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#MeToo Backlash? And Other Emerging Trends in Employment Law

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#MeToo Backlash?

- 28% of managers who are men are uncomfortable participating in a common work activity with a woman, such as mentoring, working alone, or socializing together.
- Source: SurveyMonkey online poll conducted January 23-25, 2018, among a national sample of 2,950 employed adults.



- 60% of managers who are men are uncomfortable participating in a common work activity with a woman, such as mentoring, working alone, or socializing together.
- Source: SurveyMonkey online poll conducted February 22-March 1, 2019, among a national sample of 5,182 adults in the U.S. ages eighteen and older.



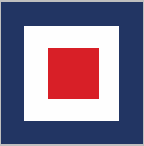
- Senior-level men are now far more hesitant to spend time with junior women than junior men across a range of basic work activities.
- They are:
 - 12 times less likely to have 1-on-1 meetings
 - 9 times less likely to travel together for work
 - 6 times less likely to have work dinners



- 36% of men say they've avoided mentoring or socializing with a woman because they were nervous about how it would look.



- 23% of respondents indicated that it was “Somewhat Common” for managers to refuse to travel, dine, or meet alone behind closed doors with colleagues of the opposite sex.
- Source: Employment Law Alliance poll of 382 U.S. employment lawyers from all 50 states, the District of Columbia and Puerto Rico during February 2018.



Billy Graham rule - Wikipedia

en.wikipedia.org/wiki/Billy_Graham_rule

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Billy Graham rule

From Wikipedia, the free encyclopedia

The **Billy Graham rule** is a practice among some male **evangelical Protestant** leaders, in which they avoid spending time alone with women to whom they are not married. It is named after **Billy Graham**, a proponent of the practice, although recently has also been called the **Mike Pence rule**.^[1] It is adopted as a display of integrity, a means of avoiding sexual temptation, to avoid any appearance of doing something considered morally objectionable, and to avoid being accused of sexual harassment.

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Background

"Billy Graham rule" [edit]

In 1948, Graham held a series of evangelistic meetings in Modesto, California. Together with Cliff Barrows, Grady Wilson and George Beverly Shea, he resolved to "avoid any situation that would have even the appearance of compromise or suspicion".^[2] The accountability agreement, which has become known as the "Modesto Manifesto",^[3] covered not only their interactions with women, but also commitments to integrity with respect to finances, their interactions with local churches, and publicity.^[4] From that time onward, Graham made a point of not traveling, meeting, or eating alone with a woman other than his wife Ruth.^[5] Graham biographer Grant Wacker observed that "Over the years Graham received intense media scrutiny, but hardly anyone accused him of violating any of those four principles."^[6] By Graham's own admission, though, he was not an absolutist in the application of the rule that now bears his name: his autobiography relates a lunch meeting with Hillary Clinton that he initially refused on the grounds that he does not eat alone with women other than his wife, but she persuaded him that they could have a private conversation in a public dining room.^{[7][8]}

"Mike Pence rule" [edit]

In March 2017, *The Washington Post* noted that U.S. Vice President Mike Pence never eats alone with a woman other than his wife, Karen, and that he won't attend events featuring alcohol without her by his side.^{[9][10][11]} Emma Green, writing for *The Atlantic*, noted that the controversy was an example of how "notions of gender divide American culture": while "socially liberal or non-religious people may see Pence's practice as misogynistic or bizarre", for "a lot of conservative religious people" the "set-up probably sounds normal, or even wise".^[12] Employment lawyer Joanna Grossman wrote that the Pence rule, when applied to workplace dinners, could be illegal labor discrimination under Title VII of the Civil Rights Act of 1964.^[13]

Reactions

Reactions [edit]

The rule has been criticized for viewing women merely as potential objects of lust as well as restricting opportunities for women to network with male colleagues.^{[9][14]} Tracey Bianchi argues that it means "Women are marginalized and cut out of opportunities to network, share their ideas, and advance in the organization."^[15] Bianchi also argues that the rule conflicts with the practice of Jesus himself, who spent time alone with the Samaritan woman at the well.^[15]

Ty Grigg suggests that the rule has not been "effective at curbing infidelity". He argues that the rule "has framed relating with the opposite sex with fear", and that this leads to a diminished mutual respect, which in turn creates "the kind of environment where inappropriate relating is more likely to occur".^[16] Others, though, suggest that unfaithful pastors must have failed to implement the rule.^[17]

Michael Brown observes that criticism against the rule has misunderstood the purposes of the rule. He argues that the rule prevents third parties from suspecting that an illicit romantic relationship exists (avoiding the appearance of evil). It also protects against any future accusations should the other party become embittered and seek to attack the innocent boss. Finally, it does protect both parties from developing natural attractions and potentially falling into adultery.^[18]

Public opinion

Public opinion [edit]

According to a 2017 poll conducted by the Morning Consult for the New York Times, 53% of women and 45% of men believe that it would be inappropriate to have dinner alone with someone of the opposite sex who is not their spouse, compared to 35% of women and 43% of men who would consider it appropriate.^[19]

See also

See also [edit]

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Legal Problem

- It shall be an unlawful employment practice for an employer—
 - (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
 - (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.



