

“WICKED” DIDN’T WIN BEST PICTURE – BUT EMPLOYERS CAN TURN ITS LESSONS INTO BEST PRACTICES

Insights
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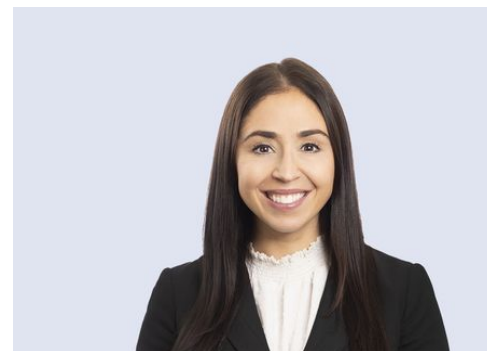
“Wicked” may have lost best picture to “Anora,” but the musical’s stars opened the Oscars with a stellar performance of the most memorable songs from the Land of Oz – and there’s no doubt that it was a smash hit at the box office. This Broadway adaptation – which was nominated for 10 Oscars and took home two – is a cautionary tale about the harmful impact of toxic behaviors whether at school, at work, or in society at large. Although a green-skinned witch lives only in the world of fiction, the themes from “Wicked” have real implications for the workplace. Here are the key lessons for employers from “Wicked” and other top films featured at the 97th Academy Awards on March 2.

Eliminate Unlawful Discrimination

“Wicked” tells the story of Elphaba Thropp before she became known as the “Wicked Witch of the West.” As a student at the magical and musical Shiz University, Elphaba is discriminated against based on the green color of her skin. She is also horrified to witness the university fire her favorite professor – a goat named Dr. Dillamond – solely because he is an animal. These actions led to big problems on campus, and discriminatory practices can do the same for your workplace.

The hit musical highlights the importance of developing robust policies and taking appropriate workplace measures to prevent and address unlawful conduct under anti-discrimination and anti-harassment laws, such as the following:

Related People



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- Title VII of the Civil Rights Act of 1964, which prohibits workplace discrimination and harassment based on national origin, race, color, religion, and sex (including sexual orientation, gender identity, and pregnancy).
- Additional federal laws that protect employees and job applicants from discrimination based on age, disability, genetic information, and more.
- State and local laws, which may also prohibit employers from discriminating against employees based on these and additional protected characteristics (such as marital status, caregiver status, weight, and hair texture). These laws generally prohibit differential treatment, harassment, and retaliation based on protected characteristics.



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Best Practices: In addition to developing and consistently following anti-discrimination and anti-harassment policies, employers maintain clear complaint and investigation procedures, provide avenues for anonymous reporting, and train managers on both overt and more subtle forms of discrimination that are prohibited in the workplace.

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Eliminate Unlawful Discrimination

Best Practices ★★★★★

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Stop Workplace Bullying

Although “Wicked” is set in an academic environment, the bullying that occurs on campus would also be problematic in the workplace. Notably, workplace bullying generally isn't

“illegal” unless it is based on a protected characteristic, like the ones under the federal and state laws mentioned above.

In Elphaba’s case, much of the bullying she experienced was based on the color of her skin, which can rise to the level of unlawful harassment under Title VII and similar state laws. According to the Equal Employment Opportunity Commission (EEOC), such harassment is unlawful when enduring offensive conduct becomes a condition of continued employment, or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

What if comments – like the students comparing Elphaba to an artichoke – are just meant as jokes? While a one-time remark based on a protected characteristic might not be actionable, this behavior can be a violation if it is either severe or pervasive.

“Petty slights, annoyances and isolated incidents — unless extremely serious — will not rise to the level of illegality,” according to the EEOC. But even when bullying isn’t technically illegal or based on a protected characteristic, it can be problematic in the workplace and impact employee morale, mental health, productivity, and tenure. Employers should be aware of the negative impact and consider taking pro-active steps to create a healthy and safe work environment for all employees.

