

# Identifying and Preventing Workplace Bullying

---

**Whitney M. Harmon**

**(901) 577-2230**

**[wharmon@bakerdonelson.com](mailto:wharmon@bakerdonelson.com)**

**Joann Coston-Holloway**

**(901) 577-8223**

**[jholloway@bakerdonelson.com](mailto:jholloway@bakerdonelson.com)**

---

***“Bullying is the sexual harassment of 20 years ago; everybody knows about it, but nobody wants to admit it.”***

**Lewis L. Maltby, President,  
National Workrights Institute**

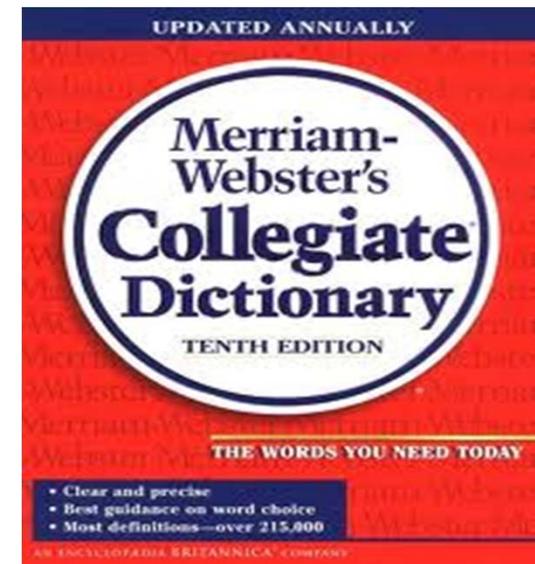
# Goals

---

- Define workplace bullying
- Identify forms of bullying behavior
- Properly respond to bullying
- Determine Reporting Channels/Mechanisms
- Identify Outcomes of bullying
- Identify Difference between bullying and illegal discrimination and harassment



- 
- **Workplace bullying:** Has been defined as persistent, offensive, abusive, intimidating or insulting behavior or unfair actions directed at another individual, causing the recipient to feel threatened, abused, humiliated or vulnerable. Workplace bullies and targets may be employees, clients or vendors of the affected organization.



# Is Workplace Bullying really a problem?

---

- **Are organizations experiencing workplace bullying?** Based on a study conducted by SHRM, about one-half (51%) of organizations reported that there had been incidents of bullying in their workplace.
- **Which bullying behaviors are most common?** Among organizations that experienced incidents of bullying, nearly three-quarters (73%) reported verbal abuse, three out of five (62%) reported malicious gossiping and/or spreading lies/rumors about workers, and one-half (50%) reported threats or intimidation.
- **What are the outcomes of workplace bullying?** The three most common outcomes of bullying incidents that organizations experienced were decreased morale (68%), increased stress and/or depression levels (48%) and decreased trust among co-workers (45%).
- **All statistical information in this presentation comes from SHRM (Society for Human Resource Management).**

# How big of a problem?

---

- According to a survey sponsored by the Workplace Bullying Institute in 2010, 35 percent of U.S. workers have experienced or witnessed bullying.
- The survey also found that 62 percent of bullies are men; 38 percent are women.
- Women make up 58 percent of the targets; men make up 42 percent.
- Men bully men more frequently than they bully women (55.5 percent), and women usually bully other women (80 percent).
- Workers ages 30 to 49 are the most frequent targets.

# What forms of Workplace Bullying Exist?

---

- Verbal abuse – shouting, swearing, name calling or malicious sarcasm
- Gossiping and/or spreading lies or rumors about workers
- Threats or intimidation
- Teasing – about appearance, lifestyle, habits, attitudes, or private lives
- Ignoring or excluding workers
- Harsh or constant criticism
- Aggression
- Interfering with work performance
- Using technology for bullying

# Who is bullying whom?

---

- Employee v. employee (same or similar level)
- Supervisor v. Employee
- Employee v. Supervisor (bullying like harassment can happen at any level)
- Employee v. Client
- Client v. Employee
- Who else?
  - Vendors, Board members, Volunteers



# Effects of Bullying on Employees

---

- Physical and Emotional problems, including anxiety, depression, headaches, insomnia, etc.
- Decreased morale
- Decreased trust and productivity
- Increased turnover
- Increased absenteeism
- Increased concerns about violence in the workplace



