



Human Rights
Commission

Te Kāhui Tika Tangata

How to have a positive and healthy workplace

PREVENTING AND DEALING WITH WORKPLACE BULLYING
MUKA WHATU ORA

Resources for Workshop Participants

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Contents

1. What is Workplace Bullying?	3
2. Legal Cases	5
3. Legal Issues	11
4. Key Employment Elements	19
5. Example Statement from the Executive Director	21
6. Example Policy Content	22
7. A Case Study: SCION	24
8. Action Plan Template	26
9. Resources and Support	27
10. Training Module Evaluation Form	30

1 > What is Workplace Bullying?

The following quotes taken from various sources are some of the many definitions that exist on workplace bullying.

"Workplace bullying is a continual and relentless attack on other people's self-confidence and self-esteem."

"Bullying is behind all forms of harassment, discrimination, prejudice, abuse, conflict and violence. Where bullying has a focus it comes out as harassment or discrimination. Where bullying lacks focus it comes out as pure bullying."

(Tim Field, USA author of *Bully in Sight: how to predict, resist, challenge and combat workplace bullying*)

"It is persistent, offensive, abusive, intimidating, malicious or insulting behaviour, abuse of power or unfair penal sanctions, which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines their self-confidence and which may cause them to suffer stress."

"As with harassment, bullying is defined largely by the impact of the behaviour on the recipient, not its intention."

(UK Dignity at Work Partnership funded by Amicus and DTI)

"Bullying is not 'tough' management; it is illegitimate behaviour, unrelated to accomplishing productive work, so outrageous as to be the antithesis of what a good employer values and encourages."

Is best understood through the bully's behaviours -

- *acts of commission (hostile verbal, nonverbal communication and interfering actions) and*
- *omission (the withholding of resources - time, information, training, support, equipment - that guarantee failure) - which are all driven by the bully's need to control the target."*

(The US and Canadian Workplace Bullying and Trauma Unit)

The common themes in these definitions are:

- Directed at a target, often an individual
- Verbal or physical
- Repeated, persistent
- Unreasonable, inappropriate
- Offensive, abusive, intimidating, malicious, insulting
- Target - loss of self confidence, threatened, upset, humiliated, vulnerable
- About power - positional, resources, physical, psychological.

2 > Legal Cases

Some summaries are taken from *Dealing with Bullying in the Workplace*, by Anna Fitzgibbons, June 2006, and some are taken from the Department of Labour's Employment Cases Summary.

Cases where bullying WAS found to be occurring

1. *Attorney-General in respect of the Chief Executive of the Department of Corrections v Gilbert*, 14 March 2002 (CA 141/00)

This case:

- Together with the amendments to the Health and Safety in Employment Act 1992 (HSE) which were introduced into law in May 2003, brought to the forefront workplace stress and bullying and was the beginning of a series of cases that have been brought around workplace bullying. Media coverage given to the decision and the amendments to the HSE encouraged many employees to identify themselves as suffering from workplace stress.
- Ordered a large sum to be paid for damages for humiliation, anxiety and distress and for medical expenses.
- Found the employer failed to take account of the employee's severe stress levels due to workload, office dysfunction and inadequate resources.

2. *Job v Attorney General in respect of the Director General of Department of Conservation* unreported, A Dumbleton, 20 January 2003, AA 18/03

In this case:

- The grievant brought a personal grievance claim alleging unjustifiable dismissal following his sacking because of bullying in the workplace.
- His behaviours included bad language and threats.
- The employer's view was that the employee's conduct in harassing and bullying staff constituted serious misconduct.
- The ERA found that the dismissal in this instance was justified because the applicant's behaviour in bullying and harassing staff had caused the employer to lose trust and confidence in him.

3. *O'Brien v Renton Chainsaws and Mowers Limited* unreported, H Doyle, 27 February 2003, CA 21/03

In this case:

- The employee resigned and brought a personal grievance claiming constructive unjustifiable dismissal.
- The employee complained to his employer on numerous occasions about his relationship with a particular manager whom he claimed was constantly swearing at him and pushing him.
- The ERA found in favour of the employee observing that he had an entitlement to a safe and secure workplace and the failure of the employer to provide him with this was a breach of its duty to him which had resulted in his resignation.

