

CREATING A WELCOMING WORKPLACE

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INTRODUCTION

If you have ever experienced sexual harassment, be assured that you are not alone. [Every 68 seconds](#) someone is sexually assaulted in the United States. Perhaps that's why the #MeToo movement has gained such traction since it began in 2006. Victims of sexual harassment are breaking their silence and banding together to demonstrate the pervasiveness of this issue.

Unfortunately, sexual harassment often occurs at work. According to the [latest numbers](#) from the U.S. Equal Employment Opportunity Commission (EEOC), there were more than 27,000 charges alleging sexual harassment at work between FY 2018 and FY 2021 – a number that increased significantly after #MeToo went viral in October 2017.

But sexual harassment is not the only type of abusive workplace behavior. Workplace harassment and bullying are also pervasive. In fact, research by the [Workplace Bullying Institute \(WBI\)](#) indicates that 30% of U.S. workers suffer abusive conduct at work, while at least 49% report being affected by it. Abusive conduct includes intimidating, hostile, or offensive behavior that is frequent, severe, and may interfere with an employee's performance.

A [recent example](#) of a hostile work environment in the headlines lies in Chicago's Department of Water Management. The organization recently reached a \$950,000 settlement with Dilan Abreu, a 40-year veteran bricklayer, who was harassed, abused, and retaliated against by the former alderman's son because of an "unrestricted culture of overtly racist behavior and attitudes" tolerated by the city.

Organizations (not to mention legislators and regulators) have been trying for years to address workplace misconduct that targets vulnerable employees, and yet the problem persists. Clearly, previous methods haven't been very effective. What's needed now is a more comprehensive approach.



