WORKPLACE BULLYING IN AMERICAN ORGANIZATIONS: THE PATH FROM RECOGNITION TO PROHIBITION

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ABSTRACT

Incidents of workplace bullying are on the rise in the American workplace. Researchers have compared recent concerns about bullying to those expressed about sexual harassment twenty years ago. Statistically, though, bullying occurs far more often than does sexual harassment; in fact, the U.S. Workplace Bullying Survey (2007) reported that bullying is *four times* as prevalent as illegal, discriminatory harassment.

This paper explores the evolution of employee legal rights in American organizations, with a specific focus on parallels between the serious organizational problems of workplace bullying and sexual harassment. It also examines the legal, legislative and policy protections currently available to employees both in the United States and internationally, proposed systemic changes, as well as likely prospects for change in the immediate future.

KEYWORDS: workplace bullying, sexual harassment, discrimination, legal protection, legislation, policies

PERSPECTIVES ON THE AMERICAN WORKPLACE

The American workplace has undergone significant change during the past thirty years. Not all that long ago, working for a corporation was significantly defined by promises— promises made by employers to provide lifetime job security, fair compensation, cost-free health care, and a secure retirement plan. In return, employees promised their long-term loyalty and to reliably report each day to do the work of the organization. Together, this unspoken understanding between employers and employees formed the "implicit social contract" of the work relationship (Kochan & Shulman, 2007).

In this relationship, employees often felt like children, with the company playing the role of "parent" (e.g. giving direction as well as an allowance, and providing security) and the employee serving as the "dutiful child" (e.g. following orders and not questioning authority in exchange for the protections and benefits offered by the organization) (Metcalf, 2009). Though employees were often frustrated with the repetition of their jobs and the autocratic nature of their supervisors, the promise of "the good life"—a solid retirement at which point they could begin to do what they really wanted to do with their lives—was compelling. For many, the promise of these benefits provided adequate justification for the trade-offs they were required to make in terms of time, effort and frustration.

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Over time, who works, how work is carried out, and the conditions of employment have changed dramatically, but the public and organizational policies and practices governing work and the employment relationship (originally put in place in the 1930's to fit the industrial economy and workforce of that time) have not kept pace. The social contract that governed work for many years is now long gone, and those historical promises have been broken (Kochan & Shulman, 2007; Time, 2008).

Employees have witnessed—either personally or through the experience of their parents—massive job cuts, significant reductions in or elimination of employee benefit plans and policy benefits, and increasing health care costs being passed along to employees. They have also seen pension and 401(k) plans, along with retiree medical benefits, eliminated because of a failing economy and rising costs. Worse yet, they have witnessed the painful aftermath of decisions made to eliminate or reduce retiree benefits under those plans—long after employees retired based on those commitments.

It is no surprise, then, that many young employees are now highly pessimistic about work and the economy. They are also reluctant to commit to employment in the corporate sector; as a result, half of them are uninsured (Time, 2008). Since organizations are no longer committed to their future (either in terms of providing job security or providing for their retirement), employees frequently adopt a "me first" strategy of self-preservation. This has resulted in "job hopping" and a lack of loyalty or long-term commitment by employees to their organizations (Trunk, 2008).

In addition to these changes in the social contract, the reality of the new workplace is that it is often disconnected from the rest of society in terms of rights, privileges and legal protections. As Levering (1988, p. 62) has observed:

> We generally accept as a given the contrast between our time at work and the rest of our lives. Once you enter the office or factory, you lose many of the rights you enjoy as a citizen. There's no process for challenging—or changing—bad decisions made by the authorities. There's no mechanism to vote for people to represent you in decision-making bodies . . . We take for granted that such rights and protections don't apply to the workplace, partly because most of us have never seen examples to the contrary.

Other authors and researchers have confirmed this grim view of American organizations. William Greidner, a political writer, describes the reality of the current workplace:

> In pursuit of "earning a living" most Americans go to work for someone else and thereby accept the employer's right to command their behavior in intimate detail. At the factory gate or the front office, people implicitly forfeit claims to self-direction and are typically barred from participating in the important decisions that govern their daily efforts. Most employees lose any voice in how the rewards of the enterprise are distributed, the surplus wealth their own work helped to create. Basic rights the founders said were inalienable—free speech and freedom of assembly, among others—are effectively suspended, consigned to the control of others. In some ways, the employee also surrenders essential elements of self.

