

# Employer of workplace bully fined \$13,000

By Catherine Stewart

Workplace bullying has been back in the media spotlight with the recent high profile Auckland Council case. A senior manager kept his job despite allegedly bullying six staff and a finding by an investigator that there was a "climate of fear" in his department. The case provoked calls for workplace bullying to be taken more seriously in New Zealand.

A recent decision from the Employment Relations Authority shows workplace bullying being taken seriously, however the strong message from the case is that employers of the bullies can be held responsible for the bullying behaviour.

## Employer liable for bully's actions

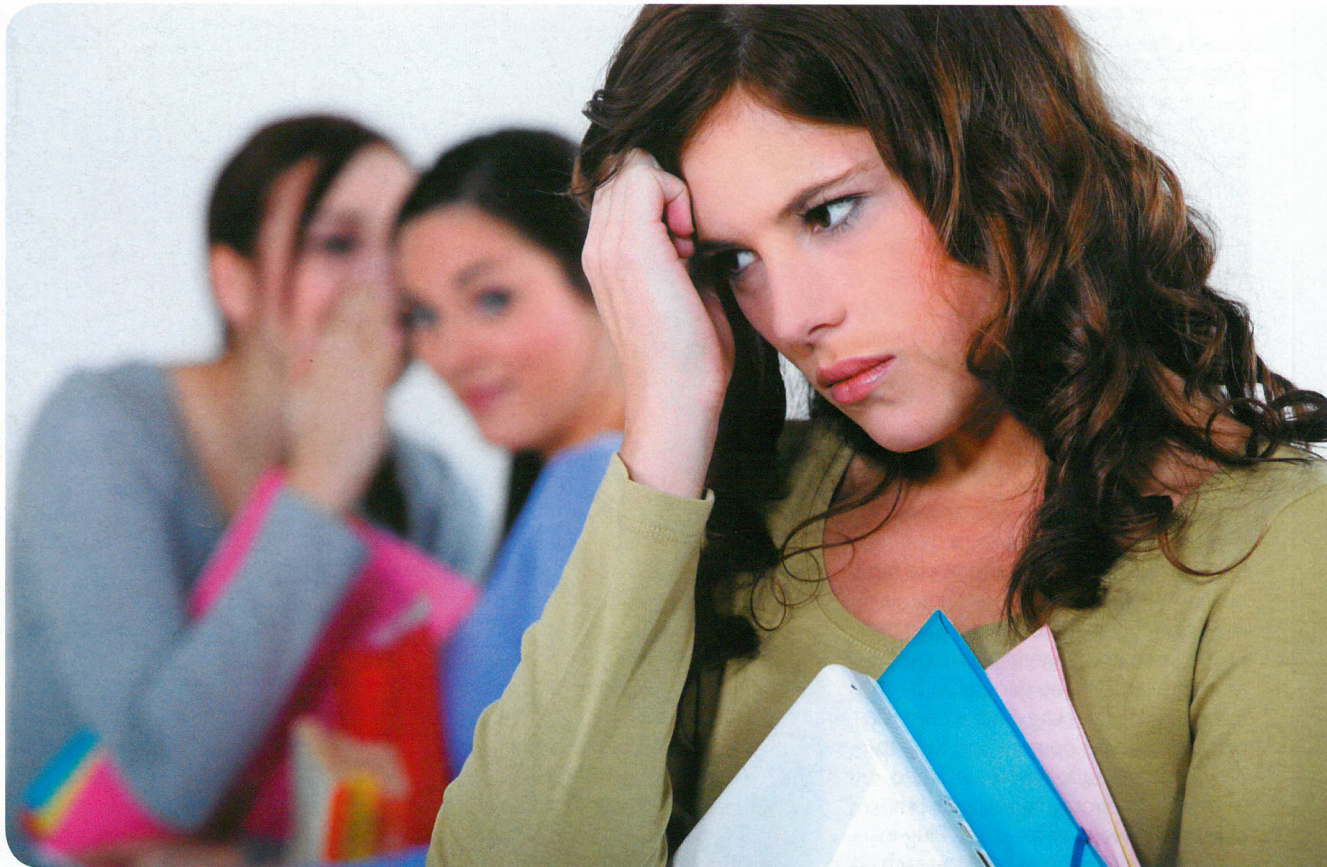
The decision is *Corbett v UDP Shopfitters Ltd* (July 2012). The employer, who took no part in the bullying, was found liable for the actions of the bully and fined \$13,000.

