

Workplace Psychological Safety Act Findings

1. **U.S. workers have a right to physically and psychologically safe work environments.** The Occupational Safety and Health Act (OSHA) of 1970, 29 USC 651, Congressional Findings and Purpose states, "...to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources... to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions...including the **psychological factors** involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems... establishing causal connections between diseases and work in environmental conditions... by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience...by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws... by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem...." (*United States Department of Labor*). The OSHA Act of 1970, 29 USC 654, Duties states, "(a) Each employer shall furnish to each of his employees employment and a place of employment which are free from **recognized hazards** that are causing or are likely to cause death or serious physical harm to his employees; shall comply with occupational safety and health standards promulgated under this Act. (b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct" (*United States Department of Labor*).
2. **The National Institute for Occupational Safety and Health (NIOSH), established by OSHA, is a research agency focused on the study of worker safety and health. It is part of Centers for Disease Control and Prevention (CDC), in the Department of Health and Human services. NIOSH recognizes bullying (one employee targets or "bulls-eyes" another employee) as a workplace psychosocial hazard (CDC, 2022),** defining psychosocial hazards as "factors in the work environment that can cause stress, strain, or interpersonal problems for the worker" and defining bullying as "repeated, unwanted harmful actions intended to humiliate, offend, harm, undermine, or degrade, and can cause lasting physical and psychological damage."
3. **Psychosocial hazards are considered as significant as physical, biological, chemical and enviromechanical hazards and can contribute to diminished mental health.** Psychosocial hazards are "psychosocial factors that are perceived or experienced as unfavorable and can cause damage. Damage from a psychosocial hazard is in the **mind** of the individual exposed, which in turn influences their behavior. The resulting action could expose the individual to harm and cause similar or different harm to others" (Daniels, 2022). Bullying and harassment are among the most significant psychosocial hazards (International Organization for Standardization, 2021).
4. **Psychosocial hazards can occur concurrently with and be influenced by other hazards. NIOSH also recognizes toxic work organizations, where there is a poor safety climate and lack of commitment to occupational safety, as a psychosocial hazard (CDC, 2022).** NIOSH

also recognizes violence and incivility as psychosocial hazards, defining violence as “any physical assault, threatening behavior, or verbal abuse occurring in the work setting” and incivility as “...rude and discourteous actions of gossiping and spreading rumors, and refusing to assist a coworker...May also include name-calling, using a condescending tone, and expressing public criticism which can compromise coworker dignity and demonstrates a clear lack of respect” (CDC, 2022).

5. **According to the World Health Organization/International Labour Organization joint policy brief on Mental Health at Work, “unsafe working environments create risk factors for mental health.”** Exposure to psychosocial hazards produces psychosocial risk. Psychosocial risk relates to the potential of these types of hazards to cause several types of outcomes on individual health, safety, and well-being and on organizational performance and sustainability.
6. **Disregarding psychosocial hazards in the U.S. workplace violate basic human rights.** The social and economic well-being of every country depends on balancing employer accountability with workers’ rights to ensure healthy and productive workers. Article 1 of the Universal Declaration of Human Rights states, “All human beings are born free and equal in dignity and rights” (United Nations). All people – regardless of their gender, race, disabilities, sexual orientation, gender identity, age, income, religion, faith, and political affiliations – deserve the right to work in safe environments free from all forms of abuse and oppression.” The right to dignity must be assured in the workplace.
7. **Employers are not liable for psychological safety nor do they want to be. They disregard the existence of psychosocial hazards and any complaints about them to avoid liability further jeopardizing the safety of employees and the work environment. Employers need to be held accountable for toxic, psychologically unsafe work environments that jeopardize employee safety.** The U.S. has the worst record among major developed countries when it comes to workers’ rights. “The International Trade Union Confederation’s 2022 Global Rights Index indicates 65 major developed countries have fewer systematic violations of workers’ rights than the U.S.” (#creator & #identity, 2021).
8. **The phenomenon of workplace bullying is a pervasive problem in U.S workplaces and follows a typical playbook according to researchers:** A 2019 survey revealed that 94 percent of 2,081 employees indicated they experienced bullying in the workplace (Workplace bullying: What can you do?, 2019).
 - a. **Bullying begins between individual employees (interpersonal abuse). The bully is afraid the employee will outshine them, so they begin a targeted campaign of psychologically abusive behavior against that employee.** “In workplace bullying, the exercise of power and control over another provides the ignition for aggressive and abusive behavior” (Duffy & Sperry, 2014). The behavior, such as failing to provide workplace support or withholding necessary information or exclusion from important meetings, can be highly covert attacks in private settings or overt passive-aggressive attacks (Baron & Neuman, 1996). Workplace bullying typically involves “threats to professional status and isolating and obstructive behavior (i.e., thwarting the target’s ability to obtain important objectives)” (Keashly & Neuman, 55).
 - b. **The targeted employee, who is typically exemplary, reports the abuse through the proper channels of the organization. In psychologically safe work environments, the employer is “responsive to [the] complaint from [the] employee about [the] toxic work environment”** (Duffy & Sperry, 2014). Employers have systems in place to monitor and

