

ADDITIONAL MATERIAL TENDERED

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AT PARLIAMENTARY HEARING INTO BULLYING AT WORKCOVER ON 6 NOVEMBER 2013

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1. Material in relation to Recommendations 1, 2 and 4

(a) **Michigan Technological University Office of Institutional Equity Paper 4/13** – defines workplace bullying in a way which does not require intention as an element. Effect is the gist of the definition. Still recommends:

- Apology by perpetrators
- Anger Counselling for perpetrators
- Training (seminars) for perpetrators.

(Annex A)

(b) **Guarding Minds at Work (GM@W)** This is a free web-based strategy that helps employers protect and promote psychological safety and health in the Workplace. At the Simon Fraser University in Canada, researchers identified 13 psychosocial risk (PSR) factors. Each one is discussed in detail at the GM@W website.

(Annex B)

2. Material in relation to Recommendations 4 and 6

(a) There should be a framework agreement for prevention and minimisation of psychosocial risks in the NSW public sector.

The framework agreement should be entered into between the Government, PSA, other unions with members employed in the NSW Public Sector, WorkCover, other SRWSD Agencies and representatives of other public sector agencies in NSW.

The framework agreement should have in its preamble a reference to an apology, or at least an acknowledgement of past and present harm caused by bullying.

The framework agreement should be developed along the same or similar lines to the framework agreement signed on 22 October 2013 between the French Government, unions and public employers.

(Annex C)

- (b) Research has shown that the making of an apology has more impact than the non-making of an apology. For example Fox and Stallworth (2006) reported that 67% of their survey respondents believed that an employer apology would have made a difference to them in resolving a dispute associated with workplace bullying.

(Annex D)

3. Material in relation to Recommendation 5

- Local Work Group Focus Group Report 2013 (already before the Inquiry)

Points of special interest (PSR factors):

- Need for clearer expectations
- Need for more respect towards staff
- Need for better culture of involvement
- Better consultative culture

What can cause bully behavior?

Events like downsizing, being overworked, and job insecurity can cause a person to behave like a bully.

A bully is often an overworked, middle manager, someone who is overloaded and cannot cope, or handle the stress.

A person may progress into a bully after a promotion.

The person might have a drug or alcohol problem.

The bully thinks this is how they should behave.

Could my actions be taken as bullying?

- Do you yell at meetings?
- Do you enjoy confrontations?
- Does your department have high absenteeism or high turnover?
- Do you avoid thinking about how others might feel if you say or do hurtful things to them?
- Do you find it difficult to trust others?
- Have you ever been in trouble (as a child) for bullying or physical violence?
- Do you need to control those around you?

What can I do?

- Apologize to people you've bullied.
- If you feel like you're having trouble controlling your feelings/anger talk to a counselor.
- Attend seminars.

Retaliation

Retaliation against individuals who report and/or file complaints of discrimination or harassment, who cooperate in investigations, or who participate in hearings will not be tolerated. Acts of retaliation should also be reported to the Affirmative Action Officer.

Where to go for help

- Office of Institutional Equity 487-3310
- Counseling Services 487-2538
- Contact your union steward
- Human Resources 487-2280

The Workplace Bully

Bullying is an intentional repeated pattern of offensive, insulting, threatening behavior. It is an abuse which makes the recipient feel upset, threatened, humiliated or vulnerable.

MTU is an EEO/AA employer/institution
www.mtu.edu/equity

4/13

Michigan Technological University
Office of Institutional Equity
487-3310

How to identify bullying in the workplace

Some bullies are obvious they throw things, slam doors, and have angry outbursts. Others, however, are much more subtle.

Signs of a bully

- Distorts truth and reality
- Charming in public - two faced
- Blames others for errors
- A bully doesn't want to hear the other side of the story, does not try to understand or get another point of view.
- A bully needs to control people.
- Makes inappropriate comments about appearance, lifestyle
- Takes credit for others work

A bully uses threats and harassment to intimidate. A bully ridicules to destroy confidence and self esteem. A bully tries to make others disrespect you. Often these behaviors are done in front of others, at meetings, or by email.

Studies have shown the bully is most likely to be the boss (male or female).

Examples of bullies who have authority

- Threatens to terminate your employment
- Bad evaluations
- Makes your life difficult,
- Punishes for petty things
- Suggests you have emotional problems
- Demeans your role
- Yells and screams at you
- Suggests you are incompetent, too sensitive
- A bully will misinterpret what you say to make you look bad
- May exclude you from meetings etc.
- Overwork with unreasonable timelines
- Fails to return your calls

The target of a bully is most often a person that is popular and competent. This person is often seen as a threat to the bully. Studies have also shown the most often it is a female that is being bullied.

At first you might not recognize the behavior as bullying. You may think the situation will pass and was nothing to worry about.

Over time you might start to doubt yourself and think you did something wrong.

Signs that you might be bullied

- You feel strained
- You find yourself walking on eggshells
- You are quieter than usual
- You go out of your way to avoid the bully
- You are afraid to open your mouth in front of this person
- You pretend to get along with this person
- You choose your words carefully when around this person
- You are making more errors on the job
- You are undermined or even shouted out, particularly when others are around
- You are continually criticized and made to feel "wrong".
- Your work is never good enough
- Your requests to transfer positions are denied

What to do if you are being bullied

- Tell someone
- Keep a journal
- Confront the bully with a witness – let the bully know that you don't like their behavior (list the behaviors) and you would like it to stop. This may be hard to do but the bully won't go away if you ignore the situation. Write a letter if you cannot confront the bully.
- Don't allow the bully to intimidate you or make you feel bad about yourself.
- Don't allow the bully to isolate you from your colleagues. Keep up your workplace friendships.
- Contact the AA Office for help.

Examples of things to say or do to stop the bully

Your calling me names instead of addressing the problem is unacceptable.

If you are so angry that you cannot communicate in a calm manner we should wait and discuss this at another time or I can tell by your tone of voice that you are pretty upset.

Ask non-threatening, questions. For example: "What would you have liked me to do instead?"

Let the bully know if the behavior does not stop you will be forced to take further action.

Each incident alone may seem unimportant but over a period of time they can build and cause stress.