# Effects of Bullying on Employers

---

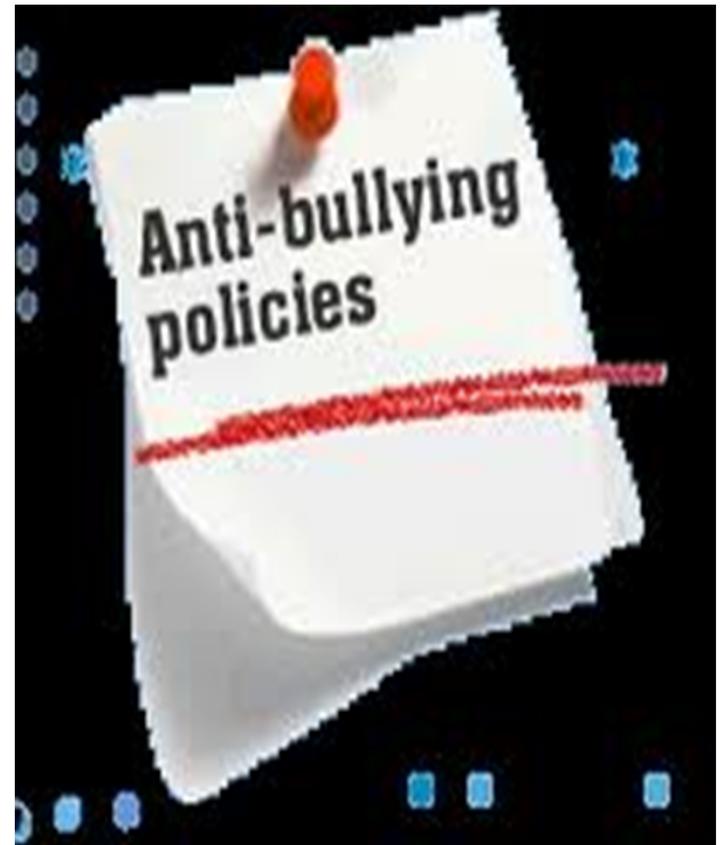
- **Increased Costs due to:**
  - turnover
  - higher healthcare costs
  - low productivity
  - absenteeism
  - low morale and retaliation



# How to Avoid Workplace Bullying?

---

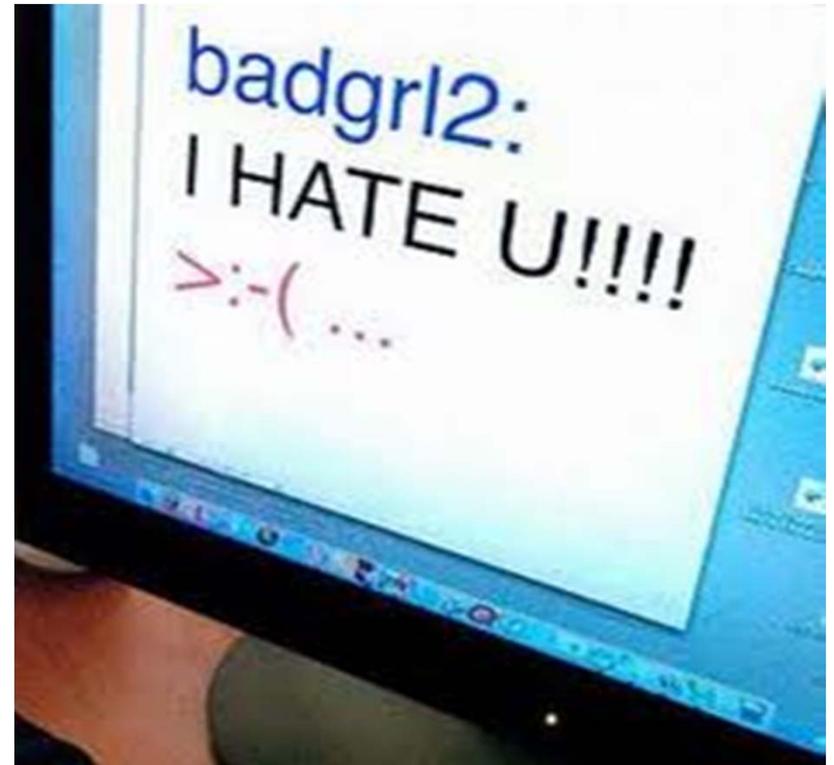
- Implement a Workplace Bullying Policy.
- Have a grievance process for investigating and addressing allegations of bullying.
- Monitor bullying behavior and complaints.
- Conduct regular bullying prevention/awareness training and orientation programs.



