

Ventura County Grand Jury 2010 - 2011



Final Report

Bullying in the Workplace

May 24, 2011

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Bullying in the Workplace

Summary

Bullying is a frequently heard term that is primarily associated with schools. In January 2011, the *Ventura County Star* published an article entitled "County, schools to tackle bullying." The article stated that "Ventura County officials want to partner with local school districts to address bullying, a pervasive problem that affects communities nationwide." Unfortunately, bullying is not limited to schools. It is also a problem in the workplace including Ventura County (County) government. [Ref-01]

As a result of a public complaint, the 2010-2011 Ventura County Grand Jury (Grand Jury) initiated an investigation into bullying within the workplace. The Grand Jury researched the topic using internet search resources and reviewed County policies and procedures related to workplace behavior. The Grand Jury interviewed past and current county employees who were targets of, or witnesses to, bullying behavior. Finally, the Grand Jury interviewed representatives from the County Executive Office Human Resources Division (CEO-HR) and the Auditor-Controller Office (A-C) who document and investigate workplace behavior complaints.

The Grand Jury found that bullying is occurring in County government and that the County has no anti-bullying policy. Employees have escaped from bullying by leaving their County positions. These employees did not file complaints of bullying because they perceived they could not get a fair and impartial investigation into their complaints. They felt their situation would worsen if their identities became known.

The Grand Jury recommends that the Ventura County Board of Supervisors (BOS) issue a policy against bullying and collect data to identify the existence and extent of bullying in branches of County government. The CEO-HR should establish an independent process to report cases of bullying. This process should include a separate bullying hotline staffed by non-County personnel for documenting complaints. Investigations into bullying complaints should be coordinated by the CEO-HR. This should include direct oversight of all investigators and enforcement of restrictions that preclude investigators from handling complaints within their own departments.

Background

As a result of a public complaint, the Grand Jury initiated an investigation into the existence of bullying within County government. Workplace bullying can be defined as an abuse or misuse of power that manifests itself in "behavior that intimidates, degrades, offends, or humiliates a worker." This definition is documented in the April 2008 Report from the Safety & Health Assessment and Research for Prevention Program (SHARP), an independent research program under the Washington State Department of Labor & Industries. [Ref-02]

The Workplace Bullying Institute (WBI) commissioned Zogby International, a market research firm, to conduct a survey on workplace bullying in 2007 and again in 2010. Results published in an August 30, 2010 press release from WBI indicated that 34.4% of American workers polled in 2010 reported that they were personally bullied at work, while the comparable statistic for 2007 was 37%. [Ref-03]

Behaviors indicative of workplace bullying include the following:

- being shouted at or sworn at
- being excessively monitored
- being isolated or excluded from activities
- being threatened
- being physically intimidated

Title VII, United States Code (Civil Rights Act of 1964), prohibits employment discrimination against a protected class based on an individual's race, sex, color, religion, or national origin. If a bully's behavior does not show a pattern of discriminatory behavior, the victim has no legal recourse. Attachment 1 to this report is an article from the New York Law Journal that provides an in-depth explanation of the legal differences between workplace discrimination and bullying. (Att-01)

Methodology

The Grand Jury interviewed more than a dozen past and current County employees. Initial interviewees were identified by the complainant. Subsequent contacts resulted from the interviews. The employees were questioned about their personal exposure to bullying as well as their observation of others who were targets of bullying behavior. The Grand Jury also interviewed and received evidence from staff members within CEO-HR and A-C, who are familiar with workplace behavioral policies and handle complaints of workplace behavior abuse.

Facts

FA-01. Employees were yelled at by managers in group meetings and in public areas.

FA-02. Employees, including those who were highly experienced, were excessively monitored by managers to such an extent that they left their positions. Some employees transferred to other agencies and, at times, accepted a demotion to receive that transfer. Others left County employment for other positions, or they retired earlier than they had planned as a direct result of their manager's bullying behavior.

FA-03. Employees were isolated both organizationally and physically. Some employees were organizationally separated from their functional

groups into single person work units that bypassed their former supervisor and reported directly to a higher manager. Some employees were physically separated by being placed on a Paid Administrative Leave that required they stay at home during normal work hours without any work responsibilities.