Signs of stress from bullying

- You dread going to work
- Worry about your future
- You feel drained, have trouble sleeping
- You engage in self destructive behavior
- You start getting stress related illnesses: headaches, depression, panic attacks, high blood pressure, ulcers
- Loss of confidence

Why people put up with bullying

- Too emotionally stressed to deal with it
- Afraid of losing their job
- They are embarrassed or intimidated
- May feel nothing will change
- Afraid of retaliation
- Afraid the situation may get more severe

Effects of bullies at the workplace

- Staff turnover, absenteeism
- Low employee morale
- Poor work output/loss of productivity
- Legal action
- Workmen's compensation claims
- Poor customer service

Annex B

The 13 PSR factors discussed at the GM@W site are:

- Psychological support
- Organisational culture
- Clear leadership and expectation
- Civility and Respect
- Psychological job fit
- Growth and development
- Recognition and reward
- Involvement and influence
- Workload management
- Engagement
- Balance
- Psychological protection
- Protection of physical safety

Three of special significance to the present inquiry

- Organisational culture
 - Trust, honesty and fairness
 - Culture sets the tone for the organisation
 - Trust is essential for any positive or productive social processes in any organisation
 - A culture of constant, chaotic urgency leads to an environment in which burnout is the norm
- Clear leadership and expectation
 - Overly instrumental and outcome-focussed leadership attitudes are not effective
 - Leaders who look after their own well being are valued
 - Middle managers are at risk because they have to lead and be led

- Civility and Respect
 - Lack of it leads to exhaustion
 - Bullying is an example of disrespectful behaviour – it affects bystanders as well as direct recipients

ANNEX C

France: Public service deal on psychosocial risks

The French government, eight trade unions and representatives of public employers signed a framework agreement on 22 October on the prevention of psychosocial risks in the public service. The agreement requires each public employer to draw up a "psychosocial risk assessment and prevention plan" by 2015. Around 5 million civil servants will be covered by the agreement. Other commitments include better resourcing of health, safety and working conditions committees, especially by allowing union officials more time off for related duties, and of preventive health services. An initial progress report is to be submitted before the end of 2015. The signatories say the agreement is the "first stage" of a broader discussion on working conditions and the quality of working life.

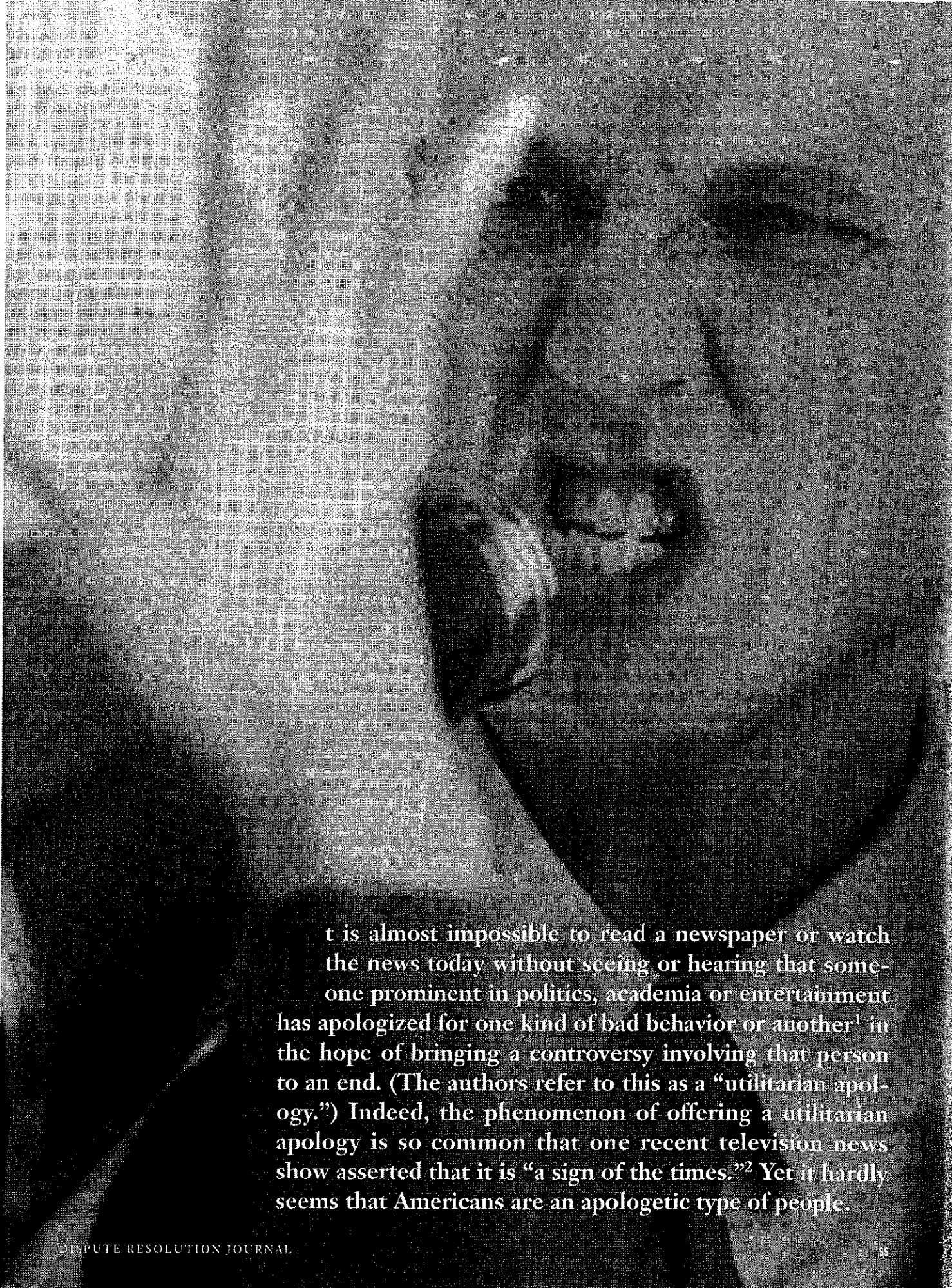
ETUI news report.

LABOR

*An Empirical
Research Note*

**BY SUZY FOX AND
LAMONT E. STALLWORTH**

Artville/Getty Images



t is almost impossible to read a newspaper or watch the news today without seeing or hearing that someone prominent in politics, academia or entertainment has apologized for one kind of bad behavior or another¹ in the hope of bringing a controversy involving that person to an end. (The authors refer to this as a "utilitarian apology.") Indeed, the phenomenon of offering a utilitarian apology is so common that one recent television news show asserted that it is "a sign of the times."² Yet it hardly seems that Americans are an apologetic type of people.