4. *McGowan v Nutype Accessories Limited* (2003) 1 ERNZ 120

In this case:

- The bullying took place "*under the noses of management*".
- The Court decision made it clear that employers must take effective steps to put an end to constant verbal abuse - an employee taunted and swore at his manager at every opportunity.
- Senior management of the company failed to take action to enforce its warning that the bully would be dismissed if the abuse continued.

5. *Williams v The Warehouse Ltd* (12/12/05, Member King, ERA Auckland AA498/05, AEA770/05).

In this case:

- Widespread publicity was received.
- Williams was the Quality Assurance Manager for the apparel side of the Merchandise Department at The Warehouse. She had been with the company for about nine years before her dismissal.
- A staff member resigned and reported to HR that she was being bullied by Williams and that she was scared about laying a complaint.

- While Williams was away a staff meeting was held and a number of staff came forward alleging bullying. An investigation was commenced by the company and Williams was suspended and following the investigation, dismissed.
- Williams brought a personal grievance claiming unjustifiable dismissal.
- Williams was unsuccessful. The Authority looked at Williams' behaviour and concluded she posed a risk to the health and safety of other employees. Employer's obligations to provide safe and healthy workplaces are significant under the HSE and The Warehouse carried out a fair procedure and justifiably dismissed the "bully".

6. *Harbord v Waste Management Limited* unreported, D Asher, 23 February 2005, WA 30/05

In this case:

- An employee made threats to another employee that he would kill him.
- The bully's physical size and gang connections were extremely intimidating to his co-worker who was the subject of the threats.
- The employer failed to investigate the employee's concerns when it became aware of the threats.
- The Authority described the applicant's colleague as a bully, a description the employer agreed with.
- The Authority referred specifically to the employer's obligations under the HSE and said that the hazard alleged by the applicant was personal harassment and potential violence from another employee. The Authority said that the bullying endured by the applicant amounted to psychological assault.

7. *Department of Labour v Nalder & Biddle (Nelson) Ltd*
(DC, Nelson, CRN 04042500, 13 April 2005, Judge McKegg)

This case:

- Was the first prosecution under the HSE since the introduction of the amendments.
- A new employee found her responsibilities were greater than expected and complained she was suffering from stress and chest pains.
- The company took some steps to alleviate her problems by hiring additional staff. Those steps were not, however, enough to alleviate the stress and her chest pains continued and she was forced to resign.
- She subsequently raised an employment problem, which was settled on a confidential basis.
- The Department of Labour did, however, proceed with a prosecution and the District Court found that the prosecution had been made out. It ordered the company to pay a fine and to pay reparation to the employee.
- Although not related to bullying, this case proved that workplace stress is the origin of some workplace litigation, albeit at this stage relatively limited.

Cases where bullying was NOT found to be occurring

8. *Voisey v Age Concern Counties/Manukau Incorporated*
unreported, YS Oldfield, 16 September 2003, AA

In this case:

- The applicant objected to the manager's manner, offensive words, critical comments, unwarranted criticism of her performance, disdain etc.
- The Authority accepted 'brusque and insensitive manner of manager' however found that this was in the normal range of what can be expected in the workplace and that the applicant was 'extraordinarily sensitive'.

9. *Briggs v New Zealand Gem Trading Company Ltd* unreported, V Campbell, 4 June 2004, AA 194/04

In this case:

- The employee had been counselled by her Manager for her own interpersonal shortcomings.
- The employee complained the manager had a dominant, blunt style and condescending manner, negative tone of voice and made derogatory comments etc.
- The Authority accepted that the Manager, alleged to be a bully, had a 'brusque management style' but did not accept that this led to the employee's resignation or gave rise to an actionable claim.
- The Authority also found that the applicant was a sensitive person who had taken offence at behaviours which fell within the normal range of what could be expected in the workplace.

10. *Nagai v Carlton Hotel (Auckland) Limited* unreported, J Scott, 19 October 2004, AA 339/04

In this case:

- The applicant alleged that he was singled out by the head chef for criticism in front of others, yelled at and blamed for deficiencies that were not his fault.
- The Authority considered this was a case of firm directions or rebukes for minor misdemeanours and that behaviour came well within the scope of the accepted and expected behaviour in the particular environment.

