

Workplace Bullying: Review of U.S. Federal Court Cases

Rickey E. Richardson
Tarleton State University

Melanie S. Richardson

ABSTRACT

“Workplace bullying” goes beyond ordinary disagreements at work, even those that are heated exchanges with raised voices. It typically manifests itself as malicious, intentional, repeated, abusive behaviors which harm the bullied employee. Among the potential consequences to employees are job loss and severe health problems, while some negative effects experienced by employers can be increased absenteeism, turnover, and costs. Currently, there is no specific federal cause of action in the United States aimed at preventing such abuse. Researchers previously analyzed U.S. federal court cases to determine how workplace bullying is being treated by the courts. In order to contribute to this research and bring it more up to date, this study focused on federal court cases reported during the time period of November 2014, through December 2021. Westlaw, a comprehensive legal database, was used to collect cases referencing workplace bullying and which were reported during the time period under study. Content analysis was employed to analyze the data. Conclusions reached include workplace bullying is a continuing and widespread federal court issue, a significant percentage of plaintiffs represent themselves, the difficulty of the alleged injured party to prevail, and some employers are addressing the issue through the use of organizational policies. Study implications include employers should recognize the potential negative consequences of bullying in their workplaces and take steps to prevent it. Developments in both federal and state laws related to workplace bullying, as well as how courts interpret such laws, appear to warrant future study.

Subjects: Business Law, Human Resource Management and Organizational Behavior

INTRODUCTION

Workplace bullying continues to be a significant workplace issue in the United States (U.S.), with both employees and employers experiencing negative consequences as a result. Those bullied, known as targets, may suffer from a variety of health issues including severe anxiety, disruption of sleep, poor concentration, PTSD, depression, panic attacks, high blood pressure, cardiovascular disease, heart attack, stroke, and others (Namie, 2003; Namie, 2007; Nielsen & Einarsen, 2012; Yamada, 2003). In addition, targets often lose their jobs either voluntarily, through constructive discharge, termination, or transfers (Vega & Comer, 2005; Workplace Bullying Institute, 2021a). Co-workers of the target who observe the bullying may also “suffer personal stress that has a negative impact on their productivity as well” (Vega & Comer, 2005, p.106). From an employer viewpoint, examples of potential negative outcomes for organizations can include: reductions in productivity, increased absenteeism and turnover, reduced employee commitment, increased medical claims, increased litigation costs, increased workers compensation expenses, recruitment issues, brand damage, and decreased profits (Namie & Namie, 2004;

Piotrowski, 2012; Society for Human Resource Management, 2012; Vega & Comer, 2005; Yamada, 2008).

Defining the Term

“Workplace bullying” goes beyond ordinary disagreements at work, even those that are heated exchanges with raised voices. Definitions of the term are varied but tend to point out such behavior involves repeated, intentional acts which are malicious, abusive, and harmful to the bullied employee (Dhar, 2012; Namie, 2003; Smith & Coel, 2018; Vega & Comer, 2005). Notelaers et al. (2019) found, “the phenomenon crystallises and manifests itself through negative social behaviours, such as humiliating remarks, gossiping, finger pointing, or excluding employees from the social group or social activities” (p. 58). While Nielsen and Einarsen (2018) observed, “conceptually, it is the persistency, the systematic nature, and the feeling of being trapped and victimized by the harassment, which distinguishes bullying from other forms of aggression and mistreatment in the workplace” (p. 73).

The Workplace Bullying Institute (WBI) is a repository of workplace bullying information. WBI’s mission centers on the “prevention and correction of abusive conduct at work through education of targets and the public, training of professionals,” and “creation of evidence-based solutions for organizations and unions” (WBI, 2021b). It also conducts research, supports and collects research of others, and advocates for legislation to help in the prevention of bullying in the workplace. The WBI defines workplace bullying as “repeated, health-harming mistreatment by one or more employees of an employer: abusive conduct that takes the form of verbal abuse; or behaviors perceived as threatening, intimidating, or humiliating; work sabotage; or in some combination of the above” (WBI, 2021b).

The Society for Human Resource Management (SHRM) is a professional organization with a mission “to empower people and workplaces by advancing HR practices and by maximizing human potential” (SHRM, 2022a). SHRM has over 300,000 members, approximately 97% of them working for companies located in the U.S. It provides research findings, sample policies, best practices, and more to its members (SHRM, 2022b). SHRM defines workplace bullying as “persistent, offensive, abusive, intimidating or insulting behavior or unfair actions directed at another individual, causing the recipient to feel threatened, abused, humiliated or vulnerable” (SHRM, 2012, p.2). To assist its members in their attempts to prevent workplace bullying in their organizations, SHRM published a sample policy designed to help identify bullying behaviors. The policy contains a list of 18 bullying behaviors. The list includes, but is not limited to: “using obscene or intimidating gestures, personal insults and use of offensive nicknames, public humiliation in any form, and unwanted physical contact, physical abuse or threats of abuse to an individual or an individual’s property” (SHRM, n.d., par. 4).

Persistence and Prevalence

Bullying in the U.S. workplace is both persistent and prevalent. Lutgen-Sandvik et al. (2007), estimated 35%-50% of employees in the U.S. have experienced workplace bullying (p. 854). While Piotrowski (2012), observed 50% of U.S. employees identified as having experienced bullying in the workplace. These findings are similar to those reported by the WBI and the SHRM.

Through Zogby Analytics, the WBI has completed five U.S. workplace bullying related surveys over the time period of 2007 to 2021. Findings of the surveys indicate the issue of bullying in U.S. workplaces affects a sizeable number of individuals and is both persistent and prevalent (WBI, 2007; WBI, 2010; WBI, 2014; WBI, 2017; WBI, 2021a). Table 1 shows a recap of selected findings of the surveys.

Types of Experiences	2007	2010	2014	2017	2021
Experiencing WB now or within last year	13%	9%	7%	9%	13%
Have Experienced WB before, but not within the last year	24%	26%	20%	10%	17%
Have witnessed WB of others	12%	15%	11%	15%	13%
Know (but haven't seen) WB happen to others	n/a	n/a	10%	4%	13%
Total affected by WB	49%	50%	48%	38%	49%

Table 1. Persistence and Prevalence of Workplace Bullying (WB) in the United States.

With coronavirus increasing the need to work remotely, the 2021 WBI survey added questions to assess the existence and prevalence of workplace bullying for remote workers. Results revealed 43.2% of remote workers surveyed reported being directly bullied, with an additional 18.3% responding they have witnessed others being bullied, for a combined total affected of 61.5% (WBI, 2021a). This combined percentage (61.5%) of remote workers affected by workplace bullying exceeds the overall rate of the total respondents affected by workplace bullying of 49% as noted in Table 1 above (WBI, 2021a). Reasons for the increased incidence reported by remote workers are unknown, but speculation could suggest there may be something about not being in the physical presence of another person that contributes to more aggression.

SHRM surveyed member human resource professionals across a broad range of industries regarding their organization’s experience with workplace bullying. Seventy-seven percent of survey respondents represented companies with only U.S. operations, with the remaining representing multinationals. Findings revealed 51% of respondents reported their organizations had experienced an incident of workplace bullying. This closely aligns with the results of the WBI surveys for individuals shown in Table 1 (SHRM, 2012) and the observations of Lutgen-Sandvik et al. (2007) and Piotrowski (2012).

Despite the reported persistence and prevalence of workplace bullying in the U.S. and its potentially serious consequences on both individuals and organizations, there is currently no specific federal cause of action aimed at preventing or punishing such abuse (Richardson et al., 2016; Tomkowicz & Fiorentino, 2017; Weisel, 2016). Even so, workplace bullying has been alleged in some federal court cases.

Relevance

This research reviews cases brought in U.S. federal courts in which workplace bullying is alleged to have occurred. Martin and LaVan (2010) and Martin, Lopez and LaVan (2009) observed that such workplace bullying related case reviews provide information to human resource professionals and attorneys which is based upon facts of actual cases as opposed to surveys or other methodologies. By reviewing court cases it is ideally the impartial opinions of third parties (i.e. judges), free from emotion, that are being considered. These opinions enable the contributions of this study to include fact based information about the continued existence of bullying in the workplace, its prevalence, persistence, and impact; as well as actions taken by employers to help prevent or eliminate such behavior.

