DECATUR AREA SOCIETY FOR HUMAN RESOURCE MANAGEMENT

Hostile Work Environment In All Its Forms

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A PRESENTATION BY:

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Davis & Campbell L.L.C. consists of thirteen attorneys with a central office in Peoria and additional offices in Chicago and Washington, D.C. The firm’s practice consists predominately of the representation of business owners and management in labor, corporate and tax matters. Davis & Campbell L.L.C. represents local, regional and national clients, with clients ranging in size from Fortune 500 companies to the sole entrepreneur.

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I. Hostile Environment Overview

Actionable hostile work environment occurs when unwelcome comments or conduct unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive working environment. The harassing conduct must be based on a protected characteristic and the harassment must be both unwelcome and severe or pervasive to the individual (subjective standard) and to a reasonable person (objective standard). Anyone in the workplace can commit hostile work environment harassment -- a management official, co-worker, or non-employee, such as a contractor, vendor or guest.

The federal statutes making such conduct actionable include Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), Section 1981 of the Civil Rights Act of 1866, and Section 1983 of the Civil Rights Act of 1871. The Illinois Human Rights Act also prohibits discriminatory hostile work environment harassment.

The anti-discrimination statutes are not a general civility code. The law does not prohibit simple teasing, offhand comments, or isolated incidents that are not extremely serious. Additionally, the law does not prohibit severe or pervasive conduct that is not based on a protected characteristic. Simply put, non-discriminatory bullying is currently not unlawful per se under any federal or state statute.

However, recently there has been a good deal of attention placed on non-discriminatory workplace bullying. Advocacy groups and employment law associations have blitzed the media with staggering statistics about workplace
bullies and the purported emotional and economic toll their behavior has on the workplace. One such advocacy group, the Workplace Bullying Institute, has created a model anti-bullying statute that it is urging state legislatures to adopt. To date, 25 states have considered anti-bullying legislation, but so far no such legislation has been enacted. This is an emerging area of law that employers should be sure to keep an eye on.

II. Elements of Actionable Hostile Environment Claim

The basic elements of a hostile work environment claim are:

1. The employee was subjected to harassing conduct;
2. The conduct occurred because the employee was a member of a protected class (e.g. race);
3. The conduct was unwelcome; and
4. The conduct was sufficiently severe or pervasive that the employee believed that the conduct made his work environment hostile, and a reasonable person would find the employee’s environment to be hostile or abusive.

A. Harassing Conduct

There are numerous actions that may be considered harassing conduct including:

1. Use of derogatory words, phrases, or epithets
2. Demonstrations such as use of gestures, pictures or drawings which would offend a particular group
3. Comments about an individual’s physical characteristics
4. Making disparaging remarks about an individual
5. Sending, forwarding or soliciting inappropriate letters, notes, emails or images
6. Expressing negative stereotypes
7. Leering
8. Physically touching or striking an individual

B. Protected Class/Category

Federal and/or state laws prohibit harassment based on any of the protected categories:

1. Race/Color
2. Religion
3. Age
4. National Origin/Ancestry
5. Gender
6. Disability
7. Marital Status
8. Military Status
9. Sexual Orientation
10. Orders of Protection

C. Unwelcome

To be unlawful, harassing conduct must be unwelcome in the sense that the alleged victim did not solicit or incite the conduct and regarded it as undesirable or offensive. Thus, employers sometimes argue that the conduct in question was not unwelcome because it was playful banter and the alleged victim was an active participant. The facts in all cases require careful scrutiny to determine whether the alleged victim was, in fact, a willing participant.
**Example -- Unwelcome Conduct [EEOC Compliance Manual Section 12]**

Beth’s colleague, Bill, repeatedly talked to her at work about her prospects for salvation. For several months, she did not object and discussed the matter with him. When he persisted even after she told him that he had “crossed the line” and should stop having non-work related conversations with her, the conduct was clearly unwelcome.

**D. Severe or Pervasive**

Even unwelcome conduct is not unlawful unless: (1) the victim subjectively perceives the environment to be abusive, and (2) the conduct is severe or pervasive enough to create an objectively abusive work environment -- one that a reasonable person in the victim’s position would find hostile or abusive. The conduct does not have to be so egregious that it causes economic or psychological injury; at the same time, the conduct is not unlawful simply because it is uncomfortable or inappropriate. The conduct just must be sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.

Hostile work environment claims must be analyzed on a case-by-case basis by looking at all the circumstances, the context and by using common sense. Relevant factors in evaluating whether certain conduct creates a sufficiently hostile work environment include:

1. Whether the conduct was physically threatening, intimidating or humiliating;
2. How frequently the conduct was repeated;
3. Whether the conduct was hostile and/or patently offensive;
4. The context in which the harassment occurred;
5. The duration of the conduct; and
6. Whether the conduct unreasonably interfered with the victim’s work performance.

There is no threshold magic number used to determine whether conduct meets the severe or pervasive standard. Courts consider the number of incidents as a factor, but this alone is not determinative. The required showing of severity or seriousness of the conduct varies inversely with the pervasiveness or frequency of the conduct. In other words, the more egregious the conduct, the fewer the incidents needed to meet the legal standard. A single incident of invidious harassment can create a hostile work environment.

