

For Businesses, Bully Lawsuits May Pose New Threat

Who's afraid of the big, bad boss?

A significant number of U.S. workers say they are—and soon those in New York may be able to sue their employers, including small businesses, for any suffering they experience at the hands of a toxic boss or other workplace bully.

Earlier this month, the Empire State's Senate passed a bipartisan measure that would allow workers who've been physically, psychologically or economically abused while on the job to file charges against their employers in civil court. The bill applies to organizations of all sizes, unlike other employee-friendly laws that exempt small businesses, such as the federal government's Family and Medical Leave Act. It also holds employers responsible for the bullying of workers by colleagues and not just supervisors.

In addition to New York, 16 other states have introduced legislation in recent years aimed at curbing workplace bullying, but none have become law. New York's passage by the state's Senate is considered significant because the issue is generally deemed a liberal cause; the state's Senate is made up of a slight Democratic majority and one of the bill's two leading sponsors is Republican. The bill next moves to a vote by the labor committee of the state's Democratic-majority Assembly at a to-be-determined date.

Business owners nationwide should take note, as a chain reaction is likely to ensue if the measure becomes law, says Jennifer Rubin, a partner in the employment-law practice at New York law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C. "It's only a matter of time before this trends to other states," she says. "It's politically popular."

New York's anti-bullying bill defines bullying broadly and includes the repeated use of derogatory remarks, insults and epithets, as well as conduct that a "reasonable person" would find threatening, intimidating or humiliating.

Mathew Tully, founding partner of Tully Rinckey PLLC in Albany, N.Y., says he's concerned that his 77-employee law firm could get sued as a result of the bill because it operates within a high-pressure environment. "Generally, our employees are acting in a professional manner, but every so often there may be a burst of anger," he says.

On the flip side, Mr. Tully figures that his firm would likely see an increase in demand for its legal services if the bill were to become law, as he's already heard from more than a dozen clients seeking advice on how to avoid litigation. "It's going to drum up a lot of business for us," he says. "This is almost guaranteed to flood the courts."

Road Science LLC, a Tulsa, Okla., technology company with 110 workers, pledges in its employee handbook to maintain a "jerk-free" culture. Anti-bullying bills were proposed—but never passed—in Oklahoma in 2004, 2007 and 2009.

Frank Panzer, Road Science's chief executive, says he opposes such legislation because it could prompt false claims from workers. "The danger is you create a victim mentality," he says. "Just because you're being disciplined doesn't mean someone's bullying you. A lot of (managers) are just very forthright. If they feel it, they say it. They don't have much tact."

According to New York lawmakers, between 16% and 21% of employees have experienced health-endangering workplace bullying, abuse and harassment, and such behavior is four times more prevalent than sexual harassment.

The problem is just as common in small businesses as large ones, says Wayne A. Hochwarter, a management professor at Florida State University's College of Business, who surveyed 980 workers in March and April on the topic. One third of respondents said they work for companies with about 100 employees or less, and of those, 23.5% reported experiencing supervisor bullying on a weekly basis, compared with 21.3% of the other two-thirds of respondents who said they work for larger organizations.

To be sure, New York's anti-bullying legislation says that employers may not be held liable if they take steps to prevent or promptly correct abusive behavior.

Small-business owners should therefore be sure to have a policy that prohibits bullying by both supervisors and colleagues, says Rick Gibbs, a senior humanresources specialist for Administaff Inc., a Kingwood, Texas, human-resourcesoutsourcing firm. Owners should also create ways for employees to notify them about instances of abuse, such as by installing an anonymous hotline.

Of course, it can also be helpful to try and avoid hiring workers who might be perceived as bullies in the first place. Suzanne Miller, owner of SPM

Communications LP, a public-relations company in Dallas with 18 employees, says she asks candidates about their experiences working with others to get a sense of whether they might have abusive tendencies. "If you take the time to get to know a person and what motivates them in business and in life, you're going to find that you choose the right people," she says.

Ms. Miller says she's glad the New York legislation recognizes bullying as unhealthy. Part of what motivated her to become an entrepreneur in 1999 was a prior three-year stint working for a toxic boss. "She would scream at me before she would check the facts," says Ms. Miller of her former employer. "I felt belittled for no apparent reason."

Business owners should also consider the possibility that they might actually be bullies. One telltale sign: A high turnover rate, says Gary Namie, co-founder of the Workplace Bullying Institute, an employee-rights group in Bellingham, Wash.

"You're creating a place that reasonable people don't want to stay in," he says.

"You've probably focused on whatever it is you make or sell and don't have an incentive to get management skills."

Another indicator of a bully business owner is if he or she takes all the credit for their company's success, says Vicky Oliver, author of "Bad Bosses, Crazy Coworkers & Other Office Idiots." "If everything is your idea," she says, "it's probably because you're bullying the people who work for you into submission."