Mr Corbett worked for UDP Shopfitters Ltd as a carpenter/joiner. From time to time he complained to the owner of the company, Mr Hicks, that he was being abused by some of his co-workers. Mr Corbett said the co-workers would swear at him, abuse him and treat him with a lack of respect. He was called "f-ing Irish" and on one occasion a "thieving Irish b\*\*\*\*d." Mr Corbett said that Mr Hicks told him that that was the way the men were and he would have to put up with it.

On 6 September 2011 Mr Corbett complained to Mr Hicks that he was working very long hours and he did not come to work to be abused. Mr Hicks said he would speak to the men about it. However Mr Hicks decided to hold off from speaking to the men for a couple of days, as they were all working very long hours to finish fittings of stores following the Christchurch earthquake. He thought it better to wait until that work was done before speaking to them, as they were all tired and stressed.

The following day the men were even more hostile than usual to Mr Corbett and that evening he was assaulted by one of them. Mr Corbett rang Mr Hicks the following morning to complain about the assault, however Mr Hicks downplayed the matter. This caused Mr Corbett to believe that the company was not going to investigate his complaint, and he resigned.

One essential element for the Authority to decide upon was whether the actions that Mr Corbett was subjected to were part of "banter" he willingly took part in, or whether they were unwelcome by him. The Authority found that, even if Mr Corbett did take part in banter, the actions of his co-workers went beyond what could reasonably be expected of an employee in his workplace, even in the relaxed and oc-



asionally heated atmosphere of a busy building site.

Although the claim of unjustified action in the workplace requires some unjustified action by the employer, and the employer had not itself done the bullying, the Authority found there were two reasons why the employer should be liable. Firstly, it is the responsibility of the employer to provide a safe working environment and the company failed to do so. Secondly, Mr Hicks had decided to take no immediate action when Mr Corbett complained to him about the abuse on 6 September. If Mr Hicks had taken urgent action at that time, that may have prevented the assault which occurred on 7 September.

The Authority found that Mr Corbett was unjustifiably disadvantaged in his employment, unlawfully discriminated against, and unjustifiably constructively dismissed. The Authority awarded him \$3,161 in lost wages (for a five week period when he was out of work) and \$10,000 compensation for hurt and humiliation.

## What is bullying?

Many employers are unclear about whether certain conduct amounts to "bullying" or not. There is no legal definition of bullying, although the Employment Relations Authority decision of *Kneebone v Schizophrenia Waikato Inc* (2007) gives the following useful guidelines on bullying: "...for conduct to come within a broad definition of bullying the elements must include:

- repeated actions

- carried out with the desire to gain power or exert dominance
- carried out with the intention to cause fear and distress."

When undertaking an assessment of whether bullying has occurred, an employer must consider all relevant matters including relevant case law as well as any applicable company policy.

Examples of what may constitute workplace bullying include: verbal abuse, unreasonable or inappropriate criticism, threats, coercion or intimidation, offensive or degrading behaviour, private or public humiliation, positional abuse (for example, unjustifiable and/or inconsistent disciplinary action or being set up to fail with an overload of work), isolation (for example, stopping access to other managers/staff, withholding information, exclusion from work opportunities).

Bullying does not include: reasonable and lawful directions given by a busi-

ness owner/manager to an employee, performance appraisals or disciplinary procedures which are conducted in a fair and objective manner, disciplinary action which is taken following objective assessment and fair procedure.

## Can your business afford workplace bullying?

Employers pay a high price when bullying occurs in their workplace. As can be seen from the Corbett case referred to above, the financial penalties awarded by the courts against employers can be high. Over and above this are the hidden costs of lost productivity owing to low staff morale caused by workplace bullying. Ultimately workplace bullying affects an employer's profitability through both direct and indirect means. No business can afford to put off addressing the issue any longer.

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*Catherine Stewart is a lawyer specialising in giving advice to companies and individuals on how to avoid workplace bullying, or managing and defending workplace bullying claims.*