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## **LANDEGGER BARON LAW GROUP**

### **Presents**

### ***"Workplace Violence, Bullying and Hostile Work Environment Claims"***

### **Current Trends & Concerns**

### **Employment Law Workshop**

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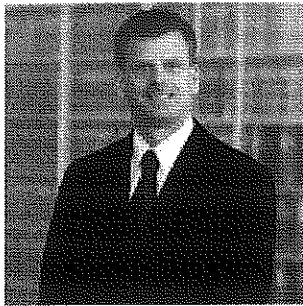
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# California Broadens Employment Discrimination Prohibitions to Include Victims of Domestic Violence and Stalking



By Brian Ewing

On October 11, 2013, Governor Jerry Brown signed a law extending greater employment protections to victims of domestic violence, sexual assault, and stalking. Senate Bill 400 prohibits terminating, or otherwise discriminating or retaliating against, an employee because he or she is a victim of domestic violence, sexual assault, or stalking, if the employee has notified the employer of his or her status as a victim, or the employer has actual knowledge of the employee's status as a victim. The law also requires employers to provide reasonable accommodations to employees who notify their employers that they are victims, to ensure their safety at work.

The bill was prompted by a story earlier this year of a school teacher in San Diego whose employment was terminated because of the school's and parents' fears about her ex-husband. According to news reports, the ex-husband was abusive, and the teacher had warned the school principal about him. After the ex-husband was seen in the parking lot, the school was locked down, and the teacher and her four children who attended the school were all placed on indefinite leave, fearing for

the safety of the other children and faculty should the man return. The school eventually terminated the teacher's employment.

Under SB 400, the school's actions would be unlawful. Employers can no longer terminate domestic violence victims, even if there is a real safety risk to the other staff or, in case of schools, the students. There may be other options, however.

The law also requires employers to provide reasonable accommodations to employees who have disclosed to the employer that they are victims of domestic violence, sexual assault, or stalking, and who request accommodations. The bill calls for an "interactive process" between the employer and employee victim who requests accommodations. Accommodations could include, according to the law, "implementation of safety measures, including a transfer, reassignment, modified schedule, changed work telephone, changed work station, installed lock, assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace, an implemented safety procedure, or another adjustment to a job structure, workplace facility, or work requirement in response to domestic violence, sexual assault, or stalking, or referral to a victim assistance organization." In determining whether accommodations are reasonable, the employer should consider the circumstances or dangers facing the employee. Employers are not required to provide accommodations that cause an undue hardship to business operations or accommodations that would violate their duty to provide a safe and healthful working environment under Cal-OSHA.

The employer may request certification of the employee's status as a victim. The certification may be a police report, a restraining order or similar court order, or

documentation from a licensed medical professional, licensed health care provider, or counselor that states the employee is undergoing treatment resulting from domestic violence or sexual assault. The employer must treat this documentation, and any statements from the employee about his or her status as a victim, confidentially, and only disclose the documentation and statements as required by law and only after notice to the employee of the disclosure.

SB 400 will undoubtedly lead to questions about what employers must do when employees request reasonable accommodations related to domestic violence situations.

Should you have any questions about how this law affects your business, please do not hesitate to contact our office.



# California

## LEGISLATIVE INFORMATION

### SB-400 Employment protections: victims of domestic violence, sexual assault, or stalking. (2013-2014)

#### Senate Bill No. 400

#### CHAPTER 759

An act to amend Sections 230 and 230.1 of the Labor Code, relating to employment.

[ Approved by Governor October 11, 2013. Filed with Secretary of State  
October 11, 2013. ]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 400, Jackson. Employment protections: victims of domestic violence, sexual assault, or stalking.

(1) Existing law provides protections to victims of domestic violence or sexual assault. Existing law prohibits an employer from taking adverse employment action against a victim of domestic violence or sexual assault who takes time off from work to attend to issues arising as a result of the domestic violence or sexual assault, as long as the employee complies with certain conditions. Existing law entitles an employee who is discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for specified purposes, to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Under existing law, an employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor. Existing law authorizes an employee who is discharged, threatened with discharge, demoted, suspended, or otherwise discriminated or retaliated against by his or her employer in violation of these provisions to file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations, as specified.

This bill would extend these protections to victims of stalking. The bill would also prohibit an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's status as a victim of domestic violence, sexual assault, or stalking if the victim provides notice to the employer of the status or the employer has actual knowledge of the status. The bill would also require the employer to provide reasonable accommodations that may include the implementation of safety measures or procedures for a victim of domestic violence, sexual assault, or stalking, as specified. Because a violation of the bill's requirements under certain circumstances would be a crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 230 of the Labor Code is amended to read:

**230.** (a) An employer shall not discharge or in any manner discriminate against an employee for taking time off to serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer that the employee is required to serve. -

(b) An employer shall not discharge or in any manner discriminate or retaliate against an employee, including, but not limited to, an employee who is a victim of a crime, for taking time off to appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

(c) An employer shall not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work to obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or his or her child.

(d) (1) As a condition of taking time off for a purpose set forth in subdivision (c), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the following:

(A) A police report indicating that the employee was a victim of domestic violence, sexual assault, or stalking.

(B) A court order protecting or separating the employee from the perpetrator of an act of domestic violence, sexual assault, or stalking, or other evidence from the court or prosecuting attorney that the employee has appeared in court.

(C) Documentation from a licensed medical professional, domestic violence counselor, as defined in Section 1037.1 of the Evidence Code, a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, licensed health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence, sexual assault, or stalking.

(3) To the extent allowed by law and consistent with subparagraph (D) of paragraph (7) of subdivision (f), the employer shall maintain the confidentiality of any employee requesting leave under subdivision (c).

(e) An employer shall not discharge or in any manner discriminate or retaliate against an employee because of the employee's status as a victim of domestic violence, sexual assault, or stalking, if the victim provides notice to the employer of the status or the employer has actual knowledge of the status.

(f) (1) An employer shall provide reasonable accommodations for a victim of domestic violence, sexual assault, or stalking who requests an accommodation for the safety of the victim while at work.

