



Human Rights
Commission

Te Kāhui Tika Tangata

How to have a positive and healthy workplace

PREVENTING AND DEALING WITH WORKPLACE BULLYING
MUKA WHATU ORA

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Foreword

Creating a positive workplace and enhancing human capital are worthy aims for every workplace. Bullying is corrosive and negative. It runs counter to decent work and impacts on productivity, staff morale, retention and individual self esteem. This module aims to help Crown entities, business and other organisations prevent bullying in the workplace. I would like to thank all those who contributed to the development of this training tool kit.

Dr Judy McGregor

EQUAL EMPLOYMENT OPPORTUNITIES COMMISSIONER KAIHAUTU ORITENGA MAHI

Muka Whatu Ora

The concept around the term *Muka Whatu Ora* is made up of three entities. *Muka* refers to the many strands of Harakeke (flax) fibres that are produced when continuously scraped, with an end product similar to that of the basic rope fibre. The strands represent the many entities that exist in the workplace i.e. employers, employees, ethnicities, genders, different cultural backgrounds. *Whatu* refers to the actual weaving of the muka (flax fibres) to produce the completed garment. *Ora* refers to health, life and well-being. It also includes the creation and maintenance of a healthy working environment.

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1 > Introduction

The idea for this training module originated from a roundtable discussion that was held at the Human Rights Commission in 2006 with a group of Crown entities and public service departments who wanted a tool to help them manage workplace bullying.

It is designed to be used by any workplace to provide an opportunity to raise awareness of, prevent, and deal effectively with bullying.

It has five parts:

1. Module Framework, including instructions for the trainer while running the training.
2. PowerPoint Slides
3. Trainer's Notes - to go with slides
4. Optional Exercise
5. Training Manual: Resources for workshop participants
 - an accompanying manual to be copied for each of the workshop participants. This manual contains information to be used during the workshop as well as resources that may be useful afterwards.

The module can be used to provide training for groups of human resources staff, general staff or managers. The type of audience will determine how long is spent on each section. Some sections may not be useful for all staff. The module can be used across organisations or within one workplace. An effective training session should not have more than 20 people.

This module is designed for a half day workshop but could be completed in two hours if the role play exercise was not used or sections were cut back or eliminated altogether. Alternatively, it could be extended to cover a whole day if discussion in each area was extended.

The trainer should be clear at the beginning of the session about the issue of confidentiality. Participants will feel much more comfortable expressing their views if they can be assured that what they say will remain confidential. Participants should also be encouraged to support each other within the group as sometimes focusing on workplace bullying can be painful for people who have experienced bullying, harassment or other forms of violence.

Although bullying is often directed at an individual, it may also be directed at a group. Workplace bullying is about power but not always positional power. Workplace bullying can occur between a worker and a manager or supervisor or between co-workers.

A number of resources were used in the development of this module, particularly the following:

- Department of Labour, Employment Cases Summary, November 2005.
- Andrea Needham, *Workplace bullying: the costly business secret*, 2003.
- State Services Commission, *Creating a Positive Work Environment: Respect and Safety in the Public Service Workplace*, June 2003.

This module will be available online and regularly updated.

The Human Rights Commission is interested in any feedback from organisations that use the training programme - positive or negative - as we see it as an opportunity to improve the content.

Why should an organisation undertake 'preventing and dealing with bullying' training?

In the 1990's the terms "workplace bullying" and "workplace stress" were virtually unheard of. However, there is no doubt that many workplaces employed staff who felt stress as a result of the workplace environment.

Use of the term “bullying” has become much more frequent in recent years. The Court of Appeal decision in *Attorney-General in respect of the Chief Executive of the Department of Corrections v Gilbert*, 14 March 2002 (CA 141/00), the amendments to the Health and Safety in Employment Act 1992 (HSE Act) introduced into law on 5 May 2003 and the publication of a number of books and articles has brought to the fore workplace stress and workplace bullying. Many employees identified themselves as suffering from workplace stress following media coverage given to the *Gilbert* decision and the amendments to the HSE Act. (*Dealing with Bullying in the Workplace*, by Anna Fitzgibbons, June 2006.)

Human resources practices have become more sophisticated and employees expect to be valued and respected by their employers. They do not expect to be treated badly or with disdain.

Employers are obliged to create a safe and secure working environment for their employees, and take all reasonable practicable steps to manage hazards and avoid exposing employees to unnecessary risk of physical injury or psychological harm.

According to the Employment Relations Act 2000 (s 108) an employee can take a personal grievance case against their employer if the employer directly or indirectly subjects the employee to behaviour that is unwelcome and by its nature or through repetition, has a detrimental effect on that employee’s employment, job performance, or job satisfaction.