11. *Sharma v Vehicle Testing NZ Ltd* unreported, L Robinson, 4 June 2004, AA 195/04

In this case:

- The Authority accepted that the manager had spoken in a 'matter of fact way' and also asked the applicant whether he was in the right job and that he asked more than once 'are you going or staying?'.
• The Authority was not persuaded this amounted to bullying or harassment.

12. *Sherwin v Fletcher Challenge Forests Limited* unreported,
D King, 14 September 2004, AA 293/04

In this case:

- The applicant claimed he was ritually humiliated and made to wear a joke beanie hat with a propeller. The hat was given to anyone who made minute changes to log demands during a particular workplace process.
- The Authority stated that although this was infantile behaviour, it was not bullying.

3 > Legal Issues

Dealing with bullying in the workplace

ANNA FITZGIBBONS JUNE 2006

A Introduction

Four years ago, the terms “workplace bullying” and “workplace stress” were virtually unheard of. There is no doubt that many workplaces had bullies within them and many workplaces employed staff who felt stress as a result of the workplace environment and bullying which may have occurred. So why is it that these terms have become more frequent in recent years? Are more people being bullied at work? Are more people stressed at work? It is my own view that the Court of Appeal decision in *Attorney-General in respect of the Chief Executive of the Department of Corrections v Gilbert*, 14 March 2002 (CA 141/00), the amendments to the Health & Safety in Employment Act 1992 (“HSE Act”) introduced into law on 5 May 2003 together with the publication of the book by Andrea Needham *Workplace Bullying: The Costly Business Secret* (Penguin, New Zealand, 2003) brought to the fore workplace stress and workplace bullying. Many employees identified themselves as suffering from workplace stress following media coverage given to the Gilbert decision and the amendments to the HSE Act or from workplace bullying and stress after reading Needham’s book.

B Stress under the Health & Safety in Employment Act and its amendments

The HSE Act was amended in 2002 and the amendments came into force on 5 May 2003. The amendments to the HSE Act extended the definition of “harm” to include physical or mental harm caused by work related stress. The definition of “hazard” was also extended to include “a situation where a person’s behaviour may be an actual or potential cause or source of harm to the person or another person”. Therefore a bully could be deemed a “hazard”. Since the introduction of these amendments to the HSE Act, certainly in practice, there was initially an influx in the number of claims being brought by employees which included a claim of workplace

stress. The first prosecution occurred in 2005 in *Department of Labour v Nalder & Biddle*. The purpose of this paper is not to deal with the area of workplace stress except to say that where an employee alleges workplace bullying there is often a claim that the resulting stress is workplace stress and therefore actionable under the HSE Act as amended.

C Workplace Bullying

Noticeably since the publication in 2003 of Needham's book referred to above on workplace bullying, many personal grievance claims brought by disgruntled employees have alleged bullying behaviours in the workplace. Certainly I have noticed and talked with many employees since 2003 that have read Needham's book, and identified that the behaviour they were receiving at work was bullying behaviour. Many of these employees chose to bring personal grievance claims alleging constructive unjustifiable dismissal or unjustifiable disadvantage, based on workplace bullying.

D What is it?

As stated above there is no definition of "workplace bullying" in our legislation. Chapter 2 of Andrea Needham's book is devoted to the question of what workplace bullying is. On page 22 of her book she refers to the definition of workplace bullying developed by the Workplace Bullying & Trauma Institute ("WBTI") which is an organisation based in the United States and Canada. The WBTI definition of workplace bullying is:

- "The repeated health-endangering mistreatment of a person (the target) by a cruel perpetrator (the bully);
- Acts of commission (hostile verbal, non verbal communication and interfering actions) and omission (the withholding of resources/ time, information, training, support, equipment/ guarantee failure) - which are all driven by the bully's need to control the target;
- Is illegitimate behaviour, unrelated to accomplishing productive work, so outrageous as to be the antithesis of what a good employer values and encourages."

Needham's book is comprehensive and useful in that it refers to a number of international organisations concerned with bullying. Employers wishing to delve more into the issue of workplace bullying will find her book a very useful resource. The area is a difficult one for employers because of the lack of recognition of "workplace bullying" in the legislation so it is important for employers to consider what workplace bullying is, how to recognise it and then what to do about it.