(2) For purposes of this subdivision, reasonable accommodations may include the implementation of safety measures, including a transfer, reassignment, modified schedule, changed work telephone, changed work station, installed lock, assistance in documenting domestic violence, sexual assault, or stalking that occurs in the workplace, an implemented safety procedure, or another adjustment to a job structure, workplace facility, or work requirement in response to domestic violence, sexual assault, or stalking, or referral to a victim assistance organization.

(3) An employer is not required to provide a reasonable accommodation to an employee who has not disclosed his or her status as a victim of domestic violence, sexual assault, or stalking.

(4) The employer shall engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations.

(5) In determining whether the accommodation is reasonable, the employer shall consider an exigent circumstance or danger facing the employee.

(6) This subdivision does not require the employer to undertake an action that constitutes an undue hardship on the employer's business operations, as defined by Section 12926 of the Government Code. For the purposes of this subdivision, an undue hardship also includes an action that would violate an employer's duty to furnish and maintain a place of employment that is safe and healthful for all employees as required by Section 6400 of the Labor Code.

(7) (A) Upon the request of an employer, an employee requesting a reasonable accommodation pursuant to this subdivision shall provide the employer a written statement signed by the employee or an individual acting on the employee's behalf, certifying that the accommodation is for a purpose authorized under this subdivision.

(B) The employer may also request certification from an employee requesting an accommodation pursuant to this subdivision demonstrating the employee's status as a victim of domestic violence, sexual assault, or stalking. Certification shall be sufficient in the form of any of the categories described in paragraph (2) of subdivision (d).

(C) An employer who requests certification pursuant to subparagraph (B) may request recertification of an employee's status as a victim of domestic violence, sexual assault, or stalking every six months after the date of the previous certification.

(D) Any verbal or written statement, police or court record, or other documentation provided to an employer identifying an employee as a victim of domestic violence, sexual assault, or stalking shall be maintained as confidential by the employer and shall not be disclosed by the employer except as required by federal or state law or as necessary to protect the employee's safety in the workplace. The employee shall be given notice before any authorized disclosure.

(E) (i) If circumstances change and an employee needs a new accommodation, the employee shall request a new accommodation from the employer.

(ii) Upon receiving the request, the employer shall engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations.

(F) If an employee no longer needs an accommodation, the employee shall notify the employer that the accommodation is no longer needed.

(8) An employer shall not retaliate against a victim of domestic violence, sexual assault, or stalking for requesting a reasonable accommodation, regardless of whether the request was granted.

(g) (1) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a) or (b) shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(2) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer for reasons prohibited in subdivision (c) or (e), or because the employee has requested or received a reasonable accommodation as set forth in subdivision (f), shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, as well as appropriate equitable relief.

(3) An employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(h) (1) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a), (b), (c), (e), or (f) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee may file a complaint with the division based upon a violation of subdivision (c), (e), or (f) within one year from the date of occurrence of the violation.

(i) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a), (b), or (c). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(j) For purposes of this section:



- (1) "Domestic violence" means any of the types of abuse set forth in Section 6211 of the Family Code, as amended.
- (2) "Sexual assault" means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code, as amended.
- (3) "Stalking" means a crime set forth in Section 646.9 of the Penal Code or Section 1708.7 of the Civil Code.

**SEC. 2.** Section 230.1 of the Labor Code is amended to read:

**230.1.** (a) In addition to the requirements and prohibitions imposed on employees pursuant to Section 230, an employer with 25 or more employees shall not discharge or in any manner discriminate or retaliate against an employee who is a victim of domestic violence, sexual assault, or stalking for taking time off from work to attend to any of the following:

- (1) To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.
- (2) To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.
- (3) To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.
- (4) To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

(b) (1) As a condition of taking time off for a purpose set forth in subdivision (a), the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible.

(2) When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee, within a reasonable time after the absence, provides a certification to the employer. Certification shall be sufficient in the form of any of the categories described in paragraph (2) of subdivision (d) of Section 230.

(3) To the extent allowed by law and consistent with subparagraph (D) of paragraph (7) of subdivision (f) of Section 230, employers shall maintain the confidentiality of any employee requesting leave under subdivision (a).

(c) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has taken time off for a purpose set forth in subdivision (a) is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, as well as appropriate equitable relief. An employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor.

(d) (1) An employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (a) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee may file a complaint with the division based upon a violation of subdivision (a) within one year from the date of occurrence of the violation.

(e) An employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (a). The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

(f) This section does not create a right for an employee to take unpaid leave that exceeds the unpaid leave

time allowed under, or is in addition to the unpaid leave time permitted by, the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2601 et seq.).

(g) For purposes of this section:

(1) "Domestic violence" means any of the types of abuse set forth in Section 6211 of the Family Code, as amended.

(2) "Sexual assault" means any of the crimes set forth in Section 261, 261.5, 262, 265, 266, 266a, 266b, 266c, 266g, 266j, 267, 269, 273.4, 285, 286, 288, 288a, 288.5, 289, or 311.4 of the Penal Code, as amended.

(3) "Stalking" means a crime set forth in Section 646.9 of the Penal Code or Section 1708.7 of the Civil Code.

**SEC. 3.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION v. NATIONAL EDUCATION ASSOCIATION ALASKA

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**United States Court of Appeals,Ninth Circuit.**

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, Plaintiff, Carol  
Christopher; Julie Bhend; Carmela Chamara, Plaintiffs-Intervenors-  
Appellants, v. NATIONAL EDUCATION ASSOCIATION, ALASKA; National  
Education Association, Defendants-Appellants.**

**Equal Employment Opportunity Commission, Plaintiff-Appellant, v. National  
Education Association, Alaska; National Education Association, Defendants-  
Appellees.**

**Nos. 04-35029, 04-35201.**

**Argued and Submitted July 11, 2005. -- September 02, 2005**

Before GOODWIN, BRUNETTI, and W. FLETCHER, Circuit Judges. Jennifer S. Goldstein, EEOC, Washington, DC, for the plaintiff-appellant. Kenneth R. Friedman, Friedman, Rubin & White, Bremerton, Washington, Terry A. Venneberg, Tacoma, WA, for the plaintiffs-intervenors-appellants. Jeremiah A. Collins, Bredhoff & Kaiser, Washington, DC, for defendant-appellee NEA. Leslie Longenbaugh, Simpson, Tillinghast, Sorensen & Longenbaugh, Juneau, AK, for defendant-appellee NEA-Alaska.

