

# No Bullies Allowed!

## Labor & Employment Law Update

on February 10, 2015

Beginning January 1, 2015, California employers (with 50 or more employees) must provide anti-bullying training to supervisors within 6 months of assuming a supervisory role, and during biannual anti-sexual harassment training. California broadly defines workplace bullying as: "Conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests." This may include:

- Repeated infliction of verbal abuse (*e. g.*, derogatory remarks, insults, and epithets),
- Verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or
- Gratuitous sabotage or undermining of a person's work performance.

There is no question that bullying has negative impacts in the workplace. It lowers morale and productivity, and may lead to union organizing activity – especially when the bully is a supervisor. Tennessee is the only other state with an anti-workplace bullying law (which applies only to public employers); and all states (except Montana) have school anti-bullying laws to protect students. Many other states require or highly encourage some form of employment anti-harassment training (including Colorado, Connecticut, Florida, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Washington, and Wisconsin).

However, California's law signals a dangerous shift in human resources management. While there is no private cause of action, an employer that fails to incorporate anti-bullying into their biannual training will certainly see this as part of a discrimination/harassment/retaliation claim – and worse, will likely see claims for deficient training and enforcement.

### Practical Advice

Audit your policies to ensure a productive workplace, free of illegal and otherwise unproductive harassment and discrimination. For example:

- **Open Doors:** provide employees with a retaliation-free mechanism to report concerns and have open dialogue with management. Make sure they know about it.

- **Stop bullying.** If you don't do it now, a new union may form tomorrow.
- **Establish appropriate conduct policies** and enforce them.
- **Train supervisors** to recognize and correct unproductive and inappropriate conduct.
- **Take proactive steps**, such as moving, disciplining, or terminating bullies.

But use caution: implementing rules *only after* concerted protected activity ("once it is too late") could also lead to unfair labor practice charges (*see, Care One at Madison Avenue*, 361 NLRB No. 159 (12/16/2014), discussed in our February 3, 2015 blog). Thus, seek the advice of counsel when difficult or compound situations arise.

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