

Canary in the Mine: Ombuds as First Alerts for Workplace Bullying on Campus

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ABSTRACT

Nationally, only Tennessee and California have enacted statutes to begin addressing workplace bullying (Yamada 2015). Hence, workplace bullying remains a critical workplace issue. Responses from 401 study participants employed at 175 four-year colleges and universities in the United States indicated that 62% have experienced the adverse impact of workplace bullying (Hollis 2015). Despite the debilitating impact in higher education related to employee disengagement, health issues, and the cost of turnover, many study respondents still perceived offices of human resources to be ineffective in dealing with this problem. The ombuds office can bridge the gap by providing impartial and confidential support to visitors who report bullying. The purpose of this article is to highlight the ombuds person as an early alert figure who can impartially mitigate personal and financial losses for those affected by workplace bullying.

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KEYWORDS

Workplace bullying, ombudsman, early intervention, higher education

Introduction

"[Bullying] is a serious problem with no solution on the horizon... Moreover, there is nepotism and favoritism that makes public discussions ineffective in finding strategies."

Respondent #36 (2012)¹

¹Direct quotes at the beginning of each segment are verbatim remarks from study respondents who offered open-ended comments about workplace bullying in higher education (Hollis 2012).

For many years, coal miners who entered mine shafts often carried a canary into the mine to sound a first alert warning signalling the presence of lethal carbon monoxide in the air. Even though the canary is small, the bird's shrill warning was powerful, saving lives, as well as protecting families who could have lost a loved one to the toxic environment. I use the analogy of the canary in the mine to illuminate the potential for the ombudsman to similarly sound an important warning in the face of toxic workplace environments, including those involving bullying.

This article emerged from the primary data I collected as an academic researcher studying workplace bullying in American higher education (Hollis, 2012). The voices from the data set reflect the respondents' first-hand experiences related to bullying or bullying behaviors. Of the respondents, more than 60 percent reported experiences with bullying. The study participants provided open-ended comments regarding people's experiences with bullying; about one-third of the respondents noted a particular frustration with seeking relief through offices of human resources (HR). My analysis included reflecting on leadership and power, which is outside the scope of this article. I also sought to explore the concerns related to the HR function and how ombuds' impartiality could play a role in helping to address workplace bullying. The purpose of this article is to highlight the unique role of the ombuds as an early alert figure who can help organizations and their employees mitigate the personal and financial losses workplace bullying can leave in its wake.

THE COSTS OF WORKPLACE BULLYING

"A chronic, pervasive problem that undermines the effectiveness and integrity of higher education."
Respondent #115 (2012).

Bullying can be defined as harassing, offending, socially excluding someone or negatively affecting someone's work tasks. The behavior occurs repeatedly and regularly over a period of time. As the behavior escalates, the person subject to the bullying can end up in an inferior position and become the target of systematic negative social acts (Einarsen et al., 2010, p. 22). Workplace bullying researchers have chronicled the magnitude of this abusive trend (Björkqvist, Österman & Hjelt-Bäck, 2006; Branch, Ramsay & Barker, 2013; Cowan, 2012; Fritz, 2014; Zabrodska & Kveton, 2013).

The costs of unchecked bullying range far and wide, incurring personal and organizational damage. Researchers have documented the impact of workplace bullying on the target's health and well-being (Constanti & Gibbs, 2004; Djurkovic, McCormack, & Casimir, 2008; Query & Hanely, 2010). Those facing workplace bullying often develop self-esteem issues, lack concentration, and may even have post-traumatic stress symptoms (Thomas, 2005). If a damaging situation is allowed to fester, either the bullies or their targets can be forced to leave the institution and sacrifice standing in their professional career trajectory (Constanti & Gibbs, 2004; Djurkovic, McCormack, & Casimir, 2008). The target and those colleagues witnessing the abuse recoil into phantom busy work, take more sick time, and begin looking for other employment (Hollis, 2015).

Researchers have documented the institutional costs of bullying, including high turnover and employee disengagement that dampens productivity (Bliss, 2012; Hollis, 2015; Namie & Namie, 2009; Pearson, 1999; Wiedmer, 2010). Given that "the average cost for replacing an employee is 150% of the departing employee's pay" (Hensen, 1997, p. 17), a figure also confirmed by Seaver (2015) and Ruyle (2012), organizations may spend hundreds of thousands of dollars to recruit and on-board new staff to replace those who have left after episodes of bullying. Also, the bully who seeks to break the

will of his or her colleagues may also be willing to break other rules, such as organizational policies and even state or federal laws (Hollis, 2012). As such, the organization may wind up paying untold extended costs.

