonable behaviour towards the same employee may not, of themselves, be of sufficient gravity to demonstrate *repeated* unreasonable behaviour so as to constitute workplace bullying.

3. When workplace bullying poses a risk to health and safety

A *risk to health and safety* means exposure to the chance of injury or loss (including psychological harm). It must be a real risk with a causal link between the behaviour and the risk to health and safety, although the bullying behaviour need not be the only cause of the risk.

Workplace bullying vs reasonable management action

Reasonable management action, taken in a reasonable way, will never be regarded as workplace bullying.

Management action can include such things as:

- conducting performance appraisals;
- holding meetings to address under-performance; and
- taking steps to address potential misconduct.

This qualification on the definition of bullying seeks to preserve the rights of employers to take appropriate action against employees, provided that it is reasonably justified and done in a reasonable manner.

This is an important issue in practice, given that employers accused of bullying often respond by saying that they were simply trying to correct or discipline an underperforming employee.

When is management action reasonable?

Again, this is to be assessed objectively. An employee must demonstrate that the decision to take management action lacked proper justification, such that a reasonable person would consider it to have been unreasonable in all the circumstances.

For management action to be regarded as reasonable though, it does not have to be the best or the preferable course of action. There may be more than one way of doing things reasonably. Mere imperfection in undertaking management action does not make the behaviour unreasonable.

It is not determinative that the worker in question may have found the management action to be humiliating or embarrassing. The question of the impact upon the employee does not, of itself, establish whether the management action was reasonable.

When is management action carried out reasonably?

Not only must management action be reasonable, but it must be carried out reasonably too. Both aspects of reasonableness are important. An employer may have good cause to take action against an underperforming employee, but the way that is done must still be reasonable.

For employers facing allegations of workplace bullying or inappropriate treatment of an employee, it is not sufficient to simply point to sub-par performance of the employee. Underperforming or non-compliant employees do not forfeit their right to work free from bullying in the workplace.

Whether management action will be regarded as having been taken reasonably will involve consideration of a number of factors, such as:

- the individual circumstances of the worker;
- whether established workplace policies and procedures were followed; and
- whether it was done in an appropriate and timely manner.

Employee legal rights if subjected to workplace bullying

Employees are entitled to work free from workplace bullying, however substandard their behaviour might be. An underperforming employee can be the subject of disciplinary action or a performance improvement plan, provided such steps are justified and executed in a reasonable manner. If such action is not both justified and carried out reasonably, it may well amount to workplace bullying.

Where a worker is subjected to workplace bullying, then (depending on their employer) they may apply to the Queensland Industrial Relations Commission or the Fair Work Commission for a “stop bullying order”.

Conclusion

Claims of workplace bullying are common nowadays and can present real challenges for employers claiming to have been engaged in a process of correcting or disciplining underperforming staff.

Unless management action can be objectively seen to be both reasonably justified **and** done in a reasonable way, it may amount to workplace bullying.

Get help from an employment lawyer

If you've been exposed to workplace bullying and would like to understand your legal options or if you're an employer seeking to defend allegations of workplace bullying, you should get in contact with one of our [employment lawyers](#) for advice and assistance.

Contacting Gilshenan &Luton

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