Additionally, maintaining and promoting a healthy workplace culture, which includes being free of bullying, has become even more important as U.S. employers grapple with labor shortages and retention. As Sull, Sull, and Zweig (2022) wrote about the recent rise in employee turnover, “companies with a reputation for a healthy culture ... experienced lower-than-average turnover” (p.6) and “a toxic culture is the biggest factor pushing employees out the door” (p. 9). For employers, managers, and human resource professionals concerned with ensuring the cultures of their organizations are healthy and free of toxicity, this study provides information that may help raise awareness of the potential for bullying to occur in

their workplaces, understand the significant consequences of such bullying on their employees and organizations if it occurs or is occurring, and take steps to ensure their workplaces are free from bullying. It may also aid in the development of policies, procedures, and training to help improve workplace quality, improve retention, and potentially help reduce liability from workplace bullying claims.

In an effort to understand how the issue of workplace bullying is being addressed through federal courts, an explanation of court systems in the U.S., review of prior studies which analyzed related court cases, and the associated legislative environment will help lay the ground work for proceeding.

LITERATURE REVIEW

Courts

In the United States, there exists both state and federal court systems. Two broad categories of cases heard in both state and federal courts are criminal and civil. Criminal prosecutions potentially subject a defendant to incarceration and are brought by prosecutors who are charged with enforcing laws. Civil cases are brought by private parties. Civil actions typically seek monetary damages and/or injunctive relief. Injunctive relief “restrains a party from doing certain acts or requires a party to act in a certain way” (Cornell Law School, 2020). An example of a civil action would be when a person sues their former employer seeking monetary damages for an alleged wrongdoing.

In the federal system, there are 94 district courts (trial courts), 13 circuit courts (appeals courts), and one Supreme Court. There are also a few trial courts which have been established by Congress to handle specialized matters such as international trade, federal tax disputes, and claims against the U.S. government. The district and circuit courts are spread throughout the United States. The United States Supreme Court, located in Washington, D.C., “is the highest court in the American judicial system, and has the power to decide appeals on all cases brought in federal court or those brought in state court but dealing with federal law” (United States Department of Justice, n.d.).

According to the United States Department of Justice (n.d.),

Federal courts are courts of limited jurisdiction, meaning they can only hear cases authorized by the United States Constitution or federal statutes. ... Sometimes, the jurisdiction of state courts will overlap with that of federal courts, meaning that some cases can be brought in both courts. The plaintiff has the initial choice of bringing the case in state or federal court. However, if the plaintiff chooses state court, the defendant may sometimes choose to “remove” to federal court.

This research focuses on civil cases brought in federal court. Such cases typically rely on federal law or a combination of federal and state law. Four workplace bullying related prior studies were found which focused on a review of combined federal and state cases or just federal cases.

Prior Studies

The current study updates the following prior studies by focusing upon cases decided during the time period of November 2014, through December 2021, which is later in time than any of the existing studies of Martin and LaVan, (2010), Martin, Lopez, and LaVan (2009), Yamada, (2013a), and Richardson, Jones and Hall (2016). William Martin and Helen LaVan (Martin & LaVan, 2010) used the Lexis/Nexis database to search litigated cases from 2003 to 2007 related to workplace bullying. Of the 273 federal and

state court cases identified, a random sample of 45 were selected for analysis. Results showed approximately 73% of the cases sampled were filed in federal district court. Additionally, they found the legal cause of action most often utilized some aspect of Title VII of the Civil Rights Act (race discrimination 35.6%, gender discrimination 28.9%, national origin discrimination 6.7%, and religious discrimination 2.2%). Other causes of action relied upon by plaintiffs in the litigated cases analyzed included United States constitutional issues and intentional infliction of emotional distress (Martin & LaVan, 2010).

The research of Martin, Lopez, and LaVan (2009) analyzed litigated cases between 2006 and 2008 searching for those that mentioned workplace bullying. The Bureau of National Affairs database, which includes both federal and state cases, was utilized for data gathering. Noting there were no federal or state laws providing specific legal recourse for workplace bullying victims, the researchers sought to identify the legal arguments and laws utilized in cases involving workplace bullying. Their analysis found plaintiffs most frequently pursued legal remedies utilizing Title VII of the Civil Rights Act (retaliation, harassment, and discrimination). Other federal statutes used included the Age Discrimination in Employment Act, Fair Labor Standards Act, Equal Pay Act, and Family Medical Leave Act. To a lesser extent, plaintiffs cited constitutional amendments as well as state laws. Of the 524 litigated cases deemed usable by the researchers, the plaintiff prevailed in 82. In summary, the researchers stated “what the present authors believe is that the workers who filed these lawsuits were those who had claimed their rights under various civil rights laws and who were then retaliated against” (Martin et al., 2009, p.151).

David C. Yamada’s article, “Emerging American Legal Responses to Workplace Bullying” (Yamada, 2013a) recaps his scholarly and legal work related to workplace bullying since the late 1990’s. His underlying research focused, in part, upon workplace bullying related cases in courts of appeals, state supreme courts, and the U.S. Supreme Court. The causes of action he identified relied upon by plaintiffs included intentional infliction of emotional distress, discrimination, harassment, and hostile work environment. Actions also arose from employer liability laws, Title VII of the Civil Rights Act, the Americans with Disabilities Act, and regulations of the Occupational Safety and Health Administration.

Yamada (2013a) observed:

the absence of a baseline legal protection against workplace bullying left a huge void that other legal claims could not fill. After considering employment discrimination, labor relations, and occupational safety and health laws, as well as myriad speech protections, I concluded that many targets of severe workplace bullying essentially stood without legal protections against the abusive mistreatment. (p.332)

Yamada determined in order to provide the necessary legal protections, statutory legislation was needed to address workplace bullying. This led to his drafting of what is thought to be the first statutory bill model language. Now known as the Healthy Workplace Bill (HWB), it is described as “an act addressing workplace bullying, mobbing, and harassment without regard to protected class status” (Yamada, 2013a, p. 24). The goal was to create statutory protection against workplace bullying through state legislatures. The HWB proposed bill language includes a specific cause of action regarding workplace bullying (termed abusive work environment), liability for both employers and employees, and provided for damages, both compensatory and punitive. Additionally, the HWB allows plaintiffs to file claims directly with a state court and includes protection against retaliation. Through a grassroots effort, advocates and volunteers lobbied state legislatures seeking support and sponsorship of the HWB (Yamada, 2013a).

The work of Richardson et al. (2016) analyzed U.S. federal court cases from January, 2009 through October, 2014 in which workplace bullying was alleged. Using the Westlaw legal database, the researchers identified 93 cases meeting their criteria. These cases were analyzed noting place of origination, type of employer, prevailing party, and cause(s) of action relied upon. Their analysis showed the case origination was wide spread across the United States with 32 states, the District of Columbia, and Puerto Rico identified. The types of employers represented in these cases were both public (state, borough/city/town, USPS, county, and school district) and private employers. The litigated cases analyzed found the vast majority of plaintiffs were unsuccessful in seeking a legal remedy for workplace bullying. The authors also found the most common causes of action utilized included various forms of discrimination, hostile work environment, retaliation and harassment. Other causes of action utilized in the litigated cases included the Americans with Disabilities Act, infliction of emotional distress, U.S. constitution claims, disparate treatment, wrongful discharge, and the Family and Medical Leave Act (Richardson et al., 2016). The authors pointed out workplace bullying “can be found almost anywhere and in any type of employer in the U.S.” (Richardson et al., 2016, p. 123). However, significantly the courts overwhelmingly found in favor of the alleged responsible party (Richardson et al., 2016).

The legislative environment will typically provide a glimpse of issues of importance at both the state and federal level. When considering this environment as it relates to workplace bullying, the WBI observes, “the U.S. remains the sole western industrialized nation to not have laws or health and safety regulations addressing bullying in addition to status-based harassment” (WBI, 2021a, p.12).

