

Note: Delete this page and following four pages (total 5 pages) once you complete tailoring the template for your own business.

Why do I need this document?

This policy has been developed to assist employers in meeting their legal obligations under Work Health and Safety legislation and the Fair Work Act and thereby to eliminate or minimise bullying in the workplace.

The Fair Work Commission has the power to deal with allegations of bullying between an employee and their employer, or co-workers, and the authority to make orders to stop and prevent the bullying behaviour from occurring.

Related documents

- Code of Conduct
- Performance and Misconduct Policy
- WHS General Policy

1. What is the legal definition of bullying?

Bullying occurs when a worker or a group of workers **repeatedly** behaves unreasonably towards another worker or a group of workers while that worker or group of workers is at work, and that unreasonable behaviour creates a risk to health and safety. The risk to health and safety can be either psychological or physical or both.

Examples of bullying include:

- offensive language, yelling, screaming, verbal abuse, rudeness
- excluding or isolating employees from team activities
- ridicule, insults, belittling opinions, patronising titles or nickname
- deliberately changing work rosters to inconvenience a particular employee
- giving employees deliberately impossible assignments, or
- withholding information necessary to perform work.

It can occur between a worker and a manager; workers and supervisors, or co-workers.

Bullying does NOT include:

- genuine and reasonable disciplinary procedures
- genuine and reasonable performance management – constructively delivered feedback or counselling, or
- directing and controlling how work is done
- fair and constructive feedback on workers' performance.

In Victoria, the *Crimes Act 1958* [Vic] was amended so that some bullying can also amount to stalking, which is a criminal offence reportable to the police.

2. Does the bullying have to have occurred in the workplace?

The Full Bench of the Fair Work Commission held that the meaning of 'at work' is not limited to the confines of a physical workplace. Instead, it held that 'work' encompasses both the performance of work at any time or location and when the work is engaged in some other activity which is authorised or permitted by their employer or in the case of a contractor their principal (such as being on a meal break for accessing social media while performing work).

Examples of complaints upheld

The Fair Work Commission made an order to stop bullying based on repeated unreasonable behaviour over an extended period of time. This behaviour included:

- belittling and humiliating the employee by acting in an aggressive and rude manner
- speaking abruptly to the employee and treating her differently to other employees
- making unreasonable comments to the employee
- acting inappropriately by referring to the employee as 'a naughty little school girl running to the teacher' during a meeting for making a complaint, and
- defriending the employee on Facebook after this meeting.

In another matter, the Fair Work Commission made anti-bullying orders regarding behaviour which included:

- swearing, yelling and inappropriate language
- daily interference and undermining of the work of two employees
- physical intimidation and slamming of objects on the employees' desks
- attempts to incite the Applicants to victimise other staff members, and
- threats of violence.

3. When violence is not bullying

The reference to repeated behaviour includes persistent behaviour and can incorporate a range of behaviours over time. This means one-off serious instances of aggravated behaviour, such as violence, will not be dealt with as bullying matters but will be dealt with through other laws such as the criminal law.

4. Why this policy is not just about anti-bullying legislation

An employee who has been subjected to bullying has a number of options for making complaints about the conduct. Most commonly these involve:

- a complaint to the Fair Work Commission under the **anti-bullying provisions** of the Fair Work Act
- complaining to the regulator in their state or territory, such as WorkCover or WorkSafe, that is empowered to investigate incidents that pose a risk to employee **health and safety**. Where an employer is found to be liable for bullying behaviour, they may face prosecution for breaching workplace health and safety legislation. This may result in fines or, in some serious cases, imprisonment.
- lodgement of a **Workers compensation claim** where workplace bullying has resulted in the employee suffering a mental or physical injury
- lodgement of an **equal opportunity complaint** if the bullying conduct also meets the legal definition of discrimination, harassment, vilification or victimisation, for example, if an employee is repeatedly targeted for unfair treatment/bullying conduct because of their race, sex or age, this may amount to unlawful racial, sex or age discrimination, or
- making a claim that the employer has **breached the implied contractual term** of 'mutual trust and confidence' and, accordingly is liable for damages to the employee.

Getting it wrong

It is vitally important you maintain up to date policies about bullying and appropriate workplace behaviour. Further, prompt and objective investigations are becoming an essential requirement.

It is widely accepted that bullying behaviour can have serious consequences on an individual's mental and physical health and wellbeing. For this reason, bullying is treated as a serious workplace health and safety issue and has attracted significant attention, including from state/territory Work Health and Safety regulators.

WHS laws continue to apply alongside the federal anti-bullying laws under the Fair Work Act. This means the employer could be subject to the same penalties under the relevant state or territory WHS law as any serious workplace safety breach – **\$3 million for a company, and \$600,000 or 5 years' imprisonment for an individual.**

If the Fair Work Commission is satisfied that a worker has been bullied while at work, and that the bullying would otherwise continue, it may make an order it considers appropriate. While no compensation can be ordered, **contravening a stop bullying order can be subject to penalties of up to \$10,800 for an individual or \$54,000 for a body corporate.**

General Information

This policy has been developed to assist employers in meeting their legal obligations under the Work Health and Safety Legislation and the Fair Work Act and thereby to eliminate or minimise bullying in the workplace.

The policy provides that bullying will not be tolerated and presents mechanisms for disciplining those who engage in such behaviour in the workplace. In addition, the policy provides formal and informal mechanisms for dealing with any complaint relating to bullying.