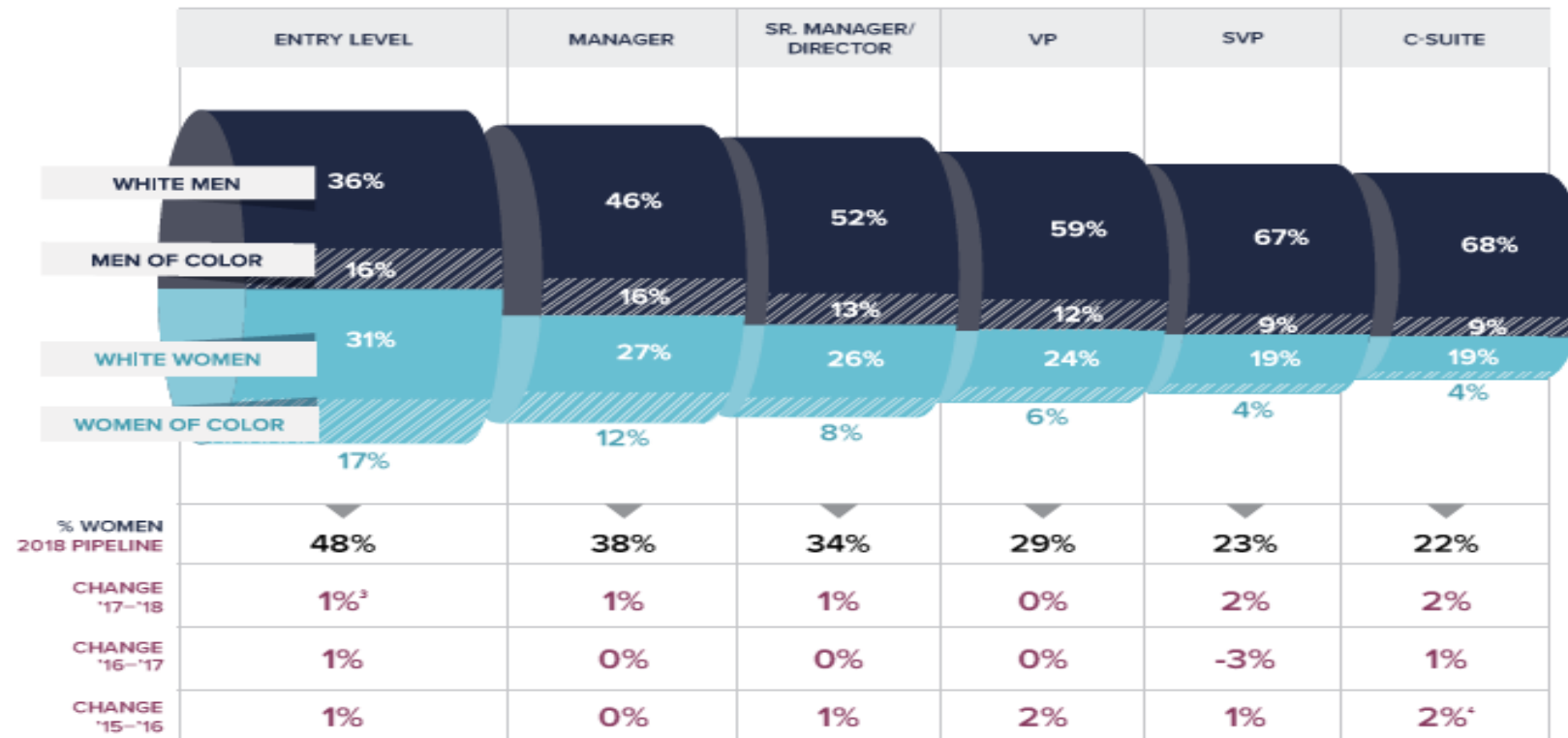
Practical Problem

- Women are under-represented in senior leadership.



REPRESENTATION IN THE CORPORATE PIPELINE BY GENDER AND RACE

% OF EMPLOYEES BY LEVEL IN 2018²





- “Women get more raises, they advance faster, and they stay in the organization longer. That’s not because men are better mentors, but because they have positions of influence and power. It’s a numbers game. Men get increased access to information, they build a more diverse and expansive network, and they tend to increase their interpersonal skills.”
- David Smith, PhD., author of Athena Rising: How and Why Men Should Mentor Women.



Solutions?

- Men shouldn't be afraid of women in the workplace.
- Focus on common sense.



- Trade chivalry for common courtesy.
 - Men shouldn't carry luggage on a business trip or insist on paying for a meal or drinks.
- Praise or constructive feedback should be focused on skills, talents and competencies, not physical appearance.
- Discuss personal situations only as they relate to the impact on the mentee's job performance.