It is well known that far-eastern cultures like those of Japan and China are supportive of the custom and practice of offering an apology,³ but whether the United States has a culture supportive of apologies could be questioned since Americans are thought to be more egocentric and individualistic.⁴

Currently there is a very small number of published empirical research on the effectiveness of apologies in resolving workplace and some other types of disputes.⁵ The authors determined to fill that gap by examining that topic in the context of bullying disputes in the workplace. Their study was prompted by an article on the subject of apology by David Hoffman⁶ and by an EEO diversity conference co-sponsored by Loyola University-Chicago and the Center for Employment Dispute Resolution at which the theoretical effect of apologies was discussed. Also motivating this endeavor was author Lamont Stallworth's experience as an EEO mediator handling a matter in which the "break-through" came when the employer's human resources vice

president offered an apology for the manner in which an older worker was terminated.⁷

The research on which this paper is based focused on the respondents' experience with workplace bullying, how targets of bullying viewed the hypothetical effectiveness of various ways employers might handle complaints of bullying, and, in particular, whether an apology would or would not be effective in resolving bullying disputes. The authors hoped their research would address the following questions with respect to apologies:

Would African-American workers be more likely than white workers to accept

An assumption tested in this study is that the personal experience of being bullied will influence a person's attitudes toward the fairness and efficacy of personal, organizational, and extra-organizational means of redress.

apologies? Would female workers be more likely than male workers to accept apologies?⁸ And would workers (including managers) who felt that an apology would make a difference in the resolution of a workplace bullying dispute also be more likely to support the use of internal conflict resolution processes such as neutral fact-finding, mediation and arbitration? The answer to these questions should interest employers who wish to reduce the substantial cost of employment dispute resolution and workers who wish to avoid the substantial economic and non-economic costs and psychological stress of litigation.⁹

I. Study Method

A. Obtaining the Respondents

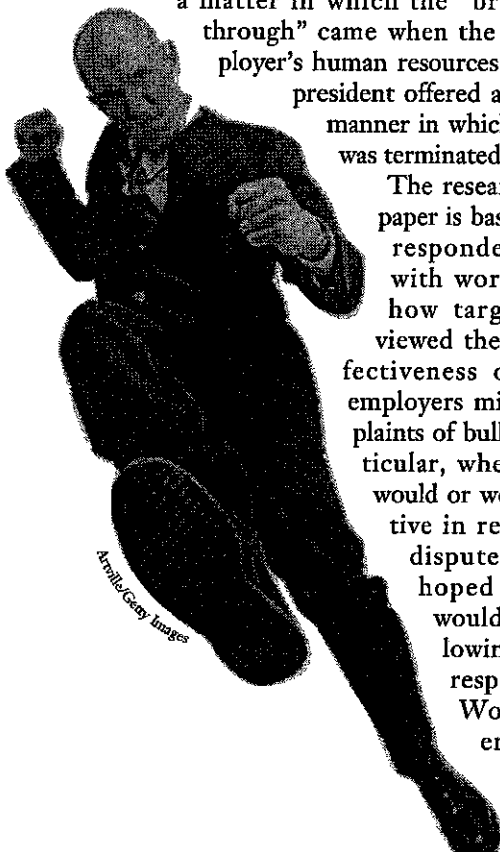
The authors used lists provided by the National Association of African-American Human Resources Professionals, Hispanic MBA Association, Loyola University Chicago Alumni Association (MBA graduates), and the National Black MBA Association (Illinois) in order to obtain respondents for this study. The researchers mailed and e-mailed invitations to the addressees on these lists and asked them to voluntarily participate. Those who wished to responded by mail, e-mail, and by directly responding to an online version on the internet. The authors received usable responses from 262 full-time employees.

The first 13 questions of the questionnaire asked for information about the respondents' age, gender, ethnicity, employment status and most recent position, self-characterization of color, place of birth, primary language, education, income, number of employment grievances or EEOC charges filed in the past five years, and the percentage of work experience in the unionized setting.

B. General Characteristics of Respondents

The authors found that the respondents worked for a broad range of employers and represented workers and managers at all levels. Managerial positions were held by 161 (62%) of the survey respondents.

The racial breakdown was 28 (9%) Asian, 138 (52%) African-American, 27 (10%) Hispanic/



Latino, 71 (27%) White, and 4 (2%) "other." The gender breakdown was 90 (34%) men and 172 (66%) women.

An exact response rate could not be calculated, because the e-mail lists were of indeterminate length and the postal mailing produced a large number of "addressee unknown" returns.

C. Bullying Experiences

Lorelei Keashly, one of the leading bullying researchers in this country, has defined workplace bullying as "persistent negative interpersonal behavior experienced by people at work."¹⁰ Researchers do not agree on the extent to which negative interpersonal behaviors needs to be ongoing, or must involve status or power differences, in order to be considered bullying. The authors chose to use Keashly's broad definition of bullying, which includes a wide range of experiences, and empirically test assumptions about different types of bullying.

The authors crafted this question to determine the scope of bullying problems: "Over the past 5 years, how often have you experienced someone behaving toward you as follows in your place(s) of work?" So that the authors could obtain specific descriptions of the type of bullying, they listed in the questionnaire two types of bullying behaviors derived from the bullying and dispute resolution literature. The two types are called "general bullying" (25 different behaviors) and "racial/ethnic bullying" (7 behaviors). Racial/ethnic bullying behaviors involved negative action and inaction due to race or ethnicity, such as making racial slurs and excluding people from an activity because of their race or ethnic background. See Table 1.

In addition to these bullying items, the authors asked the following open-ended question intended to elicit more information about the circumstances of the respondents' bullying experiences: "Within the last five years, please describe an incident directed toward yourself that you felt was unfair, discriminatory, or emotionally abusive. Please include where and when it happened, who was involved, and whether this incident occurred in a unionized or non-unionized setting. (If a unionized setting, please indicate if you were a bargaining unit member or member of the union)."

To obtain information about who the bullies were, the questionnaire directed the respondents as follows: "For each [bullying behavior on the list] that has occurred, please indicate who DID the behavior (1=co-worker; 2=a supervisor; 3=both; 4=other)."¹¹

TABLE NO. 1. GENERAL AND RACIAL/ETHNIC BULLYING BEHAVIORS.