This appeal presents the question whether harassing conduct directed at female employees may violate Title VII in the absence of direct evidence that the harassing conduct or the intent that produced it was because of sex. We hold that offensive conduct that is not facially sex-specific nonetheless may violate Title VII if there is sufficient circumstantial evidence of qualitative and quantitative differences in the harassment suffered by female and male employees.

## **I. PROCEDURAL HISTORY**

The Equal Employment Opportunity Commission ("EEOC") brings this action against the National Education Association-Alaska ("NEA-Alaska") and the National Education Association ("NEA" or "NEA national") for violations of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) ("Title VII").

Three female employees filed EEOC charges against NEA-Alaska in April 2000. The EEOC filed its action against NEA-Alaska in July 2001, alleging that the organization created a sex-based hostile work environment for all three employees and that it constructively discharged one of them. All three employees subsequently intervened in this action. On June 28, 2002, plaintiffs filed a joint motion to join the NEA national as a defendant, which the district court granted. NEA-Alaska moved for summary

judgment, arguing that there were insufficient facts for a jury to infer that there existed a hostile work environment or that any alleged harassment was because of sex. NEA also separately moved for summary judgment on the ground that it was not a proper party to the action and that it was not liable for any alleged violations of Title VII, assuming that there were violations. The district court granted summary judgment to both defendants, holding that a reasonable trier of fact could not find that the alleged harassment was "because of . sex" within the meaning of the statute. Plaintiffs timely appeal.

## II. FACTS

NEA-Alaska is a labor union that represents teachers and other public school employees. NEA-Alaska appointed Thomas Harvey Interim Assistant Executive Director in early 1998, and he began working in its Anchorage office. In August 1999, NEA-Alaska designated him Assistant Executive Director. He currently serves as Executive Director of NEA-Alaska. Carol Christopher was an employee designated as a "UniServ director" in the Anchorage office. In that capacity she helped local affiliates with organizing and training, from 1995 until she resigned in February 2000. Julie Bhend and Carmela Chamara were members of the Anchorage office's administrative support staff at all material times. Bhend began working for NEA-Alaska in 1993 and is still employed there; Chamara was employed by NEA-Alaska from 1997 until she resigned in August 2000. Both Christopher and Chamara have testified that their resignations were precipitated by Harvey's conduct, but only Christopher has claimed a constructive discharge.

The record reveals numerous episodes of Harvey shouting in a loud and hostile manner at female employees. The shouting was frequent, profane, and often public. The record shows little or no provocation for these episodes. Christopher described an illustrative incident:

I had a sister who was dying in California . [we] were all taking turns going to take care of her, and be there just in case she died, so I asked for-I went over Labor Day weekend so I wouldn't get in trouble, so I had the legitimate days off, and then I think I took an extra day . and when I got back, we had a meeting at the get go, right in the morning, we had a meeting, and Tom came in and said, so how's your sister? And I said, not very good at all. And I said, do I need to bring anything to this meeting, Tom? And he said, if you would have read your fucking e-mail, you would have known, but, no, you were out of town, so we've lost a day there. And again I just went, my sister is dying. I was with a sister who's dying, and he's saying that to me? Like people take days off-all the men take days off there to go fishing and hunting and that's okay. He knows my sister is dying. He knows how heavy my heart is, and he can say that? It was-so it was so astonishing and so cruel at the same time, I just again just started crying and I left the room.

(emphasis added). Bhend and Chamara also testified to Harvey regularly "yelling" at them loudly and publicly for little or no reason.

Harvey's verbal conduct also had a hostile physical accompaniment. Christopher testified that Harvey regularly came up behind her silently as she was working, stood over her, and watched her for no apparent reason. Bhend testified that at an evaluation meeting where Harvey accused her of taking breaks with Christopher and another employee in order to talk behind his back, Harvey "lung [ed] across

the table” at her and shook his fist at her. She also testified that on another occasion when she was comforting a local union president about an unrelated matter, Harvey came up behind her, grabbed her shoulders, and yelled “get back to your office.” Chamara testified that in one instance, Harvey “pump[ed] his fist in [her] direction, trying to make a point, as was his custom. Stepping toward me to make the-make the point. I stepped back. I told him that he was being physically threatening.” She went so far as to call the police and file a report on one occasion, on her therapist's advice that she document physical threats. The physical manifestation of Harvey's anger was also confirmed by other witnesses, including male employees. For example, Jeff Cloutier, another UniServ director, testified to Harvey's regular invasion of Christopher's and Bhend's “personal space.”

Harvey's behavior clearly intimidated female employees. For example, Bhend testified that Harvey's behavior at her evaluation meeting put her in a “state of panic,” and that she “felt that [she] was in jeopardy.” She also testified that after that incident, she felt “physically threatened most of the time” on the job whenever Harvey was at the workplace. Indeed, Bhend went so far as to omit submission of a number of her overtime hours because she “was too scared of Mr. Harvey to turn them in to him.” Like Bhend and Christopher, Chamara also testified that the impacts of the incidents with Harvey were not isolated, but created a general atmosphere of intimidation in the workplace that was “like working with a ticking time bomb because you're sitting by and you're waiting for your turn to be next.” Jeff Cloutier testified, without prompting, to the “general fear of the women at our office.”

### III. DISCUSSION

#### Because of Sex

The district court erred in its characterization of the boundaries of a cognizable Title VII sex-based hostile work environment claim, and summary judgment was inappropriate under the applicable law. The facts in the record, interpreted in the light most favorable to the plaintiffs, could lead a reasonable juror to conclude that Harvey's conduct, of which primarily women were the targets, was “because of . sex” within the meaning of the statute. 42 U.S.C. § 2000e-2(a)(1). The main factual question is whether Harvey's treatment of women differed sufficiently in quality and quantity from his treatment of men to support a claim of sex-based discrimination. Addressing that question, in this case, requires a clarification of what constitutes a legally significant difference in treatment of men and women.

