

SPECIFIC CHARACTERISTICS DISTINGUISHING WINNING FROM LOSING: LITIGATED WORKPLACE BULLYING CASES

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ABSTRACT

The traditional thinking in employee relations is that victims of workplace bullying are not legally protected from consequences in the workplace. Individuals are bullied and have no specific, legal recourse. However, 522 cases dating from 2006 to 2008 were analyzed using the terms “bully” or “bullying” and “employee.” The source of the cases was the BNA database of litigated cases. The cases were examined to identify characteristics leading to case outcomes for victims of workplace bullying. The following were found to be statistically significant by a chi-square analysis: the National Labor Relations Act, the False Claims Act, state laws, and unfair pay. The results indicate that victims were better protected by state law than by federal discrimination laws.

INTRODUCTION

Workplace bullying is an international concern that has garnered increased attention in organizational research. Studies of this form of behavior in the workplace have been conducted in Scandinavian countries as well as in the United Kingdom and the United States. The findings have indicated that workplace bullying behavior can have a negative effect not only on the direct victims of the

bullying behavior but also on witnesses to the bullying behavior (Crawford, 2001; Vartia, 2001) and on the organization as a whole (Heames & Harvey, 2006; Vega & Comer, 2005; Yamada, 2000). The negative effects of workplace bullying include, but are not limited to, a variety of psychological (Niedhammer, David, & Degioanni, 2007), physiological (Kivimaki et al., 2005; Keashly & Neuman, 2004), interpersonal, and familial consequences (Jennifer, Cowie, & Ananiadou, 2003; Rayner, Hoel, & Cooper, 2002; Tracy, Lutgen-Sandvik, & Alberts, 2006), and as social isolation and financial problems (Von Bergen, Zavaletta, & Soper, 2006).

Studies of workplace bullying have also reported a wide variety of prevalence rates. In fact, the research on the prevalence of workplace bullying is well established (Einarsen, Hoel, Zapf, & Cooper, 2003; Rayner & Keashly, 2005). In one investigation, the 12-month prevalence rate was 41%, which equates to approximately 47 million U.S. workers (Schat, Frone, & Kelloway, 2006). Other studies have indicated percentages ranging from anywhere between 37% and 90% (Glendinning, 2001; Vega & Comer, 2005; Workplace Bullying Institute, 2007). This range of variance has been attributed to the lack of a universally accepted definition of workplace bullying (Schat et al., 2006) and concerns about the methods used for measuring workplace bullying (Hoel, Rayner, & Cooper, 1999; Nielsen, Notelaers, & Einarsen, 2010; Zapf et al., 2010).

In spite of the consequences of workplace bullying behavior mentioned above and the prevalence of such behavior, there is no existing federal or state statute that provides victims with recourse specifically against bullying. This lack of legal protection has resulted in a generally accepted perception that victims of workplace bullying are powerless. Yet a variety of types of workplace bullying involving termination, suspension, discipline, retaliation, and discrimination due to the demographic characteristics of the victim have appeared in legal cases involving workplace bullying (Martin, Lopez, & LaVan, 2009), even in the absence of a federal or state statute. In fact, recent research has indicated that individuals have had above-zero win rates in bullying cases (Martin et al., 2009). From 1979 through 2006, federal plaintiffs won 15% of job discrimination cases. By comparison, in all other civil cases, the win rate was 51% (Clermont & Schwab, 2009).

Therefore, the purpose of the present study is to explore why U.S. victims of workplace bullying sometimes prevail, despite the lack of federal and state laws that explicitly prohibit workplace bullying. This is in spite of the lack of a universal consensus on the definition of workplace bullying. This study further sets out to examine judgments that may rule in favor of a plaintiff in a situation, such as workplace bullying, where there is in fact no explicit law in place. Additionally, this article aims to determine the specific characteristics that distinguish winning cases from losing cases. This will help individual plaintiffs determine when they might find recourse in the face of bullying behaviors in the workplace, even though there is no protection by a specific workplace bullying law.