General bullying behavior

Made aggressive or intimidating eye contact or physical gestures (e.g., finger pointing, slamming objects, obscene gestures).
Gave you the silent treatment.
Limited your ability to express an opinion.
Situating your workspace in a physically isolated location.
Verbal abuse (e.g., yelling, cursing, angry outbursts).
Demeaned you in front of co-workers or clients.
Gave excessively harsh criticism of your performance.
Spread false rumors about your personal life.
Spread false rumors about your work performance.
Repeated things to others that you had confided.
Made unreasonable work demands.
Intentionally withheld necessary information from you.
Took credit for your work.
Blamed you for errors for which you were not responsible.
Applied rules and punishments inconsistently.
Threatened you with job loss or demotion.
Insulted you or put you down.
Interrupted you while you were speaking.
Flaunted his/her status over you in a condescending manner.
Intentionally left the area when you entered.
Failed to return your phone calls, e-mails, etc.
Left you out of meetings or failed to show up for your meetings for no legitimate reason.
Attacked or failed to defend your plans to others.
Intentionally destroyed, stole, or sabotaged your work materials.

Racial/ethnic bullying: Based on Race or Ethnicity

Made derogatory comments about your racial or ethnic group.
Told jokes about your racial or ethnic group.
Used racial or ethnic slurs to describe you.
Excluded you from social interactions during or after work because of your race or ethnicity.
Failed to give you information you needed to do your job because of your race or ethnicity.
Made racist comments (for example, said people of your ethnicity aren't very smart or can't do the job).
Made you feel as if you have to give up your racial or ethnic identity to get along at work.

For each of the general and racial/ethnic bullying items respondents were supposed to indicate how often they experienced any of them using the following scale: 1=never; 2=rarely; 3=sometimes; 4=quite often; 5=extremely often.

D. Effectiveness of ADR Programs and HR Departments

The authors also sought to determine the respondents' preferences regarding the handling of workplace complaints. They singled out respondents' views about internal conflict management processes and strategies by asking "on a scale from 1-5" how effectively they thought the following human resource systems and strategies would address unfair or discriminatory incidents:

- encouraging employees to voice their opinion about the workplace;
- encouraging employees to speak up when they saw another employee being treated unfairly;
- having a counselor, ombudsperson, employee assistance program; or mentoring program;
- offering mediation or arbitration.¹²

To assess the respondents' attitudes towards different approaches to resolving the conflict, the survey asked respondents to assume they were involved in an employment dispute as a result of having received unfair or abusive treatment at work and then state how much they agreed or disagreed (on a 1-5 scale with 1 being strongly agree and 5 being strongly disagree) with the following:

- I feel comfortable using an unbiased third-party workplace dispute resolver; I trust the company's internal dispute resolution program.

In contrast to these internal organizational approaches, respondents were asked to state the degree to which they agree with two external approaches: legislation and litigation.

- You support legislation to prohibit bullying or emotionally abusive behavior in the workplace.
- You trust the public justice system (e.g., courts) to handle such situations.

E. Role of Apology

Central to the authors' research was the respondents' attitudes toward an apology from the employer and how it would affect them. The survey addressed this by asking the respondents

how much they agreed or disagreed (on the same 1-5 scale) with the following statements.

Assuming you have been treated unfairly or abusively by someone at work:

- An apology from the employer would have made a difference to you (Apology Statement-APO #1)
- Assuming an EEOC charge had been filed, an apology would prompt you to withdraw the charge (Apology Statement-APO #2) or
- Assuming an EEOC charge had been filed, an apology would prompt you to settle (Apology Statement-APO #3).

II. Statistical Analysis

The authors computed mean scores for the following categories of bullying: "general bullying," "racial/ethnic bullying," "supervisory general bullying" (i.e., the bully was identified as the respondent's supervisor); "co-worker racial/ethnic bullying."

Respondents were divided into subgroups based on whether they had experienced bullying (targets) or not (non-targets), and whether they had experienced racial/ethnic bullying or not.

Respondents were also divided into subgroups based on those who did and did not experience "general bullying by a supervisor," "racial/ethnic bullying by a supervisor," "general bullying by a co-worker," or "racial/ethnic bullying by a co-worker." The authors could not meaningfully compare those who experienced general bullying with those who did not because 97% of the survey respondents reported having experienced general bullying at work. Therefore, they divided the subgroups of those who experienced "general bullying" into three additional groups based on their mean general bullying scores (high, middle and low). Then the authors compared the high and low general bullying scores ("Total General Bullying Low vs. High"). This enabled them to compare the views of targets and non-targets on the effectiveness of apologies and other aspects of the survey.

The authors also computed a fourth variable: the mean of the three apology statements, which they gave an overall apology score. They called this the "MEANAPO." MEANAPO is used to represent a generalized attitude toward apologies in bullying cases.¹³

III. Statistical Results

Table No. 2 presents the authors' statistical findings about the attitudes of bullying targets and non-targets toward an apology.¹⁴ The key assumption being tested is that the personal experience of being bullied will influence a person's

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Lamont Stalworth is a professor at the same Institute. He is also the founder and chair of the Center for Employment Dispute Resolution (CEDR) in Chicago, and a member of the National Academy of Arbitrators.

The authors thank the National Association of African-American Human Resource Professionals, Hispanic MBA Association, Loyola University Chicago Alumni Association, and the National Black MBA Association (NBMA), for their assistance with this study.

The authors also thank Judith Bohac-Bergere of CEDR for typing the manuscript. CEDR and a Research Support Grant from Loyola University, assisted with funding for this study.

attitudes toward the fairness and efficacy of personal, organizational, and extra-organizational means of redress.

A. Respondents as a group

Overall, a significant majority (67%) of respondents (both targets and non-targets) agreed (strongly or slightly) that an employer apology would have made a difference to them in resolving a workplace dispute; however, less than one third (29%) agreed (strongly or slightly) that an apology would prompt a withdrawal of an EEOC charge; slightly more than one third (35%) agreed (strongly or slightly) that an apology would prompt settlement of the case.

B. Expectations versus Findings

Based on previous research, the authors expected that African-American workers would

be more likely to accept apologies than white workers, and that female workers would be more likely to accept apologies than male workers. The authors also assumed that workers and managers who were receptive to an apology would be more likely to support the use of internal conflict resolution processes such as neutral fact finding, mediation and final and binding arbitration.