LISTEN. THINK. WIN.



The “Grandma” Rule

- Be mindful of your behavior.
- Don’t make jokes of a sexual or flirtatious nature that could be easily misinterpreted.
- Keep your hands to yourself.
- Never cross into anyone’s personal space without permission.
- Apologize if a woman is offended by your behavior – don’t tell her to relax or calm down.



- So much informal mentoring happens in informal social settings, such as after work or on weekends.
- Let mentees control decisions when possible, such as where to meet and other logistics.
- Consider conducting mentoring in public places and creating safe mentoring environments for male and female mentees.



- Consider adding a discussion of the positive aspects of mentoring to professional development and best practices to your harassment prevention training.



Arbitration Agreements

- Ending Forced Arbitration of Sexual Harassment Act
- Would prohibit pre-dispute arbitration agreements requiring arbitration of sex discrimination claims under Title VII of the Civil Rights Act of 1964.
- Introduced in 2017.



- Enjoys bipartisan support:
 - Senators Kirsten Gillibrand (D-NY), Kamala Harris (D-CA), Dick Durbin (D-IL), Dianne Feinstein (D-CA)
 - Senators Lindsey Graham (R-SC), Lisa Murkowski (R-AK)

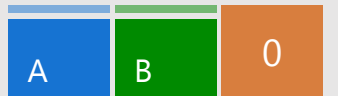


- Forced Arbitration Injustice Repeal Act or “FAIR Act.”
- Would prohibit pre-dispute arbitration agreements that require arbitration of employment, consumer, antitrust, or civil rights disputes, and also agreements that prohibit class or collective arbitrations.
- Introduced in 2019.



Poll

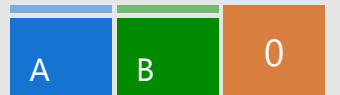
- How many attendees use arbitration agreements?
 - A. Yes
 - B. No





Poll

- For attendees that have arbitration agreements, do any of them prohibit class or collective claims?
 - A. Yes
 - B. No



LISTEN. THINK. WIN.



Workplace Violence

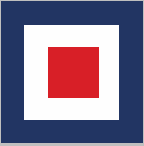
- The “new normal.”
- Acts of violence and other injuries is currently the third-leading cause of fatal occupational injuries in the United States.
- Of the 5,147 fatal workplace injuries that occurred in the U.S. in 2017, 458 involved intentional injury by another person.
- Source: Bureau of Labor Statistics Census of Fatal Occupational Injuries.



- Zero-tolerance policy covering all workers, patients, clients, visitors, contractors, and anyone else who may come in contact with company personnel.



- Assess your worksite and identify potential risk factors.
- Take appropriate precautions to prevent or minimize risks of assault.
- Engineering controls, administrative controls, and training.



HOW TO RESPOND WHEN AN ACTIVE SHOOTER IS IN YOUR VICINITY

QUICKLY DETERMINE THE MOST REASONABLE WAY TO PROTECT YOUR OWN LIFE. CUSTOMERS AND CLIENTS ARE LIKELY TO FOLLOW THE LEAD OF EMPLOYEES AND MANAGERS DURING AN ACTIVE SHOOTER SITUATION.

1. Run

- Have an escape route and plan in mind
- Leave your belongings behind
- Keep your hands visible

2. Hide

- Hide in an area out of the active shooter's view.
- Block entry to your hiding place and lock the doors

3. Fight

- As a last resort and only when your life is in imminent danger.
- Attempt to incapacitate the active shooter
- Act with physical aggression and throw items at the active shooter

**CALL 911 WHEN IT
IS SAFE TO DO SO**

HOW TO RESPOND WHEN LAW ENFORCEMENT ARRIVES ON THE SCENE

1. HOW YOU SHOULD REACT WHEN LAW ENFORCEMENT ARRIVES:

- Remain calm, and follow officers' instructions
- Immediately raise hands and spread fingers
- Keep hands visible at all times
- Avoid making quick movements toward officers such as attempting to hold on to them for safety
- Avoid pointing, screaming and/or yelling
- Do not stop to ask officers for help or direction when evacuating, just proceed in the direction from which officers are entering the premises

2. INFORMATION YOU SHOULD PROVIDE TO LAW ENFORCEMENT OR 911 OPERATOR:

- Location of the victims and the active shooter
- Number of shooters, if more than one
- Physical description of shooter/s
- Number and type of weapons held by the shooter/s
- Number of potential victims at the location

RECOGNIZING SIGNS OF POTENTIAL WORKPLACE VIOLENCE

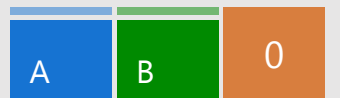
AN ACTIVE SHOOTER MAY BE A CURRENT OR FORMER EMPLOYEE. ALERT YOUR HUMAN RESOURCES DEPARTMENT IF YOU BELIEVE AN EMPLOYEE EXHIBITS POTENTIALLY VIOLENT BEHAVIOR. INDICATORS OF POTENTIALLY VIOLENT BEHAVIOR MAY INCLUDE ONE OR MORE OF THE FOLLOWING:

- Increased use of alcohol and/or illegal drugs
- Unexplained increase in absenteeism, and/or vague physical complaints
- Depression/Withdrawal
- Increased severe mood swings, and noticeably unstable or emotional responses
- Increasingly talks of problems at home
- Increase in unsolicited comments about violence, firearms, and other dangerous weapons and violent crimes



Poll

- Has anyone hired an outside firm to conduct a risk assessment or make a safety or evacuation plan?
 - A. Yes
 - B. No



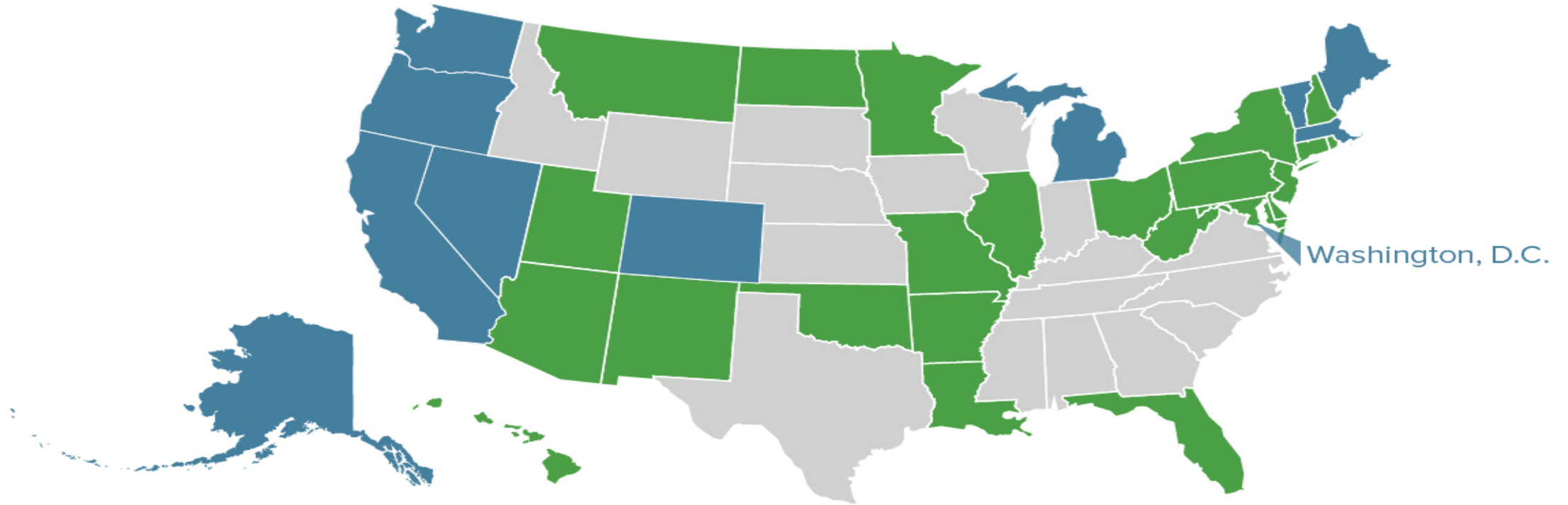


Marijuana in the Workplace

- All marijuana use is still illegal under federal law.
- Marijuana is listed as a Schedule I drug under the Controlled Substances Act, which means that it is deemed to have no medical value and a high potential for abuse.



State Marijuana Laws

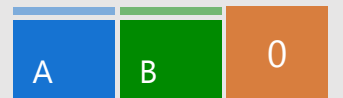


- States with comprehensive medical marijuana programs
- States that allow recreational and medical marijuana use
- States that do not have a comprehensive marijuana law



Poll

- How many attendees have operations or employees in a state where marijuana use is legal?
 - A. Yes
 - B. No





State Marijuana Laws

- Qualified patients and their caregivers generally must receive a certification from a medical practitioner and register with the state.
- Registered medicinal users may have job protections in some states:
 - New York.
 - Massachusetts: A former employee who used medical marijuana to treat Crohn's disease and was fired for testing positive for marijuana sufficiently alleged that she was a "qualified handicapped person," as required to state claim for handicap discrimination. Barbuto v. Advantage Sales & Marketing, LLC, 78 N.E.3d 37 (Mass. 2017).
 - Connecticut: Qualifying patient could bring claim against prospective employer for denial of employment in violation of state law based on positive cannabis result during pre-employment screening. Noffsinger v. SSC Niantic Operating Co., 273 F. Supp. 3d 326 (D. Conn. 2017).