DEFINITION OF WORKPLACE BULLYING

There are several varying definitions of workplace bullying in the extant literature. In fact, the discussion surrounding this area of workplace bullying has often been characterized as “never ending debates over definitions” (Crawshaw, 2009: 264). This lack of a consensus definition has been widely discussed in the literature (Fox & Stalworth, 2009), and it is beyond the scope of this article to attempt to come to a decision on the varying definitions of workplace bullying. In spite of the lack of a consensus definition, the cornerstones of existing definitions of workplace bullying consistently include a focus on the frequency and duration of the behavior (Einarsen, Hoel, & Notelaers, 2009). Therefore, the operational definition of workplace bullying used in this study is based upon the following definition posited by Einarsen, Hoel, Zapf, and Cooper (2003: 6):

Bullying at work is about repeated actions and practices that are directed against one or more workers, that are unwanted by the victim, that may be carried out deliberately or unconsciously, but clearly cause humiliation, offence and distress, and that may interfere with job performance and/or cause an unpleasant working environment.

LEGAL CONTEXT

In spite of the lack of a universally agreed upon definition of workplace bullying, the definitional concerns are quite important because legal proceedings rely upon objective conceptualizations and descriptions (Lengick-Hall, 1995; Rodriguez-Carballeira et al., 2010). The term “bullying” has taken on different connotations, where “commonly accepted meanings of bullying have tended to accentuate an assemblage of individual, medical and therapeutic, managerial and particular legal remedies” (McCarthy, 2003: 235). As can be seen, the legal aspects of workplace bullying have been quite relevant to the definitional debate. Although the precise conceptualization of bullying continues to be debated among academics and the courts, it has been asserted that “bullying gives sharper definitions to forms of violence that mostly fall outside present legal definitions of assault, sexual harassment, discrimination, health and safety, equal opportunities, and human rights” (McCarthy, 2003: 236). From this, it is evident that such a form of violence should fall under the auspices of the legal system.

The legal context of workplace bullying is rather complex, even given the absence of a federal statute addressing workplace bullying. It has been empirically demonstrated that legal cases involving workplace bullying have been filed using arguments related to the U.S. Constitution, to federal statutes including but not limited to various equal employment opportunity (EEO) laws, and to state laws (Martin et al., 2009). Moreover, legal cases have been filed using arguments related to a variety of tort actions, also including but not limited to the intentional

infliction of emotional distress (IIED), defamation, privacy, and breach of contract (Martin et al., 2009).

Legal Aspects of Workplace Bullying: A Review of the Literature

The development of workplace bullying as a legitimate legal construct under which individuals can file a cause of action has been described as similar to the development of the legal construct of sexual harassment 10-15 years ago (Fox & Stalworth, 2009; Lindemann & Kadue, 1999). It was found that the ratio of workplace bullying to illegal harassment is 4:1 (Workplace Bullying Institute, 2007). Moreover, workplace bullying compared to illegal harassment results in greater harm as measured by anxiety, anger, and hostility (Richman, Rospenda, & Nawyn, 1999).

If the United States or any of the 50 states were to adopt a legislative response to workplace bullying in the form of a legal remedy, the question would arise as to whether a new law should be enacted or an existing law should be used in some way. For those cases involving one of the protected categories as defined by the Civil Rights Act of 1964 (in Title VII), then an existing statute would be used. For those cases involving health and safety, the Occupational Safety and Health Act of 1970 (OSHA) under the general duty clause (OSHA § 5 [a] [1]) would be used.

To date, the legal aspects of workplace bullying have centered on status-conscious bullying and status-blind bullying (Fox & Stalworth, 2009; Yamada, 2004). Status-conscious bullying involves those claims in which the individual links the workplace bullying to a federal or state statute like Title VII of the Civil Rights Act of 1964. Yamada (2007) asserts that Intentional Infliction of Emotional Distress (IIED) claims are more likely to go in favor of the plaintiff if coupled with a claim of severe discriminatory harassment. In contrast, status-blind bullying involves those claims in which there is no existing federal or state statute with which to link the cause of action. This form of workplace bullying is not considered a valid cause of action across the United States, since there are no federal or state laws in the United States that address workplace bullying.

In the meantime, the Healthy Workplace Bill (HWB), which is tracked by the Workplace Bullying Institute, has been introduced in 16 state legislatures. Martucci and Sinatra (2009: 82) have described an update on the HWB at the federal level and state level indicating that “employers must be mindful of possible upcoming obligations to provide a bully-free workplace and what that entails.”

When Judgments Side with the Plaintiff in the Absence of Law

The question arises as to what egregious conditions would have to exist for a judge to find in favor of an individual who has been bullied, if no specific

protective legislation against bullying exists. Situations in which there has been retaliation, violence, or interference with union organization are likely to result in rulings in favor of the individual who has been bullied in the workplace.

