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CIVIL RIGHTS

NEWSLETTER

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Workplace Bullying and Mobbing: Examining the Concepts Involved

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In February 2003, the international debate over the issue of workplace bullying and mobbing reached the Oregon Legislative Assembly with the introduction of Senate Bill 496. The bill's summary read, in part, "Prohibits subjecting employee to abusive work environment or retaliation." Its text was very similar to that of a bill introduced in the California Legislature the same month, and the similarities were no coincidence: both bills were versions of model legislation drafted by David C. Yamada, a professor at Suffolk University Law School.[1] Although the Oregon bill did not pass, different versions of it were introduced in Salem in 2005, in House Bills 2410 and 2639. The House bills were also unsuccessful.

Campaigns for the legislation in Oregon and other states are being coordinated through www.bullybusters.org, a website run by psychologists and nationally known anti-bullying activists Gary and Ruth Namie. Although no state legislature has yet enacted a version of the model legislation, the number of states in which the legislation has been introduced continues to grow, with New Jersey in October 2006 being the most recent.[2] This increased attention in the United States to the issue of workplace mobbing and bullying compels examination of the concepts involved, starting with a comparison to Europe.

Europe and the United States have developed fundamentally different paradigms concerning workplace harassment.[3] Europeans focus on the importance of fostering dignity in the workplace, while Americans focus on countering discrimination.[4] Thus, harassment laws in the United States have grown out of the anti-discrimination language in Title VII of the Civil Rights Act of 1964.[5] In contrast, European laws tend to deal with workplace abuse on a status-neutral basis, without paying heed to protected classes.[6] European theory thus tries to advance each employee's right to respectful treatment, rather than to equal treatment.[7]

Mobbing Concept Developed

It was in this cultural context that the concept of mobbing in the workplace was formulated. The formulation and popularization of the concept is generally credited to a Swedish psychologist and researcher, Professor Heinz Leymann, who coined the term in the early 1980s.[8] Although he is now deceased, some of his work is still easily available in his online Mobbing Encyclopaedia, at www.leymann.se. His basic definition of "mobbing" is provided there:

> Psychological terror or mobbing in working life involves hostile and unethical communication which is directed in a systematic manner by one or more individuals, mainly toward one individual, who, due to mobbing, is pushed into a helpless and defenseless position and held there by means of continuing mobbing activities. These actions occur on a very frequent basis (statistical definition: at least once a week) and over a long period of time (statistical definition: at least six months' duration).[9]

Leymann elaborated on the definition by identifying the kinds of "hostile activities" involved in mobbing; in doing so, he observed that the activities consist "to a great extent of quite normal interactive behaviors."[10] They gain their status as mobbing activities by being used frequently, over a long period of time, "in order to harass."[11] Leymann placed mobbing activities in these general categories:

- Effects on the victim's opportunities to communicate adequately (management gives him no opportunity to communicate, he is silenced, he is subjected to verbal attacks regarding work assignments, verbal threats, or verbal activities done in order to reject him, etc.);
- Effects on the victim's opportunities to maintain social contacts (colleagues do not talk with him any longer or he is even forbidden by management to talk to them, he is isolated in a room far away from others, etc.);
- Effects on the victim's ability to maintain his personal reputation (others gossip about him, ridicule him, make fun of his handicap, ethnic heritage, or way of moving or talking, etc.);

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✦ In This Issue

BOLI Final Orders
December 2005–November 2006

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The Oregon Bureau of Labor and Industries (BOLI) investigates complaints and conducts administrative hearings in civil rights and wage and hour cases. BOLI final orders issued since 1996 can be accessed through the BOLI website, www.oregon.gov/boli. The full text of all BOLI final orders is available for purchase in 27 volumes plus a digest with regular supplements. The set is also available at most local law libraries.

This article summarizes the single civil rights final order that BOLI has issued in 2006—an order on reconsideration of a final order issued in 2005 and previously summarized in the December 2005 issue of this newsletter.

Emerald Steel Fabricators, Inc., 27 BOLI 1 (2005); 27 BOLI 242 (2006)

The respondent, Emerald Steel Fabricators, Inc., hired the complainant through a temporary employment agency in January of 2003. The complainant worked full-time as a drill press operator in the respondent's machine shop for seven weeks.

