

Bullying Rights of Action

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If an employee believes they have been the victim of bullying they have several legal remedies.

An application can be made pursuant to Part 6-4B of the *Fair Work Act* 2009 to seek an order to stop the bullying.

Alternatively, the employee can apply for compensation if they were injured as a result of the bullying, which is usually in the form of a mental health condition or stress.

If the employee feels they have no option but to resign because of the bullying, they could claim an unfair dismissal remedy on the basis that their resignation was a constructive dismissal.

However, as with all rights of action, they are only as strong as the defences are weak.

As I mentioned in a recent column, bullying allegations will not be maintained and therefore will not offer a remedy to the applicant employee if it is established that the behaviour complained of amounts to reasonable management action, taken in a reasonable way. Reasonable management action is therefore the “go to” defence to either of these bullying rights of action.

As well as the defence of reasonable management action, for a worker seeking an order that the bullying be stopped pursuant to the Fair Work Act, there is another element that either the Fair Work Commission or the court must consider. This is that there must be a risk that the worker will continue to be bullied at work (see section 799FF of the *Fair Work Act* 2009).

Therefore, if an employer is able to argue that there is no identifiable risk of a continuation of the behaviour, the employee won't succeed with an order that the bullying conduct is to stop.

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Elsbeth's articles can be accessed on the Daily Mercury website at <http://www.dailymercury.com.au/topic/elsbeth-ledwy/> or you can find Elsbeth's column “Mind Your Own Business” in the Daily Mercury newspaper each Wednesday.



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