ANTECEDENT OF WORKPLACE BULLYING

Warning Signs:
- Sudden increase in absenteeism
- Unexplained requests for transfers
- Behavior changes such as depression
- Sudden deterioration in work performance

Methods to collect information about potential bullying behavior:
- Monitor patterns of sick leave and workers comp data
- Worker attitude surveys, exit interviews, employee assistance providers, input from managers and supervisors, union representatives and leadership
- Consulting with health and safety representatives and committees
- Information gathering systems like suggestion box, open door policy, chat sessions, town hall meetings, etc.

Factors to increase risk of bullying behavior:
- **Significant organizational change**...major internal restructuring or technological change may inadvertently create an environment that increases the risk of bullying;
- **Workforce characteristics**...some employees may be at greater risk, such as new hires and those who represent a minority due to age, gender, religion, race, etc.;
- **Workplace relationships**...poor workplace relationships and inadequate communication can contribute to bullying behavior, eg. Workplaces that tolerate teasing and practical jokes;
- **Work systems**...staff shortages, poorly defined jobs, lack of policies and procedures, lack of training and supervision;
- **People management practices**...managers who have not had leadership training, have poor interpersonal skills, and a “command and control” management style.

BULLYING IN HOSTILE WORKPLACE CONTINUUM

Bullying occurs between incivility and violence on both poles of the continuum. It can result in mild to severe harm to the individual. If incivility is low-intensity deviant behavior with an uncertain intent to hurt someone in violation of workplace policies and standards of respect, then bullying is interpersonal mistreatment, psychological harassment or abusive conduct of antisocial behavior and aggression directed to another.

It is not a personality clash, misunderstanding, or miscommunication or joking or horseplay...it is harassment in a deliberate pattern as a hurtful and menacing
behavior. Keashly and Newman ("Exploring Persistent Patterns of Workplace Aggression," 2001) identified ten bullying behaviors:

1. glaring in a hostile manner;
2. treating in a rude/disrespectful manner;
3. interfering with work activities;
4. giving the silent treatment;
5. giving little or no feedback on performance;
6. not giving praise to which an individual feels entitled;
7. failing to give information needed;
8. delaying actions on matters of importance to an individual;
9. lying;
10. preventing an individual from expressing oneself.

Common to most definitions is behavior that intimidates and/or undermines a person and that is repeated over time.

There is no law against being a jerk at work and the American legal system is hesitant to legislate manners or civility in the workplace except for discrimination laws. Nevertheless, as this problem becomes more recognized and acknowledged legal remedies will be found. Some believe broad definitions of harassment and bullying may open the door to specious complaints and questionable charges. There are established legal remedies presently available regarding individual legal remedies for workplace matters.

**Title VII Sexual Harassment Cause of Action**... in 1998 the Supreme Court held an employer strictly liable for supervisor harassment that culminates in a tangible employment action such as discharge, demotion, or undesirable reassignment. (*Faragher v. City of Boca Raton*) The employer could be liable for sexual harassment by its supervisor even if the employer was unaware of the behavior. In *Burlington Industries v. Ellerth* the court stated an employer could be liable for sexual harassment absent a "tangible employment action." An affirmative defense is the exercise of reasonable care to prevent and correct promptly any sexual harassment behavior and to show the injured employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. In *Hesse v. Avis Rent A Car* (2004) the Eight Circuit said that the employee was entitled to protection from discrimination or harassment in her employment at Avis if she can show that it was based on sex and generalized harassment in the workplace is not illegal under Title VII.

Nevertheless, in *EEOC v. National Education Association* (2005) the Ninth Circuit stated that "offensive conduct that is not facially sex-specific nonetheless may violate Title VII if there is sufficient circumstantial evidence of qualitative and quantitative differences in the harassment suffered by female and male employees.” Progressive courts may create a status-free hostile work environment and hold liable employers for their abusive and bullying managers and supervisors.
**Intentional Inflection of Emotional Distress** ...to prevail in this claim the plaintiff must prove:

- the defendant acted intentionally or recklessly;
- the conduct was extreme and outrageous;
- the defendant’s actions caused emotional distress to the plaintiff;
- the resulting emotional distress was severe.

IIED does not extend to simple insults, threats, annoyances, indignities, trivialities, or petty oppressions in the workplace. These rude and boorish actions have and always will take place and sensitive people should become hardened to occasional acts that are inconsiderate and unkind. Because bully behavior is not usually extreme or outrageous it is hard to prove. The case of *Doescher v. Raees (2005)* was an operating room perfusionist who sued the surgeon for bullying behavior that caused severe and permanent emotional damages. The jury awarded the plaintiff $325,000, which was reversed on appeal.

**Intentional Interference with a Contract** ... in *O’Brien v. New England Telephone and Telegraph (1996)* the Massachusetts Supreme Court held a supervisor could be help personally liable for engaging in a course of abusive, harassing conduct toward the plaintiff that was unrelated to the company’s corporate interests. When co-workers undertake a deliberate, calculated, systematic campaign to humiliate and degrade a person both professionally and personally they can be liable for damages, but the question remains if the employer who knew or should have known also shares that liability.

