

# THE NATIONAL LAW REVIEW

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## Corporate Divorce Series: Employment Relationship Fail

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Few of us can honestly say that our job never disappoints us and the same can probably be said of personal relationships. But how do you know when you are in a failed employment relationship and what do you do about it?

Once again these questions lead to a discussion about extremes. A dysfunctional workplace (like a challenging relationship) is more likely to produce conflict than a compliant, well managed and properly administered one. But the focus here is not necessarily on conflict, but rather on illegal behavior.

So how out of bounds does an employer have to behave to make a bad employment relationship into an illegal one?

Once again we have [California](#) to thank for leading the country in regulating workplace behavior. If a company employs at least 50 people in California, then it is legally obligated to provide training for its supervisors about anti-bullying behavior (presumably to prevent bullying behavior in the workplace, and not to perfect it). Bullying behavior, at least in California, means using derogatory remarks, insults and epithets, verbal or physical conduct that a reasonable person would find threatening or intimidating or the gratuitous sabotage or undermining of a person's work performance. Frankly, this behavior satisfies the very definition of an abusive relationship, whether personal or professional. But, at least for now, an employee cannot privately sue a California employer for a manager's bullying behavior.

California's foray into workplace civility is not a new concept. If you are familiar with Bob Sutton's book, [The No Asshole Rule](#), then you might be familiar with his suggestion that the time employees don't spend on emotional reactions to assholes in the workplace is time spent making a business more productive. But you can't sue your employer for hiring jerks - not because the law frowns upon asshole-like behavior, but because workers compensation laws generally prevent employees from suing their employers for workplace injuries, including hurt feelings.

So what is illegal workplace behavior? Engaging in tortious behavior, such as assault and battery or false imprisonment, could expose both the employer and its supervisors to liability. And layer on top of that statutory violations, chief among them the federal and state laws prohibiting workplace discrimination. So an employment relationship fail may also be a meritorious legal claim. But stupidity, meanness or incompetence (without more) will not trigger legal liability in the workplace.

So where does that leave employers and employees? Fortunately in the at-will world employees are generally free to exit an abusive employment relationship at any time and typically without any sort of legal liability. So if the relationship is that bad, then the two-footed vote seems the best option if finances allow it. But a more sensible approach and less drastic option would be counseling - using the human resources professionals who are trained in employee relations much like marriage counselors in the personal relationship realm to help the



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parties resolve the conflicts in the employment relationship.

A bad employment relationship is rarely an illegal one. And suing your employer because you are the victim of a bad manager is rarely fruitful or productive. The legal system is not the cure-all for the employment relationship fail.

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