

## **Model Anti-Workplace Bullying Law**

### **PURPOSE**

Workplace bullying is a pattern of behavior that intimidates, undermines, degrades, humiliates, and otherwise harms an employee, possibly in front of other employees, clients, or customers. Workplace bullying in general is not illegal in the U.S. unless it involves harassment based on race/color, religion, national origin, sex, age (over 40), marital status, disability, sexual orientation/gender identity, veteran/military status, or any other protected class. Workplace bullying is pervasive and harmful.

### **APPLICATION**

This law applies to individuals, groups, and employers (company/organization/sole proprietor). Employees include full and part-time, contract, exempt and non-exempt, volunteers, and other categories where work is being provided to the benefit of the employing entity. Employees include teens (16-19) and adults (over 19).

### **DEFINITIONS**

The definitions in this subsection apply throughout this document unless the context clearly requires otherwise.

Bullying behavior under EEOC is harassment based on race/color, religion, national origin, sex, age (over 40), marital status, disability, sexual orientation/gender identity, Veteran/military status, or any other protected class. Nothing in the definitions requires the target to possess a protected class characteristic that is a basis for the bullying-based harassment under EEOC.

#### Aid and Abet

Aid and abet refers to a person's action to help, support, or approve bullying behavior of the perpetrator(s). An employer is considered to aid and abet if they engage in action or inaction that allows bullying to happen and/or does not stop bullying.

#### Bullying

Repeated unwarranted treatment, harassment, or intimidation communicated by a person:

1. In person, in writing, physical behaviors, and/or via electronic means such as transmission of information by wire, radio, phone, optical cable, electromagnetic, or other communication means;
2. By a person(s) bullying an individual to force them out of the workplace, retaliate, "pick" on the target, to make the target decide they do not want to make, or other reason;
3. In forms such as physical; work duty; emotional abuse such as using rumor, innuendo, intimidation, humiliation, discrediting, isolation, physical acts; or other bullying behaviors

### Harassment

Harassment means any intentional electronic, written, verbal, or physical act including, but not limited to these forms of communication, that results in harms such as but not limited to:

1. Mentally or physically harms a person or damages the person's property;
2. Has the effect of substantially interfering with a person's ability to work;
3. Is so severe, persistent, or pervasive that it creates an intimidating or threatening workplace environment;
4. Has the effect of substantially disrupting the orderly operation of the organization;
5. Effects make a person quit, reduces productivity, increases absences, or other impacts

### Intimidation

An act or series of acts directed at a specific person with the intent to deter or coerce the target into taking an action they do not want to take and causes the person to fear the perpetrator(s).

### False Complaints

Misusing formal or informal complaint processes as tools to bully such as lodging complaints with no evidence, misinformation, and/or false information. Filing false court cases are also prohibited.

### Mobbing

Mobbing is a form of group bullying. Mobbing is repeated unwarranted treatment, harassment, or intimidation communicated by a group of perpetrators:

1. In person, in writing, physical behaviors, and/or via electronic means such as transmission of information by wire, radio, phone, optical cable, electromagnetic, or other communication means;
2. By a group of people bullying an individual to force them out of the workplace, retaliate, "pick" on the target, to make the target decide they do not want to make, or other reason;
3. In forms such as physical; work duty; emotional abuse such as using rumor, innuendo, intimidation, humiliation, discrediting, isolation, physical acts; or other bullying behaviors
4. A group behavior by co-workers, subordinates, superiors, or some combination.

### Perpetrator

Individuals, groups, and employing organizations who engage in bullying or aids and abets bullying or mobbing.

### Retaliation

Taking adverse actions against person(s) who reports bullying, files a bullying complaint, participates in a bullying investigation, and/or reports a person, group, or employer who is aiding and abetting in bullying.

### Scapegoating

Scapegoating is the practice of targeting a person(s) for unwarranted blame resulting in negative treatment that harms the target(s) usually requiring the target(s) to bear blame for others

### Target

A target is a worker who is full and part-time, contract, exempt and non-exempt, volunteers, and other categories where work is being provided to the benefit of the employing entity.