The effects of harassment and bullying on a workplace are:

- a reduction in staff morale, creativity, performance and productivity, caused by isolated, unhappy, distracted and unmotivated staff;
- a potential breakdown in work relationships;
- an unhealthy workplace culture and ongoing conflicts;
- increased absenteeism due to anxiety, panic attacks, fear, depression, stress and ill-health. Unaddressed stress can often lead to errors at work, injury, fatigue, illness and disease;
- increased staff turnover;
- increased management time spent investigating and dealing with complaints; industrial action, damaged reputation, expensive litigation procedures and negative publicity.

An employer to protect itself must inform employees about their rights and responsibilities. A responsible and 'good employer' should actively promote a positive working environment for all its employees. A good employer will have an active prevention policy developed with staff and deals with incidents of bullying if it occurs.

- What is workplace bullying?
- What is the law?
- What are the costs of not dealing with it?
- Developing and maintaining a positive, healthy workplace.
- How do you prevent, diagnose and deal with bullying?
- Developing an action plan to enhance and maintain a positive and healthy workplace.

This training programme can be modified to suit any workplace and any group of participants.

2 > Module Framework

HOW TO HAVE A POSITIVE AND HEALTHY WORKPLACE: PREVENTING AND DEALING WITH WORKPLACE BULLYING

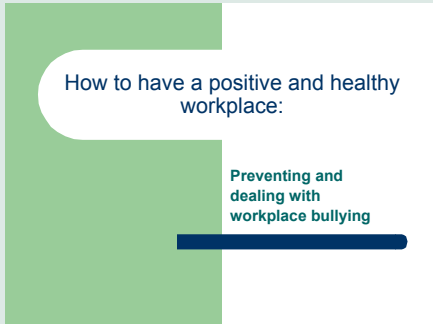
TIME	TOPIC	INSTRUCTIONS	PP SLIDES	RESOURCES
8.45	Introduction	<p>Welcome</p> <p>Housekeeping</p> <p>Manual</p> <p>Confidentiality and support (see Introduction)</p> <p>Ask for introductions, what participants want from the day and where they believe their workplace/team is (out of 10) re being positive and healthy.</p> <p>Write on board what they want from the day and tick the white paper next to the number each participant says their workplace/ team is at.</p>	<p>Slide 1</p> <p>Title of training module</p>	<p>Participants' Manual</p> <p>Large paper on wall with numbers down left hand side from 10 to 1 with smiley face on top and frown face at bottom</p>
9am	Overview of workshop	<p>Show slide 2</p> <p>Take participants through the workshop contents. Use participant's language re what they want from day. Encourage interaction and sharing of experiences during the day.</p>	<p>Slide 2</p> <p>Workshop programme</p>	
9.15	What is workplace bullying?	<p>Show slide 3, mention there is no legal definition and ask participants to discuss what they think bullying is.</p> <p>Write ideas on board (see trainer's notes for some examples).</p> <p>Show slide 4 and make links with what you have on the board and the common themes.</p> <p>Refer participants to the experts' definitions in the manual.</p>	<p>Slide 3</p> <p>What is workplace bullying?</p> <p>Slide 4</p> <p>Common themes in definitions</p>	<p>Bullying definitions listed in manual under Section 1 > What is Bullying?</p>
10.10	What is the law?	<p>Show slide 5 (see Trainer's Notes) and discuss the three different pieces of relevant legislation: what they all mean, and emphasise there is no legal definition or specific recognition of 'workplace bullying' in any NZ legislation.</p> <p>Ask participants for examples of any cases they are familiar with.</p> <p>Show slide 6 and 7 (see Trainer's Notes) and discuss each of the cases listed and which ones proved bullying and which did not. Refer participants to the list in their manual which has full references to the cases.</p> <p>Discuss case law themes and refer participants to article in the manual by Anna Fitzgibbons.</p>	<p>Slide 5</p> <p>Table with law summary</p> <p>Slide 6 & 7</p> <p>List of legal cases</p>	<p>Case Examples in manual under Section 2 > Legal Cases - where bullying WAS found and NOT found</p> <p>Anna Fitzgibbons, LawWorks <i>Dealing with Bullying in the Workplace</i> article in manual, Section 3 > Legal Issues</p>
10.30	Morning Tea			
10.45	What are the costs of not dealing with it?	<p>Ask participants to brainstorm what the costs of not dealing with bullying are.</p> <p>Show slide 8 and discuss each item mentioned referring back to participants' comments.</p>	<p>Slide 8</p> <p>Costs of bullying</p>	

CONTINUED...

