



## On The Horizon: States Mull “Bad Boss Laws”

By Wendy Davis  
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Bosses who scream at staff, throw tantrums, hurl insults and otherwise attempt to bully their subordinates aren't just bad for morale. They also could soon be legal liabilities, thanks to new bad boss laws now pending across the country.

In the last year, a national movement to rein in bosses who bully, insult, or otherwise denigrate employees took hold, said employment law attorney Richard H. Block. To date, laws are pending in 20 states that could give employees subject to bullying bosses the right to sue their employers. If these statutes are enacted, a torrent of lawsuits will inevitably follow, Block said.

But Human Resource professionals can take steps to stave off at least some of those lawsuits. Block, part of Dreier LLP's The Employment Law Group of Block Bernstein & Lagasse, outlined the pending laws and shared some tips on how to minimize liability.

### **Taking Aim at Workplace Bullies**

Today, workers generally can't bring lawsuits simply because a boss or co-worker has harassed them, unless the treatment was based on factors like race, age, sex or religion.

For that reason, many companies tend to look the other way at bullying behavior -- provided the culprit treats everyone equally badly. “We tolerated these guys because, well, they were great producers, they were the owners of our companies, and they were equal opportunity abusers,” Block said, adding that companies felt secure that as long as the bosses weren't discriminating, their behavior wasn't grounds for a lawsuit.

But a wave of new legislation is pending that explicitly gives employees the right to sue bullying bosses simply for being abusive. “This is revolutionary,” Block said. “It's a phenomenal trend.”

“Now there are laws being passed that are going to make it a separate lawsuit because somebody's been yelling at you,” said Block. “All I have to do is show that this guy's on my case day after day after day and, guess what, I have a lawsuit.”

The proposed laws vary by state, but Block said that they're broad enough that he and other employment lawyers will be kept busy for decades litigating the lawsuits that will ensue.

New Jersey, one of the first states to consider such legislation, is currently mulling the “Healthy Workplace Act.”

“We now have courts that are going to say, ‘Hey, is this a healthy workplace? Is this a place where I would like to work, or is it a place that's horrific?’”

“You're talking about something so nebulous that we're inviting millions of lawsuits,” he added.

If passed, the New Jersey law would allow employees to sue for \$25,000 for “abusive conduct,” defined as “the malicious conduct of an employer or employee in the workplace that a reasonable person would find hostile, offensive or unrelated to an employer’s legitimate business interest.”

Examples cited in the proposed statute include “repeated infliction of verbal abuse such as the use of derogatory remarks, insults, and epithets; verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating; or the gratuitous sabotage or undermining of a person’s work performance.”

That law, like others pending throughout the country, additionally states that employees can sue if bosses retaliate against them for reporting the abusive behavior. That provision is in itself a minefield for companies because abusive bosses are the ones most likely to strike back against complainers, Block said.

While the New Jersey law gives some leeway employers by stating that a single act won’t usually be grounds for a lawsuit, that’s little practical comfort because abusive bosses tend to repeat their behavior. “Either there’s a tendency to be a nasty supervisor or there’s not,” Block said.

A pending Connecticut statute also broadly defines an “abusive workplace” as “a workplace where an employee is subjected to abusive conduct that is so severe that it causes physical or psychological harm.”

Connecticut casts a wide net in its definition of employer, which includes any “person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, the state, any political subdivision of the state, any governmental agency or any other entity that employs persons.”

“I take that to include somebody who has a nanny somebody who has a housekeeper,” said Block. “They’re not kidding,” he added. “Whoever is sponsoring this legislation, they’re not kidding.”

That law would allow employees to sue for back pay, front pay, compensation for emotional distress, medical expenses, attorneys’ fees and punitive damages -- which often tend to be in the vicinity of 10 percent of a company’s annual revenue, said Block.

Of course, in addition to the potential financial liability, a trial can severely damage a company’s reputation. “Think of the publicity that’s going to be generated with abuse cases,” Block said. If a trial shows that a company is “a hellish place to work,” then few people will want to work there, he added.

Other states considering bad boss laws include New York, which recently authorized the Department of Labor to study the issue, Oregon and Hawaii.

### **Email Policies, Release and Arbitration Agreements**

Should these laws come to pass, there are steps companies can take to protect themselves.

The best way to prevent liability is to head lawsuits off at the pass by treating employees fairly, responding to employee complaints and implementing policies and procedures aimed at eliminating bullying.

The latter is particularly important should an employee sue. That's because, as with sexual harassment, if a company has a policy outlining what's not allowed, and also has procedures for complaints, the courts are likely to require employees avail themselves of those procedures before filing suit.

Here, it's important that companies tailor their policies to the situation, Block said. For instance, if employees speak Spanish, the company should provide written material outlining the policies and procedures in that language.

It's also important to refrain from putting negative comments in email, Block said. "You've got to tell your people, 'Never, ever, ever reprimand or be hostile to somebody over email,'" he said, adding that such messages serve as written proof of the writer's abusiveness. "If it sounds bad orally, when you see reprimands in writing, it's 20 times worse."

What's more, email increases the likelihood of hurt feelings and misunderstandings because people can't assess body language, tone of voice or other intangible factors that are key to communication.

Additionally, human resources professionals also should ask references whether particular applicants are abusive, to screen out such people before they're hired.

Another good way to avoid a lawsuit is to offer departing employees an incentive to sign a release stating they won't sue. "If you have a release, a contract that says, 'I'm not going to sue you,' that's enforceable, provided you give something for them," Block said.

He added that companies often can get such releases for a very small financial amount, such as one or two week's payment, or a few months of COBRA coverage. "It's not expensive, but it's worth gold to you."

Employers also can protect themselves by asking workers when they're hired to sign an agreement to take any disputes to arbitration rather than a jury. "What we preach to managers is that there is a dirty four-letter word in our business, and that is jury," Block said. "They don't have to explain their decisions and they are going to be sympathetic to the employee before you even make an opening argument."

Ultimately, however, much comes down to training supervisors to treat people with courtesy and respect. "You want to teach your managers habits so that people will come to work and be excited to work with that manager."

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