#### 1. The district court order

The relevant content of the behavior in question includes repeated and severe instances of shouting, “screaming,”<sup>1</sup> foul language, invading employees' personal space (including one instance of grabbing a female employee from behind), and threatening physical gestures, all apparently following little or no provocation. Harvey's behavior was not, on its face, sex- or gender-related. No one testified that Harvey made sexual overtures or lewd comments, that he referred to women employees in gender-specific terms, or that he imposed gender-specific requirements upon women employees. The district court thought that these omissions in the evidence were fatal to the case.

However, there is no legal requirement that hostile acts be overtly sex- or gender-specific in content, whether marked by language, by sex or gender stereotypes, or by sexual overtures. While sex- or gender-specific content is one way to establish discriminatory harassment, it is not the only way: “direct comparative evidence about how the alleged harasser treated members of both sexes” is always an available evidentiary route. *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80-81, 118 S.Ct. 998, 140 L.Ed.2d 201 (1998). The ultimate question in either event is whether “‘members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.’” *Id.* at 80, 118 S.Ct. 998 (quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 25, 114 S.Ct. 367, 126 L.Ed.2d 295 (1993)).

The Supreme Court has held that “harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex.” *Id.* Moreover, plaintiffs do not need to prove that Harvey had a specific intent to discriminate against women or to target them “as women,” as the district court put it, whether sexually or otherwise. “Title VII is not a fault-based tort scheme. Title VII is aimed at the consequences or effects of an employment practice and not at the . . . motivation of co-workers or employers.” *Ellison v. Brady*, 924 F.2d 872, 880 (9th Cir.1991) (internal quotations omitted). There we held that conduct may be “unlawful sexual harassment even when harassers do not realize that their conduct creates a hostile working environment.” *Id.*

The district court erred in holding that the “because of . . . sex” element of the action requires that the behavior be either “of a sexual nature” or motivated by “sexual animus.” The district court recognized that plaintiffs “presented substantial evidence that Harvey is rude, overbearing, obnoxious, loud, vulgar, and generally unpleasant” but nonetheless held that because “there is no evidence that any of the exchanges between Harvey and Plaintiffs were motivated by lust” or by “sexual animus toward women as women,” his conduct was not discriminatory.

In applying this sexual animus test, the district court seemed to find it significant that Harvey did not seek “to drive [women] out of the organization so that their positions could be filled by men.” He noted that the workplace was a teacher's union, in which women were traditionally not a minority. However, a pattern of abuse in the workplace directed at women, whether or not it is motivated by “lust” or by a desire to drive women out of the organization, can violate Title VII. Indeed, this case illustrates an alternative motivational theory in which an abusive bully takes advantage of a traditionally female workplace because he is more comfortable when bullying women than when bullying men. There is no logical reason why such a motive is any less because of sex than a motive involving sexual frustration, desire, or simply a motive to exclude or expel women from the workplace.

## 2. Applying the differential effects standard

Whatever the motive, the ultimate question under *Oncale* is whether Harvey's behavior affected women more adversely than it affected men. Plaintiffs allege that Harvey's treatment of women employees was “more abusive” and that he treated “his female subordinates worse” by “subjecting the women to more severe, more frequent, more physically threatening abuse.” Defendants deny this allegation. These charges and their denials make a triable question of fact.

a. Qualitative comparison of treatment

We have previously held that it is error to conclude that harassing conduct is not because of sex merely because the abuser “consistently abused men and women alike.” *Steiner v. Showboat Operating Co.*, 25 F.3d 1459, 1463 (9th Cir.1994). In that case, the sex- or gender-specific character of the abuse directed at female employees was fairly obvious, and summary judgment was clearly inappropriate. *Id.* (“The numerous depositions of Showboat employees reveal that Trenkle was indeed abusive to men, but that his abuse of women was different. It relied on sexual epithets, offensive, explicit references to women's bodies and sexual conduct.”). We went on to state that even if the supervisor had “used sexual epithets equal in intensity and in an equally degrading manner against male employees, he cannot thereby ‘cure’ his conduct toward women. Ellison unequivocally directs us to consider what is offensive and hostile to a reasonable woman.” *Id.* at 1464.

We acknowledge that our invocation of the “reasonable woman” standard, which renders sex-specific differences in the subjective effects of objectively identical behavior sufficient to ground a claim of discrimination, was rooted in the context of explicitly sex- or gender-specific conduct or speech. We now hold that evidence of differences in subjective effects (along with, of course, evidence of differences in objective quality and quantity) is relevant to determining whether or not men and women were treated differently, even where the conduct is not facially sex- or gender-specific.

The record reveals at least a debatable question as to the objective differences in treatment of male and female employees, and strongly suggests that differences in subjective effects were very different for men and women. One male UniServ Director (the same position held by Christopher), apparently had a very different experience with Harvey than Christopher did. Mark Jones stated that Harvey raised his voice to him only on a “couple of occasions” and that they were “able to talk it out-I mean the period of raising the voice was very short” and that “[s]ince then I have not experienced any of that.” Moreover, Christopher also testified that the character of Harvey's aggressiveness with male employees was different from that experienced by female employees: it had the quality of “bantering back and forth with somebody, and being with the boys . . . at the end of the day, I would go in and he and Bob and Rich and Jeff are all laughing in Tom's office, talking, talking, talking, laughing, laughing.” Similarly, Bhend stated that Harvey “shar[ed] a ‘we're all guys here’ relationship with male employees.”