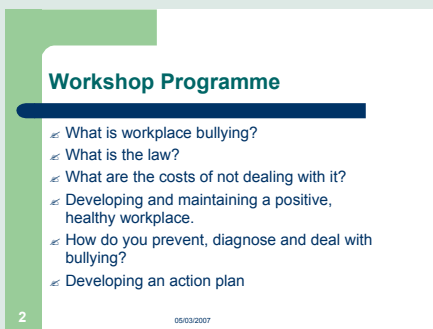
TIME	TOPIC	INSTRUCTIONS	PP SLIDES	RESOURCES
11am	Getting and keeping a positive healthy culture	<p>Show slide 9 (see Trainer's Notes) and divide participants into groups and ask each group to discuss</p> <ol style="list-style-type: none"> 1. What does a negative workplace look like? 2. What does a positive, healthy workplace look like? 3. How do you get and keep a positive, healthy workplace? <p>They need to write results on white paper under three columns.</p> <p>Ask each group to report back. Facilitator to write up ideas on developing and maintaining a positive culture on the board.</p> <p>Ask whole group to add to the ideas on the Board.</p> <p>Refer participants to the Key Employment Elements in the manual.</p>	Slide 9 Positive healthy workplaces	List of Key Employment Elements of a 'good employer' in the manual, Section 4
11.30	Prevention, identification and taking action	<p>Show slide 10 and divide participants into groups of three corresponding to each area on the slide (Prevention, Identification and Taking Action).</p> <p>Give them 10 minutes to consider and write-up interventions they might take in each area to ensure the workplace is well placed to prevent and deal with bullying (explain there will be overlap between group interventions).</p> <p>Give them an example ie the Prevention Group may decide to <i>'train people on how to give and receive feedback'</i> or <i>'introduce a policy that states clearly intolerance of workplace bullying'</i> and the Identification Group may decide to <i>'do a confidential annual cultural survey'</i>.</p> <p>Ask them to put their white paper up on the walls and each group to feedback their ideas.</p> <p>Show slides 11, 12, 13 (see Trainer's Notes) and discuss, referring to comments made on whitepaper around the room.</p> <p>Refer participants to the example of Executive Director Statement and Example Policy Content in the manual. Explain that bullying is a form of harassment and can therefore be a part of the harassment policy (it doesn't have to be a stand-alone policy). Optional Exercise: a role play dealing with a workplace incident that could be construed as bullying (see Trainer's Notes).</p>	Slide 10 Preventing, identifying and taking action Slide 11 Prevention Slide 12 Identification Slide 13 Taking Action	<p>Large sheets of white paper and blue tack</p> <p>Example Executive Director Statement in the manual, Section 5</p> <p>Example Policy Content in the manual, Section 6</p> <p>Two copies of the role play script from the Trainer's Notes</p>
12.30	Action Plan	<p>Ask participants to spend five minutes talking to the person next to them about three things they plan to do when they get back to work. Ask them to write these actions down on the template provided.</p>		Copies of an Action Plan Template in the manual, Section 8
12.45	Evaluation	<p>Go round room and ask participants what they learned that was useful, how they feel about the morning and what they are going to do when they go back to work.</p> <p>Ask participants to fill in an evaluation form.</p>		Copies of Training Manual Evaluation Form in the manual, Section 10

3 > PowerPoint Slides

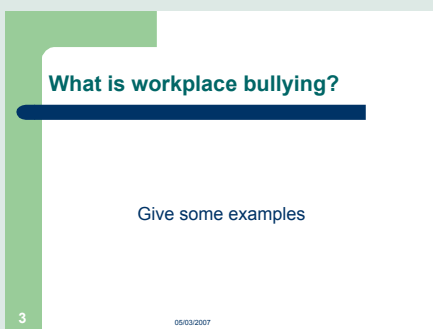
Slide 1



Slide 2



Slide 3



Slide 4

Common themes in definitions

- ✦ Directed at a target, often an individual
- ✦ Verbal or physical
- ✦ Repeated, persistent
- ✦ Unreasonable, inappropriate
- ✦ Offensive, abusive, intimidating, malicious, insulting
- ✦ Target – loss of self confidence, threatened, upset, humiliated, vulnerable
- ✦ About power – positional, resources, physical, psychological

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Slide 5

What is the Law? - Summary

Employment Relations Act (ERA)	Health and Safety in Employment Act (HSE)	Human Rights Act (HRA)
Personal grievance claim alleging discrimination, sexual or racial harassment, or duress re. union membership	Physical or mental harm caused by work-related stress	Racial and sexual harassment Victimisation on the basis that someone has made a complaint under the HRA
Personal grievance claim alleging unjustifiable constructive dismissal, unjustifiable disadvantage or breach of contract	Obligations on an employer under this Act may be used by employee to support claim for constructive dismissal, unjustified disadvantage or breach of contract	No employee can be subjected to any 'detriment' at work by reason of any of the 13 grounds of discrimination in s21 of the Act
A bullying claim has to be framed around already recognised duties implicit in the employment relationship such as duty to provide a safe workplace or duty of trust and confidence	A bullying allegation has to include a claim that the resulting stress is workplace stress A bully may be deemed a 'hazard' (a hazard is a situation where a person's behaviour may be a cause of harm to another person)	A bullying allegation has to have a link to one of the 13 grounds of discrimination. Or the allegation has to be because the target is being victimised due to having made a complaint