- FA-04.** Conditions imposed on employees placed on a Paid Administrative Leave, as documented in the “Placement on Paid Administrative Leave Memorandum” form, are not unlawful but are “largely unenforceable, and therefore improper.” This opinion is that of the County of Ventura County Counsel’s Office (County Counsel). That office has not approved the form shown in Attachment 2 of this report. This form was used by two agencies to place employees on Paid Administrative Leave. (Att-02)
- FA-05.** Employees receive training on the process for reporting workplace complaints during both the new employee training sessions and the bi-annual recurring training sessions. Although the training material does not list the A-C Employee Fraud Hotline as a method for reporting workplace behavior complaints, the A-C Employee Fraud Hotline does accept these complaints and processes them. The A-C Employee Fraud Hotline process includes taking the initial report, evaluating the completeness of the information, assigning the complaint to an agency for investigation, and approving the investigation results. Attachment 3, Employee Complaint Resolution Process, documents the complaint procedure. (Att-03)
- FA-06.** Employees left their County positions as a result of being bullied and declined to complain about their situations through the Employee Complaint Resolution Process or to the A-C Employee Fraud Hotline. These employees did not believe their complaints would be investigated fairly. They feared that the offending manager would become aware of their complaints and their identities, resulting in retaliatory behavior that would worsen their situations.
- FA-07.** Bullying in the workplace impacts the physical and emotional health of employees who are the targets of a bully. Health problems, as a result of bullying, have led to legal claims.
- FA-08.** The County incurs the cost for recruitment and training of replacement personnel when bullied employees leave their County positions. During the recruitment and training periods of replacement personnel, departments must distribute their workload among the remaining staff or delay tasks.
- FA-09.** The County has no written policy specifically directed against bullying in the workplace. The County does have a written policy for workplace discrimination and harassment to comply with Title VII, United States Code (Civil Rights Act of 1964). One instance of that

policy is documented in Attachment 3 in a paragraph entitled “What is discrimination or harassment?” (Att-03)

- FA-10.** The County has a written policy that defines causes for disciplinary actions. Some of the causes describe actions that might serve as a policy against bullying such as “intemperance,” “discourteous treatment of other employees,” and “failure of good behavior.” These descriptions do not clearly identify bullying behavior. Attachment 4, Causes for Disciplinary Action, contains the full list of actions. (Att-04)
- FA-11.** Forms used in employee disciplinary actions are not formally reviewed by County Counsel for compliance to current law and for sound legal practice on a periodic basis.
- FA-12.** Workplace behavior complaints filed through the CEO-HR or the A-C Employee Fraud Hotline were normally assigned to the agency against which the complaint was lodged to investigate the allegations internally.
- FA-13.** Neither the CEO-HR, nor the A-C Employee Fraud Hotline provided detailed data on workplace behavioral complaints to the BOS. In some cases, data identifying workplace behavior complaints by category and department, along with trend statistics, were available, but were considered to be sensitive information. Since reports to the BOS are published on a County website for public information, the detailed data are not included in the reports.
- FA-14.** The Grand Jury found samples of policies written specifically to address bullying behavior through Internet searches. (Att-05)

Findings

- FI-01.** Workplace bullying is occurring in the County workplace and there is no policy or employee training to preclude bullying. (FA-01 through FA-03, FA-09, FA-10)
- FI-02.** Processes in place to report workplace behavior problems are not trusted by employees because the agency with the alleged bullying issue is allowed to investigate complaints using personnel within its own organization. This system risks the exposure of a complainant’s identity and reinforces employee perception that the investigation would not be conducted fairly. (FA-05, FA-06, FA-12)
- FI-03.** The BOS does not receive detailed data that would identify bullying problems within County offices. (FA-13)
- FI-04.** Forms used for employee disciplinary actions are not reviewed for content on a periodic basis by County Counsel. Since County Council has opined that the “Placement on Paid Administrative Leave Memorandum” form is improper, it is likely that other forms used for employee disciplinary actions may have legal issues. (FA-04, FA-11)

FI-05. A County policy against bullying, that includes descriptions of bullying behaviors, will educate employees on unacceptable workplace behaviors and encourage employees to report this type of workplace abuse. This will potentially reduce the numbers of employees leaving County service to escape bullying and save the County the costs of finding and training replacements. (FA-06 through FA-10)