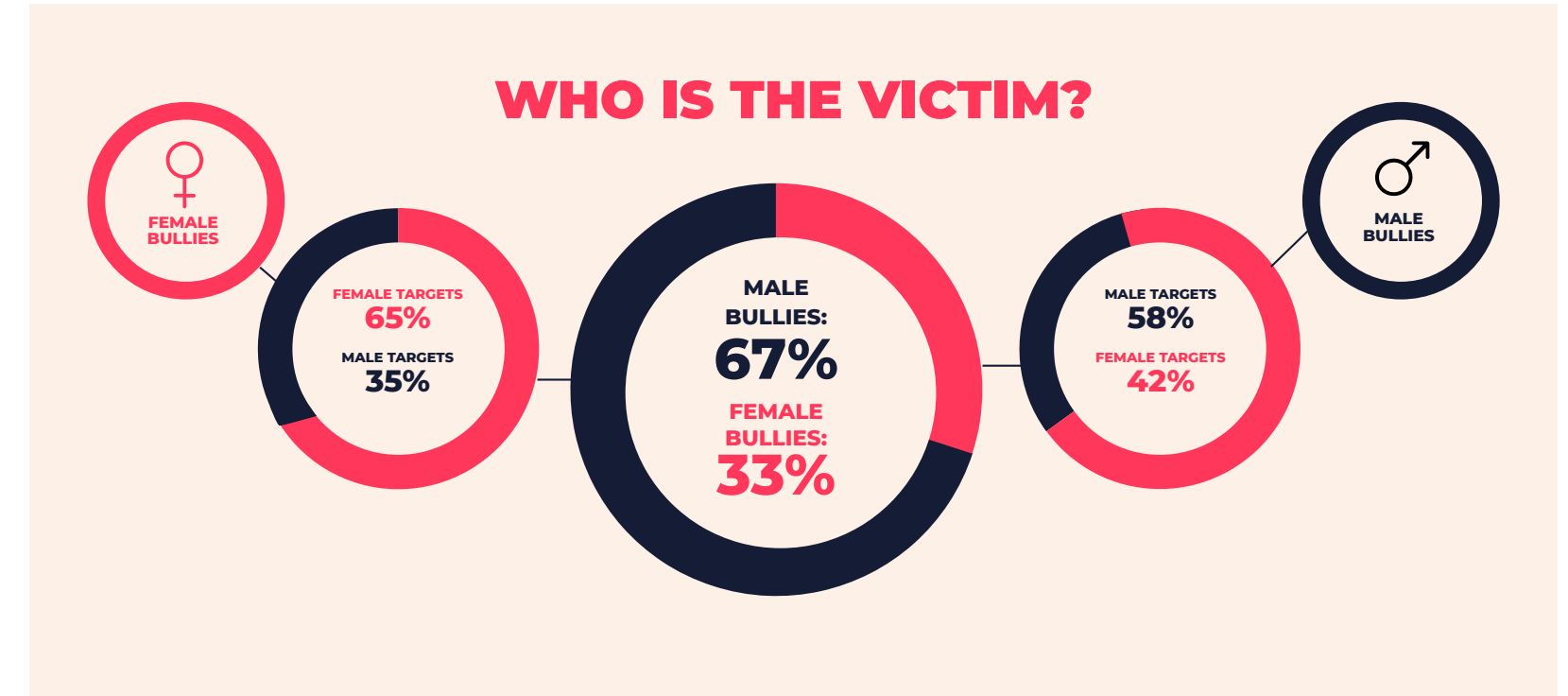
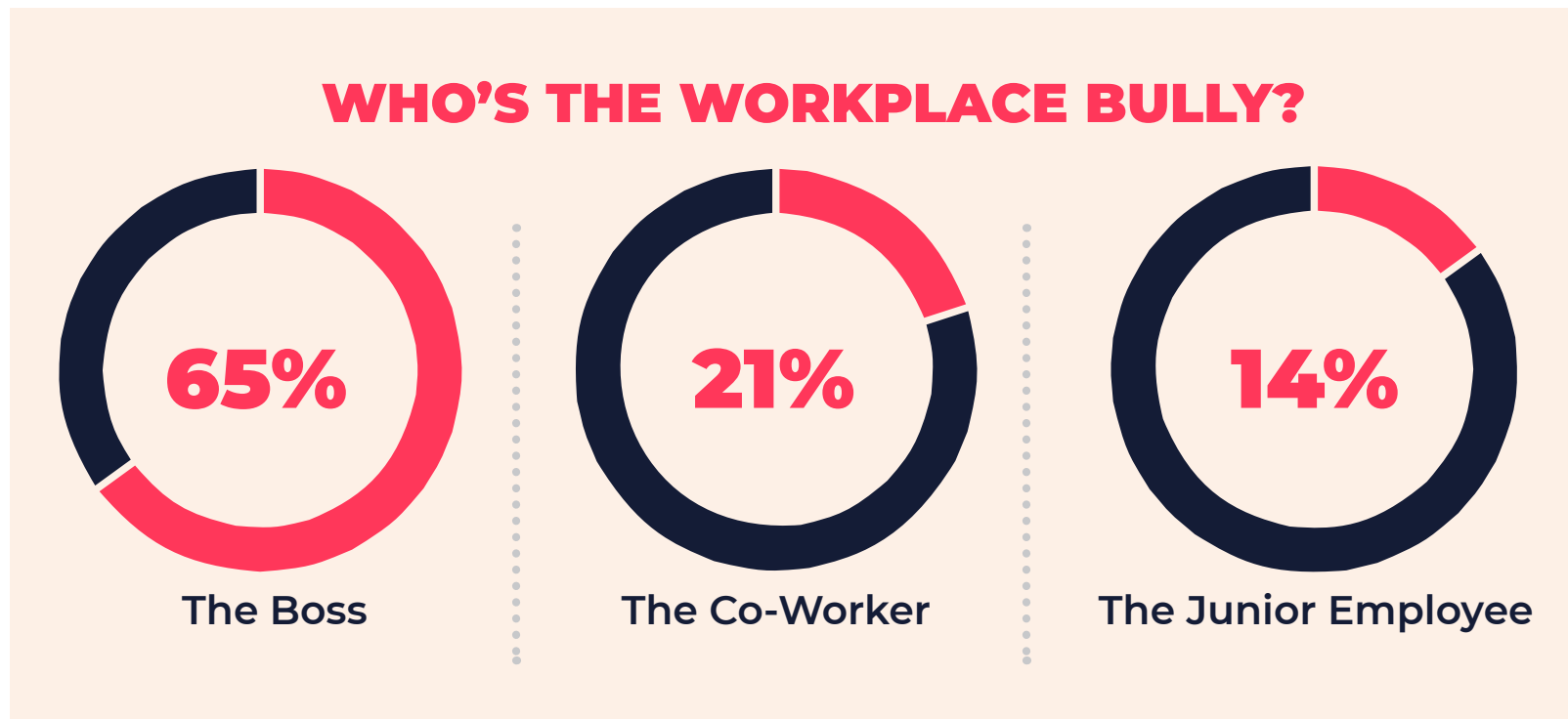
WHAT IS BULLYING?

Broadly speaking, bullying is ongoing unwelcome behavior meant to harm someone who is unable to respond. The common denominator in most cases of bullying is one person or group asserting power over another.