The complainant did not disclose when he was hired that he had a medical marijuana card issued under the Oregon Medical Marijuana Act (OMMA), because he was afraid he wouldn't be hired. He used medical marijuana one to three times per day during his period of employment with the respondent, to gain relief from a number of long-term conditions, including an anxiety disorder, panic attacks, chronic cramps, severe nausea, and vomiting. He never used marijuana at work or on the respondent's property. The agency found that the complainant was a disabled person, as he suffered from mental and physical impairments that substantially limited him in the major life activity of eating.

The complainant's supervisor discharged him shortly after the complainant disclosed that he had a medical marijuana card and indicated that medical marijuana worked better for him than other medications to treat his conditions. The commissioner found that the complainant's disclosure constituted a request for reasonable accommodation and that the respondent failed to engage in a meaningful interactive process as required under Oregon and federal case law. The commissioner also found that the respondent discharged the complainant based on his use of medical marijuana and violated ORS 659A.112(2)(e) and (f) by failing to make reasonable accommodation and denying the complainant an employment opportunity.

The respondent raised a number of affirmative defenses, including that the OMMA does not require an employer to accommodate the use of medical marijuana in the workplace, that an employer is not required to permit a medical marijuana user to work in safety-sensitive positions, that an employer is free to ban illegal drug use under the federal Drug-Free Workplace Act of 1988, and that Oregon disability laws are to be construed, to the extent possible, consistent with the federal Americans with Disabilities Act, which does not require accommodation of marijuana use.

The commissioner denied those defenses, noting that the agency was bound by the Oregon Court of Appeals decision in *Washburn v. Columbia Forest Products, Inc.*, 197 Or. App. 104, 104 P.3d 609 (2005), until such time as the Oregon Supreme Court reversed the decision.

The commissioner issued the order on reconsideration based on the Oregon Supreme Court's subsequent decision in *Washburn*, 340 Or. 469, 134 P.3d 161 (2006). In *Washburn*, the

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The purpose of this publication is to provide information on current developments in civil rights and constitutional law. Readers are advised to verify sources and authorities.

Recycled/Recyclable

Supreme Court Update

Decided

***Ayers v. Belmontes*, No. 05-493 (Nov. 13, 2006)**

The Court voted 5–4 to uphold the death sentence in this first-degree murder case from the Ninth Circuit. The Court held that the Eighth Amendment does not require an express jury instruction to consider mitigating evidence, even when a state statute requires an express instruction to consider aggravating evidence.

Certiorari Granted

***Abdul-Kabir v. Quarterman*, No. 05-11284 (Oct. 13, 2006)**
***Brewer v. Quarterman*, No. 05-11287 (Oct. 13, 2006)**

Texas "special issue" capital sentencing jury instructions permitted jurors to register only a "yes" or "no" answer to two questions: whether the defendant killed "deliberately" and whether the defendant would probably constitute a "continuing threat to society." The Court will review Fifth Circuit decisions that held that the instructions satisfied the Eighth Amendment by allowing jurors to fully consider and give effect to mitigating evidence about the defendant's destructive family background and mental defects.

***Hein v. Freedom From Religion Foundation*, No. 06-157 (Dec. 1, 2006)**

The Court will consider whether taxpayers can have standing to litigate an alleged violation of the First Amendment's establishment clause when Congress has not earmarked money for the program or activity challenged. The Seventh Circuit held that taxpayers have standing to challenge the Office of Faith-Based and Community Initiatives, which the plaintiffs alleged promoted religion, and is financed by a congressional appropriation, even though it was created entirely within the executive branch by presidential executive order.

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***Morse v. Frederick*, No. 06-278 (Dec. 1, 2006)**

The Court will review a Ninth Circuit decision that held that a school may not censor student speech at an off-campus but school-authorized activity that potentially undermines a message favored by school policy without a reasonable concern about the likelihood of a substantial disruption to its educational mission.

