

**Today's webinar will
begin shortly.**

We are waiting for attendees to log on.

Presented by:

Joe Ambash and Cheryl Pinarchick

Phone: (617) 722-0044

jambash@fisherphillips.com

cpinarchick@fisherphillips.com

Wake Up Call

Confronting Workplace Harassment



Presented by:

Joe Ambash and Cheryl Pinarchick

Phone: (617) 722-0044

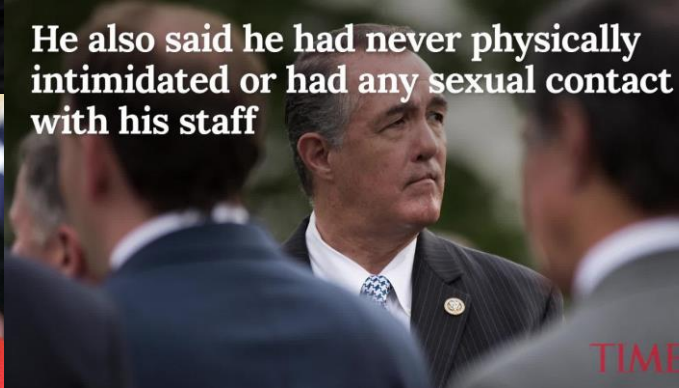
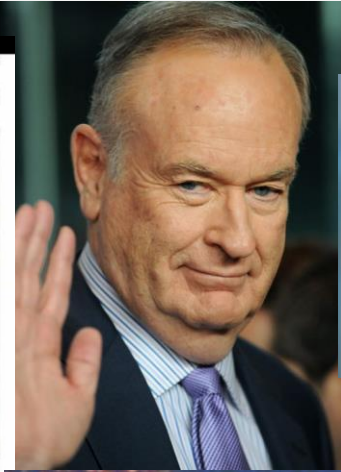
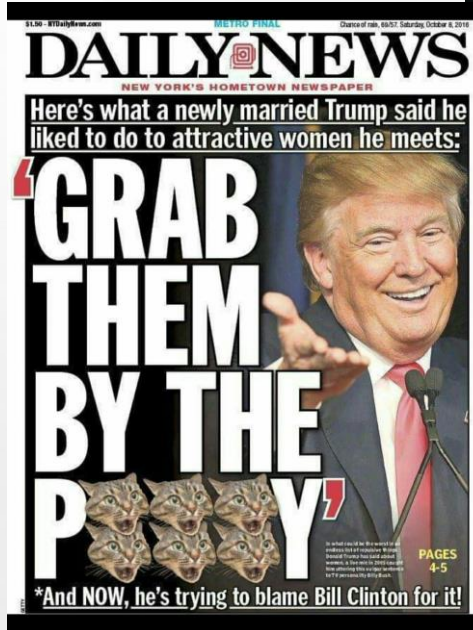
jambash@fisherphillips.com

cpinarchick@fisherphillips.com

Why Are We Presenting This Program?

- Our workplace culture has been transformed within the last couple of months.
- The stakes are higher.
- The expectations are higher.
- Employers must respond more effectively.
- The media are questioning whether harassment training works.

The Dam Has Burst...



The Movement of #MeToo



Time's Up Campaign



A star-studded group of female Hollywood figures — including [Reese Witherspoon](#), [Shonda Rhimes](#), [Natalie Portman](#) and [Kerry Washington](#) — has launched a new initiative to combat workplace sexual discrimination and inequality.

The [Time's Up campaign](#) — spearheaded by more than 300 actresses and executives — will push for a marked increase in women hires along with equal pay and benefits across professions both glamorous and otherwise.

“The struggle for women to break in, to rise up the ranks and to simply be heard and acknowledged in male-dominated workplaces must end,” the group said in a statement. “Time’s up on this impenetrable monopoly.”

The initiative will also feature a legal defense fund for both women and men who believe that they’ve been discriminated against or harassed in their workplace.

The Basics: Workplace Harassment

- Harassment isn't just about male harassers and female victims.
- Harassment can be “quid pro quo” or “hostile environment.”
- Harassment by either sex is prohibited.
- Same-sex harassment also unlawful.
- No one has the right to harass any employee regardless of position or status.
- Harassment of, or by, customers, clients, vendors, etc. also unlawful.

Harassment Charges and Lawsuits Result In:

- Defense Costs
- Emotional Distress
- Negative Publicity
- Disruption of Work
- Loss of Employment



Possible Civil Damages Claims

- Assault and Battery
- Intentional Infliction of Emotional Distress
- Loss of Consortium
- Defamation

Possible State Criminal Charges

- Assault and Battery
- Stalking
- Criminal Harassment

Supervisors May Be Personally Liable For Violations

- A supervisor's home, car, bank account may be at risk
- Supervisors' wages may be garnished
- Supervisors may have to pay their own attorney to defend them

Costs of Defense

- Can be hundreds of thousands of dollars
- Possible fees/costs of the plaintiff's attorney
- Lost production/business and lowered morale

The New Paradigm

- Employers today have to approach workplace culture from the perspective of creating a respectful environment for all employees.
- The EEOC's focus is now on respectful workplace training.
- It means not only focusing on what NOT to do in the workplace.
- Employers need to focus on teaching employees the real elements of a respectful workplace.
- This training must also address workplace bullying.

What is Workplace Bullying?

