

BERTELSON LAW OFFICE, P.A.

Employment Law • Minneapolis, MN

Workplace News

Employment Law Litigation and Proactive Conflict Resolution Services for the Workplace

Spring 2012

Workplace Bullying

Bullying has received national attention. Last year, President and Mrs. Obama released a public service announcement addressing bullying and its harm to children. Celebrities and politicians have rallied around the documentary, *Bully*, which depicts bullying in American high schools and focuses on the death of two students who took their own lives after being bullied.

Last year, anti-workplace bullying legislation was introduced in both the Minnesota House and Senate. The proposed law would prohibit both employers and employees from subjecting employees to an abusive work environment. Although this legislation has yet to be enacted, employees who are subjected to workplace bullying are not without protection.

While it has long been the case in Minnesota that a bullied employee may bring a harassment claim if the bullying/harassment is based on a protected category, other laws also protect a bullied employee.

Two "Workplace Bullying" Cases

In February 2012, a jury in Ramsey County awarded \$270,000 to a victimized employee who was fired after he reported abusive behavior by his boss. The case is *Mitch Absey v. Echosphere LLC, Dish Network Services LLC, and Marshall Hood*, Civil No. 62-CV-10-6691 (Ramsey County District Court). The order denying Defendants' motion for summary judgment was filed on June 22, 2011.

According to the Court's summary judgment order, Mitch Absey worked for defendants Echosphere, LLC and Dish Network Services, LLC for 10 years. Beginning in 2004, Absey was supervised by Marshall Hood, the General Manager in Dish's Maplewood, Minnesota office. On at least three

occasions, in 2005 or 2006, in the spring of 2009, and in January 2010, Absey reported to human resources abusive behavior by Hood. Absey reported that Hood was verbally and physically abusive in the workplace, including an incident in which Hood

While it has long been the case in Minnesota that a bullied employee may bring a harassment claim if the bullying/harassment is based on a protected category, other laws also protect a bullied employee.

brought a large 20-inch satellite dish into the service office from the dumpster, threw it down near two employees, and began screaming at them. Absey testified that he often saw Hood crossing his arms, appearing hostile, turning red and near purple with rage, and appearing potentially violent. Absey reported an incident in which Hood threw up into the air a handful of paperwork and shouted to the entire staff, "you're pissing all over me."

In January 2010, Absey reported an incident in which Hood punched

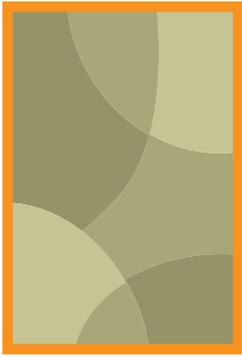
a hole through a plywood door while haranguing an employee. Hood also self-reported this incident and was suspended for three days and placed on a coaching plan. Absey was fired in a reduction-in-force in February 2010.

The Court found that Absey had presented facts showing a genuine issue for trial in regards to whistleblower retaliation under Minn. Stat. § 181.932. The court found that Absey's reports fell under Minn. Stat. § 1.5 which provides in relevant part: "The State of Minnesota hereby adopts a policy of zero tolerance of violence. It is state policy that every person in the state has a right to live free from violence." (emphasis added). The Court found that the public policy of zero tolerance for violence in Minn. Stat. § 1.5, is further developed in a criminal statute, Minn. Stat. § 609.72, Subd. 1. Disorderly Conduct.

This statute states in relevant part:

Whoever does any of the following in a public or private place, including on a school bus, knowing,

Workplace News is only a general summary of the topics discussed here and is not a substitute for legal advice.



BERTELSON
LAW OFFICE, P.A.
Employment Law • Minneapolis, MN

402 Union Plaza
333 Washington Ave. N.
Minneapolis, MN 55401

(612) 278-9832

Check out our updated
website:
www.bertelsonlaw.com

email:
beth@bertelsonlaw.com
andrea@bertelsonlaw.com

Workplace News
is only a general
summary of the
topics discussed
here and is not
a substitute for
legal advice.

or having reasonable grounds to know that it will, or will tend to, alarm, anger or disturb others or provoke an assault or breach of the peace, is guilty of disorderly conduct, which is a misdemeanor:

- (1) engages in brawling or fighting; or
- (2) disturbs an assembly or meeting, not unlawful in its character; or
- (3) engages in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in others.