There have been one or two cases in New Zealand which demonstrate the type of behaviour that could be classified as bullying behaviour. The cases were brought in the context of personal grievance claims. *Job v AG in respect of the DG of the Department of Conservation* (unreported, AA 18/03, 20 January 2003, A Dumbleton) was a personal grievance claim alleging unjustifiable dismissal. In this instance, the grievant brought a personal grievance claim alleging unjustifiable dismissal following his dismissal because of bullying in the workplace. His behaviours included bad language and threats. The employer was of the view that the employee's conduct in harassing and bullying staff constituted serious misconduct. The Employment Relations Authority ("The Authority") found that the dismissal in this instance was justified because the applicant's behaviour in bullying and harassing staff had caused the employer to lose trust and confidence in him.

Another Authority decision which refers to the type of behaviour that could be classified as bullying is *O'Brien v Renton Chainsaws & Mowers Ltd* (AA 21/03 27 February 2003, H Doyle). The employee in this case resigned and brought a personal grievance claiming constructive unjustifiable dismissal. The employee complained to his employer on numerous occasions about his relationship with a particular manager whom he claimed was constantly swearing at him and pushing him. The Authority found in favour of the employee observing that the employee had an entitlement to a safe and secure workplace and the failure of the employer to provide him with this was a breach of its duty to him and which had resulted in his resignation.

A recent decision which received widespread publicity was *Williams v The Warehouse Ltd* (12/12/05, Member King, ERA Auckland AA498/05, AEA770/05).

Ms Williams was the Quality Assurance Manager for the apparel side of the Merchandise Department at The Warehouse. She had been with the company for about nine years before her dismissal.

There were a number of issues in this case but the salient issues regarding the alleged bullying occurred in October 2004. A staff member had resigned and reported to HR that she was being bullied by Ms Williams. The complainant was scared about laying a complaint while Ms Williams was away, a staff meeting was held and a number of staff came forward alleging bullying. An investigation was commenced by the company and Ms Williams was suspended. Following the investigation Ms Williams was dismissed. Ms Williams brought a personal grievance claiming unjustifiable dismissal.

Ms Williams was unsuccessful. The Authority looked at Ms Williams' behaviour and concluded she posed a risk to the health and safety of other employees. Employer's obligations to provide safe and healthy workplaces are significant under the HASE and The Warehouse carried out a fair procedure and justifiably dismissed the "bully".

E Is workplace bullying actionable?

New Zealand, as with many overseas jurisdictions, does not have legislation to deal with "workplace bullying", nor do we have a proper legal definition of what workplace bullying is. An employee who has an employment relationship problem must bring a claim under the Employment Relations Act 2000 ("the ER Act"). The Act contains no definition of workplace bullying nor does it include workplace bullying as a behaviour for which an employee can claim a personal grievance. Section 103 of the ER Act clearly defines what constitutes a personal grievance and includes:

- unjustifiable dismissal,
- unjustifiable disadvantage, namely that an employee's employment has been affected to his or her disadvantage by the unjustifiable action of the employer,
- discrimination,
- sexual harassment,
- racial harassment, or
- duress in relation to the employee's membership or non membership of a union or employee organisation.

Nowhere in the definition of personal grievance does it refer to workplace bullying. This means that an employee must bring his or her claim under the more general headings of "unjustifiable dismissal" or "unjustifiable disadvantage" and frame the claim around the already recognised duties implicit in the employment relationship, such as the duty to provide a safe workplace, and the duty of trust and confidence.

Similarly, the Human Rights Act 1993 does not prohibit "workplace bullying". The Human Rights Act prohibits racial and sexual harassment in New Zealand workplaces but does not prohibit bullying or other harassment (other than racial or sexual harassment).

An employee who claims that he or she was forced to resign as a result of workplace bullying, either as a result of the employer's inactivity in respect of workplace bullying by a colleague or because of bullying by the employer him or herself, may bring a personal grievance that he or she was unjustifiably dismissed. The unjustifiable dismissal relates to being forced to resign because of a breach of duty on the part of the employer. Resignation in these circumstances is referred to as a "constructive dismissal".