manage unacceptable misconduct. They effectively deter psychologically abusive behaviors by dealing with the perpetrator through counseling, training, or removal.

- c. **In psychologically unsafe work environments, the abused employee is further abused (organizational abuse). They are misled to believe there is a complaint and investigatory process, however, the employer remains “unresponsive to [the] employee complaint”** (Duffy & Sperry, 2014), **significantly exacerbating the toxicity of the work environment.** The majority of U.S. employers respond to abusive bullying behavior with denial of its existence, support for the perpetrator, and retaliation against the targeted employee (Rayner, 2003). Employers further victimize the targeted employee by withholding support. In a study of 138 leaders, “71 percent [of leaders] condone bullying.... The notion that bullying causes targets to reduce their level of engagement, commitment and performance was widely rejected,” found expert Andrew Faas (2014).
- d. **The abused employee is the one perceived to be a threat of liability to the employer, not the bully. The abuse morphs into organizational bullying (representative employees also target the employee), often referred to as “bullying on steroids” due to the magnification of the abuse and subsequent traumatic harm.** Employees experience a second round of mistreatment, or “institutional betrayal,” as the employer or its representative employees deny the existence of the problem, reposition the employee as the offender, and support the perpetrator (Smith & Freyd, 2014). Targeted employees should “expect personnel/human resources to disbelieve [them] and deny the bullying” (the Tim Field Foundation, 2017). When employees report the misconduct and mistreatment, organizational members typically use unethical communication and misuse investigatory and disciplinary channels to eliminate the targeted and further victimized employee from the organization and strip the victim of respect, status, and influence (Duffy & Sperry, 2014). “Workplace mobbing... includes a form of unethical communication characterized by failure to act or silence in the face of worker mistreatment. These kinds of aggressive acts against a victim include acts of omission that involve failure to take action when action is called for” (Duffy & Sperry, 2014).
- e. **Institutional complicity: “The dominant story is set and narrated by the employer”** (Duffy & Sperry, 2014). After pushback and reporting efforts fail, the targeted and further victimized and abused employee realizes they have been betrayed and are trapped. They have no choices left. The bully won’t let up, and the employer won’t help. Silent killer stress has been taking its toll with significant physical and mental manifestations. Employees voluntarily leave because of the incurred health harm (injury), are fired for no longer being able to perform their job because of the incurred health harm (injury), or die from the incurred health harm, all alleviating the employer from any threat of liability. Researchers call this response “expulsion,” a process of dehumanization (Leymann, 1996; Glambek et al., 2015).
- f. **Bullies rarely lose their jobs, undermining what is and isn’t acceptable behavior in the workplace and proliferating the toxicity of an already unsafe work environment.** (Glambek et al., 2015). When employers tolerate workplace bullying, bullies become even more aggressive (Bandura, 1973). The toxicity of the work environment is further bolstered by the silence of bystander employees who know they will not receive support from management (O’Reilly & Roberts, 1976). The late anti-bullying activist Tim Fields stated, “When bullies act with impunity, the institutional culture comes to be dominated by fear and self-seeking behavior... Innovation and cooperation become risky and thus rare.... The

serial bully's inefficiency and dysfunction... can spread through an organization like a cancer" (Vaknin, 2017). Disengagement is the approach experts recommend to targeted and victimized employees for self-protection (Klein, 2005).

