

Is Workplace Bullying the New Discrimination?

Things have changed since the days that racist and sexist would openly and without reservation communicate to individuals of color and women respectively – via words, threats, looks, and actions – that you’re not welcomed, wanted, or worthy. Fast forward to current times, these attitudes still exist; however, the difference is that individuals who hold these views are willful in their efforts to continue these prejudices with the use of updated tactics. These tactics might include: non-preferential assignments, lack of diversity in senior management levels, teams that don’t have any minorities, or companies with minimal minority representation.

Anyone who pursues claims of discrimination against individuals or organizations has to prove it. Generally, the standards used to demonstrate discriminatory intent is often related to whether an individual called someone a racially insensitive term, a racist symbol was used, or someone was attacked while being called racist names. This classification might be a reasonable standard in the 1960’s; however, educated individuals understand that the use of these types of communications, gestures, or behaviors can lead to actionable claims. Therefore, individuals who discriminate will operate within the boundaries of laws, but short of violating any governmental regulation that protect individuals against discriminatory policies, behaviors, employment actions, etc.

Other barriers counter to healthy work environments are ‘right to work’ laws, which allow employers to separate an employee at any time or for any reason – with or without cause. This regulatory framework allows companies to legally discriminate against individuals without any legal consequences in spite of their performance.

States that have ‘right to work’ laws can be fertile environments for workplace bullying. These regulatory environments can minimize employee complaints about workplace abuses due to a fear of an immediate job loss, which can also allow workplace bullying to go unchecked or unchallenged. Moreover, these environments allow for openly questionable practices and behaviors to exist up to the limits of law(s), which should protect individuals from any types of discrimination.

It’s important to note that workplace bullying is legal in almost every jurisdiction in the U.S. and in countries around the world. Bullying in the workplace can be

related to an individual's looks, relationships, intelligence, speech pattern, clothes, or other arbitrary factors, as long as the behaviors or adverse employment actions aren't related to a protected class under Title VII of the Civil Rights Act. Title VII enacted in 1964 – and updated in recent years – protects individuals against discrimination based on factors such as race, sex, religion, disabilities, and more.

Individuals who are discriminated against due to reasons that aren't protected under Title VII have limited legal remedies against adverse employment actions. The only potential protections are if an employer has documented policies and procedures to protect its resources (e.g., employees, contractors, vendors, etc.) against any type of discrimination or harassment. This is a significant reason that 'right to work' laws should be discontinued to remove any gaps in legal protections.

Some might argue that the elimination of 'right to work' laws would remove an employer's right to terminate an employee. This type of thinking is shortsighted, as employers should have documented policies and procedures to administer employee separations. This documentation – if consistently administered – can provide greater protections for employers and employees.

Other arguments might suggest that additional laws to protect against workplace bullying aren't needed because it will be difficult to manage and will also lead to frivolous lawsuits. Similar arguments were made against laws to protect women from sexual harassment, too. However, sexual harassment laws have provided greater protections to prevent and protect employees (men and women) against any unnecessary infringement of an individual's legal rights to life, liberty, and the pursuit of happiness.

It's time to ensure that workplaces, individuals, and societies are guarded against any actions, behaviors, policies, procedures, or laws that prevent anyone from having a fair and unrestricted opportunity for success.

Additional information on workplace bullying can be obtained in Beyond SPRH's solution-oriented books: [“Bullies... They're In Your Office, Too: Could you be one?”](#) and [“Management Spotlight: Belief”](#).