

One CMOs response to bullying in the workplace. (anon)

Some years ago I was part of a CMO workforce undergoing structural changes, facilitated by a new manager. Several days after defending a colleague from what appeared to be unreasonable criticisms by our manager, I was surprised to learn that he had launched disciplinary action against me for an unrelated matter. It soon became apparent to myself and my colleagues that we were being subjected to an aggressive management style that was destabilising our department.

We tried the usual avenues (via union representatives) to raise our concerns with higher levels of management and found that this only triggered powerful responses from upper management describing us as 'paranoid' with me singled out as 'undeniably vindictive' and a 'troublemaker', all written by someone who had never met or even spoken to me. This 'report' to the CEO demanded that I be put before proceedings that were considered to be illegal by my union representatives. One of my colleagues commented that I had been singled out for 'slow crucifixion'. It took almost a year before these proceedings were eventually withdrawn. Just when the dust had settled I found myself subjected to a second round of unwarranted disciplinary action, where the investigator assured me that he could not make any adverse findings against me. It soon became apparent that the investigator had been pressured to alter his findings by higher levels of management wanting to make an example of me. From that moment on, I realised that I would not get anywhere with existing procedures. If I was to be successful, I had to find new ways of addressing and eliminating bullying and harassment from my workplace.

I surfed the net and spoke to numerous experienced unionists, lawyers and architects of various anti-bullying policies, etc. It soon became apparent that bullying and harassment was endemic within hierarchical systems and the best advice that you could ever receive when strongly targeted by an organization was to simply move to greener pastures.

I decided that I might learn more about this problem by staying in that position before I moved on. At best I thought I could become an agent for positive change within my workplace. To better protect myself from tiers of management that had supported inappropriate disciplinary actions against me, I managed to be elected as an OHS representative on the Occupational Health and Safety Committee. I believed this would protect me against any reprisals when raising issues about health and safety in my workplace.

Over the subsequent months and years I made numerous notifications to the CEO of my Area Health Service advising him of my concerns that there were ongoing foreseeable risks to the psychological wellbeing of staff within my workplace, namely the behaviour of my immediate manager and all those supporting his aggressive management style, including local and regional managers (which included the CEO I was providing these notifications to !). In my emailed communications I invited the CEO to conduct relevant OHS risk assessments to ensure that all risks to health and safety could be addressed, minimised and / or eliminated from my workplace.

These requests were politely received but never acted upon in the manner I requested. This did not concern me, as I was more interested in creating a paper trail of recurrent notifications and their resultant inactions, that could make the wider organization and the CEO appear grossly negligent should anyone suffer any subsequent injury from their failure to address issues raised by an OHS representative.

I chose this course, after becoming aware of various provisions within the NSW OHS Act and Regulation. In particular the Act states (in Part 1, 3 Objects) that the employer must:

"ensure that risks to health and safety at a place of work are identified, assessed and eliminated or controlled,"

"promote a safe and healthy work environment for people at work that protects them from injury and illness and that is adapted to their physiological and **psychological needs"**

“protect people at a place of work against risks to health or safety arising out of the activities of persons at work,”

In section 8 **Duties of Employers** it states:

“An employer must ensure the health, safety and welfare at work of all the employees of the employer.”

That duty extends (without limitation) to .. **ensuring that systems of work and the working environment of the employees are safe and without risks to health,**

The OHS Regulation states in Section 9 **Employer to identify hazards:**

(1) An employer must take reasonable care to identify any foreseeable hazard that may arise from the conduct of the employer’s undertaking and that has the potential to harm the health or safety of:

(a) any employee of the employer, or

(b) any other person legally at the employer’s place of work,

or both.

(2) In particular (and without limiting the generality of subclause (1)), **the employer must take reasonable care to identify hazards arising from:**

(a) the work premises, and

(b) work practices, work systems and shift working arrangements

(including hazardous processes, psychological hazards and fatigue related hazards), and

Furthermore the Act specifically states in Section 23 **Unlawful dismissal or other victimisation of employee:**

An employer must not dismiss an employee, injure an employee in his or her employment or alter an employee’s position to his or her detriment because the employee:

(a) makes a complaint about a workplace matter that the employee considers is not safe or is a risk to health

The regulation outlines various penalties if an employee is dismissed or victimised when reporting concerns about OHS risks in their workplace

Again in section 23

Maximum penalty (**where each penalty unit = \$110 in 2010**):

(a) in the case of a corporation (being a previous offender)—375 penalty units, **(= \$41,250 fine)** or

(b) in the case of a corporation (not being a previous offender)—250 penalty units, **(= \$27,500 fine)** or

(c) in the case of an individual (being a previous offender)—225 penalty units, (= **\$24,750 fine**) or

(d) in the case of an individual (not being a previous offender)—150 penalty units. (= **\$16,500 fine**)

Therefore all I did was provide recurrent notifications of potential OHS risks within my workplace to the individual held ultimately responsible for ensuring compliance within all aspects of the OHS Act and Regulation, which was the CEO of my area health service.