Legislative Environment

As mentioned, currently there is no specific cause of action provided by federal law which addresses workplace bullying (Richardson et al., 2016; Tomkowicz & Fiorentino, 2017; WBI, 2021a; Weisel, 2016). Rather, as noted by Weisel (2016), in the U.S., existing federal laws such as the Title VII of the Civil Rights Act of 1964 are utilized to seek legal remedies in the federal courts.

Considering the jurisdictional scope of U.S. federal courts, it is possible given the right circumstances, if there is a state law prohibiting workplace bullying it could be litigated in the federal court system. A majority of state legislatures in the U.S. have at least considered the workplace bullying issue. As of 2021, 31 states have introduced a legislative bill to address workplace bullying to some extent (Healthy Workplace Bill, 2021). However, such bills typically face significant opposition and become stalled in the legislative process. It should be noted however, the Commonwealth of Massachusetts has recently introduced Senate Bill S2723 which states it is “an Act addressing workplace bullying, mobbing, and harassment, without regard to protected class status while promoting healthy workplaces (Commonwealth of Massachusetts, 2022, p. 1). This bill is currently working through the committee process of the Massachusetts legislature. Three states and one U.S. territory which have actually passed legislation related to workplace bullying are California, Tennessee, Utah, and Puerto Rico (Santos & Colon-Acevedo, 2020; Healthy Workplace Bill, 2021; Yamada, 2015).

California

Although California was the first state to introduce the Healthy Workplace Bill in 2003, the bill eventually died in committee. Instead, California addressed workplace bullying in a significantly more limited way in 2014 by amending the state’s existing employment discrimination and employment law to include abusive conduct (workplace bullying). The amendment requires employers with 50 or more employees to ensure supervisory employees receive a minimum of two hours of training with regard to sexual harassment within six months of becoming a supervisor. It also required abusive conduct be

included as a part of the training (State of California, 2014; Yamada, 2015). The California legislation defined abusive conduct as:

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. (State of California, 2014, p. 97).

It is important to note that the California legislation does not create specific cause of action for workplace bullying (Yamada, 2015).

Tennessee

Initially, Tennessee adopted the Healthy Workplace Act in 2014 for state and local governmental entities. The bill required the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to create and publish a model policy addressing abusive conduct (workplace bullying) by 2015 (Yamada, 2015). The Act did not create a specific cause of action, but instead focused upon the prevention of employer liability. As noted by Yamada (2015), "adoption of the state's model policy or one that comports with its essential features will insulate a public entity from liability" (p.54). The model policy was intended to: 1) provide "assistance to employers in recognizing and responding to abusive conduct in the workplace, and 2) prevent retaliation against any employee who has reported abusive conduct in the workplace" (Yamada, 2015, p.54). The Healthy Workplace Act defined abusive conduct as: "repeated verbal abuse in the workplace, including derogatory remarks, insults, and epithets"; "verbal, nonverbal, or physical conduct of a threatening, intimidating, or humiliating nature in the workplace," or "the sabotage of undermining of an employee's work performance in the workplace" (Rutchow, n.d., p. 1). In 2019, the Governor signed an amendment expanding the Tennessee Healthy Workplace Act to include private sector employers (Rutchow, n.d.).

Utah

In 2015, Utah enacted HB 216, "The Workplace Abusive Conduct Amendments to Promote a Healthy Workplace" modifying the Utah State Personnel Management Act (State of Utah, 2015). The bill requires departments to provide training to employees of state executive agencies "to educate employees and supervisors about how to prevent abusive workplace conduct" (State of Utah, 2015, p 2). The Utah legislation defines abusive conduct as:

verbal, nonverbal, or physical conduct of an employee to another employee that, based on its severity, nature and frequency of occurrence, a reasonable person would determine: a) is intended to cause intimidation, humiliation, or unwarranted distress, b) results in substantial physical or psychological harm as a result of intimidation, humiliation, or unwarranted distress; or c) exploits an employee's known physical or psychological disability (State of Utah, 2015, p 2).

The bill requires the training to include information on what constitutes abusive conduct, resources available to employees that are victims of abusive conduct, and the grievance process if one feels as though they have been a victim. It does not create a specific cause of action for abusive conduct (State of Utah, 2015).

Puerto Rico

In 2020, Puerto Rico, a U.S. territory, enacted the first legislation in the United States specifically aimed at workplace bullying. Unlike the state legislation discussed above, HB 306 creates a specific cause of action for workplace bullying. It also requires employers, both public and private: adopt policies prohibiting bullying in the workplace, inform employees of the new law and their rights, and create a process to investigate and address reported incidents of workplace bullying (Santos & Colon-Acevedo, 2020). The Puerto Rico Department of Labor defined unlawful workplace conduct with the following guidelines:

- Must be malicious
- Must be unwanted
- Must be arbitrary, unreasonable, or capricious
- Can be verbal written or physical
- Must have occurred repeatedly by the employer, its agents, supervisors or employees
- Must be oblivious to the legitimate interests of the company
- Must violate the employee's protected constitutional rights, such as the inviolability of the dignity of the person, protection of the worker against risks to their health or personal integrity in their work or employment
- Must create an intimidating, humiliating, hostile or offensive work environment not suitable for a reasonable person to perform their duties or tasks in a normal way. (Santos & Colon-Acevedo, 2021, p. 1)

Under this law, employees of both public and private employers have a cause of action for workplace bullying, but must first exhaust internal processes within the company and mediation with the Alternate Dispute Resolution Bureau of the Judiciary before filing a lawsuit (Santos & Colon-Acevedo, 2021). In addition, Santos & Colon-Acevedo (2021) state “aggrieved employees would be entitled to remedies greater than those under local anti-discrimination statutes” (p.1).

After forming a basis of understanding about workplace bullying, we determined the appropriate methodology upon which to proceed with our study. Our methodology included identification of the data source, research method, and study questions.

METHODOLOGY

In order to contribute to the understanding of how the issue of workplace bullying is being treated in litigated cases and bring prior research up to date, this study focused on U.S. federal court cases reported during the time period of November 2014, through December 2021. To perform this research, Westlaw, a comprehensive legal database which reports cases from all federal courts, as well as others, was used as the data collection source. Search terms used were “bullying” and “workplace bullying.” The searches resulted in 1138 pages of data consisting of 111 case entries.

The initial data population of 111 cases was reviewed to determine if there were any duplicates. Duplicates can arise when there has been reporting of a significant decision in a case (such as a ruling on a summary judgment motion) or a case has been decided at the district court level and is then appealed to a court of appeals. In this instance, both the district court opinion and court of appeals opinion appear in the time frame under review. Summary judgment motions are decided prior to a full trial and usually consist of a party asking the court to dismiss the case in whole or in part. Typically, when ruling on a

summary judgment motion, the court will rule the case is – a) without merit and dismisses it, or b) without merit in part and potentially meritorious in other parts resulting in the case continuing on its claims considered possibly to be meritorious, or c) potentially entirely meritorious resulting in the case continuing in its entirety. Duplicates were found to exist in 7 cases which reduced the total population to 94 unique cases.

The research method utilized to review the data gathered was content analysis. According to Neuendorf and Kumar (2015), “content analysis has been defined as the systematic, objective, quantitative analysis of message characteristics (p. 1). Bengtsson observed, “content analysis can be used on all types of written texts no matter where the material comes from” (2016, p. 10). “The conclusion of the typical content analysis is the statistical summarization and analysis of the coded variables across many units of analysis” (Neuendorf, 2019, p. 212). The method enables a researcher to “present a summary of themes, categories/sub-themes and sub-categories/sub-headings as a table to allow the reader to get a quick overview of the results” (Bengtsson, 2016, p. 12). Content analysis can be performed manually or through the use of computer software. For this study, the analysis was performed manually. A coding process was established in order to analyze the cases. In an effort to provide opportunities for comparison of this study’s findings with prior research, codes were based upon the following questions:

- What was the year of decision?
- Was the decision made by a district court or appeals court?
- Did the plaintiff act in a “pro se” capacity?
- Where did the cases originate?
- What type of employer was involved?
- Which party prevailed?
- What were the causes of action relied upon?