However, Cloutier testified to an incident with Harvey that “scared the hell out of” him, during which, at one point, Harvey “instantly [ ] was three inches from my nose-chin, he's a fairly short guy . . . And I don't even remember what he was saying-very loud, spitting in my face, accusing me of being insubordinate.” This is the only incident described in the record that seems to be comparable in magnitude with the multiple incidents involving female employees described by the plaintiffs. Moreover, there is no evidence in the record that any male employee manifested anywhere near the same severity of reactions (e.g., crying, feeling panicked and physically threatened, avoiding contact with Harvey, avoiding submitting overtime hours for fear of angering Harvey, calling the police, and ultimately resigning) to Harvey's conduct as many of the female employees have reported. A few instances of hostile behavior toward male employees-which the record suggests may have had a qualitatively different, “bantering” character-do not erase the possibility that a reasonable jury might find that the pattern of abuse directed at female employees was discriminatory.

b. Quantitative comparison of treatment

The defendants argue that because Harvey had more regular contact with female than with male employees the differential effect on women was merely incidental. For example, Cloutier testified that the “men working in that office left lots of times to go to school buildings, to fly out of state. It was only the women that stayed there, and it was the women who felt most vulnerable.”

At least two other circuits have held, as we now do, that an unbalanced distribution of men and women in relevant employment positions, and the fact that some men were also harassed, does not automatically defeat a showing of differential treatment. See *Kopp v. Samaritan Health Sys., Inc.*, 13 F.3d 264, 269 (8th Cir.1993) (“[T]he incidents of abuse Kopp has cited in the record involve primarily women. [A]pproximately ten involved female employees; only four involved male employees.”); *Haugerud v. Amery School Dist.*, 259 F.3d 678, 695 (7th Cir.2001) (reversing summary judgment on hostile work environment claim despite fact that “[d]etermining whether plaintiff was treated differently because of her sex, as opposed to some other reason . . . is admittedly complicated by the fact that she is the only day custodian at the high school”). To hold otherwise would allow the accident of a mostly female workplace to insulate even a culpable employer from liability. The precise determination of how much qualitative and quantitative difference in treatment is enough circumstantial evidence to support a Title VII claim is a question for the jury. We leave open the possibility that in some cases, the quantitative comparison between male and female employees as classes will reveal differences too slight to survive summary judgment. In this case, however, summary judgment was not appropriate.

Sufficiently Severe

The facts already recited present a triable issue whether the work environment Harvey created was sufficiently severe to be illegal under Title VII. The rule is that “the required showing of severity or seriousness of the harassing conduct varies inversely with the pervasiveness or frequency of the conduct.” *Ellison v. Brady*, 924 F.2d at 878. Where the conduct in question was allegedly a “daily thing,” there can be little question that a reasonable juror might infer that Harvey’s pattern of verbal and physical intimidation, as confirmed by a wide range of employees, was sufficiently severe to satisfy the statute.

Summary Judgment for the NEA

NEA national argues that its summary judgment should be affirmed, even if judgment for NEA-Alaska is reversed. NEA argues that it is not a proper party in this action because it was not named in the original EEOC charges. However, failure to name the party in the original charges is not dispositive. The law of this circuit is that

Title VII charges can be brought against persons not named in an E.E.O.C. complaint as long as they were involved in the acts giving rise to the E.E.O.C. claims. Further, where the EEOC or defendants themselves “should have anticipated” that the claimant would name those defendants in a Title VII suit, the court has jurisdiction over those defendants even though they were not named in the EEOC charge.

*Sosa v. Hiraoka*, 920 F.2d 1451, 1458-59 (9th Cir.1990) (citation and internal quotation marks omitted); see also *Ortez v. Washington County*, 88 F.3d 804, 808 (9th Cir.1996). Moreover, in general, “[t]he



jurisdictional scope of a Title VII claimant's court action depends upon the scope of both the EEOC charge and the EEOC investigation.” *Sosa v. Hiraoka*, 920 F.2d at 1456. NEA further argues that it “cannot in any event be held responsible under Title VII for the alleged harassment” because it did not exercise sufficient authority and control over Harvey's conduct or the conditions of his employment.

These are fact-intensive questions that have not been addressed by the district court and as to which the record has not been fully developed. Accordingly, both the jurisdictional and the liability questions regarding the NEA should be addressed on remand.

#### IV. CONCLUSION

We reverse the summary judgment. There was sufficient evidence for a rational trier of fact to conclude that the alleged harassment by Harvey was both because of sex and sufficiently severe to support a hostile work environment claim under Title VII.

REVERSED AND REMANDED.

#### FOOTNOTES

1. The deposition testimony repeatedly used the word “screaming.”

GOODWIN, Circuit Judge.

**PRESS RELEASE**

9-14-09

## **NATIONAL EDUCATION ASSOCIATION'S ALASKA AFFILIATE TO PAY FOR HARASSING WOMEN AGAIN**

### ***EEOC Obtains \$170,000 for Female Employees Harassed by Executive Director At the Center of Previous Lawsuit***

ANCHORAGE, Alaska – The Alaska affiliate of the National Education Association (NEA-AK) has agreed to provide \$170,000 and other relief to settle a federal lawsuit charging that its executive director targeted four female employees for severe harassment because of their gender, the U.S. Equal Employment Opportunity Commission (EEOC) announced today. This is EEOC's second lawsuit against the NEA-AK charging gender-based harassment; the earlier case was settled on behalf of three other women for \$750,000 in 2006 (EEOC and Christopher v. NEA-AK and NEA, CV 01-0225 (JKS)).

According to the EEOC's most recent lawsuit, then-Executive Director Thomas Harvey delivered a daily barrage of abusive treatment to female employees and treated men less harshly. The women described Harvey's face turning bright red and his neck veins bulging out as he shook his fists in their faces and yelled and screamed at them, often reducing these employees to the point of tears. The EEOC also alleges that although top management officials at NEA-AK were aware of Harvey's abusive behavior, either from directly witnessing it or from receiving complaints, they took no action to stop the abusive behavior and in fact promoted Harvey to his executive position during the EEOC's first lawsuit on similar charges. The agency's investigation found that Harvey's conduct continued through that litigation and resulted in this second lawsuit.

Former Associate Staff Ellen Cruse, who worked at the union for over 20 years, stated, "I am glad this is over and I am able to fully close that chapter. One would hope that NEA-Alaska, after having settled claims with seven current or former employees, would take greater care and attention to the treatment of their employees."