A recent Supreme Court case, *Gomez-Perez v. Postmaster General* (2008), is illustrative of retaliation. Gomez-Perez, a federal Postal Service employee, filed an age discrimination complaint under the Age Discrimination in Employment Act (ADEA) and was subsequently subjected to retaliation and bullying in the form of groundless complaints against her, false accusations, and reduction of her work hours. The Court of Appeals held that discrimination in the federal sector based on age did not cover retaliation. However, the Supreme Court disagreed. While the verdict was not directly in favor of the plaintiff, her case was remanded back to the Court of Appeals for further consideration.

Violence and threats of violence were an integral part of the lawsuit in *Scarborough v. Board of Trustees Florida A&M University* (2007). This Title VII case involved a female supervisor charged with sexually harassing a male subordinate. The female supervisor subsequently engaged in violent behavior directed at the subordinate when he refused her advances. The violence consisted of slashing the employee's car tires, spitting in his face, using profanity, and threatening him with violence. The victim had his promotion candidacy withdrawn and subsequently was discharged. Precipitating his discharge was the fact that he was considered unprofessional when he called the (campus) police, which disrupted the workplace. The Appeals Court vacated the District Court's decision, and the case was remanded for consideration as to whether the employee's discharge was pretext for the supervisor's retaliating behavior.

Additionally, interfering with union organizing led to the bullying of a nurse organizer in *St. Margaret Mercy Healthcare Centers v. National Labor Relations Board* (2008). While the hospital had a no-solicitation rule with respect to the location in question, it was enforced against the nurse organizer only in conjunction with her attempting to organize the nurses in the hospital. The union organizing nurse was disciplined for her solicitation, even though it was not proven that her activities created a disturbance in the patient area of the hospital. Additionally, in the past a wide variety of other solicitations had been allowed to take place. It could be anticipated that this discipline would have a chilling effect on future nurse organizing. Without union protection, other arbitrary behaviors on the part of management toward nurses could be expected. This case was brought before the National Labor Relations Board (NLRB), which found that the no-solicitation rule was related to union organizing and was applied discriminatorily. In fact, it was applied only to employees who solicited in favor of unions, in an attempt to dissuade them from union organizing. The Court ruled in favor of the Board (representing an individual plaintiff), indicating that there was sufficient evidence to conclude that by disciplining the nurse organizer, the hospital was interfering with union organizing.

Legal Theory

Previous research by Martin et al. (2009) found that victims of workplace bullying prevailed in 15.6% (82 out of 522) of the cases they examined. The most frequently identified reasons for filing a cause of action were retaliation, harassment, discrimination, civil rights, constitutional amendments, state laws, and unlawful termination. The plaintiff success rate, although low, is actually an above-average rate, because other studies have found even lower success rates for plaintiffs suing under similar laws for reasons unrelated to bullying. The present study therefore seeks to determine the relationship between case characteristics and case outcomes for victims of workplace bullying. More specifically, we propose the following relationships:

Hypotheses

H₁: There is a relationship between the legal context, in terms of federal law, and legal outcomes for victims of workplace bullying.

H₂: There is a relationship between the legal context, in terms of state law, and legal outcomes for victims of workplace bullying.

H₃: There is a relationship between possible tort action and legal outcomes for victims of workplace bullying.

H₄: There is a relationship between managerial response and legal outcomes for victims of workplace bullying.

H₅: There is a relationship between types of bullying behavior and legal outcomes for victims of workplace bullying.

H₆: There is a relationship between victim response and legal outcomes for victims of workplace bullying.

RESEARCH METHODS

Development of the Sample

The data for this research come from the Bureau of National Affairs (BNA), Inc. database of litigated cases. All the usable cases for the years 2006 to 2008 were retrieved using the search strategy (bully OR bullying AND employee). The timeframe of three years was selected in order to provide a relatively recent perspective on litigation relating to bullying, that is, to find out what is going on currently in the legal arena. This search resulted in 522 usable cases, which comprise the data.

Content analysis was done on the cases. If a particular characteristic was present, it was coded as 1 and if absent it was coded as 0. Types of characteristics, as suggested by the literature, include legal context, type of bullying behavior,

and case outcomes. Legal context included both legislation and possible tort actions. Legislation included constitutional amendments, federal EEO laws, federal laws other than EEO, and state laws. Possible tort action included intentional infliction of emotional distress, defamation, privacy, and breach of contract. Types of bullying behavior included termination, discipline, suspension, and discrimination due to the demographic characteristics of the victim. Whether there was retaliation was also coded.

