

Mediation, Arbitration and Workplace Bullying

April WBI Instant Poll, $n = 473$

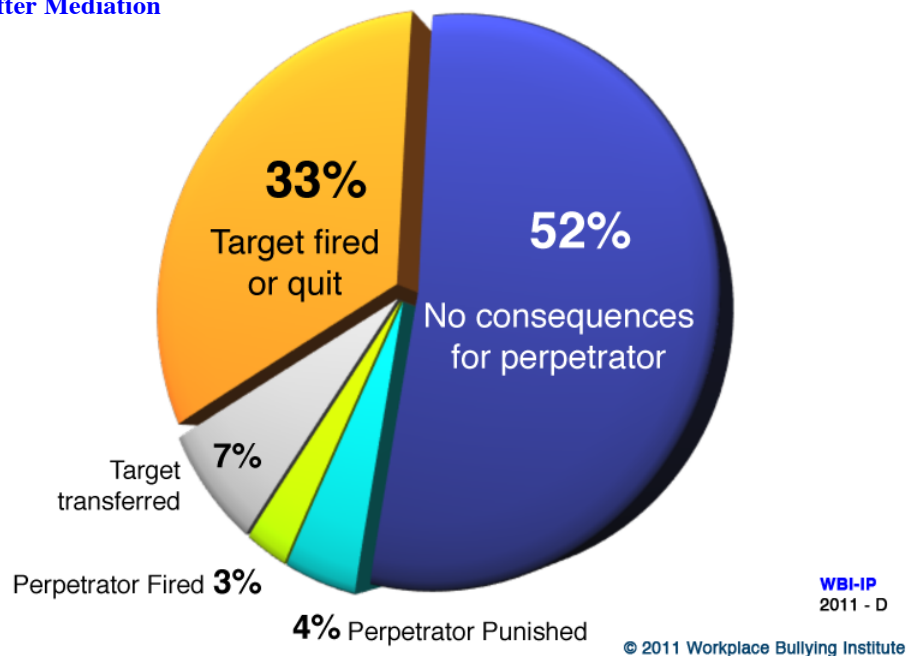
At WBI, we have always argued against the adoption of mediation or other alternative dispute resolution practices for bullying resolution. The source of our resistance is twofold: (1) often the bullied target who is already compromised and often emotionally wounded is mandated to participate, and (2) workplace bullying is a form of violence, non-physical and sub-lethal, but interpersonal violence nevertheless.

Violent relationships cannot be mediated. Mediation requires that both parties are rational and capable of gaining an empathic understanding of the needs and intellectual interests of the other party. In bullying, only one party is rational. The other's interest is tainted by her or his need to dominate the other party. There is no equal footing at the start. One does not mediate domestic violence. There is no halfway in the gulf between parties when one is under assault by the other.

The question asked: *"If your employer required you to engage in mediation and/or arbitration to address your workplace bullying situation, what was the outcome? Choose up to 2 responses."* [580 responses total]

- Target was terminated 18.9%
- Target voluntarily left organization 14.5%
- Target was transferred to a different position within same organization 7.2%
- Harasser faced zero consequences 52%
- Harasser kept position and was punished 3.2%
- Harasser was transferred 1.2%
- Harasser was terminated 2.7%

Outcomes After Mediation



Overall, targets were displaced; they lost their jobs voluntarily or involuntarily, in 33.4% of cases.

Bullies suffered no consequences; they were able to act with impunity in 52% of cases.

Negative consequences for alleged offenders followed traditional dispute resolution procedures in only 7% of cases. Of those, termination resulted in only 3% of cases.

If chance alone were to predict an outcome between two parties, one could expect that each person would “win” 50% of the time. The actual outcome is far from chance. The aggressor (harasser, bully) “won” in mediation by any measure you choose. Bullies walk away with having to give up anything in compromise (52%). Negatives were not equivalent—for targets (33% if one counts a transfer to safety as a positive, or 50% if transfers also mean loss of a coveted job that had to be abandoned to get to safety) vs. for bullies (7%).

When targets are mandated to mediate, the targets’ loss of control over their work lives is reinforced by the employer. After the process, the outcomes strongly favor the bullies.

Employers should not mandate mediation or arbitration. (Arbitration is often a clause in modern employment contracts. It is the employer saying to employees that you may not sue them in civil court no matter how they mistreat you.)

In conclusion, the empirical data seem to support our position to tell bullied targets to avoid mediation.

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