The number of cases in particular decision years helps to determine if workplace bullying is a continuing issue. Court levels reveal whether or not the case was resolved at the trial court level or upper court level. Of the two levels, upper court level decisions may be of more importance when guiding the bringing of future lawsuits and court decisions therein. When a person represents themselves (“pro se”) they are typically at a disadvantage when facing trained attorneys. This disadvantage can result in the loss of a case, even if the merits of bringing the case were sound. It can also mean that attorneys were unwilling to take the case. If the number of pro se litigants increases over time, it may be an indication that attorneys, without a specific cause of action against workplace bullying to rely upon, are becoming less and less likely to accept employment to pursue such claims. Case locations shed light on whether or not the issue of workplace bullying is confined to a certain geographic area or is more widespread and consequently an issue of greater significance to businesses. Which party prevails is an important indicator of whether or not parties claiming to be victims are likely to be successful by resorting to the courts. While the causes of action relied upon, especially in light of no federal cause of action aimed at preventing workplace bullying, provide guidance as to what laws may be relied upon while potentially using the bullying experienced as contributing to the violation of such laws.

Reliability can be a concern when using multiple coders in the process of content analysis. This potential concern was addressed by using only one coder for this study. The coder has an earned law degree and substantial experience in reading and interpreting legal cases. As added measures to achieve accuracy, the coder performed recounts and reviews of findings during the analysis process.

According to Neuendorf and Kumar (2015),

external validity is the extent to which results of a study may be generalized beyond the study sample at hand. Thus, both the careful selection of a population of messages

to which the researcher hopes to generalize and the representativeness of the sample taken from that population are of concern to the content analyst. (p. 3)

To help ensure the external validity of this study, multiple search terms were employed and the entire population of reported cases found were reviewed.

Following this methodology led to application of the study questions to the data set, the results of which help shed light as to the status of workplace bullying in the U.S. federal court system.

RESULTS

Analysis of the cases using the study questions resulted in the determination of decision years, court levels, whether or not those alleging workplace bullying had occurred represented themselves or were represented by an attorney, case locations, employer types, prevailing parties, and causes of action relied upon. Some of the prominent observations of each determination included: a marked increase in the number of yearly cases occurred in 2017, the overwhelming majority of decisions were in the district court, claiming parties represented themselves approximately one-third of the time, case locations were spread across the United States, employer types were varied, the party alleging the occurrence of workplace bullying prevailed in only one of the cases which had reached a final decision, and causes of action related to Title VII of the Civil Rights Act were the most frequently relied upon. More details about the results to each study question follow.

Year

The year in which the decisions were rendered and the number of decisions for each year are shown in Table 2. The number of cases doubled in 2017 over the prior year, remained fairly consistent through 2020, and then declined in 2021. It is unknown what may have caused the doubling in 2017 or the decline in 2021. Perhaps it is conceivable the “Me Too” movement may have had some effect in 2017. The “Me Too” movement, an effort to raise awareness and provide healing support to victims of sexual violence, originally called “me too.” and now referred to in other variations of the term including “#MeToo,” extends to approximately 85 countries (me too., 2022; Sigurdardottir & Halldorsdottir, 2021). In 2017, the movement went viral on social media and expanded as victims told their stories of sexual harassment and sexual violence (Ballard & Easteal, 2018; Sigurdardottir & Halldorsdottir, 2021). It is also conceivable the Coronavirus epidemic may have played a role in 2021 case declines especially since legal proceedings did experience some disruption in their processes.

Year	Number of Decisions	Year	Number of Decisions
2014 (November-December)	1	2018	18
2015	7	2019	16
2016	7	2020	18
2017	14	2021	13

Table 2. Year of Decision

Court Level, Location, and Representation

Of the 94 cases remaining after the elimination of duplicates, 89 were district court decisions, 5 were court of appeals decisions, and in 35 the plaintiffs proceeded pro se. According to the United States District Court for the District of Massachusetts. (n.d.), “litigants or parties representing themselves in court without the assistance of an attorney are known as pro se litigants ... ‘Pro se’ is Latin for ‘in one’s own behalf.’” A litigant may choose to proceed pro se for a variety of reasons. Some examples of such situations are when, a) they cannot find an attorney who will handle their case, b) they cannot afford an attorney, or c) they feel they are better off without an attorney. Unlike criminal cases, in civil cases there is no constitutional right to an attorney.

The location of cases and the number in each location are recapped in Table 3. Cases appeared in 29 different States, in addition to the District of Columbia. Cases most frequently appeared in the States of New York, Texas, California, Illinois, Maryland, Michigan, New Jersey and Washington.

Location	Number of Cases	Location	Number of Cases	Location	Number of Cases
Alabama	1	Maryland	5	North Carolina	2
California	6	Massachusetts	3	Ohio	2
Connecticut	3	Michigan	5	Oklahoma	3
District of Columbia	2	Minnesota	1	Pennsylvania	2
Florida	1	Missouri	1	South Carolina	2
Georgia	3	Montana	1	Tennessee	3
Illinois	5	Nevada	2	Texas	7
Kansas	2	New Jersey	4	Virginia	1
Kentucky	2	New Mexico	2	Washington	4
Louisiana	2	New York	15	Wisconsin	2

Table 3. Where Did the Cases Originate

Employer Type

A recap of the type of employers which were involved and the number of cases for each type appears in Table 4. Disputes were most frequent between employees and private employers. Other types of employers included school districts, states, federal entities, counties, boroughs, cities, towns, the District of Columbia, and the United States Postal Service. Individuals were named as defendants in some cases, most typically in addition to the employer.

Employer Type	Number of Cases	Employer Type	Number of Cases
Private	47	County	6
School District	13	Borough, City or Town	5
State	11	District of Columbia	2
Federal	8	US Postal Service	2

Table 4. What Type of Employer was Involved

Prevailing Party

Table 5 provides information as to which party prevailed or if a verdict as to all claims had not been reached classified the case as still ongoing. The cases were close to evenly divided between the alleged responsible party prevailing and the litigation continuing.

Prevailing Party	Number of Cases
Alleged responsible party	45
Still ongoing (at least to some claims)	48
Alleged injured party	1

Table 5. Which Party Prevailed

Causes of Action

Since there is currently no specific workplace bullying federal cause of action, plaintiffs rely upon a variety of other laws to bring actions in which they allege bullying occurred. It is not uncommon for litigants to plead numerous and varied causes of action in hopes at least one is successful. This is why the number of causes of action found in this study exceed the number of cases reviewed. The causes of action relied upon by plaintiffs in the cases under review and the number of cases in which the cause of action appeared are reported in Table 6. For definitions and/or explanations of selected terms found in the table, see “Appendix A.” In some instances, cause of action sub-categories are also shown. Based upon their frequency of appearing, the most common causes of action were – a) discrimination, b) retaliation, c) Age Discrimination in Employment Act (ADEA), d) Americans with Disabilities Act (ADA), e) hostile work environment, and f) infliction of emotional distress. As shown, other causes of action were relied upon with less frequency. A few causes of action were omitted since they only appeared in one case each.

Cause of Action	Number of Cases
Discrimination - Title VII <ul style="list-style-type: none"> • Comprised of subcategories: <ul style="list-style-type: none"> ○ Race - 23 ○ Non-specific - 9 ○ Gender - 5 ○ Age - 3 ○ National origin - 3 ○ Sexual - 2 ○ Color - 1 ○ Ethnicity - 1 ○ Pregnancy - 1 ○ Religious - 1 	49
Retaliation	33
Age Discrimination in Employment Act (ADEA) <ul style="list-style-type: none"> • Comprised of subcategories: <ul style="list-style-type: none"> ○ Non-specific pleading - 8 ○ Discrimination - 4 ○ Hostile work environment - 4 ○ Retaliation - 4 	20
Americans with Disabilities Act (ADA)	17
Hostile Work Environment	17
Infliction of Emotional Distress	13
U.S. Constitution <ul style="list-style-type: none"> • Comprised of subcategories: <ul style="list-style-type: none"> ○ First Amendment - 6 ○ Fourteenth amendment - 5 	11
Defamation	9
Family Medical Leave Act (FMLA)	8
Breach of Contract	6
Harassment	6
Conspiracy	5
Disparate Treatment, Impact and/or Discipline	5
Negligence (hiring, training, supervision)	5
Negligent Infliction of Emotional Distress	4
Tortious Interference	3
Wrongful Discharge/Termination	2

Table 6. What Were the Causes of Action Relied Upon

Consideration of these results led to a number of conclusions which help to ascertain whether or not workplace bullying is an issue of continuing concern to employees and employers, suggest opportunities for future research, review managerial implications, and provide suggestions for actions managers can take to help minimize the problem.

