



Employer Guide:

How to Respond to Workplace Bullying

BELL & CO

Level 2, 149 Vivian Street, Wellington
PO Box 102, Wellington 6140
Phone (04) 499 4014

info@bellandco.co
bellandco.co



The Health and Safety at Work Act 2015 marked a fundamental shift in New Zealand’s approach to workplace health and safety. As a result of the Act, the focus has shifted from managing incidents to proactively identifying and managing risks.

Under s30 of the Act, employers must eliminate all risks to health and safety as far as reasonably possible. If that is not possible, they must minimise the risk. At is poses a risk to the health and safety of employees, but cannot be eliminated, workplace bullying falls is a risk that employers must minimise.

The risk to health and safety that bullying poses stems from its far reaching effects,

These include:

- Poor mental and physical health of employees;
- A hostile work environment;
- Employees working while sick, or taking more sick leave;
- Employees resigning; or
- Increased accidents in workplaces where physical safety is critical

This guide runs through the key steps employers should take once they become aware that bullying is happening in the workplace.

01

Consider whether there is unreasonable behaviour in the workplace

Employers must minimise the risks posed by workplace bullying, whether they have received a complaint or not.

If an employer is aware that unreasonable behaviour is occurring, it is their responsibility to do something about it.

02

Gather information

Once an employer is aware that there is unreasonable behaviour in the workplace, or they have received a complaint, they should:

- Have a clear description of the behaviour;
- Gather evidence in an unbiased, empathetic way, ensuring that they hear from the complainant, subject of the complaint and any bystanders;
- Understand the issues and what's needed to resolve them; and
- Explore what outcome the complainant wants.

03

Determine whether behaviour constitutes bullying

Consider the behaviour in light of WorkSafe's definition of bullying:

"repeated and unreasonable behaviour directed towards a worker or group of workers that can lead to physical or psychological harm".

This definition refers to persistent behaviour that an ordinary person would think abnormal.

04

Review the principles to follow when investigating in-house reports or complaints

WorkSafe NZ has devised a list of principles applicable to any investigation, whether formal or informal. You should review and apply these to whatever investigative approach you take.

- Treat all matters seriously.
- Act promptly.
- Ensure non-victimisation.
- Support all parties by ensuring that both parties know the support available to them through employee assistance programmes or peer support systems. You should also inform both parties of their entitlement to have a support person present at interviews or meetings.
- Be neutral.
- Communicate the process and outcomes by informing parties what they can expect from the process and what time frames they can expect. If there are any delays, communicate these delays with the parties.
- Maintain privacy.
- Clearly and thoroughly document everything.

05

Decide on the appropriate approach and carry it out

Low-key approach:

Where the bullying behaviour is of a low level, and the employer or manager has the buy-in of the complainant, a low-key approach could be appropriate.

Low-level bullying behaviour could include:

- Thoughtless comments that offend the complainant;
- Talking about the complainant behind their back;
- Someone else taking credit for the complainant's work.

Under this approach, the employer or manager should:

- Tell the subject of the complaint that their behaviour was inappropriate;
- Ask them not to do it again; and
- Remind them of your workplace values and code of conduct (if you have them).

If the bullying behaviour does not stop, the employer or manager should move on to either an informal or a formal approach.

Informal approach:

An informal approach is appropriate where the bullying behaviour is not sufficiently serious to warrant a formal approach, but the low-key approach may not cause the desired change in behaviour.

It may be inappropriate to talk directly, but informally with the subject of the complaint if:

- The employer or manager does not have the buy-in from the complainant to talk directly to the subject of the complaint;
- The employer or manager is aware that a one-off direct conversation with the subject of the complaint is unlikely to produce a positive outcome; or
- The behaviour is of a more serious nature.

Decide on the appropriate approach and carry it out, cont.

Once the worker has reported the behaviour to their employer or manager, there are two options the employer or manager could take:

1. Schedule a meeting with the subject of the complaint. The employer or manager should approach the subject of the complaint carefully and ensure the conversation takes place in a private room. The complainant should be:

- a. provided with evidence of the complaint;
- b. told that the behaviour is inappropriate;
- c. reminded of workplace values, processes and policies;
- d. told of any Employee Assistance Programmes available to them, including counselling and coaching; and
- e. encouraged to discuss the issue with a trusted third party, such as a friend, member of HR or a lawyer.

The manager or employer should take notes that accurately record the date, time and details of the conversation.

2. Organise a mediation, or facilitated meeting, resulting in a written agreement understood by all parties. This meeting could be in-house, where an independent manager could act as a mediator, or utilising an independent mediator. If using this approach, an employer or manager should ensure:

- a. They have the consent from both the complainant and subject of the complaint to the mediation or meeting.
- b. Both parties are provided with the information that will be relied upon in the mediation or meeting and given sufficient time to consider it.
- c. Both parties are aware of their right to bring a support person.

If the behaviour continues, a formal complaint may be lodged.

Decide on the appropriate approach and carry it out, cont.

Formal approach:

An employer or manager should use a formal approach where:

- They receive a formal complaint;
- The person making the complaint requests it; or
- If the behaviour involves senior management, occurs over an extended timeframe or involves multiple or vulnerable workers.

Once it is clear that a formal approach is necessary, an employer or manager should:

1. Meet with the subject of the complaint and:
 - a. Disclose the nature of the allegations and any relevant documents.
 - b. Remind them of the business' workplace policies on bullying and expectations on how they conduct themselves at work
 - c. Inform them that an investigation will take place and outline the process the investigation will follow.
 - d. Remind them of any employee assistance programmes that they have access to and encourage them to discuss any issues at work with a trusted manager or support person.
2. Where the business has resources, appoint an independent investigator to undertake an investigation and produce a report. If the business does not have sufficient resources, appoint a manager that is able to be independent.
3. Decide what to do based on the investigator's findings.
4. Meet with each party, provide them with a copy of the report, and discuss the recommended solution. The parties should be informed of their right to have a support person with them at this meeting
5. If the report concludes that bullying has occurred, a disciplinary process will be necessary. See our **Disciplinary Process guide** for more information.

¹ FGH v RST [2018] NZEmpC 60

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Review the principles to follow when investigating in-house reports or complaints

If an employer does not yet have policies and processes in place to minimise bullying, they should consider writing one. The [WorkSafe website](#) contains many helpful resources, including an Anti-Bullying policy template.

If a personal grievance (under s103 of the Employment Relations Act) arises following allegations of bullying, and the business does not have policies and processes of their own, the Court will use the WorkSafe guidelines *Preventing and Responding to Workplace Bullying* as a 'yardstick' to assess whether appropriate steps were taken.¹

Businesses should regularly review their processes and policies and update them where they are not effectively minimising bullying.

For reviews, use data from informal or formal processes and consult with workers, health and safety representatives and unions.

About Us

Bell & Co is a boutique dispute resolution firm. We've led extensive restructures for clients and acted on behalf of disadvantaged employees.

This guide is not a replacement for good advice. At Bell & Co, we can offer advice from both a human resource and legal point of view.

If you have further concerns or questions, regarding workplace bullying, please don't hesitate to get in contact with Bell and Co at **04 499 4014**.



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