

Workplace Bullying

This information is based on the law as at November 2010. It is intended as a guide only and not to replace the need for legal advice about specific situations.

This tip sheet is for workers in the ACT. If you work elsewhere, you may have similar rights. You should get legal advice about your situation.

What is Workplace Bullying?

Workplace bullying is behaviour that intimidates, offends, degrades, insults or humiliates somebody in the workplace. You could be bullied by your employer, another person or group of people at work. You could be bullied when you are alone or in front of other people (such as co-workers, clients or customers).

Bullying can be both *physical* and *psychological*. It can include many different kinds of behaviour and it is not always easy to describe.

Some examples of bullying behaviour are:

- intimidation, verbal abuse, physical attacks or threats
- persistent and unfounded criticism of your work
- making fun of your work or you (including your family, sex, sexuality, race or culture, education or economic background)
- excluding or isolating you from other people or situations
- giving you work to do that is pointless, or is impossible to do in the given time or with the resources provided
- deliberately changing your work roster to make it difficult for you to do your work or to do it properly
- deliberately holding back information you need for getting your work done properly
- sexual harassment is a particular type of bullying that many women experience in the workplace
- making you do humiliating things in order to be accepted as part of the team.

What can you do if you are being bullied at work?

- **Keep a diary.** Record as much detail as you can about what is happening, particularly:
 - the date, time and place;
 - who was involved and if there are any witnesses;

- what happened;
- how it made you feel; and
- any actions you've taken in response.

This kind of information is very useful if you are making a complaint and could even be used as evidence in a court or tribunal.

- **Find out** whether or not your employer has policies and procedures for preventing and handling bullying. If so, it should tell you who the appropriate people within the organisation to talk to are and the process to follow if you wish to lodge a complaint you may also need to follow some of the additional steps in this tip sheet. If your employer does not have such policies follow the steps below.
- **Tell someone within the organisation.** Appropriate people might include your employer, the human resource manager, your manager or supervisor, and/or the Equal Employment Opportunity officer or occupational health and safety representative. These people may be able to help to resolve the situation quickly and informally, even if there is no formal complaints procedure at your work.
- **Report what happened to you** to ACT WorkCover and the Fair Work Ombudsman.
- **Seek legal advice on your options and your rights.** You can seek legal help at any time. If the person doing the bullying is your employer or your employer has not done anything to support you and to stop the bullying, it's important you seek outside support and advice. You can contact the Women's Legal Centre or another lawyer.
- **See a doctor or a counsellor.** It is important to be aware of how bullying can affect you both physically and emotionally. You should see a doctor or a counsellor if you are feeling sick and/or distressed as a result of workplace bullying. You need to get a WorkCover medical certificate and take photographs of any injuries.

Some workplaces have an Employee Assistance Program, where you can speak to a counsellor on a confidential basis free of charge. For information on other free counselling services in the ACT & Region, see the Centre's tip sheet *Counselling and Mediation*.

- **Contact your union.** If you are a member of the union, contact your delegate to explain your situation and ask for support. Even if you are not already a member of the union, they may be able provide you with some assistance, depending on the situation.
- **Consider making a formal complaint or taking legal action.** Some information on the different options that might be available to you is below, and there are contact details for organisations that might be able to help you at the end of this tipsheet.

What can I do if I want to take it further?

There is no legislation in Australia that deals specifically with workplace bullying. This means that you might need to consider a number of different options if you would like to make a formal complaint or take legal action.

Because there is overlapping jurisdiction between anti-discrimination, workers compensation and industrial tribunals and the common law, you need proper advice about the most appropriate jurisdiction in which to commence proceedings. It is important to note that each proceeding has its own time limit and the choice of jurisdiction will depend on the circumstances of the case and the remedy you are seeking.

✓ **Grievance procedures in awards or agreements**

A grievance is a complaint against the person bullying you which your employer is supposed to try and resolve. There may be some information on grievance procedures in your award or workplace agreement which you should be able to use in order to resolve the complaint.

