

A portrait of William K. Phillips, a middle-aged man with grey hair, wearing a dark grey suit, white shirt, and a red patterned tie. He is standing outdoors with a blurred background, smiling slightly at the camera.

William K. Phillips

— Phillips & Associates

Getting terminated from work is never good news to bring home, especially from a job you love. But getting unfairly terminated from work, due to discrimination, brings even more emotion to surface. If you have ever been a victim of discrimination, you are familiar with that terrible feeling, especially when it happens at the workplace . . . you can often feel devastated, lost and depressed.

As part of a series special, we speak with one of New York's top employment lawyers, William Phillips, who says, "the most rewarding part of our job is not just resolving a case, but rather when we see our clients start a new job and have a deserved fresh start."

Throughout 2018 we will hear from Bill Phillips, and his team at Phillips & Associates, PLLC, on a variety of topics regarding employment law, from sexual harassment to racial discrimination.

This month, we get to know a little more about Bill and his team, the best way to achieve positive results for distressed clients, and the laws protecting employees in New York.

With years of experience behind you, give us an overview of employment law in New York.

The term "wrongful termination" is a misconception for New York employees. We get thousands of calls from employees who have been "wrongfully terminated". The employment laws in New York are very clear, except for a couple of narrow exceptions. New York is an employment "at-will" State. This means that just as an employee can quit his or her job at any time, an employer can fire an employee at any time, for any reason, or no reason at all. However, it is unlawful to terminate someone based on a legally protected category such as age, disability, gender, pregnancy, race, religion, national origin or other protected trait covered under the law. Discrimination in the workplace occurs when an employee, in a protected class is unfairly treated or harassed in matters concerning hiring, promotions, compensation, layoffs, or forced retirement because of that protected class. Additionally, discrimination may occur even if there is not a termination or other adverse employment action. For example, it is illegal for an employer to allow discriminatory comments or behavior in the workplace that make it a hostile work environment for any employee. Examples of a hostile work environment include sexual harassment such as sexual advances, sexual comments, jokes or pornography.

Similarly, racist images or paraphernalia in the workplace such as nooses, threats of hanging, being lynched, and use of the n-word can amount to racial discrimination. While we have made great strides with regard to civil rights and laws to protect against race discrimination in the workplace, the reality is that racial harassment is still prevalent.

To sum it up, any words or actions based on a person's protected

traits or class that alter the terms and conditions of the workplace, and make it difficult to work, may constitute a hostile work environment, regardless of whether the person has been terminated.

In New York there are three main laws that protect employees from discrimination and sexual harassment: Title VII which is the Federal Law, the New York State Human Rights Law ("NYSHRL") and the New York City Human Rights Law ("NYCHRL"). Employees working within the five boroughs of New York are fortunate to have the New York City Human Rights Law which is one of the most powerful anti-discrimination laws in the United States. It is interpreted liberally and protects more categories for individuals such as marital status, sexual orientation, military status, domestic violence, criminal conviction records, and predisposing genetic characteristics. The NYCHRL also provides harsher penalties to employers who are found liable for discrimination, such as unlimited compensatory damages, attorney fees, punitive damages, as well as lost wages. Additionally, Federal Statutes such as the Americans with Disabilities Act ("ADA") and the Age Discrimination in Employment Act ("ADEA") provide similar protections for New York workers terminated on the basis of disability and age. The Pregnancy Discrimination Act likewise prohibits termination based on pregnancy or family responsibility.

What is the biggest hurdle for victims of discrimination to overcome?

Imbalance of Power and Finances: David vs Goliath

Employees were, and for the most part still are, at a big disadvantage in the workplace. There is a dramatic power imbalance between employees and the companies for which they work. This power balance can intensify after experiencing sexual harass-

ment or discrimination. The company/employer often hires a large law firm to represent it, while the employee may have just lost their job, has very little money and no one to help them understand their rights.

