

Standing Up for the Workplace: *The Importance of Addressing and Preventing Workplace Bullying*

Kate McNeill-Keller and Carolyn Lee
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Agenda

1. What is Workplace Bullying and What is the Cost?
2. The Legal Framework
3. Identifying, Managing and Preventing Workplace Bullying – Practical Tips
4. Questions

Bullying

“Bullying is usually seen as acts or verbal comments that could 'mentally' hurt or isolate a person in the workplace. Sometimes, bullying can involve negative physical contact as well. Bullying usually involves repeated incidents or a pattern of behaviour that is intended to intimidate, offend, degrade or humiliate a particular person or group of people. It has also been described as the assertion of power through aggression.”

– Canadian Centre for Occupational Health and Safety

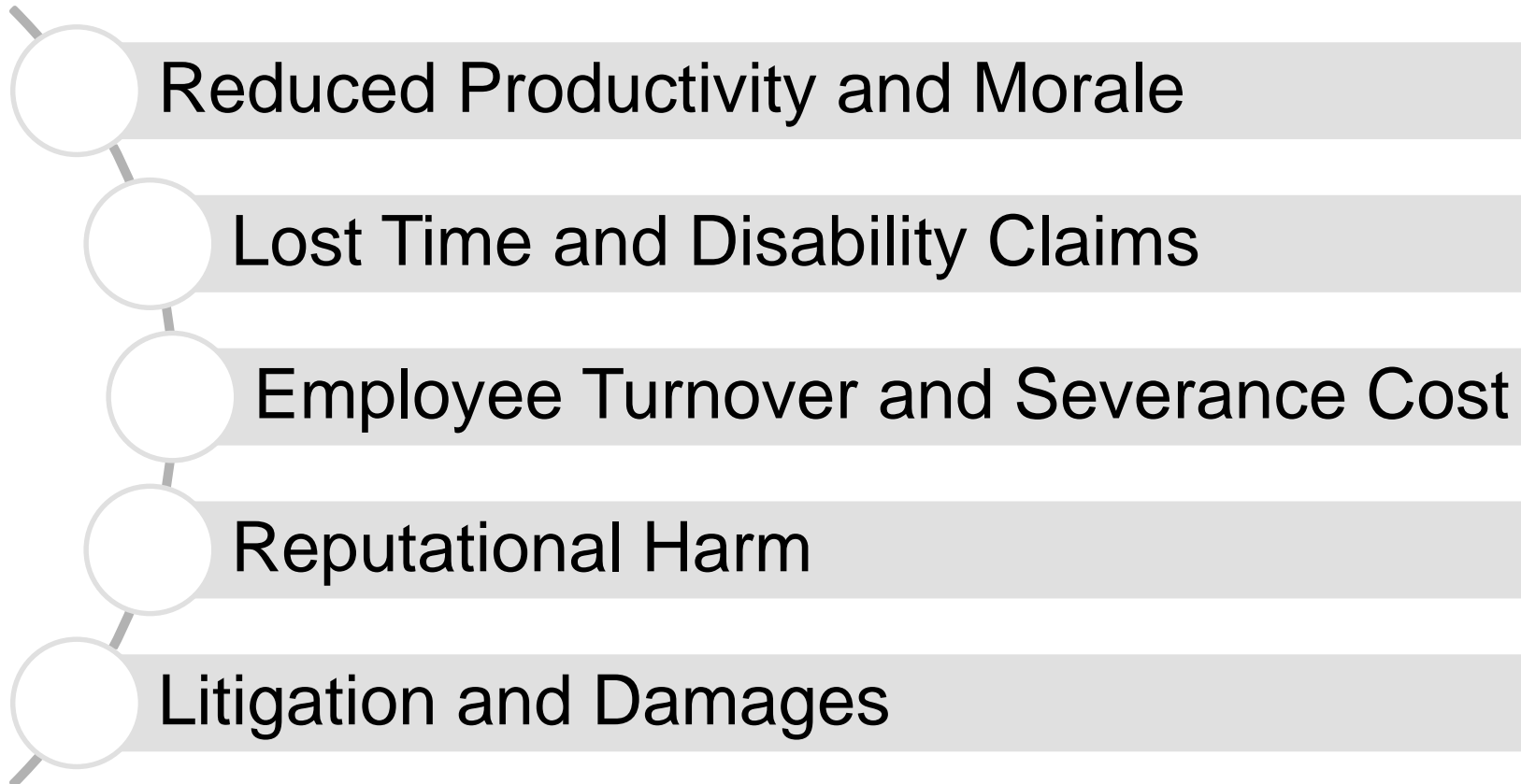
What Might Constitute Workplace Bullying?

- Name calling, inappropriate jokes, belittling or humiliating behaviour, intimidation, sabotage
- Isolation (physical, interpersonal, professional)
- Unjustified performance management or denial of opportunity
- Aggressive or inappropriate communication style
- Physical harm/contact or threats of harm
- Online or social media communications or circulation of materials

Why Should Our Organization Care?

1. It is the law.
2. It is costly to ignore.
3. It is the right thing to do when seeking to foster an ethical work environment.

What is the Cost of Workplace Bullying?

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- Reduced Productivity and Morale
 - Lost Time and Disability Claims
 - Employee Turnover and Severance Cost
 - Reputational Harm
 - Litigation and Damages

Workplace Bullying – The Legal Framework



The Occupational Health and Safety Act – What is Protected?