However, the authors' findings were not always consistent with these expectations and assumptions. They found that African-Americans were significantly less willing than whites to give significance to an apology, having a lower MEANAPO for each apology statement on the questionnaire (2.95 vs. 3.41). Contrary to their expectations, the authors found that men were slightly more willing than women (mean of 2.94 vs. 2.66), and managers were significantly more willing than non-managers (mean of 2.86 vs. 2.56), to withdraw an EEOC

**TABLE NO. 2. ENDORSEMENT OF APOLOGIES
(DEMOGRAPHIC DIFFERENCES AND DIFFERENCES BETWEEN TARGETS AND NON-TARGETS OF BULLYING).**

	APO 1	Mean	APO 2	Mean	APO 3	Mean	MEANAPO
Total	67.30%	3.72	28.62%	2.75	34.86%	2.93	3.13
Men	64.66%	3.74	30.00%	2.94	37.08%	3.10	3.26
Women	68.23%	3.71	28.41%	2.66+	34.32%	2.86	3.08
Managers	72.05%	3.78	35.41%	2.86	41.88%	3.01	3.22
Non-mgrs	58.76%	3.61	17.71%	2.56*	23.96%	2.80	2.99+
African-American	62.05%	3.54	26.28%	2.58	30.88%	2.74	2.95
Whites	75.71%	4.04**	24.28%	2.93*	40.00%	3.21**	3.41**
Bullying							
LOW	65.06%	3.72	26.50%	2.82	32.43%	2.94	3.16
HIGH	64.44%	3.61	32.59%	2.66	35.96%	2.87	3.05
Bullying Supervisor							
NO	76.00%	4.06	36.00%	3.14	48.98%	3.39	3.52
YES	65.26%	3.64*	26.89%	2.66*	31.60%	2.83**	3.04**
Bullying Co-worker							
NO	67.76%	3.78	29.73%	2.67	30.00%	2.75	3.07
YES	66.88%	3.68	27.82%	2.81	28.41%	3.06*	3.18
Racial/Eth. Bullying							
NO	67.08%	3.75	24.38%	2.71	33.33%	2.95	3.14
YES	67.64%	3.68	35.29%	2.80	37.25%	2.90	3.13
Racial/Eth. Bullying Supervisor							
NO	67.29%	3.76	26.76%	2.74	34.91%	2.95	3.15
YES	67.34%	3.57	36.73%	2.80	34.69%	2.86	3.07
Racial/Eth. Bullying Co-worker							
NO	67.24%	3.72	25.97%	2.69	33.05%	2.90	3.10
YES	67.74%	3.77	48.39%	3.16*	48.39%	3.19	3.38

Percentages are followed by mean scores, with range: 1-5.

APO 1: If the employer were to have offered an apology for the incident, it would have made a difference in satisfying the matter.

APO 2: If you filed a charge, an apology would prompt you to withdraw the charge.

APO 3: If you filed a charge, an apology would prompt you to settle the case.

MEANAPO (Mean of APO 1-3)

T-tests indicate significant differences in mean scores: +p<.10 * p<.05 ** p<.01

charge if an apology were offered. Men and managers had higher MEANAPOs than women and non-managers on the three apology statements in the questionnaire (3.22 vs. 2.99).

Comparison of Bullying Subgroups

The authors expected that targets of "supervisory bullying" would associate their bullying experiences with organizational injustice and therefore would be less likely than non-targets to think an apology would be useful.¹⁵ The authors also expected targets of "co-worker bullying" would consider bullying to be an interpersonal event and therefore would be more likely to believe that an apology would be useful.

The authors observed no significant differences between targets and non-targets of total general bullying in their responses toward the three apology statements in the questionnaire (or in their overall MEANAPO). However, there were differences in attitudes within the subgroups of targets when the type of bully was taken into consideration. Providing partial support for the authors' expectations, targets of coworker bullying were more likely to think that an apology would prompt them to settle a case (mean of 3.06) than non-targets (mean of 2.75). However there were no significant differences for the other apology items. Similarly, targets of racial/ethnic bullying by coworkers were significantly more likely to think that an apology would cause them to withdraw an EEOC charge (mean of 3.16) than non-targets (2.69) of such bullying; but there were no differences on the other apology items.

When the bully was a supervisor, a different picture emerged. Consistent with the authors' expectations, targets of supervisory bullying were significantly less likely than non-targets to think that an apology would have any effect at all (MEANAPO of 3.04 vs. 3.52). However, targets and non-targets of racial/ethnic bullying by supervisors did not differ in their attitude toward an apology, although the attitudes of targets of supervisory racial/ethnic bullying had consistently more negative attitudes toward apologies than targets of coworker racial/ethnic bullying.

Also consistent with their expectations, the authors found a correlation between the apology scores and support for internal dispute resolu-

tion. Targets who indicated that they would find meaning in an apology supported the use of employer-sponsored conflict management ADR programs or systems.

But contrary to their expectations, the authors observed no significant relation between apologies and support for legislation requiring employers to implement internal conflict management programs, nor for litigation to resolve such conflicts.

IV. Discussion: What Does an Apology Have to Do with It?

The authors assumed that an apology could have an effect on the resolution of workplace bullying disputes and their primary goal was to shed some light on what that effect might be.¹⁶

The study results suggest that the status of the target influences the effect of an apology. The findings may be explained in terms of "efficacy" theory in which the subject has a strong belief in his or her own ability to "effectuate change," not only for their particular benefit but for the organizational good.¹⁷ The absence of feelings of efficacy could be as important as the presence of such feelings.

Women and Racial Minorities

Concern has been expressed in the literature that mediation and other ADR processes may be unfair to women and racial minorities.¹⁸ The concern is usually an "imbalance of power" based on economics¹⁹ and/or education and the inability to retain legal counsel. Nevertheless, research suggests that women and racial minorities do not believe that they are being unfairly treated in mediation with an employer whose bargaining power is greater because they have tended to be more satisfied with a lesser outcome in mediation than their white male counterparts.²⁰ If these minority groups were relatively more satisfied

than white men with mediation outcomes, it seemed logical to assume that the same racial minorities would be more receptive to an apology as consideration in the resolution of a dispute. However, the author's statistical results did not confirm this assumption. To their surprise, it showed that male targets of bullying were more affected by an apology than women²¹

Consistent with the authors' expectations, targets of supervisory bullying were significantly less likely than non-targets to think that an apology would have any effect at all.

and African-American²² targets of workplace bullying.