Example -- Sufficiently Severe Conduct [EEOC Compliance Manual Section 15]

Tim, an African American, is an employee at an auto parts manufacturing plant. After a racially charged dispute with a Caucasian coworker, the coworker told Tim: “Watch your back, boy!” The next day, a hangman’s noose, reminiscent of those historically used for racially motivated lynchings, appeared above Tim’s locker. Given the violently threatening racial nature of this symbol and the context, this incident would be enough to alter Tim’s working conditions.

Example -- One Instance of Physically Threatening Conduct Sufficient to Constitute Hostile Environment [EEOC Compliance Manual Section 12]

Ihsaan is a Muslim. Shortly after the terrorist attacks on September 11, 2001, Ihsaan came to work and found the words “You terrorists go back where you came from! We will avenge the victims!! Your life is next!” scrawled in red marker on his office door. Because of the timing of the statement and the direct physical threat, this incident, alone, is sufficiently severe to constitute hostile environment harassment based on religion and national origin.
Example -- Sufficiently Pervasive Conduct [EEOC Compliance Manual Section 15]

Miyuki, of Japanese decent, got a job as a clerk in a large general merchandise store. After her first day on the job, a small group of young male coworkers starts making fun of her when they see her by slanting their eyes, or performing Karate chops in the air, or intentionally mispronouncing her name. This occurs many times during her first month on the job. This is pervasive harassment because of race and/or national origin.

Example -- Conduct Not Sufficiently Severe or Pervasive [EEOC Compliance Manual Section 15]

Steven, an African American, is a librarian at a public library. Steven approaches his Caucasian supervisor, John, with the idea of creating a section in the stacks devoted to books of interest particularly to African Americans, similar to those he has seen in major bookstore chains. Steven’s supervisor rejects the idea out of hand, stating that he does not want to create a “ghetto corner” in the library. This statement alone, while racially offensive, does not constitute severe or pervasive racial harassment, absent more frequent or egregious incidents.

Example -- Conduct Not Sufficiently Severe or Pervasive [EEOC Compliance Manual Section 12]

Marvin is an Orthodox Jew who was hired as a radio show host. When he started work, a co-worker, Stacy, pointed to his yarmulke and asked, “Will your headset fit over that?” On a few occasions, Stacy made other remarks about the yarmulke, such as: “Nice hat. Is that a beanie?” and “Do they come in different colors?” Although the co-worker’s comments about the yarmulke were insensitive, they were not sufficiently severe or pervasive to create a hostile work environment for Marvin.

III. Employer Liability -- Supervisor v. Co-worker/Non-employee Harassment

A. Supervisor Harassment

An employer’s liability for an actionable hostile work environment differs depending on whether the harasser is a supervisor or a co-worker. A supervisor is an individual that has the authority to: (1) undertake or recommend tangible
employment decisions affecting the victim, or (2) direct the victim’s daily work activities.

When hostile work environment harassment is perpetrated by a supervisor, under federal law, an employer is vicariously liable, unless the employer can show:

1. That it exercised reasonable care to prevent and promptly correct the harassing behavior; and

2. The complaining employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Example -- Employer Not Liable for Unlawful Harassment By A Supervisor [EEOC Compliance Manual, Section 13]

Carla, a Guatemalan, claims that she was subjected to frequent offensive comments based on sex and national origin by her first-level supervisor. Carla was aware of the employer’s anti-harassment complaint procedures, but did not notify her employer or explain her failure to follow those procedures. The employer learned of the harassment from Carla’s co-worker, and immediately conducted an investigation. The employer reprimanded the supervisor and transferred him to another division. The company is not liable for the harassment because it took reasonable preventative and corrective measures and Carla unreasonably failed to complain about the harassment.

B. Co-Worker/Non-Employee Harassment

When hostile work environment harassment is perpetrated by a co-worker, or a non-employee over whom the employer has control (e.g. customers on the premises, vendors, or independent contractors), an employer will be liable if it knew or should have known about the conduct and failed to take prompt and appropriate corrective action.
Example -- Employer Liable for Harassment By Non-Employee Over Whom It Has Control [EEOC Compliance Manual Section 15]

Charles is a frequent visitor on XYZ Senior Community’s “neighborhood days,” when XYZ allows senior citizens in the neighborhood to visit its residents. During his visits, Charles often yells derogatory comments about Blacks and Latinos at Cheryl, a Black employee of Puerto Rican national origin, and has even pushed and tripped her on a few occasions. Cheryl complains about the conduct to a manager, and is told that XYZ cannot take any action against Charles because he is not a resident. On subsequent visits, Charles continues to yell racial and ethnic slurs at Cheryl, and she files an EEOC charge. XYZ is liable for the actions of Charles, a non-employee, because it had the power to control Charles’s access to the premises, was aware of Charles’s offensive conduct, and did not take corrective action.

However, unlike federal law, under Illinois state law, when a supervisor engages in hostile work environment harassment, the employer is strictly liable.