Many discrimination law firms charge an upfront fee, anywhere from \$500.00 to \$5,000 for an initial consultation or retainer. We cannot, with good conscience, ask a person who just lost his or her job to pay us a fee. So, we offer free consultations to prospective clients. Additionally, we are a contingent employment law firm. This means we do not take any attorneys' fees unless we are successful in obtaining a verdict or settlement.

More importantly, litigation itself is also costly. At Phillips & Associates, we fund the cost of litigation. Many firms do not have the financial resources to fund the cost of litigation properly. Therefore, while their attorney fees may be contingent, they ask the client to pay thousands of dollars for the litigation costs or they cut corners and may not litigate the case to the fullest extent. We spend the amount of money necessary to properly litigate our clients' cases. We will take every deposition and pay for all discovery and expert reports. Clients need to take a close look at the law firm they want to hire and determine if that lawyer or firm has the funds and the resources to properly litigate the case to the end. We handle cases from inception through trial, even appeal if necessary.

What three factors would you say work towards ensuring you achieve successful results for your clients' cases?

We always strive to provide quality representation along with a compassionate and personalized attorney-client relationship for each and every client.

Quality of Representation: Having "The Best of the Best"

Many of our Attorneys have achieved "best of" status.

In fact, William Phillips was selected as a "10 Best Labor and Employment Attorneys in New York" by the American Institute of Legal Counsel, 2017 and 2018 "Top 100 Labor & Employment Lawyer in New York" by the American Society of Legal Advocates, "Employment Discrimination Attorney of the Year in New York - 2018" by Corporate International, and was recently selected as a member "Lawyers of Distinction" in Employment and Labor Law. Partner Bryan Arce, has been repeatedly recognized as a "Super Lawyer" and is a member of the "Million Dollar Advocates Forum" along with being listed as "Top Discrimination Attorney" by AVVO, and being named one of the "Top Three Best Rated Employment Attorneys" in Newark, NJ by Three Best Rated.

Additionally, we have 10 other employment attorneys who have achieved "Super Lawyer" status and three additional employment attorneys who are members of the prestigious "Million and Multi-Million Dollar Advocates Forum". Membership here is limited only to attorneys who have won or settled million and multi-million-dollar verdicts and settlements. Phillips & Associates spends thousands of dollars on legal education for all of our attorneys and staff. We are constantly attending seminars and lectures throughout the country to keep up with and better understand the ever-changing landscape of employment and discrimination law.

Having Compassion and Understanding

It is important to understand the emotional aspect of an employment law case. A person's job is probably the second most important thing in his or her life next to

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his or her family. We spend more time at work with co-workers and supervisors than we spend at home. I, along with my partner, have personally experienced the loss of a job in my life... more than once. We understand the effect it has on your self-image. To lose your job is already terribly emotional. To lose your job after being discriminated against or sexually harassed at work can be devastating. We as lawyers need to understand the emotional suffering that this causes in a person's life. It's a blow to their ego, they lose confidence, they cannot pay their bills or support their family. They can also go through depression and anxiety. We know they are never going to forget what they went through, but we work very hard to get a financial settlement which offers some closure and the opportunity to start a new chapter in his or her life. In fact, often, the most rewarding part of our job is not the settlement; it's when we see our clients start a new job and a deserved fresh start.

Offer a Personalized Service

Law is a service industry. Many lawyers forget that clients are customers. Customer service is just as important as results. Although we are providing legal services, we are also providing much more: emotional support, an outlet to vent, confidence that their case will be handled properly, constant contact and feedback, answered questions or concerns, and so much more than just law.

Many law firms just do not understand that concept. The number one complaint in the legal field is a lawyer not responding to client calls. Many firms look at clients as just another case that the attorney is going to try and settle for money. But having an attorney-client relationship is just that... a relationship. Every person, every situation, and every case is different, so we must personalize that relationship for each client, situation and case. But what does not change is our quality and level of service, regardless of different circumstances.