Alternatively, the employee can bring a personal grievance of unjustifiable disadvantage as a result of bullying by the employer. The claim is that the employee's employment has been affected to his/her disadvantage as a result of the employer's failure to take steps to prevent the bullying.

Unjustifiable constructive dismissal and unjustifiable disadvantage are the most frequent means of bringing claims based on workplace bullying. From my experience, the number of employees bringing these types of claims is on the increase. However, if you review the case law, it seems that it can be difficult for employees to prove that the bullying that they have suffered crosses the threshold of seriousness to support a personal grievance claim. It appears from the case law to date, that bullying in the form of physical or verbal abuse such as constant and offensive swearing will give rise to a successful personal grievance, but some of the more insidious forms of bullying, such as intimidation demonstrated by a brusque management style are unlikely to pass the threshold.

See for example: *Harbord v Waste Management Limited* (WA30/05), where the bully made threats to another employee that he would kill him. The bully's physical size and gang connections were extremely intimidating to his co-worker who was the subject of the threats. The employer failed to investigate the employee's concerns when it became aware of the threats. Contrast this to: *Briggs v NZ Gem Trading Co Ltd* (AA194/04) where the Authority accepted that the Manager, alleged to be a bully, had a brusque management style but did not accept that this led to the employee's resignation or gave rise to an actionable claim. In this case the employee had been counselled by her Manager for her own interpersonal shortcomings. See also: *McGowan v Nutype Accessories Ltd* [2003] 1 ERNZ 120 in which the bullying took place "under the noses of management". This Employment Court decision makes it clear that employers must take effective steps to put an end to constant verbal abuse. In this case a subordinate taunted and swore at his Manager at every opportunity. Senior management of the company failed to take action to enforce its warning that the bully would be dismissed if the abuse continued.

What can be taken out of the case law? Firstly, employers have an obligation to provide a safe, secure work environment. This duty is explicit in the HSE Act and has been affirmed in significant case law such as *Gilbert*, in which the Court of Appeal emphasised the implied duty on employers to take reasonable steps to maintain a safe workplace for their

employees (in the context of a work related stress claim). Employers also have a well recognised duty to maintain the relationship of trust and confidence with their employees and this can be undermined by serious and sustained acts of bullying. The Williams case above also highlights the importance of keeping a workplace safe and healthy.

Employers have the responsibility to take complaints of workplace bullying seriously and to take steps to investigate and put an end to any such bullying. The worst case scenario could include a situation where an employer is aware of bullying of an employee, takes no steps and the employee is subject to physical or mental violence which causes harm. OSH will investigate incidents of “serious harm” in the nature of a recognisable mental or physical illness and may prosecute under the HSE Act. Employers would be liable for fines under the HSE Act as well as potential claims under the ER Act.

Whatever you might take from the case law it is clear that bullying in the workplace is divisive and can have a serious impact on work harmony and cohesiveness. For this reason, many claims are settled without the claim progressing further in order to deal with the negative and more intangible aspects of a bullying situation. Sometimes, unfortunately, the only solution is for either the bully or the person being bullied to exit the workplace. These exits may be negotiated in genuine bullying situations as the only practical solution to a breakdown in the employment relationship, but may also be negotiated in situations where the claim of bullying is used as a tactic by the employee to avoid the consequences of disciplinary action.

F When is bullying used as a tactic to avoid appraisal?

In my experience, in the last few years there has been an increase in claims brought alleging workplace bullying against managers who are managing the performance of the employee concerned. It is at the point when the employee’s employment is in jeopardy that the employee will instruct an advocate/lawyer who will raise bullying as an issue. The claim will be raised that the employee’s employment has been affected to his or her disadvantage as a result of this unjustifiable action (i.e. disciplining)

by the manager. It is often seen used as a tactic to enable the employee to resign with an exit package rather than being dismissed. The genuineness of these bullying claims must be questionable. At the end of the day, if the employee concerned has not raised issues of bullying before, if the company has performance standards which the manager is ensuring are maintained, then such an allegation should be seen for what it is, a tactic in order to enhance an exit. The employer concerned could make a call as to whether there is any benefit in having the employee resign with an exit package or whether this leads to the setting of an unhealthy precedent in the organisation. We advise caution in cases where the claims of bullying do not appear to be genuine. As with all claims of harassment, spurious or unsupported allegations that are raised against a manager who is simply trying to manage a difficult employee can have implications for the manager's reputation and confidence if handled incorrectly or insensitively.

