

Bullying

From 1 January 2014, a worker in a business or undertaking will be able to apply to the Fair Work Commission for an order to prevent them from being bullied at work.

Allegations of bullying which took place before this date must be dealt with by state work health and safety authorities.

Who do the laws apply to?

The laws only apply to businesses which operate as a company or a trust with a company trustee. The laws do not apply to sole traders or partnerships or businesses which are run by a trust with an individual as trustee unless these businesses are in the NT or the ACT.

The laws cover all 'workers' including:

- employees;
- contractors;
- subcontractors;
- apprentices;
- trainees;
- work experience students;
- volunteers

What is bullying?

A worker is 'bullied at work' if, while at work, an individual or group **repeatedly** behaves unreasonably towards the worker and that behaviour creates a risk to the health and safety of the worker. The sort of behaviours which could amount to bullying are:

- aggressive and intimidating conduct;
- belittling or humiliating comments;
- victimisation;
- spreading malicious rumours;
- teasing, practical jokes or initiation;
- displaying offensive material;
- exclusion from work-related events;
- unreasonable work expectations

What about reasonable management action?

The legislation makes it clear that 'reasonable management action carried out in a reasonable manner' is not bullying. Reasonable management action may include for example:

- performance management processes;
- disciplinary action for misconduct;
- informing a worker about unsatisfactory work performance or inappropriate work behaviour;
- directing a worker to perform duties in keeping with their job;
- maintaining reasonable workplace goals and standards.

Next Steps: for more information, download Fair Work's *Managing Underperformance Best Practice Guide* at www.fairwork.gov.au/ArticleDocuments/711/Managing-underperformance-best-practice-guide.pdf.aspx

The anti-bullying process

The purpose of the anti-bullying regime is to prevent workers being bullied at work and to restore working relationships. It is not about providing monetary compensation nor is it about penalising employers.

Thus, the Fair Work Commission can only make orders to prevent a worker from being bullied at work and only if there is a risk that the worker will continue to be bullied at work. Workers who 'reasonably' believe that they have been bullied at work may make an application to the Fair Work Commission. There are no time limits for making the application but the worker must still be working for the employer where the bullying is alleged to have taken place.

The Fair Work Commission must start to deal with the application within 14 days. This does not necessarily mean that there will be a hearing within 14 days. The Fair Work Commission may use this time to make inquiries or seek further information from the parties.

The process will involve the Fair Work Commission making an initial assessment to decide whether the claim is one which can be dealt with under the legislation, who the parties are, the nature of the alleged bullying and how the application should be dealt with. All parties will be given the opportunity to be heard. The Fair Work Commission may mediate or conciliate the dispute with the aim of resolving the issues so that constructive and cooperative relationships can resume.

The Fair Work Commission must take into account the employer's internal policies and grievance procedures when making orders.

What can you do to prevent a bullying claim?

If workers understand what is and what is not bullying and if they feel that any complaint will be dealt with fairly and transparently by the employer there is less likelihood that they will feel that they need to make a complaint to the Fair Work Commission. The following will assist you to ensure that bullying is dealt with appropriately in the workplace:

1. Ensure that you have a bullying policy in place and that all workers are aware of it;
2. Make sure that the policy clearly specifies what is and what is not bullying;
3. Ensure that workers are clear about what is and what is not bullying;
4. Ensure that you have a grievance procedure which can be used to address bullying complaints and that all workers are aware of it and feel comfortable using it;
5. Ensure that your managers have training on how to deal with bullying complaints;
6. If you receive an allegation of bullying from a worker - act immediately;
7. Apply your performance management processes consistently and fairly with all workers and document everything in writing;

Next Steps: Download the No Bullying Policy template to create one for your farm: www.thepeopleindairy.org.au/LiteratureRetrieve.aspx?ID=130760

How to respond to a bullying claim?

Fair Work Commission has a guide and response forms to help you respond to a bullying claim – visit www.fwc.gov.au/resolving-issues-disputes-and-dismissals/workplace-issues-disputes/anti-bullying