Furthermore I reminded the CEO that by making these notifications, I was merely fulfilling my employee designated responsibility to report potential workplace hazards in order to allow my employer ample opportunity to address, minimise or eliminate these risks. I was reporting these in the same manner that was expected of me, should I notice physical hazards such as exposed electrical wiring, leaking pipes, loose tiles or steps that could lead to injury or death. This was my interpretation of the requirements set out in Section 28 (of the NSW OHS Regulation) **"Employees to disclose certain matters."**

(1) An employee must take reasonable steps to prevent risks to health and safety at work by notifying the employee's employer or supervisor of any matter that, to the knowledge of the employee, may affect the capacity of the employer to comply with the requirements of this Regulation.

When reporting concerns about exposed electrical wiring I did not need to be an electrician, or a plumber if there was a leaking pipe. I could simply report them in a basic sense and just invite my employer to get appropriately qualified personnel to properly assess any accompanying risks. Similarly I didn't need to be too specific about any bullying behaviours by my manager. I didn't need to provide any psychological details. Just report that I was concerned that there might be behaviours that could be causing psychological damage in my workplace. It was up to the CEO to organise relevant risk assessments when duly notified.

The CEO suggested certain actions, which I could not agree to, even though I was aware that the Act requires employees to comply with the employer's direction in Section **20 Duties of employees**

(2) An employee must, while at work, co-operate with his or her employer or other person so far as is necessary to enable compliance with any requirement under this Act or the regulations that is imposed in the interests of health, safety and welfare on the employer or any other person.

However, in my view, I could not be expected to co-operate in proceedings proposed by the CEO that might cause me further harm or injury. Hence when the CEO suggested I lodge my concerns as part of a formal grievance, I replied that I had received expert advice that to do so was likely to cause me further harm and/or injury, as grievance proceedings were heavily biased against complainants and were no longer considered to be appropriate in cases of serious bullying and harassment. The subsequent NSW Policy Guideline No: 2007-011 now supports this view when it states in 4.2.1:

.. it is important to note that the NSW Health grievance resolution process is for managing minor workplace issues only and is not to be used to manage potentially serious workplace issues.

I made it clear to the CEO, that I could ONLY provide full information to someone who was well qualified and widely recognised to be an expert in the assessment and correct identification of all forms of overt and covert workplace bullying. Furthermore, I could ONLY agree to proceedings that would not cause me any further harm or injury. Naturally this arrangement was never provided by the CEO.

So we established a regular pattern of recurrent notifications, that led to recurrent inactions by the CEO. Finally the CEO agreed to implement a series of educational sessions on bullying and harassment throughout our hospital with particular emphasis on providing sessions to the department where I worked. These sessions were well received and appeared to benefit all staff, particularly the non-medical staff.

At the same time I drafted a potential survey instrument to gauge the level of bullying and harassment within my workplace. I hoped that this could be used on a recurrent basis. The guiding premise behind developing this survey was to provide as many 'non-judgemental awareness raising questions' as possible. So that this instrument would raise awareness whilst it was ascertaining the level of coercive behaviours in any workplace. I believed that passing this survey around during its development would make it much more difficult for bullies to successfully operate. To this end, this survey was passed around to as many staff as possible, to encourage them to criticise existing questions and develop their own. It was also passed up through several layers of higher management on the premise that it needed to be properly developed so that it could be entered into the regional Quality Award competition. I simply told them that I wanted their help to ensure that it would WIN !

Five years later bullying and harassment seems to have largely disappeared from our workplace even though my original protagonist and I have learnt to 'comfortably' co-exist. He has not engaged in any sustained bullying for many years.

Yes, bullying does spasmodically occur as outbursts from other members of staff from time to time. Usually at times of significant stress, but never in any sustained fashion. Should the latter ever re-occur it would simply require another set of recurrent OHS notifications to the CEO and the resurrection of a "survey that needs to be further refined and updated" by ALL affected staff. This could happen in an official capacity or unofficially by seeking to refine it as part of a quality initiative. The irony, of course, is that this survey has had so much exposure, that it has never needed to be implemented.

I hope that my experience might prove useful to other CMOs finding themselves being subjected to serious bullying & harassment.

A copy of the NSW OHS Act can be found on the internet at
<http://www.legislation.nsw.gov.au/fullhtml/inforce/act+40+2000+FIRST+0+N>

A copy of the NSW OHS Regulation 2001 with Margin Notes can be found at:
<http://www.bees.unsw.edu.au/ohs/OHSRegulation2001withMarginNotes.pdf>