While recognizing the end of the earlier social contract and the scarcity of legal protections, others strenuously argue that when individuals enter the workplace, they do not abdicate their right to be treated fairly and humanely (Andersson & Pearson, 1999; Hornstein, 1996, 2003). At a bare minimum, employers need to observe workplace norms for mutual respect. As Hornstein (1996, p. 143) notes:

> No matter what the circumstances, bosses may not abuse others. They may not lie, restrict, or dictate employees' behavior outside the workplace, threaten harm, or protect themselves at the expense of those more vulnerable. Positions of greater power in organizations' hierarchy do not grant license to show favoritism, humiliate or behave as masters or gods.

For nearly two decades now, management experts, scholars, practitioners, and authors of popular business books have urged American employers to treat their employees with respect, engage in open dialogue, eliminate fear, and encourage employee input and feedback. At the same time, employers have also been encouraged to lead their organizations toward the creation of a fair and respectful culture—one that includes fairness, civility, and dignity for the employees who work there through effective leadership, employment policies, benefit programs, internal communication, and the like (Daniel & Metcalf, 2001; Daniel, 2003a, Daniel, 2003b; Daniel, 2006; Daniel, 2009b; Deming, 1982, 2000; Drucker, 1992; Goldsmith et al., 2003; Hartling & Sparks, 2002; Hornstein, 1996, 2003; Levering, 1988; Miller, 1986; Peters & Waterman, 1982; and Sutton, 2007, to name but a few). Despite these vigorous efforts to promote the development of a more humane and respectful workplace, the idea that an individual is entitled to be treated with dignity at work sadly remains "a somewhat revolutionary concept" (Yamada, 2008a, p. 56).

OVERVIEW OF WORKPLACE BULLYING IN THE UNITED STATES

Though it may be immoral and unprofessional, it is not yet universally illegal in the United States for managers to intimidate, threaten, exploit, control, humiliate, manipulate, ostracize, ignore, fail to communicate, engage in a pattern of obstructive behavior, or gossip and spread rumors about their employees—a phenomenon which has been labelled *workplace bullying*. Despite compelling evidence suggesting that bullying and related workplace abuse is costly to employers (Level Playing Field Institute, 2007), actions like these are directed towards employees with a surprisingly high frequency in the American workplace.

Three important studies, released in 2007 and 2008, now clearly confirm the pervasiveness of the problem:
- A March 2007 survey of 1,000 adults (which included extensive interviews with 534 full and part-time workers) in American workplaces confirmed that nearly 45 per cent of the study's participants reported that they have worked for an abusive boss (Employment Law Alliance Survey, 2007).
    - Similarly, in September 2007, a poll conducted by Zogby International for the Workplace Bullying Institute (the largest scientific survey of bullying in the United States to-date, consisting of 7,740 online interviews of a representative sample of the adult population), found that 37 per cent of American

workers—an estimated 54 million employees—report being bullied at work. When organizational bystanders are included, bullying affects nearly half (49 per cent) of all full or part-time employees in America, or 71.5 million workers (U.S. Workplace Bullying Survey, 2007).

• In a joint study conducted by the Society for Human Resource Management (SHRM) and the Ethics Resource Center, approximately three out of 10 HR professionals (32 per cent) reported having observed misconduct that they believed violated their organizations' ethics standards, company policy or the law. Of the top five types of misconduct witnessed, the most prevalent included "abusive or intimidating behavior toward employees" (excluding sexual harassment), with 57 per cent of the participants confirming that they had witnessed this type of bullying behavior at work (Society for Human Resource Management and the Ethics Resource Center Survey, 2008).