The "efficacy theory" referred to above could explain these results with white males believing in their ability to create change and women and African Americans lacking as strong a belief. Targets of "supervisory bullying" had even less of a belief an apology as a stimulus for resolving a workplace dispute.²³ This too can be viewed as a lack of belief in the individual's own efficacy. These victims of bullying did not feel that accepting an apology would effectuate any change whatsoever.

Managers versus Non-Managers

Nearly 62% of survey respondents held managerial positions. One would expect managers to feel more "efficacious" than non-managers. However, the lack of efficacy appears to be a less relevant factor in the case of co-worker bullying. The study revealed that non-managers who were bullied by a co-worker were more receptive to an apology than non-managers who did not experience bullying.²⁴

The authors suggest that the reason for this is that an employee who is bullied by a peer (as opposed to a supervisor) will not necessarily blame the organization and lose faith in the corporate culture.²⁵ However, when the bully is a supervisor (an agent of the employer), the worker is more likely to lose faith in corporate justice.

Racial and Ethnic Bullying

When bullying involved "racial and ethnic comments or actions" by a co-worker, the respondents tended to be more likely to accept an apology and withdraw an EEOC charge (Table No. 2, 3.16 versus 2.69). The authors suggest two possible explanations for these results.

First, both bullying targets and the bully have the same or similar status within the organization. So here too, the event may be considered an interpersonal problem, rather than an institutional one. Second, the target may be satisfied with an apology believing that the bully, having been exposed to corporate authorities, will cease to engage in the complained-of behavior or risk termination of employment.²⁶ Third, the target may be more inclined to "forgive" a bully with equal or similar status and, as Hoffman suggested, "trust" that there will be no similar future harassing and retaliatory conduct.²⁷

Apology and Internal Conflict Management Programs

Apology and Support for ADR

An issue of interest to the authors was whether

TABLE 3. CORRELATIONS OF APOLOGY AND SUPPORT FOR INTERNAL AND EXTERNAL DISPUTE RESOLUTION.

	APO 1	APO 2	APO 3	MEANAPO
Internal Dispute Resolution	.33 ***	.22 **	.26 ***	.31 ***
External Dispute Resolution	.06	.01	.07	.06

APO 1: If the employer were to have offered an apology for the incident, it would have made a difference in satisfying the matter.

APO 2: If you filed a charge, an apology would prompt you to withdraw the charge.

APO 3: If you filed a charge, an apology would prompt you to settle the case.

MEANAPO (Mean of APO 1-3)

** p < .001

*** p < .0001

the survey participants who were favorably disposed toward an apology supported the use of internal conflict management programs and strategies (e.g., consulting an unbiased third-party workplace dispute resolver or trusting an internal organizational dispute resolution mechanism or programs), as opposed to litigation or legislation. To test this, the above two internal dispute resolution processes were combined into the variable DRINT, and the anti-bullying legislation items were combined into the variable DREXT. Correlations of these two dispute resolution variables with the apology items are shown in Table 3.

The authors found strong evidence that acceptance of apologies was correlated with support for internal organizational dispute resolution programs, but not with approaches external to the company (e.g., legislation and litigation). This is a significant finding for a number of reasons. First, it has become increasingly difficult for an employee to prevail in a statutory employment dispute,²⁸ particularly in cases involving workplace bullying.²⁹ Consequently, most workers are better off resolving a bullying dispute internally and preserving the employment relationship³⁰ or "moving on." So are employers, since it can be very costly for employers to defend against employment claims.³¹ Second, early access to multi-step corporate conflict management programs can provide both workers and employers with an opportunity to resolve the problem using mediation, leading to a possible "win-win" situation. Mediation also can help the parties address the underlying or real cause of their problem and save them both financial and psychological distress. Third, mediation programs often help preserve employment relationships; thus, they can be used to promote the public policy supporting diversity in the workplace. This is a critical point, particularly given the Supreme Court's decision in *Grutter v. Bollinger*,³² which recognized that support of diversi-

ty is a matter of public policy and in the public interest. Last, since mediation protocols provide for privacy and confidential proceedings, this form of dispute resolution provides a safe context (a kind of safe harbor) in which to engage in problem-solving negotiations. It is also where expressions of apology, regret and sympathy may be safely offered without fear that they may be used later as an admission against interest.

V. Conclusion

In "All I Really Needed To Know I Learned In Kindergarten," Robert Fulghum sets forth

some 10 propositions about life lessons. One is "Say You Are Sorry When You Have Hurt Somebody." This life lesson is supported by the findings of this study, which indicate that an offer of an apology has the *potential* to resolve workplace harassment disputes involving bullying. This finding also supports Hoffman's views about the potential value of an apology.

The theoretical and practical significance of this and other findings of this exploratory study need further consideration and thought about how to establish more "safe harbors" in which offers and acceptance of apology may be made. ■

ENDNOTES

¹ The latest manifestation of this is Vice President Dick Cheney's inadvertent shooting of a friend with whom he was quail hunting. Reports of the accidental shooting, and Mr. Cheney's response four days later made newspaper headlines across the country. See also Apology In The News? need more for proper citation

² See ABC.com for a series of segments and reports on apology.

³ David A. Hoffman, "The Use of Apology in Employment Cases" 1 *Practical Dispute Resolution* (1999). See also H. Wagatsuma & A. Rosett, "The Implications of Apology: Law and Culture in Japan and the United States," 20(4) *Law Soc. Rev.* 461-498 (1986).

⁴ Jennifer Shultz, "Cultural Individualism, Collectivism and Conflict Resolution Preferences," in *ADR & the Law* 99, 106-109 (19th ed. jointly published by the American Arbitration Association, Fordham Urban LJ and Fordham Int'l LJ 2002).

⁵ Deborah L. Levi "The Role of Apology in Mediation," 72(5) *N.Y.U. L. Rev.* 1165-210 (November 1997); Carl D. Schneider, "What It Means to Be Sorry: The Power of Apology in Mediation," available at www.mediate.com/articles/apology.cfm; A. Lazare, "Go Ahead, Say You're Sorry," *Psychology Today* 40-43, 76-78 (January/February 1995); N. Tavuchis, *Mea Culpa: A Sociology of Apology and Reconciliation* (Stanford U. Press). Lastly, see Barbara Kellerman "When Should a Leader Apologize and When Not? *Harv. Bus. Rev.* 73-81 (April 2006).