TOXIC YET LEGAL BEHAVIOR

"I had to seek professional counseling and tried to report her [bully], but did not trust the system to actually do anything about it but make me look like a tattler... You don't expect it, you can't believe it, you are not prepared to deal with it and most organizations have nothing in place to help you."
Respondent #39 (2012).

Researchers have given toxic work behavior many names, including "bullying," "mobbing" (Dav-enport et al., 1999), "psychological aggression" (Keashly, 2010), and "abusive supervision" (Tepper, 2000). Regardless of the name, the behavior is still legal in the United States with the exception of California and Tennessee, which passed statutes regarding abusive workplace behavior in 2014 (Yamada, 2015). "Harassment is unwelcome conduct that is based on *race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information*. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive." (EEOC, 2012, emphasis added).

In the absence of state and federal laws directed at bullying, organizations can craft policies to curtail unwanted behavior. For example, colleges and universities can develop acceptable use policies to manage behavior online or using social media on equipment owned by the institution. Some organizations have instituted anti-harassment and anti-discrimination policies, revamping their internal policies to protect themselves from illegal behavior emerging from within the staff. In regards to bullying, however, organizations often dismiss this negative behavior as stemming from personality conflicts between colleagues. As such, the majority of targets do not have legal recourse to protect themselves from what Yamada (2000) categorized as "status-free harassment."

Some targets of workplace bullying attempt to frame bullying behavior in the context of hostile work environment claims in the hopes of focusing organizational attention on their concerns. However, these claims are only actionable under federal laws protecting harassment if the behavior "is so severe and pervasive that it alters the conditions of the victim's environment and creates an abusive working environment" (Rotteveel, 2015, p. 6). The treatment must be so extreme that it detrimentally affects the complainant and that others in the same protected class would be affected. Lastly, the element of *respondeat superior* must be met for a successful hostile workplace claim. "For *respondeat superior* liability to exist, a plaintiff must demonstrate that the employer failed to provide a reasonable avenue for complaint, or, if the employer was aware of the alleged harassment, that it failed to take appropriate action" (Rotteveel, 2015, p. 6). Off-color jokes, insults, yelling, cursing, and other manipulative or intimidating behaviors found in bullying typically do not fall under the hostile work environment provision.

In most cases, if employees claim that bullying created a hostile work environment, employers will engage in some minimal mitigation to avoid further legal action. The employers' responses are often enough to nullify the hostile work environment claim, yet they can leave employees feeling that the

organization has not truly addressed the problem (Hollis, 2012). Findley et al.'s (2012) study of 50 complaints of hostile work environment provided a sample of the struggles employees faced in filing such claims. The commonality in these 50 complaints was that "all of the victims usually complained to managers, but little or nothing was done to ameliorate the situation" (p. 32). As noted in Findley's study, the hostile work environment claim is particularly hard for complainants to prove.

In 2015, the United States still lags behind other nations that have passed laws to protect employees from workplace bullying. For example, France, Serbia, Sweden, Norway, and Finland (French Court of Cassation, December 6 2011, no. 10-82266; Ministry Social Affairs and Health, 2004; Ordinance Swedish National Board Section 1, para 4, 1993) prohibit workplace bullying. Norway's Work Environment Act reads:

Employees shall not be subjected to harassment or other improper conduct. Employees shall, as far as possible, be protected against violence, threats and undesirable strain as a result of conduct with another person. Ministry may by regulation issue further provision concerning implementation of the requirement of this section. (Work Environment Act 2012, p. 11)

Some Canadian provinces, including British Columbia, Quebec, Victoria, and Manitoba, also have healthy workplace legislation (New Harassment Prevention, 2011; Quebec Provincial Government, 2004; Safe at Work Ontario, 2011; Worksafe BC, 2013; Worksafe Victoria, 2012). In 2014, Australia amended its fair work legislation to include this clarification: "enable an employee who is bullied at work to apply to the Fair Work Commission [FWC] for an order to stop the bullying" (Fair Work Amendment 2013, para 1).

HUMAN RESOURCES, INSTITUTIONAL ADVOCATE

"HR is of no help whatever when the bully has brought in a million dollars for the institution and is the president's buddy." Respondent #100 (2012).

The primary purpose of human resources departments is to serve and protect the institution, not the individual employee. In many institutions, human resources also has a role in employee relations, labor relations, and answering employees' questions about policies and practices. The extent to which human resources offices provide support to staff varies widely. What is less variable is the fact that human resources personnel are often hired to directly serve those in power. Given that bullies are typically people with some sort of positional power, human resources staff may not be in the best position to approach those with power regarding allegations of bullying. Therefore, in matters involving bullying by people with positional power, human resources staff members are in the precarious position as "rule enforcers" who cannot in fact enforce. Rather, they advise and coach executive staff to adopt more agreeable behaviors. Problems can arise when the executive finds that these recommendations contradict their preferred style of wielding authority (Janove, 2011). This circular problem can render the human resources person largely powerless to address complaints of bullying by those with power.