Like sexual harassment, workplace bullying is a deep and painful assault to the dignity of the person targeted for such abuse. Bullying occurs in a variety of different forms, with the most commonly described behaviors including: intimidation, threats, exploitation, humiliation, control, manipulation, ostracizing, ignoring, failure to communicate, engaging in a pattern of obstructive behavior, and gossiping/spreading rumors about an employee (Daniel, 2009a). Targets have described the agenda of the bully as "I'm gonna get you—whatever it takes," and describe the experience of being bullied as an "all-out personal attack" on the targeted individual (Daniel, 2009a). The significant impact of the experience and the emotional toll it takes on the target is both humiliating and painful:

> *I mean, that's where you just say that—literally—you wish the Earth would open up and suck you in. You know, like a big hole would just suck me in so I could get out of that situation.* (Daniel, 2009a)

There is compelling evidence showing that bullying is harmful to both employees and their organizations (Namie & Namie, 2003; Keashly & Jagatic, 2003; Leymann, 1990; Leymann & Gustaffson, 1996). Organizations with abusive work environments frequently experience increased absenteeism and turnover, higher health costs, as well as reduced productivity and lower employee morale (Bassman, 1992; Pearson, Andersson, & Porath, 2005).

The impact of bullying on employee loyalty and engagement is significant. In 2007, the Corporate Leavers Study found that 2 million employees leave their organizations each year as a result of unfairness at work, including being bullied—costing American employers a reported $64 billion annually (Level Playing Field Institute, 2007). Specifically, the behaviors reported as most likely to prompt an employee to quit were: (1) being asked to attend extra recruiting or community-related events because of one's race, gender, religion, or sexual orientation, (2) being passed over for a promotion due to one's personal characteristics, (3) being publicly humiliated, (4) being compared to a terrorist in a joking or serious manner, and (5) *being bullied*. This study unequivocally confirms that the unfair treatment of employees is both pervasive and costly; as a result, it should serve as compelling evidence for employers to voluntarily make the policy and practice changes required to ensure a fair and respectful workplace with zero-tolerance

for the abusive treatment of employees.

While the vast majority of employers in the United States have implemented policies prohibiting both general and sexual harassment, very few have voluntarily acted to revise their policies to explicitly prohibit bullying. Some notable exceptions include: IBM, the Federal Reserve Bank of Boston, and the Massachusetts Institute of Technology (Yamada, 2007), as well as Goodwill Southern California (Los Angeles), Graniterock (another California company based in Watsonville), and both the Oregon Department of Transportation and the Oregon Department of Environmental Quality.

PARALLELS BETWEEN BULLYING AND OTHER NEGATIVE ACTS
Comparisons with Sexual Harassment

Researchers have compared concerns about workplace bullying to those expressed about sexual harassment twenty years ago (Kelly, 2005; Yamada, 2000). Statistically, though, bullying occurs with far more frequency in American organizations than does sexual harassment. In fact, the 2007 U.S. Workplace Bullying Survey (2007) reported that bullying is *four times* as prevalent as harassment based on illegal discrimination.

In addition to occurring more often, a recent meta-analysis of roughly 100 studies over the past two decades by Hershcovis & Barling (2008) indicated that employees who experience bullying, incivility or interpersonal conflict are more likely to quit their jobs, have lower well-being, be less satisfied with their jobs, and have less satisfying relations with their bosses than employees who were sexually harassed. Targets of bullying also reported more job stress, less job commitment, and higher levels of anger and anxiety (American Psychological Association, 2008).

   The similarities between the workplace problems of workplace bullying and sexual harassment are numerous:

- Both problems were "undiscussable" by employees for a period of time before being brought to society's attention;
    - Both actions create a "hostile work environment";
    - Both involve the abuse of organizational power by the aggressor;
    - Both are forms of work-related harassment and usually require more than just a one-time incident;
    - Neither of these actions are "accidental"—they are intentional, aggressive behaviors;
    - Both forms can (and do) occur both one-on-one or in front of other people;
    - Neither require face-to-face contact—the offensive contact can occur in emails, phone calls, and by the method of supervision;
    - Both the bully and the target are on the employer's payroll;
    - The stress and trauma experienced by the targets is *caused* by going to work;
    - Targets are often initially blamed as being "thin-skinned," suggestive of a sentiment that they must deserve such treatment or that the abuse is really not a problem;

- Both have severe consequences for the personal well-being and job satisfaction of the target;
- Significant investments of time and money are required to identify, correct and prevent both problems; and
- Both result in increased turnover and higher health care costs, and often damage to the employer's reputation.

