



Am I being bullied or is it reasonable management action?

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The workplace can be an environment of stress for some workers. Sometimes workers feel they are being bullied, harassed or victimised by their manager and some develop psychological problems as a result of this. Although they may feel it is bullying behaviour, it may actually be '*reasonable management action being carried out in a reasonable manner*'.

Reasonable management action is not considered bullying, if handled in a 'reasonable manner', according to the *Fair Work Act*. For that reason, the question is often of critical importance to any prospective applicant in the anti-bullying jurisdiction of the Fair Work Commission.

So, at what point does action by managers go from reasonable management action to bullying behaviour? In answering the question for any given situation, it is useful to break it down into three parts:

1. Was the behaviour management action?
2. Was it reasonable for management to take the action?
3. Was the action carried out in a reasonable manner?

Was the behaviour management action?

To be considered 'management action', it must be more than normal operational instructions which are part of your and your manager's daily work. It needs to have the essential characteristic of being managerial.

Various examples have been found to constitute management action by courts and tribunals over the years. These include:

- performance appraisals and other [meetings addressing underperformance](#); and
- investigations into alleged misconduct and any follow up, [counselling or disciplinary action](#).

It may also include:

- [denying benefits](#) in certain circumstances; and
- lawfully modifying work arrangements; [for example through redeployment](#).

Was it reasonable for management to take that action?

If it appears to be 'management action', the next step is to ask whether it was *reasonable* to take that action.

In determining reasonableness, it is important to consider the specific circumstances of each case.

This will be a question determined on an objective assessment, meaning that the subjective views of the worker or the manager will not be determinative.

As a starting point though, the action must be lawful and it must not be irrational, absurd or ridiculous.

Courts and tribunals have also provided some guidance on this point. For example, noting that the question is not whether certain actions could have been *more* reasonable, but simply whether the action was reasonable in all the circumstances.

It will also be relevant if an employer has policies and procedures in place for dealing with certain matters and the management action departs drastically from those procedures. Ultimately however, given that the answer will differ on a case by case basis, this is an issue on which workers should consider seeking advice.

Was the action carried out in a reasonable manner?

If something is determined to have been both 'management action' and 'reasonable', it still needs to have been carried out in a reasonable manner.

This involves another assessment of the circumstances surrounding the action. Here, a key consideration will be the way in which the worker was impacted by the action.

Some relevant factors could include:

- the particular [characteristics of the worker and the situation](#);
- whether there have been delays in taking the management action;
- whether there was a [failure to make simple inquiries](#) that could have uncovered relevant facts about the worker; and

- whether established procedures were followed.

What happens next?

If the answer to each of these questions is 'yes', there may be some difficulty pursuing a bullying-related claim. If the action has caused psychological injury to the worker, [there **may** still be options to pursue a workers' compensation claim](#). Eligibility to make a claim will be dependent on a number of further factors specific to commonwealth and state-based workers' compensation schemes. You should seek legal advice from one of our [personal compensation lawyers](#), about any potential entitlements

However, if you believe that action being taken against you is not reasonable management action being carried out in a reasonable manner, you may have employment law options available to you under the *Fair Work Act*.

Applying to the Fair Work Commission for an anti-bullying order in respect of the person carrying out the actions, is one option. If you have resigned due to the action and you believe the action was unreasonable such that it gave you no choice but to resign, you may also have options to lodge a claim for unfair dismissal. Note, [strict time limits apply to unfair dismissal claims](#). Speak with [one of our employment lawyers](#) for assistance in relation to this.

Personal help for bullying or stress in the workplace?

If you are suffering psychological stress in the workplace, we recommend seeking help from your GP or from a service like ['Beyond Blue'](#).

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