4/30/07 5

Slide 6

Case examples – bullying found

- ✦ AG in respect of the CE of the Dept Corrections v Gilbert 02
- ✦ Job v AG in respect of the DG of the DOC 03
- ✦ O'Brien v Renton Chainsaws & Mowers 03
- ✦ McGowan v Nutype Accessories Limited 03
- ✦ Williams v The Warehouse Ltd 05
- ✦ Harbord v Waste Management Ltd 05
- ✦ DoL v Nalder & Biddle 05

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Slide 7

Case examples – bullying not found

- ✦ **Voisey v Age Concern 2003**
- ✦ **Briggs v NZ Gem Trading Co Ltd 2004**
- ✦ **Nagai v Carlton Hotel 2004**
- ✦ **Sharma v Vehicle Testing NZ Ltd 2004**
- ✦ **Sherwin v Fletcher Challenge 2004**

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Slide 8

Costs of Bullying

- ✦ loss of respect for managers and supervisors
- ✦ poor morale and poor employee relations
- ✦ poor performance
- ✦ lost productivity
- ✦ absence
- ✦ resignations and staff turnover
- ✦ damage to organisational reputation
- ✦ tribunal and other court cases and payment of unlimited compensation
- ✦ loss of self confidence for target

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Slide 9

Positive Healthy Workplaces

- ✦ What does a negative workplace look like?
- ✦ What does a positive, healthy workplace look like?
- ✦ How do you develop and maintain a positive, healthy workplace?

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Slide 10

Preventing, identifying and taking action

- PREVENTION – Risk management
- IDENTIFICATION – Diagnosis and systems that allow early intervention
- TAKING ACTION – Dealing with complaints and solving problems speedily

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Slide 11

PREVENTION: Risk Mitigation

- Leadership** : strong, competent, visible, openly accountable, willing to confront difficult people
- Values** : obvious through behaviours demonstrated daily and used to help deal with difficult decisions
- Infrastructure** : systems, HR framework - robust, flexible, transparent
- Policies and procedures** : clear statements on expectations, encouraged and unacceptable behaviour - made transparent
- Awareness and understanding** : what bullying is, what policy and expectations are, what to do if it happens
- Training** : reminders or training programme on harassment to all staff approx every two years.

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Slide 12

IDENTIFICATION

- Culture diagnosis or weather-check e.g.**
 - Staff questionnaire
 - Focus groups
- Use systems to assist in early intervention e.g.**
 - Exit interviews
 - Performance management
 - HR statistics
- Monitoring the workplace for signs of trouble e.g.**
 - Reduced productivity
 - Requests for transfer

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Slide 13

TAKING ACTION

- Responsibilities** – if bullying is occurring
- Safe, fair and speedy procedure** – to deal with complaints
- Disciplinary procedure** – for those found to be bullies
- Dealing with the bully**
- Monitoring** systems
- Support** for the complainant

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4> Trainer's Notes - to go with the slides

What is Workplace Bullying?

Notes for slide 3: What is workplace bullying?

There is no legal definition of workplace bullying. Some examples that are identified in the literature are:

- aggression, threats, shouting, abuse, terror, and obscenities
- constant humiliation or ridicule, belittling efforts often in front of others
- excessive supervision, monitoring or criticism about minor things
- constantly overriding authority, removing work responsibility, or reducing the job to routine tasks below capabilities
- setting impossible objectives or constantly changing the work, and then criticising for not meeting the demands of the job
- ostracising and marginalising, dealing with the person only through someone else, or excluding them from discussions and decisions
- spreading nasty rumours
- refusing reasonable requests for leave or training, or blocking promotion
- repetition of small incidents/remarks which on their own might be seen to be slightly unsuitable but not significant, which over a period of time and repeated have a cumulative affect that is destructive and damaging
- taking the credit for other people's work but never taking the blame when things go wrong
- refusing to interact with a colleague.

Bullying often consists of a series of incidents which alone can appear trivial, but together can be devastating. This is why the 'target' (the currently accepted term for a person who is bullied) needs to write notes to demonstrate that a series of events has occurred over time.

One occurrence of the behaviour is not usually considered to be workplace bullying by most commentators, however there is some disagreement on this. In considering this issue, it is important to take into account the 'magnitude' of the incident and its impact on the target.

What is the Law?

Notes for slide 5: Bullying – legal summary

The following is taken from *Dealing with Bullying in the Workplace*, by Anna Fitzgibbons, June 2006.

Even though there is no legal definition or specific recognition of 'workplace bullying' in any New Zealand legislation, every employment agreement contains certain fundamental terms implied by **common law**. The employer has a duty to provide a safe and secure workplace. To do this an employer is required to take reasonable steps to protect employees from physical and mental harm. In addition an employer is under an implied duty not to conduct him/herself in a manner calculated or likely to destroy or seriously damage the relationship of trust, confidence and fair dealing which exists between employer and employee. If an employer fails to do this it leaves the employer open to a personal grievance claim by an employee.