⁶ See Hoffman *supra* n. 3.

⁷ In this particular case, the offered apology was a recognition that the employer "could have done a better job in the way" the employee was terminated and not for the termination decision.

⁸ See, e.g. Michele Hermann *et al.*, *The Metrocourt Project Final Report* (1993); Trina Grillo "The Mediation Alternative; Process Dangers for Women" 100 *Yale L.J.* 1545 (1991); Michelle

Hermann, "New Mexico Research Examines Impact of Gender and Ethnicity in Mediation" *Disp. Resol. Mag.* 1 (Fall 1994); Deborah Tannen, "I'm Sorry, I'm Not Apologizing: Why Women Apologize More Than Men, and Why It Matters" in *I Only Say This Because I Love You: How the Way We Talk Can Make or Break Family Relationships Throughout Our Lives* ch. 4 (Random House 2002).

⁹ Wayne F. Cascio, "The High Cost of Mismanaging Human Resources" in *Costing Human Resources: The Financial Impact of Behavior In Organizations* ch. 4 (4th ed. S. Western College Pub. 2000).

¹⁰ Rayner & Keashly "Bullying at Work: A Perspective from Britain and North America." in *Counterproductive Work Behavior: Investigations of Actors and Targets*. 271 (S. Fox & P. Spector, eds. APA Press 2005).

¹¹ The survey also sought to determine how respondents reacted to workplace bullying, but that part of the survey results is outside the scope of this paper.

¹² The survey also asked whether the respondents' employers have such programs and strategies in place. In an open ended question it also asked the respondents to suggest other conflict resolution methods that employers should implement to address bullying and emotional abuse and discriminatory behavior in the workplace. However, this part of the survey is beyond the scope of this article.

¹³ This variable is psychometrically sounder than the single item variables.

¹⁴ The significance of these differences is tested by t-tests of the mean scores.

¹⁵ *Id.*

¹⁶ The authors were not trying to prove a causal relationship between an apology and resolution of those disputes. However, they believe that the finding that an employer's apology could prompt a victim of bullying to withdraw or settle an EEOC charge support this assumption. See Table 2, MEANAPO

28.62. This finding should interest employers who incur significant costs in defending against employment claims.

¹⁷ See Sandra Gleason, "The Probability of Redress: Seeking External Support," in *Outsiders on the Inside: Women & Organizations* (Barbara Forisha-Kovach & Barbara H. Goldman eds. 1981); David Saunders *et al.*, "When Do Employees Speak Up?: Factors Influencing the Propensity to Use Voice" (Nat'l Inst. Disp. Res. ed., 1987).

¹⁸ See, e.g., articles by Hermann *et al.*, Grillo, and Hermann, cited *supra* n. 8; and Gary LaFree & Christine Rack, "The Effects of Participants' Ethnicity and Gender on Monetary Outcomes in Mediated and Adjudicated Civil Cases," 30 *Law & Soc'y Rev.* 767, 770 (1996).

¹⁹ A party with less economic power may be forced to appear without counsel (i.e., *pro se*). See, e.g. Lewis Maltby, "Paradise Lost—How the Gilmer Court Lost the Opportunity for Alternative Dispute Resolution to Improve Civil Rights," 12 *N.Y. L. Sch. J. Hum. Rts.* 1 (1994) (asserting that 95% of the time Title VII plaintiffs are not successful in obtaining legal representation).

²⁰ See, e.g., Hermann *supra* n. 8.

²¹ See Table 2 (women: MEANAPO 2.94 vs. 2.66).

²² See Table 2 (African-American: MEANAPO 2.95 vs. 3.41).

²³ See Table 2, MEANAPO 3.04 vs. 3.52).

²⁴ Table 2, MEANAPO 3.06 vs. 2.75.

²⁵ See Suzy Fox & Lamont E. Stallworth, "Racial/Ethnic Bullying: Exploring Links Between Bullying and Racism in the U.S. Workplace," 66 *J. Vocational Behav.* 483 (2005).

²⁶ Theoretically the "co-worker bully" should cease bullying conduct, but what motivates bullying behavior may not be so controllable.

²⁷ Hoffman, *supra* n. 3.

²⁸ See Theodore Eisenberg & Stewart J. Schwab, "Double Standard on Ap-

peal: An Empirical Analysis of Employment Discrimination Cases in the U.S. Courts of Appeals," available at www.findjustice.com/ms/pdf/double-standard.pdf. See Kevin M. Clermont & Stewart J. Schwab, "How Employment Discrimination Plaintiffs Fare in Federal Court," 1 *J. Empirical Legal Study* 429, 451-52 (2004); Kevin M. Clermont *et al.*, "How Employment Discrimination Plaintiffs Fare in the Federal Courts of Appeals," 7 *Emp. Rts. & Emp. Pol'y.* 547 (2003); Kevin M. Clermont & Theodore Eisenberg, "Pantophobia in the Appellate Courts: Civil Rights Really Do Differ from Negotiable Instruments," 2002 *U. Ill. L. Rev.* 947; Michael Selmi, "Why Are Employment Discrimination Cases So Hard to Win?," 61 *La. L. Rev.* 555, 560-61 (2001) (asserting that employers pre-

vail in 98% of federal court employment discrimination cases resolved and how these cases tend to be resolved at the pre-trial stage). See also Susan Mandel, "Equal Treatment? Study Shows a Wide Gap Between Worker, Employer Wins in Job Bias Appeals," *A.B.A. J.* 24 (Nov. 2001). But see Harry T. Edwards & Linda Elliott, "Beware of Numbers and Unsupported Claims of Judicial Bias," 80 *Wash. U. L.Q.* 723 (2002). Contra Kevin M. Clermont & Theodore Eisenberg, "Judge Harry Edwards: A Case in Point," 80 *Wash. U. L.Q.* 1275, 1276 (2002) (criticizing the Edwards and Elliott article and its assertions).

