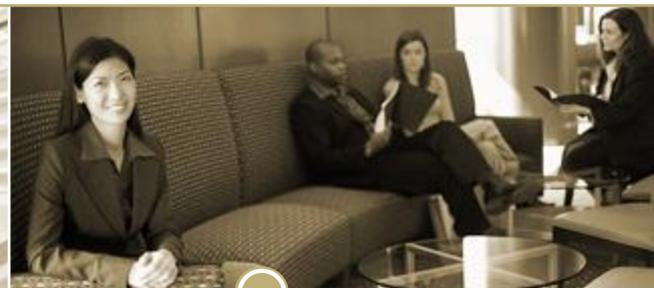




Coffee Club

Not Just on the School

Grounds: *Addressing Workplace
Bullying*



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A Professional Law Corporation

Introduction

Welcome to the AALRR monthly “Coffee Club” Webinar Series.

Our series will focus on labor and employment law issues facing California employers and will provide you with a unique understanding and perspective on a variety of interesting and timely topics.

Join us the first Tuesday of every month
@ 10:00 am for a new and exciting topic.

Today, we will be discussing Workplace Bullying

Next Month, *Off-Duty use of Medical & Recreational Marijuana: Managing the Workplace*



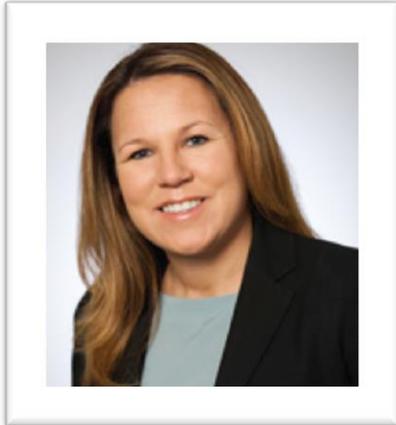
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Meet Amber Solano



Amber Solano represents employers in both the private and public sector in all areas of labor and employment law, including the areas of wrongful discharge, wage and hour (including class actions), discrimination/ harassment, defamation, leaves of absences, privacy, and the First Amendment.

Ms. Solano handles matters in state and federal courts as well as before various administrative agencies, she also counsels clients on a variety of employment issues, including employee discipline, wage and hour compliance, and adherence to federal and state family and medical leave laws.

Bullying in the Workplace

Almost all workplaces have been faced with the problem of workplace bullying but until recently workplace bullying has received little attention compared to prevention efforts directed toward discrimination and sexual harassment.

Just as national attention on student and minor cyber bullying prompted legislation by many states, now workplace bullying is also receiving attention and may be next to receive legislative action.



New Issue for Employers

- New focus on workplace bullying as compared to prevention efforts directed at discrimination and sexual harassment
- 37% adult Americans experienced bullying
- 12% adult Americans have witnessed bullying
- 80% of conduct is “legal”
- 72% conducted by workers who outrank their targets
 - Healthy Workplace Campaign

Generally not illegal unless unlawful discrimination, harassment or retaliation is involved

Workplace Conduct



- Society has changed.
- What was once considered harmless joking or teasing, or was ignored because “that’s just the way things are,” is no longer tolerated.

Workplace Bullying

Repeated Mistreatment *May Include*:

- Displays of anger or yelling at employees during a crisis
- Openly criticizing or taunting an employee in front of others
- Blatantly ignoring employees as if invisible
- Profanity used towards or around employees
- Physical intimidation used towards employees
 - Exaggerated physical behaviors such as stomping, slamming doors or drawers
 - Glaring or intense staring at another person

What is **Not** Workplace Bullying?

While each situation is unique, usually these are **not** considered bullying:

- General disagreements among co-workers or supervisors
- Occasional or general incivility or rudeness
- Tough or demanding bosses
- Legitimate evaluation or disciplinary action
- Specific complaints of misconduct

What Are “Protected Classes”?