While [65% of workplace bullying](#) takes place at the hands of bosses, the power dynamic doesn't strictly follow corporate hierarchy: coworkers account for a fifth of bullying, while a portion (14%) is actually “bottom up,” that is, perpetrated by an employee on their superior.

Women make up a minority (33%) of bullies, but women bullies choose women as targets 65% of the time. Surprisingly, 51% of bullied targets are men.





Bullying can take many forms, such as intimidation, unwanted touching (sexual or not), gossiping, exclusion, yelling, or verbal assault and other behaviors intended to isolate and harass an individual. It can be subtle, but it is always ongoing, and can eat away at victims' mental and physical health, as well as their ability to perform their job effectively. By definition, bullying is intentional, so it is important that any training program brings to light unconscious biases to afford well-intentioned individuals the opportunity to correct unintended discriminatory behavior.

Bullying becomes unlawful harassment when it is perpetrated against individuals based on color, national origin, race, religion, sex, age, disability, and genetic information. These so-called "protected classes" were established by Title VII of the Civil Rights Act of 1964 and subsequent federal legislation. But unless it meets these criteria, bullying alone is not illegal.

That could change soon, however. A model [Healthy Workplace Bill \(HWB\)](#) prepared by WBI is under consideration in 31 state legislatures. California has passed training-only mandates for all employers in California, while Utah has passed training-only mandates for state-only employers.

The Healthy Workplace Bill offers protections for employers and employees alike. For employers, it sets out to precisely define an “abusive work environment” to aid employers in recognizing one, and requires proof of health harm by licensed health or mental health professionals. It protects conscientious employers from certain liability risk when internal correction and prevention mechanisms are in effect, and it gives employers reason to terminate or sanction offenders.

For victims, the law would provide legal redress for cruelty at work that harms health. It permits suing the bully as an individual, holds the employer accountable, and seeks restoration of lost wages and benefits. Crucially, it is “status blind,” meaning that it does not require plaintiffs to be members of protected classes.



INACTION HAS RISKS

There are many reasons to make sure your organization's workplace is welcoming and civil to all, not the least of which is that's the right thing to do.

First, this behavior by its nature prevents the victim from working effectively. It damages morale and reduces productivity, innovation, and teamwork. In a tight talent market, gaining a reputation for a hostile work environment can negatively impact recruitment and retention efforts, reducing access to talent and threatening a company's competitive position.



9 WAYS TO FOSTER A CIVIL WORKPLACE

The goal of an anti-harassment and bullying program is not merely to prevent negative conduct but also to inspire positive behavior in the form of collaboration, open communication, and civility. This requires a multi-faceted approach that engages the organization at all levels. Here are some essential steps to consider:

1. **Get leadership involved.** It is critical that corporate leadership fully buys into and supports any effort to foster a healthy, harassment-free work environment for employees. Corporate cultural norms typically originate at the top of the corporate ladder, so leadership must “walk the walk” of appropriate behavior as well as “talk the talk.”
2. **Put it in writing.** A clear workplace civility policy should clarify not only what’s unacceptable in terms of harassment and bullying but also what is expected in terms of positive behavior. This policy should be prepared under the guidance of legal counsel to ensure compliance with the laws and regulations of every jurisdiction in which the company operates. Make sure the policy outlines initial actions, investigative procedures and proportionate responses to suit the degree of the infraction.
3. **Provide Training.** Policies are useless if they sit on a shelf. Confirm that employees and managers understand what’s expected of them with a comprehensive training program.
4. **Teach managers how to respond.** While every employee should be trained to recognize and avoid inappropriate conduct, managers and supervisors must also understand how to respond to an accusation should it arise.
5. **Create a clear reporting and escalation process.** Employees who feel harassed or intimidated should know exactly how to report their concerns and have faith that they will be acted upon appropriately and in a timely manner.

6. **Establish appropriate investigative procedures.** By defining a clear process for investigating complaints, organizations can avoid bias and treat all claims fairly.
7. **Provide protection for claimants.** Employees who come forward should be assured that they will not suffer retribution or negative impacts simply for making a claim. Retaliation — whether systematic or incidental — is a serious offense that compounds the initial harm the employee suffers.
8. **Offer acceptable solutions.** Organizations should engage their legal counsel to devise solutions that work for all parties involved. These can range from reassignment and retraining to termination of the offender.
9. **Make the consequences clear.** Your team must understand that unwelcome behavior will have consequences for the perpetrator, up to and including termination.