**Constructive Discharge** ... it is increasingly common for employees to resign because of harsh, unreasonable employment conditions placed upon the individual by the employer. A resignation based on intolerable working conditions is a constructive discharge. The overwhelming majority of cases involving constructive discharge are linked to Title VII claims, but it is a common law cause of action and can stand alone or combined with intentional interference with contracts and become a viable, status-free cause of action against workplace bullies.

Workplace bullying is a drain on the efficiency and effectiveness of the organization and employers must act proactively to establish practices and policies to prevent it. Bullying is disruptive to managing people and workers are entitled to an environment free of such behaviors. American workers should be protected from workplace bullying construed as harassment.

**ANTI-BULLYING STRATEGIES FOR EMPLOYERS**

Design and implement a system to minimize workplace bullying:

- Culture of Support...
  - Improve the quality of performance feedback
• Anti-bullying Policy...
  o Establish a code of conduct and enforce it
  o Determine the corporate culture and strive to improve interpersonal relationships and emotional intelligence levels of managers and supervisors.

• Offer Training...
  o Alert managers and supervisors to bullying definitions
  o Create awareness of the debilitating effects of bullying
  o Orient all new hires to your anti-bullying culture.

• Complaint and Investigation Procedures...
  o Treat all complaints seriously and promptly
    ▪ Consider separating people during the investigation
    ▪ Consider counseling if warranted
    ▪ Keep the affected party informed and document all investigation actions and outcomes
    ▪ After investigation inform both parties separately
    ▪ Disciplinary action may include a written apology and promise to cease behavior, formal warning, counseling, transfer, suspension, or dismissal
  o Be consistent
  o Point of contact with mediation skills for early resolution
  o Monitor effectiveness.

Complaint process:

Inform all workers of the complaint process even if incorporated into existing grievance procedures.

• Use plain English or prevalent language of the workforce
• Be fair and balanced giving the alleged bully an opportunity to respond to allegations
• Ensure privacy and confidentiality and act quickly.
• Allow non-written complaints and initiate an informal review
  o Focus should be on behavior rather than personalities
  o Both parties should be encouraged to take responsibility for their own behavior
  o Attempt non-blaming approach without disciplinary action
  o Move to more formal procedures if informal actions are fruitless.
• Allow the bully target to:
  o Seek advice from the contact person
  o Directly approach the alleged bully to discuss with or without another trusted person
  o Request a supervisor to speak with the alleged bully on their behalf
  o Seek assistance of an independent third party such as a mediator for voluntary face-to-face discussions.

• If the complaint is not substantiated both parties may require support and encouragement to return to normal working relationship:
  o Ongoing counseling
  o Changing working arrangements
  o Addressing organizational issues
  o Get consent of both parties to inform others

What should employees do:

• Promote and model professional behavior and refer bullying behavior to the contact person or manager

• Keep a record or diary of incidents accurately reporting when and where it occurred, what was said, how it made you feel, who was there to witness it, and names of people willing to support the claim

• Obtain medical records if health is impaired

• Review the company policy for workplace bullying and follow the procedures set out therein

• Seek advice from the company contact person or other appropriate individual but do not speak with people not involved in the handling of complaints in your workplace

• Utilize the employee assistance program services if available

• Do not retaliate or try to get even.

Guide to developing an anti-bullying policy:

An anti-bullying policy should outline expectations of workplace behavior and give confidence that all claims are taken seriously. It should include:

• Commitment to providing employees a safe and healthy work environment free from bullying or harassment
• Statement that all employees are entitled to be treated with dignity and respect by their colleagues
• A definition of bullying
• Statement that bullying causes risk to health and safety
• Commitment that bullying allegations will be dealt with promptly, seriously, and confidentially
• Statement stating supervisors and managers are responsible for making sure bullying does not occur in their work areas
• Encourage workers who experience or witness bullying behavior to report it with assurance they will not be victimized
• Identify contact person
• Signed by chief executive or equivalent within the organization
• Displayed in the workplace prominently and discussed during staff meetings or management strategy sessions.
ANTI-BULLYING POLICY FOR ACME CORPORATION

ACME considers workplace bullying to be unacceptable and intolerable for its employees and customers and will not allow it to occur. Workplace bullying is degrading and harmful to individuals and the company. Repeated behavior of abusive actions of one or many against another with incivility and the deliberate intent to cause discomfort can be considered bullying.

ACME desires its corporate culture to be respectful and uplifting to all who work or visit and will require periodic training and awareness sessions to all employees regarding workplace bullying. All employees are entitled to an environment free of bullying and managers and supervisors must be alert and attentive to violations of that entitlement.

ACME employees who believe they are being bullied should report this and document all instances. These reports of workplace bullying will be taken seriously and investigated promptly with confidentiality and impartiality. Anyone who reports bullying or others who witness or support those allegations should feel protected and immune from retaliatory actions. Reprisal for reporting workplace bullying will not be tolerated. Disciplinary or rehabilitative action will be asserted against anyone who is found to be a bully and such action, up to and including dismissal, will be determined given the circumstances.

ACME will take all reasonable steps to protect employees’ health, safety, and welfare and considers workplace bullying or occupational violence an unsafe working environment and a risk to its employees and will seek to reduce or eliminate workplace bullying, abuse conduct, and violence.

The contact person to report or discuss workplace bullying is ________________

Telephone ______________________ E-mail ____________________

Signed: __________________________________________________________________________