IV. Preventative and Corrective Measures for Employers

To prevent harassment from arising and to maintain an affirmative defense that the employer prevented and corrected harassment, an employer should:

1. Establish and disseminate a written anti-harassment policy, with an appropriate complaint procedure, which should be distributed to all employees and posted in conspicuous places at each of the employer’s facilities and business locations;

2. Train and continuously educate all employees about harassment; and

3. Promptly investigate all complaints of harassment and take appropriate corrective action.
A. Anti-Harassment Policy

An employer’s anti-harassment policy should contain the following:

1. A clear explanation of prohibited conduct -- verbal, visual and physical conduct;

2. Assurances that employees who make complaints of hostile work environment harassment or provide information related to such complaints will be protected against retaliation;

3. A clearly described complaint process that provides accessible avenues for complaints (should be designed to encourage victims to come forward);

4. Assurances that the employer will protect the confidentiality of harassment complaints to the extent possible;

5. A complaint process that provides a prompt, thorough, and impartial investigation; and

6. Assurances that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred.

B. Training

Workforce training is essential to preventing harassment and protecting the employer if harassment occurs. Employees must be told what conduct constitutes harassment, must be informed that there is a complaint procedure in place, and must be educated on what to do if they either witness or experience harassment themselves. Training should include practical guidance on federal and state harassment laws, harassment prevention and consequences, and should be taught in a classroom or other interactive forum.

Training of supervisors is critical and essential. In addition to the above training, supervisors should be trained on how to recognize potentially harassing behavior and what to do if an employee complains, either formally or informally.
C. Prompt Investigation and Corrective Action

Promptly investigating hostile work environment allegations and taking immediate and successful corrective action to resolve hostile work environment harassment complaints are critical to establishing an employer’s affirmative defense against liability for hostile work environment harassment claims.

Corrective/remedial measures should be designed to stop the hostile work environment harassment, correct its effects on the complaining employee, and ensure that the harassment does not recur. These measures need not be those that the complaining employee requests or prefers, as long as they are effective. The measures should be proportional to the seriousness of the offense, and should be not adversely affect the complaining employee.

Adequate remedial measures include: separating the complaining employee and harasser, individual counseling or training for the harasser, and taking disciplinary action against the harasser. Inadequate corrective actions include: an unreasonable delay in taking action, transferring the complaining employee in a manner that adversely affects the employee, and not disciplining the harasser severely enough.

V. Emerging Claim -- Non-discriminatory Workplace Bullying

A. Overview

As a result of non-discriminatory bullying not being prohibited under any federal or state statute, victims of workplace bullying have had to use traditional tort claims (e.g., assault and battery, false imprisonment, defamation and intentional infliction of emotional distress) for legal relief, with very little success.

In practice, several employees have made non-discriminatory hostile work environment/bullying claims against individuals working for clients of Davis & Campbell L.L.C. Redacted copies of letters asserting the claims are attached hereto as Appendix A.

**B. Definition of Bullying**

The Workplace Bullying Institute, the proponent of the Healthy Workplace Bill [which is discussed in Section D below] has defined workplace bullying as: “repeated, health-harming mistreatment that is expressed as one or more of the following: verbal abuse, or conduct (including nonverbal behavior) which is
threatening, intimidating, or humiliating, or interference with work, preventing work from getting done, sabotage.”

The Workplace Bullying Institute has elaborated on the distinction between workplace bullying and rudeness, stating that:

“Incivilities and rudeness rarely trigger stress in people who experience them. Toe picking, knuckle cracking, belching and nostril reaming are all offensive and undignified. However, they reflect only on the socialization of the picker, cracker, belcher and reamer. It’s not bullying until the bully does something to the Target. If the bully picks the Target’s toes (against her wishes) or picks her nose (without permission) and this offensive behavior hurts her emotionally, it could be bullying. Inadvertent social mistakes not expressly done to affect another person may be cute to talk about, but they do not qualify as bullying according to our criteria.”

According to “The Bully at Work” by Gary and Ruth Namie, the top 10 tactics for bullies are:

1. Blame for errors
2. Unreasonable job demands
3. Criticism of ability
4. Inconsistent compliance with rules
5. Threaten job loss
6. Insults and put-downs
7. Discounting/denial of accomplishments
8. Exclusion, “icing out”
9. Yelling, screaming
10. Stealing credit
Suzy Fox, an associate professor at Loyola’s Institute of Human Resources and Employment Relations, identified six types of office bullying tactics. Chicago Tribune’s Red Eye labeled the categories and matched the behaviors with pop culture characters and entertainers, which are contained in Appendix B.

C. Proposed Model Legislation -- Healthy Workplace Bill

A few years ago, the Workplace Bullying Institute began circulating model anti-bullying legislation known as the Healthy Workplace Bill. The actual text of the proposed Healthy Workplace Bill is available only to authorized users -- State Coordinators and Registered Citizen Lobbyists whose lawmaker requested a copy. However, the Workplace Bullying Institute has published an overview of the proposed Healthy Workplace Bill.