CONCLUSIONS

The lack of a federal cause of action specifically focused upon preventing or punishing workplace bullying does not mean that such abuse is not occurring. This research found cases appearing in 29 different States, plus the District of Columbia (Table 3), in a wide variety of employer types (Table 4), and in fairly consistent year to year numbers (Table 2). However, the lack of a federal cause of action does mean plaintiffs had to rely on other laws to have their bullying allegations heard. Examples of such laws include – Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act (ADEA), and Americans with Disabilities Act (ADA) (Table 6). These findings are similar in many respects to those of Martin, Lopez and LaVan (2009), Martin and LaVan (2010), and Richardson et al. (2016).

For a person who believes they have experienced workplace bullying, it is very difficult for them to prevail through litigation in U.S. federal courts. Of the 46 cases reaching complete resolution, the prevailing party, with only one exception, was the party alleged to be responsible for allowing bullying to exist in its workplace (Table 5). The cases of *Arsenault v. State of Maryland, Department of Public Safety and Correctional Services* (2020), *Blount, Jr. v. Ajinomoto Health and Nutrition* (2020), *Moody v. Chevron Phillips Chemical Company LP* (2017), and *Parker v. National Association of Letter Carriers, et al.* (2020), shed light on this difficulty. For selected excerpts from these cases see “Appendix B.” Another barrier to prevailing by persons alleging they have been bullied may also be they frequently represent themselves. Representing themselves or “pro se” occurred in approximately one-third of the cases studied.

This study also revealed some organizations are using their policies and procedures in attempts to prevent workplace bullying and avoid its negative consequences (*Bosse v. State of Connecticut Department of Economic and Community Development* (2021); *Devalentino v. Houston Independent School District* (2020); *Riser v. Washington State University, et al.* (2019)). The research of Brewer and Kitsantas (2019) supports the idea of utilizing anti-bullying policies and procedures, suggesting organizations can mitigate the impact and potential costs of workplace bullying with such actions. Further, their work found organizational support as it relates to workplace bullying can improve the level of job satisfaction and reduce absenteeism (Brewer & Kitsantas, 2019). Analysis of the cases in this study revealed the United States Environmental Protection Agency, Southwest Airlines, and Vanguard, are organizations which have adopted the approach of utilizing anti-bullying policies and procedures. Excerpts from *Booke v. Wheeler, Administrator U.S. Environmental Protection Agency* (2021), *Carter v. Transport Workers Union of America Local 556 and Southwest Airlines* (2019), and *Coia v. Vanguard, et al.* (2017), can be found in “Appendix B.”

Future Research

Although developments on the legislative front in this area are very slow, they are worth continued monitoring, especially in light of the proposed new law in Massachusetts and the recent law enacted by Puerto Rico. It would be interesting to see what, if any, impact these laws have in their respective workplaces and whether or not such legislation spreads to more states and/or to federal legislation.

Based upon the prevalence, persistence, and negative consequences of bullying in the workplace, as well as developments in actions being taken by organizations to prevent such abuse; understanding how federal courts reason through and resolve issues over time in cases containing allegations of workplace bullying appears to continue to be of value. Such further research could aid in the understanding of what is actually occurring in American workplaces related to bullying. Additional questions that could be explored would

include determining why more cases are generated in some geographic areas than others and whether or not the variance is attributable to the differences in causes of actions available in a jurisdiction.

Additionally, since this study focused exclusively on decisions in U.S. federal courts, another opportunity for future research would be to examine U.S. state court decisions related to workplace bullying. A comparison of findings from studies which focused on federal courts to those of studies which focused on state courts may also provide additional useful information about workplace bullying.

Managerial Implications

Bullying is both prevalent and persistent in the American workplace. Surveys indicate approximately half of employees and the organizations they work for recognize bullying exists in their workplaces and for remote workers, the percentage increases to 61.5% (WBI, 2021a; Society for Human Resource Management, 2012). As shown in Table 1, surveys also indicate that, for employees, this percentage has stayed fairly constant over a 14-year period (WBI, 2007; WBI, 2010; WBI, 2014; WBI, 2017; WBI, 2021a).

The consequences of workplace bullying are serious to both employees and employers. Bullied employees are likely to lose their jobs, as well as potentially experience a broad range of severe health issues (Vega & Comer, 2005; WBI, 2021a). Examples of such health issues include: severe anxiety, disruption of sleep, poor concentration, PTSD, depression, panic attacks, high blood pressure, cardiovascular disease, heart attack, and stroke (Namie, 2003; Namie 2007; Nielsen & Einarsen, 2012; Yamada, 2003). The target's fellow employees who observe the bullying may also experience stress and a decline in productivity (Vega & Comer, 2005, p.106). For employers some examples of consequences include: reductions in productivity, increased absenteeism and turnover, reduced employee commitment, increased medical claims, increased litigation costs, increased workers compensation expenses, recruitment issues, brand damage, and diminished profitability (Namie & Namie, 2004; Piotrowski, 2012; SHRM, 2012; Vega & Comer, 2005; Yamada, 2008).

Furthermore, Tomkowicz and Fiorentino (2017) wrote “should there be any doubt that workplace bullying is an issue of potential legal consequence, it is worth noting that insurance companies are tracking developments on this front” (, p. 5). And, Yamada (2013b) observed:

in 2011, an insurance industry newsletter published by PropertyCasualty360.com reported that some employers are requesting that insurance companies include workplace bullying in their employment practice liability insurance (EPLI) policies. EPLI policies have become a fact of life in corporate America, and it makes sense that the insurance industry would be discussing the potential impact of workplace bullying legislation. (p. 181)

Defending a lawsuit in which workplace bullying is alleged can result in substantial legal fees even if the company prevails. In light of this and other potential consequences, managers should ensure their EPLI policies contain workplace bullying claims coverage.

Overall, managers should strive to free their workplaces of bullying. Their successful efforts to do so will greatly assist in establishing a healthy workplace culture in their organizations. Such a culture is even more important in times of labor shortages and retention issues (Sull, Sull, & Zweig, 2022). To maintain healthy workplace cultures, decrease employee turnover, and minimize the negative consequences of workplace bullying on both employees and their organizations, managers should consider adopting and enforcing policies aimed at preventing bullying in their workplaces.

As early as 2012, SHRM reported workplace bullying policies are a good business practice (Brinney, 2012). As managers contemplate what their policies should include, they may want to review the SHRM model policy and/or the policy adopted by the United States Environmental Protection Agency (EPA). SHRM's model policy includes a definition of workplace bullying as well as examples of bullying behavior, and a reporting process through human resources (SHRM, n.d.). The EPA appears to be on the forefront of efforts to prevent harassment, including bullying, throughout its agency. This is evidenced by the administrator of the EPA publishing a policy statement entitled "Anti-Harassment Policy Statement 2021" which reinforced the agency's "zero-tolerance policy for any form of workplace harassment or discrimination" and referenced EPA Order 4711. The policy statement specifically mentions workplace bullying as being prohibited and states in part, "the EPA will not tolerate other types of harassment based on conduct that is threatening, intimidating, or bullying" (United States Environmental Protection Agency, 2021). The associated EPA Order 4711 states, in part:

This order applies to allegations of harassment based on race, color, sex (including pregnancy, sex stereotyping, gender identity or expression), national origin, religion, age, disability, prior protected Equal Employment Opportunity activity, sexual orientation, status as a parent, marital status, political affiliation, and protected genetic information (p .1).

This order, and the procedures contained herein, also apply to other types of harassment (e.g., actions that are threatening, intimidating, bullying and/or disturbing) but not alleged to be based on the protected classes listed above (p. 2).