RESULTS

Frequencies

The frequencies of the case characteristics are presented in Table 1. Both the count and the percentage of the total cases and the cases in which the individual prevailed in court are shown. Portrayed in column 3 is the win rate for the plaintiffs. For example, of the 11 cases in the sample, which involved National Labor Relations Act, the plaintiffs prevailed in seven for a win rate of 63.64%. The cases are sorted in descending order of percentage in which the individual prevailed. Within the legal context, discrimination as a case characteristic existed in approximately half of the cases; however, it was expected that this would be higher, as there is very specific legislation protecting discrimination on a variety of bases. These include Title VII, the Americans with Disabilities Act (ADA), and other civil rights legislation. Constitutional amendments, specifically the First, Fourth, and Fourteenth amendments, accounted for 22% of all the cases, but for 16% of the cases in which the individual prevailed. Unequal pay in the context of bullying occurred in 2% of all the cases, but in 5% of the cases in which the individual prevailed. In the legal context of state laws, filing under state laws accounted for 14% of the cases, but for 23% of the cases in which the individual prevailed. Managerial responses to bullying in the form of retaliation existed in approximately 66% of the cases. Bullying behavior such as harassment existed in only 17% of the total cases, while it existed in almost 50% of the cases in which the individual prevailed. Additionally, a charge of an unfair labor practice occurred in 2% of all cases, but in 4.8% of the cases in which the individual prevailed. Not surprisingly, however, claims of unfair treatment by the victim existed in 95% of the total cases and in 99% of the cases in which the individual prevailed.

A chi-square test was performed to determine the relationship between case characteristics and case outcomes. This test is a non-parametric test of statistical significance for bivariate tabular analysis. The chi-square value was found to be quite high at a level of significance of .05 for four of the case characteristics: the National Labor Relations Act; the False Claims Act; state laws; and unfair pay. In short, four of the 32 case characteristics were found to be statistically significant. Therefore, results indicate at least partial support for two of our six hypotheses. Specifically, results indicate partial support for our first hypothesis that there is a relationship between the legal context, in terms of federal law, and

Table 1. Frequencies of Case Characteristics of Litigated Bullying Cases^a

Predictor variable	Total cases (<i>n</i> = 522) Total number of cases	Cases (<i>n</i> = 83) Number in which individual prevailed	Win rate
A. Legal-Federal			
1. National Labor Relations Act*	11	7	63.64%
2. False Claims Act*	6	3	50.00%
3. ERISA	4	2	50.00%
4. Fair Credit Act	2	1	50.00%
5. Workers Comp.	5	2	40.00%
6. LMRA	6	2	33.33%
7. FLSA or Equal Pay Act	22	6	27.27%
8. FMLA	30	6	20.00%
9. Civil rights in general	253	37	14.62%
10. Discrimination, Title VII, ADA, Hostile Environment	272	39	14.34%
11. Constitutional amendments	114	13	11.40%
12. Whistleblowers Act	20	2	10.00%
13. ADEA	49	4	8.16%
14. OSHA	1	0	0.00%
B. Legal-State			
15. State laws*	72	19	26.39%
C. Tort Action			
16. Intentional infliction of emotional distress	13	3	23.08%
17. Intimidation	8	1	12.50%
18. Tort action—General	11	1	9.09%
19. Breach of contract	8	0	0.00%
20. Defamation	7	0	0.00%
21. Tort action—Privacy	8	0	0.00%
D. Managerial			
RESPONSE			
22. Unfair pay*	9	4	44.44%
23. Unlawful termination	62	13	20.97%
24. Retaliation	345	51	14.78%
25. Discipline, suspension	30	4	13.33%
26. Banned access	1	0	0.00%
27. Failure to reinstate	1	0	0.00%
E. Bullying Behavior			
28. Unfair labor practice	8	4	50.00%
29. Harassment	88	41	46.59%
30. Interference	11	4	36.36%
31. Exposure to hazard	1	0	0.00%
F. Victim Response			
32. Claim of unfair treatment	497	82	16.50%

^aTable 1 is sorted in descending order of percentage of cases in which the individual prevailed.

*Indicates significant chi-square analysis, $p < .01$.

**Indicates significant chi-square analysis, $p < .05$.

legal outcomes for victims of workplace bullying. Results also indicate support for our second hypothesis that there is a relationship between the legal context, in terms of state law, and legal outcomes for victims of workplace bullying.

Illustrative Cases

Individuals prevail based on a variety of laws, as illustrated below.

