

**OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD**

BOARD STAFF'S REVIEW OF THE PETITION

Petition File No. 547
Robert Jungers

Submitted By: David Kernazitskas, MSPH, CIH, CSP
Title: Senior Safety Engineer
Date: July 20, 2015

Introduction

On April 13, 2015, the Occupational Safety and Health Standards Board (Board) received a petition from Robert Jungers (Petitioner). The Petitioner requested that the Board amend the General Industry Safety Orders to include a workplace bullying prevention standard similar to Healthy Workplace Bill in Massachusetts.

Labor Code Section 142.2 permits interested persons to propose new or revised regulations concerning occupational safety and health and requires the Board to consider such proposals and to render its decision no later than six months following their receipt. In accordance with Board policy, the purpose of this evaluation is to provide the Board with relevant information upon which to base a reasonable decision.

History

Board staff is unable to locate any previous petitions specific to the subject of workplace bullying. However, previous petitions to the Board on the topic of workplace violence have mentioned the prevention of workplace bullying.

Petitions 538 (Richard Negri and Kathryn Hughes, SEIU Local 121RN and Nurse Alliance of California) and 539 (Bonnie Castillo, California Nurses Association) were received on February 11, and February 20, 2014, respectively. Because they were submitted at nearly the same time and with substantially similar subject matter, the Board acted on them together. Both petitions requested the promulgation of a workplace violence prevention standard, centered on healthcare workers. The Board granted the petitions on June 19, 2014, requesting that the Division develop a consensus rulemaking proposal addressing workplace violence protection standards for consideration by the public and the Board. The Division held its first advisory committee meeting in September 2014.

Petition 542 (Meleah Hall) was received on July 17, 2014, requesting a standard to address workplace violence in educational settings. The Board granted the petition to the extent that an advisory committee be convened to discuss workplace violence in all workplace settings, including education.

Reason for the Petition

The Petitioner states that “the workplace bullying and mobbing issue is very old” and that “[He has] seen it all [his] life.” He estimates that regulations addressing workplace bullying have existed in other countries for about 20 years. While browsing social media, he says that he discovered some information discussing the State of Massachusetts’ Healthy Workplace Bill and “immediately saw the need for something like this in California.”

National Consensus Standard

Board staff is unable to identify any national consensus standards regarding workplace violence or bullying prevention, but there are numerous resources available online to those seeking information, including <http://www.healthyworkplacebill.org/>.

Federal OSHA Standards

Federal OSHA does not have a regulation specific to workplace bullying prevention. Unsafe or unhealthful conditions in the workplace for which a specific regulation does not exist are regulated using the General Duty clause.

Division of Occupational Safety and Health (Division) Report

The Division submitted an evaluation report for Petition File No. 547 dated June 23, 2015, which recommends denying the Petitioner's request. The Division evaluation discusses several existing regulations found in Civil, Government, and Labor Code, which act to prevent or discourage behaviors related to workplace bullying. The Division points out that "Under those statutes, hearing officers, administrative law judges, and court judges are authorized to oversee the discovery of evidence and conduct hearings to consider the evidence and the credibility of the parties." As a result, the enforcement of a workplace bullying standard by the Division would require hearing testimony, gathering evidence, and making judgments based on that evidence, which are not authorized practices of the Division. Although the Division recognizes that workplace bullying can lead to stress and health problems for employees, the behaviors of workplace bullying do not lend themselves to objective standards, which are enforceable by the Division. Therefore, the Division recommends that the petition be denied.

Staff Evaluation

A 2012 report prepared for the National Education Association (NEA) entitled "Prevention and Intervention of Workplace Bullying in Schools" states that

"the word 'bullying' is commonly used in the research to describe incidents at work in which workers are ridiculed or humiliated, prevented from access to information necessary for their jobs, physically threatened, pressured or coerced to miss entitlements like vacation time, being ignored, being treated in an angry or hostile manner, or receiving insinuations that one should quit."¹

Workplace bullying is closely related to workplace harassment, but the latter is more clearly defined and prohibited by specific regulations. Additionally, the two concepts differ in that harassment is harm that occurs to an individual for belonging to "a protected class, such as race/ethnicity or sex, whereas bullying may have nothing to do with a

¹ The NEA report was prepared by Catherine P. Bradshaw, Ph.D., M.Ed. and Kate Figiel, Ed.M., of Johns Hopkins University and can be found here: <https://www.nea.org/assets/docs/Workplace-Bullying-Report.pdf>

person's group membership (NEA, Page 5).” Victims of discriminatory harassment can sue the perpetrator of the harassment under various federal civil rights laws, but victims of bullying have no such recourse.

According to the Workplace Bullying Institute (<http://www.workplacebullying.org/>), victims of bullying can experience a wide range of physical and mental health harm, including stress and stress-related diseases, debilitating anxiety, panic attacks, and depression. Extreme cases of prolonged bullying can result in suicide.

The Healthy Workplace Bill (<http://www.healthyworkplacebill.org/>) that is mentioned by the Petitioner is an anti-bullying initiative that has been introduced in 29 State legislatures so far. The bill was first introduced in California in 2003, but was never scheduled for hearing. In Massachusetts, the bill has been introduced for action five times since 2005, but has never been voted on. The bill was introduced again in Massachusetts on March 11, 2015.

The Healthy Workplace Bill (HWB) aims to make workplace bullying litigable through private right of action, meaning that a victim can directly sue the perpetrator without waiting for a 3rd-party to determine whether or not an incident occurred. According to the website, the HWB will provide an avenue to workers “for legal redress for health harming cruelty at work”, allow a victim “to sue the bully as an individual”, and hold the employer accountable for preventing workplace bullying. By design, the HWB will not be enforced by state agencies, incur costs to adopting states, or require plaintiffs to be members of protected status groups².

As stated by the HWB organizers, the bill is not designed to be enforced by state agencies, such as the Division. Several other issues with the enforcement of a workplace bullying standard also make the creation of a workplace bullying standard in Title 8 incompatible with the role of the Division. Enforcement staff of the Division are trained in safety engineering and/or industrial hygiene. Workplace bullying lends itself to psychological and social issues for which Division personnel lack expertise and training. The Division is not the ideal agency for enforcement of such a standard.

California's Department of Fair Employment and Housing (DFEH) enforces regulations prohibiting discrimination and harassment throughout the state. If a state agency were to enforce a workplace bullying standard, the DFEH would be a better candidate than the Division because the topic is more closely related to workplace discrimination and harassment than workplace safety and health.

California has recently enacted legislation addressing workplace bullying, potentially making the proposed regulation unnecessary. On September 9, 2014, AB 2053 (Gonzalez) was approved by Governor Brown, effective January 1, 2015. The purpose of the bill was to add training on the prevention of “abusive conduct” to the currently required biannual training on sexual harassment for supervisors of California businesses with 50 or more employees. Although AB 2053 (Gonzalez) only requires supervisors to

² <http://www.healthyworkplacebill.org/bill.php>. Accessed on 5/15/2015.

be trained on workplace bullying, and falls well short of the provisions of the Healthy Workplace Bill, it is a significant step toward combatting the issue.

Recommendation

Workplace bullying is a recognized societal/sociological issue throughout California workplaces, but its detection, management, and prevention are outside the expertise and traditional scope of the Division's enforcement. The issue of workplace bullying would be better addressed through legislative means, as in AB 2053 (Gonzalez), and enforced through a state agency with expertise in the field of similar topics, such as the DFEH. Based on the foregoing discussion, Board staff recommends that the Petition be denied.