***Scott v. Harris*, No. 05-1631 (Oct. 27, 2006)**

The Court has agreed to decide whether a police officer who stops a high-speed chase by ramming his police cruiser into a fleeing suspect's car violates the Fourth Amendment's protection against unreasonable seizure and whether it was "clearly established" in federal law that an officer violates the Fourth Amendment by using deadly force during a high-speed chase. The Eleventh Circuit held that an officer who uses deadly force against a fleeing suspect who does not pose an immediate threat to human life may not claim qualified immunity from the offender's assertion of his Fourth Amendment right to be free from excessive force during a seizure.

***Smith v. Texas*, No. 05-11304 (Oct. 6, 2006)**

The Court will review a decision of the Texas Court of Criminal Appeals, which held that for an unconstitutional jury instruction to invalidate a death sentence, a defendant must show "egregious harm."

***Winkelman v. Parma City School Dist.*, No. 05-0983 (Oct. 27, 2006)**

The Court will decide whether and, if so, under what circumstances, non-lawyer parents of a disabled child may proceed *pro se* in federal court in an action brought under the Individuals with Disabilities Education Act. There is a three-way split among six circuits on this question.

Argument Held

***Gonzales v. Carhart*, No. 05-0380 (Nov. 8, 2006)**

The Court heard oral argument on this case from the Eighth Circuit to determine whether, despite Congress's determination that a health exception was not necessary to preserve the health of the mother, the Partial-Birth Abortion Ban Act of 2003 is invalid because it lacks a health exception or is otherwise unconstitutional on its face.

***Gonzales v. Planned Parenthood*, No. 05-1382 (Nov. 8, 2006)**

In this case from the Ninth Circuit, the Court heard oral argument regarding the constitutionality of the Partial-Birth Abortion Ban Act of 2003. The Ninth Circuit held that the act was unconstitutional on three grounds: it imposed an undue burden on a woman's right to choose, it was unconstitutionally vague, and it failed to include a health exception for the mother.

***Meredith v. Jefferson Cty. Bd. of Ed.*, No. 05-915 (Dec. 4, 2006)**

In this case from the Sixth Circuit, the Court heard oral argument to determine whether a student enrollment plan that mandates each school's student population to be between 15% and 50% African American satisfies the Fourteenth Amendment's equal protection clause, specifically, the requirement that racial classifications be narrowly tailored to serve a compelling governmental interest.

***Parents Involved in Community Schools v. Seattle School Dist. No. 1*, No. 05-908 (Dec. 4, 2006)**

In this Ninth Circuit case, the Court heard oral argument regarding whether the use of race as an "integration tiebreaker" in determining which students would be assigned to racially

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SUPREME COURT UPDATE

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concentrated high schools in Seattle violates the Fourteenth Amendment's equal protection clause.

***Philip Morris USA v. Williams*, No. 05-1256 (Oct. 31, 2006)**

In this case from the Oregon Supreme Court, the Court heard oral argument to decide whether a court's determination that a defendant's conduct was highly reprehensible and analogous to crime is consistent with the constitutional requirement that punitive damages be reasonably related to the harm to the plaintiff. The court also will decide whether due process permits a jury to punish a defendant for the effects of its conduct on nonparties. ✦

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BOLI FINAL ORDERS

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court followed the federal standard and considered mitigating measures, concluding that the plaintiff was not a "disabled person," because he was able to counteract or ameliorate his leg spasms and resulting sleep problems by using prescription medication. However, the commissioner found that in this case, the complainant was unable to obtain relief from his medical conditions through the use of prescription medications and medical marijuana. Because the complainant was substantially affected in the major life activity of eating, even with mitigating measures, the agency affirmed its prior determination that he was a disabled person.

Because the Oregon Supreme Court in *Washburn* determined that the question of plaintiff's status as a disabled person was dispositive and did not reach the issues of accommodation of medical marijuana use by employers, the commissioner affirmed the prior decision to deny respondent's affirmative defenses.

The commissioner awarded the complainant $8,013.50 in back pay and $20,000 in damages for emotional distress. ✦

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Articles Needed

Have you recently done some research or written a memo that you could easily transform into a newsletter article?

Do you need an incentive to brush up on a recent development in the law?