In hindsight, it appears that American society was relatively slow to respond to the problem of sexual harassment. Disparaging comments such as "what a whiner" or "such a cry-baby" were commonly directed toward the targets. The prevailing view was that these types of situations were "private" matters that the parties should work out between themselves.

The problem with this "hands-off" strategy was the power differential—usually the target of the abuse was in an inferior organizational position without much (if any) power to stop it. Eventually, though, this behavior was made legally actionable because of the devastating impact on its victims. The result was that this previously "undiscussable" workplace abuse thereafter became a public concern. As a result, sexual harassment is no longer legal.

Unfortunately, however, the problem still appears to be somewhat pervasive. In fiscal year 2008 alone, the Equal Employment Opportunity Commission (EEOC) received 13,867 specific charges of sexual harassment for which they recovered $47.4 million in monetary benefits for the charging party and other aggrieved individuals (U.S. Equal Employment Opportunity Commission, 2008)—and this does not include awards obtained through litigation. What these statistics suggest is that even the implementation of laws expressly outlawing such conduct have not been enough to stop this widespread problem; however, one can only speculate how many more people might be subjected to sexual harassment at work without these protections.

In response to these legal changes, corporations in the United States now make significant investments each year in the training of both employees and managers in an effort to combat the problem of sexual harassment. In addition, they also devote significant time and resources to the investigation of harassment complaints and in the enforcement of their corporate policies prohibiting such conduct (Daniel, 2003b).

Comparisons with Domestic Violence

Bullying also closely resembles the phenomenon of domestic violence (Workplace Bullying Institute, 2008). The abuser inflicts pain at unexpected moments, keeping the target off-balance, but continually aware that the abusive action can (and likely will) happen at any time. Between episodes, there are periodic phases of relative stability and peaceful co-existence.

By virtue of the very nature of the relationship, the target is in physical proximity to the abuser (e.g. husband-to-wife, boss-to-subordinate, or co-worker to co-worker). The

target often engages in self-blame, believing that s/he is somehow responsible for causing the abusive treatment. The abuser exploits his or her power over the target, either real or imagined. Subsequently, bystanders, friends and family members begin to move from denial of the problem, to acknowledgment that the abuse is real, to rationalizing the motives of the abuser, and then blaming the victim for staying in the bad relationship (Workplace Bullying Institute, 2008).

The law was also slow to take action with respect to situations of domestic violence; instead, the general view was that such problems were "confidential" or "private" family matters. With evidence of the damage caused to its targets, American society eventually became outraged and domestic violence became a public issue. As a result, domestic violence was criminalized and, like sexual harassment, it too is no longer legal.

EXISTING LEGAL PROTECTIONS AGAINST BULLYING
In the United States

While employees do have some basic rights in the workplace (e.g. the right to privacy, fair compensation, and freedom from discrimination, among others), the law has been somewhat reluctant to regulate employment-related issues. As a result, it is not entirely surprising that there is not yet a direct legal claim for workplace bullying (Yamada, 2000, 2007, 2008a, 2009b). There is, however, one key law—Title VII of the Civil Rights Act of 1964—which provides at least a potential avenue for redress from bullying abuse.

Title VII permits relief for employees who are members of a "protected class" (e.g. those employees who possess legally-protected characteristics such as race and color, sex, religion, and national origin and who are working for organizations with 15 or more employees) based upon a theory of a "hostile work environment" (Title VII, 1964). Age and disability are also protected, but fall under different laws (the Age Discrimination in Employment Act of 1967 and the Americans with Disabilities Act of 1993, respectively). A "hostile work environment" is deemed to exist in a workplace where the "intimidation and ridicule are so severe that they alter the conditions of the victim's employment and create an abusive working environment that interferes with performance." In addition, there is also a requirement that "a reasonable person finds this behavior hostile and the victim perceives the environment to be abusive" (see *Harris vs. Forklift Systems, Inc.* and *Rogers vs. EEOC*).

Although Title VII provides some limited protection against bullying, in only 20 per cent of all bullying situations does the target have "protected class" status that would qualify them to file a complaint under existing law (U.S. Workplace Bullying Survey, 2007; Namie & Namie, 2004). As a result, it is not be enough for an individual to file a lawsuit claiming "My boss bullied me" or "My boss harassed me." In order to state a valid cause of action, the person would have to claim "My boss harassed me because of my sex . . . or because of my age . . . or my race . . . ."