According to the Workplace Bullying Institute, the Healthy Workplace Bill substitutes health-impairment for discrimination, and extends protection to all employees, working for either public or private employers, regardless of protected group status, who seek redress for being subjected to an abusive hostile work environment. The Bill makes it unlawful for an employee to subject another employee to malicious conduct that sabotages or undermines their work performance. Furthermore, the Healthy Workplace Bill prohibits retaliation against a complaining employee or anyone who helps the complaining employee.

Targeted employees must rely solely on private attorneys to enforce the Healthy Workplace Bill. States will have no enforcement role. Individuals may
accept workers’ compensation benefits in lieu of bringing a private action under the Healthy Workplace Bill.

Also, under the proposed Healthy Workplace Bill, the bullying employee is personally liable for the unlawful conduct. The employer may also be vicariously liable, but the employer may avoid vicarious liability if: (1) it exercises reasonable care to prevent and promptly correct the abusive conduct, and (2) any adverse employment decisions are consistent with legitimate business interests, or the employee's poor performance, illegal or unethical activity.

The Workplace Bullying Institute summarizes the Healthy Workplace Bill as follows:

1. Addresses only the most abusive, health-endangering circumstances.
2. Does not mandate “feeling good” principles, health must be damaged.
3. No new government bureaucracy; costs the state nothing.
4. Good employers with policies that honestly enforce them have nothing to fear.
5. The small penalties will discourage attorneys from taking weak cases -- low chance of frivolous cases.

D. Illinois – Abusive Work Environment Act

On January 29, 2009, Illinois became the 15th state to consider anti-bullying legislation, when the Abusive Work Environment Act (“Act”) was introduced by State Representative Arthur L. Turner as HB 374. Proposed HB 374 died on the Illinois House floor without any vote being taken. However, the Act was reintroduced on February 2, 2010 by State Senator William Delgado as
SB 3566. On March 18, 2010, SB 3566 was passed by the Illinois Senate, but died without a vote by the Illinois House.

**Coverage**

The Act appeared to be modeled after the Healthy Workplace Bill, the anti-bullying statute being promoted by the Workplace Bullying Institute. However, one key difference between the Act and the Healthy Workplace Bill was the definition of “employer.” Under the Act an “employer” included “the State or any subdivision thereof, any county, municipality, unit of local government, school district, community college district, municipal or public corporation, or State university.” Thus, the Act applied to public employers only, unlike the model Healthy Workplace Bill, which applies to both private and public employers.

**Abusive Work Environment**

The Act made it unlawful to subject an employee to an abusive work environment. Under the Act, an abusive work environment exists when an individual, acting with malice, subjects an employee to abusive conduct so severe that it causes tangible harm to the employee. The specific elements of an abusive work environment were defined as follows:

1. **Abusive conduct**: “conduct, including acts, omissions, or both, that a reasonable person would find hostile, based on the severity, nature, and frequency of the conduct”;

2. **Malice**: “the desire to cause pain, injury or distress to another”; and

3. **Tangible Harm**: “psychological harm [the material impairment of a person’s mental health] or physical harm [material impairment of a person’s physical health or bodily integrity].”
However, conduct protected by the First Amendment of the U.S. Constitution and Article I of the Illinois Constitution, including the exercise of free speech, free expression, and free exercise of religion or expression of religiously based views are not be considered “abusive conduct” unless the intent was to intimidate or harass.

**Retaliation**

The Act also made it unlawful to retaliate against an employee who opposed an unlawful employment practice under the Act, or who participated in any manner in an investigation or proceeding under the Act.

**Liability and Affirmative Defenses**

The Act created individual liability for the perpetrator of the abusive conduct and vicarious liability for employers. However, the Act did contain affirmative defenses for employers and individuals. For the affirmative defenses available to employers, the Act made a distinction between conduct that does, and conduct that does not, result in an adverse employment action.

If the conduct does not result in an adverse employment action, the employer has an affirmative defense if:

1. The employer exercised reasonable care to prevent and correct promptly any actionable behavior; and

2. The complaining employee unreasonably failed to take advantage of appropriate preventative or corrective opportunities provided by the employer.
On the other hand, if the conduct did result in an adverse employment action, the employer can establish an affirmative defense only by showing that the adverse action was reasonably taken due to poor performance, misconduct, or economic necessity;

The Act also created employer affirmative defenses for complaints made about a performance evaluation and complaints made about investigations. In the case of a complaint that is the result of an unfavorable performance evaluation, an employer can defend by showing that the performance evaluation was reasonable. When the complaint is based on an investigation, an employer can defend by showing that it conducted a reasonable investigation about potentially illegal or unethical behavior.

An individual employee can establish an affirmative defense by proving that the employee committed the unlawful employment practice at the direction of the employer, under the threat of an adverse employment action.