If you are an apprentice, you can contact your Apprentice Field Officer or your local Apprenticeships Centre.

✓ **Discrimination Complaint**

Bullying can be unlawful discrimination if it is related to an attribute you have such as your sex, race, disability, age, sexuality, etc. If this is the case, you may be able to make a complaint to the ACT Human Rights Commission within **2 years** of the last incident of discrimination or the Australian Human Rights Commission within **12 months**.

Your complaint of discrimination can be made against the individual who bullied you as well as your employer UNLESS the employer can show that they took reasonable precautions and due diligence to prevent the discrimination or harassment.

For more information on complaints of discrimination and harassment, see the Centre's tipsheets *Discrimination and You* and *How do I Complain about Discrimination*.

✓ **Unfair dismissal or breach of the general protections application**

If you have lost your job or feel that you had to resign because of the bullying behaviour, you might be able to lodge a claim of unfair dismissal with Fair Work Australia but should do so within **14 days** of leaving work.

Or you may be able to lodge an application claiming that your employer's conduct is in breach of the general protections. That should be lodged with Fair Work Australia within **60 days** of leaving work.

If you wish to lodge one of these applications you should contact the Centre or Fair Work Australia for more information. You can also read our Tip sheet called **Unfair Dismissal or General Protections Dismissal**

✓ **Workers Compensation Claim**

If you have a physical or psychological injury that was caused by workplace bullying, you might be able to claim workers compensation. For a claim to be successful, you will need to prove that work was a significant factor that contributed to your injury. For more information about workers compensation, contact WorkCover ACT. The Centre also has a tip sheet on workers compensation.

✓ **Criminal Assault**

Where bullying involves assault or threat of assault it may be a criminal offence and you should contact the police and make a statement. In cases of indecent or sexual assault, you should also contact Canberra Rape Crisis Centre.

✓ **Occupational Health and Safety Law**

Your employer must ensure the health, safety and welfare of their employees. They must do so by providing and maintaining a safe workplace, facilities and work systems for, and providing proper information, instruction, training and supervision to, their employees.

Workplace bullying creates an unsafe working environment and a risk to employees' health. Therefore, employers have an obligation to eliminate or reduce the risk of bullying and violence in their workplaces.

Employees also have a duty to ensure that they do not create or increase risk to another person. They must cooperate with the employer in adopting measures that prohibit bullying or violence.

Where bullying has become a workplace health and safety issue, you can make a complaint to WorkCover ACT. It is against the law for your employer to victimise or dismiss you, threaten you, injure you or change your job prejudicially because you have made a complaint like this.

✓ **Negligence**

Generally, employers have a duty of care towards their workers. This means they must provide a safe, quiet and enjoyable workplace which is free from abuse, harassment and intimidation. Employers must also take all reasonable steps to ensure that their workers are protected in the workplace.

Where a worker is injured while at work, legal action for negligence may be taken against either the employer or the person who caused the injury or both.

Negligence in employment is proved by establishing that the safety standard provided by the employer is not what a reasonable person would provide in the circumstances.

Negligence is a common law action and it may be difficult and expensive to prove. It is only worth taking legal action if extensive damage has been caused. You need to consult your solicitor before taking such action.

Where can I get help and information?

Women's Legal Centre (ACT & Region)

(02) 6257 4499 (local)
1800 634 669 (outside Canberra)
www.womenslegalact.org

UnionsACT

(02) 6247 7844
www.unionsact.org.au

ACT WorkCover

(02) 6205 0200
<http://www.ors.act.gov.au>

Fair Work Ombudsman

13 13 94
www.fwo.gov.au

ACT Human Rights Office

(02) 6207 0576
www.hro.act.gov.au

Australian Human Rights

1300 656 419
www.humanrights.gov.au

Law Society ACT
(for referrals to a private solicitor)

(02) 6247 5700
www.actlawsociety.asn.au