Recommendations

- R-01.** The BOS should establish a written policy defining bullying actions and the consequences to those engaging in bullying behaviors. A sample policy is included in Attachment 5. (FI-01, FI-05) (Att-05)
- R-02.** The CEO-HR should create an independent hotline to receive complaints specific to improper workplace behavior that is separate from the A-C Employee Fraud Hotline. It should be staffed by non-County personnel to protect the anonymity of callers. (FI-02)
- R-03.** The CEO-HR should be responsible for coordinating all workplace behavior investigations and for ensuring these investigations are performed by personnel outside of the agency against which the complaint was made. (FI-02)
- R-04.** The CEO-HR should provide employee education on bullying and the process for reporting and investigating bullying complaints. (FI-01, FI-02)
- R-05.** The BOS should require that reports be provided periodically from the CEO-HR with detailed statistics that quantify the extent bullying occurs in the County. The data should include all complaints, as well as the number of substantiated complaints of bullying reported by specific agency and department. This information will allow the localization of a problem. Data provided should include all complaints and substantiated complaints as a function of time in order to identify trends. (FI-03)
- R-06.** The CEO-HR should establish a plan to have all employee disciplinary action forms periodically reviewed by County Counsel and should ensure all agencies only use current forms obtained directly from CEO-HR. (FI-04)

Responses

Responses Required From:

Board of Supervisors, County of Ventura (FI-01 through FI-04) (R-01 through R-06)

Auditor-Controller, County of Ventura (FI-02, FI-03) (R-02, R-05)

Responses Requested From:

Director, Human Resources Division, County Executive Office, County of Ventura (FI-01 through FI-04) (R-01 through R-06)

References

- Ref-01.** Cheri Carlson, "County, schools to tackle bullying," *Ventura County Star, East County Section*, January 23, 2011.
- Ref-02.** Washington State Department of Labor & Industries, *Workplace Bullying: What Everyone Needs to Know*, Safety & Health Assessment & Research for Prevention (SHARP) Report #87-2-2008, <http://www.lni.wa.gov/Safety/Research/Files/Bullying.pdf> (Accessed December 6, 2010).
- Ref-03.** *Workplace Bullying Institute, s.v.* "Workplace Bullying Still Rampant in US," <http://www.workplacebullying.org/2010/08/30/2010-wbi-zogby/>. (Accessed December 6, 2010).

Attachments

- Att-01.** Habinsky, Jason and Fitzgerald, Christine M., "Office Bully Takes One on the Nose: Developing Law on Workplace Abuse," *New York Law Journal*, January 21, 2011
- Att-02.** Placement on Paid Administrative Leave Memorandum Form
- Att-03.** Employee Complaint Resolution Process
- Att-04.** Causes for Disciplinary Action
- Att-05.** Sample Anti-Bullying Policy, Downloaded from the Public Domain, [www.b21pubs.com/b21downloadables/Bullying Policy/bullypol.doc](http://www.b21pubs.com/b21downloadables/Bullying_Policy/bullypol.doc)

Glossary

TERM

DEFINITION

A-C	County of Ventura Auditor-Controller Office
CEO-HR	Human Resources Division, County Executive Office, County of Ventura
County	Ventura County
County Counsel	County of Ventura County Counsel’s Office
EEOC	Equal Employment Opportunity Coordinator
Grand Jury	2010-2011 Ventura County Grand Jury
SHARP	Safety & Health Assessment and Research for Prevention Program under the Washington State Department of Labor & Industries
WBI	Workplace Bullying Institute—a website established in the early 1990s by Drs. Gary and Ruth Namie “... to raise awareness of, and create public dialogue about Workplace Bullying.”

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Attachment 01

Office Bully Takes One on the Nose: Developing Law on Workplace Abuse

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Office Bully Takes One on the Nose: Developing Law on Workplace Abuse

Jason Habinsky and Christine M. Fitzgerald

New York Law Journal

January 21, 2011

For years the law has been stacked against an employee claiming that he or she was abused or bullied by a co-worker. Generally, the law offers no protection to such a victim as long as the alleged bully can show that his or her actions were not motivated by the victim's status as a member of a protected class. Currently, there are no federal, state or local laws providing a cause of action for an individual subject to a non-discriminatory abusive work environment. However, with bullying becoming front-page news across the nation, it is just a matter of time before the law adapts. Since 2003, 17 states have considered legislation designed to protect employees from workplace bullying. Indeed, this year New York came very close to a floor vote on a bill that would provide a cause of action to an employee subjected to an abusive work environment.

Proponents of anti-bullying legislation contend that it is necessary given the prevalence of abusive conduct in the workplace. The proposed New York legislation noted that "between sixteen and twenty-one percent of employees directly experience health endangering workplace bullying, abuse and harassment" and that "[s]uch behavior is four times more prevalent than sexual harassment."

Employers, however, should be wary of such legislation. Anti-bullying legislation would allow employees having nothing more than ordinary disputes and personality conflicts with their supervisors and co-workers to threaten their employers with litigation. Surely some of these disputes would end up in court even though they wouldn't rise to the level of actionable bullying. Moreover, it is hard to conceive how an anti-bullying statute could avoid being vague and overbroad when it comes to defining what sort of behavior is unlawful.