- Non-discrimination provisions typically exclude jobs that require drug testing under federal law, such as certain commercial motor vehicle operators because the Department of Transportation requires them to pass drug and alcohol screens.



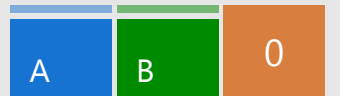
Paternity Leave

- Jones Day was sued on August 14, 2019, by a husband and wife alleging that the firm's parental leave policy discriminated based on sex.



Poll

- How many attendees offer paternity leave?
 - A. Yes
 - B. No

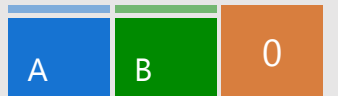


LISTEN. THINK. WIN.



Poll

- Are the paternity leave benefits the same as, or different from, maternity leave benefits?
 - A. Same
 - B. Different





U.S. Equal Employment Opportunity Commission

PRESS RELEASE
8-30-17

EEOC Sues Estée Lauder for Sex Discrimination

Cosmetics Giant Gave Men Lesser Paid Parental Leave and Related Benefits, Federal Agency Says

PHILADELPHIA - Estée Lauder Companies, Inc., one of the world's leading manufacturers and marketers of skin care, makeup, fragrance and hair care products, violated federal law when it implemented and administered a paid parental leave program that automatically provides male employees who are new fathers lesser parental leave benefits than are provided to female employees who are new mothers, the Equal Employment Opportunity Commission (EEOC) alleged in a lawsuit it announced today.

According to the suit, in 2013 Estée Lauder adopted a new parental leave program to provide employees with paid leave for purposes of bonding with a new child, as well as flexible return-to-work benefits when the child bonding leave expired. Under its parental leave program, in addition to paid leave already provided to new mothers to recover from childbirth, Estée Lauder also provides eligible new mothers an additional six weeks of paid parental leave for child bonding. Estée Lauder only offers new fathers whose partners have given birth two weeks of paid leave for child bonding. The suit also alleges that new mothers are provided with flexible return-to-work benefits upon expiration of child bonding leave that are not similarly provided to new fathers.

The case arose when a male employee working as a stock person in an Estée Lauder store in Maryland sought parental leave benefits after his child was born. He requested, and was denied, the six weeks of child-bonding leave that biological mothers automatically receive, and was allowed only two weeks of leave to bond with his newborn child. Such conduct violates Title VII of the Civil Rights Act of 1964 (Title VII) and the Equal Pay Act of 1963, which prohibit discrimination in pay or benefits based on sex. The suit seeks relief for the affected employee, and other male employees who were denied equal parental leave benefits because of their sex.

The EEOC's Washington Field Office investigated the charge of discrimination that led to this suit. The EEOC filed suit (*EEOC v. Estée Lauder Companies, Inc.*, Civil Action No. ---) in U.S. District Court for the Eastern District of Pennsylvania after first attempting to reach a pre-litigation settlement through its conciliation process. As part of the suit, the EEOC is seeking back pay and compensatory and punitive damages on behalf of the aggrieved class members, as well as injunctive relief.

"It is wonderful when employers provide paid parental leave and flexible work arrangements, but federal law requires equal pay, including benefits, for equal work, and that applies to men as well as women," said EEOC Washington Field Office Acting Director Mindy Weinstein.

EEOC Philadelphia District Office Regional Attorney Debra M. Lawrence added, "Addressing sex-based pay discrimination, including in benefits such as paid leave, is a priority issue for the Commission."

Enforcement of equal pay laws, including targeting compensation systems and practices that discriminate based on gender, is of one of six national priorities identified by the Commission's Strategic Enforcement Plan.

The EEOC Philadelphia District Office has jurisdiction over Pennsylvania, Maryland, Delaware, West Virginia and parts of New Jersey and Ohio. Attorneys in the EEOC Philadelphia District Office also prosecute discrimination cases arising from Washington, D.C. and parts of Virginia.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov. Stay connected with the latest EEOC news by subscribing to our email updates.



- The company settled this lawsuit for a \$1.1 million payment to a class of fathers and entered into a consent decree.



Best Practices

- Set eligibility for parental leave requirements, i.e., months of service.
- It is legal to provide women with more time off after childbirth as long as it is related to physical limitations imposed by pregnancy or childbirth and not merely for purposes of bonding with a child or providing care for a child.



Best Practices (continued)

- It is OK to require employees to use paid time off (e.g., vacation, sick leave) before collecting parental leave pay.
- It is OK to have FMLA leave run concurrently with parental leave.



“Ban the Box”

- Movement to remove the check box in job applications asking if applicants have a criminal record.
- California, Illinois, Massachusetts, and more than 20 other states have “ban the box” laws that prohibit private employers from asking that question on job applications.
- So do more than 150 municipalities across the country.



“Ban the Box”

- Fair Chance Act
- Would prohibit federal agencies and federal contractors from requesting that applicants for employment disclose criminal history record information before receiving a conditional offer.
- Introduced in 2017.