Workplace bullying may include the deliberate, hurtful, negative, repeated mistreatment of one or more employees. Examples of workplace bullying include constant and unfair criticism, teasing, yelling, insulting, malicious gossiping, and aggressive behavior (p.5). (United States Environmental Protection Agency, 2018)

REFERENCES

Arsenault v. State of Maryland Department of Public Safety and Correctional Services. Civil Action No. RDB-20-0998, 2020 WL 7694472, (D. Maryland, December 28, 2020)

Ballard, A. J., & Easteal, P. (2018). The secret silent spaces of workplace violence: focus on bullying (and harassment). *Laws*, 7(4), 35.

Bengtsson, Mariette. (2016). How to plan and perform a qualitative study using content analysis. *NursingPlus Open*, vol. 2, 2016, 8–14.

Blount, Jr. v. Ajinomoto Health and Nutrition. No. 5:20-CV-00356-FL, 2020 WL 6439167, (E. D. North Carolina, Western Division, August 14, 2020)

Booke v. Wheeler, Administrator U.S. Environmental Protection Agency. Civil Action No. 20-2370-KHV, 2021 WL 3737107, (D. Kansas, August 24, 2021)

Bosse v. State of Connecticut, Department of Economic and Community Development. Civil Case No. 3:20-CV-00760 (JCH), 2021 WL 6337750, (D. Connecticut, August 3, 2021)

Brewer, K.C. & Kitsantas, P. (2019). Workplace bullying among nurses and organizational response:

An online cross-sectional study. *Journal of Nursing Management*, 28(1), 148-156.

Brinney, E. (2012). Experts recommend workplace bullying policies. *Society for Human Resource Management*. Retrieved July 19, 2022 from: <https://www.shrm.org/resourcesandtools/hr-topics/employee-relations/pages/experts-recommend-workplace-bullying-policies.aspx>

Carter v. Transport Workers Union of America 556 and Southwest Airlines. Case No. 3:17-CV-2278-S, 353 F.Supp.3d 556, (N.D. Texas, Dallas Division, February 1, 2019)

Coia v. Vanguard, et al. Civil Action 16-3579, 2017 WL 724334, (E.D. Pennsylvania February 23, 2017)

Commonwealth of Massachusetts. (2022). Retrieved March 12, 2022, from: <https://malegislature.gov/Bills/192/S2723/BillHistory>

Cornell Law School. (n.d.a). *Discrimination*. Retrieved July 13, 2022, from: <https://www.law.cornell.edu/wex/discrimination>

Cornell Law School. (n.d.b). *First Amendment*. Retrieved July 11, 2022, from: https://www.law.cornell.edu/constitution/first_amendment

Cornell Law School. (n.d.c). *14th Amendment*. Retrieved July 11, 2022, from: <https://www.law.cornell.edu/constitution/amendmentxiv>

Cornell Law School. (n.d.d). *Hostile work environment*. Retrieved July 11, 2022, from: https://www.law.cornell.edu/wex/hostile_work_environment

Cornell Law School. (n.d.e). *Intentional infliction of emotional distress*. Retrieved July 11, 2022, from: https://www.law.cornell.edu/wex/intentional_infliction_of_emotional_distress

Cornell Law School. (n.d.f). *Negligence*. Retrieved July 11, 2022, from: <https://www.law.cornell.edu/wex/negligence>

Cornell Law School. (n.d.g). *Negligent infliction of emotional distress*. Retrieved July 11, 2022, from: https://www.law.cornell.edu/wex/negligent_infliction_of_emotional_distress

Cornell Law School. (n.d.h). *Tortious interference*. Retrieved July 11, 2022, from: https://www.law.cornell.edu/wex/tortious_interference

Cornell Law School. (n.d.i). *Wrongful termination*. Retrieved July 11, 2022, from: https://www.law.cornell.edu/wex/wrongful_termination

Cornell Law School. (2020, June). *Injunctive relief*. Legal Information Institute. Retrieved March 17, 2022, from: https://www.law.cornell.edu/wex/injunctive_relief

Cornell Law School. (2022a, January). *Conspiracy*. Retrieved July 11, 2022, from: <https://www.law.cornell.edu/wex/conspiracy>

Cornell Law School. (2022b, March). *Defamation*. Retrieved July 11, 2022, from: <https://www.law.cornell.edu/wex/defamation>

Cornell Law School. (2022c, March). *Harassment*. Retrieved July 11, 2022, from: <https://www.law.cornell.edu/wex/harassment>

Cornell Law School. (2022d, June). *Breach of contract*. Legal Information Institute. Retrieved July 11, 2022, from: https://www.law.cornell.edu/wex/breach_of_contract

Devalentino v. Houston Independent School District. Civil Action No. H-18-0393, 2020 WL 60255, (S.D. Texas, Houston Division, January 6, 2020)

Dhar, R. L. (2012). Why do they bully? Bullying behavior and its implication on the bullied. *Journal of Workplace Behavioral Health*, 27, 79-99.

Healthy Workplace Bill. (2021). Retrieved, March 16, 2022, from: <https://healthyworkplacebill.org>

Lutgen-Sandvik, P., Tracy, S. J., & Alberts, J. K. (2007). Burned by bullying in the American workplace: Prevalence, perception, degree and impact. *Journal of Management Studies*, 44(6), 837-862.

Martin, W. & LaVan, H. (2010). Workplace bullying: A review of litigated cases. *Employee Responsibilities and Rights Journal*, 22, 175-194.

Martin, W. M., Lopez, V. F. & LaVan, H. N. (2009). What legal protections do victims of bullies in the workplace have? *Journal of Workplace Rights*, 14(2) 143-146.

Me too. (2022). Retrieved July, 2022 from: <https://metoomvmt.org/get-to-know-us/history-inception>

Moody v. Chevron Phillips Chemical Company LP. Civil Action H-17-1490, 2017 WL 2832737, (S.D. Texas, Houston Division June 30, 2017)

Namie, G. (2003). Workplace bullying: Escalated incivility. *Ivey Business Journal*, 68(2), 1-6.

Namie, G. & Namie, R. (2004). Workplace bullying: How to address America's silent epidemic. *Employee Rights and Employment Policy Journal*, 8(2), 315-334.

Namie, G. (2007). The challenge of workplace bullying. *Employment Relations Today*, 43-51.

Neuendorf, K. A. (2019). Content analysis and thematic analysis. In P. Brough (Ed.), *Advanced Research Methods for Applied Psychology: Design, Analysis and Reporting* (pp. 211-223). New York: Routledge.

Neuendorf, K. A., & Kumar, A. (2015). Content analysis. In G. Mazzoleni (Ed.), *The International Encyclopedia of Political Communication* (Vol. 1, pp. 221-230). Hoboken, NJ: Wiley & Sons, Inc.

Nielsen, M. B., & Einarsen, S. (2012). Outcomes of exposure to workplace bullying: A meta-analytic review. *Work & Stress*, 26(4), 309-332.

Nielsen, M. B. & Einarsen, S.V. (2018). What we know, what we do not know, and what we should and could have known about workplace bullying: An overview of the literature and agenda for future research. *Aggression and Violent Behavior* 42 (2018) 71-83.

Notelaers, G., Van der Heijden, B., Hoel, H. & Einarsen, S. (2019). *Work & Stress*, Vol. 33, No. 1, 58-75.

Parker v. National Association of Letter Carriers et al., Case Number 19-12915, 2020 WL 3121175 (E.D. Michigan, Southern Division June 12, 2020)

Piotrowski, C. (2012). From workplace bullying to cyberbullying: The enigma of e-harassment in modern organizations. *Organization Development Journal*, 30(4), 44-53.

Richardson, R., Joiner, S., & Hall, R. (2016). The status of workplace bullying in federal court cases. *Academy of Business Research Journal*, 1114–1128.