Harassment based on gender violates Title VII of the Civil Rights Act of 1964, which also protects employees who report such offenses from retaliation. The EEOC filed the suit (EEOC and Poole v. NEA-AK, NEA and Thomas Harvey, Civil Action No. 07-00197 RRB) in the U.S. District Court for Alaska after a neutral investigation by EEOC investigator Karen McCloskey and first attempting to reach a voluntary settlement through the agency's conciliation process. One of the female employees, Denise Poole, intervened in the EEOC's suit and named the National Education Association and Thomas Harvey as additional defendants pursuant to state law claims. Those state claims were also settled for an unspecified amount.

In addition to the monetary relief to be shared by four women, NEA-AK has agreed to review its employment policies to ensure that they protect employees against discrimination; provide effective means to address complaints of discrimination; and educate employees about their rights and responsibilities in the workplace. Also, NEA-AK is required to report to the EEOC for four years on its compliance with the consent decree settling the suit.

"We do see repeat offenders in our line of work, but it is rare to sue the same employer for the same extreme harassment by the same manager, under the same top management," said EEOC Regional Attorney William

Tamayo. "If this is what it takes to send the message though, the EEOC will not hesitate to continue to take action against illegal workplace harassment."

EEOC San Francisco District Director Michael Baldonado added, "It is unfortunate that a teachers' union, whose primary purpose is to protect union members from abusive work practices, would allow this type of egregious, unchecked harassment to happen to employees in its own workplace."

According to [www.nea.org](http://www.nea.org), the NEA is the nation's largest professional employee organization, representing 2.7 million elementary and secondary teachers, higher education faculty, education support professionals, school administrators, retired educators and students preparing to become teachers. On its web site [www.neaalaska.org](http://www.neaalaska.org), NEA-Alaska claims over 11,000 members in 65 local affiliates throughout the state, and has 26 staff working in offices in Anchorage, Juneau and Fairbanks.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its web site at [www.eeoc.gov](http://www.eeoc.gov).

## **EMPLOYEE RELATIONS POLICY WITH ACKNOWLEDGMENT**

### **A. POLICY AGAINST DISCRIMINATION.**

\_\_\_\_\_ (the "Company") is committed to providing a work environment that is free of discrimination. In keeping with this commitment, the Company maintains a strict policy prohibiting unlawful discrimination. This policy applies to all employees of the Company, including supervisors and non-supervisory employees. The policy also, applies to non-employees of the Company including clients, customers, vendors and any other person doing business with the Company.

All aspects of employment with the Company will be governed on the basis of merit, competence and qualifications and will not be influenced in any manner by an individual's race, ancestry, color, religion (including religious dress and grooming practices), national origin, marital status, sex (including sexual harassment and gender identity), sexual orientation, disability (physical or mental including HIV/AIDS diagnosis), pregnancy (including breastfeeding and conditions related to breastfeeding), medical condition (cancer and genetic characteristics), age (40 or over), military and veteran status, or exercising the right to any legally provided leave of absence in the application of any policy, practice, rule or regulation.

All decisions made with respect to recruiting and hiring, evaluations and promotions for all job classifications will be based solely on individual qualifications as related to the requirements of the position. Likewise, all other personnel matters such as compensation, benefits, transfers, lay offs, training, educational opportunities and programs will be administered free from any illegal discriminatory practices.

### **B. POLICY AGAINST HARASSMENT, INCLUDING SEXUAL HARASSMENT.**

The Company is also committed to providing a work environment that is free of harassment, including sexual harassment.

Sexual harassment includes:

1. Unwanted sexual advances;
2. Offering employment benefits in exchange for sexual favors;
3. Making or threatening reprisals after a negative response to sexual advances;
4. Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons or posters;
5. Verbal conduct: making or using derogatory comments, epithets, slurs, and jokes;

6. Verbal sexual advances or propositions;
7. Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations; and
8. Physical conduct: touching, assault, impeding or blocking movement.

**C. COMPLAINT AND INVESTIGATION PROCEDURE.**

Any form of discrimination or harassment, including sexual harassment, is absolutely prohibited. Any incident of possible discrimination or harassment should be brought immediately to the attention of the Human Resources Department of the Company which will thoroughly investigate the matter in confidence. After reviewing all the evidence, the Company will make a determination concerning whether reasonable grounds exist to believe that harassment has occurred.

Disciplinary action, up to and including discharge, will be taken against any employee who is found to have engaged in harassment.

No employee shall be subjected to any form of retaliation for reporting any violation of this policy truthfully and in good faith.

**HARASSMENT BY NON-EMPLOYEES.**

In addition, the Company will take all reasonable steps to prevent or eliminate sexual harassment by non-employees including customers, clients and suppliers who are likely to have workplace conduct with our employees.

**EMPLOYEE RELATIONS POLICY ACKNOWLEDGMENT**

I have read and received a copy of the Company's Employee Relations Policy, including the policies against discrimination and harassment, including sexual harassment, and fully understand my obligations and responsibilities as outlined therein.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Witness: \_\_\_\_\_ Date: \_\_\_\_\_

## **POLÍTICA DE RELACIONES DE EMPLEADOS CON RECONOCIMIENTO**

### **A. POLÍTICA CONTRA LA DISCRIMINACIÓN**

\_\_\_\_\_ (la “Compañía”) está comprometida a proveer un ambiente libre de discriminación. Para cumplir con este compromiso, la Compañía mantiene una política estricta prohibiendo la discriminación ilegal. Esta política se aplica a todos los empleados de la Compañía, incluyendo supervisores y empleados que no son de supervisión. La política también se aplica a personas que no son empleadas por la Compañía, incluyendo clientes, suministradores y cualquier otra persona que tenga contacto de trabajo con la Compañía.

