



*Disclaimer: the material in this fact sheet is intended as a general guide only. You should not act on the basis of the information in this fact sheet without first getting legal advice about your own particular reason. The information is based on the laws in Victoria as of July 2020.*

# BULLYING AT WORK

**Note:** There are time limits when dealing with employment law – see details below. Seek legal help as soon as possible.

## BEFORE WE START – IF YOU NEED, SPEAK TO SOMEONE NOW

Being bullied can make you feel upset, vulnerable or afraid. It can even lead to mental health problems like anxiety or depression. Get support as soon as possible. Talk to someone you trust like a family member, friend or a counsellor.

You can get **24-hour free confidential counselling and support** by calling:

Kids Helpline (for young people age 5-25)

Phone: 1800 551 800

Website: [www.kidshelpline.com.au](http://www.kidshelpline.com.au)

Lifeline

Phone: 13 11 14

Website: [www.lifeline.com.au](http://www.lifeline.com.au)

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## WHAT IS WORKPLACE BULLYING?

### Working Definition of Workplace Bullying

Workplace bullying is repeated, unreasonable behaviour directed at an employee or group of employees that creates a risk to the health, safety or wellbeing of an employee. You have the right to feel safe in your place of work.

The bully might be one of your co-workers, your boss or someone else in your workplace. It can happen at work, at a work function or even outside of work hours.

Example of workplace bullying can be when someone repeatedly does something like:

- tease or humiliate you;
- spread nasty rumours about you;
- unfairly discipline you;
- treat you worse than everyone else;
- yell at you or swear at you;
- continually follow you around;
- call, email, text or message you online unnecessarily or inappropriately;
- damage, hide or steal your property;
- threaten you or make you feel scared;
- hit you, push you or be violent towards you;
- talk to you or send you messages, items or images that are sexual and that make you feel uncomfortable; and/or
- kiss or touch you when you don't want them to.

### What is not Workplace Bullying?

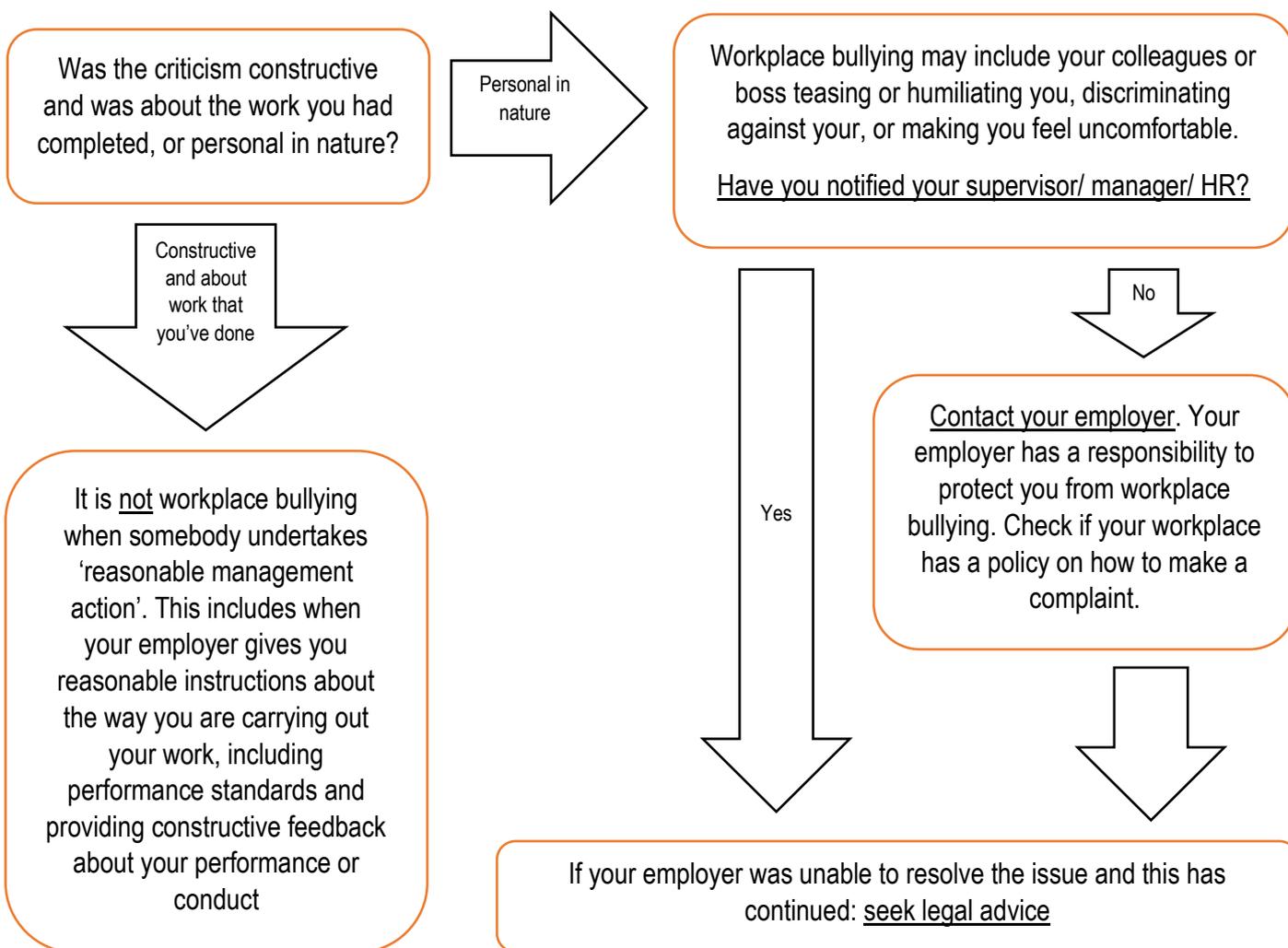
It is not bullying when someone undertakes "reasonable management action" in a reasonable way.