All workers (and others in the workplace, where possible) should be made aware of the policy, the standards that are expected of them and the consequences for breaching the policy. The policy can be effectively communicated in a number of ways, such as:

- conducting face to face training sessions — this is generally the most effective way to communicate the policy to staff and to train staff to recognise and deal with bullying
- team meetings
- including the policy in induction manuals and procedure manuals
- including the policy on the company's intranet, on notice-boards, or in newsletters
- sending email messages and/or;
- including the policy as an attachment to payslips

Training sessions about the policy should (as a minimum) take place as part of the induction of new workers and in specific training sessions for existing workers. However, your workers should be reminded of the policy on a regular basis. This may involve conducting regular 'refresher' sessions at which workers are taken through the policy, sending out emails in relation to the policy and where it can be accessed, or using one of the other methods set out above.

Please note under Work Health and Safety Legislation, an employer must, as far as reasonably practicable, consult with its employees or others carrying out work, before making decisions on health and safety matters, including bullying. If there are health and safety representatives, then they must be involved in the consultation process.

Consultation must be carried out when developing policies and procedures relating to bullying, including complaint procedure. Consultation involves sharing information with workers and health and safety representatives, allowing them to express views and taking those views into account.

There is further guidance on the prevention of bullying in the workplace on the ACFA Website under the Resources/WHS Tab [Guide for Preventing and Responding to Workplace Bullying and Dealing with workplace bullying- a worker's guide/ Fair Work Commission Benchbook on Anti-bullying \(Need to check on website and reference correct guides\)](#)

This guidance material is generally applicable to all types of work and all workplaces covered under Work Health and Safety Legislation, including workplaces that are mobile, temporary and remote. It can be used by managers, supervisors, workers (including volunteers and contractors), health and safety representatives and other persons at the workplace to assist with managing the risks associated with bullying in the workplace.

How to complete this template

Designed to be customised

It is completely customisable based on your specific requirements.

Include what you must and can comply with

This document should be used in conjunction with your contract of employment, and any specific company procedures and processes. Only include the commitments you are confident you can comply with, make sure you update and review the document regularly.

Important: You may have legal obligations to your employees under an employment or industrial agreement such as an award, workplace agreement or employment contract. Make absolutely certain what's written in this document is consistent with these. If you're unsure what covers your employees, ACFA Members can contact ACFA's workplace advice team on 1300 342 248 or on 02 4340 2000 for further advice/assistance.

To complete the template:

1. Using Word's Replace function, search for (INSERT COMPANY NAME) and replace with your company name.
2. Replace (items in brackets) with your own wording.
3. Once you have finished work on the template, delete the introduction/explanation page/s of the document.
4. Update page numbers.

Disclaimer

As content added includes materials from third parties the Australian Cabinet & Furniture Association (ACFA) does not make any representations or warranties (expressed or implied) as to the accuracy, currency or authenticity of the information. To the full extent permitted by law, ACFA will not be liable or responsible for any third-party materials. The Australian Cabinet & Furniture Association, its employees and agents do not accept any liability to any person for the information in this document.

Workplace Bullying Policy

1. Purpose

1.1 (Insert company name) aims to provide a safe and healthy work environment, so far as is reasonably practicable, in which all workers are treated fairly, with dignity and respect. Bullying is a risk to the health and safety in the workplace, and will not be tolerated by (insert company name).

1.2 This Policy outlines the (insert company name)'s commitment to a safe workplace and is aimed at ensuring, so far as it reasonably can, that employees are not subjected to any form of bullying while at work. It also details the legal responsibilities of (insert company name) and workplace participants in relation to preventing bullying in the workplace.

2. Commencement of Policy

2.1 This Policy will commence on XX/XX/XXXX. It replaces all other bullying policies (whether written or not).

3. Scope

3.1 This Policy covers all employees of (insert company name) (whether full-time, part-time or casual) and all persons performing work at the direction of, in connection with, or on behalf of (insert company name) (for example contractors, subcontractors, agents, consultants, and temporary staff) (collectively 'workplace participants').

3.2 This Policy extends to all functions and places that are work related, for example, work lunches, conferences, Christmas parties and client functions. This Policy does not form part of any employee's contract of employment. Nor does it form part of any contract for service.

4. Legal responsibilities

4.1 Everyone at the workplace has a legal responsibility to prevent bullying from occurring.

4.2 Under relevant health and safety legislation (the 'WHS Legislation') (insert company name) has the primary duty to eliminate or minimise, as far as reasonable practicable, the risks to health and safety in the workplace. This duty includes the implementation of strategies to prevent workplace bullying. This policy will assist (insert company name) in complying with its legal responsibilities.

4.3 Workplace participants are also required under the WHS Legislation to take reasonable care for their own health and safety, as well as that of others at (insert company name)'s workplace. All workplace participants must also comply with any reasonable instruction given by (insert company name).

*** THIS IS ONLY A PREVIEW OF THE DOCUMENT, YOU WILL NEED TO PURCHASE THE DOCUMENT TO SEE ALL THE CONTENT.**

**Please Note: As a Business Plus or Premium ACFA Member you can download all the policies on our website for free or have them customised specifically for your business at no additional charge. ACFA Members can also request policies and resources which are not on our website through our HR Department. This is just one of the many services that are included with our annual membership subscription.*