Todo aspecto de empleo con la Compañía será gobernado a base de mérito, aptitud y capacidades, y no será influenciado de ningún modo por raza, ascendencia, color, religión (incluyendo costumbres religiosas de vestimenta y arreglo personal), origen nacional, estado civil, sexo (incluyendo acoso sexual e identidad de género), embarazo (incluyendo lactancia materna y condiciones relacionadas a lactancia materna), orientación sexual, incapacidad (física o mental incluyendo diagnóstico de HIV/SIDA), condición médica (cáncer y características genéticas), edad (40 y mas), estado de militar y veterano, o por ejercer el derecho a cualquier permiso de ausencia legal en la aplicación de cualquier política, práctica, regla o regulación.

Todas las decisiones hechas acerca de reclutamiento y empleo, evaluaciones y promociones para todas las clasificaciones de trabajo serán basadas solamente en las capacidades individuales del empleado relacionadas a los requisitos de la posición. Igualmente, todos los demás asuntos del personal como compensación, beneficios, transferencias, despido temporal, entrenamiento, oportunidades y programas educativos serán administrados libres de cualquier práctica discriminatoria ilegal.

### **B. POLÍTICA CONTRA EL HOSTIGAMIENTO, INCLUYENDO ACOSO SEXUAL**

La Compañía también está comprometida a proveer un ambiente de trabajo libre de hostigamiento, incluyendo acoso sexual.

Acoso sexual incluye:

1. Avances sexuales no deseados;
2. Ofrecer beneficios de empleo a cambio de favores sexuales;
3. Hacer o amenazar de represalias después de recibir una respuesta negativa a un avance sexual;
4. Conducta visual: mirada de reojo lasciva; hacer gestos sexuales; desplegar objetos o retratos, caricaturas o carteles sexualmente sugestivos;
5. Conducta verbal: hacer o usar comentarios, epítetos, calumnias o chistes derogatorios;
6. Avances o proposiciones sexuales verbales;
7. Abuso verbal de una manera sexual, comentarios gráficos verbales acerca del cuerpo de un individuo, palabras sexualmente degradantes usadas para describir a un individuo, cartas, notas o invitaciones obscenas o sugestivas; y
8. Conducta física: tocar, asaltar, impedir u obstruir el movimiento.

C. **PROCEDIMIENTO DE QUEJA E INVESTIGACIÓN**

Cualquier tipo de discriminación u hostigamiento, incluyendo el acoso sexual, es absolutamente prohibido. Cualquier incidente de posible discriminación u hostigamiento debe ser presentado de inmediato a la atención del Director de Recursos Humanos quién investigará cuidadosamente el asunto en confianza. Después de revisar toda la evidencia, la Compañía determinará si existen motivos razonables que indiquen que el hostigamiento o acoso sexual ha ocurrido.

Acción disciplinaria, hasta e incluyendo despido del trabajo, será tomada en contra de cualquier empleado que se determine ha participado en hostigamiento o acoso sexual.

Ningún empleado será sujeto a alguna forma de represalia por reportar honestamente y en buena fe cualquier violación de esta política.

**HOSTIGAMIENTO O ACOSO DE PARTE DE NO-EMPLEADOS**

Adicionalmente, la Compañía tomará todos los pasos razonables para prevenir o eliminar el hostigamiento o acoso sexual de parte de personas que no son empleadas por la Compañía, incluyendo clientes y suministradores quienes tengan contacto de trabajo con nuestros empleados.

**RECONOCIMIENTO DE LA POLÍTICA DE RELACIONES DE EMPLEADOS**

Yo he recibido y leído una copia de la Política de Relaciones de Empleados de la Compañía, incluyendo la política en contra de la discriminación y el hostigamiento, incluyendo el acoso sexual, y entiendo completamente mis obligaciones y responsabilidades bajo esta política.

Firma: \_\_\_\_\_

Fecha: \_\_\_\_\_

Testigo: \_\_\_\_\_

Fecha: \_\_\_\_\_

[YOUR COMPANY]  
**ANTI-BULLYING POLICY**

[YOUR COMPANY] is committed to providing all employees a healthy and safe work environment. [YOUR COMPANY] will ensure that procedures exist to allow complaints of bullying to be dealt with and resolved within [YOUR COMPANY], without limiting any person's entitlement to pursue resolution of their complaint with the relevant statutory authority. [YOUR COMPANY] is committed to the elimination of all forms of bullying.

This policy applies to all employees of [YOUR COMPANY]. It applies during normal working hours, at work related or sponsored functions, and while traveling on work related business. There will be no recriminations for anyone who in good faith alleges bullying.

#### DEFINITIONS

Bullying is unwelcome or unreasonable behavior that demeans, intimidates or humiliates people either as individuals or as a group. Bullying behavior is often persistent and part of a pattern, but it can also occur as a single incident. It is usually carried out by an individual but can also be an aspect of group behavior (see "mobbing" below). Some examples of bullying behavior are:

##### Verbal communication

- Abusive and offensive language
- Insults
- Teasing
- Spreading rumor and innuendo
- Unreasonable criticism
- Trivializing of work and achievements

##### Manipulating the work environment

- Isolating people from normal work interaction
- Excessive demands
- Setting impossible deadlines

##### Psychological manipulation

- Unfairly blaming for mistakes
- Setting people up for failure
- Deliberate exclusion
- Excessive supervision
- Practical jokes



- Belittling or disregarding opinions or suggestions
- Criticizing in public

Context is important in understanding bullying, particularly verbal communication. There is a difference between friendly insults exchanged by long-time work colleagues and comments that are meant to be, or are taken as, demeaning. While care should be exercised, particularly if a person is reporting alleged bullying as a witness, it is better to be genuinely mistaken than to let actual bullying go unreported.

### **Mobbing**

Mobbing is a particular type of bullying behavior carried out by a group rather than by an individual. Mobbing is the bullying or social isolation of a person through collective unjustified accusations, humiliation, general harassment or emotional abuse. Although it is group behavior, specific incidents such as an insult or a practical joke may be carried out by an individual as part of mobbing behavior.

### **CONSEQUENCES OF BULLYING**

Bullying is unacceptable behavior because it breaches principles of equality and fairness, and it frequently represents an abuse of power and authority. It also has potential consequences for everyone involved.

