

Indiana University-Purdue University Indianapolis

Office of Equal Opportunity

Newsletter – May 2011

Panel Discussion Where Do I Take My Concern or Grievance?

Join representatives from the Office of Equal Opportunity, Student Rights, Responsibilities and Conduct, the Student Advocate, Human Resource Administration, Academic Affairs and the Behavioral Consultation Team to discuss their respective roles on campus and the types of concerns and issues that fall under their jurisdiction. This panel discussion of IUPUI resources will be held on **Thursday, May 26, 2011 from Noon - 1:30pm in the Campus Center Room 305.**

Workplace Mobbing and Bullying Defined

by Charles D. Bultena, Midwestern State University
Richard B. Whatcott, Midwestern State University

Workplace mobbing is defined as “an impassioned, collective campaign by colleagues to exclude, punish and humiliate a targeted worker” (Westhues, 2002, p. 32) It usually begins with one person who decides that he or she is threatened by a colleague and thus begins a campaign of mobbing to try to drive that person out (Halbur, 2005). Mobbing is a desperate campaign that spreads through the workplace like a disease, infecting person after person with the desire to eliminate a target. Workplace mobbing is a ganging up of work colleagues to force someone out through several tactics, including: rumoring, intimidating, humiliating, discrediting, and isolating (Gates, 2004).

Workplace bullying focuses more on the specific acts of perpetrators and how they are carried out. Bullying has been referred to as generic harassment that is typically unpredictable, irrational and unfair (Vega and Comer, 2005). Hence, bullying is not defined by its frequency and duration as is mobbing, but by specific acts. The acts of bullying tend to inflict the same social misery on victims as mobbing, but not so covertly. Workplace bullying, like childhood bullying, is the mistreatment of an employee targeted by another using aggressive or unreasonable behavior to sabotage their performance (Namie and Namie, 2003). Workplace bullying suggests an offensive, abusive, intimidating, malicious or insulting behavior, often amounting to an abuse of power, position or knowledge to humiliate a subordinate or colleague (Tehrani, 2003).

Characteristics of Bullying versus Mobbing

| | BULLYING | MOBBING |
|-----------------------------|--|--|
| Sector | Often public organizations (sales) | Often private organizations (higher education) |
| Harasser(s) | Single person (often a supervisor) | Colleagues |
| Target(s) | Weak or submissive | Above average performer |
| Motivation | Bully's motivation to achieve power | Threatened by victim's perceived power |
| Actions Derive From | Self-aggrandizement | Envy or jealousy |
| Triggering Situation | Bully's feelings of inadequacy | Organizational conflict |
| Desired Effects | Achieve a patsy | Drive out of organization |
| Methods | Elementary | Complex |
| Harassment Activities | Obvious abnormal interactions | Disguised as normal interactions |
| Attack | Direct | Indirect |
| Defense | Likely informal | Likely formal |
| Frequency | Single or regular occurrence no specified pattern | Regular occurrence, at least once a week |
| Duration | various durations | long durations at least for six months |
| When Victim Subsides | Victim loses effectiveness | Victim leaves organization |
| When Victim Resists | Bullies back-off | Mobbers gather strength |
| Management | Often aligns with victim | Often aligns with mobbers |
| Harasser(s) Consequences | Often punished | Often unpunished |
| Victim Consequences | Loss of confidence and self-assurance, anger, illness, frustration, unemployment, doubts of sanity, stress | |
| Organizational Consequences | Turnover, decreased productivity, loss of effectiveness, creativity, reputation, commitment and key people | |
| Social Consequences | Unemployment, disaffection, court involvement | |

Polis Reintroduces Student Non-Discrimination Act

by Chris Johnson

On Thursday, March 10, 2011 U.S. Rep Jared Polis, one of the openly gay members of Congress, reintroduced legislation aimed to protect LGBT students against bullying and discrimination in school at a time when bullying of LGBT students is receiving considerable attention.

In a statement, Polis said "education is the right of every student" regardless of their actual or perceived sexual orientation or gender identity. It becomes more apparent with each case that this is a problem that is not going away – sometimes even teachers and administrators contribute to the problem," Polis said. "The alarming increase in teen suicides has shown us just how far we are from making our children's schools safe spaces. We must take action to protect the safety of our students and enshrine the values of equality and opportunity in our classrooms."

Modeled after Title IX of the Education Amendments of 1972, the Student Non-Discrimination Act would establish a comprehensive federal prohibition against discrimination in public schools against LGBT students. Additionally, the measure would also forbid schools from discriminating against based on the sexual orientation and gender identity and prohibit them from ignoring harassing behavior.