Riser v. Washington State University, et al. No: 2:18-CV-0119-TOR, 2019 WL 4126507, (E.D. Washington, August 29, 2019)

Rutchow, W. (n.d.). Tennessee amends anti-bullying statute to extend protection from infliction of mental anguish claims to private employers. *The National Law Review*, IX(116). Retrieved February 10, 2022, from: <https://www.natlawreview.com/article/tennessee-amends-anti-bullying-stature-to-extend-protection-infliction-mental>

Santos, J.F., & Colon-Acevedo, S.E. (2020). Puerto Rico becomes first jurisdiction to adopt law against workplace bullying. *The National Law Review*, X(220). Retrieved, February 10, 2022, from: <https://www.natlawreview.com/article/puerto-rico-becomes-first-jurisdiction-to-adopt-law-against-workplace-bullying>

Santos, J.F. & Colon-Acevedo, S.E. (2021). Puerto Rico issues guidelines on law against workplace bullying. Retrieved January 24, 2022, from: <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/puerto-rico-issues-guidelines-on-law-against-workplace-bullying.aspx>

Sigurdardottir, S., & Halldorsdottir, S. (2021). Persistent suffering: the serious consequences of sexual violence against women and girls, their search for inner healing and the significance of the #MeToo movement. *International Journal of Environmental Research and Public Health*, 18(4), 1849.

Smith, F.L.M. & Coel, C.R. (2018). Workplace bullying policies, higher education and the first amendment: Building bridges not walls, *First Amendment Studies*, 52:1-2, 96-111.

Society for Human Resource Management (n.d.). *Workplace Bullying Policy*. Retrieved July 19, 2022 from: https://www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/cms_018350.aspx

Society for Human Resource Management. (2012). SHRM survey findings: Workplace bullying. *SHRM*. Retrieved, February 10, 2022, from: <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/workplacebullying.aspx>

Society for Human Resource Management. (2022a). About SHRM. Retrieved February 10, 2022, from: <https://www.shrm.org/about-shrm/Pages/default.aspx>

Society for Human Resource Management. (2022b). Membership FAQs. Retrieved February 10, 2022, from: <https://www.shrm.org/about-shrm/Pages/FAQ.aspx>

Society for Human Resource Management (2022c). What are disparate impact and disparate treatment? Retrieved July 12, 2022, from: <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/disparateimpactdisparatetreatment.aspx>

State of California. (2014). Assembly Bill No. 2053. Retrieved February 10, 2022, from: http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2051-2100/ab_2053_bill_20140909_chaptered.htm.

State of Utah. (2015). House Bill 216. Retrieved February 11, 2022, from: <https://le.utah.gov/~2015/bills/static/HB0216.html>

Sull, D., Sull, C., & Zweig, B. (2022). Toxic Culture is Driving the Great Resignation. *MIT Sloan Management Review*. Retrieved July 17, 2022 from: <https://sloanreview.mit.edu/article/toxic-culture-is-driving-the-great-resignation>

Tomkowicz, S.M & Fiorentino, S.R. (2017). Status-blind harassment and the Faragher model: A comprehensive managerial response to workplace bullying. *Southern Law Journal* XXVII, 1-34.

United States Department of Justice. (n.d.). *Introduction to the Federal court system*. Offices of the United States Attorneys. Retrieved March 6, 2022, from, <https://www.justice.gov/usao/justice-101/federal-courts>

U.S. Department of Labor. (n.d.a). *Family and Medical Leave Act*. Retrieved July 12, 2022, from: <https://www.dol.gov/agencies/whd/fmla>

U.S. Department of Labor. (n.d.b). *Retaliation*. Retrieved July 12, 2022, from: <https://www.dol.gov/agencies/whd/retaliation>

United States District Court for the District of Massachusetts. (n.d.). *FAQs- what does it mean to appear pro se?* Retrieved March 10, 2022, from <https://www.mad.uscourts.gov/pro-se/faqs.htm>

United States Environmental Protection Agency. (2018). *Procedure for addressing allegations of workplace harassment*. Retrieved March 13, 2022, from: https://www.epa.gov/sites/default/files/2016-01/documents/epa_order_4711_workplace_harassment_final.pdf

United States Environmental Protection Agency. (2021). *Anti-Harassment policy statement 2021*. Retrieved March 13, 2022, from: <https://www.epa.gov/ocr/anti-harassment-policy-statement-2021>

U.S. Equal Employment Opportunity Commission. (n.d.a). *Age discrimination*. Retrieved July 12, 2022, from: <https://www.eeoc.gov/age-discrimination>

U.S. Equal Employment Opportunity Commission. (n.d.b). *Laws enforced by EEOC*. Retrieved July 12, 2022, from: <https://www.eeoc.gov/statutes/laws-enforced-eeoc>

U.S. Equal Employment Opportunity Commission. (1989, January). *CM-612 Discharge/Discipline*. Retrieved July 12, 2022, from: <https://www.eeoc.gov/laws/guidance/cm-612-dischargediscipline>

U.S. Equal Employment Opportunity Commission. (1997, January 15). *Fact sheet: Disability discrimination*. Retrieved July 12, 2022, from: <https://www.eeoc.gov/laws/guidance/fact-sheet-disability-discrimination>

Vega, G. & Comer, D. R. (2005). Sticks and stones may break your bones, but words can break your spirit: Bullying in the workplace. *Journal of Business Ethics*, 58, 101-109.

Workplace Bullying Institute. (2007). *2007 WBI U.S. workplace bullying survey*. Retrieved February 21, 2022, from: <https://workplacebullying.org/download/2007-wbi-u-s-workplace-bullying-survey/>

Workplace Bullying Institute. (2010). *2010 WBI U.S. workplace bullying survey*. Retrieved February, 21, 2022, from: <https://workplacebullying.org/download/2010-wbi/>

Workplace Bullying Institute. (2014). *2014 WBI U.S. workplace bullying survey*. Retrieved, February 21, 2022, from: <https://workplacebullying.org/download/2014-wbi/>

Workplace Bullying Institute. (2017). *2017 WBI U.S. workplace bullying survey*. Retrieved February 21, 2022, from: <https://workplacebullying.org/download/2017-wbi/>

Workplace Bullying Institute. (2021a). *2021 WBI U.S. workplace bullying survey*. Retrieved February 21, 2022, from: <https://workplacebullying.org/2021-wbi-survey/>

Workplace Bullying Institute. (2021b). *Workplace bullying institute*. Retrieved, March 1, 2022, from: <https://workplacebullying.org/>

Weisel, M. (2016). Bullying in the workplace: Not every wrong has a legal remedy. *Labor Law Journal*, Winter, 2016, 67 (4), 520-528.

Yamada, D. C. (2003). Workplace bullying and the law: Towards a transnational consensus? In S. Einarsen, H. Hoel, D. Zapf, & C. L. Cooper (Eds.), *Bullying and emotional abuse in the workplace: International perspectives in research and practice* (399-411). London: Taylor & Francis.

Yamada, D.C. (2008). Workplace bullying and ethical leadership. *Journal of Values-Based Leadership*, 1(2).

Yamada, D. (2013a). Emerging American legal responses to workplace bullying. *Temple Political & Civil Rights Law Review*, 22(2), 329-354.

Yamada, D. (2013b). Workplace bullying and the law: a report from the United States. *Workplace Bullying and Harassment*, 165-185.

Yamada, D.C. (2015). Workplace bullying and the law: U.S. legislative developments 2013-15. *Employee Rights and Employment Policy Journal*, 19(1), 49-60.

APPENDIX A

Definitions and/or Explanations of Selected Terms

Age Discrimination in Employment Act (ADEA) - “forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40, although some states have laws that protect younger workers from age discrimination. ... The law prohibits discrimination in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, benefits, and any other term or condition of employment. It is unlawful to harass a person because of his or her age. Harassment can include, for example, offensive or derogatory remarks about a person's age. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.” (U.S. Equal Employment Opportunity Commission, n.d.a)

Americans with Disabilities Act (ADA) - “Title I of the Americans with Disabilities Act of 1990 prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. The ADA covers employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations. The ADA's nondiscrimination standards also apply to federal sector employees under section 501 of the Rehabilitation Act, as amended, and its implementing rules.” (U.S. Equal Employment Opportunity Commission, 1997)

Breach of Contract - “occurs whenever a party who entered a contract fails to perform their promised obligations” (Cornell Law School, 2022d).

Conspiracy - “an agreement between two or more people to commit an illegal act, along with an intent to achieve the agreement's goal. Most U.S. jurisdictions also require an overt act toward furthering the agreement. An overt act is a statutory requirement, not a constitutional one.” (Cornell Law School, 2022a)

Defamation - “statement that injures a third party's reputation. The tort of defamation includes both libel (written statements) and slander (spoken statements). State common law and statutory law governs defamation actions, and each state varies in their standards for defamation and potential damages.” (Cornell Law School, 2022b)

Discrimination – “different treatment for similarly situated parties, especially when no legitimate reason appears to exist” (Cornell Law School, n.d.a).