The Court found that Absey, in good faith, reported a violation or suspected violation of a state law or rule adopted pursuant to state law. In particular, the Court found that Absey reported to Dish's Human Resources representatives that Hood, "knowingly, or having reasonable ground to know that it will, or will tend to, alarmed, angered or disturbed Dish's employees or breach of their peace, disturbed an assembly or meeting of the employees, not unlawful in its character and engaged in offensive, obscene, abusive, boisterous, or noisy conduct or in offensive, obscene, or abusive language tending reasonably to arouse alarm, anger, or resentment in Dish's employees." (p. 14 of summary judgment order).

The Court also found that Dish did not listen to Absey's complaints, failed to investigate, and failed to take timely corrective measures to protect its employees from Hood's violent outbursts. The Court found that Dish violated its internal EEO policies because it did not take sufficient corrective and timely measures to prevent Hood from harassing and threatening Dish's employees.

Ultimately, the jury awarded Absey \$50,000 for lost wages, \$20,000 for emotional distress, and \$200,000 for punitive damages.

In 2008, the Indiana Supreme Court upheld a \$325,000 jury verdict to a hospital employee bullied

by a cardiovascular surgeon. *Raess v. Doescher*, 883 N.E.2d. 790 (Ind. 2008). At trial, plaintiff advanced the theory of "workplace bullying" in regards to his claims of assault and intentional infliction of emotional distress.

Joseph Doescher worked as a hospital operating room perfusionist (the person who operates the heard/lung machine during open heart surgeries). During the trial, Doescher testified that during a surgery, defendant Dr. Daniel Raess, a cardiovascular surgeon, who was "angry at the plaintiff" about reports that the defendant's treatment of other perfusionists, aggressively and rapidly advanced on [Doescher] with clenched fists, piercing eyes, beet-red face, popping veins, and [was] screaming and swearing at him. [Doescher] backed up against a wall and put his hands up, believing that the defendant [Raess] was going to hit him, "[t]hat he was going to smack the [****] out of me or do something." Then [Raess] suddenly stopped, turned, and stormed past [Doescher] and left the room, momentarily stopping to declare to [Doescher] "you're finished, you're history." *Raess*, 883 N.E.2d at 794. During the trial, plaintiff's expert witness, an organizational psychologist, testified that in his opinion what happened was "an episode of workplace bullying." *Id.* at 797.

During the trial, defendant Raess requested an instruction to the jury that "workplace bullying" was not an issue in the case and that the jury need not determine whether the defendant was a "workplace bully" to decide the case. The Indiana Supreme Court upheld the trial court's decision disallowing such an instruction. The Court noted:

As to the first concept, we disagree. In determining whether the defendant assaulted the plaintiff or committed intentional infliction of emotional distress, the behavior of the

continued

University of Minnesota addressing workplace bullying

While workplace bullying in and of itself is not illegal in Minnesota, the University of Minnesota is one employer who appears to be addressing it.

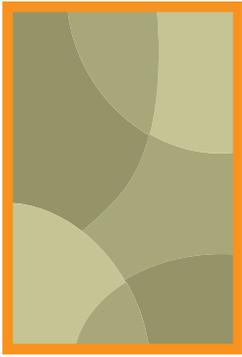
According to an article in the *Minnesota Daily*, the University of Minnesota's Office of Equal Opportunity and Affirmative Action (EOAA) held a workshop in March for faculty and staff, "Addressing Bullying Behavior in the Workplace" to educate them on what bullying is and how to address it.

The University defines bullying "as an imbalance of power and intent to cause harm and repetition." The article outlines that "Acts of bullying are specific to each case, but scenarios could include spreading rumors, undermining the work a person does or giving a poor evaluation to put an employee's job at risk."