How effective is mediation in employment law cases?

We find mediation to be very helpful in employment cases. We mediate through private mediations, as well as in State and Federal Courts, the Equal Employment Opportunity Commission ("EEOC") and the State Division of Human Rights. Mediation provides the opportunity for the parties, both the employee and the employer, to control the final outcome of the case. Mediation is typically a private and confidential process whereby a mediator attempts to understand the dispute, understand "both sides of the story", and guide the parties to a resolution. The mediator is a neutral party and does not act as a judge or a jury. The mediator is not going to determine a winner and a loser. The mediator may point out the strengths and weak-

ness of each party's case in order to facilitate a resolution, but will not choose sides.

Mediations can also help avoid the time and expense of the long drawn out litigation process. This applies to all parties involved. Typically, the employer will spend tens of thousands of dollars in attorneys' fees to defend and litigate a case, and still may be "on the hook" for potentially tens or hundreds of thousands of dollars more if the employer loses at trial. Another advantage of mediation is that both the employee and employer get closure sooner and maintain privacy. The employee can move on with his or her life without reliving his/her story or fighting with the employer for years. Similarly, the employer can quickly get back to doing business without reliving the story and fighting with the employee for years.

The mediation process is not always successful, but it is generally a good process if both sides are negotiating in good faith. But good faith does not always get the job done and defense law firms understand that if we cannot agree on an appropriate settlement during the mediation process, we are prepared to file the case in court and go to trial if necessary.

Your firm makes every effort to obtain the maximum level of compensation for each client you serve, how do you ensure your team achieves this?

Many of our clients come to us because they want a dedicated team of high powered employment lawyers to stand up to their employer. They see the landscape of attorneys out there who practice in multiple areas of law handling real estate transactions, bankruptcy, divorce or personal injury along with employment law as a side business. Additionally, many firms represent and advocate for employees on one day

but then turn around and represent and support the companies the next day. At Phillips & Associates, we only represent employees. Our only focus is employment discrimination and sexual harassment and we are very successful at it. We do not need to practice in other areas of law, or represent corporations, to make ends meet. Our depth of experience in handling employment cases, and the fact that we are a full-service law firm, makes us the go-to firm for many high net-worth individuals (HNIs) who appreciate the quality of our service. While we serve many HNIs, we analyze every case based on liability, regardless of how much a person earns. We don't care if a person makes \$250,000 or minimum wage. If he or she was illegally discriminated against or harassed, we can pursue the case.

Understanding Case Values to Obtain Maximum Value for Clients

Over the past seven years, our attorneys have obtained over \$85,000,000 in settlements and verdicts for victims of discrimination. This year we expect to surpass \$100,000,000. Most of our verdicts and settlements are single plaintiff employment related cases, not class action civil rights cases. Very few plaintiff's firms can match our depth of knowledge with respect to the various potential damages relating to different causes of action. As civil attorneys litigating employment cases, we can really only seek monetary damages, whether it is for lost wages, emotional damages, attorneys' fees or punitive damages. Regardless of the type of damage done, it will still come down to money. Having handled countless sexual harassment and discrimination cases, we understand the potential value of each case and have a database of privately settled discrimination and sexual harassment cases and verdicts from which to draw comparisons. Quite frankly, many discrimination attorneys have never handled a

discrimination case valued over \$250,000, let alone \$1 million dollars. Additionally, other attorneys tend to value cases based solely on lost wages, often not considering, or not appreciating, the emotional toll the victim has experienced. If the attorney doesn't understand the full value of a case, a client's potential recovery can be "left on the table." For example, an attorney may settle a case for \$75,000 and go back to the office giving high fives, without having the experience to know that the real value of the settlement was actually \$250,000. If the attorney doesn't think the case is worth \$250,000 they will never get it. Some attorneys ask their clients, "how much do you want?" We find this question one of the most ridiculous questions an attorney can ask. How would a client, not knowing the legal framework for damages, know how much his or her case could be worth? We as attorneys need to educate the client so he or she can understand the law, understand how his or her specific case fits into the law and make appropriate recommendations to the client regarding values and the associated risks of litigation. We are constantly conducting a risks vs benefits analysis throughout the litigation process.