To-date, there have been very few reported bullying cases, with two notable exceptions. The first is a New York case which alleged bullying and abuse. This action on behalf of

two plaintiffs resulted in a $1 million USD settlement in 2005 (after seven days of testimony at trial and "without admission of guilt") (*Aleandri et al., versus the City University of New York*). The second case is a 2005 Indiana situation, *Raess versus Doescher*. In the *Raess* case, a heart surgeon was sued by a perfusionist for assault, intentional infliction of emotional distress, and tortuous interference with business relations over an incident in the operating room. Though there were numerous appeals, in 2008 the plaintiff was ultimately awarded $325,000 USD on the assault count. This is widely regarded as the first time a workplace bullying case has been heard and decided by a court in the United States, and will undoubtedly be cited often in future litigation.

The success of the targets in the *Aleandri* and *Raess* cases will no doubt be heralded in future discussions about workplace bullying and the law; however, claims for intentional infliction of emotional distress are reportedly "very difficult to win" (Yamada, 2009b, p. 563). As a result, the bottom line is that the realistic prospects for success based on current employment laws in the United States are "very dim" (Yamada, 2009b).

International Protections

Workplace bullying is a serious problem that occurs all over the world. In 1993, Sweden was the first country to establish an anti-bullying ordinance. Australia, Canada, France, Sweden, and the United Kingdom are among the nations that have adopted (or are considering the adoption of) legal and regulatory responses as well (Yamada, 2007). In addition, the International Labor Organization (ILO) and the European Union (EU) have signed a joint agreement to outlaw workplace bullying with a targeted compliance date of April 2010 (European Union Framework Agreement, 2007). Significantly, most of these international laws unequivocally fix the responsibility for workplace bullying squarely on the employer.

PROPOSED ANTI-BULLYING LEGISLATION

Although workplace bullying is prevalent, costly and results in serious consequences to all parties involved, it has been observed that it "often falls between the cracks of existing employment law" (Yamada, 2008a, p. 563). This "gap" in protection exists because only employees who are members of a "protected class" have potential standing to litigate such abuse. As a result, a model piece of legislation has been proposed that would make workplace bullying illegal for *all* employees, regardless of their race, age, sex, national origin, etc.

Known as the *Healthy Workplace Bill*, the proposed legislation is intended to provide a legal incentive for employers in the United States to prevent and respond to the mistreatment of employees at work. It is also intended to provide legal redress for employees who have been harmed—psychologically, physically or economically—by being deliberately subjected to an abusive work environment (Yamada, 2004, 2006, 2008a, 2009b). The research and background for this proposed legislation was authored by David Yamada, a Professor of Law and Director of the New Workplace Institute at the Suffolk University Law School in Boston, Massachusetts (New Workplace Institute,

2009). The bill has been vigorously supported by the Workplace Bullying Institute through its Legislative Campaign (Workplace Bullying Institute Website, 2008).

In stark contrast to the comments of those opposing the legislation, the bill defines the concept of abusive conduct very precisely. It is not intended to regulate "incivility" or other minor workplace conflicts. As defined in the proposed bill:

> Abusive conduct is conduct of an employer or employee in the workplace, *with malice,* that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. In considering whether abusive conduct is present, a trier of fact should weight the severity, nature, and frequency of the conduct . . . which may include . . . verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating; or the gratuitous sabotage or undermining of a person's work performance. A single act normally will not constitute abusive conduct, unless especially severe and egregious.

The concept of *malice* is a critical component of the proposed bill. Malice is defined as:

> The desire to see another person suffer psychological, physical, or economic harm, without legitimate cause or justification. **Malice may be inferred** from the presence of factors such as, outward expressions of hostility, harmful conduct inconsistent with an employer's legitimate business interests, a continuation of harmful, illegitimate conduct after the complainant requests that it cease or demonstrates outward signs of emotional or physical distress in the face of the conduct, or attempts to exploit the complainant's known psychological or physical vulnerability. (Emphasis added)

What this means is that if the action is done with *malice* and not in furtherance of the employer's legitimate best interests, then it would be considered prohibited conduct, and potentially actionable under the proposed bill. If, however, there is no evidence of malice, then even if conflict occurs between a manager and employee, it would not be bullying. Some examples of fairly typical situations at work that might create conflict (but not be bullying) include giving an employee direct feedback about job-related mistakes, disciplinary actions, and counselling an employee about his/her poor performance, absenteeism or tardiness, among others.

