

Anti Workplace Bullying Pre-Law Model Policy

MODEL POLICY

This model policy is an educational tool for employers wishing to stop workplace bullying. It is a template that can be revised to suit individual hiring organizations. Also, State laws may requires editing to comply with Sate law.

PURPOSE

We are committed to a work environment free of bullying. Workplace bullying will not be allowed by any employee at any level because it is harmful and negatively impacts the workplace. Workplace bullying costs employees their good health, leads to financial burden, and stymies their careers. Bullying costs the company competent people, employees not giving their best effort, money to replace staff, and can lead to legal costs.

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.

Many behaviors are legal that can be prohibited by organization policy. This policy aims to prevent and respond to workplace bullying behaviors exhibited by employees, enabled by employees, and/or ignored by decision-makers who could end the behavior.

ROLES AND RESPONSIBILITIES

It is the role and responsibility of all employees, managers, supervisors, and others covered by the policy to fully comply with respect to the following:

- Preventing and not engaging in bullying
- Reporting bullying
- Participating in an investigation under the policy
- Prohibiting and not engaging in retaliation

APPLICATION

This policy applies to all employees whether hired, contracted, or volunteer. Employee behavior falls under this policy at all properties owned or controlled by the company/organization, and when representing the company at any time. If an employee is found to have engaged in bullying outside of these parameters, with credible information obtained, they will be held to account under this policy as bullying anywhere is bullying here.

PRIVACY

Privacy as defined by law is not applicable and confidentiality is not guaranteed for those participating in the process. Persons participating are protected to the extent of confidentiality defined in this policy and under applicable law. Retaliation provisions in this policy and under applicable law.

RETALIATION

Complainants/targets are not required to sign an agreement that prevents them from disclosing or discussing their closed case with others, but they cannot violate employment laws concerning the accused employee(s). Complainants/targets will not be subject to discharge, discrimination, or retaliation for disclosing or discussing their case.

DEFINITIONS

The definitions in this subsection apply throughout this document unless the context clearly requires otherwise. Every example of bullying behavior is not described in this policy.

EEOC Harassment

Bullying behavior under law 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 in federal, state, or local law. Nothing in the definitions requires targets to possess protected class characteristics required for bullying-based harassment under EEOC or State EEO. We will fully comply with investigations under by these agencies. Violations of antidiscrimination laws is also a violation of this policy.

Aid and Abet (Enable)

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

Single or repeated actions such as unwarranted treatment, harassment, or intimidation communicated by a person such as:

- 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;
- By a person(s) bullying an individual to force them out of the workplace, retaliate, "pick" on the target, force the target to make the decision to leave, when they do not want to make that decision, or other reason;
- In direct forms such as physical; work duty; emotional abuse such as using rumor, innuendo, intimidation, humiliation, discrediting, isolation, physical acts; or other bullying behaviors

Emotional Abuse

Emotional abuse includes but is not limited to rumor, false innuendo, intimidation, public humiliation, gaslighting, inaccurate discrediting, isolation, overreacting, micromanaging, etcetera.

Employee

The term employee includes personnel, owner (s), and board members. Employees include full and part-time, contract and volunteers, temporary and permanent, exempt, and non-exempt, and any other categories where work is being provided to the benefit of the company/organization. Employees include teens (16-19) and adults (over 19).

Gaslighting

Gaslighting is psychological manipulation of a person usually over an extended period that causes the victim to question the validity of their own thoughts, perception of reality, or memories and typically leads to confusion, loss of confidence and self-esteem, uncertainty of one's emotional or mental stability, and a dependency on the perpetrator.

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:

- Mentally or physically harms a person or damages the person's property;
- Has the effect of substantially interfering with a person's ability to work;
- Is so severe, persistent, or pervasive that it creates an intimidating or threatening workplace environment;
- Has the effect of substantially disrupting the orderly operation of the organization;
- 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/or causes the person to fear/avoid 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. Repeated false or unfounded complaints against a target will not be used as evidence supporting accusations by complainant(s). Complainants, enablers, decision-makers and investigators providing or using false and/or unfounded complaints to take job action against a target constitutes bullying under this policy.

Mobbing

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

- 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;
- By a group of people bullying an individual to force them out of the workplace, retaliate, “pick” on the target, force/coerce the target into making a decision they do not want to make, or other reason;
- In direct forms such as physical; work duty; emotional abuse such as using rumor, innuendo, intimidation, humiliation, discrediting, isolation, physical acts; or other bullying behaviors
- A group behavior by co-workers, subordinates, superiors, or any combination.