Available Relief

The Act allowed successful complainants to receive the following relief: reinstatement, removal of the offending party from the complainant’s work environment, back pay, front pay, medical expenses, compensation for emotional distress, punitive damages and attorney’s fees. However, where an employer is liable for an unlawful employment practice that did not result in an adverse employment action, the employer’s liability for emotional distress damages was capped at $25,000 and the employer was not subject to punitive damages.
Also, if a complainant received benefits for medical costs and/or time off of work as the result of a compensable injury or illness caused by an unlawful employment practice under both the Workers’ Compensation Act and the Act, the payments of workers’ compensation must be reimbursed from compensation paid under the Act.

**Enforcement**

The Act was only enforceable by a private right of action, with a statute of limitations period of one year from the date of the last unlawful employment practice. There is not a government agency like the EEOC or IDHR responsible for investigating or pursuing claims as in the discrimination arena.

**E. Bullying Case**

In April of 2008, the Indiana Supreme Court affirmed a jury verdict of $325,000 against a heart surgeon for bullying a former hospital employee [*Raess v. Doescher*, 883 N.E.2d 790 (Ind. 2008)]. This case is being hailed as a prime example of a successful workplace bullying case.

The Indiana Supreme Court found that the following allegations of bullying asserted by the former employee against the surgeon was sufficient to prove an assault claim: “by aggressively and rapidly advanc[ing] on the plaintiff with clenched fists, piercing eyes, beet-red face, popping veins, and screaming at him. The [employee] backed up against a wall and put his hands up, believing that the [surgeon] was going to hit him, ‘that he was going to smack the s**t out of me or do something.’” Then the [surgeon] suddenly stopped, turned and
stormed past the [employee] and left the room, momentarily stopping to declare to the [employee], ‘You’re finished, you’re history.’”

Although the employee’s claim was for assault, the case gained national attention because Gary Namie, director of the Workplace Bullying Institute, was allowed to testify that the surgeon was a bully and that the surgeon had bullied the employee. Specifically, Namie testified that “[i]n my opinion, it’s an episode of workplace bullying …” and “I concluded that based on what I heard and what I read that the defendant is a workplace abuser, a person who subjected that plaintiff to an abusive work environment. It was a horrific day, it was a particularly [egregious], outrageous … episode.”

The Indiana Supreme Court also stated that “workplace bullying could ‘be considered a form of intentional infliction of emotional distress.’”
APPENDIX A
10/17/07 phone call with [REDACTED]
4:00 pm

I thanked [REDACTED] for sending me the email on 10/16 and asked her to walk me through what had transpired related to [REDACTED]. I told her I normally like to hear the person discuss the situation rather than only read an email so that I fully understand what happened.

[REDACTED] stated that she put energy into trying to develop a relationship with this potential client in order to create an opportunity and now she is concerned that it will be a "[REDACTED]" (not sure if this is the correct name) all over again. She told me that this was an issue from the past that she never made a big deal about but it’s another example of her wanting to be treated the same as everyone else. She didn’t press that particular issue b/c it was just a potential opportunity, whereas [REDACTED] is a real, substantial opportunity. The magnitude of this is much larger.

[REDACTED] stated that she thinks it is very clear that they (meaning [REDACTED] and [REDACTED]) are trying to discount her in the process. [REDACTED] is the type of person to take things and run with them. He did this with [REDACTED] but she was definitely involved from the beginning. This type of sale requires a large team, and anyone would need to be involved in the process. Despite this, she is the sales person. The lead (from [REDACTED]) came to her. [REDACTED] and [REDACTED] also got word of the lead at the same time, just b/c of their level of involvement. Up until 10 days ago she thought they all were working as a team on the sale.

On a side note, she mentioned that a meeting has been scheduled with [REDACTED] and [REDACTED] to discuss [REDACTED]. I asked her to explain what the meeting was about and she told me it would help after she explained what happened in her last meeting with [REDACTED]. [REDACTED] thinks [REDACTED] was put in the middle of this issue by [REDACTED] probably told [REDACTED] to deal with it as her [REDACTED] Manager.

In their last meeting on 10/16/07, [REDACTED] was working off of an old activity list, going over her activity and clarifying leads. He neglected to discuss [REDACTED] even though her activity trail is entered clearly into [REDACTED]. Since he didn’t mention it, she brought it up. He asked [REDACTED] why she thought she should be involved in it. She told him that he knew why she should be involved. He didn’t respond to that, but rather asked her to tell him what she had done. She reminded him that she had tracked her activities all along and he knew it. She told me that she felt that he was bullying her, but mentioned that she kept in mind that he was probably put in the middle of it (since she already knew about the conversation between [REDACTED] and [REDACTED]).

[REDACTED] stated that she does not trust [REDACTED]. She feels that he has taken things she’s said and twisted them into something else. As they were discussing her involvement in the meeting she asked if she needed to tape their conversation. She told me she is trying to act like one of the guys and that was her approach in saying that. [REDACTED] stood up and said the conversation was over. She told him to sit back down, that they weren’t done discussing
it. He told her not to tell her what to do. She asked if this was going to be another
(?) He said he would schedule a meeting with to discuss this further.

After told about her conversation with she was devastated. She had a horrible weekend thinking that they would do this to her. I asked her to clarify what told her and she said it was exactly as she put it in the email. She said she didn’t want to get involved in this, but she had to. She thinks it’s ok that he is not in the meeting on Friday b/c the two of them are working well together and she wants it to stay that way by not having him in the middle.