Existing Legal Framework

Currently, employers have little to worry about with respect to facing substantial liability as a result of workplace bullying. The existing legal framework provides very limited recourse to an employee who is bullied at work. While some types of harassment are outlawed under Title VII of the Civil Rights Act of 1964, Title VII's reach is narrow. Title VII prohibits employment discrimination based on an individual's race, sex, color, religion, or national origin.

It is well-settled that "Title VII does not prohibit all verbal or physical harassment in the workplace" but rather only discrimination because of race, sex, color, religion or national origin. *Oncala v. Sundowner Offshore Services Inc.*, 523 U.S. 75 (1998). See also, *Marshall v. NYC Board of Elections*, 322 Fed. Appx. 17, 18-19 (2d Cir. 2009) (noting that plaintiff's "allegations that her supervisor displayed a violent temper, stood over her with clenched fists on several occasions, disparaged her educational background, and engaged in crass behavior are troubling. But Title VII is not a 'general civility code for the American workplace'; it prohibits only harassment that is discriminatory"); *Bush v. Fordham University*, 452 F.Supp.2d 394 (S.D.N.Y. 2006) (allegations of harassment included that co-worker altered plaintiff's timesheets, threatened to call security on her for no reason, and failed to give her phone messages did not amount to actionable harassment); *Jowers v. Lakeside Family and Children's Services*, 2005 U.S. Dist. LEXIS 30977 (S.D.N.Y. 2005) ("It is quite clear that Plaintiff did not enjoy the most cordial of relationships with

either his co-worker or his supervisor. Such discord, however, is not a valid ground to assert a hostile workplace claim under Title VII...Title VII is not designed to serve as a code of civility to govern workplace professionalism"). Therefore, even where the workplace bully creates an uncomfortable or even unbearable work environment for co-workers or subordinates, this will not violate Title VII unless such conduct is discriminatory.

Likewise, the extreme behavior that gives rise to the tort of intentional infliction of emotional distress does not encompass most workplace bullying. In order to prove a claim for the intentional infliction of emotional distress a plaintiff must prove that the defendant acted intentionally or recklessly, the defendant's conduct was extreme and outrageous, and the conduct caused severe emotional distress. Restatement (Second) of Torts §46.

Courts have found that extreme or outrageous conduct is "so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community'...but does not extend to 'mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.'" *Porter v. Bankers Life & Casualty Co.*, 2002 U.S. Dist LEXIS 20627, at 5-6 (N.D. Ill. Oct. 25, 2002) (dismissing intentional infliction of emotional distress claim where employee claimed that he was falsely accused of fraud and bullied and intimidated during questioning about the alleged fraud) (citations omitted).

Employees also have been unsuccessful in trying to fit their workplace bullying claims into a cause of action for constructive discharge. For example, in *Aldridge v. Daikin America Inc.*, 2005 U.S. Dist. LEXIS 27389, at 14 (N. D. Al. Oct. 6, 2005), the court found that plaintiff's "work conditions were not so intolerable that a reasonable person would have resigned... [Plaintiff] may have been under a closer watch than other...employees. He also may have been the target of negative comments... He was not, however, forced to resign from his job."

A recent case from the Southern District of New York illustrates the current law's limited use in the bullying context. In *Mendez v. Starwood Hotels & Resorts Worldwide Inc.*, 2010 U.S. Dist. LEXIS 107709 (S.D.N.Y. Sept. 30, 2010), the plaintiff alleged that his employer discriminated against him based on his national origin, race and disability. The plaintiff also alleged that his employer unlawfully retaliated against him for engaging in protected activity. At trial, the jury found for the employer on all of the discrimination claims, but found in favor of the plaintiff on the retaliation claim and awarded the plaintiff \$1 million in compensatory damages. The court, however, remitted the compensatory damages to \$10,000, noting that there was no evidence that the plaintiff suffered any significant damage as a result of the employer's actions.

The court opined that it was convinced that the jury felt sorry for the plaintiff—as, indeed, the court felt sorry for the plaintiff. Mendez endured an abusive workplace and got very little sympathy or assistance from either his employer or his union.... [A] non-discriminatory but uncivil workplace can certainly make a person miserable. The court is convinced that the jurors concluded that Mendez was miserable at work, having found some basis on which to hold [the employer] liable, awarded damages that were entirely out of proportion to any injury that was or could have been attributed to the retaliatory [action]—but that were perfectly in proportion to the teasing and rudeness Mendez endured at the hands of his fellow workers and chefs....