G Legal strategies for managing bullying and harassment in the workplace.

Employment agreements/employment policies and procedures should ensure that workplace bullying/harassment of an employee is behaviour which is not tolerated by the organisation and will be regarded as serious misconduct if found to be occurring. Workplace bullying/ harassment should be treated in a similar way to other types of harassment including sexual or racial harassment. It would be useful for employers to devise their own definitions which do not have to be exhaustive of bullying behaviours which will not be tolerated in their organisation and to make it clear what the process would be if employees were being targeted. It is important that any definition takes into account the fact that a pattern may emerge of bullying. Individual incidents alone may seem petty but stepping back and looking at the pattern may amount to "bullying".

Check performance management systems to ensure they are fair and objective.

If an allegation of workplace bullying is made, treat it seriously, and as with other complaints investigate and take steps to address the situation.

4 > Key Employment Elements

There are seven key elements that organisations need to concentrate on as they move towards being a 'good employer'. They are:

1 Leadership, Accountability and Culture

Uses diverse networks when recruiting staff; demonstrates leadership and vision that articulate the values of the organisation and the importance of people and diversity; a structure that is supportive and equitable; managers that are accountable for providing equal employment opportunities for their staff and managing diversity; willingness to build engagement processes with employees and their representatives; opportunities for staff to participate in organisational decisions; and a learning culture which recognises and supports the aims and aspirations of all employees.

2 Recruitment, Selection and Induction

Implements an impartial, transparent employment process with no barriers or biases to employing the best person for the job regardless of gender, ethnicity and disability; and provides a comprehensive introduction to the organisation for all employees setting out the organisation's values and employee opportunities.

3 Employee Development, Promotion and Exit

Provides a learning environment and takes a positive, equitable approach to developing all employees through internal and external training, coaching and mentoring; develops employees in line with organisational and individual requirements; provides equal opportunities for all employees to move up, through and out of the organisation in a positive way; and provides performance management practices that are transparent and fair.

4 Flexibility and Work Design

Workplace design and organisation takes account of the need to assist employees to balance work with the rest of their lives and ensures managers relate to employees in a respectful and flexible way, considering the employment requirements of all groups including parents and other carers.

5 Remuneration, Recognition and Conditions

Has a transparent, fair, gender neutral remuneration system which is regularly reviewed; ensures equitable job opportunities and conditions; and recognises employee contributions.

6 Harassment and Bullying Prevention

Provides a zero-tolerance environment to all forms of harassment and bullying; takes a pro-active approach to training managers and staff on their rights and responsibilities; has a specific policy and procedure for dealing with harassment complaints and acts quickly to address complaints.

7 Safe and Healthy Environment

Provides a healthy and safe workplace and trains all employees on their rights and responsibilities; creates an environment that supports and encourages employee participation in health and safety; takes a pro-active approach to employee health and wellbeing in order to provide physical, cultural and psychological safety; deals with issues in a supportive way; and reduces workplace obstacles to accommodate people with disabilities.

5 > Example Statement from the Executive Director

This statement is an example of a poster that could be displayed on a workplace noticeboard to express the organisation's zero-tolerance to discrimination and harassment.

Statement from the Executive Director

___ has a zero-tolerance to discrimination, harassment of all kinds (which includes bullying), and victimisation and is committed to proactively working to provide a 'safe' work environment for all.

___ is committed to being a 'good employer', having equal employment opportunities for all, and to being an employer of choice. ___ is constantly striving to achieve the highest standards of employer/employee behaviour that reflect our core values of human rights, dignity and respect for all.

Every person has the right to be treated with dignity and respect at work. Discrimination and harassment will be regarded as serious misconduct if found to be occurring. Appropriate action could include warnings, removal from work area, and dismissal for serious offences. All staff and Board are expected to comply with this policy.

___ has responsibility to protect staff from workplace discrimination and harassment; this includes protection from harassment by members of the public. All staff have the right to be treated with respect by the public they provide services to.

