

New laws were passed through Federal Parliament on 27 June 2013, adding **anti-bullying** measures to the Fair Work Act. The measures allow a **'worker'** to apply directly to the Fair Work Commission for an order to stop the bullying.

The laws come into effect from **1 January 2014**.

What is bullying?

Workplace bullying is defined as **repeated** and **unreasonable** behaviour directed towards a worker or group of workers that creates a risk to health and safety.

Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

Unreasonable behaviour means behaviour that a reasonable person, having regard to the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Who does it apply to?

The new laws have adopted an expanded definition of **'worker'** as being **'any individual performing work in any capacity'**.

This includes contractors, subcontractors (and their employees), employees of a labour hire company, volunteers and work experience students.

What does this mean in practice?

From 1 January 2014 workers who believe they have been bullied at work will be able to apply directly to the Fair Work Commission for assistance.

The FWC must start to deal with the matter within 14 days of receiving the complaint by informing itself of the matter, holding a conference, or holding a hearing.

At present workers who wish to seek orders during the course of their employment have to make an application in the Federal Court or Federal Circuit, and bear the cost of doing so even if they're successful.

The FWC General Manager Bernadette O'Neill, recently told a Senate estimates hearing that the commission anticipated an additional 3,500 bullying complaints annually as a result of the new laws.

What you need to do...

To discourage employees from making misguided claims in the first place, education is key.

It is now more important than ever for employers to have up-to-date, comprehensive grievance and investigation procedures that are implemented well by way of staff training and regular updates.

The best way to mitigate the risks associated with bullying claims is to have very clear, comprehensive policies that define what bullying is, and what it's not. It is important to educate staff about what actions fall short of bullying for the purposes of making a complaint - such as reasonable management action or an interpersonal conflict.

Employers can also avoid unnecessary action if employees feel comfortable with internal grievance procedures and are aware of whom they can approach. If they feel their matter is being dealt with promptly and effectively then there is less likelihood of the matter being escalated to the FWC.

It is strongly advised that employers review and update the following:

- counselling and disciplinary procedures
- anti-bullying policies
- grievance, investigation and dispute resolution procedures

If you require assistance to review and update your workplace practices please contact Ray at HR Tool to discuss your individual situation.