- Workplace Harassment → “engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome”
- Sexual Harassment → “engaging in a course of vexatious comment or conduct against a worker, in a workplace because of sex, sexual orientation, gender identity or gender expression where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or a sexual solicitation or advance where the person making it is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know the solicitation or advance is unwelcome”
- Workplace Violence → “exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker”

OHSA and Bill 132

- As of September 8, 2016:
 - Workplace harassment includes workplace sexual harassment
 - Employers must implement a workplace harassment policy and program and renew (and if appropriate, train) annually
 - Employers must ensure that workplace harassment is appropriately investigated
 - MOL Inspectors may order third-party investigations at an employer's expense

The Human Rights Code – What is Protected?

- Discrimination and adverse or differential treatment on the basis of prohibited grounds, including in the context of employment
- Sexual harassment or harassment on the basis of prohibited grounds, including in the context of employment

Workers Compensation – What is Protected?

WSIB Operational Policy No. 15-03-02:

- A worker is entitled to benefits for traumatic mental stress that is an acute reaction to a sudden and unexpected traumatic event arising out of and in the course of employment.
- A worker is not entitled to benefits for traumatic mental stress that is a result of the employer's employment decisions or actions.
- Event must arise out of and occur in the course of employment and must be:
 - clearly and precisely identifiable
 - objectively traumatic
 - unexpected in the normal or daily course of the worker's employment or work environment
 - suffered or witnessed first hand or heard through direct contact

Identifying, Managing and Preventing Workplace Bullying

Step 1 – Acknowledge the Issue and Assess the Risk

- Consider past incidents and complaints
 - Are there trends or patterns?
 - How were issues resolved – was it a “one-off” bandage or a true ongoing solution?
- Consider nature of the workplace and workforce
 - Do employees work unsupervised?
 - Is there a workforce culture that may be problematic?
 - Do employees take these issues seriously?
- Engage the workforce and seek feedback

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Step 2 – Commit to a Workplace Free From Bullying

- Ensure that leadership comes from the top and that all employees are made aware that the organization takes these matters seriously
- Be clear in messaging and ensure that the framework is in place to back that up (need to “walk the walk”)
- Make policies easily accessible to employees

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Step 3 – Ensure that Programs are in Place

- Review and update policies
 - Prohibitions on workplace bullying should clearly be addressed in workplace policies, including employee handbooks, respectful workplace policies, anti-discrimination/anti-harassment policies, workplace violence policies and codes of conduct
 - Consider addressing online/cyber-bullying in the context of appropriate use of technology and social media policies
- Ensure training programs are up to date and that employees engage and participate
- Ensure employees know how to raise a concern

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Step 4 – Monitor the Workplace

- Train managers on how to identify signs of bullying in the workplace
- Monitor social media for signs of targeted bullying
- Enlist employees to help you monitor by encouraging them to take a proactive role in preventing bullying in the workplace

Identifying, Managing and Preventing Workplace Bullying

Step 5 – Timely and Appropriate Response to Complaints

- Ensure you have a clear complaints process in writing
- Train managers on how to respond to both formal and informal complaints
- Identify in advance who will be responsible for internal investigations and when you will use an external investigator
- Ensure you comply re: reporting outcomes to affected parties
- Monitor for reprisal/retaliation
- Document, document, document

Identifying, Managing and Preventing Workplace Bullying

Step 6 – Discipline and Terminations

- Progressive Discipline
 - Routine in unionized environments, but when is it appropriate or permitted in a non-unionized environment?
- Terminations Without Cause
 - Normal contractual/statutory/common law analysis applies
- Terminations With Cause
 - When might conduct justify a termination with cause?
- Involvement of Authorities

Questions?

Kate McNeill-Keller
Partner, Labour & Employment
McCarthy Tétrault LLP
416-601-8108, kmcneill@mccarthy.ca

Carolyn Lee
Labour Relations & Employment Specialist
McCarthy Tétrault LLP
416-601-7564, carolynlee@mccarthy.ca

VANCOUVER

Suite 1300, 777 Dunsmuir Street
P.O. Box 10424, Pacific Centre
Vancouver (Colombie-Britannique) V7Y 1K2
Tél. : 604-643-7100
Télé. : 604-643-7900
Sans frais : 1-877-244-7711

CALGARY

Suite 4000, 421 7th Avenue SW
Calgary (Alberta) T2P 4K9
Tél. : 403-260-3500
Télé. : 403-260-3501
Sans frais : 1-877-244-7711

TORONTO

Suite 5300, TD Bank Tower
Box 48, 66 Wellington Street West
Toronto (Ontario) M5K 1E6
Tél. : 416-362-1812
Télé. : 416-868-0673
Sans frais : 1-877-244-7711

MONTRÉAL

Bureau 2500
1000, rue De La Gauchetière Ouest
Montréal (Québec) H3B 0A2
Tél. : 514-397-4100
Télé. : 514-875-6246
Sans frais : 1-877-244-7711

QUÉBEC

Le Complexe St-Amable
1150, rue de Claire-Fontaine, 7^e étage
Québec (Québec) G1R 5G4
Tél. : 418-521-3000
Télé. : 418-521-3099
Sans frais : 1-877-244-7711

ROYAUME-UNI & EUROPE

125 Old Broad Street, 26th Floor
London EC2N 1AR
ROYAUME-UNI
Tél. : +44 (0)20 7786 5700
Télé. : +44 (0)20 7786 5702