Having the Resources to Fight Back Against Sexual Harassment & Discrimination

With 18 employment discrimination attorneys, we have the resources and financial backing to level the playing field with the large defense firms. When you hire Phillips & Associates, you hire an entire legal team to fight for your rights. Every one of our cases is staffed with a team of attorneys and support personnel. We handle cases from inception through trial, even appeal if necessary. We will not be out worked or buried in paperwork the way a solo or small law firm might be by the defense firm.

What changes have you seen in the past few years in the area of Employment Law?

The biggest change in 2018 has come courtesy of the #MeToo movement, and all the attention sexual harassment has received in the media lately. It has removed the stigma of being a victim of sexual harassment and empowered more women to come forward with their claims and hold their employers, or former employers, accountable for the past illegal conduct. Even more importantly, the movement has empowered other types of victims of harassment, such as racial or pregnancy discrimination victims, to come forward because he or she has realized that they are most likely not alone. We are now seeing many new cases dealing with old harassment because of #MeToo. Of course, New York City is at the forefront in providing protections for employees and the NYCHRL is a powerful tool for people who have been harassed, sexually or otherwise.

Disability

Disability discrimination and reasonable accommodations in the workplace are also a large part of our practice. New York recently expanded protections to employees seeking reasonable accommodations. Specifically, the law will require employers to be more proactive and engage in a "cooperative dialogue" with its employees who may need a reasonable accommodation. The law requires employers to provide employees with a final written decision regarding the accommodation. This law will come in to effect later this year.

Pregnancy

In addition, in 2016, the Protect Women from Pregnancy Discrimination bill went into effect in New York. It provides greater protection than federal law by requiring employers to provide reasonable accommodations for

employees who are pregnant. For example, employers are required to accommodate breastfeeding employees by giving them reasonable unpaid break time or by letting them use paid breaks or mealtimes to pump or express breast milk for a nursing child for up to three years after delivery. As part of the accommodations for breastfeeding women, employers are supposed to provide a private space that is close to the work area where the employee can pump or express milk. Importantly, under the Protect Women from Pregnancy Discrimination bill, the state law has been changed such that "pregnancy-related conditions" are now considered disabilities. New York employers are now required to provide reasonable accommodations to pregnant employees with pregnancy-related conditions.

Caregiver Protection

Along those lines, in 2015, New York City released a new rule designed to protect employees, and others, from facing discrimination based on his or her role as a caregiver. It bars discrimination

against caregivers altogether. This means that employers cannot deny employment to, or take an adverse action against, job applicants or workers who serve as caregivers for a minor child or a recipient of care.

Transgender Rights

Also in 2015, the New York City Commission on Human Rights released a document providing guidance to employers, businesses, and housing establishments regarding the protections provided under the NYCHRL. According to the measure, transgender individuals still face extremely high rates of discrimination, including prejudices against an individual's actual or perceived sexual orientation. The guidance makes it clear that discrimination under the NYCHRL "includes discrimination on the basis of gender identity, gender expression, and transgender status." Discrimination occurs when an individual receives treatment that is inferior to the treatment received by others because of his or her gender or perceived gender. **LM**

ABOUT WILLIAM K. PHILLIPS

Bill Phillips is the managing partner of Phillips & Associates, one of the largest plaintiffs' only employment law firms in New York. The firm handles cases involving sexual harassment and discrimination in the workplace including pregnancy, race, disability, religion, gender, and sexual orientation and other protected traits. Phillips & Associates also handles other areas of harassment at work such as retaliation and wrongful termination. Most recently Phillips & Associates was selected as one of the "10 Best Employment & Labor Law Firms in New York" by the American Institute of Legal Counsel.

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