



# Preventing Workplace Bullying: 7 Steps Employers Can Take Now

Insights

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While many federal and state laws protect employees against harassment, workplace bullying often isn't covered unless it is based on a protected characteristic, such as race or gender. But that doesn't mean employers should ignore disruptive behavior just because it's not technically unlawful. Here's what you need to know about workplace bullying and seven proactive steps you can take to prevent it.

## Recognize the Reality of Workplace Bullying

Nearly 80 million workers have been affected by workplace bullying, [according to a survey by the Workplace Bullying Institute](#). Other survey findings include:

- About 30% said they have personally experienced bullying, and an additional 19% said they have witnessed it.
- Remote workers were more likely to say they've been bullied (43%, with 50% occurring in online meetings and 9% through email).
- Sixty-five percent identified their boss as being a bully, 21% said a co-worker was a bully, and 14% said a subordinate was a bully.

How can you overcome these startling statistics? To help foster a healthy, safe, and welcoming work environment, employers should consider creating robust policies that address abusive conduct.

"Aside from creating a legal defense, these types of policies may prevent inappropriate or harassing conduct, as well as create positive employee morale," says [Emily Litzinger](#), an attorney with Fisher Phillips in Louisville, Ky. "Positive workplace morale can result in higher productivity, retention and better recruiting efforts."

## Know When Bullying Becomes Illegal

The Workplace Bullying Institute defines bullying as "repeat mistreatment," which includes workplace sabotage; verbal abuse; and abusive conduct that is threatening, intimidating, or harassing. But what behaviors are deemed unlawful in the workplace?

**Legal Basics**

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As a starting point, employers should be aware of the laws that protect employees, including:

- **Title VII of the Civil Rights Act of 1964**, which prohibits workplace harassment based on national origin, race, color, religion, and sex (including sexual orientation, gender identity, and pregnancy).
- **The Age Discrimination in Employment Act**, which prohibits such behavior based on age, starting at age 40.
- **The Americans with Disabilities Act**, which prohibits harassment based on disability.

According to the Equal Employment Opportunity Commission (EEOC) — the agency that enforces these laws — harassment is unlawful when enduring offensive conduct becomes a condition of continued employment, or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

The types of conduct that the EEOC recognizes as offensive include:

- Offensive jokes, slurs, epithets, or name-calling.
- Physical assaults or threats.
- Ridicule or mockery.
- Insults or put-downs.
- Offensive objects or pictures.
- Interference with work performance.

But offensive conduct may not always be unlawful, even when based on a protected characteristic. “Petty slights, annoyances and isolated incidents — unless extremely serious — will not rise to the level of illegality,” the EEOC states. “To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.”

## ***Potential Broad Liability***

Notably, an employer could be liable for harassment by an employee’s supervisor, co-worker, or client, among others who may work closely with the employee. Moreover, when harassment creates a hostile work environment, employees may have a claim if they are affected by the behavior, even if they are not the target of the harassment.

“Any time that bullying relates to an employee’s protected characteristic, it could potentially lead to a claim under Title VII or other federal, state, or local anti-discrimination laws,” says [Lisa McGlynn](#), an attorney with Fisher Phillips in Tampa, Fla. For example, it would not be illegal to bully someone just because their football team lost, because this would not be a protected characteristic. However,

the behavior could cross the line into unlawful harassment if it is related to a co-worker's race, sex, or other protected characteristic.

### ***Do Jokes Count?***

What if comments are meant as a joke? Perhaps, for example, an employee accused of bullying says they called an older member of the team "grandpa" in jest. While a one-time remark is likely unactionable, McGlynn says, behavior like this can be a violation if it is related to a protected characteristic — such as age — and is either severe or pervasive.

### ***State and Local Laws***

State and local laws can include more — or different definitions of — protected characteristics. For example, some states specifically prohibit discrimination based on weight or hair texture. In other states, however, these characteristics would not be specifically protected.

"For employers that operate in multiple locales, it is important to know what your state and local laws might require beyond federal anti-discrimination laws," McGlynn notes.

### ***Cultivate a Healthy Workplace***

Employment laws are not general civility codes, but employers can establish their own guidelines and expectations. Just be sure these rules don't run afoul of applicable employment and labor laws, including the National Labor Relations Act.

Many employers want to go beyond simply checking the boxes for legal compliance to create a healthy and productive workplace culture. You can be proactive by taking the following seven steps:

**1. Look at the Big Picture.** "My key suggestion for employers is to focus on structural and systemic prevention of bullying," says Ludmila Praslova, Ph.D., SHRM-SCP, professor of graduate organizational psychology at Vanguard University of Southern California in Costa Mesa, Calif. "Systemic prevention is the key to success and creating healthy organizations."

**2. Set Clear Expectations.** "Employers should include policies that clearly define what is acceptable and unacceptable behavior," Litzinger recommends. "Employers are encouraged to use examples that relate to the workplace."

**3. Be Consistent.** Employers that do not consistently enforce their policies run the risk of negatively affecting morale and reducing the positive impact these policies aim to produce, Litzinger adds. Moreover, inconsistencies can create legal liability.

**4. Train Employees.** Employers may want to add anti-bullying to their harassment prevention program. Notably, some employers must already do this under state law. In California, for example,

employers with at least 50 employees must include “abusive conduct” prevention as a component of their mandatory anti-harassment training.

**5. Establish a Reporting Process.** “Employers should strive to create an environment in which employees feel free to raise concerns and are confident that those concerns will be addressed,” according to the EEOC. Make sure your employees and supervisors know who to contact when they need assistance.

**6. Promptly and Thoroughly Investigate Complaints.** Take complaints seriously and consider designating an experienced person or team to conduct investigations.

**7. Assess Company Culture.** Praslova recommends that employers conduct regular assessments of their organizational culture to detect early signs of a toxic environment.

## Conclusion

We will continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to Fisher Phillips’ Insight System to get the most up-to-date information. For further information, contact the authors of this Insight or your Fisher Phillips attorney.

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