Workplace Teachings from the Slap-Heard-Round-the-World at the Oscars Ceremony

Insights
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As the dust settles from the 2022 Oscars, most of us continue to remain stunned. Will Smith assaulted Chris Rock on stage and in front of millions of viewers around the world, plain and simple. It was a shocking event that many thought should have led to his arrest or, at a minimum, his immediate removal from the event. But what if something similar happened in your workplace? What should you do if a workplace assault occurs on your premises – and what should you do if someone makes a tasteless joke about someone else or a family member?

What Should You Do if You Have a Will Smith in the Workplace?

If that same thing happened in your workplace, it certainly should lead to Smith's termination. Employers today should be focused on creating a safe and secure work environment free from violence and threats. Unprovoked – or barely provoked – physical assaults cannot be tolerated. No matter how crude or tasteless or offensive any statement might have been that prompted the response, violence is never the appropriate response.

You should, however, make sure to follow your policies and protocols before making the termination decision. Suspend your Will Smith immediately to remove him from the workplace. Conduct a swift and thorough investigation. If you are in a unionized environment, make sure you follow the "just cause" standard, including a sufficient and fair investigation and the application of equal treatment when it comes to discipline compared to how you have handled prior instances of workplace violence.

What Should You Do if You Have a Chris Rock in the Workplace?

But what about Chris Rock? As we saw, he made fun of Jada Pinkett-Smith's baldness, which is due to a medical condition called alopecia areata. This is an autoimmune disease in which a person's immune system attacks the body (here, the hair follicles) causing the hair to fall out. It can be treated, but there is no cure. It often affects children and, while not life-threatening, the significant changes it causes in physical appearance can lead to severe anxiety and depression. So, let's move Rock's joke into the workplace. What would happen if Rock was an employee of yours and made the joke about a coworker's spouse during a pre-shift meeting?

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It could be a serious violation of your harassment-free workplace policy. Most harassment-free workplace policies define harassment as unwelcome behavior based on a protected characteristic. Unwelcome is judged by a "reasonable person standard." In other words, could a reasonable person be offended by the comment or conduct? If so, it is unwelcome. And, if it is unwelcome, it generally constitutes harassment as long as it's based on a protected characteristic (at least under most workplace policies).

Protected characteristics, of course, include things like race, gender, religion, national origin, age, and disability, to name a few. Under the Americans with Disabilities Act, a disability is defined as "a physical or mental impairment that substantially limits a major life activity." Using that definition, alopecia areata may or may not constitute a disability (in most cases, probably not).

But it may not really matter. For one, many policies also define protected characteristics to include a "medical condition." In that case, a joke about someone with alopecia areata being bald would be a clear violation.

But even if not, many employers have other policies – such as a Code of Conduct or Professionalism Standards – that require employees to treat others with dignity and respect. In either case, Rock's joke, if made in the workplace, would almost certainly warrant disciplinary action, including potential termination.

More importantly, it **does not matter** whether the employee complained or was even offended. Even if the employee laughed at the joke (which Pinkett-Smith did not) or had the ability to capably handle it on her own (which Pinkett-Smith arguably did), harassment is harassment. If others – i.e., a "reasonable person" – could be offended by the conduct, it would violate most harassment-free workplace policies. The reasons for that are: (1) an employee may not be comfortable complaining even if they are offended and, (2) even if they are genuinely not offended – and even joined in the joke – others ("innocent bystanders") could be offended.

Conclusion

These are critical concepts for HR and business leaders to understand – and all employees to be trained on – to ensure you are fostering a safe and inclusive workplace focused on dignity and respect for all. A comprehensive understanding of these issues will help to maximize potential benefits and reduce legal risks.

Fisher Phillips will continue to monitor any further developments in this area as they occur, so you should ensure you are subscribed to Fisher Phillips' Insight system to gather the most up-to-date information. If you have any questions regarding the issues raises in this Insight, or if Fisher Phillips can help you with your workplace behavior policies and training, please consult your Fisher Phillips attorney or the authors of this Insight.

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