She mentioned that she and have meetings according to his schedule. They are supposed to be Monday mornings but he fits them in when he can. She gets no motivation from him, second guesses him and again, doesn’t trust him. She thinks he doesn’t understand what she does because he has never done it himself.

We all put effort into creating her goals and then within 5 days he was already pressuring her that she wasn’t meeting them. She understands that everyone is under pressure right now, but thought that might have been pushing it. She told me she felt the need to seek counsel to protect herself.

I asked her to tell me about coming into her office without knocking. She said it hasn’t happened for a month, but the last time was around Sept. 19th. She was on a conference call and he came in without knocking. It was fine b/c they just hung out on the call together. On the 19th she made reference to people coming into her office and interrupting her but she did not say anything about him specifically coming in or about the lack of knocking first, but he got her point. She recollected in either early summer or late spring that her door had accidentally locked itself and he knocked and tried to open the door right away without waiting for her to say come in. When he found the door locked he started banging on the door. She emphasized that he was banging, not knocking.

She left it by saying that she has really been trying to put in quality work to get leads and just wants to be treated fairly. She asked me if I had any advice for the meeting on Friday and I told her that her approach of just listening to what they had to say was probably a good idea. I told her she may need some time to think about what they say before she discusses her point with them. She thinks its best that I wasn’t invited to the meeting and asked if I had told about her email. I told her I had not. She asked me not to say anything about it to him. I told her that I would like to share this information with and she did not object. I asked her to please call me after their meeting on Friday to let me know how it goes. She told me she would do so.
Hostile Work Environment Report

June 27, 2008
Requested from [Redacted]
From: [Redacted]

Attention [Redacted]

In my office you pressed me to name the person who made the comment during our [Redacted] meeting on June 26, 2008 that if we get pushback from anyone on the decision that has been made to change the [Redacted] brand, then ‘f’em and tell them to not let the door hit you in the a—.” Upon urging I told you I believed [Redacted] made the comment. However as an important clarification, the comment received full support from [Redacted] and [Redacted] because each nodded in approval of the comment. Furthermore, neither of these senior managers, [Redacted] who chairs the [Redacted] meetings, or [Redacted] objected to the comment, corrected the comment, or clarified the comment. The comment was embraced by our leadership and witnessed by employees. [Redacted] and [Redacted] appeared stunned with the comment and I was stunned by the comment as it represented unprofessional conduct and violation of the [Redacted] mission, values and core competencies. Further, as clarification, the ‘F’ word may not have been stated, it may have been, “screw ‘em, and tell them to not let the door hit you in a—,” but the meaning is the same.

Further specific, examples of a hostile work environment are as follows:

At the [Redacted] meeting on June 26, 2008, I asked if it would be wise as we roll out the brand change, to involve staff in the planning process. I was interrupted by [Redacted] abruptly as she stated, “no.” In past management meetings with [Redacted] I would extol the virtues of collaboration as a teambuilding tool that causes employees to have buy-in to the improvement process that will result in the highest employee commitment and inspired performance feeling ownership in the process. In these meetings [Redacted] expressed disdain for the notion of collaboration. At the [Redacted] meeting, upon saying no to collaboration, [Redacted] stated that is why the [Redacted] team is in place, “to make decisions” and [Redacted] and [Redacted] agreed. Immediately upon this exchange, the discussion centered on pushback from the workforce that comes from top down decisions like this followed by the comment of what will happen to anyone who pushes back. It was perfectly clear that a decision was made prior to the [Redacted] team meeting and that [Redacted] and [Redacted] were part of the decision in private discussions with [Redacted] and [Redacted] whose names were mentioned.

It is clear that [Redacted] and [Redacted] have special access to senior leaders, [Redacted] and [Redacted] as well as the managing director and they intentionally stifle collaboration that could cause important information to reach our senior leaders. When [Redacted] became my manager I was told to no longer report to the managing director cutting me off from communications with the managing
director.  has boasted on numerous occasions that she has a personal relationship with  has made comments as recently as the May manager's meeting that imply a personal relationship with the managing director. At the May 19th manager's meeting, made the comment, unrelated to any agenda item or company business, that questioned the managing director's memory of staying in a certain hotel together at a conference. She said to him in front of the whole group, "do you remember staying at that hotel together?" When the managing director said, "no" acted totally surprised and got a look on her face of shock, with eyebrows raised, mouth open, as if to question the managing directors memory in her body language. Numerous people present laughed in amazement at the comment. Comments such as these are unprofessional and lead to confusion in employee interpretation.

