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Labor and Employment Alert: Workplace Bullying — a New Training Requirement in California — The Next Protected Category?

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Workplace bullying is a topic that is garnering a lot of attention. A new poll commissioned by CareerBuilder found that 28% of workers feel that they have been bullied at work and 19% of those workers have left their jobs because of the bullying. Twenty-Seven percent of those bullied are management employees (manager, director, team leader, vice president and above); 19% of employees bullied earn more than \$50,000 a year. The impact of workplace bullying on productivity is profound, and the legal ramifications are becoming more important every day.

On September 9, 2014, California enacted changes to its mandatory sexual harassment training program. These changes, effective January 1, 2015, require that all covered employers provide training related to workplace bullying. Currently, California law requires that all employers with 50 or more employees provide two hours of harassment training to all supervisors within six months of hire and provide refresher training every two years thereafter. The new requirement does not change the overall length of the required training – two hours – it just adds additional content. The new law requires employers to provide training designed to prevent workplace bullying.

The actual term used by the new California statute (AB2053) to describe workplace bullying is “abusive conduct.” According to the statute, “abusive conduct” means “conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive and unrelated to an employer’s legitimate business interests. Abusive conduct may include 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, or the gratuitous sabotage or undermining of a person’s work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.”

While the inclusion of abusive conduct/workplace bullying training as part of the regularly mandated California harassment training does not make abusive conduct/workplace bullying per se illegal, it may open

the door to other legal implications. For example, is the statute a “public policy” that can be used to support wrongful termination in violation of public policy claim? This question, and many more, will have to be answered in the coming months and years.

California is not the only state to enact a statewide workplace bullying related statute this year. In June 2014, Tennessee enacted the first statewide anti-bullying law. The Tennessee law is applicable only to public employers and provides that public employers are immune to bullying related lawsuits if they adopt policies that prohibit abusive conduct defined as “acts or omissions that would cause a reasonable person, based on the severity, nature, and frequency of the conduct, to believe that an employee was subject to an abusive work environment, such as: (A) Repeated verbal abuse in the workplace, including derogatory remarks, insults and epithets; (B) Verbal, non-verbal or physical conduct of a threatening, intimidating or humiliating nature in the workplace; or (C) The sabotage or undermining of an employee’s work performance in the workplace.”

Laws specifically designed to prohibit workplace bullying have been introduced in at least 26 states. Similar laws have been adopted in Britain, Canada and Australia. In fact, the Australian State of Victoria made workplace bullying a criminal offense after a 19-year-old worker committed suicide in response to repeated workplace bullying.

While it may be years before being bullied in the workplace becomes a protected category—if ever—the proactive employer should work with counsel to design and implement policies to stay one-step ahead of this trend. If you would like to discuss this, or any other aspect of employment law, please contact your Vorys lawyer.