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26 States Introduce Laws to Combat Workplace Bullying

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While there may still be some people naive enough to think that "words will never hurt me," in some cases words have all the power and intention to do just that. Workplace bullying destructs the emotions and mentality of its victims, leading to immense psychological and emotional trauma, according to [workplacebullying.org](#), the nation's grassroots legislative movement to enact the anti-bullying Healthy Workplace Bill. The reality is that bullying is not only evident on the playground, but it is found within the workplace as well. As adults, the conditions are even tougher. In the workplace, the demands to perform well are high and the stakes of consistently performing well are even higher. What should an employee do when bullied in the midst of trying to perform at work?

At present, there is no protection from bullying under federal law. While some states have enacted anti-bullying legislation, there has been scant case law addressing the issue. Of note is one decision from the Supreme Court of Indiana on April 8, 2008, *Raess v. Doescher*, 883 NE 2d 790 (Ind. Sup. Ct. 2008), involving workplace bullying where the defendant, Daniel Raess, a cardiovascular surgeon, challenged a \$325,000 jury verdict and judgment based on a claim for assault by the plaintiff, Joseph Doescher, a hospital operating room perfusionist. According to the decision, Doescher reported to hospital administration that Raess mistreated other perfusionists. Out of anger from these reports, Raess "aggressively and rapidly advanced on the plaintiff with clenched fists, piercing eyes, beet-red face, popping veins, and screaming and swearing at him. The plaintiff backed up against a wall and put his hands up, believing that the defendant was going to hit him, 'that he was going to smack the shit out of me or do something.' Then the defendant suddenly stopped, turned, and stormed past the plaintiff and left the room, momentarily stopping to declare to the plaintiff, 'You're finished, you're history.'"

As a result of Raess' conduct, the plaintiff testified that the assault detrimentally affected his life in a variety of ways, including his career and earning capacity and his ability to interact with his wife, his family, and people in general. Evidence was presented that, as of the time of the trial, the plaintiff could not return to his work as a perfusionist because of the resulting emotional response, lack of focus, lack of confidence, and inability to make split-second decisions. The plaintiff presented psychiatric testimony that his confrontation with the defendant was the cause of his resulting "major depressive disorder with anxiety and panic disorder," because of which he was unable to return to

his previous employment.

In support, the plaintiff called an organizational psychologist, Dr. Gary Namie, as an expert witness during trial. Namie was asked to opine on the definition of "workplace bullying" and whether the defendant's conduct could be categorized as such, the opinion said. Before trial, the defendant filed motions in limine to exclude Namie's testimony and to prevent him and any other witness from offering testimony or evidence depicting or referring to the defendant as a "workplace bully," according to the opinion. The motions in limine were denied in part. According to the appellate opinion, the trial court permitted the expert witness to testify at trial that: "I concluded that based on what I heard and what I read that [the defendant] is a workplace abuser, a person who subjected [the plaintiff] to an abusive work environment. It was a horrific day, it was [a] particularly egregious, outrageous ... episode."

Raess, in his defense, argued that the phrase "workplace bully" had little relevance to the elements of the plaintiff's claims and the witness should not have been permitted to testify. The defendant also argued on appeal that the trial court erred in not tendering the defendant's proposed instruction on workplace bullying. The trial court opined that the defendant was free to argue that the case was not about workplace bullying, while the plaintiff would similarly not be getting an instruction that the case was about workplace bullying. On review, the majority of the Supreme Court of Indiana pointed out that since one of Doescher's claims was for intentional infliction of emotional distress, "the behavior of the defendant was very much an issue." Further, the phrase "workplace bullying," like other general terms used to characterize a person's behavior, is an entirely appropriate consideration in determining the issues before the jury. In dissent, however, one of the state's justices contended that allowing Namie's testimony was not harmless and warranted reversal. By contrast, Dr. David Hartman, a clinical and forensic psychologist and neuropsychologist, testified for the defendant in a qualitatively different way from Namie. Namely, Hartman did not label the defendant a "workplace abuser" or the incident as "an episode of workplace bullying." Rather, Hartman's testimony offered a conclusion as to the plaintiff—that his mental state is typical of someone who has been "verbally assaulted" in the workplace.

The injury inflicted upon Doescher, and the resultant jury award exemplifies the nature of workplace bullying. Despite the nonphysical infliction, the verbal assault from Raess rendered extreme apprehension and distress, leading the jury to conclude that an assault occurred and Doescher reasonably responded to Raess' intent. Interestingly, the *Raess* case did not recognize "workplace bullying" as a legal term or as a cognizable element to claims for assault or intentional infliction of emotional distress. Raess was identified as an "abuser" rather than a "bully." This appears to be a distinction without a difference.

At the current time, 28 legislatures (26 states and two territories) have introduced workplace bullying legislation—with the state of Tennessee as the first to pass it. Tennessee Gov. Bill Haslam signed the Healthy Workplace Act on June 3, putting the law into effect for employees of state and local government agencies. The law excludes protection for private-sector employees, but nevertheless is a good step for rehabilitating the work environment.

While the term "workplace bully" is not used, the law very clearly defines severe abusive conduct. Under the Tennessee version of the Healthy Workplace Act, abusive conduct is defined as "acts or omissions that would cause a reasonable person, based on the severity, nature, and frequency of the conduct, to believe that an employee was subject to an abusive work environment, such as:

- (A) Repeated verbal abuse in the workplace, including derogatory remarks, insults, and epithets.
 - (B) Verbal, nonverbal, or physical conduct of a threatening, intimidating, or humiliating nature in the workplace.
 - (C) The sabotage or undermining of an employee's work performance in the workplace."
- (See <http://healthyworkplacebill.org/states/tn/CC0014.pdf>.)

The Tennessee law is considered one of the biggest changes made to U.S. employment law in the last 40 years, according to www.healthyworkplacebill.org.

Pennsylvania became the 25th state to introduce the Healthy Workplace Bill. The bill was sponsored by Democratic Rep. Mark B. Cohen, along with 10 co-sponsors. According to HB 1179, the Pennsylvania General Assembly proposed the law to "provide legal redress for employees who have been harmed psychologically, physically or economically by deliberate exposure to abusive work environments and to provide legal incentives for employers to prevent and respond to abusive treatment of employees at work." Most notably, the bill is not limited to public-sector employers.

The bill also trumpets the frequency of workplace bullying by reciting that "workplace bullying, abuse and harassment is four times more prevalent than sexual harassment alone." Section 4 of the proposed law proscribes an abusive work environment and explains that "an employer or employee may not retaliate in any manner against an employee who has opposed an unlawful employment practice under this act or who has made a charge, testified, assisted or participated in any manner in an investigation or proceeding under this act, including, but not limited to by: internal complaints and proceedings, arbitration and mediation proceedings, or legal actions." Pennsylvania HB 1179 has been referred to the House Committee on Labor and Industry. Its fate remains unknown at this point. What is known is that arbitrary conduct at work should not be tolerated. Implementing the Healthy Workplace Bill will reasonably prevent bullying, and help sustain a healthy work environment. At what point should employees decide between their integrity and their career? The answer is that they shouldn't have to choose. The system will remain flawed if states do not adopt anti-bullying laws protecting employees.

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