Consistent with this approach, a recent study by the author confirmed that it is the presence or absence of *malice* that is determinative of whether a conflict situation at work is workplace bullying, or not (Daniel, 2009a). Based on correspondence with the drafter of the proposed bill, it appears that this may be the first study of its kind to study malice vis-à-vis workplace conduct (Yamada, 2008b). Even though malice is a high threshold for a bullied employee to prove, it is important to note that the proposed legislation makes a critical distinction between truly abusive behavior and other lesser forms of conflict at work—and this recent study appears to confirm the appropriateness of making that distinction.

Striking a sensible balance between the right of an organization to manage its employees, and the reasonable expectations of employees about their right to work in an environment free from abuse, the model act only applies to "a workplace where an employee is subjected to abusive conduct that is so severe that it causes physical or psychological

harm to the employee" (Yamada, 2000, 2006, 2008a, 2009b; Healthy Workplace Bill, Online). Additionally, sufficient evidence of the severity of the abuse must be provided by a competent physician or supported by competent expert evidence at trial. The bill specifies that an employer is *vicariously* liable for a violation committed by its employee, and would also make the bullying manager *directly* liable to the complaining target for such actions.

Employers are also provided with protections under the bill. Organizations can avoid liability for the actions of the bully based on two affirmative defenses:
- When the employer has exercised reasonable care to prevent and promptly correct the abusive conduct and the employee unreasonably failed to take advantage of the corrective opportunities provided by the employer; or
  - When negative employment decisions (e.g. terminations, demotions, or punitive transfers) are consistent with legitimate business interests, or based on the employee's poor performance, or illegal or unethical activity.

Like many current employment-related laws, retaliation against a target for participating in an investigation or proceeding under the bill is prohibited. The rights of a target would be enforceable solely by a private right of action (which would authorize injunctive relief and would limit an employer's liability for emotional distress to $25,000 USD in situations where an unlawful employment practice does not result in a negative employment decision and the employer could not be held liable for punitive damages in such situations either).

The bill would allow an aggrieved employee to seek compensation under the bill *or* the worker's compensation remedy—but not both. Given that actions could only be brought privately, no state regulation would apply. Importantly, the bill explicitly requires that targets make a substantial financial investment in their case to move it forward, and the state is given no enforcement role. This means that there would be no new government bureaucracy created or funded as a result of this legislation (which rebuts some of the concerns expressed so far).

While anti-bullying legislation has been proposed in 16 states since 2003, it has yet to be adopted (Namie, 2009; Workplace Bullying Institute, 2008). Through the Workplace Bullying Institute's Legislative Campaign (which organizes and coordinates the volunteers), there are now citizen lobbyists in 26 states and 2 Canadian provinces (Namie, 2009).

Advocates of the new bill argue that a workplace bullying statute would fill a significant "gap" in the law discussed earlier, while its opponents argue with equal vigor that such a law is unnecessary (based on the assumption that organizations will eventually come to understand that tolerating bullies will drive away talented employees), and would likely cause an increase in frivolous litigation (Davis, 2008; Yamada, 2008a, 2009b).

The debate continues with no immediate prospects for the adoption of the measure. There have, however, been a number of significant changes in the United States in recent years

(e.g. a new President and administration, the global economic crisis, public exposure of numerous accounts of corporate ethical violations, etc.). As a result, it has been speculated that these events may conspire to create a more favorable climate for the passage of the legislation in the future (Yamada, 2009a).

POTENTIAL SYSTEMIC CHANGES
Changes to American Employment Law and the "Social Contract"

Given that the prior social contract between employers and employees has been broken, there is an urgent need to create a new contract—a new understanding of the values and expectations that Americans have for work and its relationship to their families, as well as to society as a whole, along with the related changes to law and policies. As expressed by Kochan & Shulman (2007, p. 2):

> Americans expect work to be a source of human dignity and growth. This is deep in our cultural and our religious heritages. By working, we develop as human beings, contribute to our society and communities, and provide for our families. We teach our children there is dignity and fulfilment in hard work and that by working hard in school and in their careers, opportunities will come their way . . . . Given the importance of work to healthy individuals, our policies and organizations need to ensure that work provides a living wage, decent benefits, and the opportunity to use one's skills and abilities to their full potential. At a macro-level, ensuring these necessities requires a commitment to a full-employment policy in practice and trade policies that work for ordinary workers and their families.