²⁹ Gary Namie & Ruth Namie, *The Bully at Work: What You Can Do to Stop the Hurt and Reclaim Your Dignity on the Job* (Sourcebooks, Inc. 2000). See David

Yamada, "Foreward: Introduction to Symposium on Workplace Bullying," 8 *Emp. Rts. & Emp. Policy J.* 235 (2004); John Gravois, "Mob Rule in Departmental Disputes: Professors Can Act Like Animals," *Chron. Higher Educ.* A10-A12 (April 14, 2006).

³⁰ Losing one's job can impose greater hardship on an older or less skilled or credentialed worker.

³¹ Employers may spend \$96,000 to \$100,000 defending such cases. See Cascio, *supra* n. 9.

³² *Grutter v. Bollinger*, 539 U.S. 306 (2003), upholding the race-conscious affirmative action admissions program at the University of Michigan Law School. In so doing, the Supreme Court opined that "diversity" is a matter of "public interest."

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Is Bob bullying his team, or just being Bob?

06 November 2013 7:23am

The question of whether certain behaviours constitute bullying or are just the consequence of abrasive personalities is so problematic that employers should shift their focus to the prevention of both, says HR Business Directions organisational psychologist Trish Cloete.

One of the problems with trying to distinguish between abrasive behaviour and bullying is that workers who naturally tend toward a rude, aggressive or hostile manner might exhibit the exact same behaviours as a bully, she says.

In Cloete's experience, one of the most common examples is managers who are dismissive of others.

"So someone is trying to engage them, trying to ask for information, and they shut them down."

Another is managers who undermine their fellow workers, whether by talking about them behind their backs, or embarrassing them in front of others.

"Very often there are leaders who believe that that's what they need to be - they need to be authoritarian, [so they] change things like rosters, and allocation of work without even informing people.

"Those are all things that are abrasive behaviour... but they also fall into the gambit of bullying behaviour."

Some argue that abrasive behaviour has less of an impact than bullying, but "that's really a matter of perspective", Cloete says.

"The only way I could see there being a distinction is that with bullying it does target a group or a specific person, whereas somebody who is generally abrasive or hostile, well that's their manner with everyone. So they're having a more generalised impact as opposed to someone who treats a specific person or group that way.

"With a bully you're looking at malicious intent; it's someone who, for whatever reason, has developed a prejudice or dislike against a particular person [or] people for a personal reason, and is actually targeting those people with destructive behaviour, whereas someone who is quite abrasive and hostile in their manner isn't necessarily going to target a specific person.

"They may not even be aware that that is their style, they may not be aware of the impact they're having, they may not have the communication and soft skills to change their behaviour."

In the case of a bully, censure and punishment is appropriate because the behaviour is deliberate, Cloete says.

"Whereas an abrasive person... may be more receptive to change; they may be someone you can work with more constructively, helping them develop the skills, making them more aware of the impact that they're having."

Even so, the impact of both behaviours can be the same, and telling one from the other is not always possible. Further, interpreting one worker's behaviour as deliberate and dismissing the same behaviour in someone else could be seen as unfair.

"It's just so subjective. If the behaviours are the same and the impact is same, is intent relevant?"

Regardless of the answer, getting it wrong is risky. What's needed is a change of tack, Cloete says.

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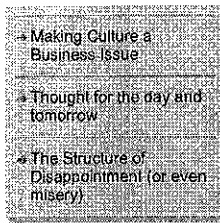
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Focus on prevention

"The focus needs to change from trying to distinguish what is bullying versus what is harassment versus what is abrasive behaviour - which is where I think the focus is at the moment - on to the prevention of negative behaviour in general," she says.

From a prevention point of view, even more important than an organisation's policy on bullying and how to manage it, is its code of conduct or ethics, Cloete says.

"It needs to be a really, really specific document that outlines very specific behaviours that are considered unacceptable, and this needs to include bullying as well as abrasive behaviour.

"Then you've got a contract with employees, up front, very specifically: these are the things that will not be tolerated. Whether it's bullying or not then becomes irrelevant, we don't need to get caught up in what the intention is."

If a code of conduct or behaviour policy is clear and comprehensive, employees can be held to account for behaviours that they know aren't considered acceptable in the workplace.

"It's obviously not as simplistic as that - there is the question of limits, is someone being oversensitive to a particular behaviour? - but I think you cut down on that subjectivity quite substantially by being very clear up front as to what the specific behaviours are."

The level of detail is important and might extend to, for example, rules such as, "don't take an employee to task in front of their team", she says.

"A lot of it would really be common sense, but... common sense is not very common.

"It does just make it a little bit clearer and easier to prevent getting to the point where people have to get a third party involved," Cloete says.

Prevention is particularly important given that the Fair Work Act amendments coming into effect in January don't require workers to go through internal processes before approaching the Fair Work Commission with bullying complaints, she adds.

It's important to be constructive as well as prohibitive in devising a code or policy.

"[It's about] creating a positive culture in the workplace that is more productive, with more cohesive teams [and] managers that are well equipped... a workplace culture that supports health and wellbeing and safety generally."

The success of an employer's efforts in this area will largely depend on its leaders, who must be capable of modelling appropriate behaviour and addressing inappropriate behaviour "without fear or favour".

"There's very often a fear or lack of capability in terms of addressing underperformance. These are difficult conversations to have, and having to call somebody to account on negative behaviour, especially if they're already an intimidating, abrasive person, can be really, really difficult," Cloete says.

"A big part of prevention, apart from having those policies in place, is really about equipping leaders to implement that, and again having that process in place up front where those behaviours are very clear, it just gives them the tools to support how they approach a situation where there has been negative behaviour."

Even if a negative behaviour is clearly related to a worker's personality, and doesn't target - or even bother - anyone in the workplace, for the sake of consistency it should be addressed, Cloete says.

"In order for a policy to be effective, there must be a fair process that applies to everyone in all situations.

"It's never healthy not to address it, because circumstances change - people shift teams or have members coming and going at some point that may well come across someone who just can't take it.

"Let's say everybody's OK, they're used to Bob being abrasive, they look the other way, but someone comes in who's a different team leader, who is also extremely abrasive, but even worse - now you're in a situation where Bob's behaviours haven't been called to account but you need to call this person's behaviour to account. Fairness and discrimination become a risk.

"Having said that, it's not necessarily then a case of going in guns blazing and issuing warnings," she says.

"It might be a case of 'Geez Bob, we know you're like that but let's work on this'... it could be something that is part of his performance [management], where he is being constantly reminded and called to account on this issue."

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