1. Employment Relations Act (ERA)

Most cases in New Zealand that demonstrate the type of behaviour that could be classified as bullying behaviour are involved with personal grievance claims. Section 103 clearly defines what constitutes a personal grievance and includes:

- unjustifiable dismissal,
- unjustifiable disadvantage, namely that an employee's employment has been affected to his or her disadvantage by the unjustifiable action of the employer,
- discrimination,
- sexual harassment,
- racial harassment, or
- duress in relation to the employee's membership or non membership of a union or employee organisation.

Nowhere in the definition of personal grievance does it refer to workplace bullying. This means that an employee must bring his or her claim under the more general headings of "*unjustifiable dismissal*" or "*unjustifiable disadvantage*" and frame the claim around the already recognised duties

implicit in the employment relationship, such as the duty to provide a safe workplace, and the duty of trust and confidence and fair dealing.

An employee who claims that he or she was forced to resign as a result of workplace bullying, either as a result of the employer's inactivity in respect of workplace bullying by a colleague, or because of bullying by the employer him/herself, may bring a personal grievance that he or she was unjustifiably dismissed. The unjustifiable dismissal relates to being forced to resign because of a breach of duty on the part of the employer. Resignation in these circumstances is referred to as a "*constructive dismissal*".

Alternatively, the employee can bring a personal grievance of unjustifiable disadvantage as a result of bullying by the employer. The claim is that the employee's employment has been affected to his/her disadvantage as a result of the employer's failure to take steps to prevent the bullying.

Another option open to the employee would be to bring a claim for breach of contract which the Employment Relations Authority can determine under s161 (1)(b) of the ERA.

2. Health and Safety in Employment Act (HSE)

Amendments to the HSE Act in 2003 extended the definition of "*harm*" to include physical or mental harm caused by work related stress. The definition of "*hazard*" was also extended to include "*a situation where a person's behaviour may be an actual or potential cause or source of harm to the person or another person*". Therefore a bully could be deemed a "*hazard*". Since the introduction of these amendments there was initially an influx in the number of claims being brought by employees which included a claim of workplace stress. The statutory obligations on an employer under the HSE may be used by an employee to support a claim for constructive dismissal, unjustified disadvantage or breach of contract. Failure to comply with the requirements of the HSE may also be an offence under that Act for which a fine may be awarded.

3. The Human Rights Act (HRA)

This legislation does not prohibit “workplace bullying” unless it can be proved that the employee was subjected to detriment at work by reason of any of the prohibited grounds of discrimination. The HRA prohibits racial and sexual harassment, and discrimination based on any of the 13 grounds in the Act. The HRA also prohibits victimisation of someone because they have made a complaint under the HRA.

Notes for slides 6 and 7: Case examples – bullying found and not found

What can be taken from the case law?

Employers have an obligation to provide a safe, secure work environment. This duty is explicit in the HSE and has been affirmed in significant case law such as *Gilbert* (see the Participants' Manual for case references), in which the Court of Appeal emphasised the implied duty on employers to take reasonable steps to maintain a safe workplace for their employees (in the context of a work related stress claim). The *Williams* case also highlights the importance of keeping a workplace safe and healthy.

Employers have a well recognised duty to maintain the relationship of trust and confidence with their employees and this can be undermined by serious and sustained acts of bullying.

Employers have the responsibility to take complaints of workplace bullying seriously and to take steps to investigate and put an end to any such bullying. The worst case scenario could include a situation where an employer is aware of an employee being bullied, takes no steps and the employee is subject to physical or mental violence which causes harm.

The Department of Labour's Health and Safety Office will investigate incidents of “serious harm” in the nature of a recognisable mental or physical illness and may prosecute under the HSE. Employers would be liable for fines under the HSE and potentially, claims under the ERA.

However the case law also tells us that it can be difficult for employees to prove that the bullying they have suffered crosses the threshold of seriousness to support a personal grievance claim. It appears from the case law to date, that bullying in the form of physical or verbal abuse such as constant and offensive swearing will give rise to a successful personal grievance, but some of the more insidious forms of bullying, such as intimidation demonstrated by a brusque management style are unlikely to pass the threshold. Behaviour that would not normally be expected in a workplace, even if upsetting to a staff member, will not always be of a serious enough nature to amount to workplace bullying.

Getting and Keeping a Positive, Healthy Culture

Notes for slide 9: Positive, healthy workplaces

Knowing how to give and receive feedback is an important aspect of a positive workplace. It is important for managers, supervisors and all staff to be able to express positive feedback, or constructive criticism to a staff member in a positive, productive manner that will be accepted by the employee. Everyone wants to feel like their contribution is valued and most of us would like to know if our behaviour or actions are having a negative effect on someone else and how we can improve.