For example: an employer can give you reasonable instructions about the way you carry out your work, set reasonable goals for your performance, standards and deadlines, and give you constructive feedback about your performance or conduct.

Example of reasonable management action could be as follows:

*“Samantha has been called into her boss’ office following review of her work. Samantha’s boss has explained that her work was not up to the expected standard however explained what needed improvement and offered assistance in areas Samantha was struggling in. Samantha left the office feeling deflated.”*

## When do criticism becomes workplace bullying and what to do



## MAKING A COMPLAINT

If you are being bullied, you should take notes or keep a diary detailing what happened, when it happened (dates and times) and if there were any witnesses. Try to keep any bullying text messages or emails in your phone or in your inbox as evidence, or make sure you take screenshots of them.

### Make a complaint to your employer

It is your employer’s responsibility to protect you from bullying in the workplace. Your employer should do something to stop the bullying if it is affecting your health and wellbeing. Under the *Equal Opportunity Act 2010 (Vic)*, employers have a responsibility to eliminate discrimination and sexual harassment in the workplace. Your employer should do something to stop the bullying if it is affecting your health and wellbeing.

If your workplace has a policy on how to make a complaint about bullying, you should follow any procedures set out in that policy.

If your workplace does not have a policy on bullying complaints, you should make a complaint to your supervisor, your manager, your human resources manager or your occupational health and safety representative.

For more information on how to make a workplace bullying complaint, go to:

- the WorkSafe website at [www.worksafe.vic.gov.au/bullying-workplace](http://www.worksafe.vic.gov.au/bullying-workplace);
- Advisory Service website at [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au); or
- the Fair Work Commission website at [www.fairwork.gov.au/employee-entitlements/bullying-and-harassment](http://www.fairwork.gov.au/employee-entitlements/bullying-and-harassment)

### What if I am being discriminated against?

Bullying in the workplace might also be classified as discrimination, if you are treated unfairly because of your gender, sexuality, race, religion, disability or other personal characteristic.

For more information about discrimination in the workplace, go to:

- the Victorian Equal Opportunity and Human Rights Commission at [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au); and
- the Australian Human Rights Commission websites and [www.humanrights.gov.au](http://www.humanrights.gov.au).

If you have been discriminated against in your workplace, you should seek legal advice.

### What if I am being sexually harassed?

Sexual harassment means unwelcome sexual behaviour which makes a person feel offended, humiliated or intimidated, and that reaction is reasonable in the circumstances.

Sexual harassment in the workplace can also be a form of workplace bullying. The perpetrator may be another employee, your boss, or even a customer at your workplace.

Sexual harassment can include:

- comments about your private life or the way you look;
- leering or staring at you in a sexual way;
- touching you or hugging you in a way that makes you feel uncomfortable;
- making sexual comments or jokes;
- showing you or displaying offensive sexual images in the workplace (e.g. screen savers or calendars);
- sending you sexual emails, text messages or posts via social networking sites;
- repeatedly asking you out on dates; and
- asking you for sex.

If you have been sexually harassed in your workplace, you should seek legal advice.

### What if I get bullied even more for making a complaint about discrimination or sexual harassment?

You have every right to make a complaint about discrimination or sexual harassment in your workplace. Your employer has a legal duty to make sure you are not 'victimised' in your workplace for making a complaint about discrimination or a sexual harassment or for supporting someone else to make a complaint.

Victimisation for making a complaint can include things like:

- being fired
- being no longer offered shifts if you are a casual employee
- being bullied or intimidated by co-workers or your employer
- being denied a promotion or demoted to a position with less pay or responsibility

- being denied pay

If you are victimised at work for making a complaint about discrimination or a sexual harassment or supporting someone else to make a complaint, you should seek legal advice.