For those being bullied

People who have been bullied often suffer from a range of stress-related illness. They can lose confidence and withdraw from contact with people outside the workplace as well as at work. Their work performance can suffer, and they are at increased risk of workplace injury.

For the employer

Besides potential legal liabilities, the employer can also suffer because bullying can lead to:

- Deterioration in the quality of work
- Increased absenteeism
- Lack of communication and teamwork
- Lack of confidence in the employer leading to lack of commitment to the job

### **For others at the workplace**

People who witness bullying behaviors can also have their attitudes and work performance affected. They can suffer from feelings of guilt that they did nothing to stop the bullying, and they can become intimidated and perform less efficiently fearing that they may be the next to be bullied.

### **RESPONSIBILITIES**

#### **Managers and supervisors**

- Ensure that all employees are aware of the anti-bullying policy and procedures
- Ensure that any incident of bullying is dealt with regardless of whether a complaint of bullying has been received
- Provide leadership and role-modeling in appropriate professional behavior
- Respond promptly, sensitively and confidentially to all situations where bullying behavior is observed or alleged to have occurred

### **Employees**

- Be familiar with and behave according to this policy
- If you are a witness to bullying, report incidents to your supervisor, President or Human Resources Director as appropriate
- Where appropriate, speak to the alleged bully(ies) to object to the behavior

### **IF YOU THINK YOU HAVE BEEN BULLIED**

- Any employee who feels he or she has been victimized by bullying is encouraged to report the matter to his or her supervisor, or with Human Resources.
- Where appropriate, an investigation will be undertaken and disciplinary measures will be taken as necessary.

**NEW VISTA HEALTH SERVICES, LLC**  
**SUNLAND, CALIFORNIA**

<b>ZERO TOLERANCE</b>
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**WORK PLACE BULLYING: A PROBLEM THAT CANNOT BE IGNORED**

**MYRA MAY,RN,MS,JD,NHA**  
**PRESIDENT/CEO**

**Definition:**

Work place bullying is any type of repetitive abuse in which the victim of the bullying behavior suffers verbal abuse, threats, humiliating or intimidating behaviors, or behaviors by individuals that interfere with the employee's job performance and places at risk the health and safety of the victim. Often it involves abuse or misuse of power and authority within an organization.

**How The Victim Feels:**

Bullying behaviors create feelings of defenselessness in the victim and significantly demoralize his or her right to dignity in the workplace. This is driven by the individual who needs complete control of an individual, regardless of the pain and suffering inflicted on the victim. The bully meticulously plans who will be targeted when the victim will be abused, and how this abusive behavior will be perpetuated.

**Why Do Individuals Bully:**

Most often is the need for the bully to be in control of all aspects of the work environment. They may have a personality flaw such as being shortsighted; stubborn to the extreme of psychopathic tendencies, such as trying to be repulsively charming, have an exaggerated sense of self; and lack the ability to be remorseful or feel guilt over the harm inflicted upon others.

**White Wall of Silence:**

This often protects the bully. In some cases, senior managers ingratiate these behaviors and often protect the bully instead of the victims. This will continue until there is zero tolerance.

### **Examples of Bullying Acts:**

- Undermining of work
- Disadvantaging the target
- Physical abuse
- Verbal abuse
- Isolating individuals
- Interfering in work practices
- Continual criticism
- Sarcasm
- Demeaning
- Destroying confidence
- Fabrication complaints (false accusations)
- Setting up to fail
- Incivility

### **Tell Tale Signs of Workplace Bullying:**

This helps to determine if bullying is occurring:

- Despite an employee's attempt to learn a new procedure or complete a task, the supervisor is never pleased.
- An employee is called to unplanned meetings with the supervisor where only further degradation occurs.
- The workplace bully continually undermines and torments an employee who is trying simply to do his or her job.
- Despite having expertise and a history of excellence in the area of practice, an employee is accused of being incompetent.
- No matter how many times an employee asks for help and the senior leader tell the nurse action will be taken, the bully continues to interfere with the employee's job performance.
- The bully screams or yells at the employee in front of others to make him or her look bad.
- Colleagues are told to stop interacting with an employee at work and in social settings.
- An employee constantly feels stressed and fearful waiting for additional negative events.
- When an employee asks an organizational leader for help, he or she is told to "get a tougher skin" or "work out your differences."
- Co-workers and senior leaders share the employee's concern that the bully is a problem but they take no action to address the concern in the workplace.

## **Consequence of Bullying Behavior:**

### **Health Care Organization:**

Bullying can cause harm to patients. It can cause medical errors and lead to preventable adverse outcomes. Bullying does increase cost by creating increased turnover when nurses who are bullied choose to quit their jobs rather than remain in a work environment that makes them miserable.

- Bullying can cost over \$4 billion annually.
- The Joint Commission's Sentinel Alert cited an Institute for Safe Medication Practices survey that found that 40% of clinicians have "kept quiet or remained passive during patient care events rather than question a known intimidator."
- Literature indicates hostility significantly decreases morale as well as job satisfaction.
- It increases rate of work dissatisfaction, absences from work, lost productivity, and work related injuries in health care institutions.

### **To the Person Being Bullied:**

- One of the most profound consequences of workplace bullying is the emotional pain suffered by victims, which also has a secondary effect on co-workers who witness the bullying as well as families who recognize the impact on the bullied loved one.
- Victim's suffered significant anxiety, depression and feelings of isolation.
- Being labelled as trouble maker.
- Fearing loss of job advancement or job loss.
- Experiencing psychosomatic symptoms, such as nervous tension, headaches, eating disorders, sleep disturbances and onset of chronic illness.
- Develop symptoms of posttraumatic stress disorder. This includes problems with self-esteem, recurrent nightmares, and depression.

### **Types of Bullying:**

*Vertical Bullying:* This involves a manager bullying employees under his/her supervision.

*Horizontal Bullying:* This happens when one employee bully's another employee.

### **What is the role of leadership:**

As health care leaders we have a responsibility to employees and the public to provide work environment that are free from bullying behavior. When it is identified, leadership individuals must take swift action to ensure that it stops. The perpetrator is held accountable, and steps are taken to ensure bullying does not occur again.