

## “Upward Bullying”: Problems Outback for US Employers

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In the typical workplace bullying scenario, the involved players are very clear—a co-worker bullies a fellow colleague or a superior bullies his or her subordinate. But what happens when the roles reverse and the employee bullies the employer? This scenario, dubbed “upward bullying,” occurs when a subordinate bullies someone in a managerial position. Upward bullying can manifest itself in a number of ways ranging from verbal abuse to insubordination to making false complaints against a superior.

Upward bullying is a growing trend in Australia. In 2013, Safe Work Australia, a statutory agency responsible for the health and safety of Australian workers, reported that workplace bullying rates in Australia are substantially higher than in other countries. A 2006 study out of Griffith University in Queensland, Australia reported that a quarter of Australian bosses may be targets of upward bullying. Upward bullying can result in decreased work productivity, affect retention rates, and incite insubordination. The effects of upward bullying can also extend beyond the workplace. Managers subject to this type of negative behavior tend to experience depression, stress, anxiety, and dissatisfaction with their jobs which in turn may affect a business’s bottom line.

Upward bullying also affects employers. In 2010, the Productivity Commission estimated that workplace bullying costs Australian employers anywhere between \$6 billion and \$36 billion annually.

While there are no laws in Australia specifically addressing upward bullying, the *Fair Work Act 2009* (Cth) (“FWA”) may afford recourse to victims of upward bullying. Part 6-4B of the FWA, titled “Workers Bullied at Work” (“Part 6-4B”) allows a worker who has been bullied at work to apply to the Australian Fair Work Commission for an order to stop the workplace bullying. Part 6-4b does not make a distinction between which type of employee is eligible to obtain such an order and instead states that a *worker* may obtain an order to stop bullying. The FWA defines a “worker” as “an individual who performs work in any capacity, including as an employee, a contractor, a subcontractor, an outworker, an apprentice, a trainee, a student gaining work experience, or a volunteer.” As such, an employee in a managerial position may obtain an order from the FWA to stop bullying by a subordinate if “the worker has been bullied at work by an individual or a group of individuals” and “there is a risk that the worker will continue to be bullied at work by the individual or group.”

In the United States, upward bullying is rarely seen because of the employment at-will doctrine.

Under the at-will doctrine, an employee may be terminated at any time, for any or no reason at all, as long as that reason does not violate state or federal law. As such, American employees are less likely to engage in upward bullying for fear of termination. While upward bullying may not be a major concern in the U.S., American employers employing personnel abroad should be aware of upward bullying and how to best handle such situations.

There are ways employers can prevent upward bullying in the workplace. One way is to foster collaborative working relationships and eliminate the “us versus them” mentality that sometimes exists between employees and their superiors. Employers could also implement an internal grievance or open door process that both staff and managers can trust. The availability of a reliable grievance process may deter employees from engaging in upward bullying as means of airing their grievances and instead facilitate a reasonable resolution between employees and management. Employers can also make sure that employees understand what behavior is prohibited in the workplace, and have a policy in place for dealing with employees who engage in prohibited behavior.

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