If you or someone in your office would like to contribute an article to this newsletter, please contact our editor at elise.gautier@comcast.net.

- Effects on the victim's occupational situation (he is not given any work assignments, he is given meaningless work assignments, etc.); and
- Effects on the victim's physical health (he is given dangerous work assignments, others threaten him physically, he is attacked physically, he is sexually harassed in an active way, etc.).[12]

The attention given to status-neutral workplace harassment in Europe in the context of the dignity paradigm has led a number of countries to enact or interpret legislation to counter the harassment. Those countries include Germany,[13] France, Sweden, Belgium, Finland, and the Netherlands.[14]

Terms Used in the United States

While status-neutral workplace harassment is often referred to as "workplace mobbing" in Europe, both the terms "mobbing" and "bullying" have been commonly used in the United States. The interest in harassment that percolated up in Europe in the 1980s seems to have arisen in the late 1990s in the United States, and two of the most frequently referenced popularizing books take different etymological approaches. Anti-bullying activists Ruth and Gary Namie called their 2000 book on dealing with harassment *The Bully at Work: What You Can Do to Stop the Hurt and Reclaim Your Dignity on the Job*, while a 1999 book by Noa Davenport, Ruth Schwartz, and Gail Elliott is entitled *Mobbing: Emotional Abuse in the American Workplace*.

The authors of *Mobbing* were knowingly following in the footsteps of Heinz Leymann, who wrote a foreword for their book.[15] Nevertheless, they provided their own definitions for "mobbing," one of which was quoted last year by Oregon's Employment Relations Board in a case in which the board found that an employee had been improperly terminated in a mobbing situation:

> Mobbing is an emotional assault. It begins when an individual becomes a target of disrespectful and harmful behavior. Through innuendo, rumors, and public discrediting, a hostile environment is created in which one individual gathers others to willingly, or unwillingly, participate in continuous malevolent actions to force a person out of the workplace.[16]

Legal Theories

In contrast to the popularizing tone of authors of such books as *Mobbing* and *The Bully at Work*, David C. Yamada, who serves as a board member and affiliated scholar with the Namies' Workplace Bullying & Trauma Institute, has researched and written on a more scholarly level.[17] He has published articles concerning the existing causes of action that could be or are used to combat workplace bullying (his preferred term), and he has laid out the logic behind the model anti-bullying legislation that is supported by the www.bullybusters.org website.[18]

The existing legal theories Yamada has identified that may provide redress for bullying victims include the tort of intentional infliction of emotional distress (IIED). IIED generally involves the following factors:

1. The wrongdoer's conduct must be intentional or reckless;
2. The conduct must be outrageous and intolerable in that it offends generally accepted standards of decency and morality;
3. There must be a causal connection between the wrongdoer's conduct and the emotional distress; and
4. The emotional distress must be severe.

Another tort Yamada has identified as a potential avenue of legal redress is intentional interference with the employment relationship (IIER),which generally requires the following:

1. The plaintiff had an employment contract with an employer;
2. A third party knowingly induced the employer to break that contract;
3. The third party's interference was intentional and improper in motive or means; and
4. The plaintiff was harmed by the third party's actions.

Yamada also suggests that some cases of bullying may be cognizable under current employment discrimination law, including Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. In addition, he cites federal labor law as potentially giving some protection, both through the mere presence of unions in the workplace and through the right to engage in concerted activity for mutual aid or protection.

He also argues that federal and state occupational safety and health statutes could provide some protection for bullying victims who suffer serious physical harm, such as high blood pressure or heart attacks. Other avenues of potential redress that Yamada discusses are workers' compensation statutes, anti-retaliation and whistleblower laws, free-speech protections, and written employer policies.

Despite this lengthy catalog of legal theories that could possibly be used by bullying victims, Yamada has nonetheless proposed targeted legislation because he believes that none of the current options adequately support what he sees as the key policy goals of prevention, compensation, dispute resolution, and punishment.

