



Workplace Bullying in New Jersey

Understanding the Law and Employer Responsibilities

WORKPLACE BULLYING IS A SERIOUS but often poorly-defined issue that can have significant consequences not only for affected employees but for organizations as a whole. It damages employee well-being, morale and productivity, erodes a healthy workplace culture and takes management resources away from business priorities.

The New Jersey Healthy Workplace Act

In New Jersey, workplace bullying is not explicitly prohibited by statute and remains technically legal. The proposed New Jersey Healthy Workplace Act (the Act) —introduced repeatedly since 2014—would create protections against abusive conduct that causes an employee physical or psychological harm through malicious, intimidating or humiliating actions (verbal and physical) like rumor-spreading, social exclusion and work sabotage. However, the legislation has not been enacted, in part because the terms and definitions are thought to be too nuanced and subjective, leaving almost any workplace behavior susceptible to being classified as bullying.

Despite the lack of a legal statute, NJ employers should never ignore complaints and allow bullying behavior to go unchecked. Persistent “abusive conduct” can eventually lead to illegal acts of discrimination, a hostile work environment and even retaliation. A workplace complaint should never be dismissed under the presumption that the complainant was hyper-sensitive or the actions of the accused were harmless. Experience has revealed that bullies target vulnerable populations precisely because they know these targets are defenseless.

When is Workplace Bullying Illegal?

There are certain situations where workplace bullying can, in fact, be deemed illegal in New Jersey. This occurs when it overlaps with protected characteristics or creates a hostile work environment under existing laws.

Key laws applicable in New Jersey include:

- Title VII of the Civil Rights Act of 1964, which prohibits harassment based on race, color, national origin, religion and sex, including sexual orientation, gender identity and pregnancy
- The Age Discrimination in Employment Act (ADEA), which protects employees age 40 and older
- The Americans with Disabilities Act (ADA), which prohibits harassment based on disability
- The New Jersey Law Against Discrimination (NJLAD), one of the broadest anti-discrimination statutes in the country, which protects employees from harassment and discrimination based on numerous characteristics, including race, sex, age, disability, sexual orientation, gender identity or expression, and other protected traits

Under guidance from the Equal Employment Opportunity Commission (EEOC) and New Jersey courts, harassment is unlawful when the conduct becomes a condition of employment or is pervasive enough that a reasonable person would find the work environment intimidating, hostile or abusive. Offensive jokes, slurs, ridicule, threats, insults, offensive images and interference with work performance can all contribute to an unlawful hostile work environment. Isolated incidents or minor slights are usually not considered illegal. What matters is the context, frequency, and severity of the behavior.

Employer Liability Risks

New Jersey employers may be liable for harassment by supervisors, coworkers, clients or other third parties. In addition, employees may have claims even if they were not the direct target of the conduct, so long as they were affected by a hostile work environment. The broad interpretation of the NJLAD means that employers face heightened risk of legal action when bullying behavior is tolerated or inadequately addressed. For this reason, it is important to recognize the warning signs and respond appropriately. Some common “red flags” that might indicate bullying in the workplace are: a decline in performance and productivity, absenteeism, withdrawal, heightened emotions and an increase in employee turnover.

Best Practices for a Proactive Approach

New Jersey employers are strongly encouraged to adopt proactive measures to combat workplace bullying. Best practices include clearly defined anti-bullying policies, confidential reporting systems, thorough documentation, management training, prompt and consistent investigations and regular follow-up assessments to ensure safety and respect among employees is being maintained.

Although workplace bullying may be technically lawful in New Jersey in some cases, ignoring it is never a good strategy. Employers who address the behavior promptly, recognize when it crosses into illegality and prioritize cultivating a culture of respect are better equipped to protect employees, reduce legal risk, and preserve a healthy, productive workplace. ■

If you have questions about bullying in the workplace, contact the NIEDWESKE LAW FIRM, LLC at 908-738-8500 and one of our highly skilled employment attorneys will be happy to assist you.