All staff and Board have a clear role to play in helping to create a climate at work in which discrimination and harassment is unacceptable. In particular, staff and Board should be aware of their own conduct, avoid colluding with inappropriate behaviour and co-operate fully in any complaint procedure. Managers have an additional responsibility to raise awareness of the issue, respond actively to any complaints and challenge and stop unacceptable behaviour in the workplace.

6 > Example Policy Content

The following are headings that could form part of a 'dignity at work policy and procedures' document. See the State Services Commission's *Creating a Positive Work Environment* for guidance on developing a policy www.ssc.govt.nz/display/document.asp?NavID=82&DocID=3296

1 Policy Introduction and Scope

2 Legislation including:

- Universal Declaration of Human Rights 1948
- Human Rights Act 1993
- Employment Relations Act 2000
- Health & Safety in Employment Act 1992
- Crown Entities Act 2004
- Police Act 1958

3 Definitions including:

- Discrimination
- Workplace Harassment
 - Racial Harassment
 - Sexual Harassment
 - Bullying
- Victimisation

4 What behaviour is encouraged

5 Complaints Procedure including:

- Self help
- Informal complaints procedure
- Formal complaints procedure
- Complaint to External Bodies
- Harassment by clients or contractors

6 Resolution of complaints including:

- Sanctions if the allegations are substantiated
- Sanctions if the complaint is malicious, vexatious or frivolous
- Counselling
- Training

7 Roles including:

- Contact People
- Corporate Services or Human Resources Manager
- Harassment Mediators
- Harassment Investigators
- Managers

8 Legal considerations including:

- Confidentiality
- Defamation
- Access to and protection of information
- Official Information Act 1982 and disclosure of information
- Privacy Act

Signature and date of adoption

7 > A Case Study: Scion

Bullying in the workplace: Shape'em

(Story copied from www.neon.org.nz)

When qualified staff are scarce, human resources managers have to find a way to deal with loose cannons - and they can't just shove them off the deck. Crown Research Institute Scion, in Rotorua, prefers to spend considerable time and money on its workers to make sure they have the skills and support needed to function as a team. Scion shows that when a company is united behind its workplace relations policies, bullies do not thrive.

Alyson Howell is People Development Manager at Scion, a Crown entity that employs many world-class scientists. Because many of them are highly sought-after specialists in their field, it is vital to retain them, Alyson says. "Fortunately we don't have a huge problem in this area, largely because we have gone to great lengths to implement processes to prevent these situations arising."

"Scientists don't grow on trees, we say. When you're working in the field of science you have to recruit from all around the world. We have 32 nationalities. It's hard to get people, and when you get them you want them to stay because they might be one of very few people that have that ability because it's so specialised. In science, fresh ideas are important but continuity is very important too," Alyson says.

Scientists have a reputation for being temperamental and difficult to get along with, but Alyson doesn't see it that way.

"Scientists are like all people - they come in all shapes when it comes to their human relationships. So our approach has been to grow their interpersonal skills. We're into teamwork and collaboration. Science can be a very isolated activity and people like to work in single-cell offices. But teamwork is really crucial to us to be an innovative organisation. Inevitably we get issues between people so our approach has been to increase the level of self-awareness across the organisation."

Alyson says it is too easy to assume that intelligent people will know about effective relationships. Having worked in the area of human relations for many years, it is easy to forget that the insights she has learned from her studies are not obvious to everyone. "When you say to a scientist 'Have you read any books on communication or done any courses?' most often they have not."

Last year Alyson held four workshops called "Face to Face" to develop Scion workers' interpersonal skills. The workshops started with the MBTI (Myers-Briggs Type Indicator) self-awareness process, and then there were sessions on listening and questioning, assertiveness, and giving and receiving feedback. The other tool Alyson uses is the "Belbin Team Roles Process" which helps people in teams to play to each other's strengths.

The workshops were not compulsory, but were well-attended which Alyson takes as a sign that people are always interested in communication.

When working relationships break down, Scion calls in a mediator, which Alyson has found effective even in cases where people are indulging in power games. "People have come to agreements and worked out how they can work together, and are now working together. In situations where somebody's personal situation seems to be a contributor, we have paid for them to see a counsellor. It's better to do that earlier in the person's career so if we identify a problem early, we get them some help."