“Ban the Box”

- Passed the House July 2019.
- Lead sponsors are Senators Cory Booker (D-NJ) and Ron Johnson (R-WI).



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CASES IN **47 STATES**

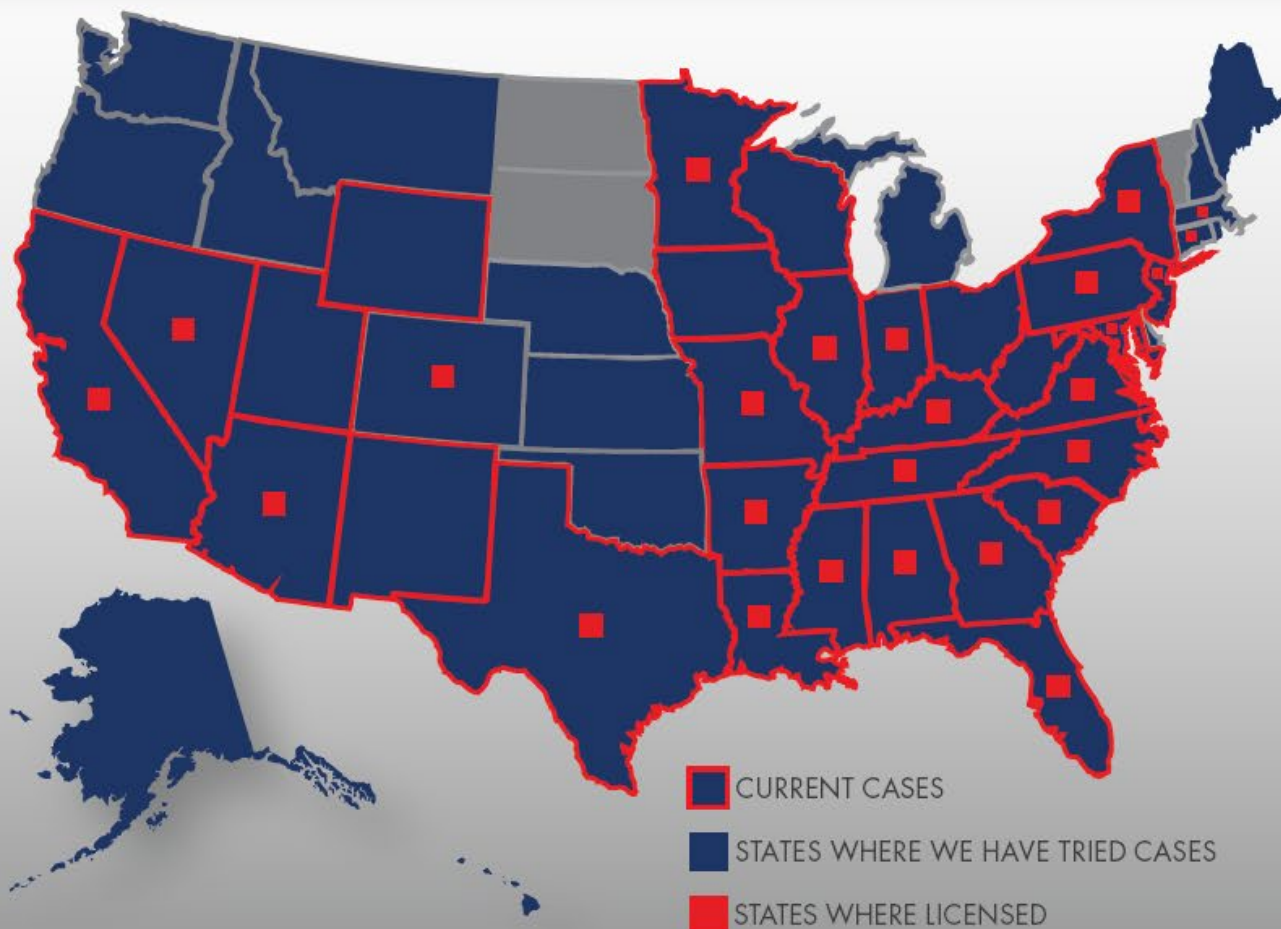
MANAGING
CASES IN **30 STATES**

MANAGED
CASES IN **22 COUNTRIES**

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As of January 11th, 2019

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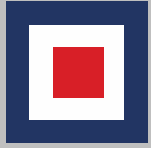


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Combating the “Rambo” Litigator

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Combating the “Rambo” Litigator



LISTEN. THINK. WIN.



Who is the “Rambo” Litigator?



Who is the “Rambo” Litigator?

- Overly aggressive
- Uses intimidation and threat tactics
- Lacks courtesy and professionalism



The Bully Lawyer

LISTEN. THINK. WIN.



The Bully Lawyer

- Rude
- Insulting
- Condescending





The Unprepared Lawyer

LISTEN. THINK. WIN.



