

# LABOR AND EMPLOYMENT LAW UPDATE



## MIGHTY MOUSE: CYBER BULLYING IN THE WORKPLACE!

Recent headlines regarding cyber bullying beg the question: Should employers be concerned about the phenomenon in the workplace? According to a survey released by the Workplace Bullying Institute (“WBI”) on September 17, 2010, the answer is a resounding “YES!” The survey found that 35% of the U.S. workforce (an estimated 53.5 million Americans) reported being bullied at work. Indeed, the survey determined that bullying is four times more prevalent than unlawful harassment.

**WHAT IS CYBER BULLYING?** Cyber bullying is a broad term which encompasses any use of electronic media, such as e-mail, instant messaging, internet chat rooms, online discussion groups, blogs, websites (e.g., Facebook, MySpace, etc.) telephone calls, voice mails, text messaging, webcams, and visual and audio recordings, to intentionally harm another. Cyber bullying can take many forms:

- \* Repeated and unwelcome telephone calls, e-mails or text messages to the victim.
- \* Derogatory, abusive, humiliating, threatening or defamatory postings or communications regarding the victim.
- \* Postings or communications known to be offensive or disturbing to the victim.
- \* Trickery of the victim through false personas and false postings and communications.

- \* Harmful impersonations of the victim in electronic postings and communications.
- \* Digitally altered photos of the victim.
- \* Secretly broadcasting or recording the victim on a webcam or other device.
- \* Sending computer viruses to the victim.
- \* Unauthorized access of the victim’s computer, e-mail or online accounts.
- \* Encouraging others to engage in cyber bullying of the victim.

**DOES CYBER BULLYING VIOLATE FEDERAL LAW?** Some forms of cyber bullying can violate federal law but comprehensive legislation addressing all forms in the private workplace is still in the formative stages. Some relevant laws include:

18 U.S.C. § 875: This law makes it a crime to transmit any communication containing a threat to injure the person of another.

47 U.S.C. § 223: Criminal and civil penalties apply to the use of a telephone or telecommunications device to annoy, harass, threaten or abuse a person at the called number.

FEDERAL WIRETAP ACT: Criminal penalties and private suits are available for the unauthorized interception of wire, electronic and oral communications.

STORED COMMUNICATIONS ACT: This Act provides for criminal penalties and private suits for the unauthorized acquisition of stored electronic communications.

COMPUTER FRAUD & ABUSE ACT: Criminal penalties and private suits are available for unauthorized access or damage to a computer.

EMPLOYMENT LAWS: Work-related bullying may be prohibited by federal employment laws if it (1) is motivated by a victim’s legally protected characteristic, association, status, service or activity; or (2) constitutes interference with a legally protected right of the victim.

**DOES CYBER BULLYING VIOLATE STATE LAW?** Again, some forms of cyber bullying can violate state law but comprehensive legislation addressing all forms in the private workplace is still in the formative stages. Some relevant laws include:

**COMPUTER CRIMES:** Many states have laws similar to the federal laws listed above which provide for criminal and civil penalties and private rights of action.

**DEFAMATION:** A false statement of fact made to others regarding an individual can give rise to a claim of defamation.

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS:** Conduct which is sufficiently outrageous and causes the victim severe emotional distress may be actionable.

**INVASION OF PRIVACY:** A claim may exist for (1) an intrusion upon the solitude or seclusion of a person, (2) an appropriation of the name or likeness of another person, (3) publication of a private fact regarding a person, or (4) publication of a matter which places a person before the public in a false light.

**DUTY TO PROVIDE A SAFE WORKPLACE:** An employer has a duty in most states to provide its employees a safe workplace.

**EMPLOYMENT LAWS:** Work-related bullying may also violate protected rights under state employment laws.

**CAN AN EMPLOYER BE LIABLE FOR CYBER BULLYING BY AN EMPLOYEE?** Yes. The same legal principles which allow an employer to be liable for unlawful acts by an employee include unlawful acts committed by an employee during cyber bullying.

**WHAT CAN AN EMPLOYER DO TO AVOID EXPOSURE FOR CYBER BULLYING?** An employer should consider, amongst other measures:

- \* Develop, publish and enforce rules for the use of employer provided computers, PDAs, cell phones, websites, online accounts, etc.
- \* Develop, publish and enforce rules prohibiting any reference to the employer or the employee's title in personal electronic postings and communications.

- \* Develop, publish and enforce rules which prohibit cyber bullying amongst employees during working and non-working hours.
- \* Develop, publish and follow a procedure whereby employees can report cyber bullying without fear of retaliation.

### QUESTIONS

Questions regarding cyber bullying in the workplace can be directed to Robert G. Chadwick, Jr. at Campbell & Chadwick, P.C.

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