



Bullying, Harassment and Stress in the Workplace – A European Perspective

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The Origins of Anti-Bullying Legislation in Europe

- In 1993, Sweden was the first country to take legislative action to mitigate the effects of bullying at the workplace
 - Employers were charged with the duty to establish preventative organizational measures and to swiftly investigate, mediate and counter any instances of bullying
 - The law was a “non-punitive” approach aimed at resolving bullying through dialogue and consensus as opposed to sanctions

A Comprehensive Network of Bullying Laws

- This trend has been reinforced by European Union (EU) laws prohibiting discrimination, promoting equal treatment and ensuring that employers look after the health and safety of their employees
- As a result, a comprehensive network of EU and national on bullying and stress exist today

The Cost of Bullying to Employers

- Bullying at work is a widespread and costly problem for employers
 - 22% of European workers suffer from work-related stress
 - One in twenty workers have been the target of workplace bullying
 - Stress is a factor accounting for 50-60% of all lost working days
 - An estimated € 20 billion cost for “work-related stress” (for the EU-15 in 2002)

Statistics from the European Agency for Healthy Workplace Surveys



Q1: What is the legal framework for outlawing bullying in Europe? (1)

- European law including anti-discrimination statutes
- Domestic statutes outlawing bullying (in some jurisdictions)
- Criminal Liability
- Liability from general principles including the right to dignity



Q1: What is the legal framework for outlawing bullying in Europe? (2)

- What is bullying and when does it begin?
- Not necessary intentional
- More than one incident
- Distinction between bullying based on Protected Characteristics (“discriminatory harassment” and bullying at large)

Q2: What is the legal Framework on the prevention of stress in the workplace?

- The European Union
 - The EU Agreement on work-related stress of October 8, 2004:
 - Provides “*a framework to prevent or manage problems of work-related stress*”
 - Increases “*the awareness and understanding of employers, workers and their representatives of work-related stress*”
- Domestic provisions including those relating to Health & Safety in the workplace
- The law of negligence (in the UK)

Q3: How can bullying be “proved” or “disproved”?

- Across Europe, the burden of proof shifts for discriminatory harassment
- Burden of proof also shifts for bullying (France, and Spain)
- Prohibitions against retaliation for discriminatory harassment
- Prohibitions against retaliation for bullying (France)
- Hard to prove bullying at large (with exceptions – France, Spain)



Q4: To what extent is an employer liable for bullying suffered by its employees?

- Acts of an employer or management
- Acts of other employees
- Acts of third-parties
- Acts outside the workplace
- The importance of preventative steps by an employer



Q5: What financial and legal risks do employers face when dealing with bullying and stress claims?

- Damages
- The voiding of terminations and other discriminatory/bullying acts
- Constructive discharge
- Injunctive relief
- Punitive fines
- Social security indemnifications
- Criminal sanctions



Q6: What should employers and other actors be doing to prevent bullying and wrongful stress and to minimize exposure to liability?

- Zero tolerance policies and statements
- Effective practices and procedures
- Training and raising awareness
- Monitor and audit



Q7: What trends are we seeing and what can we expect?

- Cyberbullying and misuse of social media
- Increased remedies, increased awareness and increased claims
- The use of bullying and stress collective agreements and negotiations with works councils, trade unions and other employee representatives
- The difficulty of proving free-standing individual bullying claims

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- Yasmine Tarasewicz is a Partner in the Paris office and co-head of the International Labor & Employment Group.
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- *Chambers Europe* 2009 notes that Yasmine “is hailed by sources for her ‘eloquence, strong personality and superstar profile,’” and that “she is widely acclaimed for her abilities and exceptional work on collective employee issues arising out of complex restructurings, as well as for her work on discrimination cases.” The most recent edition of *Legal 500 EMEA* says that “Proskauer Rose LLP’s reputation is directly linked to the expertise and track record of practice head Yasmine Tarasewicz, who is ‘very impressive and really helpful in assisting clients to find their way through French employment law.’”
- Yasmine is established as an opinion leader. As one of France’s leading experts in this field, she lectures and writes extensively. Her opinion and comments are sought by many experts and journalists and she hosts regular committees during which experts and clients can discuss practical employment issues.



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- Daniel Ornstein is a Partner in the Labor & Employment Law Department, resident in the London office. He has more than ten years of experience dealing with a broad range of UK and international employment issues, including High Court litigation, collective labor law, large-scale redundancies, Employment Tribunal litigation and training.
- Dan has extensive experience in litigation involving team moves and restrictive covenants before the High Court, and has been involved in some of the most recent high-profile cases in the UK, including *UBS v. Vestra* and *Farr v. Thomas*. He also has an in-depth knowledge of Employment Tribunal litigation, including claims for discrimination, victimization, working time, and unfair/wrongful dismissal.
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