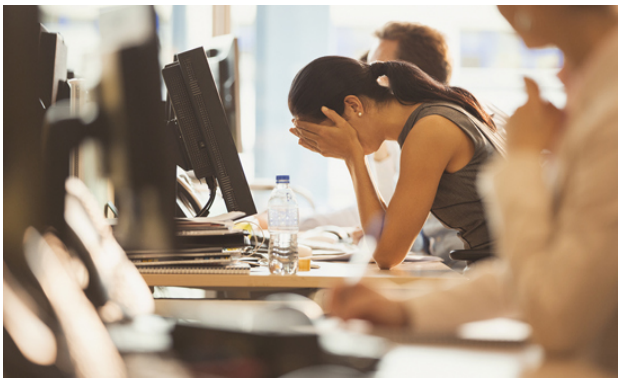
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Workers' compensation for bullying and harassment in Queensland

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Bullying and harassment at work can lead to serious mental health issues like anxiety, depression, and even post-traumatic stress disorder (PTSD). If you've been bullied at work in Queensland, you may be entitled to workers' compensation benefits.

In this blog, we explain the compensation process through WorkCover Queensland, and briefly look at other options available under federal laws, including the Fair Work Act and anti-discrimination legislation.

What is workplace bullying or harassment?

In Queensland, bullying refers to (generally) repeated, unreasonable behaviour directed at a worker or group of workers that creates a risk to health and safety.

Examples of workplace bullying may include:

verbal abuse, yelling or threats;

humiliation in front of others;

unjustified/unreasonable performance management or micromanagement;

exclusion from work-related events;

intimidating or manipulative behaviour.

Sexual harassment or discrimination based on race, sex, disability, or age may also fall under relevant anti-discrimination laws and may involve separate legal action.

Employer’s duty of care

Queensland employers have a legal obligation to provide a safe workplace. This duty of care includes protecting employees from psychological harm caused by bullying and/or harassment.

Under workplace health and safety laws and the Queensland workers’ compensation scheme, employers must:

identify and assess psychosocial risks;

implement reasonable prevention strategies; and

respond reasonably to bullying complaints promptly and fairly.

Failing to do so can expose an employer to a workers’ compensation common law claim or to be in breach of applicable safety laws/regulations.

Workers’ compensation claims for psychological injuries

If bullying or harassment has caused a mental injury (also called a psychological or psychiatric injury), you may be able to lodge a workers’ compensation claim through WorkCover Queensland or your self-insured employer.

Workers’ compensation benefits payable

- Weekly compensation for lost wages;

Medical and related expenses;

- Lump sum compensation if you’re left with a permanent impairment;

Return-to-work support.

Proving a workplace psychological injury

To succeed in a claim for a psychological injury due to bullying or harassment, you must show:

you are a worker as defined by Queensland law;

you have suffered a work-related psychological injury (e.g. depression, anxiety, PTSD); and

your work was a significant contributing factor to the injury.

You will need to obtain a medical certificate from a medical doctor to note the nature of your psychological condition and the work-related cause(s) of it. It's also important to report the injury to your employer and seek medical help as early as possible.

Reasonable management action is not bullying

Under section 32(5) of the *Workers' Compensation and Rehabilitation Act 2003* (Qld), a psychological injury will not be considered work-related if it arose wholly or predominantly from:

reasonable management action, taken in a reasonable way;

actions related to transfer, demotion, discipline, retrenchment or dismissal; or

a worker's performance appraisal or disciplinary process.

What counts as "reasonable"?

Actions like giving feedback, issuing warnings, or making performance-based decisions are generally lawful. However, if done in a harsh, targeted or humiliating way, they may cross the line and lead to a valid claim.

Examples:
A formal performance meeting with clear goals = reasonable management action
Publicly berating an employee on a regular basis = potential bullying

This distinction is a common issue in Queensland psychological injury claims involving bullying and harassment.

Options if your WorkCover claim is rejected

WorkCover Queensland may reject your claim if it believes:

- the injury wasn't caused by work;
- the injury resulted from reasonable management action; and/or
- there is insufficient medical evidence to link your psychological injury to work events.

If this happens, you can:

- request an internal review through the Workers' Compensation Regulator;
- appeal to the Queensland Industrial Relations Commission (QIRC), if the regulator confirms the initial decision not to accept your claim.

It's always good to seek legal advice to assess other options or avenues for review to the regulator, or appeal to the QIRC

Very strict timeframes apply, so it's essential to act quickly after receiving a decision.

You can read more about appeal options in our earlier blog, "Appealing a workers' compensation decision by WorkCover Queensland".

Other legal options outside the workers' compensation scheme

While workers' compensation is the most common path for compensation due to injury sustained due toa work-related event, there are other avenues for addressing bullying and harassment at work.

Fair Work Act 2009 (Cth)

You can apply to the Fair Work Commission for a stop bullying order if bullying is ongoing and creating a risk to your health and safety. This is not a compensation pathway but aims to stop the behaviour.

Some workers may also bring a claim under general protections if they've been treated adversely for exercising workplace rights.

Anti-Discrimination Act 1991 (Qld)

If the bullying is based on race, sex, age, disability or other protected attributes, you may lodge a complaint with the Queensland Human Rights Commission.

Compensation for distress or loss of income may be available under this legislation, though the process is separate from workers' compensation.

What to do if you're experiencing bullying at work

The below suggestions will not only potentially aid in addressing underlying issues related to workplace bullying and harassment, but will also be very helpful should you choose to pursue any entitlements to workers' compensation.

Keep records

Document dates, times and details of incidents;

Save emails, messages or screenshots;

If relevant and appropriate, take photos and/or video;

Identify witnesses, if any.

Report the issues to your employer

Use your employer's grievance procedures or simply report issues as they arise;

Speak with HR or your supervisor/manager (if safe to do so).

Seek medical help

Get a GP referral to a psychologist or mental health expert;

This supports your health and helps with any future WorkCover claim.

Lodge a WorkCover claim (if you have sustained an injury that requires medical attention and/or some time off work to recover)

Claims can be submitted online or with help from a doctor;

Don’t delay as strict time limits apply.

Get legal advice

A compensation lawyer can guide you through WorkCover processes;

You may also need advice on Fair Work or discrimination claims.

Get help from a workers’ compensation lawyer

Bullying and harassment at work should not ever be considered just “part of the job.” Queensland law recognises the serious impact they can have on your mental health and provides options for compensation and other legal remedies.

Workers’ compensation in Queensland offers benefits due to a psychological injury at work. If you’re unsure whether what’s happening is bullying or reasonable management, or whether you have grounds for a claim, get in touch for some free initial advice.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.