



WORKSAFE VICTORIA

WORKPLACE VIOLENCE AND BULLYING

June 2005

YOUR RIGHTS, WHAT TO DO,
AND WHERE TO GO FOR HELP.

PLEASE NOTE:

As at 1st July 2009 changes were made to workplace laws and we advise that you obtain further information from:

“Fair Work Infoline” on 13 13 94



Stay up-to-date with the latest workplace safety laws and information

Some WorkSafe Victoria publications include references to superseded health and safety and dangerous goods laws. These publications are progressively being reviewed and updated to reflect the current law.

About this publication

This publication has not yet been updated. However, it will continue to help you to understand your legal duties and how to comply.

The *Occupational Health and Safety Act 1985*, *Dangerous Goods Act 1985*, *Road Transport (Dangerous Goods) Act 1995*, all occupational health and safety regulations and some dangerous goods regulations made before July 2007 have been amended or replaced with new laws.

Where a reference is made to any legislation made before July 2007, it is important to check that this information is still current.

To get the most up-to-date workplace health and safety information, visit worksafe.vic.gov.au or contact the WorkSafe Advisory Service on 1800 136 089.

About Codes of Practice

Codes of Practice were made under the *Occupational Health and Safety Act 1985* to provide practical guidance on specific health and safety topics.

While Codes of Practice include references to the old Act and pre-2007 regulations, WorkSafe considers compliance with an existing Code of Practice as compliance with the current law on that topic.

Where reference is made to conducting a risk assessment under pre-2007 OHS regulations, this is no longer legally required under the current regulations if the risk is well known and the solution is obvious. There will be occasions, however, where it will be appropriate for a duty holder to undertake a risk assessment in order to identify the correct risk control(s).

For more information, see the WorkSafe Position on *How WorkSafe applies the law in relation to identifying and understanding hazards and risks*, and our handbook for workplaces, *Controlling OHS hazards and risks*.

The *Occupational Health and Safety Act 2004* enables compliance codes to be made to provide greater certainty about how to comply with current OHS laws. All Codes of Practice will eventually be replaced or supplemented with a compliance code or other guidance material.

The status of Codes of Practice made under the *Dangerous Goods Act 1985* has not changed.

WorkSafe Victoria is a trading name of the Victorian WorkCover Authority.

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Second edition updated by Vera Smiljanic

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Disclaimer

The information contained in this booklet is intended as a guide only and is current as of June 2005. It is not a substitute for professional legal advice. Legislation varies from state to state and is liable to change, so up-to-date information should always be sought.

Readers should not act on the basis of any information in this booklet without first obtaining legal advice.

WorkSafe Victoria is a division of the Victorian WorkCover Authority.

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INTRODUCTION

This guide has been written to give you information about your rights and how to deal with workplace violence and bullying. The guide looks separately at areas of workplace violence such as assault and other crimes, threats, sexual harassment, racial abuse, and bullying. It also informs you about where to go for help, who can intervene in situations of workplace violence and bullying and various legal options that may be available.

1. WORKPLACE VIOLENCE AND BULLYING

By law every worker has the right to be safe and free from risk of injury when they are at work. If you are experiencing violence or bullying in your workplace, then you are not safe. Being employed does not give your boss or co-workers permission to assault, threaten, harass or repeatedly bully you.

What is workplace violence?

Any incident where an employee is physically attacked or threatened in the workplace.

What sorts of things could be workplace violence?

- Someone threatening to hurt you
- Objects being thrown at you
- Pushing, shoving, punching, kicking
- Being touched up and any other type of indecent physical contact
- Racial abuse
- Unwelcome sexual comments

All these are examples of workplace violence and some of these are also crimes.

What is workplace bullying?

Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.

What sorts of things could be workplace bullying?

All sorts of behaviour can be bullying. Below are just some examples:

- Practical jokes
- Being sworn at
- Someone insulting you
- Being excessively supervised
- Being constantly criticised
- Being put down in public
- Rumours being spread about you
- Being overloaded with work or not given enough work to do
- Not getting the information you need to do your job
- Your personal effects or work equipment being damaged
- Being threatened with the sack

This guide concentrates on workplace violence and bullying that is carried out at the workplace by co-workers, supervisors or bosses.