### Threats

Threats (nonphysical and/or physical) is a statement or action of a perpetrator(s) whose purpose or intent is to harm the target in some manner, their property, and/or their rights in one or more forms such as, but not limited to:

1. Menacing or nonverbal behavior
2. Physical action
3. Verbal communication
4. Written communication
5. Relayed through another person
6. Other means of relaying a message

### Violence

Bullying violence includes harms such as mental, physical, property, financial, career, and other harms to targets.

### Whistleblower

A person who reports on a person, group, or employer engaged in a bullying activity or aiding and abetting bullying activity.

### Worker

Worker is defined as adult (over 19) and teen (16-19) per US Bureau of Labor Statistics categories.

## **EVIDENCE COLLECTION**

Evidence includes documentation such as emails, witnesses, witness statements that can corroborated, electronic recordings (written, audio, or video), or other objective information.

One-party notice of recording is allowed under this law because bullying is often verbal and one-on-one with no witnesses.

1. This law allows person-to-person, group, and meeting recording in audio, video, or both for evidence collection related to legal and organization policy/procedure violation(s) with notice to one person.
2. Meetings involving government personnel, agencies, or entities can be recorded without approval.
3. If a target is involved in job action, they can record the meeting.
4. Virtual and social media meetings and interactions can be recorded.
5. Using recordings outside any defined contexts in this law is prohibited.

## **INFRACTIONS**

1. Aid and Abet
2. Bullying
3. EEOC harassment
4. Harassment
5. Intimidation
6. False complaints
7. Misusing legal, formal, or informal complaint processes
8. Mobbing
9. Violence
10. Retaliation
11. Scapegoating
12. Threats
13. Violate other federal, state, or local laws while violating the anti-workplace bullying law

## **PENALTIES**

### Application of Law

1. Targets (or family/guardian if target is not mentally or physically able) can seek redress via criminal and civil processes for pain and suffering, loss of income, loss of benefits, loss of retirement contributions, and loss of career.
2. Company/organization/employer can be sued in civil court for pain and suffering, loss of income, loss of benefits, loss of retirement contributions, and loss of career.
3. Those who aid or abet the perpetrator will be in violation of the law and treated the same as the perpetrator(s).
4. Wage and revenue garnishments can be applied by the Courts for failure to pay fines or damages.

### Penalty Categories

1. Incivility - Common low intensity, harmful behavior that occurs with ambiguous intent, no apparent pattern, violates norms for mutual respect, and with no physical assault but over time negatively impacts the target and interferes with their ability to work and may lead to emotional harm.
2. Bullying 1– Actions that undermines, degrades, or humiliates a target and interferes with their ability to engage in work activities and may lead to emotional harm.
3. Bullying 2– Bullying 1 plus Intimidation and/or nonphysical threats that interferes with a target's ability to engage in work and may lead to emotional harm.
4. Bullying 3 – Bullying 2 plus physical threats or actual physical violence or actual nonphysical damage that interferes with a target's ability to engage in work and may lead to emotional and/or physical harm.

5. Retaliation –An employee or employer can engage in retaliation by responding to a target who submitted a bullying complaint or was a whistleblower, or participated in an investigation in ways designed to punish, to discourage from acting on future bullying incidents, and/or to make a target quit.

Retaliation includes but is not limited to:

- Continue bullying;
- Reprimand the target;
- Give a performance evaluation that is lower than it should be;
- Transfer the target to a less desirable position;
- Engage in verbal or physical abuse;
- Threaten to make, or make reports to authorities (such as reporting immigration status or contacting the police);
- Issue threats of any type designed to fulfill the elements of retaliation definition;
- Increase scrutiny and unfair/unreasonable evaluation;
- Spread false rumors;
- Treat persons close to the reporter negatively (for example, start bullying close coworkers);
- Make the person's work more difficult (for example, punishing a target by purposefully changing their work schedule to conflict with work and/or personal responsibilities)

