Workplace bullying: unfair discrimination, dignity violation or unfair labour practice?

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Take the quiz:

Do any of your leaders

- Disapprove of weakness in their employees? Yes / No
- Raise their voices when they get annoyed? Yes / No
- Spread malicious gossip? Yes / No
- Cause employees to dissolve into tears or walk away when confronted by them? Yes / No
- Use sarcasm? Yes / No
- Criticise junior colleagues in front of clients/customers? Yes / No

Every ‘yes’ adds to the risk of accepting bullying and losing your best employees

(Paice & Firth-Cozens 2003)
Introduction

Workplace harassment impacts in different ways:

**Sexual harassment** impacts on an employee’s dignity, bodily integrity, job security and personal safety.

**Racial harassment** impacts on an employee’s sense of worth, dignity and empowerment.

**Workplace bullying** has been linked to a feeling of incompetence, to a sense of alienation, to anxiety that there will be no promotion or recognition, to job insecurity, to feelings of inadequacy, to knock-on tensions in personal relationships, and to depression.
Theoretical underpinning

- The **common law** of Master and Servant
- **Constitutional rights** to dignity, security of the person and fair labour practices
- *Murray v Minister of Defence* (2008) 29 ILJ 1369 (SCA): “Developed as it must be to promote the spirit, purport and objects of the Bill of Rights, the common-law of employment must be held to impose on all employers a **duty of fair dealing** at all times with their employees”
A definition of harassment

Generally seen as **persistent** and **unwelcome** conduct which is **hostile or offensive** to a **reasonable person** and induces a **fear of harm** and **demeans, humiliates or creates a hostile or intimidating environment** or is calculated to **induce submission** by actual or threatened adverse consequences.
Definition of bullying

Bullying refers to any unfavourable or offensive conduct on the part of a person or persons, which has the effect of creating a **hostile workplace environment**

(Other terms that are used for workplace bullying are corporate bullying, workplace violence, moral harassment, emotional abuse and work rage, mobbing.)
Examples of victimization:

- **Slander**ing or maligning an employee and his/her family
- Deliberately **withholding work-related information** or supplying incorrect information of this kind
- Deliberately **sabotaging or impeding** the performance of work
- Obviously insulting **ostracism**, boycott or disregard of the employee
- **Persecution** in various forms, threats and the inspiration of fear, degradation, e.g., sexual harassment
- Deliberate **insults, hypercritical or negative response or attitudes** (ridicule, unfriendliness etc).
- **Supervision** of the employee **without his/her knowledge** and with harmful intent.
- Offensive ‘**administrative penal sanctions**’
Adapting the **definition of harassment** in the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA):

Workplace bullying may be defined as unwanted conduct in the workplace which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences.
Testing the working definition

- Physical assault and aggression
- Verbal abuse
- Intolerance of psychological, medical or personal problems
- Humiliating or demeaning conduct
- Marginalisation
- Abuse of disciplinary processes
- Demotion or transfer
- Pressure to engage in illegal activities
- Recommendation to resign
- Creating an unhealthy working environment
Legal protection against workplace bullying

• Anti-harassment protection
• Unfair labour practice jurisdiction
• Health & safety legislation
• Delictual claims
• Constructive dismissal
Dealing with bullying

- Employers can develop their own policy or code of conduct on bullying
- Employers can educate managers and employees on suitable workplace behaviours
- Employers must establish or advertise grievance procedures
- Human resource practitioners should be educated in effective investigation processes
- Work cultures of private and public sector organisations should be reviewed
- Long term absences from work should be monitored
- Suitable reporting mechanisms should be established between human resource departments and senior management to report on workplace bullying
- Senior management should actively support the introduction of procedures, policies and practices to alleviate workplace bullying.
Case law

**Unreasonable targets:** Solid Doors (Pty) Ltd v Theron & others (2004) 25 ILJ 2337 (LAC)

**Assault** - Le Monde Luggage CC t/a Pakwells Petje v Dunn NO & others (2007) 28 ILJ 2238 (LAC) para 5; see also Ndebele v Foot Warehouse (Pty) Ltd t/1 Shoe Warehouse (1992) 13 ILJ 1247 (LC); Puren v Victorian Express (1998) 19 ILJ 404 (CCMA).

**Aggression:** Visser and Amalgamated Roofing Technologies t/a Barloworld (2006) 27 ILJ 1567 (CCMA).


**Humiliating or demeaning conduct** Maharaj v C P de Leeuw (Pty) Ltd [2005] 26 ILJ 1088 (LC); Pretoria Society for the Care of the Retarded v Loots (1997) 18 ILJ 981 (LAC).

**Marginalisation** Murray v Minister of Defence (2008) 29 ILJ 1369 (SCA) para 51.


**Demotion or transfer** Steward Wrightson (Pty) Ltd v Thorpe 1977 (2) SA 943 (A); Van der Riet v Leisurenet Ltd t/a Health & Racquet Club [1998] 5 BLLR 471 (LC); Van Wyk v Albany Bakeries Ltd [2003] 12 BLLR 1274 (LC).
Case law


**Pressure to engage in illegal activities** Bonthuys and Central District Municipality (2007) 28 ILJ 951 (CCMA).


**Creating an unhealthy working environment** Naude and Stealth Marine (2004) 25 ILJ 2402 (BCA).