- g. **The realization of institutional betrayal leads to psychological trauma (Duffy & Sperry, 2014). The misleading and lack of response and/or action by employers blindsides the abused and victimized employee. In the aftermath when the premeditation is typically discovered, health harm and job loss has already occurred, and the employee's sense of safety has been shattered.** Workplace abuse causes trauma, according to the American Academy of Experts in Traumatic Stress (*Workplace bullying - the devastating experience*). Depression is highly affiliated with direct personal denigration and being treated as invisible (Vartia, 2001). Targeted employees show decreased interest in their appearance, punctuality, and productivity (Field, 2009); some employees become defensive, hypervigilant, or socially withdrawn (Mills et al., 2008). When victimized employees realize what has happened and attempt to address it in the aftermath, they find out they have no legal recourse, face employer allegations of mental illness, and are not readily believed by doctors, therapists, family, and friends. Some experience "a feeling of desperation and total helplessness, a feeling of great rage about lack of legal remedies, great anxiety, and despair" (Leymann, 1996).
- h. **Dubbed a silent epidemic (McAvoy & Murtagh, 2003), bullying and the institution's complicity, exacerbating the toxicity of the work environment, often leads to severe, long-term injury — physical, psychological, emotional, professional, and economic.** Targeted employees suffer from a variety of resultant physical, mental health, and professional issues, including but not limited to: hypertension, heart disease (Kivmäki et al., 2003), depression (experienced by approximately 40 percent of targeted employees) (Butterworth et al., 2013), substance abuse (Richman et al., 1996), insomnia, chronic fatigue, stress-induced illnesses, anxiety disorders (including panic attacks), post-traumatic stress, paranoia and hypervigilance, confusion and self-doubt regarding one's own perceptions (subsequent to abusive "gaslighting" tactics and distortion), dissociative reactions, intense feelings of shame and humiliation, overwhelmed coping skills, and impaired cognitive function. Workplace threats from co-workers bring intense fear and worry, which trigger a physiological fight-or-flight response (Ursin & Eriksen, 2004), which can also become life-threatening. Chronic stress associated with bullying contributes to bipolar disorder, suicidal ideation (Nielsen et al., 2016), and suicide (Leymann, 1996). These effects can be associated with subsequent deterioration of work product with the potential to contribute to a vicious cycle, further damage to professional reputation, job loss, and the jeopardizing of future career and financial prospects — which often keep the targeted employee trapped in the abusive situation, exacerbating adverse effects.
- i. **The psychosocial hazards of workplace bullying and the institution's complicity of exacerbating the toxicity of the work environment cause physical injury to brain architecture that is visible on brain scans.** Extensive, peer-reviewed, replicated neuroscientific and neurobiological research documents the damage that can occur to brains by all forms of bullying, harassment, and abuse (*The Bullied Brain*, Rowman & Littlefield, 2022). Non-invasive technology (MRI, fMRI, EEG, etc.) for at least two decades reveals the way in which brains undergo physical changes from bullying behaviors (<https://www.psychologytoday.com/ca/blog/the-bullied-brain>). These invisible injuries - invisible to the naked eye - parallel the invisible injury that occurs from smoking and

second-hand smoke. In the relatively recent past, laws were written to protect workers from smoke because non-invasive technology (X-ray) revealed the damage that could occur to the body, especially the lungs, from smoking and second-hand smoke. These laws were designed to protect the health and well-being of individuals in the workplace and even in areas outside of the workplace. We have comparable research on the invisible injury done to brains from bullying and from witnessing or being a bystander to bullying (like second-hand smoke). It's toxic. It does damage. The damage can be measured by medical technology and assessed by medical experts. The health of the targeted, the perpetrator, and the bystander can all be significantly harmed. It is time for laws to protect the brains of workers in the workplace.