Perpetrator/Accused

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 bullying or aiding and abetting 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 unwarranted blame or 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:

- Menacing or nonverbal behavior
- Physical action
- Verbal communication
- Written communication
- Relayed through another person
- Other means of relaying a message

Unwarranted Treatment

Unwarranted treatment means an action was unnecessary such as misusing work duty schedules, withholding information, providing false information, gaslighting, making every action a cause for alarm and blame, or other actions that are unnecessarily harmful.

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.

Employee

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

EVIDENCE COLLECTION

Evidence includes documentation such as emails, direct witnesses, direct witness' statements that can be corroborated, electronic recordings (written, audio, or video), or other objective information. Opinions, accusations, or unfounded complaints are not evidence of policy violation.

One-party notice of recording is allowed under this policy if the State allows it, because bullying is often verbal and one-on-one with no witnesses.

- This policy 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.
- If a target is involved in job action, they can record the meeting for accuracy.
- Virtual and social media meetings and interactions can be recorded for accuracy.

LEGAL RIGHTS AND SUPPORT

Employees have the right to file a complaint with the state and federal agency responsible for implementing antidiscrimination and other applicable laws. Persons reporting bullying and the accused can have a support persons 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.

This policy is implemented with impartiality. The complaint process will provide due process or fundamental fairness to all involved. The procedures will be implemented consistently.

A complainant may be referred to law enforcement who will implement their process. The processes are separate and do not depend on each other. Complainant/target will be notified first.

COMPLAINT PROCESSES

Where to File

Complaints can be submitted verbally or electronically. Submit complaints to HR, EEO Office, union representative, supervisor or leadership, or board of directors. These personnel will report to HR and EEO office. All complaints will be investigated by HR or the EEO office. All documents and evidence will be stored in HR as official files and access is covered by relevant privacy laws.

Anonymous and Name Identified Complaints

Complaints can be filed with a name or anonymously. Anonymous claims will be investigated to the extent possible. Anonymous complaints may not lead to action if accusations cannot be proved without the complainant participation. Named complainants can participate fully or withdraw participation at any time, but the investigation will continue to the extent possible.

Complaint Notice

Accused persons will be notified of complaints before any action against them is taken. Notice will include summary of alleged behavior(s), summary of evidence, date(s) involved, possible actions if true, and date or process to meet with investigator. Notice will include they can have support persons whose standing is defined under this policy. The complainant will also be notified that they can have support persons whose standing is defined under this policy.

Impartiality

Investigation and response procedures will be impartial. All processes will provide due process or fundamental fairness within the complaint procedures.

Overview of Investigation Process

Response to alleged violations of the policy are as follows:

- Initial information collection and evaluation
- Discussion with complainant/target about options based on information
- Resolution options:
 - Informal resolution
 - Formal resolution
 - Alternative dispute resolution if target asks and complainant agrees
- File resolution outcome

Procedures

All meetings will be recorded for accuracy purposes and will become part of the formal record and protected by applicable privacy laws and policies. Days means to business days.

1. HR or EEO Office receives identifiable or anonymous complaint and assign an investigator.
2. Investigator meets with the complainant/target, and secures and reviews their evidence (or they start investigation without accused if anonymous). A witness list for the complainant/target is created and/or confirmed. Witnesses are met with and their information is recorded. Complainant/target side of investigation should last no more than 10 days from receiving complaint.
3. Notice of an investigatory meeting is sent to accused within 2 days of concluding complainant-side information gathering. The accused is instructed to contact the investigator to schedule a meeting within the next 5 days.
4. Meeting with accused will take place within the 5-day window provided in the notice. Investigator meets with the accused, reviews complainant/target evidence, and secures and reviews their evidence. A witness list for the accused is created and/or confirmed. Witnesses are met with and their information is recorded. If accuser fails to attend meeting without prior notice and approval, the investigation will continue without them. Accused side of investigation should last no more than 10 days from investigatory meeting notice with extension approval.
5. Investigator will determine if there is evidence to move forward to Step 6, 7, or 8. Within 2 days of investigatory meeting conclusion, the complainant/target will be informed of options.
 - a. If no evidence is available to move to Step 6 or 7, a mediation (Step 8) will be recommended. The purpose of mediation is to promote mutual understanding, repair the relationship, and prevent retaliation.
 - b. If there is evidence, the investigator will offer the complainant/target two options:
 - i. Resolve via informal resolution where the investigator allows the accused to take responsibility for actions and assign job actions. If informal resolution is successful, the complainant/target will be notified of outcome.
 - ii. Schedule a formal hearing. A formal hearing will also be scheduled if informal resolution is not successful.
6. Informal resolution will take place within 5-days of Step 5 meeting and applies to low-level complaints (Status changes 1 or 2). Accused will receive notice of pre-scheduled meeting. Notice provisions will be followed.
 - a. If informal resolution is successful, Investigator will provide job action according to sanction directions.