Because of the personal relationship these two senior managers have with the company leaders, and are able to access our leaders, stifle other input to them by denying collaboration, and influence our leaders with false information such as successfully commending my termination. This special access caused my reputation to be impugned and my employment terminated, without due process to be heard, thus creating a hostile work environment. Any work environment is hostile that would tolerate personal relationships between managers and leaders to the extent that employment decisions are made with no due process for employees to speak in one's own defense, no advance notice of performance deficiencies, or no opportunity for improvement of alleged performance deficiencies. Secret employment decisions were made against me while purposefully preventing company leaders from receiving factual information that retaliation is taking place against me for reporting incidences of violation of law and policy to the senior managers. As documented herein below, senior managers, namely, and commended my termination while orchestrating a cover up of their own unprofessional, unethical, and illegal actions, all intended to prevent me from providing our companies leaders with vital information, all the while plotting my termination and pretending to me that all was ok. This is a hostile work environment, not only for me, but for the if allowed to continue.

I collaborated with a senior manager, who served as my advisor, to seek his advice regarding the brand before the meeting. I did not believe I violated the previous directive from and at the start of meetings to keep it a secret. I simply asked with leaving the company, what he thought of the brand. At my management meeting with on June 23, 2008 she informed me I violated the secrecy of the meetings by asking about his advice on brand. This was hostile to me as it directed me to cut off communications with my advisor and encouraging no preparation prior to important decisions. As it turned out, the preparation was not useful as my feedback at the meeting was rejected out of hand as it was clear a decision had been made before the team met. Based on the language used at the meeting, one could imply that the decision was made by and as they drank on it with our senior leaders. I told at this meeting that if she felt I violated secrecy that I am truly sorry, that I only thought I was doing what the company encouraged, seeking advice from an advisor, and to please let our leaders know this. acted as if she would represent me well with our leaders. At no time in my employment including the months served as my manager did act as if my job performance was poor or that my job was in jeopardy. In fact acted as if the only barrier to top performance was cooperation of senior managers to transition districts to me as they were directed to do. acted as if all was fine, only to learn that her conduct was simply an act. used duplicity to disparage my performance to our leaders, deny me opportunity to communicate with others and commend my termination. This is a hostile work environment because duplicity was in violation of company policy.
Follow-up Meeting

August 22, 2007

[redacted] met with [redacted] on August 22, 2007 to follow up on the earlier meeting with [redacted] and [redacted] met with [redacted] on July 26, 2007. During the previous meeting, [redacted] voiced extreme concerns with her supervisor [redacted] and the work environment she feels he is creating. She also mentioned several times during the course of two conversations that she feels it may be easiest to resign based on the situation, but that her personal situation did not make that feasible. During the meeting with [redacted] and [redacted] discussed the following topics.

Meeting with [redacted]

- The meeting began with [redacted] discussing the meeting that was recently held between [redacted] and [redacted]. [redacted] stated that she enjoyed the time with [redacted] to review her Sr. Management assessment and her areas of development. She felt this was very productive and helpful up until the point when [redacted] joined the meeting. [redacted] felt the meeting then turned into a “therapy” session on how to get along with [redacted]. She mentioned this was disappointing if her ability to get along with [redacted] was going to determine her career path. If that was in fact the case—then she has no future here at [redacted].
- [redacted] then felt the meeting with [redacted] turned into an “interrogation” once [redacted] entered the room. [redacted] felt that she opened up and was ready to discuss—but that wouldn’t give anything. It needs to 50/50 and felt he gave “nothing.”
- [redacted] is pushing for her to complete the action plan. She feels the [redacted] is using the development plan as a “Stick to beat her with.”
- She does not trust [redacted]—she stated “he hasn’t earned it and she has no reason to.”

Environment Comments/Concerns

- The whole team is out there—[redacted] has many opportunities to support and cover for them and doesn’t.
- When a new person perceived as being in a position of power challenges a decision, or raises a concern, [redacted] backs down and scapegoats [redacted].
- [redacted] does not take accountability—even during meetings in which he has been present and given direction, and feels he changes his mind to try to get a win.
- Example: [redacted] situation—[redacted] and [redacted] talked about the steps with the offer—[redacted] was on board.
- [redacted] sees push back as a “threat” and then retaliates. She feels he always responds this way. She feels pushing back is part of her role, that is why we hired her, and she wouldn’t be doing her job if she didn’t. She has been working with these people for a year and has a lot of information based on that.
- [redacted] feels [redacted] makes “bad decisions.”
- Example: says she never wanted to eliminate their positions - that was idea. She feels he heard the may want them gone and he wanted to win points.
- Put the person at a jr. level example
  - She feels makes "arbitrary decisions"
  - He had misinformation when presenting business case (this happens often where he doesn't have facts prior to making decision)
  - She is fine with the final decisions - good decision and what she wanted - in both of these situations as they ended up where she thought they should be. She just felt that took it on a route that it didn't need to go.
- has created a "negative environment"
  - Non-productive environment
  - "Hostile not in the legal sense"
  - Demeaning
  - She can't win
  - He won't change
  - Motives are self-serving and destructive
  - Has aggressive reactions - creating an aggressive and hostile work environment
  - He is not breaking any laws - he is just creating a really bad environment
  - Unprofessional
- Growth team - "All careers and credibility in jeopardy"
  - The whole team looks like a bunch of Muppets
  - doesn't know what he should be doing and is making arbitrary decisions.
  - He is in over his head, messing things up and is making bad decisions
  - There has been no improvement since we talked in July - hasn't gotten worse either - because it was already so bad - it couldn't get any worse
  - feels it is one-sided: She has tried new approaches - nothing works or helps. She has given and willing to give but not more than 50% - he must give the other 60%
- Next steps - Investigation?
  - felt this may not be productive
  - She said "It comes down to him or her"
  - She stated "If he is the right fit and the position then she is not the right fit" and if relationship doesn't change - he can't change who he is as a 'bore' and neither can she
  - He wants her down; he may be better with a junior person that wouldn't push back.
  - His behavior and reactions are abrasive and offensive
- stated: is her number one supporter - many supporters - and of course and but is her # one supporter.
  - responded by saying that is his "glg" that is what he does so that firm management thinks this
  - He needs to treat her differently if that is how he feels
  - He has a need for power/ control/ constant battle
- Growth Team
  - All three ( and ) are interested in leaving
Leaving because they don't see anything changing - and they see no chance in getting him out.

