

Upgrading protection against cyberbullying

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International
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► ILO Working Paper 1

February / 2020

- **"System needs update": Upgrading protection against cyberbullying and ICT-enabled violence and harassment in the world of work**

► **Authors** / Valerio De Stefano, Ilda Durri, Charalampos Stylogiannis, Mathias Wouters

Methodology

- Comparative legal research, which incorporates findings by social scientists and others, for example, in terms of descriptive definitions and incidence.
- Focused on “cyberbullying” but from a broad legal perspective because cyberbullying is not a common notion in law.
- Focused on the “workplace” but with a clear understanding that cyberbullying can take place anytime and anywhere.

Structure of the presentation

1. Preliminary remarks

- Definitions
- Incidence and impact

2. Overview of relevant regulations

3. Three country examples

4. Concluding remarks

In terms of “definitions”

- Cyberbullying:

Definition is usually derived from “bullying”: persistence/repetition, duration, unequal power relation.

BUT, the cyber- element adds some distinct challenges.

- Unclear delineation with harassment, mobbing, stalking and so forth.
- Additionally, non-English terms that could be translated as “bullying” may have their own intricate implied meanings – hard to simply translate this complex notion, and expect people in different countries to have an identical understanding.

Incidence

- 14 to 20% of university employees experienced cyberbullying behaviours at least once a week (University of Sheffield, 2012).
- 22% of teachers in the Czech Republic reported to have personally experienced a cyber-attack; 3.5 per cent one that lasted more than one week in the previous 12 Months (Kopecký and Szotkowski, 2017).
- 22% of journalists reported having been victims of online threats in Sweden (Eurofound, 2015).
- 72% of public servants in Australia reported experiencing or observing task- and person-related cyberbullying over the previous six months (Queensland University of Technology, 2016).
- 10,7% of Australian manufacturing workers report having been cyberbullied (Privitera and Campbell, 2009).

Who perpetrates cyberbullying?

- Cyberbullying against trainee doctors was mainly perpetrated by fellow trainees (35.6%), secondly consultants (26%), very rarely patients or relatives (1.4%) (Farley et al., 2015).
- In case of Czech teachers, 34.92% of perpetrators are identified as pupils of the teacher, 8.08%* are parents. Colleagues would account for roughly 3.6% (Kopecký and Szotkowski, 2017).

Who is targeted?

Generally, young women and girls are at a greater risk of encountering cyberviolence, particularly cyberharassment and cyberbullying.

Report with recommendations to the Commission on combating gender-based violence: cyberviolence (2020/2035(INL))

Incidence and impact

- Overall, bullying seems to occur more often than cyberbullying.
- The two seem to often go hand in hand, at least for “internal (cyber)bullying”.

Very significant consequences for victims (Eurofound, 2015).

- Crucially, consequences can spread like a “wildfire”.

E.g. Bystanders are affected, and the behaviour might be replicated.

Therefore, it is paramount to stop (cyber)bullying for other reasons than protecting victims (including discrimination).

→ A potential priority for both employers and workers?

Regulatory overview

- In general labour laws and labour codes
- In OSH laws
- In non-discrimination laws
- In human rights instruments
- General anti-harassment laws
- Specific laws on bullying and harassment at work
- Collective agreements at the national level
- More sectoral regulations and collective agreements

Regulatory overview

Not to forget the cyber element, hence:

- Acts on harmful digital communications
- Acts on cybercrime
- Acts on personal data protection

And companies' internal policies(!)

The sheer range of regulatory angles makes it hard to compare systems; moreover, addressing cyberbullying probably requires multiple interrelated legal tools.

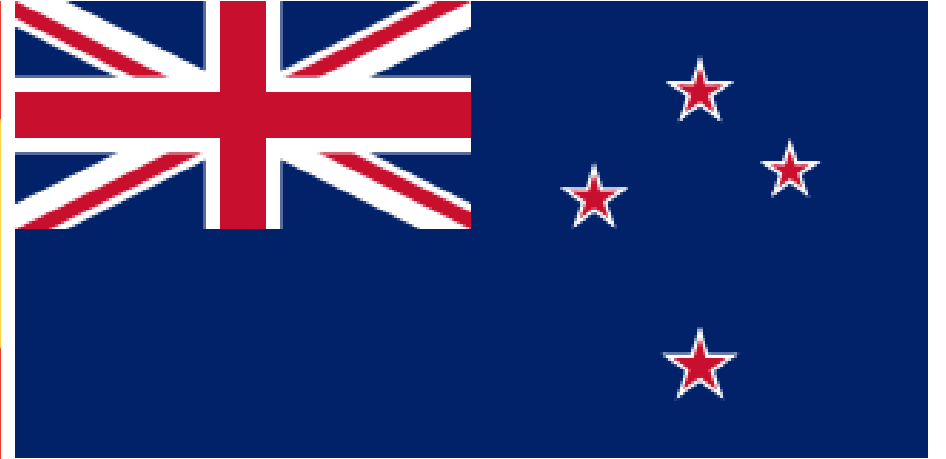
Three country examples



Prevention



Deterrence



Online deterrence

Loi relative à la protection contre la violence et le harcèlement moral ou sexuel au travail, 11 June 2002. – underwent many changes since...

“Cascade system”:

- 1. Informal intervention through a trusted person**
- 2. Formal intervention through a professional prevention adviser**
- 3. Complaint to the labour inspectorate,
which typically calls on the prevention adviser**
- 4. Lodge a case in court**

Potential penal sanctions on the employer in case preventive measures are insufficient. + victim maintains possibility of pursuing the case in court.