Best Practices: Employers may choose to go beyond what is required and create an anti-bullying policy that sets workplace expectations and guidelines and addresses problematic behavior before it escalates. Be sure to clearly define what behavior is acceptable, train managers on how to handle issues as they arise, and consistently enforce your policies. Work with legal counsel to ensure your policies and practices align with applicable employment laws, including Title VII and the National Labor Relations Act. You should also note that some state harassment-prevention training requirements include an anti-bullying component. [Click here for steps to prevent workplace bullying.](#)

Stop Workplace Bullying

Best Practices ★★★★★

Employers may choose to go beyond what is legally required and create an **anti-bullying policy** that sets workplace expectations and guidelines and addresses problematic behavior before it escalates. Be sure to clearly define what behavior is and isn't acceptable, train managers on how to handle issues as they arise, and consistently enforce your policies.

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Fix Toxic Workplace Culture

Beyond discrimination, harassment, and bullying, "Wicked" calls attention to other toxic behaviors that can wreak havoc on workplace culture. Most glaringly, Glinda (formerly known as Galinda) is favored by most (but not all) staff and students at Shiz University. This leads to unfair treatment and creates an initial unhealthy rivalry between Glinda and Elphaba.

Favoritism like this also occurs in the workplace and can lead to bias in decision making. Thus, employers should be aware of any toxic behaviors in their organization that could result in unfair treatment, create a negative workplace culture, and potentially lead to costly litigation.

Best Practices: Set objective performance criteria for all employees, make sure workloads are fairly distributed among employees, prevent burnout, be transparent and solicit feedback from employees, reinforce workplace values by setting an example from the top of the organization, and encourage and reward teambuilding and collaboration.

Fix Toxic Workplaces

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More Workplace Lessons from Oscars Nominees

- **Prevent Gender Identity Discrimination – “Emilia Pérez.”** This film – which received two Oscars despite a controversy over social media posts from the lead actress – explores gender identity issues and reminds employers to comply with laws that protect workers based on gender identity. Although the Trump administration [recently rolled back](#) Biden-era EEO workplace guidance on LGBTQ+ harassment, a [2020 case from the U.S. Supreme Court](#) makes clear that sexual orientation and gender identity discrimination violates Title VII. You should also note that at least 23 states and D.C. have explicit laws on the books prohibiting employment discrimination based on sexual orientation and gender identity, while at least 10 additional states interpret existing laws to cover such discrimination. [You can find the full list here](#) as you review your policies and practices for compliance.
- **Curb Age Bias – “The Substance.”** This movie – which took home an Oscar for best makeup and hairstyling – follows a fading celebrity who is fired from her hit aerobics show after turning 50. This distressing event prompts her to take a black-market drug that promises a “younger, more beautiful, more perfect” version of herself. The theme reminds us that discriminating against workers based on their age (40 and above under federal law) is not only illegal but can also be harmful to employee morale and lead to lower productivity, increased litigation, and a

loss of key workers. Be sure that your policies are compliant with the federal Age Discrimination in Employment Act and equivalent state laws and review your practices to ensure workers of all ages have the opportunity to thrive.

- **Address Office Romance – The Snubbed “Babygirl.”** One of this year’s biggest Oscar snubs follows a CEO who is engaged in a workplace romance with one of her company’s interns. Though “Babygirl” delves into the details of their affair, the overall theme revolves around the CEO’s position of power at work over an intern. You are likely aware of the problems stemming from office romances, including gossip, lack of productivity, potential claims of disparate treatment, or worse, sexual harassment. While many employers have policies prohibiting specific romantic relationships between supervisors and subordinates, forbidding all romantic relationships between co-workers may be unrealistic. Do your workplace romance policies need an update? You should be realistic, account for company culture, and clearly communicate your expectations with employees. [Click here for four key points to consider.](#)

More Workplace Lessons from Oscars

Prevent Gender Identity Discrimination

Emilia Pérez ★★★★★

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Address Office Romance

Babygirl ★★★★★

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Conclusion

By keeping the “big picture” in mind, employers can be the star of the show if they maintain clear policies and reporting procedures. If you need assistance in crafting appropriately tailored workplace policies or training for employees or managers, reach out to your Fisher Phillips attorney or the

authors of this Insight. We will continue to monitor developments related to all aspects of workplace law. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney or the authors of this Insight.