Workplace Bullying is repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators. It is abusive conduct that takes one or more of the following forms:

- Verbal abuse, or
- Threatening, intimidating or humiliating behaviors (including nonverbal), or
- Work interference – sabotage – which prevents work from getting done, or
- Some combination of one or more.

Bullying can be caused by supervisors or fellow employees.

Lateral Violence – Employee to Employee

- The scholarly literature defines employee-to-employee bullying as “lateral violence.”
- Such behavior is intended to overtly, purposefully demean, humiliate, or diminish the victim’s stature, resulting in social exclusion and marginalization in the workplace, which consequently leads to a power relationship in which the victim is emotionally controlled by the abuser.
- The concept: Death by a thousand paper cuts, i.e. “everyday sadism.”

Bullying v. Harassment: Similar But Different

Harassment

- Often involves physical contact
- Target selected because of who they are, i.e. member of a protected class
- Often a clear overt incident – i.e. grabbing
- The target knows they have been harassed virtually immediately
- Harassment is revealed by use of recognized offensive vocabulary and gestures
- Harassment occurs in and out of work, i.e. texting, emails, social media

Bullying

- Almost exclusively psychological
- Target selected because they are vulnerable and, typically, competent
- Typically an accumulation of small incidents
- The target may not realize for weeks or months that they are being bullied
- Bullying tends to fixate on trivial criticisms, casual insults, exclusion from the “in” group
- Bullying occurs mostly at work, but increasingly now on social media as well

Why Traditional Training is Not Enough

- There is little hard evidence that typical harassment training works. www.pbs.org/newshour/nation/does-sexual-harassment-training-work
- Rote training in which organizations tell employees that harassment is prohibited is often perceived as boring and legalistic.
- Such training may help employers create defenses to harassment charges, but it does not necessarily change your culture

What Steps Can Work to Change Culture?

- Consider live training, at least for your supervisors.
- Your supervisors are the key intersection between employees and work. If supervisors do not understand how to create a respectful workplace culture, the culture won't be respectful.
- All this assumes, of course, that senior management believes in and reinforces a culture of respect and inclusion.
- Live, experiential training, at least for supervisors, teaches them how to recognize and respond to inappropriate behavior.
- This should include analysis of hypothetical scenarios; role playing and other intensive techniques to emphasize that maintenance of a respectful workplace is a major part of their job, not mere lipservice.

Supervisory Evaluation

- From the very top of your organization down, evaluate supervisors and managers, in part, on their knowledge of respectful workplace factors; their commitment to a respectful workplace; and their role in intervening to stop inappropriate behavior.
- Take appropriate action against supervisors who do not take the elements of a respectful workplace seriously.
- Terminate supervisors who are bullies.
- Terminate supervisors who tolerate harassment, bullying or abusive conduct by employees.

Supervisory Response and Intervention

- Teach supervisors how to spot inappropriate behavior and bullying.
- Teach supervisors how to respond to complaints made by employees.
- Teach supervisors that strict confidentiality is not an option.
- Teach supervisors how to work with HR to address and investigate complaints.

Focus on What Supervisors Can/Should Do

- Typically, a list of only the things they should not do will turn supervisors off.
- Teach them the skills necessary to make them effective supervisors.
- Give supervisors verbal and physical tools to help make them more engaged and effective, i.e. how to complement; how to criticize; how to intervene; how to coach employees on respectful behavior; how to be a role model.

Employee Training

- Adopt a regular schedule of required employee training about harassment, bullying and maintaining a respectful workplace. Make sure your policies are clear and understandable.
- Discuss how to speak up; how to intervene; and how to communicate in a respectful manner in the workplace.
- Discuss barriers to speaking up or intervening.
- Discuss how employees can give meaningful feedback to others who engage in disrespectful behavior.

Bystander Intervention

- Bystander intervention techniques are strategies employees should use to intervene when they observe instances of inappropriate behavior
- There are a variety of such strategies, including:
 - Interrupting the behavior
 - Publicly supporting the victim
 - Naming or acknowledging the offense
 - Using body language to show disapproval
 - Encouraging dialogue
 - These strategies can be taught and practiced

Avoiding Disasters

- Do not ever allow your organization to ignore complaints.
- Do not ever allow a “high producer” to escape consequences of uncivil, abusive or harassing behavior.
- Learn to respond to instances of inappropriate behavior quickly. Employers who delay often suffer much more costly damages – both reputational and monetary.

Instructor-Led Training by Fisher Phillips

- Fisher Phillips provides exceptional leader-led training for clients who prefer live training of certain employees, or who prefer to augment on-line training with live training.
- Subjects include all of the topics covered by online courses.
- Live courses are customized to respond to the issues pertinent to each workplace.

One-Time Training is Not Enough

- Remember that training your supervisors and your employees is only the beginning, not the end.
- Organizations who are committed to maintaining a respectful and inclusive workplace need to reinforce these values on a daily basis.
- You can't turn a battleship around on a dime.

Questions?



Presented by:
Joe Ambash and Cheryl Pinarchick

Phone: (617) 722-0044

jambash@fisherphillips.com

cpinarchick@fisherphillips.com

Thank You



Presented by:
Joe Ambash and Cheryl Pinarchick

Phone: (617) 722-0044

jambash@fisherphillips.com

cpinarchick@fisherphillips.com