If enacted into law, violating the Student Non-Discrimination Act would lead to the loss of federal funding and give victims a legal cause of action for discrimination in public schools. The lawmakers introduced the legislation on the same day President Obama held a White House conference to speak out and devise strategies against bullying in schools. Bully against LGBT students received renewed attention late last year when several young men who were gay or perceived to be gay took their own lives after they were reportedly bullied.

OFCCP Modifies Requirements under the Vietnam Era Veterans' Readjustment Assistance Act of 1974

Making good on its promise to re-examine affirmative action requirements as they relate to veterans, the proposed rule makes a number of modifications to contractors' affirmative action obligations as they relate to veterans. Highlights of the proposed modifications include:

1. Data Collection and Hiring Benchmarks

The OFCCP is proposing that contractors be required to track applicant flow of covered veterans and undertake analysis of their data. Contractors will be required to invite applicants to self-identify their protected veteran status both before and after an offer of employment is extended and be required to retain documentation of its annual hiring benchmarks and how it was determined for **five** years.

2. Formal Linkage Agreements

Contractors will be required to establish at least three linkage agreements enlisting the assistance and support in recruiting and developing training opportunities for protected veterans with the Local Veterans' Employment Representative, an organization in the National Resource Directory, and a person or organization from a list provided by OFCCP.

3. Increased Outreach Efforts and Annual Evaluation

Contractors will be encouraged to supplement any current required outreach efforts that they may be currently undertaking to include formal briefing sessions with representatives from recruiting sources; increased efforts to reach students who are protected veterans; and participation in rehabilitation training.

4. Internal Dissemination

Contractors will be required to maintain an affirmative action policy laying out their commitment to engage in affirmative action to increase employment opportunities for qualified protected veterans.

5. Training

Contractors will be required to provide training on the benefits of employing protected veterans, appropriate sensitivity, and legal responsibilities to all personnel involved in recruitment, screening, selection, promotion and discipline.

EEOC Publishes New, Final ADA Regulations

by Marcie B. Cornfield, Esq.

As we are well aware, the ADA Amendments Act (the "ADAAA" or "Amendments Act"), which went into effect on January 1, 2009, significantly expands the ADA. The final regulations include the following:

1. **Clarify how to analyze major life activity.** The Amendments Act amended the definition of "disability" in the ADA to include a new definition of "major life activities" that included a list of activities that will be considered major life activities and a list of "major bodily functions" that are also considered major life activities. For example, the final regulations retain "interacting with others" as a general example of a major life activity. The final regulations also retain as additional examples of "major bodily functions" the functioning of "special sense organs and skin" and of the "hemic, lymphatic, [and] musculoskeletal" systems.
2. **Provide rules of construction for determining whether an impairment constitutes a disability.** Rather than provide a list of impairments that would "consistently," "sometimes," or "usually not" be disabilities, the final regulations instead provide nine rules of construction to guide the analysis and explain that by applying those principles, most impairments will be found to constitute disabilities under the revised ADA. Also provided is a list of impairments that will limit at least one major life activity, such as deafness, blindness, an intellectual disability (previously referred to as mental retardation), autism, cancer, cerebral palsy, diabetes, epilepsy, multiple sclerosis, major depressive disorder, bipolar disorder and post-traumatic stress disorder, obsessive compulsive disorder and schizophrenia.
3. **Clarify that mitigating measures may no longer be taken into account when determining whether an individual is disabled.** As part of its new nine rules of construction, the final regulations reflect the new ADA provision prohibiting the consideration of mitigating measures (save ordinary eyeglasses or contact lenses) when determining whether someone has a disability. Thus, other common mitigating measures, such as hearing aids and medication, can no longer be taken into account.
4. **Provide examples of episodic impairments which may be considered disabilities.** Impairments that are episodic (such as epilepsy) or in remission (such as cancer) are disabilities if they would be substantially limiting when active. The EEOC's appendix to the final regulations provide examples of impairments that may be episodic, including hypertension, diabetes, asthma, major depressive disorder, bipolar disorder, and schizophrenia. As GSH has written in the past, courts have already begun seeing litigation on this new change.
5. **Simplify coverage under the "regarded as" prong.** The focus is now on how a person has been treated because of a non-minor and non-transitory physical or mental impairment, regardless of the employer's belief. For example, "If an employer discriminates against an employee based on the employee's bipolar disorder (an impairment that is not transitory and minor), the employee is 'regarded as' having a disability even if the employer subjectively believes that the employee's disorder is transitory and minor."

Overall, the focus of the ADA has changed from whether the individual is considered disabled under the ADA to whether an accommodation can be – or has been – offered.