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Who can intervene in situations of workplace violence and bullying?

In situations of workplace violence and bullying, various parties have the power to intervene in order to protect an employee.

Employees who are union members can seek the assistance and advice of their union. An employee who works in a workplace with an occupational health and safety representative (or equivalent) can seek their assistance. Where no health and safety representative is present, an employee can seek assistance from WorkSafe Victoria.

In large organisations, an employee might also seek assistance from a personnel or human resources officer or manager. Employees can even seek the assistance of the police where necessary.

While this range of parties have different roles and powers to intervene in situations of workplace violence or bullying; employers have most responsibility for what happens in their workplaces.

Employers and workplace violence and bullying

Employers have quite strict responsibilities in relation to workplace violence and bullying. Co-workers also do, but it is employers who have final responsibility for what happens in their workplaces (in legal terms, this is called vicarious liability).

Health and Safety and workplace violence and bullying

Employers have a duty of care in relation to the health and safety of their employees at work. This duty cannot be delegated (passed on) to anyone else, and is strengthened by Victoria's *Occupational Health and Safety Act 2004* (OHS Act), which sets out various duties for employers in relation to their employees including:

section 21 (1) *An employer shall provide and maintain so far as is reasonably practicable for employees a working environment that is safe and without risks to health.*

Employees in a workplace also have duties under this Act. The main duties that relate to workplace violence and bullying are:

section 25 (1) *While at work, an employee must – take reasonable care for his or her own health and safety and for the health and safety of anyone else who may be affected by his or her acts or omissions at the workplace;*



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section 25 (2) *An employee must not intentionally or recklessly interfere with or misuse anything provided at the workplace in the interest of health, safety and welfare.*

WorkSafe Victoria, a division of the Victorian WorkCover Authority, is the organisation that administers the OHS Act and helps make sure the law is complied with. In February 2003 WorkSafe Victoria issued a Guidance Note on the prevention of bullying and violence at work.

If you are put at risk

TELL YOUR EMPLOYER WHAT HAPPENED, AND ALSO:

1. Go to the doctor, if necessary, and get a WorkCover medical certificate. Take photographs of any injuries.
2. Get advice from Job Watch, your union or solicitor.
3. Report what happened to you to WorkSafe Victoria.
4. Keep a diary of events and keep copies of any relevant documents eg medical certificates; WorkCover claim.

Note: all contact numbers are at the back of this guide.

If the situation is one where you feel you are at immediate risk of injury at work you can refuse to work in this dangerous situation. The OHS Act gives you the right to refuse to work where you believe you are in immediate danger.

Apprentices and workplace violence and bullying

Apprentices have certain rights because they are employed under a training agreement. In Victoria, training agreements and the employment of apprentices are governed by a law called the *Vocational Education and Training Act 1990*. This law sets out some of the rights and responsibilities of both apprentices and employers.

Incidents of workplace violence or bullying against apprentices should always be reported to an Apprenticeship Field Officer (AFO) or directly to the Office of Training and Tertiary Education (Apprenticeship Administration Branch). In certain circumstances, an employer can have the approval to employ apprentices revoked or withdrawn by this department.

2. FORMS OF WORKPLACE VIOLENCE

Criminal Acts: Police and workplace violence

The police can investigate and prosecute criminal acts of workplace violence. The laws that set out what constitutes criminal behaviour in Victoria are the *Crimes Act 1958* and the *Summary Offences Act 1966*. Some of the definitions of crimes contained in this legislation may cover the treatment you have experienced (see definitions from the Crimes Act section on pages 7 to 9).

What to do

Only the police can investigate and prosecute under the Crimes Act. If the behaviour you have been subjected to falls into any of the categories mentioned below, you should go to your local police station to make a statement.

Evidence is important for any type of criminal investigation and prosecution. Witnesses are important too, but even if there weren't any witnesses, still report what has happened to the police.

If you have been assaulted, it is important to go to the police to make a statement as soon as possible.

Always tell the employer what happened to you as well, and make a note of telling them or inform them about what happened in writing. Then, if they do nothing about the assault or criminal behaviour, you have evidence you reported it to them. You should also go to the doctor to get any injuries recorded and treated. If it is possible, also take photos of the injuries.