

Myths about the Dignity At Work Act (DAWA)

MYTH: Bullying is simply a childhood phenomenon that kids experience.

FACT: Bullying is something that impacts children and adults in all walks of life. In the workplace, tens of millions of American workers face workplace bullying on a regular basis. DAWA will help to prevent, detect, remedy, and eliminate that bullying.

MYTH: Workplace bullying will make targets tougher.

FACT: Workplace bullying has NO positive effects for targets, organizations, or society. The harm that targets suffer is severe and even includes PTSD, heart disease, workplace violence, and suicide.

MYTH: Targets are simply weak.

FACT: Targets come from all walks of life, from professional athletes to managers to service workers to teachers and professionals. Nobody is immune from being targeted by a workplace bully, and no target is immune to the effects of bullying. Further, targets are often the strongest and most productive workers. Some argue that assessing damages or actions based on whether behavior harms dignity would create a basis of action based on how “thin skinned” an employee may be implies that in the United States, unlike many countries around the world, we would be unable to recognize or protect a fundamental pillar of all human rights. This right to dignity is protected in international laws and even in Constitutions and International Charter Agreements in the EU and Canada. The assurance of dignity at work has not led to free speech violations in Puerto Rico, France, the UK, and Quebec. In fact, the assurance of dignity in the workplace has proven to be a critical component of protecting workers’ rights in general.

MYTH: Bullying is just a normal part of work.

FACT: Bullying is a violation of the most fundamental of human rights. It has no place and no value in the workplace.

MYTH: The U.S. system already addresses bullying in the workplace.

FACT: Unlike many countries across the globe, the U.S. does not have a law (statutory or common law) that addresses workplace bullying. While harassment based on limited statuses (race, color, national origin, gender, religion, age status over 40, or disability) is prohibited under U.S. EEO laws, there are numerous gaps in these laws, and nearly 3 in 4 instances of workplace bullying fall outside of these protections.

MYTH: Laws to address workplace bullying would create a civility code.

FACT: While there is nothing wrong with a civil workplace, DAWA would not create a civility code. Instead, DAWA protects the right to dignity. It does not assure civility.

MYTH: The definition of “workplace bullying” is too broad.

FACT: The DAWA states: “Workplace bullying shall be defined as the unwanted abuse of any source of power that has the effect of or intent to intimidate, control, or otherwise strip a target of his or her right to esteem, growth, dignity, voice, or other human right in the workplace.” This definition is built based on extensive study of both workplace harassment jurisprudence, time-tested international laws, and the experiences and stories of hundreds of targets of workplace bullying. The language of DAWA is no more overly broad or vague than language of Title VII, Meritor Savings Bank, Forklift, or other cases addressing unlawful harassment in the United States. (While the language is adopted from in-depth studies of US law and international laws, this study includes the study of NLRA standards for workplace rules. The language of DAWA falls well within the bounds of the pre-2018 standard (a tighter rule than the current standard) that the NLRA established in prohibiting overly, broad of vague rules.) DAWA also includes general harassment as a form of bullying, and this definition nearly mirrors that of the EEOC and SCOTUS definition of unlawful harassment: “Moral, Psychological, or General Harassment” - Unwelcome, objectionable conduct that is severe or pervasive enough to create an intimidating, hostile, or abusive environment.” (While this language that mirrors the SCOTUS definition of harassment provides workers some protections, it also leaves tremendous gaps that allow courts at both the trial and appellate levels to set ridiculous standards of what behaviors are severe and pervasive.) The language defining harassment under the EEO laws in the United States has led to most incidents of workplace harassment never being reported, and for those targets who do report, their most likely outcome is job loss. The language of DAWA is specially drafted to close the gaps created by judges and to assure that claims are brought forward and remedied.

While it is common under legal responsibilities for defendants to have to “take the plaintiff as they are,” even if they might be “thin-skinned,” by adopting “a reasonable person standard under the totality of the circumstance,” DAWA does

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not adopt the standard of taking the plaintiff as they are. While there is no reason that employers and bullies should not have to live with the target “as they are,” a typical legal standard, DAWA instead applies the reasonable person standard, the same standard as applied in US harassment jurisprudence.

MYTH: A law would violate free speech.

The language of DAWA is not overly broad to the point it would infringe on the rights to free speech or other speech in the workplace. In fact, it protects the right to speech for those who otherwise do not have the power or voice at work within a hierarchical and abusive power structure. Prior to the Meritor Savings Bank case, there was no standard of what speech is limited at work. However, the standard of speech or actions that create a hostile or intimidating environment is not much different than the language in DAWA. DAWA requires that there be “abuse of power” or misuse of power for behavior to be bullying based on the above language. DAWA also requires that the bullying be determined based on “the nature of the behavior,” “the totality of the circumstance,” and from the viewpoint of “a reasonable person under the totality of the circumstances.”

Silencing is often a part of bullying and harassment in the workplace and has even become codified as acceptable in non-disclosure agreements (NDAs), non-competes, work rules, and the adoption of the concept of unprotected “employment speech” in the private sector. Employers use their power in abusive ways to stop employees from talking on the job and reporting acts of harassment and bullying, unsafe working conditions, and fraud and abuse. DAWA would restore the right to voice for workers that has been stripped by employers and courts, including correcting at least in part the Supreme Court’s expansion of the concept of “employment speech” and the lack of protection for such speech by employees. Those who want to make speech freer should support the law rather than taking the position of continuing to guarantee harmful speech and behaviors by those in power in the workplace that violates the fundamental dignity of workers and quashes their speech.

MYTH: DAWA would be impossible for employers to manage and would cause harm to all employers, especially small businesses.

FACT: Workplace bullying is extremely harmful to all employers, directly and indirectly costing employers billions of dollars per year. DAWA incentivizes employers to take the steps necessary to eliminate bullying from the workplace and to assure worker dignity, benefiting all parties — workers, employers, and society as a whole.

MYTH: The DAWA will open floodgates of litigation.

FACT: The vast majority of targets of even unlawful harassment do not report the behaviors. Even when these are reported, the number of cases making their way to trials are small. While there are protections against frivolous cases in our legal system, DAWA will also limit litigation by providing for an enforcement agency, saving our overburdened courts and allowing targets access to remedies. DAWA also provides an incentive for employers to address workplace bullying before it rises to the level of litigation.

MYTH: Employers already address workplace bullying.

Fact: Most employers do not even meet all of the legal standards for unlawful harassment policies, and even fewer address general harassment or workplace bullying. The research on the damaging impact of bullying on targets and organizations has been around for decades, and employers have failed to take effective steps to eliminate the problem.

MYTH: The DAWA will prevent employers from disciplining poor performers.

FACT: DAWA recognizes the employer’s right to manage the workplace and allows for employers to discipline employees with just cause. This standard actually assures against bad business decisions and unfair policies and practices.

MYTH: Bullying is impossible to prove.

FACT: We already know how to define bullying. Thirty years of harassment jurisprudence, decades of academic research, and examples from across the globe show that not only can we define workplace bullying, but we can also prevent it, detect it, remedy it, and eliminate it. Now we just need to find the political will to eliminate bullying and protect workers’ right to dignity.