# Methods for Communicating Workplace Bullying Policy

---

- Employee Handbook
- Employee Orientation
- Company Code of Conduct
- Company Intranet or Website
- Staff Meetings
- Emails (from HR or Management)
- **Training (Either specifically dedicated to bullying or in conjunction with related training)**



# Typical Reporting Channels/Mechanisms

---

- The HR department
- The target employee's direct supervisor
- Other management-level staff (non-executive)
- Hotline or other reporting system
- Union representative



# Investigating Bullying

---



- Follow the paper trail – be mindful of excessive grievances or sick leave requests, pay attention to exit interviews, EAP requests. Is there a pattern?
- Do not ignore these complaints because they will escalate!
- Review related policies. Have they been violated?
- When warranted, check emails or text messages (if you have access) to look for messages between bully and target.
- When interviewing the alleged bully, notice how he/she responds? WATCH BODY LANGUAGE.
- Follow your typical investigation procedures and **DOCUMENT** everything! Remember if you are doing the work you want to be able to prove it.

# Anti-bullying Laws

---

- There is no specific federal or state anti-bullying legislation in the United States, but that does not mean that employers may not be held liable for tolerating bullying in their workplaces.
- Bullying is against the law in other countries where bullying behaviors have been identified as contrary to the idea of dignity at work. Could this be on the horizon here?
- If the offending behavior is pervasive enough to be considered threatening, intimidating or creating an environment full of hostility, there is a potential for a claim of constructive discharge, intentional infliction of emotional distress or relating the bullying to protected class discrimination.



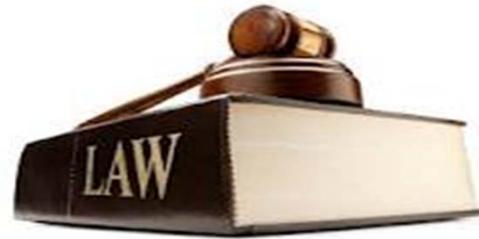
## Other sources of liability for bullying...

---

- Occupational Safety and Health Act's general duty clause to provide a safe workplace.
- Employers could be held liable for negligent hiring if they bring on a person who they knew or should have known was likely to cause harm.



# What is the Legal Outcome of Bullying?



- Claims of workplace bullying, not involving a class covered by anti-discrimination laws, have resulted in verdicts for employees under state tort laws, which protect employees from assault, battery and infliction of emotional distress.
- For example, a California jury awarded \$18 million dollars to James Stevens, who was described as a devout Christian who did not discuss sex at work. Stevens claimed that a female co-worker harassed him at work daily for almost two years, assuming suggestive poses and making crude remarks.
- The Indiana Supreme Court recently upheld a \$325,000 verdict in an assault case against a cardiovascular surgeon who was a “known bully.”

# Difference Between Workplace Bullying and Illegal Discrimination and Harassment

---

- **Workplace Bullying:** is inappropriate and unacceptable behavior, but it is not prohibited by any federal or state law.
- **Illegal Discrimination and Harassment:** pertain to discrimination and harassment based upon a protected group status such as age, race, gender, disability, religion, and national origin.



# Bullying OR Illegal Discrimination/Harassment?

---

- **Discussion Topic 1:** Dan, the supervisor in the finance department, is known to have a temper. People describe his management style as harsh, demeaning, and overbearing. When Sally, Dan's subordinate comes to you and complains about Dan's behavior you ask if he treats everyone like this. Sally admits that Dan treats everyone this way and you explain that Dan is just an "equal opportunity jerk" and there is nothing illegal about that.
  - What steps, if any, do you take with Dan? With Sally?



# Bullying OR Illegal Discrimination/Harassment?

---

- **Discussion Topic 2:** Joan Downing yells and curses at her co-worker, Paul Jones, who has a cubicle next to hers. She makes fun of his new haircut and the way he walks. She constantly criticizes his work performance and gossips to other employees about phone conversations between Paul and his girlfriend.

# Let's Recap...



- 
- Workplace bullying is persistent, offensive, abusive, intimidating or insulting behavior or unfair actions directed at another individual, causing the recipient to feel threatened, abused, humiliated or vulnerable.
  - Workplace bullying takes many forms, including, but not limited to: verbal abuse, malicious gossiping, interference with work, cruel comments, abuse of authority, unduly harsh or constant criticism, and through technology.
  - Workplace bullying is inappropriate, but not always illegal. It can, however, escalate to illegal conduct.
  - Employers must confront and stop workplace bullying because of the significant effect on and damage to employees and employers.
  - Implement anti-bullying policies, train employees, provide sufficient reporting mechanisms, and take appropriate responses.

# QUESTIONS - DISCUSSION

---

