

MEDIA RELEASE

Action not intent matters – workplace lawyer warns of the fine line between a ‘harmless’ joke and bullying

Employers must ensure employee policies and culture discourages behaviour which could be construed as bullying

Sydney, 24 July 2008 – The question ‘when does a practical joke cross the line to become bullying?’ can be difficult to answer, however according to Harmers Workplace Lawyers, a key consideration in the courts is the action itself, rather than the motivation or intent.

Greg Robertson, General Counsel for Harmers Workplace Lawyers said, “Bullying behaviour can arise when perceivably ‘harmless’ jokes get out of hand. What may have started as a fairly innocuous jibe, when repeated or spread across an organisation it can wreak havoc on the targeted individual.”

He said employers could not be too cautious when it comes to keeping employee behaviour in check. “It is important to remember that our workplaces are made up of such diverse personalities, so what may seem funny to one person can be taken as a personal attack by another.

“It needs to be remembered that even when a joke, comment or action isn’t intended to cause harm or distress, it can be perceived that way by the recipient and by the courts. If conduct has offended, humiliated or intimidated, the motive, intention or reason is irrelevant,” he said.

Referring to the current parliamentary inquiry into the NSW Ambulance Service, where there have been serious allegations of bullying and harassment, Mr Robertson said, “This high-profile inquiry will no doubt bring more attention to the issue of harassment and bullying in the workplace. However, there are numerous other examples in existence where insidious (or more subtle forms of) bullying has proven to be just as detrimental to targeted employees.”

He said employers need to be especially aware of how new employees are treated, particularly in relation to any kind of ‘initiation’ activities. “When an employee is new, it is even harder to gauge how they will perceive a ‘light hearted’ welcome. Employee hierarchies can also play a part, as junior employees can feel more vulnerable to the words or actions of superiors.”

Consequences of bullying

Taking factors such as reduced profits due to absenteeism, a drop in productivity or performance, increased staff turnover and legal costs into account, Mr Robertson said that workplace bullying is estimated to cost Australian business between \$6 billion to \$13 billion a year.

“On the legal side, bullying can lead to liability in reinstatement claims, claims for compensation for sexual discrimination or harassment, claims for damages for personal and psychiatric injury, prosecution for breach of occupational health and safety law, and even criminal charges (when bullying amounts to assault).

“For employees, the emotional and social impact on victims of bullying can be hugely detrimental. An episode of attack or an ongoing culture of bullying can also wreak havoc on wider workplace morale,” he said.

Workplace policies

Mr Robertson said that all companies needed to have some process in place to recognise and deal with any instances of bullying. “In terms of policies, it is best to treat bullying as part of a wider concern about inappropriate workplace behaviour. In that way, bullying can be covered by a Code of Conduct or part of an Occupational Health and Safety Policy.

“The benefits of a written policy are that the employer can send a clear message to employees that any form of inappropriate conduct won’t be tolerated and spell out what will be considered inappropriate and the consequences. A policy can also enable the employer to effectively discipline and if necessary remove the bully and can assist the employer to demonstrate that they have taken all practical steps to eliminate such behaviour,” he said.

Practical steps for employers

Mr Robertson said there are a number of proactive steps an employer can take to address the potential for bullying in their workforce. Employers should:

- Consult with employees and identify risk of inappropriate behaviour and determine what needs to be done to prevent or overcome that culture
- Survey employees to see whether inappropriate behaviour exists
- Develop an effective policy and procedure to deal with inappropriate workplace conduct of any kind (not just bullying or discrimination)
- Communicate the policy to all employees, with regular training and induction training for new staff
- Take all complaints seriously and ensure appropriate investigation
- Ensure compliance with the policy through regular reviews and follow-up
- Keep accurate records of steps taken to assist if legal action commences

Ends

Note to editors:

About Harmers Workplace Lawyers

Harmers Workplace Lawyers was established in 1996 as a boutique employment law firm. Since then it has become one of Australia’s leading employment and industrial law firms, with offices in Sydney, Melbourne and Brisbane. The firm has been awarded Australasian Legal Business’s ‘employment specialist firm of the year’ for the past three years running.

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