Mendez, 2010 U.S. Dist. LEXIS at 63. Although the discrimination laws shielded the employer from substantial liability in this case, had a law prohibiting workplace bullying existed, the employer would have been on the hook for the \$1 million in damages as evidenced by the court's sympathetic words regarding the plaintiff's working conditions.

Importantly, despite the absence of a cause of action for workplace bullying, the jury in the *Mendez* case clearly tried to find a way to compensate the plaintiff for the bullying he endured.

Likewise, in *Raess v. Doescher*, 883 N.E.2d 790 (Ind. 2008), the Supreme Court of Indiana upheld a \$325,000 jury verdict on an assault claim where the plaintiff alleged that "the defendant, angry at the plaintiff about reports to hospital administration about the defendant's treatment of other perfusionists, aggressively and rapidly advanced on the plaintiff with clenched fists, piercing eyes, beet-red face, popping veins, and screaming and swearing at him." 883 N.E.2d at 794. Although the defendant prevailed at trial with respect to the plaintiff's claim for the intentional infliction of emotional distress, the court opined in dicta that workplace bullying could be a form of intentional infliction of emotional distress. *Id.* at 799.

Legislation Campaign

Notably, the jury in the *Raess* case heard expert testimony on workplace bullying from Gary Namie, the co-founder of the Workplace Bullying Institute (WBI), a nonprofit organization dedicated to the eradication of workplace bullying. The WBI's Legislative Campaign division focuses on enacting anti-bullying legislation state-by-state. The WBI recruits state coordinators to introduce the Healthy Workplace Bill (HWB), drafted by Suffolk University Professor of Law David Yamada, to their local lawmakers. Thus, the campaign to pass an anti-bullying statute begins in each state with the same HWB language, although local lawmakers regularly make changes to the HWB as it is introduced and works its way through the legislative process.¹

The HWB provides legal redress for employees who are subjected to an abusive work environment, by allowing employees to sue both their employer and the alleged bully for monetary damages. The WBI contends that the bill is employer friendly since it sets a high standard for misconduct, requires proof of harm by a licensed health professional in order for an individual to collect damages, and protects employers with internal correction and prevention mechanisms from liability.

In 2003, California became the first state to introduce some form of the HWB. Subsequently, anti-workplace bullying legislation has been introduced in sixteen other states.² In 2010, the New York State Senate passed the bill.³ However, the New York Assembly Labor Committee stalled the passage of this ground breaking legislation when it voted to hold the bill, rather than vote on it.

The New York bill, A 5414B/S 1823-B, establishes a civil cause of action for employees who are subjected to an abusive work environment. The bill defines an abusive work environment as "a workplace in which an employee is subjected to abusive conduct that is so severe that it causes physical or psychological harm to such employee, and where such employee provides notice to the employer that such employee has been subjected to abusive conduct and such employer after receiving notice thereof, fails to eliminate the abusive conduct."

Abusive conduct is defined as "conduct, with malice, taken against an employee by an employer or another employee in the workplace, that a reasonable person would find to be hostile, offensive and unrelated to the employer's legitimate business interests." The severity, nature and frequency of the conduct should be considered in determining liability. The bill gives the following examples of abusive conduct:

- Repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets;
- Verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating; and
- The gratuitous sabotage or undermining of an employee's work performance.

Factors from which malice can be inferred include "outward expressions of hostility, harmful conduct inconsistent with an employer's legitimate business interests, a continuation of harmful and illegitimate conduct after a complainant requests that it cease or displays outward signs of emotion or physical distress in the face of the conduct, or attempts to exploit the complainant's known psychological or physical vulnerability."

The bill provides employers with an affirmative defense when the employer "exercised reasonable care to prevent and promptly correct the abusive conduct which is the basis of such cause of action and the plaintiff unreasonably failed to take advantage of the appropriate preventive or corrective opportunities provided."

The affirmative defense is not available when the abusive conduct "culminates in a negative employment decision with regard to the plaintiff." Further, employers are afforded the affirmative defense that "it made a negative employment decision with regard to the plaintiff which is consistent with such employer's legitimate business interests." The bill also provides employees with a cause of action for retaliation.

Remedies for an employer found liable include injunctive relief, reinstatement, removal of the offending party from the plaintiff's work environment, reimbursement for lost wages, medical expenses, compensation for emotional distress, punitive damages and attorney's fees. Under the New York bill, an employer found to have caused or maintained an abusive work environment that did not result in a negative employment decision cannot be held liable for punitive damages and damages for emotional distress will be capped at \$25,000.

