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Workplace Violence

Employer Anti-Bullying Policies Seen As Offsetting Lack of Legal Protections

ST. LOUIS—Workplace bullying may affect up to six in 10 workers over the course of their careers, causing an increase in absenteeism and sick leave that costs employers billions of dollars each year, but legal protections against bullying remain ill-defined, attorneys and researchers told a forum June 8.

Employers can adopt policies, however, that enable them to readily identify bullying and respond effectively, arbitrator Tia Schneider Denenberg said at the annual meeting of the Labor and Employment Relations Association. Denenberg also co-directs Workplace Solutions Inc., which advises workplaces on conflict management and violence prevention.

She said her organization has developed a test to help identify bullying that focuses on five factors: humiliation, intimidation, defamation, isolation, and sabotage.

Denenberg outlined a bullying prevention strategy for employers that included:

- formulating a written policy designed to support complaints,
- fostering, through training, a workplace culture inimical to bullying,
- promoting “bystander empowerment,”
- facilitating early intervention, and
- eliminating underreporting of bullying.

Lost Work Days. David Yamada, a professor at Suffolk University Law School, said bullying at work is common and can be “devastating to organizations.” He said studies find that roughly 30 to 60 percent of workers may experience abusive behavior from supervisors or co-workers during their careers.

Yamada defined workplace bullying as “deliberate, often-repeated, health-harming mistreatment of an employee by a supervisor or co-worker(s), through direct and indirect means.”

That abuse may result in significant losses for employers, Tapas K. Ray, an economist with the National Institute for Occupational Safety and Health, said at the meeting. Ray cited estimates that “lost work days differed by 2.45 days between bullied and non-bullied workers,” implying “that workplace bullying was associated with \$4.1 billion, or 5.5 percent of sickness absenteeism costs in 2010.”

The Department of Labor’s Occupational Safety and Health Administration has published several industry-specific guidelines for preventing violence in the workplace, but the agency has not issued any rules specifically aimed at regulating bullying and violence.

Scant Legal Protection for Victims. Carlos Perez, a union attorney with Reich, Adell & Cvitan, said current statutes do not protect bullied employees. Because specific legislation does not exist to protect workers against bullying, Perez said, many plaintiffs’ attorneys representing bullied workers try to fit a “square peg in a round hole,” and use discrimination or other claims for bullied employees.

Yamada has drafted a Healthy Workplace Bill, which has been introduced in some 25 states since 2003 but not enacted.

Marc Freedman, executive director of labor law policy at the U.S. Chamber of Commerce, told BNA in October that such bills may not be needed because their provisions overlap with federal civil rights law and the Americans With Disabilities Act (199 DLR A-11, 10/15/12).

Anthony T. Oliver Jr., a retired management attorney with Parker Milliken, observed that the courts provide no remedy for workplace bullying, unless the activity is connected to some form of discrimination against someone in a protected class.

“Union and management are probably on the same side on this,” said Oliver. He suggested that management provide training on bullying, perhaps as part of sexual harassment training. He also said guidelines on bullying could be negotiated into collective bargaining agreements.

By KENNETH MAY