

EXPERTS ROBYN ANDERSON



BRODIE'S LAW' IS GAINING MOMENTUM

The tragic death of Brodie Panlock in Victoria, after relentless bullying by co-workers, has led to the enactment of what has become known as 'Brodie's Law'. This amendment to the *Crimes Act* has criminalised serious bullying in Victoria. The idea of anti-bullying laws is now gaining momentum nationally.

The amended act broadens the definition of stalking to include:

- Making threats, using abusive or offensive words, performing abusive or offensive acts, and directing abusive or offensive acts towards a victim;
- Acting in a way that could reasonably be expected to cause physical or mental harm to the victim; and
- Actions that would reasonably be expected to cause the victim to self-harm.

The act has also widened the definition of 'mental harm' to include psychological harm and suicidal thoughts.

In the light of these legal changes, the growing awareness of bullying and the likelihood of other jurisdictions introducing similar laws, business owners need to ask themselves:

1. How do I deal with seeing bullying occur in the workplace?
2. How do I deal with allegations made to me about the possibility of bullying occurring?
3. How do I deal with complaints made directly to me?
4. How do I ensure that my performance management processes can withstand bullying allegations?

What to do if you detect bullying

Every employer, large and small, should have formal employee grievance procedures in place and investigate any complaints. Business owners must act quickly and decisively. If an employee feels they are being bullied, they must have an avenue to air their complaint and have the grievance dealt with confidentially and sensitively. If bullying is found to be occurring, warn the bully, explain to them the effects of their behaviour and the undesirability of it. In serious cases, and if the behaviour constitutes "serious misconduct" at law, you may be required to take further steps and terminate the bully. As a business owner, vulnerable employees expect you will be the saviour who stops the bullying, and that you will ensure they can come to work feeling safe and secure. It is your job to make it clear to every employee, regardless of length of service or position, that bullying behaviour will not be tolerated.

What to do if bullying is alleged

Simply being reactive and adopting an 'until X comes to me with a complaint themselves, I will put my head in the sand'

mindset is neither adequate nor acceptable. So taking action is absolutely necessary. Arrange to speak confidentially with the alleged bullying victim about what you have heard and ask them if everything is okay. From there, you will often be able to gauge if there is an issue. Remind all employees of the company's anti-bullying policies and the grievance procedures available to those who want to use them.

Dealing with complaints of bullying

Ensure that you act swiftly and objectively. If you fail to investigate a complaint, you could be at risk of action against you from government bodies and workers compensation authorities. In Victoria, you may also be aiding and abetting a crime. Commencing an investigation can be complex and you need to work through a fair, open and transparent process that assumes innocence until proven guilty. Ensure that all parties are afforded privacy wherever possible. Mistakes and a mishandled investigation may worsen a situation, so if you are not confident, consider outsourcing the investigation to specialists. It is a wise investment.

Performance management processes and bullying

Ensure that your processes are fair and transparent without any favouritism and be careful that performance management is not simply a knee-jerk reaction to a situation without substance. All employees need to be treated equally and with fairness and respect. Don't apply different rules to different employees. When undesirable performance or conduct occurs, document things fully and where others have supervisory responsibilities, ensure they are trained in performance management procedures. Educate employees, particularly those with supervisory responsibilities, as to what does and does not constitute bullying. If you have a sensitive situation, do not feel confident or feel that your business may be at risk, again, consider getting specialist advice.

Conclusion

Bullying is not going away and businesses need to educate all employees, supervisors and managers about what constitutes bullying and how your business will treat those who engage in this activity. We should not take our eyes off the ball in relation to genuine bullying cases, but likewise ensure your business has processes in place that ensure that legitimate performance management is handled correctly and does not morph into a bullying accusation. And the last word: don't go it alone if you do not feel confident — get assistance, because the stakes can be higher than you think. mb

"It is in every business owner's interest to educate their employees about bullying."

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