- j. **Bystander research shows they are also adversely impacted.** Bystanders suffer from a reduction in their sense of well-being, which can undermine their physical health (*Workplace bullying is more harmful than we realized*). Bystanders experience depression (Emdad et al., 2013), sleeping problems, headaches, strain, fatigue, and lack of energy (Vartia, 2001), mirroring some of the same issues suffered by targeted employees. In fact, they quit at almost the same rate as targeted employees (Rayner, 1997). "Researchers in the U.K. found that more than one-third of witnesses wanted to intervene to help victims but were afraid to do so" (Sutton, 2007). Even HR representatives are not protected against retaliation if they side with a bullied employee because workplace bullying is not illegal in the U.S.. Many employees leave the organization, changing the face of the remaining workforce (Rayner, 1997). Fear has a commanding influence over employees' interpersonal interactions and undermines healthy cooperation (Deutsch, 1973) as well as employee problem-solving and performance (Boss, 1978; Zand, 1972).
9. **Institutional and societal costs affiliated with bullying and the institutional complicity that accompanies it are exorbitant.** The institutional costs of tolerating bullies far outweigh the benefits, even when the bully is a superstar (Housman and Minor, 2015). Researcher Christine Porath said that "time wasted at work or spent searching for another job could cost companies up to \$300 billion a year (more than the total net profit of the Fortune 500 companies)" (2016). Some of the business costs associated with workplace misconduct include productivity, absenteeism, rehiring costs, and legal costs (Meidav & Vault Platform, n.d.) as well as retrospective costs to its image, reputation, and credibility (Segal, 2022). The associated societal costs of TANF and SNAP and the healthcare systems fall on unwitting taxpayers, as our government and hospitals are left to deal with sick, traumatized, unemployed, and uninsured citizens. "...the United States experiences about fifty-nine thousand excess deaths and about \$63 billion in incremental costs annually compared to what would be predicted given its per capita income level. Considering the total toll previously estimated (of about 120,000 excess deaths and \$180 billion in costs), our analyses indicate that about half of the deaths and about a third of the incremental costs from workplace conditions appear to be potentially preventable if the United States were more similar to other advanced industrialized economies," according to Stanford professor Jeffrey Pfeffer in this book *Dying For A Paycheck* (2018).
10. **Institutional complicity contributes to fear of violence.** Employer inaction to address psychologically abusive behavior in the workplace significantly contributes to and exacerbates the prevalence of workplace violence. Workplace mobbing expert Kenneth Westhues notes that both the mobbers' fear of violence from the targeted employee and the targeted employees' fear of violence from the mobbers exists when mobbing occurs, making the work environment both toxic and unsafe (Checklist of mobbing indicators).

11. **Toxic work culture tops the list of factors that contribute to psychologically unsafe work environments as shown by record attrition rates (employees lost over a period of time who are not replaced).** “Between April and September 2021, more than 24 million American employees left their jobs, an all-time record” (*Featured JLT searchable databases*). A 2022 MIT Sloan study found that “...corporate culture is a much more reliable predictor of industry-adjusted attrition than how employees assess their compensation. A toxic corporate culture... is 10.4 times more powerful than compensation in predicting a company’s attrition rate compared with its industry” (Donald Sull, 2022). We lose more workers each year — at least 4,000 — to preventable occupational injury, including psychological injury (Published by Erin Duffin & 30, 2022), than we did on 9/11 — 2,977 (*Casualties of the September 11 attacks*, 2022). After 9/11, our government instituted expensive and comprehensive homeland security regulations to prevent another dramatic loss of life. Yet we have a gaping hole in our workplace safety policy.
12. **When countries have laws against bullying and acknowledge psychological safety, incidences of workplace bullying decrease, improving the safety of the work environment.** Countries with workplace bullying legislation experience 0.6 percent (Bulgaria) to 9.5 percent (France) rates of workplace bullying (Hershcovis et al., 2015). The U.S. is the only western industrialized nation without anti-bullying legislation that addresses the relevance of psychological safety in the work environment despite decades of research (with the exception of the U.S. territory of Puerto Rico). More extensive research studies have come from other countries because they have complete data at the national level 1) because they recognized psychological safety as a component; 2) their single payer universal healthcare systems provide comprehensive data on health outcomes that we lack in the U.S.. In fact, workplace psychological safety is the only component of worker total health unaddressed in U.S. law according to National Institute for Occupational Safety & Health (NIOSH) in their April 2016 National Agenda to Advance Total Worker Health® Research, Practice, Policy, and Capacity (*A national agenda to advance total worker health research, practice...*), yet all the parts of the system influence each other (for example, stress leads to substance abuse, which can increase onsite injuries). We do not have effective employee health programs in the U.S. workplace because we leave out a major piece of the puzzle and do not factor in psychological safety.
13. **The psychosocial hazards of workplace bullying, and the institutional complicity that accompanies it, demonstrate the institution’s lack of commitment to employee safety and occupational safety, and they are not isolated problems but rather practices embedded and systemic in the totality of unaddressed and overlooked issues within the American workplace such as sexism, racism, ageism, homophobia/transphobia, classism, etc., despite anti-discrimination laws.** The courts’ shift in the 1990s from viewing the discriminatory *impact* on an aggrieved party to having to prove the *intent* of the perpetrator has rendered anti-discrimination laws ineffective at dismantling social hierarchies, leaving both those in protected groups and outside of them unprotected from workplace psychological abuse according to researchers Ellen Berrey, Robert L. Nelson, and Laura Beth Nielsen in their landmark study on the long-term effectiveness of anti-discrimination law in *Rights on Trial*. While hostile work environments are prohibited under such federal anti-discrimination statutes as Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990, victims do not have a legal claim if they cannot tie the abuse to discriminatory intent. A hostile work environment not associated with an employee’s membership in a protected group is not actionable under these laws. “The courts have moved