Spain

Deterrence

- Article 173 Criminal Code:

Anyone who inflicts degradation or humiliates another person, undermining their moral integrity, shall be punished with a term of six months to two years.

Those who, within the family relationship and taking advantage of their position, repeatedly carry out hostile or humiliating acts without amounting to domestic violence against the person shall be punished with a term of six months to two years.

The same penalty shall also be imposed on those who repeatedly carry out hostile or humiliating acts that, without amounting to degrading treatment, are intended to prevent the legitimate enjoyment of the home.

For instance, in Belgium, a case revolving around article 119 of the social penal code.

Woman is filmed going to the toilet at another employer's business while she was on the job.

Couldn't be considered bullying or harassment under that article because there was no "contact".

Harmful Digital Communications Act 2015

The goal is to: (a) deter, prevent and mitigate harm caused to individuals by digital communications; (b) provide victims of harmful digital communications with a quick and efficient means of redress.

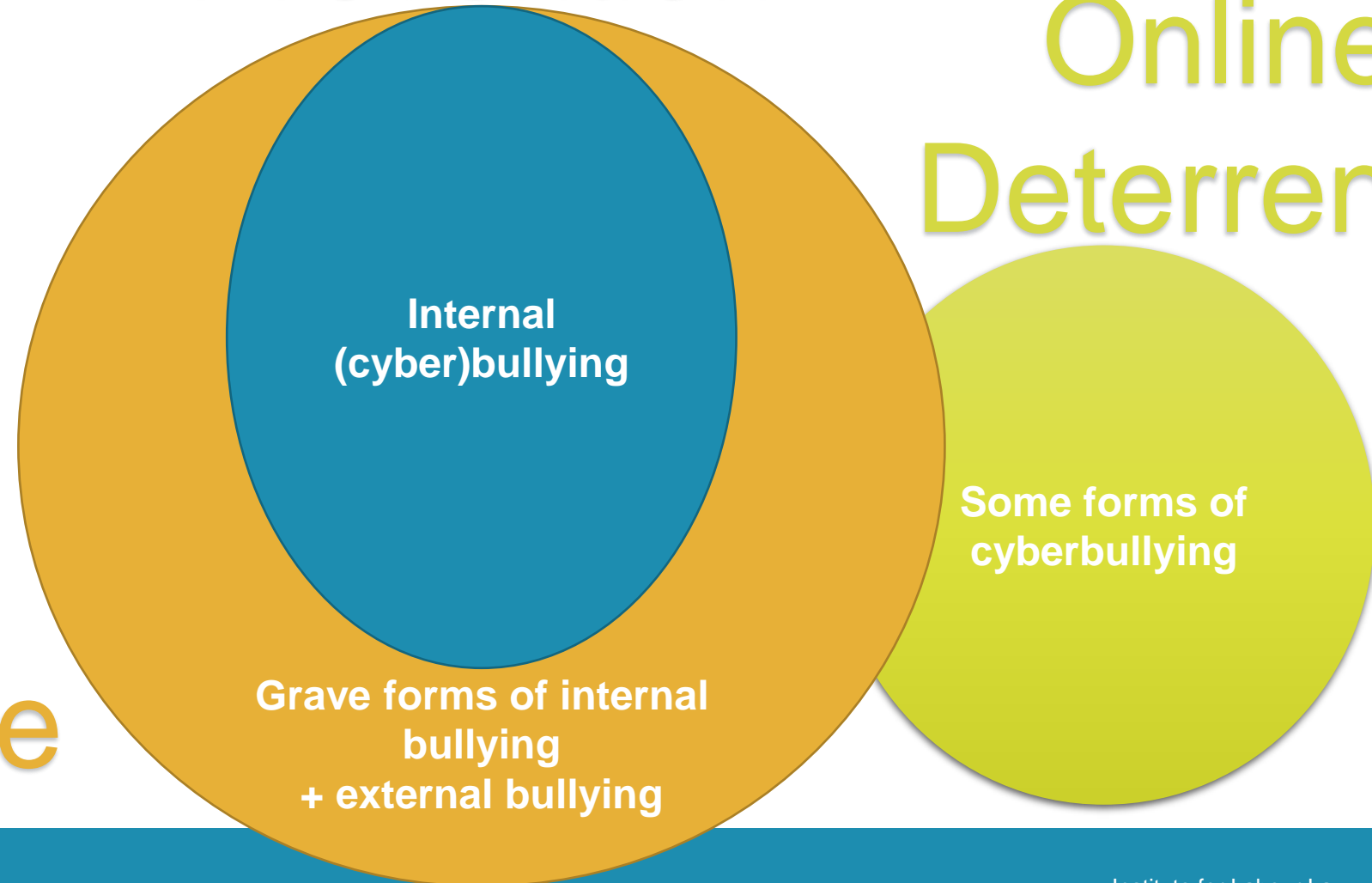
1. Redress comes in the form of a District Court ordering: (a) an order to take down or disable material; (b) an order that the defendant cease or refrain from the conduct concerned; ...
2. **Notably, court orders against online content hosts.**
3. Failure to abide by an order constitutes an offence, a term not exceeding 6 months or a fine not exceeding \$5,000 is imposed on natural persons.



Concluding remarks

Prevention

Online
Deterrence



Deterrence

Concluding remarks in relation to guidelines

- Evaluate the descriptions and definitions in relevant laws, cba's and policies.
- The personal scope of protections, e.g. self-employed workers, ex-employees.
- The entities involved in the reconciliation – adjudicative process need to be professional.
- “Qualified bystander” responsibility, or qualified responsibilities more broadly.
- Democratisation of the workplace; e.g. DPIAs & risk assessments.
- Engage the employer of the perpetrator.
- Internal specifications in relation to the duty of care.

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