Therefore, it appears that we may be on the cusp of a new era of legislation and legal precedent targeted at preventing and punishing workplace bullying. Indeed, it seems inevitable that some form of the HWB will become law, whether in New York or elsewhere, and that once the first state adopts an anti-bullying statute others will shortly follow. The *Mendez* case, discussed above, should serve as a cautionary tale to employers about the potential for huge damage awards should such legislation be passed. In the interim, employers are faced with significant uncertainty with respect to how to deal with workplace bullying. We suggest that employers become proactive and take immediate steps to prevent workplace bullying. This will ensure that employers are better prepared to defend against a cause of action for workplace bullying.

Steps Employers Can Take

There are several steps that an employer can take to address workplace bullying. First, most employers' harassment and discrimination policies do not cover workplace bullying. Such policies can be revised to prohibit harassment that is based on factors other than those protected by federal, state and local discrimination laws. Codes of conduct and disciplinary policies should likewise be revised. Employers can use the examples of abusive conduct set forth in the New York bill, and other proposed legislation, as a guide for appropriate additions to these policies.

Once these policies are revised, they should be circulated to all employees. Furthermore, employers should take seriously any complaint by an employee who alleges that he or she is the victim of workplace bullying. Such complaints should be investigated promptly and fully in the same manner as other harassment complaints. Employers also should consider providing management training to supervisory employees in order to cut down on complaints of bullying.

Finally, employers should have a zero tolerance policy for workplace bullying. There is no denying that most workplaces will have employees with different management styles and personalities, and an ordinary dose of tension, stress and conflict. However, when conduct "crosses the line" and rises to the level of bullying, supervisors or other employees who engage in

bullying should immediately be disciplined. Employers should seek the assistance of counsel in revising these policies and addressing any incidents of bullying, as well as to keep abreast of the developing legislation and jurisprudence on workplace bullying. By taking proactive action, employers can minimize the impact of the workplace bullying legislation that is bound to come to light in the near future, and in the meantime, maintain a safer and more productive workplace.

Jason Habinsky *is counsel and Christine M. Fitzgerald is an associate at Hughes Hubbard & Reed.*

Endnotes:

1. One notable exception to this occurred in Nevada. The bill introduced in Nevada in 2009 attempted to expand the state's civil rights code to include abusive conduct as an illegal employment practice.
2. The 16 other states are Connecticut, Hawaii, Illinois, Kansas, Massachusetts, Missouri, Montana, Nevada, New Jersey, New York, Oklahoma, Oregon, Utah, Vermont, Washington and Wisconsin.
3. The Illinois Senate passed a bill that would cover only public sector employees.

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Attachment 02

Placement on Paid Administrative Leave Memorandum Form

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Ventura County ????????????????

M E M O R A N D U M

Date: September 14, 2010
To: ??? EE ???
From: ??? MGR ???, ??TITLE??
RE: Placement on Paid Administrative Leave

You are hereby placed on paid administrative leave while Management of this Office, ITSD, and County Labor Relations continue to analyze and come to a proper conclusion as to how to best respond to potential misconduct by you. When deemed appropriate by ??DEPT/AGENCY?? Management, you will be apprised of our decision(s).

While on paid administrative leave, the following instructions are to be considered direct orders, and any failure by you to fully comply with any of them will, at minimum, be considered to be an intentional and inexcusable neglect of duty, willfully disobedient, insubordinate, failing of good behavior and both inimical to, and incompatible with, the public service and will, in and of itself, be sufficient cause for your dismissal.

During this period, you are still deemed to be an employee of this Office. Other than as specifically directed/ordered by me, you are to refrain from directly or indirectly communicating with anyone in or from this workplace or otherwise conducting any other County business. Your employment responsibilities are immediately modified as follows:

- 1) Authorization for the possession of any County or Office identification card(s), access card(s) and/or keys is revoked and these items are to be immediately turned over to me.
- 2) Until further notice, you have no access to, and are to have no contact with, the Office of the ??DEPT/AGENCY??, its programs, its facilities, its equipment and/or its personnel. You are to directly contact ONLY me @ (805) 654-???? or (ONLY in my absence) Mr. ??? ??? of County Labor Relations @ (805) 654-???? or (805) 850-????, to request permission to enter any County facility (including parking areas) prior to doing so. Of course, approval to do so will not be unreasonably withheld.

- 3) You are prohibited from attempting to access any County of Ventura electronic / computerized system or program.