National Labor Relations Act: Sometimes union members have protection under the National Labor Relations Act. Such was the case in *Aleman v. Chugach Support Services, Inc.* (2007). In this case, the unionized employees had protection from being bullied under their collective bargaining agreement, but the finance manager filed a Title VII, Section 1981, claim for retaliation due to his having been fired. Chugach Support Services (CSS) employed Jose Aleman and Cesar Basilis as carpenters, and James Blasic was employed as the finance manager. Both Jose Aleman and Cesar Basilis (of Hispanic origin) alleged that they were the victims of a hostile work environment based upon their national origin and race. James Blasic witnessed the hostile work environment to which Aleman and Basilis were exposed at Chugach Support Services. Blasic, a supervisory non-Hispanic employee, not covered by the collective bargaining agreement, was bullied and, in fact, the company terminated him in retaliation for the fact that he reported racial discrimination in the company's operations. Blasic states that he was fired after reporting that Hispanic employees had been dismissed and that derogatory comments had been made about non-Caucasians at CSS's work site. The court ruled that James Blasic, a witness to racial discrimination, had the legal right under Section 1981 of Title VII to file a retaliation claim, given the fact that he was terminated upon making his report. The court also held that the claims of Jose Aleman and Cesar Basilis were properly dismissed by the lower court because the two plaintiffs did not exhaust the arbitration processes as stipulated in the collective bargaining agreement. The fact that the unionized employees had the collective bargaining right to protect them from discrimination and Blasic did not, further exacerbated the fact that Blasic was bullied. His firing could be expected to lead to a further chilling effect on reporting of employees being bullied for their race/national origin in the future.

False Claims Act: Sometimes individuals are bullied for whistle blowing. In *Dilback v. General Electric Company* (2008), the court ruled in part in favor of Harold Dilback to compel General Electric Company to prepare a document of a very narrow and specific nature related to Dilback's claim. Harold Dilback, an employee of General Electric, filed a claim under the False Claims Act and subsequent to that filing became the victim of threatening and harassing behavior.

State Laws: Employees sometimes have protection under state civil rights legislation. In *McGlone v. Allegheny Valley School* (2008), the court held that McGlone established a prima facie case of discriminatory retaliation under both Title VII and the Pennsylvania Human Relations Act (PHRA). McGlone was

employed by the Allegheny Valley School as a house manager aide reporting to the house manager, Flora Figuerora. McGlone reports that she was the victim of repeated actions involving inappropriate comments of a sexual nature. These comments were unwanted by McGlone and resulted in humiliation and embarrassment for her. These repeated comments caused McGlone distress and resulted in physical symptoms to the point where the victim felt sick to her stomach, worried about going to work, and suffered occasional headaches. Overall, these factors created an unpleasant working environment for the victim and indicate occurrences of bullying behavior.

Unfair Pay: Individuals are sometimes bullied because they file complaints about unfair pay practices. In *Beck v. City of Cleveland, Ohio* (2004), the court ruled that the City of Cleveland violated Section 207(o)(5) of the Fair Labor Standards Act, which refers to undue disruption regarding the granting of accumulated compensatory leave. The court held that the City of Cleveland gave only financial reasons for not granting accumulated compensatory leave. The case arose from a complaint filed by Robert Beck, president of the Cleveland Police Patrolmen's Association, as well as past and present police officers, asserting that the City of Cleveland denied accrued compensatory leave. There was a pattern of denials of this nature. In this case, Robert Beck, president of the police union, sued his employer, the City of Cleveland, over a pattern of capricious and whimsical decisions made by police officer supervisors about granting compensatory time. In accordance with the Fair Labor Standards Act (FLSA), compensatory time is granted "in lieu of overtime compensation." Robert Beck asserted that employees, police officers, were regularly coerced to accept more compensatory time in lieu of overtime pay. Yet, in the final analysis, they were often denied the right to use the accrued compensatory time.