In a recent study of 401 employees from 175 colleges and universities in the United States (Hollis, 2015), about one-third of the respondents shared the perception that the human resources department was ineffective in dealing with a workplace bully at their institution. In the absence of state or federal policies dictating appropriate responses, human resources personnel can respond in various ways when receiving reports of bullying. Spraggins (2014) wrote that the human resources profes-

sional may “mislabel the bullying as interpersonal conflict...assume the target has done something wrong...suggest the target has mistaken bully’s benign actions for aggression...or suggest mediation efforts, not recognizing that the bully is interested in control not conciliation” (p. 190).

The following are verbatim statements by respondents answering the question, “Are there any specific comments or insights you would like to share about workplace bullying in higher education?” See table 1.

Table 1

Respondents’ comments regarding workplace bullying and human resources

Respondent #83	I think bullying is overlooked and human resources work for the institution and not the employee. I therefore think that human resources is hoping that it will just go away!
Respondent #103	When behavior is named as “bullying” the admin and human resources people immediately circle to prevent a lawsuit. I have seen a faculty member name a bully, and then have the dean immediately ask if this faculty member intends to sue the institution. This does not address the actual problem of bullying.
Respondent #97	Given the economic status of the country, I firmly believe that bullying will continue. People are tolerating more because higher education is becoming more business-like. People are often reminded that they are lucky to “just have a job.” This is very unfortunate and human resources is doing nothing to strategize to change the perception.
Respondent #63	I have held four jobs in fundraising for higher education and at three of the organizations, the toxic atmosphere was beyond oppressive and people were afraid to say anything. Human resources offices have usually protected the bullies because they were senior staff and the person being bullied was let go or left in frustration. I know a lot of people who have felt very let down by human resources offices and it would be helpful to have human resources offer greater assistance and support. It gives you the confidence to not suffer in silence.

OMBUDS IMPARTIALITY NEEDED

“The norm is bullies running unchecked devouring the meek and weak in an organizational structure.” Respondent #32 (2012).

The ombuds role presents a unique space within an organization to mitigate bullying without taking sides. With knowledge of organizational players and politics, the ombuds can report trends that will objectively point to toxic work environments and can inform interventions. Ombuds are in a solid position to offer confidential guidance and coaching to complainants (with exceptions to confidentiality in cases that involve threats of imminent harm). For example, the ombuds can help complainants think strategically about how to engage in self-advocacy or raise concerns to leadership, or whether to leave the institution if the visitor determines that departure is the healthier option. Ombuds can also work with leadership, highlighting where costly bullying is occurring and advising strategic engagement to quell the problem. Joyce (2014) commented that the ombuds can provide “feedback about how the situation has been handled and to help the supervisor realize, that if unaddressed, this problem will continue” (p. 15).

Wagner (2000) offered interventions that ombuds can employ in a variety of difficult scenarios, with compelling applications to workplace bullying.

1. The ombuds can silently influence policy. According to Wagner (2000), ombuds can offer insight into discussions on fair labor practice. Though ombuds are never present for the resolution of formal pending cases, the ombuds can contribute to later discussions on policy to suggest phrases to guard against a repeat of the same unfair labor practice.
2. Aggregated, anonymous ombuds case data can project objective evidence highlighting trends of bullying and incivility. Such data can inform leadership about emerging problems and give an early warning before they mushroom into more egregious problems.
3. The ombuds can highlight bias, unfairness, and unresponsiveness in organizational policies and procedures. While HR may be perceived as existing to protect the organization, ombuds can objectively evaluate the application of policies with an eye towards fairness to all. When the ombuds sees trends emerging in problematic policy application or institutional apathy, the ombuds can bring such inequities forward to policy makers.

CONCLUSION

The ombuds operates from a basis of impartiality and, as such, can draw attention to problematic and toxic behaviors in the organization, including bullying, without taking sides. The ombuds can benefit an organization, and its employees, by serving as a safe environment to raise and address concerns. Similar to the canary in the mine that saved miners' lives in toxic mine shafts, ombuds can also sound an early alert that preserves careers and avoids organizational costs. Unlike human resources personnel in many institutions that serve the leadership and, potentially, the power structure that exhibits bullying behavior, the ombuds can operate as a catalyst for change by making recommendations that foster healthier work environments.

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