

Law Report

LEGAL NEWSLETTER

VOLUME 9, ISSUE 1

RUDE, CRUDE AND SOCIALLY UNACCEPTABLE

Lawfully Dethroning the Workplace Despot

We all agree disruptive workplace incidents distract from harmony and productivity. One of the more prevalent and sometimes inadequately addressed workplace disruptions concerns rude, boorish employees. Their bullying can include personal insults, verbal attacks, inappropriate teasing and sarcasm, belittling another's intelligence or capabilities, and maligning someone's reputation through gossip and rumor-mongering.

IS RUDE WORKPLACE BEHAVIOR UNLAWFUL?

Although California has adopted anti-harassment laws,

One of the more prevalent and sometimes inadequately addressed workplace disruptions concerns rude, boorish employees.

it has yet to enact "civility" laws. Several states have attempted such regulation, including California's unsuccessful Healthy Workplace Bill of 2003. By declaring *all* abusive workplace conduct unlawful, such bills seek

broader protection for employees facing workplace harassment, regardless of whether the abuse was directed to an employee belonging to a protected classification (race, gender, national origin, religion, etc.). Even without such formal prohibitions, employers may be at risk for ignoring bullying behavior.

POTENTIAL LEGAL THEORIES TARGETING WORKPLACE BULLYING:

Although there is no anti-bullying law in California *per se*, affected co-workers have filed claims under the protection of the Americans with Disabilities Act (ADA) and/or workers' compensation laws claiming such bullying created stress and anxiety. Employees targeted by bullies have also sued employers for damages for the intentional infliction of emotional distress allegedly caused by such bullying incidents. Employee suits alleging such harassment was linked to a protected classification are also common. In *EEOC v. Nat'l Educ. Ass'n* (9th Cir. 2005) 422 Federal 3d 840, 844, a male allegedly acted in a particularly obnoxious fashion towards his female subordinates, often screaming profanities and physically intimidating

them, while reportedly treating his male subordinates in a more playful, bantering fashion. The court found harassing conduct need not be motivated by sexual desire to support an inference of sexual discrimination. Even if the bully's target is of the same gender, the victim might suc-

Although California has adopted anti-harassment laws, it has yet to enact "civility" laws.

cessfully sue for unlawful sex harassment. In *Singleton v. United States Gypsum Co.* (2006) 140 California Appellate 4th 1547, John Singleton's male co-workers allegedly engaged in workplace bullying by insults and sexually explicit gestures and comments. The appellate court found Singleton could have been harassed because of gender, even though the harassers were also male.

HOW TO RESOLVE CO-WORKERS' COMPLAINTS:

The wrong thing to do is ignore such a situation. Granted, it's logical to presume all workers are mature,

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ANNOUNCING: NEW! UPDATED FORMS AND HANDBOOK AVAILABLE

We have developed – and periodically revised to match the changing law – a "soup-to-nuts" employee handbook and a package of basic hire-to-fire forms and policies.

Staying compliant with new laws is vital in protecting your company and employees. We are pleased to announce that starting September 22, 2008, to meet the ever-changing laws, we will be offering revised and expanded employment forms and policy handbook. This new edition will enable you to remain in compliance with new laws, including new arbitration provisions and leave of absence requirements.

Our updated forms and handbook will reduce your legal liability while providing necessary and useful information to your employees about what's expected in your place of employment.

Don't operate at risk! We
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The Law Offices of Timothy Bowles work primarily in employment and health care fraud law; mediation; arbitration; and civil litigation. While published articles convey the firm's views on topics it has found concern many of its clients, the articles are not intended and should not be considered legal advice. Such professional advice requires full disclosure to an attorney of a client's circumstances and that attorney's opportunity to analyze those circumstances against applicable law.

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responsible adults. However, even where the bullying does not seem based on some protected classification (age, religion, national origin, etc.), don't just assume people can and should work these mat-

Treat these complaints just as seriously as a claim for sexual harassment or other harassment on a protected classification.

ters out by themselves. Treat these complaints just as seriously as a claim for sexual harassment or other harassment on a protected classification. Investigate in a thorough and neutral manner with the

intention of truly addressing and handling the problem.

HOW TO CONFRONT THE BULLY:

Of course, do not overreach to unnecessarily documenting the accused wrongdoer's every shortcoming, big, small, or microscopic. The person in question could later attempt to characterize over-documenting as attempts to create false grounds for terminating him or her. The best approach is to ensure workplace policies clearly state what code of conduct is expected at the workplace, including how workers are to behave with one another. If an employer finds an individual has crossed the line, show him or her the appropriate workplace policy, discuss the resolution, and discipline and document accordingly. Any resolution should include the appropriate corrective training. Always apply company policies consistently and

fairly: don't single out certain individuals for bullying behavior while ignoring others. If in doubt how to proceed, contact our office for assistance.

CONCLUSION:

Although anti-bullying laws do not yet exist, such workplace disruptions must be taken seriously. Conduct thorough, neutral and properly documented investigations when these incidents arise, and ensure your workplace policies clearly delineate the professional manner you expect from all your employees.

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encourage all employers to have current policies and supporting employment forms in use. New laws may make your existing personnel forms obsolete.

Call today and place your orders. Currently, our forms cost \$150 and our handbook costs \$300. Prices will be going up by year end.

Have our forms and manual already? Call for special pricing for upgrade customers. Please visit our website at www.tbowleslaw.com for more details.

UNLAWFUL HARASSMENT SEMINARS FALL SCHEDULE

- September 4th, 2008 – 1:00 p.m. to 3:30 p.m.
- October 16th, 2008 – 1:00 p.m. to 3:30 p.m.

Western Justice Center Foundation
55 South Grand Ave., Pasadena, CA 91105

Call our office for details, or visit our website at www.tbowleslaw.com