DISCUSSION

Implications

With no federal or state law dealing specifically with workplace bullying, victims of workplace bullying have still managed to file cause of action for discrimination, various civil rights violations, retaliation, harassment, and unfair treatment. Of particular note is that individuals prevailed in the legal context, with various federal and state laws providing some protection and recourse for victims of workplace bullying. The legal bases used by individuals who prevailed include the National Labor Relations Act, the False Claims Act, state laws, and the managerial response of unfair pay. Workplace bullying is a workplace injury seeking a statutorily based legal remedy. In the absence of such a legal remedy, this study adds to the literature by identifying several case characteristics empirically associated with an increased probability of individuals' prevailing in lawsuits involving workplace bullying as evidenced by win rates equal to or greater than 50%. These case characteristics include the following: the National

Labor Relations Act (63.64%); the False Claims Act (50%); the Employee Retirement Income Security Act (ERISA) (50%); the Fair Credit Act (50%), and unfair labor practice (50%). The type of bullying behavior experienced by the victim generally does not matter in terms of predicting case outcomes, except in cases of unfair labor practice.

Our study found that targets of workplace bullying who proved that they were bullied for being members of a protected class under Title VII prevailed in 14.34% of the discrimination cases, 8.16% of the ADEA cases, and 20% of the Family and Medical Leave Act (FMLA) cases. When compared to previous results reported by Clermont and Schwab (2009), the plaintiff win rates in our study were higher for Title VII (14.34% vs. 10.88%), slightly higher for FMLA (20% vs. 19.55%), and lower for ADEA (8.16% vs. 11.67%).

Recommendations for Individual Victims of Workplace Bullying and Their Attorneys

Victims of workplace bullying can still have their “day in court” if they decide not to engage in alternative dispute resolution (ADR) approaches to resolution such as conciliation, mediation, and arbitration. Victims and their attorneys will first have to determine whether the workplace bullying was status blind or not. If the victim is protected under Title VII, then the bullying was status conscious, and the victim has a reasonable chance of prevailing. Based upon this study, another status characteristic to be considered is whether the victim is a member of a union. This also increases the chances of the victim’s prevailing in cases involving workplace bullying.

There are several noteworthy case characteristics that victims and their attorneys should focus upon when filing their cause of action and litigating the case. The case characteristics that are associated with a win rate of 50% or greater include the involvement of the National Labor Relations Act, ERISA, the Fair Credit Act, and the False Claims Act. Table 1, which shows the plaintiff win rates for all the case characteristics that were identified, could be used as a checklist for victims and their attorneys when preparing a case for litigation; they may focus not only on the number of case characteristics involved, but on those characteristics with higher win rates. For instance, victims and attorneys frequently have to decide whether to litigate in a state court or in a federal court. In this study, empirical findings indicate that the win rate is 26.39% for state laws, which is a higher win rate than the plaintiff employment discrimination (Title VII) win rates (10.88%) in federal courts (Clermont & Schwab, 2009).

Limitations of the Study and the Need for Future Research

The analysis of litigated cases does not allow us to discern the toll on the victim in terms of physiological and psychological costs. It is well documented

that victims of bullies experience stress, leading to increased health insurance and workers compensation claims. Moreover, like the survivors of layoffs, non-victims may empathize with those being bullied and may also suffer physiological and psychological costs. Therefore, employees, whether victims or not, may be less productive and may be involved in more accidents in the workplace.

Additionally, the way in which unions protect their members is of interest in that while, proportionately, there were very few cases in the sample in which a union was involved, the individual prevailed in a high proportion of them. That there were very few such cases may in fact be indicative of the fact that unions are successfully protecting their members. In addition, the fact that individuals tended to prevail in those litigated cases in which unions were involved may require further analysis.

One very important conclusion of this study is that state laws, though they are not antibullying laws, were found to be more protective of the individual than were federal laws. This is the case even though many of the individuals being bullied would be protected under federal antidiscrimination laws. An ideal future scenario might be that more states will pass legislation protecting individuals from being bullied in the workplace.

Since this is a highly fluid workplace issue, it is desirable that analysis should continue, involving the cases that have been litigated since this sample was drawn. Additionally, rather than an examination being made of a sample representative of the total population for the years in question, perhaps several specific case studies should be analyzed in depth. However, researchers should certainly use random sampling as a methodological technique. Additionally, while the cases in this study were all litigated cases, it would add additional insight if we could examine the ways in which bullying is handled in the arbitration process.

CONCLUSION

One critical finding of this study is that it is not the features of the individual cases but the laws under which the cases were filed that predict the outcomes of individual cases. In essence, while there is no federal law protecting individuals from bullying, the laws examined here in fact provided protection against workplace bullying. Individuals and attorneys have known for some time that if the individual victim of workplace bullying is a member of a protected group under Title VII, then the individual has a reasonable chance of prevailing in court. This study adds to the list of case characteristics that increase the win rates for individuals seeking a legal remedy in the court system at both the federal and the state level.

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