in the direction of treating employment discrimination as a set of individual cases of intentional misbehavior, while the social science literature on discrimination increasingly points to a widespread, systemic character of bias in the organization of workplaces” (Berrey et al., 2017). Employers often choose to view psychological abuse complaints through a loophole in anti-discrimination law, an inadequate lens, to remove the reporting employee, perceived as a threat of liability.

14. **Data shows lack of commitment to psychological safety in the work environment.** Alarming, “nearly 60 percent of higher education professionals have been impacted by bullying during their careers” (Hollis, 2023). The 2016 EEOC Select Task Force for the Study of Workplace Harassment found that “[...]in a survey regarding racial and ethnic harassment,] 70 percent of the respondents reported experiencing some form of verbal harassment and 45 percent reported experiencing exclusionary behaviors” and “35 percent of LGB-identified respondents who reported being ‘open’ at work reported having been harassed in the workplace” (*Select task force on the study of harassment in the Workplace*). Psychological harassment has yet to be made illegal. Discriminatory harassment and sexual harassment are the only two illegal forms of harassment under laws in the U.S..
15. **Training and policies alone have failed to improve the psychological safety of the work environment.** “[There is a] trend in which courts have excused employers from liability if employers have adopted policies..., even when the policy may not actually be effective” (Berrey et al., 2017). “Courts increasingly defer to defenses based on employers’ assertions that they have compliance structures in place, without probing as to whether these systems amount to anything more than symbolic compliance.” A requirement for training on workplace bullying in California and a model policy for workplace bullying in Tennessee haven’t decreased the behavior or shown any improvement in psychological safety at work because employers do not enforce or abide by their own policies.
16. **Workers compensation insurance plans and common law tort provisions do not provide adequate relief to employees harmed by toxic work environments.** Employers, who pay the premiums, are the owners of workers compensation insurance plans and exercise control over them. In toxic work environments, employers challenge and/or deny workers’ compensation claims made by physically and psychologically injured workers, keeping premiums low and the acknowledgement of psychological injury below detection out of fear of liability. Intentional Infliction of Emotional Distress law requires proof of intent, an extremely high threshold and severity that requires harm to have occurred. Negligent Infliction of Emotional Distress law requires emotional distress rather than harm to the work environment, regressive compared to sexual harassment law and subject to an employer going through an employee’s entire medical history. They have been insufficient to change work cultures. A sole option of a direct lawsuit is unaffordable to low-wage workers. Even with illegal discrimination, victims must finance their own legal response, while employers use their vast resources which can include tuition fees, tax dollars, and insurance money to build legal responses into their budgets.
17. **Holding employers accountable for unsafe work environments has proven effective and is the only way U.S. work environments have ever improved the safety of employees and the work environment. Employers control the work environment. Laws control the employer. Supreme Court decisions in sexual harassment law determine that damage to the work environment is sufficient for a legal claim.** The Supreme Court has already decided that a hostile work environment is actionable with sexual harassment (*Meritor Savings Bank v. Vinson*, 477 US 57, 1986): “A claim of ‘hostile work environment’ sexual harassment is a

form of sex discrimination that is actionable under Title VII. Pp. 477 U.S. 63-69.” In addition, psychological injury need not be proven in sexual harassment cases (*Harris v. Forklift Systems*, 510 US 17, 1993): “To be actionable as ‘abusive work environment’ harassment, conduct need not ‘seriously affect [an employee’s] psychological well-being’ or lead the plaintiff to ‘suffer injury.’”

Toxic, psychologically unsafe work environments violate both human rights and employee rights. They need to be actionable to prevent and dissuade such behavior before psychological injury and/or physical health harm occur or further exacerbate incurred psychological injury and/or health harm.

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