

# Workplace bullying vs unfair labour practices: What's the difference?

Bullying as a tactic for most people is either confined to playgrounds where children hang out, or the internet where trolls sling all types of derogatory comments. But bullying is equally prevalent in the workplace with dire consequences for both victims and organisations. But discerning the difference between bullying antics and unfair labour practices is often difficult to do, says Advocate Tertius Wessels, Legal Director at Strata-g Labour Solutions.



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“Looking at the labour dispute of Peter Moyo, Old Mutual’s embattled CEO. One can understand why some people have lashed out at Old Mutual, accusing it of employing bullying tactics, after the court found his previous dismissal to be unfair. Unfair labour practices are clearly defined and therefore, easier to challenge. But sometimes an employer is simply a biased manager; while this makes them a bad leader, it does not constitute him or her as a bully,” explains Wessels.

## Definitions

The definition of bullying is repeated actions and practices that are directed to one or more workers, which are all unwanted by the victim, and may be done deliberately or unconsciously. However, these actions do cause humiliation, offence and distress, which ultimately may interfere with job performance and create an unpleasant working environment.

Unfair labour practices on the other hand are specifically defined in terms of the Labour Relations Act and generally relate to an unfair act or omission that arises between an employer and an employee.

Struggling to define which ambit bullying falls under legally is only one part of the problem. Even in organisations where processes to deal with bullying are in effect, the outcomes are not always favourable to the victims, says Wessels.

"According to findings by the Workplace Bullying Institute SA, where Human Resource (HR) intervened, 37% of those accused of bullying retaliated, while 31% of complainants lost their job. In 18% of cases, HR took no action and when it did, only 2% of cases reached a fair and just resolution; the remaining 12% of occurrences went unreported," Wessels explains.

While "bullying" is yet to be included in labour legislation, recent cases in the CCMA and our Courts highlighted the zero-tolerance approach for bully behaviours such as hate speech and racism.

But even the law fraternity is susceptible to bullying.

## Survey insights

A survey conducted by the International Bar Association revealed that bullying is prevalent in South African legal workplaces, with 73% of South African female respondents admitting to having experienced bullying and 42% of male respondents felt the same.

The effects of bullying are well documented, with the Trade Unions Congress reporting that nearly half (46%) of people say that bullying harms their performance at work, and the same amount believe it hurts their mental health. More than one in three (36%) people leave their job because of bullying, thereby disrupting career progression.

A University of the Free State study reported that the effects of persistent or intense bullying could sometimes amount to post-traumatic stress disorder.

Bullying can also affect a company's bottom line with lower productivity, higher absenteeism and staff turnover but despite all of this, employers when dealing with bullying tend to focus more on the victim, rather than the perpetrator.

The Workplace Bullying Institute SA found that the top five reasons attributed to bullying eventually stopping are 37% of victims are often fired or discharged, 33% of them resign (constructive dismissal), and 17% of complainants are transferred to another department. But only 4% of bullies are punished, and 9% transferred out.

"Employers should offer life skills such as emotional intelligence, assertiveness and conflict handling. They should, in a clear, unambiguous language assure employees their organisation will not tolerate bullying. While it remains complex to differentiate between unfair labour practices, unfair discrimination and/or harassment, our courts have proved that as a country, we do not tolerate bully behaviour," concludes Wessels.