According to the U.S. Equal Employment Opportunity Commission (n.d.b), the agency enforces the anti-discrimination provisions found in the following laws:

Title VII of the Civil Rights Act of 1964 (Title VII) - This law makes it illegal to discriminate against someone on the basis of race, color, religion, national origin, or sex. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

The Pregnancy Discrimination Act - This law amended Title VII to make it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The Equal Pay Act of 1963 (EPA) - This law makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The Age Discrimination in Employment Act of 1967 (ADEA) - This law protects people who are 40 or older from discrimination because of age. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Title I of the Americans with Disabilities Act of 1990 (ADA) - This law makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

Sections 102 and 103 of the Civil Rights Act of 1991- Among other things, this law amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases.

Sections 501 and 505 of the Rehabilitation Act of 1973 - This law makes it illegal to discriminate against a qualified person with a disability in the federal government. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.

The Genetic Information Nondiscrimination Act of 2008 (GINA) - Effective November 21, 2009. This law makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder or condition of an individual's family members (i.e. an individual's family medical

history). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Disparate Impact - “occurs when policies, practices, rules or other systems that appear to be neutral result in a disproportionate impact on a protected group. For example, testing all applicants and using results from that test that will unintentionally eliminate certain minority applicants disproportionately is disparate impact.” (Society for Human Resource Management (2022c))

Disparate Treatment - “intentional employment discrimination. For example, testing a particular skill of only certain minority applicants is disparate treatment” (Society for Human Resource Management (2022c)).

Disparate Discharge or Discipline - “Section 703(a)(1) of Title VII of the Civil Rights Act of 1964, as amended, makes it an unlawful employment practice for an employer to discharge or discipline an employee because of her/his race, color, religion, sex, or national origin. It is also an unlawful employment practice, under § 704(a) of Title VII, for an employer to discharge or discipline an employee because (s)he has filed a Title VII charge, has participated in a Title VII investigation, or has otherwise opposed Title VII discrimination.” (U.S. Equal Employment Opportunity Commission, 1989)

Family Medical Leave Act (FMLA) - “entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave” (U.S. Department of Labor, n.d.a).

Harassment - “words or behavior that threatens, intimidates, or demeans a person. Harassment is unwanted, uninvited, and unwelcome and causes nuisance, alarm, or substantial emotional distress without any legitimate purpose” (Cornell Law School, 2022c).

Hostile Work Environment - “in employment law, a situation in which unlawful discrimination has become so frequent or severe that the environment of the workplace can be considered hostile to the employee” (Cornell Law School, n.d.d).

Intentional Infliction of Emotional Distress - “the tort of intentional infliction of emotional distress (IIED) occurs when one acts abominably or outrageously with intent to cause another to suffer severe emotional distress, such as issuing the threat of future harm” (Cornell Law School, n.d.e).

Negligence - “a failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct).” (Cornell Law School, n.d.f)

Negligent Infliction of Emotional Distress - “in tort law, the causation of severe emotional distress through negligent action. Abbreviated as NIED. Plaintiffs suing for NIED must have experienced contact as a result of defendant's negligence, or at least been in the zone of danger” (Cornell Law School, n.d.g).

Retaliation - “retaliation occurs when an employer (through a manager, supervisor, administrator or directly) fires an employee or takes any other type of adverse action against an employee for engaging in protected activity. An adverse action is an action which would dissuade a reasonable employee from raising a concern about a possible violation or engaging in other related protected activity. Retaliation can have a negative impact on overall employee morale.” (U.S. Department of Labor, n.d.b)

U.S. Constitution

First Amendment – “guarantees freedoms concerning religion, expression, assembly, and the right to petition” (Cornell Law School, n.d.b).

Fourteenth Amendment – “addresses many aspects of citizenship and the rights of citizens. The most commonly used -- and frequently litigated -- phrase in the amendment is "equal protection of the laws" (Cornell Law School, n.d.c).

Tortious Interference - “is a common law tort allowing a claim for damages against a defendant who wrongfully interferes with the plaintiff's contractual or business relationships” (Cornell Law School, n.d.h).

Wrongful Discharge/Termination - “a terminated employee's claim that the firing breached an employment contract or some public law. ... If basing the claim on a public law, the plaintiff must show unlawful action such as illegal discrimination or retribution for whistleblowing.” (Cornell Law School, n.d.i)

APPENDIX B

Selected Excerpts from Cases Studied

Difficulties of Prevailing - the following case excerpts illustrate some of the difficulties experienced by those alleging they have been victims of workplace bullying:

Arsenault v. State of Maryland, Department of Public Safety and Correctional Services (2020) -

... workplaces are not always harmonious locales, and even incidents that would objectively give rise to bruised or wounded feelings will not on that account satisfy the severe or pervasive standard. Some rolling with the punches is a fact of workplace life. Thus, complaints premised on nothing more than “rude treatment by [coworkers],” “callous behavior by [one’s] superiors,” or “a routine difference of opinion and personality conflict with [one’s] supervisor,” are not actionable under Title VII.

Blount, Jr. v. Ajinomoto Health and Nutrition (2020) –

Blount is a case in which the court did find the circumstances established “a prima facie case for a hostile work environment claim under Title VII” and allowed the plaintiff to proceed. The Court held:

Blount describes a work environment of repeated verbal harassment, including slurs and derogatory comments, based on his sexual orientation. He reported several of these incidents to his superiors and to human resources, but the company took no action against the offenders. When he reported being called a “whiny bitch,” a human resources employee “laughed in [Blount’s] face.” ... Blount is scared, feels physically threatened, and had to take medical leave from work. A reasonable person would find this environment hostile.

Moody v. Chevron Phillips Chemical Company LP (2017) –

The Supreme Court has held that a workplace is sufficiently hostile as to violate Title VII when it “is permeated with ‘discriminatory intimidation, ridicule, and insult’ that is ‘sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.’” ... a single “offensive utterance” will not suffice to support a hostile workplace claim. ... In *Lee v. Regional Nutrition Assistance, Inc.*, the plaintiff complained of “three separate incidents” of derogatory racial remarks. The court held that “the conduct complained of [did] not rise to the level of severity to state a claim based on a hostile work environment.” *Lee v. Reg’l Nutrition Assistance, Inc.*, 471 Fed. Appx. 310, 311 (5th Cir. 2012).

Parker v. National Association of Letter Carriers, et al. (2020) – illustrates the lack of a workplace bullying cause of action when the court stated, “Parker asks this Court to recognize a new constitutional right to workplace conditions that are free of bullying and insulting behavior. That no other court has recognized such a claim is understandable ...”

Anti-Bullying Policies and Procedures – As revealed in the following case excerpts, the United States Environmental Protection Agency, Southwest Airlines, and Vanguard have adopted anti-bullying policies and procedures:

Booke v. Wheeler, Administrator U.S. Environmental Protection Agency (2021) - “on November 20, 2015, EPA implemented Order 4711, which is a procedure for responding to allegations of workplace harassment. Specifically, EPA Order 4711 authorizes fact-finding investigations for workplace actions that were threatening, intimidating, bullying or disturbing.”

Carter v. Transport Workers Union of America Local 556 and Southwest Airlines (2019) –

Southwest informed Plaintiff that the Company was terminating her because her conduct violated the Southwest Airlines Mission Statement and Company policies and rules, including but not limited to, the Workplace Bullying and Hazing Policy and the Social Media Policy. ... Southwest also stated that Plaintiff’s conduct ‘could also be a violation’ of Southwest’s Policy Concerning Harassment, Sexual Harassment, Discrimination, and Retaliation.

Coia v. Vanguard, et al. (2017) -

Vanguard’s Professional Conduct Policy provides, in pertinent part, employees ‘are expected to adhere to the highest ethical and professional standards of behavior.’ The policy provides examples of unprofessional actions and behavior including ‘treating ... fellow crew members in a manner that is malicious, obscene, threatening, or intimidating, or that might constitute harassment or bullying.’