The EOAA office will investigate complaints of bullying and determine a course of action. ■

References

O'Connor, Meghan. "U takes on workplace bullying: Faculty and staff are learning how to recognize and address bullying." *Minnesota Daily*. March 8, 2012. Accessed March 29, 2012
<http://www.mndaily.com/2012/03/08/u-takes-workplace-bullying>



BERTELSON
LAW OFFICE, P.A.
Employment Law • Minneapolis, MN

402 Union Plaza
333 Washington Ave. N.
Minneapolis, MN 55401

(612) 278-9832

Check out our updated
website:
www.bertelsonlaw.com

email:
beth@bertelsonlaw.com
andrea@bertelsonlaw.com

Minnesota State Bar Association

Certified ▲ Specialist



Workplace News is only a general summary of the topics discussed here and is not a substitute for legal advice.

Workplace Bullying, continued

defendant was very much an issue. The phrase “workplace bullying,” like other general terms used to characterize a person’s behavior, is an entirely appropriate consideration in determining the issues before the jury. As evidenced by the trial court’s questions to counsel during pre-trial proceedings, workplace bullying could “be considered a form of intentional infliction of emotional distress.” In seeking to tell the jury that “workplace bullying” was not an issue in the case, the tendered instruction was incorrect. Furthermore, in seeking to advise the jury that “workplace bullying” was not an element in the case, the tendered instruction was unnecessary. Other instructions adequately informed the jury of the elements of each of the plaintiff’s causes of action. It was not necessary to emphasize to the jury that non-listed elements were not elements. We find that the trial court here did not abuse its discretion in refusing the tendered instruction. *Raess*, 883 N.E.2d at 799 (internal citations omitted).

The jury found for plaintiff Doescher on his assault claim and the Indiana Supreme Court affirmed the decision. More businesses and courts are working to keep the workplace free of bullying behavior. ■

References

Karnowski, Steve. “Officials: Bullying debate in Minnesota brought change.” Associated Press. February 14, 2012. Accessed April 20, 2012. http://www.boston.com/news/education/k_12/articles/2012/02/14/officials_bullying_debate_in_minn_brought_change/

O’Connor, Meghan. “U takes on workplace bullying: Faculty and staff are learning how to recognize and address bullying.” *Minnesota Daily*. March 8, 2012. Accessed March 29, 2012. <http://www.mndaily.com/2012/03/08/u-takes-workplace-bullying>

Tanglao, Leezel. “Obamas Hope to Tackle Bullying With White House Conference.” *ABC News*. March 9, 2011. Accessed March 30, 2012. <http://www.abcnews.go.com/Politics/obamas-bullying-release-public-service-announcement-facebook/story?id=13090941#.T3tQio7Bq70>

Workplace Bullying Institute. “2010 & 2007 U.S. Workplace Bullying Surveys WBI-Zogby.” *Workplace Bullying Institute*. Accessed March 30, 2012. <http://www.workplacebullying.org/wbiresearch/2010-wbi-national-survey/>

Mitch Absey v. Echosphere LLC, Dish Network Services LLC, and Marshall Hood, Civil No. 62-CV-10-6691 (Ramsey County District Court Order denying summary judgment, June 22, 2011).

Raess v. Doescher, 883 N.E.2d. 790 (Ind. 2008).

Bertelson Law Office Offers Mediation Services

For many, early intervention in a legal conflict protects both a client’s dignity and pocketbook. As a mediator, Beth Bertelson can help parties resolve disputes, providing control and closure on a difficult situation by avoiding the time and expense of a trial. As a legal advocate practicing exclusively in employment law, Beth understands that employment conflicts can impact people physically, emotionally and financially. She also understand that for companies, unresolved disputes generally fester into costly litigation, affecting employee morale and profits.

In addition to representing individual clients in employment law matters and providing mediation services, Beth has trained businesses on employment law issues and investigated internal reports.

For over 20 years, Beth Bertelson has practiced in the area of employment law. She is a certified Labor and Employment Law Specialist by the

Minnesota State Bar Association. She has been recognized in *Law & Politics* and *Minneapolis St. Paul Magazine* as a “Super Lawyer.” She is a qualified neutral under Minnesota Rule 114. She has served as a section council member of the Labor and Employment Law Section of the Minnesota State Bar Association and a board member for the Minnesota Chapter of the National Employment Lawyers Association and several other non-profit organizations. ■

