

Emotional bullying in workplace (3/40/19)

A favourable working environment is among the factors that drive staff productivity, but a worker may also face a consistently negative attitude to them in the workplace. As a result, the person may find it intolerable to be there. This article explores the forms and characteristics of emotional bullying and ways of fighting it.

Forms and characteristics of bullying

Bullying can take one of two forms:

1. Mobbing is bullying by workers;
2. Bossing is bullying by the employer.

Both forms share a similar feature – continuous and regular aggression against a particular person. In the case of mobbing, psychological terror is perpetrated by one or more co-workers who treat a colleague in a hostile and unethical way (such as gossiping, rumouring, ignoring, forcing out of staff events, bullying a worker because of their physical defects or appearance). In the case of bossing, psychological terror is inflicted by management against a subordinate (e.g. constant, unreasonable criticism, oral or written threats, disciplinary action, setting pointless or unfeasible tasks and responsibilities, imposing longer working hours, assigning a worse workplace, threatened pay cuts).

Legal literature notes that emotional bullying against an individual is typically a uniform hostile system with targeted attacks in a variety of ways. If necessary, the victim is labelled a grumbler and their objections no longer considered. Thus, emotional bullying is comprehensive and takes place over a long period. Emotional bullying often aims to provide a “basis” for dismissing the person (by conjuring up an idea that they are a bad worker unable to cope with their responsibilities) or to create circumstances that will cause them to leave the company.

Grounds for protection and case law

Under section 94 of the Constitution, everyone is entitled to freedom and personal integrity. Legal literature recognises that it is personal integrity that prohibits the existence of psychological terror in an employment relationship. The Supreme Court, too, has extended the right to personal integrity to employment relationships.

There is not much case law on complaints about emotional bullying in the workplace. One of the reasons is that this phenomenon is not easily identified and proved, especially because the activities done against the person may appear lawful. Unlawful is the aim of those activities to make it unbearable for the person to be in the workplace. Even the victim may not realise that this is a targeted negative attitude to them until later when such an attitude has become the norm. Thus, in such circumstances the person may not always be able to defend their rights early on.

Court errors in identifying and evaluating emotional bullying result from the circumstances described in a court claim being assessed as separate, unrelated incidents. The Supreme Court’s case law recognises that evaluating separate facts of possible bullying cannot lead to correct conclusions about the possible use of psychological pressure and violence against the person. In examining arguments about emotional

bullying, the court should focus on evaluating the situation in a comprehensive way. The length of the period over which the attitude to the person should be evaluated depends on the circumstances of each case. This period is basically known to the person.

Steps to take when facing emotional bullying

A worker facing emotional bullying in the workplace and deciding to fight it should start gathering facts and evidence, for example, retain email messages, make audio recordings, and obtain witness testimonies. Mobbing can be fought with the employer's support. If the employer is unhelpful, the worker can terminate the employment relationship immediately without forfeiting the right to severance pay. And they can sue the bully for defamation and the employer for failure to provide safe working conditions.