

Workplace bullying article review

[Law](#), [Criminal Justice](#)



Workplace Bullying

Yamada D. C. (2010). Workplace bullying and American employment law: A ten-year

progress report and assessment. *Comparative Labor Law & Policy Journal* 32 (1)

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A. Workplace Bullying Enters America's Consciousness

The problem of psychological abusive behavior at work and its negative effects on individuals and organizations only began to be investigated in the U. S in the mid-1990's. Drs Gary and Ruth Namie were the first to use the term workplace bullying in terms of American employment and to expose this phenomenon to the American public. They also initiated the Campaign Against Workplace Bullying, created a "Bullybusters" website, and hosted the first U. S. conference on workplace bullying. Their efforts "legitimized" this common and insidious problem and legislators began to consider laws to combat the issue.

B. Legal Response to Workplace Bullying

It took a long time for the American legal system to respond to workplace bullying. In the late 1990's Professor Yamada joined the Namies campaigned and began researching current law for possible remedies against workplace bullying and found that American law failed to meet the challenge. In 2004, Professor Yamada published his findings in the form of a draft of the Healthy Workplace Bill. The major findings of his research were:

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1. Intentional Infliction of Emotional Distress (IIED). IIED did not offer much remedy to plaintiffs who suffered harm that was not associated with sexual misconduct of some form of protected-class discrimination. The courts failed to find the behavior of the defendants sufficiently outrageous to incur tort liability.
2. Intentional Interference with the Employment Relationship. Unfortunately, many state laws do not allow for this type of suit against one's employer, and it is a very difficult case to bring against a co-employee.
3. Discrimination Law. This works only when the plaintiff is a member of a protected class and can link the hostile work environment to the protected class. Otherwise, the harassment is not actionable due in part that stress and abuse are considered normal conditions of the work environment.
4. Occupational Safety and Health Law. This law only offers protection when the injury is physical, it has no provisions for psychological malfeasance.
5. The Healthy Workplace Bill. Due to the lack of relief inherent in the laws researched, Professor Yamada drafted a new workplace bill. This bill allows a plaintiff to bring a cause of action if they can prove they were the victims of malicious and harmful bullying at work. California was the first state to pass the bill. As of 2010, 18 states had passed the bill.

The cause of action for the Healthy Workplace Bill is:

“ It shall be unlawful practice under this Chapter to subject an employee to an abusive work environment as defined by this Chapter.”

The mens rea is malice, and the harm must be tangible, whether physical or psychological. The bill also imposes vicarious and strict liability on the employer.

Furthermore, in addition to traditional tort damages, the bill allows for removal of the offending party from the workplace. The Healthy Workplace Bill has had a significant impact on the social and legal perception of bullying in the workplace.

It is curious that it was not until recently that the American legislature responded to the plight of the victims of bullying; and that even now, a plaintiff may only recover for extreme and malicious harassment. There is also a cap on the amount of compensation. It may be that the lack of support for bullying has something to do with the American culture of rugged individualism, akin to the English “stiff upper lip.” The current trend in workplace bullying litigation brings to mind the early days of sexual discrimination litigations where the victim had to fight not only in court against the defendant, but also against the onslaught of intense disapproval in the workplace. Many of the early victims of sexual discrimination opted out of the workplace rather than have to face their co-workers.

It is also a bit disappointing in seeing how the major players did not step into the fray until many workplace bullying cases had woven their way through the judicial process. Had it not been for psychologists and educators, the American legislature may still have its back turned against the victims of psychological harassment in the workplace. Typically of other torts, physical harm has been traditionally given priority over psychological harm in the workplace. It is easy to see how an employer may find it easier to excuse a physically handicapped employee from work, rather than an employee who has “only” suffered psychological bullying.

The final acceptance of workplace bullying as actionable behavior gives evidence to the evolution of American consciousness to human dignity. Or, to quote President Barack Obama, “ our law is by definition a codification of morality.”