The Unprepared Lawyer

- A.k.a “Dumb Rambo”
- Unfamiliar with the facts or law
- Disorganized





The Obstructionist Lawyer

LISTEN. THINK. WIN.



The Obstructionist Lawyer

- Disagreeable
- Unavailable
- Unreasonable





The Unhappy Lawyer



The Unhappy Lawyer

- Miserable
- Overworked
- Hostile work environment





The Paper Tiger Lawyer

LISTEN. THINK. WIN.



The Paper Tiger Lawyer

- Hides behind letters/email
- Refuses to pick up phone
- In person isn't so bad





Dirty Tactics to Watch Out For



Written Discovery

- Excessive requests
- Unduly burdensome and overly broad
- Intended to harass
- Refuses to give extensions
- Fails to timely respond
- Serves inadequate responses



Inspections

- Do not be fooled by Mr. Two-Hats
- Never accept counsel's offer to inspect without him
- Always video record inspections of evidence



Depositions

- **When defending:**
 - Coaching the witness
 - Instructing the witness not to answer
- **When taking:**
 - Argumentative or repetitive inquiries
 - Attempts to rattle the witness
 - Sound-bite questions



Sound-Bite Questions

- A manufacturer has a duty to furnish to end users a product that is free from hazards that are likely to cause death or serious physical harm.



Sound-Bite Questions

- A product engineer should be held accountable if his or her action or inaction, with regard to the design of a product, causes harm to someone.



Motions to Compel

- Threat tactics
- Used to build a case against you/your client
- Part of a “Scorched earth” approach



Trial

- No holds barred
- Reptile theory
- Arguing outside the record and making up facts



Weapons for Combat



Don't engage



Don't engage

- Do not fight fire with fire
- If you engage, you give Rambo control
- Respond in your own way; not anyone else's



Keep calm and carry on



Keep calm and carry on

- “First, fly the airplane”
- Do not let emotions take control
- When you’re mad you make mistakes
- Take a break to collect yourself



Pick up the phone

LISTEN. THINK. WIN.



Pick up the phone

- One call might replace multiple letters
- Better yet, go to lunch
- In-person communication might diffuse
Rambo
- Always follow up in writing



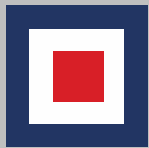


Document everything



Document everything

- Protect yourself and your client
- Remember a judge may read this
- Ask for confirmation of receipt
- Get it on the record



Pick your battles

LISTEN. THINK. WIN.



Pick your battles

- Do not make every issue a fight
- Cooperation and courtesy will benefit you
- Be judicious in filing motions



Be prepared

LISTEN. THINK. WIN.



Be prepared

- Know the facts and the law
- Master the appropriate rules
- Be familiar with the judge's preferences
- Hire experienced outside counsel



Corporate witness preparation

- During prep, ask the witness what question he is most worried about answering.
- Do a practice session, as if you or defense counsel is the Plaintiff's attorney.
- Records retention policy. Make sure this is an area you cover in prep.
- Techniques and strategies for slowing down the pace.



Professionalism Considerations



LISTEN. THINK. WIN.



Professionalism Considerations

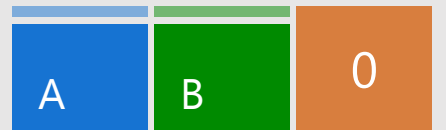
Rule 8.3 Reporting Professional Conduct

- A lawyer having knowledge that another **lawyer** has committed a violation of the Georgia Rules of Professional Conduct that raises a ***substantial question*** as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, should inform the appropriate professional authority.
- Lawyers have a similar obligation with respect to **judicial misconduct**.
- There is **no disciplinary penalty** for a violation of this Rule.



Poll

- Has anyone ever reported a lawyer to the State Bar for professional misconduct?
 - Yes
 - No



LISTEN. THINK. WIN.



Professionalism Considerations

- **Rule 3.1 Meritorious Claims and Contentions**
- **Rule 3.2** Expediting Litigation
- **Rule 3.3** Candor Toward the Tribunal
- **Rule 3.4** Fairness to Opposing Party and Counsel
- **Rule 3.5** Impartiality and Decorum of the Tribunal
- **Rule 4.1** Truthfulness in Statements to Others
- **Rule 8.4** Misconduct



Professionalism Considerations

Rule 3.1 Meritorious Claims and Contentions

In the representation of a client, a lawyer shall not:

(a) file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when ***the lawyer knows or when it is obvious*** that such action would serve merely to harass or maliciously injure another;

(b) ***knowingly*** advance a claim or defense that is **unwarranted** under existing law, except that the lawyer may advance such claim or defense if it can be supported by **good faith argument** for an extension, modification or reversal of existing law.

The **maximum** penalty for a violation of this Rule is a **public reprimand**.