The workplace needs to develop and encourage an environment where managers and staff feel comfortable enough to be able to express their concerns and issues, for example being able to say 'I don't like it when you do _____. I feel _____. This is what I'd like you to do about it _____.'

Managers need to address difficult performance issues in a calm, constructive and direct way as soon as the problem is identified. Ignoring a performance issue will only make it worse.

On the other hand, all staff (including managers) need to have training or coaching in how to accept constructive feedback in a non-defensive and positive way. This does not mean accepting all criticism without question.

Everyone has a right to have examples of the behaviour that is being discussed, and to question an opinion if they believe it is not correct.

People are not always aware their behaviour may be upsetting another staff member and they need to be told as directly as possible that this is the case. Many people will respond positively to this and alter their behaviour once they are aware of its impact.

The employee is required to report instances of bullying to the employer so that the employer can take steps to eradicate the problem. Where an employee fails to do so, that may affect the outcome of any claim the employee later makes against the employer in relation to the bullying. The general obligation on an employee to adequately alert the employer to alleged bullying is reinforced by s19 of the HSE which requires every employee to take all practical steps to ensure their own safety at work.

Having a sense of humour is an important aspect of a positive workplace but understanding that other people may have a different sense of what is funny is also important. It's necessary to be aware of the impact of humour in a work environment.

Speaking up in support of others and actively rejecting bullying is a positive workplace practice. Silence from the majority gives implicit agreement that bullying of a target is acceptable behaviour.

Some organisations provide organised group responses to bullying behaviour - a collective approach to the bully where someone other than the target does the speaking and everyone in the group is invited and encouraged to participate. This creates a completely different power dynamic for the individual who is bullying when he/she sees a number of people are concerned. This is an early intervention technique that does not involve outsiders and can circumvent further action being taken.

Written rules, codes of conduct or competencies are a way to ensure everyone knows what is expected of them and what an organisation values. Some of the areas that might be covered are the need to:

- stay calm especially with people who aren't
- be constructive and productive, not destructive, controlling or demanding
- acknowledge, understand and work with diversity. We all have different lifestyles, beliefs or opinions and different styles of operating. For example, some people take longer to assimilate new information than others
- let go of perfectionism
- be brave and take risks
- foster good communication that emphasises team spirit and encourages the desire to work together
- have managers that are accessible for making decisions
- be flexible. This may include explanations about why decisions or behaviour might need to change
- understand appropriate distance
- have realistic expectations about performance and output
- communicate well, that is, test your understanding of what has been said, contribute to the conversation, allow for silence, space and time and LISTEN.

Prevention, Identification and Taking Action

Notes for slide 11: Prevention - risk mitigation

The following are ways to mitigate the risk of harassment and bullying.

1. Leadership

There needs to be strong, competent leadership that is visible and openly accountable and is willing to confront difficult issues between people. Leadership and vision should be displayed throughout the organisation but should come particularly from senior staff. Whatever behaviours senior management demonstrate will be taken as expressing the values of the organisation. If senior managers are respectful of people, others in the organisation will be more likely to adopt that behaviour. Workplace bullying flourishes because senior management tolerates it by either

ignoring it, refusing to accept feedback about it, making excuses for the bully (such as “it’s just a personality clash”), practising it themselves, and/or talking about the behaviour in humorous or admiring terms.

2. Values

The values of the organisation should be obvious to all through behaviours demonstrated daily and should be used to help deal with difficult decisions. The values should encompass a zero-tolerance to all forms of harassment and bullying. Management philosophy and practice need to be aligned to this value.

3. Infrastructure

The organisation’s systems and human resources framework should be robust, flexible and transparent. Systems are necessary to identify people at risk of bullying behaviour with the ability to circumvent this behaviour with management training or intensive coaching.

There needs to be a system of contact people at all levels of the organisation for staff to approach with their problems.

4. Policies and procedures

There should be clear expectations and guidelines about what is expected of staff and management, behaviour that is encouraged and behaviour that is unacceptable. All forms of harassment, bullying and discrimination can be covered in one policy. There does not need to be a separate policy as bullying is a form of harassment. A policy might be termed ‘Dignity at Work’ or ‘Healthy Workplace’ or other positive terminology. It might include:

- A statement of commitment and zero-tolerance from the CEO which may be placed on notice-boards, distributed to all staff, placed on the agenda of workplace meetings, training sessions and induction sessions.
- Introduction and scope
- Legislation

- Definitions of discrimination, harassment, bullying and victimisation
- A list of behaviours that are not acceptable and those that are encouraged
- Prevention measures
- Role and duties of managers, HR, staff, contact people, mediators and investigators
- Union involvement
- Procedures to be followed to make a complaint - both internal and external
- Time scales for action
- Sanctions if bullying or harassment is proved
- How to access support and counselling, with the names of at least two contact people
- Confidentiality

See the State Services Commission's *Creating a Positive Work Environment* for guidance on developing a policy
<http://www.ssc.govt.nz/display/document.asp?NavID=82&DocID=3296>

5. Awareness and understanding

The organisation should raise levels of understanding of workplace harassment and bullying, what the policy and expectations are, and what to do if it is encountered. Promotional material such as posters could be used.