- b. If informal resolution is not successful, a formal hearing will be scheduled with one HR and one EEO representative, and one impartial leader within 5 days of informal resolution meeting. Notice provisions will be followed.
7. Formal hearing will take place within 5 days of Step 5 meeting. Parties will receive notice of pre-scheduled meeting. Parties are responsible for having their witnesses appear. Notice provisions will be followed.
 - a. A formal hearing will be scheduled with one HR and one EEO representative, and one impartial leader.
 - b. This hearing committee will assign disciplinary actions if warranted.
 - c. Outcome notification will be provided to accused and complainant/target will be provided within 5 days.
8. Mediation will be scheduled within 5 days of Step 5 meeting conclusion.
9. The complainant/target and accused will be informed of the outcome of informal resolution or hearing within 5 days of conclusion. Complainant/target and accused will receive copies of mediation outcome within 5 days of mediation. Anonymous complainants will not be notified.
10. Reasonable time extensions of up to 10 days at each step will be provided if there are multiple targets or accused persons, or extenuating circumstances.

VIOLATIONS (See Definitions section)

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

DISCIPLINARY ACTIONS

Disciplinary actions are based on numbers of violations, impacts on workplace, and impacts on target(s). Status changes are permanent for 1, 2, 3, and 5 and will become a part of the employee's file. Status change 4 reverts to 3 upon return and another violation of company policy will result in termination. These status changes will be considered if company policies are violated in the future.

Status Changes

1. Warning – One violation that only impacts the target but does not cause target personal harm, does not impact their work, and does not impact organization operations.
2. Formal Reprimand – One or more violations that impacts the target but does not cause target personal harm, does not impact their work, and does not impact organization operations.
3. Probation – One or more violations that impacts the target and others (observers and witnesses) causing mental health harm*, impacts their work, and impacts organization operations and environment. Repeated violation of this or another company policy.
 - a. *Mental health harms include anxiety, depression, psychological distress, suicidal ideation, etc.
 - b. Work impacts include not sharing information, providing false or misleading information, sabotage work, isolation, undermine, etc.
 - c. Impacts organization operations and environment include absenteeism, turnover, project noncompletion or poor completion, fear in other workers, mobbing participant, not holding bullies accountable, etc.
4. Suspension Without Pay- One or more violations that impacts the target and others (observers and witnesses) causes mental health and physical harm (symptoms from mental health issues) requiring person(s) to take leave and/or FMLA*, impacts their work, and impacts organization operations and environment. Suspension lasts for the length of time the bullying persisted.
 - a. *Physical harm includes sleep issues, fatigue, muscle issues, digestive issues, lightheadedness, heart palpitations, etc.
 - b. See 3 for the other elements.
5. Termination – Threats, violence; false or misuse complaints; major impact on operations leading to complaints, loss of money, reputational damage, etc.; and/or damage to property. Violate any company policy after being placed on probation or returned from Suspension.

*Mental health harms and symptoms must be verified by a medical professional. Health descriptions can be found in medical professional publications.

Employee Development Tasks

These tasks will be in effect until objective development is confirmed.

1. Coaching
2. Therapist evaluation
3. Leadership respectful communication and accountability
4. Restitution for property damage

RETALIATION

Retaliation against individuals covered by the policy who report allegations of bullying and/or participate in an investigation is prohibited. Employee found to have retaliated against individuals covered by the policy will be subject to corrective and/or disciplinary action, up to and including termination.

POLICY ADMINISTRATION

1. This policy will be shared yearly prohibiting bullying of staff, volunteers, and or other employees in accordance with this policy.
2. Every employee is a mandated reporter but supervisors, HR and EEO are primary contacts regarding the policy and procedure prohibiting bullying. In addition to other duties required by law and this policy, 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 policy
3. Maintain a summary of policies, procedures, programs, partnerships, vendors, and instructional and training materials on prohibiting bullying to be posted on their website.
4. Provide yearly training for reporters and contacts 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
5. Publish a yearly report of bullying cases that is maintained in HR.
6. Implement a prevention campaign to include the following elements:
 - Educational prevention program on workplace bullying/mobbing
 - Educate on the policy
 - Impacts of bullying
 - Media messaging campaigns
 - Upstander and bystander Intervention
7. Employers must refer perpetrators to law enforcement if behavior rises to real threats, damage to property, and/or physical violence.
8. Decision-makers and investigators are obligated to respond to allegations concerning a violation of this policy.