Yamada (2009b) has written a comprehensive review of the current state of American employment law which appears to support this direction, strongly suggesting that "we need to frame the intellectual and rhetorical debate over employment law and policy to focus on the *dignity and well-being of workers*" (emphasis added). In addition, he issues a call to action recommending specific systemic changes designed to tackle the problem of workplace bullying—the adoption of anti-bullying legislation, revisions to public and private benefit programs for employees (including health insurance, workers' compensation, unemployment insurance, and disability benefits), and the creation of a separate legal tribunal which would serve as a single forum for resolving employment disputes, among others.

Organizational Strategies

A comprehensive discussion of recommended organizational strategies to create a culture of respect is beyond the scope of this paper. There are, however, numerous strategies that might be considered. Most of them require a longer-term perspective—and patience to allow the strategy to actually work. Some examples include moving to what Eisler (2002) refers to as a "partnership model" of relationships at work—and approach which emphasizes mutual respect and trust, teamwork, diversity, and paying attention to the needs of employees through relationships based on genuine care and empathy. Similarly, Deming (2000, 1982) advocates the advantages of a cooperative system rather than a competitive one, urging employers to "drive out fear" from their organizations so

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that employees feel free to express their ideas and ask questions. In addition, leadership development and training, employee engagement initiatives, a focus on ensuring fairness in employment policies and practices, and the implementation of a comprehensive ethics program might also be considered, to name just a few.

The short-term solution, however, is fairly straightforward: American employers need to take *immediate* action to implement preventive measures designed to reduce the likelihood of workplace bullying—with or without legislation requiring such action. While at the same time also supporting a culture of respect, effective anti-bully prevention efforts include strong management and equally strong HR leadership, as well as the implementation of corporate policies, training for employees and managers, effective investigation and enforcement measures, and the creation and support of a respectful workplace culture (Daniel, 2006, 2009b; Namie, 2003; Yamada, 2008a, 2009b). A more complete analysis of these specific anti-bullying recommendations can be found in the author's new book titled *Stop Bullying at Work: Strategies and Tools for HR & Legal Professionals.* Alexandria, VA: SHRM Books (Daniel, 2009b).

SPECULATION ABOUT THE FUTURE

For some time now, both employers and employees have been aware that a problem exists at work, but had no common name and no clear or consistent definition for it. In addition, there was very little information about the prevalence rates or impact of such abuse. Now we have that information—and the problem has been identified as *workplace bullying.* As a result, there is no longer any legitimate reason for American organizations to delay taking proactive steps to deal with this problem—now—with or without legislation.

In an ideal world, organizations would readily perceive the positive economic, operational and morale benefits that would occur from ending all vestiges of a culture that tolerates workplace bullying and, in its place, substituting policies and practices focused on fairness, respect and dignity for all employees. Recent estimates suggest that American businesses lose approximately $300 billion dollars each year due to the loss of productivity, absenteeism, litigation, turnover and increased medical costs caused by this increased employee stress at work (Schwarz, 2004).

Despite compelling evidence suggesting the need for a different approach, organizations are often slow to voluntarily initiate new workplace policies. Instead, most tend to implement new policies "in direct response to regulatory laws and legal requirements" (Namie, as quoted in Deschenaux, 2007; Namie & Namie, 2004). Both the prevalence and serious consequences of workplace bullying strongly suggest the need for immediate changes to corporate employment policies to specifically prohibit bullying. If recent history is any guide, the passage of new legislation making such practices illegal will be required as well.

Both sexual harassment at work and domestic violence at home were initially identified as problems, given both a name and a definition, deemed unacceptable by society—and later codified into law. Workplace bullying appears to be on a similar trajectory in the

United States. There are signs to suggest that employer policies, employee training, anti-bullying legislation, and enforcement may not be far behind. Stay tuned.

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