The last page of the State Services Commission's *Creating a Positive Work Environment* booklet has a Department of Conservation poster which is a good example of a tool that could be used in the workplace to raise awareness http://www.ssc.govt.nz/upload/downloadable_files/doc-poster.pdf

6. Training

Regular reminders or a training programme on the organisation's stance on harassment and bullying, and how to recognise and deal with it should be given to all staff approximately every two years. All new staff should be trained soon after they arrive. Managers and supervisors may need further training or coaching.

There also needs to be regular training or briefings for contact people so they know what's expected of them.

The organisation's policy will outline a formal process for dealing with behaviour that is unacceptable, but all employees need training in dealing with difficult conversations in an informal way in order to circumvent bullying behaviour before it takes hold. A process for a difficult conversation might include the following aspects:

- Tell someone else what you are doing
- Practise what you will say with a colleague or manager
- Select the best time and place to approach (perhaps setting up a meeting time)
- Acknowledge that you have something difficult to talk about
- Describe specifically the behaviour to which you are objecting
- Deliver the message stating how their behaviour makes you feel
- Don't label the person, just the behaviour
- Identify exactly what you would like changed and in what ways you would like the behaviour to be different
- State clearly what you will do next if the behaviour continues
- At the end of the discussion restate clearly what was discussed and agreed
- Write notes after the discussion of what was agreed.

Notes for slide 12: Identification

The following are ways to identify if bullying is taking place.

1. Actively diagnosing the workplace by undertaking a weather-check with the staff at regular intervals can be useful. This can be done through:

- **A staff questionnaire** to identify the health of an organisation. A work-related stress survey can be found on the UK Health and Safety Executive (HSE) website at <http://www.hse.gov.uk/stress/standards/pdfs/indicatortool.pdf>

- **Internal focus groups** conducted in a relaxed atmosphere are another way of gaining intelligence on what is going on in the workplace. A document called *How to Organise and Run Focus Groups* can be found on the HSE website at <http://www.hse.gov.uk/stress/standards/pdfs/focusgroups.pdf>

2. Systems and processes such as exit interviews, performance management, HR statistics on absenteeism etc, peer review for managers of performance appraisals of their staff will allow for early signals.

3. Monitoring the workplace is important during and after complaints. This includes monitoring the incidence and nature of complaints in order to know the extent of the problem and the potential risks. Signs of bullying taking place could include:

- Sudden increases in absenteeism and lateness from people with good attendance records
- Sudden resignations from employees who seemed happy in their jobs
- Unexpected deteriorations in work performance
- Unexpected requests for transfer
- Increased worker's compensation claims
- Deterioration of workplace relationships
- Increased mistakes and cover-ups
- Not showing initiative
- Working to rule
- Increased customer complaints.

Notes for slide 13: Taking action

1. Responsibilities – if bullying is occurring:

Employees have an obligation to bring their concerns to the attention of the employer and advise of the hazard they are facing under s19 of the HSE (s19 requires every employee to take all practicable steps to ensure their own safety at work). In addition they must give the employer adequate time and opportunity to address their concerns.

The Employer has an obligation to act to create a healthy positive workplace where bullying is not tolerated. Once the employer is aware of the existence of bullying behaviour, he/she is required to take affirmative steps to deal with it. Under s2A of the HSE that duty extends to situations where the employer ought reasonably to have known about the circumstances in question. It can be very difficult for an employee to raise bullying concerns, for example where the alleged bully is a more senior staff member. Employers can become aware of bullying behaviour in many different ways. Even where the target has not raised concerns directly, it can be argued the employer was aware of the alleged bullying behaviour, the same obligation exists.

If a complaint is made, the employer should:

- confirm with the person making the complaint that the behaviour is real and not imagined - because of the subtlety and sometimes trivial nature of each incident this is sometimes hard to evidence
- access and review any written evidence of bullying the complainant has
- provide the complainant with support and protection and ensure they have a safe reporting relationship
- undertake a thorough investigation and ensure fairness
- if proved, deal quickly and precisely with the bully
- make explicit the zero tolerance policy.

Human resource personnel have specific responsibilities if a complaint is made. These include:

- supporting and advising the complainant
- documenting the complaint
- alerting senior management to the workplace hazard
- helping them manage the complaint including the prevention of further incidents.

2. Safe, fair and speedy procedure – to deal with complaints

Procedures should include:

- investigation (done by someone trained and impartial) into the allegations with individuals able to be accompanied by an employee representative or colleague
- steps to protect employees
- steps to keep employees informed so they know action is being taken and individuals are fully aware of what their offence is
- an appeals procedure.

