

## Employers Can't Ignore Workplace Bullies:

A recent court ruling has implications for business. Adopting an anti-bullying policy can improve morale and help avoid legal trouble

Last month, the Indiana Supreme Court ruled in favor of a hospital employee who sued a surgeon for emotional distress and assault based on his treatment of the person at work. The ruling drew national attention as an acknowledgment by the courts of workplace bullying both as a phenomenon and as legal terminology, says Garry Mathiason, chair of the corporate compliance practice group at labor and employment law firm Littler Mendelson. He spoke recently to Smart Answers columnist Karen E. Klein about the implications of the Indiana case for small business owners. Edited excerpts of their conversation follow.

In a survey of U.S. workers released last fall, nearly half said they had either been bullied at work or seen other employees bullied, according to the Workplace Bullying Institute. What should entrepreneurs think of those numbers?

The prevalence of bullying at work -- 54 million people have been bullied at some point, the institute estimates, based on the survey--combined with the recent court decision should serve as a warning for small businesses nationally to develop proactive measures preventing bullying at their companies.

What was the Indiana case about?

There was behavior claimed to be intentional inflicting of emotional distress by a surgeon who apparently had a terrible temper. What was particularly interesting about the case was that the jury instructions used the phrase "workplace bullying" and it was questioned whether that term was too general. But the Supreme Court said the term had viability as a commonsense phrase for a jury.

It may be a commonly understood phrase, but doesn't the definition of bullying behavior range all across the spectrum and even from person to person?

That's what makes it so hard to draw the line. Basically, it's a form of employee harassment that isn't necessarily tied to the immutable characteristics such as age, race, and sex that are protected categories in employment discrimination law currently. About 25% of the workplace bullying that's complained about falls under existing statutes. For the remainder, there's no specific channel or regulations that reach out to touch it.

But what is bullying to me might not be bullying to you. A manager may have to tell you something that hurts your feelings to help you do your job. If your boss screams at you for being late, for instance, you might think that's horrible. A month later you might get a bad performance review, and a month after that you're dismissed. Now, can you go to a lawyer and claim a bully for a boss? If so, every discharged employee theoretically could make that claim, and a lot of unnecessary litigation could result. If you get a jury evaluating uncivil workplace behavior and the jurors dislike the manager as they are likely to there's tremendous potential for inconsistent verdicts and other problems.

What implications does the Indiana ruling have for small-business owners nationwide?

It suggests that there could be a trend of these kinds of decisions and small business should adopt a policy on proper conduct in the workplace. Model policies are available online and even very small employers would benefit from adopting one.

Even if it doesn't become a legal challenge, isn't bullying at the workplace a negative thing?

Of course it is. It increases employee turnover, it causes a loss of productivity, and it can give a company a bad reputation. Nobody wants to work for an abusive boss.

How does an entrepreneur determine what's truly bullying behavior and what is not?

Most commonly, bullying consists of repeated verbal harassment. If it becomes physical there are existing legal tools to deal with it, such as assault and battery. Bullying behavior typically comes from somebody in a position of authority at a company. A bully can be a co-worker, but it's more commonly associated with a boss and particularly with an immediate boss, as opposed to someone running the company.

How should entrepreneurs deal with bullies in their firms?

They should establish firmly that this kind of conduct is not condoned. Then administer that policy on a complaint basis. What you absolutely cannot do is leave the situation alone and hope it gets better. You have a responsibility as an employer to intervene. Apart from the legal exposure involved, you have a threat to your productivity and your turnover rates.

We recommend that the business owner counsel or get counseling for the individual who has been complained about. Let the person know that this kind of behavior is not supported and won't be tolerated in the workplace. He should be able to determine whether this behavior is so much a part of his personality that the counseling is not going to work. If positive coaching doesn't work, the business owner will have to build a basis for ending the working relationship.

Don't some bullied employees just quit rather than risk whining about their bosses?

Yes, but they might feel differently if there were a business policy already established at the company. It's common for companies to do periodic harassment training. That session could easily include a little section on rude behavior. Emphasize that treating all employees with respect is the way to make the company productive. Your business reputation will only be enhanced by having an anti-bullying policy that shows you really care about your people and want them treated with respect.

The most effective way to deal with this, it seems, would be to avoid hiring a bully in the first place. Is that possible?

It's definitely smart to try to screen out people who are abusive, but it's not easy to get that information. And a lot of times people behave differently when they are talking to the CEO from the way they do when they are talking to their employees.