Professionalism Considerations

- **Rule 3.1** Meritorious Claims and Contentions
- **Rule 3.2 Expediting Litigation**
- **Rule 3.3** Candor Toward the Tribunal
- **Rule 3.4** Fairness to Opposing Party and Counsel
- **Rule 3.5** Impartiality and Decorum of the Tribunal
- **Rule 4.1** Truthfulness in Statements to Others
- **Rule 8.4** Misconduct



Professionalism Considerations

Rule 3.2 Expediting Litigation

- A lawyer shall make ***reasonable efforts*** to expedite litigation consistent with the interests of the client.
- The **maximum penalty** for a violation of this Rule is a **public reprimand**.



Professionalism Considerations

- Rule 3.1 Meritorious Claims and Contentions
- Rule 3.2 Expediting Litigation
- **Rule 3.3 Candor Toward the Tribunal**
- Rule 3.4 Fairness to Opposing Party and Counsel
- Rule 3.5 Impartiality and Decorum of the Tribunal
- Rule 4.1 Truthfulness in Statements to Others
- Rule 8.4 Misconduct



Professionalism Considerations

Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

- (1) make a ***false statement of fact or law*** to a tribunal;
- (2) ***fail to disclose*** a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
- (3) ***fail to disclose*** to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
- (4) ***offer evidence that the lawyer knows to be false.****

The **maximum** penalty for a violation of this Rule is disbarment.



Professionalism Considerations

- **Rule 3.1** Meritorious Claims and Contentions
- **Rule 3.2** Expediting Litigation
- **Rule 3.3** Candor Toward the Tribunal
- **Rule 3.4 Fairness to Opposing Party and Counsel**
- **Rule 3.5** Impartiality and Decorum of the Tribunal
- **Rule 4.1** Truthfulness in Statements to Others
- **Rule 8.4** Misconduct



Professionalism Considerations

Rule 3.4 Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) **unlawfully obstruct** another party's access to evidence or **unlawfully alter, destroy or conceal** a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b)(1) **falsify evidence**;

(b)(2) counsel or assist a witness to **testify falsely**;

(b)(3) pay, offer to pay, or acquiesce in the **payment of compensation** to a witness contingent upon the content of the testimony or the outcome of the case. But...*

The maximum penalty for a violation of this Rule is disbarment.



Professionalism Considerations

- **Rule 3.1** Meritorious Claims and Contentions
- **Rule 3.2** Expediting Litigation
- **Rule 3.3** Candor Toward the Tribunal
- **Rule 3.4** Fairness to Opposing Party and Counsel
- **Rule 3.5 Impartiality and Decorum of the Tribunal**
- **Rule 4.1** Truthfulness in Statements to Others
- **Rule 8.4** Misconduct



Professionalism Considerations

Rule 3.5 Impartiality and Decorum of the Tribunal

A lawyer shall not, without regard to whether the lawyer represents a client in the matter:

- (a) ***seek to influence*** a judge, juror, prospective juror or other official by means prohibited by law;
- (b) ***communicate ex parte*** with such a person except as permitted by law;
- (c) ***communicate with a juror or prospective juror*** after discharge of the jury if...*
- (d) engage in conduct intended to ***disrupt a tribunal***.

The maximum penalty varies based on the violation.



Professionalism Considerations

- **Rule 3.1** Meritorious Claims and Contentions
- **Rule 3.2** Expediting Litigation
- **Rule 3.3** Candor Toward the Tribunal
- **Rule 3.4** Fairness to Opposing Party and Counsel
- **Rule 3.5** Impartiality and Decorum of the Tribunal
- **Rule 4.1 Truthfulness in Statements to Others**
- **Rule 8.4** Misconduct



Professionalism Considerations

Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not **knowingly**:

- (a) ***make a false statement of material fact or law*** to a third person; or
- (b) ***fail to disclose a material fact*** to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

The maximum penalty for a violation of this Rule is disbarment.



Professionalism Considerations

- **Rule 3.1** Meritorious Claims and Contentions
- **Rule 3.2** Expediting Litigation
- **Rule 3.3** Candor Toward the Tribunal
- **Rule 3.4** Fairness to Opposing Party and Counsel
- **Rule 3.5** Impartiality and Decorum of the Tribunal
- **Rule 4.1** Truthfulness in Statements to Others
- **Rule 8.4 Misconduct**



Professionalism Considerations

Rule 8.4 Misconduct

(a) It shall be a **violation** of the Georgia Rules of Professional Conduct for a lawyer to:

(1) ***violate or knowingly attempt to violate*** the Rules, knowingly assist or induce another to do so, or do so through the acts of another;

(4) engage in professional conduct involving ***dishonesty, fraud, deceit or misrepresentation;***

(8) ***commit a criminal act*** that relates to the lawyer's fitness to practice law...*

- (d) Rule 8.4 (a)(1) does **not** apply to any of the Georgia Rules of Professional Conduct for which there is no disciplinary penalty.



Combating the “Rambo” Litigator



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Thank you!



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