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AFFIRMATIVE DEFENSE

In addition to fostering a positive work environment, taking these steps may also facilitate an affirmative defense of the organization in case of litigation. That is, the employer may prevail if it can prove it reasonably tried to prevent and promptly correct the harassing behavior, and that the claimant did not avail him/herself of preventive or corrective opportunities the employer offered.



HOW TO HANDLE BULLYING INCIDENTS EFFECTIVELY

Unfortunately, harassment can occur even in the most welcoming corporate culture. And when it does, the organization must respond appropriately at multiple levels. Again, managers should be trained to respond appropriately to claims of harassment and address them per company policy.

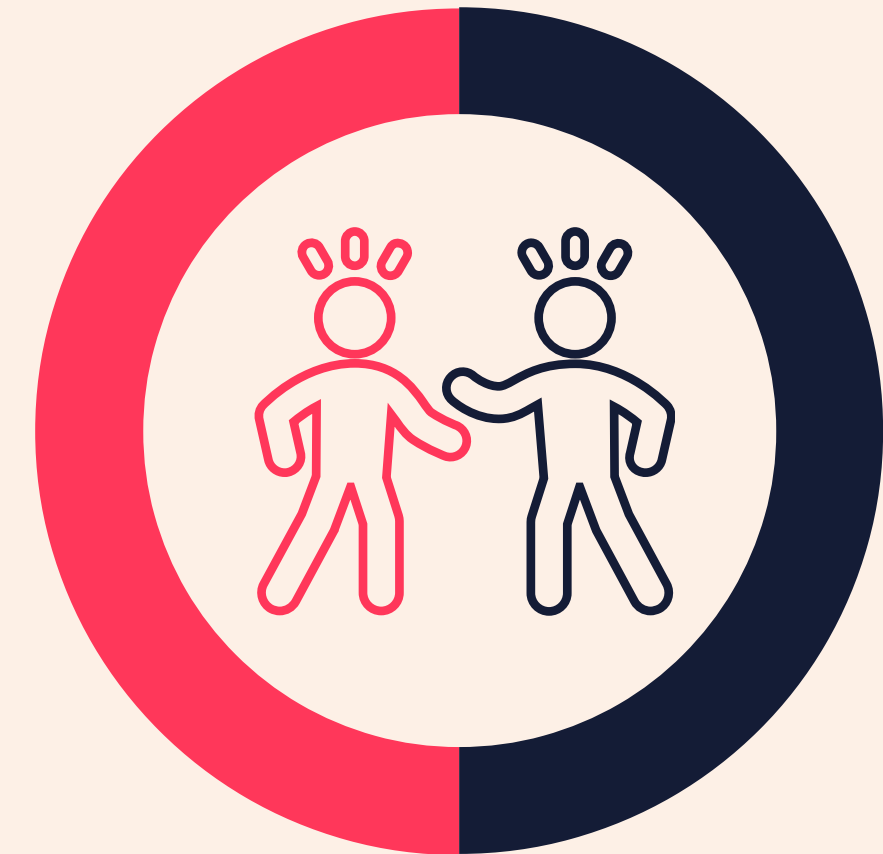
[Check out a recent blog post our team wrote on The Try Guys.](#)

- 1. Treat the person filing the complaint seriously and respectfully.** Victims of harassment have been intentionally isolated and targeted, often to the point of making them doubt their own abilities. They need assurance that they are being listened to and that their experience did not arise from any fault of their own.
- 2. Engage outside counsel as soon as possible.** This is especially important for global organizations and when the parties are in different jurisdictions. The laws surrounding workplace harassment vary greatly, and they continue to evolve. Failing to address accusations in a manner consistent with local law can expose the organization to litigation and/ or regulatory action.



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- 3. Investigate the complaint promptly and thoroughly.** The worst thing an organization can do in the case of an accusation is to sweep it under the rug. Doing so exposes the company to litigation and compliance risk. Unfortunately, doing nothing or making a cursory inquiry is an all too common response that is no longer sufficient.
- 4. Take consistent action.** The initial response and investigation should follow written guidelines and procedures. While every case is different, it is essential that all parties are treated fairly and according to policy, no matter their rank. This includes policies that provide for paid or unpaid leave, reassignment and other actions that impact both accused and accuser.
- 5. Do not retaliate.** [Older studies reveal](#) retaliation is the most prevalent category of employee charges, named in nearly half of all cases. Even giving the perception of retaliation can expose the company to litigation risk.
- 6. Ensure a consistent and proportionate response.** Just as the investigation must adhere to policies and procedures to maintain fairness, so too must the actions the organization takes upon its completion. Punitive measures, if any, should be proportionate to the infraction and consistent – no matter the rank or supposed value of the accused.
- 7. Notify leadership** (including board of directors) of any significant complaint.