Federal
Title VII
ADEA
ADA
GINA

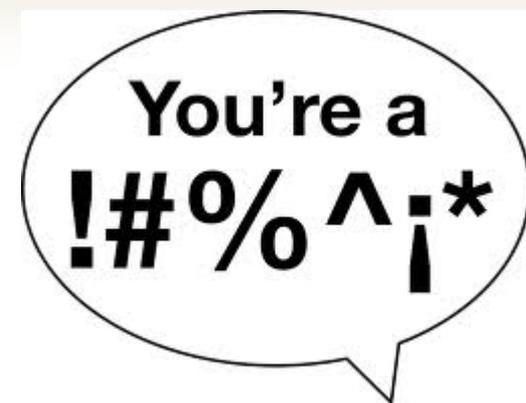
- Race
- Color
- Religious Creed
- Sex
- National Origin
- Age
- Physical/Mental Disability
- Genetic Information

What Are “Protected Classes”?

California FEHA

- ✓ Race
- ✓ Color
- ✓ Religious Creed*
- ✓ Sex*
- ✓ National Origin/
Ancestry
- ✓ Physical/Mental
Disability
- ✓ Medical Condition
- ✓ Genetic Information
- ✓ Marital Status
- ✓ Gender
- ✓ Gender Identity and
Expression
- ✓ Age
- ✓ Military and
Veterans*
- ✓ Pregnancy/Child
Birth/Breastfeeding*
- ✓ Sexual Orientation
- ✓ Perception &
Association

Prevention of Abusive Conduct



Prevent Abusive Conduct

What is Abusive Conduct?

(As defined in AB2053)



“ . . . conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer’s legitimate business interests. [It] may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person’s work performance.”

A Better Definition

What is Bullying?

- Repeated, usually intentional, health-harming mistreatment of one or more persons (targets) by perpetrators(s) that takes one or more of the following forms:
 - Verbal abuse
 - Offensive conduct and behaviors which are threatening, humiliating or intimidating
 - Work interference or sabotage which prevents work from getting done
- May also include real or perceived imbalance of power, evident enjoyment by the aggressor and sense of oppression by the target.

Prevent Abusive Conduct



What is Abusive Conduct?

- A single act shall not constitute abusive conduct, unless the act is “especially severe or egregious.”

Unintentional Environmental Conditions

- ✓ Focusing solely on numbers and not considering the personal component.
- ✓ Rewarding strong personalities and aggressiveness.
- ✓ Allowing an environment of disrespect.
- ✓ Allowing fear to be a dominant emotion in the workplace.
- ✓ Permitting leaders to using passive aggressive behavior.
- ✓ Allowing a culture of fun at the expense of others (especially those perceived as weak).

Some employers rationalize workplace bullying by claiming it is useful and sometimes necessary.

U.S. Supreme Court

Title VII does not set forth a “general civility code for the American workplace”

(Burlington Northern and Santa Fe Railroad v. White 548 U.S. 53, 63, 64 (2004).)

CA Court of Appeal

FEHA is “not designed to rid the workplace of vulgarity,” and that attempting to impose a civility code, with “human nature being what it is, would be an exercise in futility.”

(Lyle v. Warner Brothers Television Products, 38 Cal.4th 265, 295 (2006); Pantoja v. Anton 198 Cal.App.4th 87, 93 (2011).)

AB 2053

2014



- Train supervisors to identify and eliminate workplace bullying
- Augment sexual harassment training
- Adds abusive conduct component

Proactive Employers

- 1 Develop policies addressing abusive conduct in the workplace
- 2 Educate managers and supervisors
- 3 Provide employee assistance programs
- 4 Establish enforcement procedures and consequences for such behavior
- 5 If necessary, time off from work, counseling
- 6 Be aware for signs of bullying



California employers should stay ahead of the regulatory trend by **acknowledging, identifying and establishing** an in-house protocol aimed at lessening the growing workplace bullying problem.

Thank You

For questions or comments, please contact:

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