She knows she is not their peer - but they are colleagues and she does want to say they are unhappy.

is looking.

used to being closely managed - doesn't say much but is quietly relieved when he is out of the office.

wants it to go away. Thinks would do more if knew how bad it is. But she also feels it was at a turning point when she and went to with their concerns and then went straight to that was the beginning of the end. When they went to - at that point she believed it could have been fixed.

First team meeting. started with saying "a General can't choose his troops - he has to work with the troops he has."

- Team meetings have flopped - due to his approach.
- E-mails rules.
- Door rules.
- asked what is going on afterward.

has meetings with them that are aggressive and then sends an e-mail recap that reflects differently that the actual occurrence. This is very concerning as now he has documented this recap as the truth when what occurred is very different. He changes history by doing this. This occurs often.

- Mentoring - stated his support for her again and that she had so much she could learn from him and to accelerate her career growth at

Doesn't want to be anything like him professionally and doesn't want to treat people the way he does. Would never want to be like him - so no - not interested in being mentored by someone like him.

He is arrogant, pompous and has a lack of respect for people.

He is like a *strutting peacock* strut[i]n front of people who just don't care.

Vendors and employees:

and i are oil and water

- Good Salad dressing but don't mix well together

What's next - what are you going to do?

- In five weeks have my baby - and take time to think...
- Have gone from being mad and stressed to just disappointed now.
- I want to be here, and not leave my team.

- Would send a bad message if I left - they would never know the reason why I left - and if they thought even I didn't like it here and was willing to jump ship .......

Really this is so icy - very icy - so unfortunate.

is a "wrench in the Cogs". We need to remove the wrench.

will provide documentation by Friday.
APPENDIX B
BULLYING TYPES

RAGING BULLY

- Protocol: Threatening and intimidating behavior such as verbal threats (yelling or cursing) and non-verbal threats (eye contact and gestures). E-bullies use online media to harass or threaten a worker.

- Executed by: Tommy Carcetti, the Baltimore mayor turned Maryland governor, in "The Wire." An opportunistic politico, Carcetti (Aidan Gillen) yells at his subordinates and threatens them if he doesn't get the crime statistics he needs to make a successful run for governor.

MEAN-ACE

- Protocol: Demeaning behavior, including insults and put-downs.

- Executed by: Miranda Priestly (Meryl Streep) in "The Devil Wears Prada." She quietly belittles her colleagues, including assistant Andy Sachs (Anne Hathaway), who never can seem to get Priestly's coffee or errands done right. Even Sachs' wardrobe comes under fire from Priestly.
**SILENT PARTNER**

- **Protocol:** Isolation or marginalization, including the silent treatment, excluding an employee from work meetings and systematically failing to return the worker’s phone calls or e-mails.

- **Executed by:** Janice Dickinson on "The Janice Dickinson Modeling Agency." After months of tension and heated arguments, Dickinson ignored and avoided her partner Peter Hamm when she sought a dissolution of their partnership in the third season of the show.

**SEEING-RED BULLY**

- **Protocol:** Abuse of supervision, including threatening a worker with job loss or demotion, excessively harsh criticism of performance, applying rules and punishments inconsistently and making unreasonable work demands.

- **Executed by:** Montgomery Burns in "The Simpsons." He has fired Homer Simpson numerous times and has made assistant Waylon Smithers peddle him on a tandem bike and clean his denture collection.
TORMENTO

- **Protocol:** Conducting work sabotage, including attacking or failing to defend a worker's plans or proposals and intentionally destroying or sabotaging work materials.

- **Executed by:** Jim Halpert (John Krasinski) on "The Office." He enjoys playing practical jokes on fellow co-worker Dwight Schrute (Rainn Wilson). Halpert has put the contents of Schrute's desk in a vending machine and encased his stapler in Jell-O.

GABOTAGER

- **Protocol:** Spreading rumors to ruin a reputation and using cyber-bullying techniques to degrade a worker.

- **Executed by:** The doctors of "Grey's Anatomy." They're always whispering about who's sleeping with whom, who has better cases and who's fighting to stay afloat.