- 4) While on Administrative Leave, your assigned post of duty is your home. Your hours of duty are 8:00 a.m. to 5:00 p.m., Monday through Friday. Your lunch hour is from 12:00 noon to 1:00 p.m.
 - A) Our records show your cell phone number to be (805) ???-?????. If that is incorrect and/or you have a hard (land) line to your home, you are to immediately inform me and give me the correct number(s). You are to remain available *at home* to promptly respond to any call to that phone that might order to return to our offices.

 - B) During the above-specified hours of duty, you are to remain in a condition so that you can promptly (within 30 minutes) respond to a call to come to work.

 - C) Should you have a true need for any reason to leave your assigned post of duty during your assigned hours of duty, you must first receive permission from either me or (ONLY in my absence) from Mr. ???. You are to request and obtain permission to do so prior to actually leaving your post of duty. Of course, this specific requirement does not apply to your lunch hour and/or non-work hours.

To reiterate, your failure to fully comply with any aspect of the foregoing will be considered, at minimum, to be an intentional and inexcusable neglect of duty, willfully disobedient, insubordinate, failing of good behavior and both inimical to, and incompatible with, the public service, and will be, in and of itself, sufficient cause for your dismissal.

There should be no questions regarding the foregoing. However, should any arise; you may contact me @ the above listed number.

Acknowledged as Received

??? (EMPLOYEE) ???

Attachment 03

Employee Complaint Resolution Process

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Contact Numbers

Agency/Department Equal Employment Opportunity Coordinator:

County Human Resources Personnel Analyst for your department:

County Equal Employment Opportunity Officer:

Yolanda Walker 654-2602

Unions:

- SEIU 644-8291
- IUOE 656-1852
- VCPFA 484-8844
- VCDSA 987-9785
- SPOAVC 477-1605
- CNA 818-240-1900
- CJAAVC 654-2716
- VCSCOA 644-6530
- VCPPOA 654-2112
- VEA 477-7231



**Employee
Complaint
Resolution
Process**

County of Ventura



County of Ventura
 Human Resources Division
 800 S. Victoria Avenue, #1970
 Ventura, CA 93009
 Phone: 805-654-5129
 Fax: 805-654-2665
 www.ventura.org/hr

INTRODUCTION

This informal complaint procedure is designed to assist employees who believe they have been discriminated against or harassed in the course of their employment with the County of Ventura.

WHAT IS DISCRIMINATION OR HARASSMENT?

Discrimination is defined as "any act, practice or course of conduct which is not job-related and which constitutes or results in inequality of treatment of any person or group of persons because of race, color, religion, national origin, sex, age or functional limitation." In addition, the County wants to resolve any work situation which creates a hostile or offensive work environment and encourages employees to make their concerns known as soon as the offensive behavior occurs. By County policy and our complaint resolution process described below, we can insure that Ventura County is a good place to work for all.

PROCEDURES

If you have any concerns or a complaint regarding harassment, discrimination, or retaliation, follow these simple steps. If any step results in a "no action" or the issue is not addressed adequately, you are encouraged to move on to the next step. This procedure will be utilized and made available within each County agency/department.

1. **Talk** to your supervisor regarding the problem.
2. **Meet** with your agency/department Equal Employment Opportunity (EEO) Coordinator. The EEO Coordinator is responsible for informally resolving problems in your agency/department.
3. **Discuss** your concerns with your assigned Personnel Analyst at the County Human Resources Reception Desk at (805) 654-5129.

If the investigation reveals any illegal discrimination, harassment, retaliation, or other inappropriate actions, the County's Human Resources Division will attempt to resolve the matter. If any improper behavior or action by County employees is documented, Human Resources has the duty, and will recommend disciplinary action up

to and including dismissal of the responsible party(ies).

4. **If the Human Resources process does not work** to your satisfaction, a formal complaint may be filed with your Union Representative, or the Civil Service Commission (see Personnel Rules and Regulations).
5. **If you are not satisfied with the results** of the above steps, you may file a complaint at any time and at any step in the process with the Federal or State enforcement agency. Those enforcement agencies will conduct an independent review and make appropriate recommendations.