### What if workplace bullying makes me feel unsafe or leads to mental health problems?

If workplace bullying has already led to you being harmed physically or psychologically, you may be eligible for workers compensation. **Caution: strict time limits may apply when reporting a workplace injury or taking court action for workers compensation.** For a referral to a workers compensation lawyer, contact the Law Institute of Victoria on (03) 9607 9550 or visit [www.liv.asn.au](http://www.liv.asn.au).

If the workplace bullying has led to you needing medical treatment or time off work, you may also be eligible for compensation from Worksafe ([www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au)).

### What if I have had to quit or have been fired because of bullying?

If the bullying has caused you to quit, you may be able to make a claim for unlawful termination or unfair dismissal under employment laws.

For more information, go to the Fair Work Commission website at [www.fwc.gov.au](http://www.fwc.gov.au) or Jobwatch at [www.jobwatch.asn.au](http://www.jobwatch.asn.au).

**Caution: a time limit of 21 days now applies for claims of unfair dismissal or unlawful termination.**

If you had to quit your job or you were fired because of workplace bullying, you should seek legal advice as soon as possible.

## HOW CAN I PROTECT MYSELF?

### Can I apply for an Intervention Order

If workplace bullying makes you feel threatened or unsafe, you can apply for an intervention order in the Magistrates Court (or the Children's Court, if the person bullying you is under 18). If you want to take this option, you should speak to a lawyer first.

### Is an Intervention Order the best option?

If you do not feel threatened or unsafe, you can try mediation instead of applying for an intervention order. Mediation is usually less stressful and less costly but it is voluntary, so both parties would need to agree to try mediation.

The Dispute Settlement Centre of Victoria may be able to provide you with some free assistance and mediation services. To find out more, contact the Dispute Settlement Centre of Victoria on 1300 372 888 or go to [www.disputes.vic.gov.au](http://www.disputes.vic.gov.au).

### When should I report bullying to the police?

Some aspects of bullying behaviour can be a criminal offence, including:

- repeatedly bullying someone in a way that is likely to cause that person physical or mental harm, including self-harm;
- repeatedly bullying someone in a way that is likely to cause that person to fear for their own safety;
- assault or sexual assault;
- threats to kill or harm someone;
- property damage or theft;

You can contact the police about criminal bullying behaviour. The police can then investigate and charge the person responsible in court.

## MORE INFORMATION

Caution: if you are making a complaint about someone to one of the agencies listed here, the agency may inform that person of your complaint.

### Fair Work Ombudsman

For information about workplace entitlements or to make a complaint about wages or workplace entitlements. The Fair Work Ombudsman does not take complaints about bullying.

Phone: 13 13 94

Website: [www.fairwork.gov.au](http://www.fairwork.gov.au)

### Fair Work Commission

For more information about unfair dismissal or unlawful termination and to lodge a "Stop Workplace Bullying" application.

Phone: (03) 8661 7777

Website: [www.fwc.gov.au](http://www.fwc.gov.au)

### WorkSafe

For more information about workplace safety, claiming compensation for a workplace injury or to report serious incidents in your workplace.

Phone: (03) 9641 1555 or 1800 136 089 (toll free)

Website: [www.worksafe.vic.gov.au](http://www.worksafe.vic.gov.au)

### Victorian Equal Opportunity & Human Rights Commission

For more information about workplace bullying or to make a complaint about discrimination, sexual harassment or victimisation in the workplace in Victoria.

Phone: 1300 292 153

Website: [www.humanrightscommission.vic.gov.au](http://www.humanrightscommission.vic.gov.au)

### Australian Human Rights Commission

To make a complaint about discrimination, sexual harassment or victimisation in the workplace.

Phone: 1300 656 419 or (02) 9284 9600

Website: [www.humanrights.gov.au](http://www.humanrights.gov.au)

## GETTING LEGAL HELP

### Youthlaw

If you are under 25, you can get free and confidential legal advice.

Phone (03) 9113 9500 (9am-5pm, Mon-Fri)

Website: [www.youthlaw.asn.au](http://www.youthlaw.asn.au)

### Victoria Legal Aid – Legal Help

For legal information and referrals. You may also be eligible to speak to a lawyer about discrimination, sexual harassment or victimisation in the workplace for free.

Phone: 1300 792 387

Website: [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

### JobWatch

For legal information about employment law including information about unfair dismissal or unlawful termination.

Phone: (03) 9662 1933 or 1800 331 617 (country)

Website: [www.jobwatch.org.au](http://www.jobwatch.org.au)

Visit our website: [www.youthlaw.asn.au](http://www.youthlaw.asn.au)

Chat to us: 03 9113 9500

Email your questions: [legal@youthlaw.asn.au](mailto:legal@youthlaw.asn.au)

# YOUTHLAW

Young Peoples Legal Rights Centre

Inc No A0041616E

ABN 12 794 935 230