### Criminal Penalties

1. Incivility
  - Warning
  - Second time is Bullying 1
  - Three or more times Bullying 2
2. Bullying 1
  - Misdemeanor
  - Probation 1-3 year(s)
  - Fine
  - Loss of license, certifications, and/or visa
  - Plus, sanctions from other laws violated
3. Bullying 2
  - Felony 30-90 days jail
  - Probation 1-3 year(s)
  - 2x fine
  - Loss of license, certifications, and/or visa
  - Plus, sanctions from other laws violated

4. Bullying 3

- Felony 1-3 years in prison
- Probation 1-3 year(s)
- 3x fine
- Loss of license, certifications, and/or visa
- Plus, sanctions from other laws violated

5. Aid and Abet and Retaliation

- Aid and abet penalties mirror the penalty level of supported perpetrator(s)
- Retaliation behavior follows the penalty levels

6. Special Provisions

- Repeat Bullying 1-2 will be treated as Bullying 3
- Repeat Bullying 3 multiplies probation, incarceration, and fines by 2 for each additional offense
- Time extended for failure to pay fines
- Time served concurrently any time other laws are associated with the act- Bullying 2
- Time served consecutively any time other laws are associated with the act- Bullying 3

Civil Penalties

Applies to perpetrator, group of perpetrators, company/organization/employer who aid or abets a perpetrator or group of perpetrators.

1. Compensatory damages

- Pain and suffering
- Out-of-pocket expenses related to bullying such as medical appointments, travel to appointments, medications, legal bill, etc.
- Lost funds and/or benefits that otherwise would be available to target
  - Cash value of used leave due to bullying
  - Cash value of a loss of career earnings and retirement earnings if quit or fired due to bullying
  - If unemployed due to bullying, cover on-going medical benefits for two years or until re-employed

2. Punitive damages

- Equal to one year of salary/wages

3. Loss of business license.

- After third court loss
- Past courts losses for the entity if name changed, ownership transferred, or moved offshore but does business in US or US territories

4. Aid and Abet

- Those who aid or abet the perpetrator will be in violation of the law and treated the same as the perpetrator under civil penalties

5. False Complaints

- Those who file false complaints with an employer may be sued civilly
- Those who file false complaints with a court will be fined

Teens and Parents/Guardians

1. Teens under 16-19, will not be placed in jail with adults (over 19)
2. Parents/Guardians will be responsible for financial civil penalties

**EMPLOYER POLICY REQUIREMENT**

Each employer must adopt or amend, if necessary, a policy and procedure prohibiting bullying of any person and that, at a minimum, incorporates the elements described in this law.

Provisions

The policy must include the following elements:

1. Describe who is covered by the policy;
2. Provide that the employer is committed to providing a working environment free from bullying of any kind;
3. A statement that bullying is an unlawful employment practice prohibited by the anti-workplace bullying law;
4. Provide definitions of bullying under the anti-workplace bullying law;
5. Notify the employees of their right to file a complaint with the State agency responsible for implementing the law;
6. Persons reporting bullying and the accused can have a support person with them throughout the process. The support person has no standing in this administrative process thus they cannot speak on a person's behalf unless an ADA accommodation has been approved;
7. Identify the employee(s) who receive concerns or complaints. The policy should provide the complaint process and several avenues for an employee to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;
8. Advise that complaints can be filed with a name or anonymously;
  - Anonymous claims will be investigated to the extent possible
  - Note that anonymous complaints may not lead to action if accusations cannot be proved without the complainant participation
9. Employers must refer perpetrators to law enforcement if behavior rises to real threats, damage to property, and/or physical violence;
10. Advise covered persons under the policy that the employer is legally obligated to respond to allegations concerning a violation of the policy;
11. Identify options that the employer will take to respond to alleged violations of the policy, such as:

- Initial data collection
  - Formal investigation if necessary
  - Formal resolution
  - Alternative dispute resolution if complainant approves
  - Informal resolution if no evidence supports the complaint, but there is a workplace issue to resolve
12. Identify the agency's investigation or response procedure noting the importance of impartiality, that all processes will provide due process or fundamental fairness and complaint procedures, and procedures are detailed enough to promote consistent application;
  13. Describe evidence types including recording under law;
  14. Policy violations under law clearly defined;
  15. State that any person found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal;
    - Violations of policy defined
    - Employment actions clearly spelled out for violations
  16. A statement that the complainant will be informed of the status and the outcome of an investigation unless complainant is anonymous;
  17. Alternative dispute resolution processes;
  18. Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:
    - Preventing or not engaging in sexual harassment
    - Responding to concerns or allegations of violations of the policy
    - Participation in an investigation under the policy
    - The prohibition against retaliation
  19. A statement that privacy is not applicable and confidentiality cannot be guaranteed;
  20. A statement that responses to public records requests will be provided in accordance with applicable law;
    - This is an employment record so employment record laws apply
  21. A statement that retaliation against individuals covered by the policy who report allegations of bullying or who participate in an investigation is prohibited;
  22. Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of bullying or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal;
  23. A statement that an employer may not require an employee to sign an agreement that prevents the employee from disclosing or discussing conduct or the existence of a settlement involving conduct and that it is a violation for an employer to discharge or otherwise discriminate or retaliate against an employee for disclosing or discussing such conduct;
  24. The employer must notify complainant that they can refer a case to law enforcement who will implement their process. The processes are separate and do not depend on each other



### Policy Administration

1. Yearly, employers must share the policy and procedure prohibiting bullying of staff, volunteers, and or other employees in accordance with this law.
2. Every employee is mandated reporter but each employer must designate at least one person as the primary contact regarding the policy and procedure prohibiting bullying. In addition to other duties required by law, the primary contact must:
  - Ensure the implementation of the policy and procedure prohibiting bullying;
  - Receive copies of all formal and informal complaints relating bullying;
  - Communicate with employees responsible for monitoring compliance with this law;
  - Each employer must maintain a summary of its policies, procedures, programs, partnerships, vendors, and instructional and training materials on prohibiting bullying to be posted on their website;
  - Provide yearly training for those who act as the primary contact regarding the policy and procedure prohibiting bullying:
    - The training class must be based on the model policy and this law
    - Training must be provided to new staff and yearly to all staff
3. A yearly report of bullying cases must be maintained in HR and reported to local and state agencies, who report to federal agencies.
4. Prevention campaign must be implemented to include the following elements:
  - Educational prevention program on workplace bullying/mobbing
  - Required on the law and policy
  - Optional on the social aspects
  - Media messaging campaigns
  - Upstander and Bystander Intervention

### **ALTERNATIVE DISPUTE RESOLUTION**

1. Binding arbitration or mediation is permitted if target chooses, but no waiver of rights or Non-Disclosure Agreement (NDA) requirements are allowed.
2. Settlement is legal, but requiring an NDA or relinquishing rights is not allowed.
3. Fault will be determined under ADP for accurate record keeping should future issues arise.
4. ADR cases can be re-opened as civil and/or criminal cases if perpetrators or employers violate the ADR outcome.

### **STATE AND LOCAL DATA COLLECTION AND REPORTS**

1. Local, state, and federal agencies must collect bullying specific data to include bully, target, type of violence, identify characteristics, relationship, and outcome of investigation
2. Costs of bullying must be estimated: hospitalization, mental health service, leave used, payouts or court losses, etc.
3. Submit yearly report

4. Employers who fail to report will face fines equal to 25% of business value or revenue whichever is greater each year they fail to report.

### **CHANGES TO LAW**

Changes can only be made that strengthen the law and regulations, not weaken them.

### **SPECIAL PROVISIONS**

1. Complaints may be brought under this law for incidents that occurred prior to its enactment.
2. This law applies to incidents that happen away from employer owned and/or controlled property.
3. Persons who report bullying and/or participate in HR or court proceedings cannot be discriminated against by current or future employers. Employers who are found discriminating against reporters or participants in proceedings will be subject to civil penalties including possible loss of business license.