Sometimes people come into the workplace without an understanding of the relationships and processes within it. This could lead to a bullying situation. One preventative solution Alyson has found is to pair the younger scientists with a mentor. "This gives them a wise head to talk with and if they get into scrapes their mentors can help them out. The mentor is a confidant and somebody who's able to really help them move through issues."

8 > Action Plan Template

This is a template that can be used to record actions an organisation will take to prevent and deal with workplace bullying. It could include: responsibilities; safe, fair and speedy procedures; disciplinary procedures; ways of dealing with a bully; monitoring systems; and/or support for the complainant.

ACTION	BY WHEN	BY WHOM	OUTCOME WANTED

9 > Resources and Support

Resources

The NEON website section on bullying www.neon.org.nz/newsarchive/bullyindex/

The UK's Health and Safety Executive - Management Standards for Tackling Work Related Stress can be found at www.hse.gov.uk/stress/standards.htm The resources that are relevant to workplace bullying include:

- An example of a stress policy
- An indicator tool for work related stress (a questionnaire with 35 tailored questions)
- Five steps to risk assessment
- How to organise and run focus groups

The EEO Trust's www.eeotrust.org.nz material on bullying includes information on:

- Legislation and liability
- Effects of harassment and bullying
- Background: your current climate
- Steps to take
- For further support, advice and training

The Department of Labour's Employment Cases Summary can be found at www.ers.dol.govt.nz/

Other websites include:

www.acc.co.nz/injury-prevention/safe-at-work/worksafe

www.acas.org.uk/

www.informedbusinessstraining.com/

Olsen, Hadyn. (2005). *Workplace bullying and harassment: A toolbox for managers and supervisors*. This book defines workplace bullying and harassment, legal responsibilities, effects on organisations and control measures. Publisher CCH NZ limited, ISBN 08-6475635-6.

State Services Commission, *Creating a Positive Work Environment Respect and Safety in the Public Service Workplace*. This book has tips, ideas and examples for writing a policy.

Needham, Andrea. (2003). *Workplace bullying: the costly business secret*. Publisher Penguin Books NZ Ltd, ISBN 0-14-301881-7. This book has many examples of bullying and some tools that individuals and organisations can use.

Top Drawer Consultants. (1998). *Safe and Sound: preventing harassment in New Zealand workplaces* by Top Drawer Consultants. This resource is a guide for any organisation seeking to address harassment in the workplace.

Lowe, Anthea. (2002) *Bullying and harassment: risk prevention guidelines for employers*. Publisher Anthea Lowe and Associates, ISBN 0-6-4641558-1. This Australian publication offers very detailed and useful guidelines, including a 12-step bullying and harassment prevention programme, a model policy, complaints procedure/guidelines and employee climate survey.

There are many other bullying books, papers, websites and other resources listed at www.neon.org.nz/crownentitiesadvice/resourcelist/bully/

Support

Employment Relations Authority	0800 20 90 20 09 970 1550 Auckland 04 915 9550 Wellington 03 964 7850 Christchurch
State Services Commission	04 495 6600
Human Rights Commission	0800 496 877 Infoline
Council Trade Unions	04 385 1334
Human Resources Institute of New Zealand	04 499 2966
EEO Trust	09 525 3023
Citizen's Advice Bureau	0800 367 222
Young Workers Resource Centres	07 839 0094
Working Women's Resource Centres	09 379 7906
Private consultants	
Your workplace union	
Your Employee Assistance Programme	

How to have a positive and healthy workplace: Preventing and Dealing with Workplace Bullying

10 > Training Module Evaluation Form

Workshop Evaluation Sheet

Name/Team/Organisation

1. How well did the workshop meet your needs?

(a) a great deal (b) a lot (c) ok (d) a little (e) not at all

2. What was the most useful session and why:

3. What was the least useful session and why:

4. Was there anything in the workshop that seemed unclear or any questions you have that did not get answered? If so, what?

5. How effective was the facilitator in delivering the workshop?

(a) a great deal (b) a lot (c) ok (d) a little (e) not at all

6. Do you have any suggestions for future workshops?

Thank you for completing this evaluation sheet.