3. Effective disciplinary procedure – for those found to be bullies

Discipline procedures should cover:

- a timely resolution of complaints
- explanation for disciplinary action and what the penalties might be e.g. oral or written warnings, suspension or transfer, dismissal without notice for gross misconduct
- the considerations that might apply before deciding on penalties e.g. employee's general record, explanations or circumstances that should be considered, action taken in previous cases, whether the proposed penalty is reasonable.

If the employer decides that some sort of disciplinary action or dismissal is the appropriate sanction for the bullying behaviour, the employer must be able to justify that action both substantively and procedurally.

If the actions cannot be justified a claim of unjustified disadvantage or unjustified dismissal under the ERA may follow.

4. Dealing with the bully

If the investigation proves that bullying occurred management should:

- meet with the individual concerned and lay out the allegations. Do not permit the person to leave the meeting with any misunderstanding of what has been said and the implications of it. It is important to

spell it out, be specific and give examples. There should be a third person present, perhaps a human resources manager whose role is to remain impartial and ensure that the allegations are put forward appropriately and that each side is listened to.

- agree on a development plan, for example a management course or counselling. Inform them that further complaints of the behaviour will be treated as serious misconduct and may result in termination.
- document all complaints and agreements to make changes. Failure to do this may lead to grievance complaints and/or defamation action. If the individual participates in the agreed development plan, get a report-back or an outline of the course they attended, and require a report on their attendance and participation. Do not accept non-attendance or non-participation. This should be confronted and noted as unacceptable. Be prepared to pay for group programmes and counselling.

5. Monitoring systems

Systems should be set up to monitor behaviour for an agreed length of time. For example, if it is a serious incident, this may be weekly for three months and then every quarter for several years. Use feedback mechanisms to gather information. Written or oral surveys are fine as long as the specific information sought is agreed upon with the individual concerned and consistently gathered, analysed and presented.

6. Support for the complainant

Support needs to be provided so that a valued employee:

- feels safe again at work
- is listened to and has his or her experience validated by management
- is given ongoing support sufficient for recovery from the experience.

This may involve counselling or coaching and an ongoing review.

5 > Optional Exercise

Dealing with a workplace incident

To do this role play exercise you will need two facilitators or a volunteer from the workshop participants. Explain that the first scene occurs in a workplace meeting.

- 1. Scene One:** The two facilitators act out a scripted scenario set in a workplace meeting of an employee and his or her manager. If desired, the training participants can play the role of the other members of the team attending the meeting.
- 2. Optional Scene Two:** In the lunchroom after the meeting and all the staff at the meeting (the workshop participants) are having lunch. A staff member who was at the meeting (the facilitator) enters the lunchroom and asks the rest of the staff what they thought about the meeting. The staff member (facilitator) offers to get the HR manager (the facilitator or a volunteer amongst the participants) who arrives and asks staff (workshop participants) what the problem is and what they want done about it. The HR manager seems reluctant to act.
- 3. Ask** participants how the whole scenario could have been handled better and what should have been done by the staff members involved and the HR manager. Also what it feels like to be a member of a team where one of their colleagues is being bullied?

Role Play Script

SCENE 1

Meeting situation - ideally, it would be good to get participants to sit in as meeting attendees in the know but this is not essential.

Trudy: *irritated* Where is Mack? He should be here on time!

Mack: *flustered* Sorry I'm late I thought we were in meeting room 3.

Trudy: Oh perhaps I forgot to copy you in re the room change. Now can you all take out the agenda?

Mack: I don't have one.

Trudy: No I have your one here.

Mack: Why wasn't I emailed the agenda?

Trudy: I just thought I'd bring it for you.

Mack: But I see you have me speaking to the Tax Imputation Project as item two, I needed to prepare for that.

Trudy: Surely you know that project well enough to speak about it without notes.

Mack: I don't like to be put on the spot.

Trudy: Well, shall we have Dion speak about the material, I am sure he is prepared.

Other participants are looking at the floor.

Mack: No I'll do it.

Trudy: See that wasn't so hard was it? I would like Dion to speak to point 8 though because he is able to communicate things so succinctly.

Mack: But....

Trudy: What?

Mack: Oh, it doesn't matter.

Optional SCENE 2

Staff sitting around the lunchroom (training participants play the role of the staff). The amount of time spent in each part of the dialogue will depend on the type of audience ie HR staff, managers or general staff. Facilitator enters in role of a staff member that was at the meeting.

Staff member: Gee she was rough on Mack today. What do you think?

Elicit responses

Staff member: We should talk to Lou in HR...what would we say?

Elicit responses

Staff member: Do you think I should go and ask Lou to come in now?

Elicit responses

Facilitator goes out and comes in as Lou with a change of jacket.

Lou: You wanted to see me I hear. What is this, a delegation?

Elicit responses