In addition to the legal theories discussed by Yamada, it is possible that the so-called class-of-one theory under Fourteenth Amendment equal protection jurisprudence may come to be applied to employment actions, and may be relevant to bullying situations. As discussed in this newsletter a year ago, arguments have been made in recent years that a public-sector employee, not in a protected class, who asserts that he or she was treated differently from other similarly situated employees for no rational reason should be able to bring a claim alleging violation of the equal protection

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clause.[19] If the efforts to expand the use of the class-of-one theory in this way are successful, it is possible that the theory could be used by a public-sector employee alleging that he or she was bullied.

Legislative Attempts

The legislation that Yamada has drafted is intended for both public- and private-sector employees. In his ideal version, which was followed by Oregon's 2003 Senate Bill 496, he borrows the Title VII concept of a hostile work environment in an attempt to forbid even status-neutral harassment in the workplace.[20] For example, in the bill, subjecting an employee to "an abusive work environment" was an unlawful employment practice.[21] An "abusive work environment" was defined as "a work environment where the defendant, acting with malice, subjects an employee to abusive conduct so severe that it causes tangible harm to the employee." In turn, "abusive conduct" was defined as "conduct that a reasonable person would find hostile or offensive and unrelated to an employer's legitimate business interests. In considering whether abusive conduct is present, a trier of fact should weigh the severity, nature and frequency of the defendant's conduct." The bill specifically provided that abusive conduct included, but was not limited to, the following:

> (A) Repeated infliction of verbal abuse such as the use of derogatory remarks, insults and epithets;
>
> (B) Verbal or physical conduct that a reasonable person would-find threatening, intimidating or humiliating;
>
> (C) The gratuitous sabotage or undermining of an employee's work performance; and
>
> (D) A single act that is especially severe and egregious.

The term "malice" was specifically defined in Senate Bill 496 as "the desire to see another individual suffer psychological, physical or economic harm without legitimate cause or justification." The bill stated that malice could be inferred from the presence of various factors, such as the following:

> (a) Outward expressions of hostility;
>
> (b) Harmful conduct inconsistent with an employer's legitimate business interests;
>
> (c) A continuation of harmful, illegitimate conduct after the employee requests that the conduct cease or demonstrates outward signs of emotional or physical distress in the face of the conduct; or
>
> (d) Attempts to exploit the employee's known psychological or physical vulnerability.

Senate Bill 496 provided affirmative defenses for the employer, modeled in part on the language of the United States Supreme Court's 1998 *Faragher* and *Ellerth* decisions.[22] An affirmative defense existed if the "employer exercised reasonable care to prevent and correct promptly any actionable conduct" and the employee "unreasonably failed to take advantage of appropriate preventive or corrective opportunities provided by the employer;" the complaint was "grounded primarily upon a negative employment decision made consistent with an employer's legitimate business interests, such as a termination or demotion based on an employee's poor performance;" or the complaint was "grounded primarily upon a defendant's reasonable investigation about potentially illegal or unethical activity."[23] No affirmative defense was available when "the actionable conduct culminate[d] in a negative employment decision."

Yamada states that the model legislation is intended to limit the cause of action to instances of severe bullying.[24] He implies that there are genuine instances of workplace bullying that the law cannot touch. He quotes an observation by Loraleigh Keashly, a researcher, that "the subtle or hidden nature of certain abusive behaviors 'not only makes them difficult to describe specifically but also undermines the target's own abilities to discern exactly what has been going on. It could be argued that the behaviors become unidentifiable and, likely not punishable.'"[25]

In an interesting development, the anti-bullying bills introduced in the 2005 Oregon legislature departed noticeably from the model legislation.[26] Both versions made "harassment, intimidation or bullying" unlawful employment practices and included the following definitions:

> "[H]arassment, intimidation or bullying" means any persistent verbal or physical act of an employer or employee, unrelated to the employer's legitimate business interests, that a reasonable person would find threatening, intimidating, humiliating, hostile or offensive. "Harassment, intimidation or bullying" includes, but is not limited to, derogatory remarks, insults, or epithets, physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the gratuitous sabotage or undermining of an employee's work performance.

The 2005 bills lacked language about "malice." They also lacked language providing an affirmative defense for employers.