Attachment 04

Causes for Disciplinary Action

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CAUSES FOR DISCIPLINARY ACTION

- * Fraud in securing employment
 - * Incompetency
 - * Inefficiency
 - * Inexcusable neglect of duty
 - * Physical disability
 - * Mental disability
 - * Insubordination
 - * Dishonesty
 - * Drunkenness on duty
 - * Intemperance
 - * Addiction to the use of narcotics or habit forming drugs
 - * Inexcusable absence without leave
 - * Conviction of a felony/misdemeanor involving moral turpitude
 - * Immorality
 - * Discourteous treatment of the public
 - * Discourteous treatment of other employees
 - * Willful disobedience
 - * Violation of Article IV of the Ventura County Ordinance Code
 - * Corrupt use of official authority or influence
 - * Failure of good behavior
 - * Acts incompatible with the Public Service
 - * Acts inimical to the Public Service
 - * Improper political activity in violation of Article 24 (Rules and Regulations) or 1351 & 1351.1 of the Ordinance
- Sources: Section 2105 of County Personnel Rules and Regulations
Section 1345-1.4.13.1 of the Civil Service Ordinance

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Attachment 05

Sample Anti-Bullying Policy

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www.b21pubs.com/b21downloadables/Bullying_Policy/bullypol.doc

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[YOUR COMPANY]

ANTI-BULLYING POLICY

[YOUR COMPANY] is committed to providing all employees a healthy and safe work environment. [YOUR COMPANY] will ensure that procedures exist to allow complaints of bullying to be dealt with and resolved within [YOUR COMPANY], without limiting any person's entitlement to pursue resolution of their complaint with the relevant statutory authority. [YOUR COMPANY] is committed to the elimination of all forms of bullying.

This policy applies to all employees of [YOUR COMPANY]. It applies during normal working hours, at work related or sponsored functions, and while traveling on work related business. There will be no recriminations for anyone who in good faith alleges bullying.

DEFINITIONS

Bullying is unwelcome or unreasonable behavior that demeans, intimidates or humiliates people either as individuals or as a group. Bullying behavior is often persistent and part of a pattern, but it can also occur as a single incident. It is usually carried out by an individual but can also be an aspect of group behavior (see "mobbing" below). Some examples of bullying behavior are:

Verbal communication

- Abusive and offensive language
- Insults
- Teasing
- Spreading rumor and innuendo
- Unreasonable criticism
- Trivializing of work and achievements

Manipulating the work environment

- Isolating people from normal work interaction
- Excessive demands
- Setting impossible deadlines

Psychological manipulation

- Unfairly blaming for mistakes
- Setting people up for failure
- Deliberate exclusion
- Excessive supervision
- Practical jokes
- Belittling or disregarding opinions or suggestions

- Criticizing in public

Context is important in understanding bullying, particularly verbal communication. There is a difference between friendly insults exchanged by long-time work colleagues and comments that are meant to be, or are taken as, demeaning. While care should be exercised, particularly if a person is reporting alleged bullying as a witness, it is better to be genuinely mistaken than to let actual bullying go unreported.

Mobbing

Mobbing is a particular type of bullying behavior carried out by a group rather than by an individual. Mobbing is the bullying or social isolation of a person through collective unjustified accusations, humiliation, general harassment or emotional abuse. Although it is group behavior, specific incidents such as an insult or a practical joke may be carried out by an individual as part of mobbing behavior.

CONSEQUENCES OF BULLYING

Bullying is unacceptable behavior because it breaches principles of equality and fairness, and it frequently represents an abuse of power and authority. It also has potential consequences for everyone involved.

For those being bullied

People who have been bullied often suffer from a range of stress-related illness. They can lose confidence and withdraw from contact with people outside the workplace as well as at work. Their work performance can suffer, and they are at increased risk of workplace injury.

For the employer

Besides potential legal liabilities, the employer can also suffer because bullying can lead to:

- Deterioration in the quality of work
- Increased absenteeism
- Lack of communication and teamwork
- Lack of confidence in the employer leading to lack of commitment to the job

For others at the workplace

People who witness bullying behaviors can also have their attitudes and work performance affected. They can suffer from feelings of guilt that they did nothing to stop the bullying, and they can become intimidated and perform less efficiently fearing that they may be the next to be bullied.

RESPONSIBILITIES

Managers and supervisors

- Ensure that all employees are aware of the anti-bullying policy and procedures
- Ensure that any incident of bullying is dealt with regardless of whether a complaint of bullying has been received

- Provide leadership and role-modeling in appropriate professional behavior
- Respond promptly, sensitively and confidentially to all situations where bullying behavior is observed or alleged to have occurred

Employees

- Be familiar with and behave according to this policy
- If you are a witness to bullying, report incidents to your supervisor, President or Human Resources Director as appropriate
- Where appropriate, speak to the alleged bully(ies) to object to the behavior

IF YOU THINK YOU HAVE BEEN BULLIED

- Any employee who feels he or she has been victimized by bullying is encouraged to report the matter to his or her supervisor, or with Human Resources.
- Where appropriate, an investigation will be undertaken and disciplinary measures will be taken as necessary.