Retaliation is alleged in almost **50%** of employee harassment cases. Even just the perception of retaliation can expose a company to litigation.

If the complaint involves outside agencies or litigation, you should take additional steps to mitigate the negative consequences, including:

- **Cooperate** with all government agencies, such as the EEOC.
- **Consider arbitration**, which is a less costly and disruptive way to resolve disputes.
- **Be careful with communications**, such as text and emails, as they can become evidentiary.
- **Retain documents**, especially training materials.
- **Assess the impact** to the company and stakeholders.
- **Develop a media strategy** to mitigate reputational damage.
- **Make a claim** to your insurance carrier.
- **Negotiate a settlement**, if possible. Going to trial is the most public and costly result of litigation and could be highly damaging to the company's reputation.



THE ROLE OF TRAINING

Given the increasingly complex regulatory landscape and increased awareness of harassment and bullying, a check-the-box approach to training will not address the issue sufficiently. And given the continued prevalence of negative conduct, it hasn't been working for quite some time. The solution is a comprehensive training program that's highly engaging, readily available and easy to digest and retain. At a minimum, the training should encompass three areas:

- **DEFINITIONS.** Employees should be able to identify protected classes and the legal criteria that establishes unlawful harassment. They should also be able to discern instances of bullying that falls short of unlawful harassment but is otherwise unacceptable to the organization.
- **RECOGNITION.** Through real-life examples, employees should be able to recognize unlawful harassment or bullying whether they find themselves victims, onlookers, supervisors or even those who may be behaving inappropriately. Training should also expose unconscious biases that could lead to unintended discriminatory behavior.
- **RESPONSE.** Finally, the training should help those who feel they're being harassed address the issue, from talking to the harasser, to seeking the help of a manager or HR, to understanding their right to seek redress with an outside agency, such as the EEOC.

Shaping corporate culture means adjusting behavior and attitudes, which requires a sophisticated training approach. Make sure your training strategy leverages each of these important components.



3 KEYS TO SUCCESSFUL ANTI-HARASSMENT & BULLYING TRAINING



ENGAGE THE WHOLE ORGANIZATION. Anti-harassment and bullying training is for everyone in your organization, regardless of rank. Incorporate it into onboarding and annual review cycles for all your employees.



STRUCTURE TRAINING TO MAXIMIZE RETENTION. Your training should break down into tangible learning objectives that are met through an engaging presentation of information, practice opportunities, and evaluation. Strategies that maximize engagement include using practical examples, case studies, video scenarios, animation, and narration.



LEVERAGE BRAIN SCIENCE. Years of scientific research indicates that people need three things for an optimal learning experience: relevance, meaning, and emotion. Your courses should focus on the learner, incorporating real-world scenarios that foster a linkage between emotion and cognition.

When your employees understand the consequences of harassment and bullying, your organization has taken an important step towards developing an inclusive work environment. By embracing a continuous training program that discourages abusive behavior, you'll create a positive feedback loop of inclusivity — and, in turn, attract employees who value diversity and respect.



ABOUT THE AUTHOR



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As VP of Compliance Products at Skillsoft, Norman Ford oversees the compliance product portfolio. Prior to joining Skillsoft, he was Vice President of eLearning Products and Services and co-founder of GoTrain Corp. Previously, Mr. Ford served as Manager of Technical Assistance and Qualification for Lockheed Martin Energy Systems, where he was responsible for the development of training requirements and procedures and provided corporate subject matter expertise in regulatory and compliance issues. Mr. Ford has over 30 years of experience in Conduct of Operations, Nuclear Operations, Training Drills, Qualification, Certification, Training Procedure and Technical Training issues, while serving organizations including Lockheed Martin, the U.S. Department of Energy, and the U.S. Department of Defense (U.S. Navy).

ABOUT SKILLSOFT

Skillsoft (NYSE: SKIL) delivers transformative learning experiences that propel organizations and people to grow together. The Company partners with enterprise organizations and serves a global community of learners to prepare today's employees for tomorrow's economy. With Skillsoft, customers gain access to blended, multimodal learning experiences that do more than build skills, they grow a more capable, adaptive, and engaged workforce. Through a portfolio of best-in-class content, a platform that is personalized and connected to customer needs, world-class tech and a broad ecosystem of partners, Skillsoft drives continuous growth and performance for employees and their organizations by overcoming critical skill gaps and unlocking human potential.

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