Concerns about Legislation

Vicki Schultz, a professor at Yale Law School, states that there are reasons to think carefully about how to structure anti-bullying laws.[27] She suggests that it is possible that anti-bullying laws could give employers an incentive to discipline or fire employees who are simply unpopular with their co-workers, in order to promote harmonious workplaces.[28] In addition, anti-bullying laws could make it easier for employers to fire employees who are not truly abusive but whose "colorful language or aggressive styles threaten management authority."[29]

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Presumably, anti-bullying laws could also be used to undermine anti-discrimination laws, by allowing discriminating employees to bring retaliatory anti-bullying claims against their victims. This possibility is perhaps reflected in the observation of attorney Gabrielle S. Friedman, commenting on the situation in German workplaces, that there is "no love lost between feminists and most mobbing theorists."[30] She points out that the antagonism is not surprising, because "feminism aims at social change, and mobbing tends to privilege older and more established workers and traditional ideas of social status."[31]

Another concern should be the potential difficulty in evaluating bullying claims. Evaluating the evidence in an employee's civil rights claim is often a tricky process, even when the employee alleges that the ill-treatment in question was based on the employee's membership in a protected class. A complainant's membership in a protected class has the benefit of tending to bring some clarity to an investigation, because it gives a fact-finder a point on which to focus attention for an objective evaluation of the evidence. If an employee alleges that a supervisor is biased against him because of his protected-class membership, an evaluation can look at objective evidence. For example, is the supervisor using language that evokes racial or sexual stereotypes? Does the supervisor have a disproportionate number of younger workers in favored positions? Even with the focal point of a protected class, however, it is not unusual for the evidence involved in a workplace claim to be susceptible to more than one interpretation.

In evaluating the evidence underlying a bullying claim, the difficulties may be increased by the lack of a focal point (unless the claimant alleges that the bullying is on account of a protected-class membership) and the particularly subjective nature of the evidence under some definitions of bullying, turning, as the evidence might, on individuals' intentions and perceptions. Loraleigh Keashly's observation, quoted above, reflects the difficulty of subjectivity.

If bullying and mobbing are truly such subjective phenomena, special care needs to be taken in crafting legislation to deal with problems of proof.

European experts have also essentially warned that because of the subjective nature of bullying situations, management personnel or other claim evaluators have difficulty evaluating evidence neutrally. Heinz Leymann wrote, "Due to previous stigmatization, it is very easy to misjudge the situation and place the blame on the mobbed person. Management tends to accept and take over the prejudices produced during previous stages."[32]

Similarly, in an article by a quartet of European and British academics, the authors discuss an observer's difficulty staying neutral in a bullying case: "In the course of time, social perceptions of the victim seem to change, turning the situation gradually into one where even third parties perceive it as no more than fair treatment of a neurotic and difficult person."[33]

If bullying and mobbing are truly such subjective phenomena, special care needs to be taken in crafting legislation to deal with problems of proof. It is not clear that any of the bills proposed thus far in the United States sufficiently deals with these problems.

Lastly, any legislative body considering an anti-bullying bill should set up a research group to review for legitimacy the information available on bullying in the workplace. For example, Ruth and Gary Namie's Workplace Bullying & Trauma Institute (WBTI) derived information from 1998 to 2003 from what they state are "'nonscientific'" studies: online surveys in which participants are "self-selected and nonrandom."[34]

The WBTI's *2003 Report on Abusive Workplaces,* which states that it is based on a "'nonscientific' sample of 1,000 volunteer respondents," includes statistics such as that 58% of bullies are woman and 71% of bullies outrank their victim in the workplace.[35] These same statistics show up in a document on the www.bullybusters.org website entitled *Workplace Bullying: Introduction to the 'Silent Epidemic.'* The brief document is described on the site as an "overview of the phenomenon" and is labeled as an "indispensable handout to take to a meeting with lawmakers and to leave behind."

Although it is unclear how the debate on workplace mobbing and bullying will play out in this country, it is certain that good policy requires an underpinning of good data. Legislators should thus evaluate skeptically any statistics derived from unscientific studies. ✦

Sally Carter is an assistant attorney general in the Labor and Employment Section of the Oregon Department of Justice (DOJ). This article does not reflect the views or opinions of the DOJ.

Endnotes

1. Assembly Bill 1582 (Ca. 2003); David C. Yamada, "Crafting a Legislative Response to Workplace Bullying," 8 *Empl. Rts. & Employ. Pol'y J.* 475, 476–477 (2004).

2. *See* www.bullybusters.org/advocacy/legisadv.html.

3. Rachel A. Yuen, Note, "Beyond the Schoolyard: Workplace Bullying and Moral Harassment Law in France and Quebec," 38 *Cornell Int'l L.J.* 625, 629 (2005).

4. *Id.* at 629–630.

5. *Id.* at 629.

6. Gabrielle S. Friedman in "Global Perspectives on Workplace Harassment Law: Proceedings of the 2004 Annual Meeting, Association of American Law Schools Section on Labor Relations and Employment Law," 8 *Empl. Rts. & Employ. Pol'y J.* 151, 154 (2004).

7. *Id.* at 155.

8. *See, e.g.,* Kenneth Westhues, "At the Mercy of the Mob," *Workplace Mobbing in Academe: Reports from Twenty Universities* 3 (Kenneth Westhues ed., 2004).

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9. www.leymann.se/English/frame.html.

10. www.leymann.se/English/12210E.HTM.

11. *Id.*

12. *See id.*

13. Friedman in "Global Perspectives," *supra* note 6, at 158–159.

14. Yuen, *supra* note 3, at 633.

15. Noa Davenport et al., *Mobbing: Emotional Abuse in the American Workplace* 16–17 (1999).

16. *Id.* at 33; quoted in *Debra E. Fery v. State of Oregon, Dept. of Administrative Services, Information Resource Management Div., General Government Data Center*, available on the Employment Relations Board website at www.oregon.gov/ERB/orders/MA03102.pdf.pdf, at 39 n.41 (issued October 31, 2005).

17. *See, e.g.,* Yamada, *supra* note 1, and David C. Yamada, "The Phenomenon of 'Workplace Bullying' and the Need for Status-Blind Hostile Work Environment Protection," 88 *Geo. L.J.* 475 (2000).

18. *See, e.g., id.* Although a review of specific cases is beyond the scope of this article, the interested reader may fruitfully refer to Yamada's articles, in which he summarizes a number of cases in which plaintiffs brought claims under existing legal theories in situations involving alleged workplace abuse.

19. Marc Abrams and Loren Collins, "The Class-of-One Theory: Should It Apply to Employment Actions?" *Oregon Civil Rights Newsletter*, Dec. 2005, at 1, 4–5.

20. *See* Yamada, *supra* note 1, at 499.

21. SB 496 (2003).

22. *See* Yamada, *supra* note 1, at 502; *Faragher v. City of Boca Raton,* 524 U.S. 775, 118 S. Ct. 2275, 141 L. Ed. 2d 662 (1998); *Burlington Industries, Inc. v. Ellerth,* 524 U.S. 742, 118 S. Ct. 2257, 141 L. Ed. 2d 663 (1998).

23. SB 496.

24. Yamada, *supra* note 1, at 500–501.

25. *Id.* at 500.

26. HB 2410 and HB 2639

27. Vicki Schultz in "Global Perspectives," *supra* note 6, at 192.

28. *Id.*

29. *Id.*

30. Friedman in "Global Perspectives," *supra* note 6, at 159.

31. *Id.*

32. www.leymann.se/English/12220E.HTM.

33. Stale Einarsen et al., "The Concept of Bullying at Work: The European Tradition," *Bullying and Emotional Abuse in the Workplace: International Perspectives in Research and Practice* 11–12 (Stale Einarsen et al. eds., 2003).

34. Gary Namie and Ruth Namie, "Workplace Bullying: How to Address America's Silent Epidemic," 8 *Empl. Rts. & Employ. Pol'y J.* 315, 318–319 (2004).

35. Available at www.bullyinginstitute.org/res/2003process.html and www.bullyinginstitute.org/res/2003B.html. In contrast, in *The Bully at Work*, at x-xi, 274, the Namies rely on the results of their 1998 online survey to state that 89% of bullies outrank their victims.

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