

Workplace Abuse with Marjorie Mesidor

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When it comes to bullying in the workplace, in today's world there is zero room and or hopefully zero tolerance. When we think of bullying we often think of young adults or even elementary children, online abuse and of course physical abuse. Once the #metoo movement went viral, speaking out became a little easier. But, there are still many adults in the workplace being abused each and every day. They fear for their jobs, many do not know where abuse starts and where their boss has the right to reprimand you. Well, we take this very serious here at Downtown and we wanted to make sure that you know your rights and the difference, we reached out to Phillips and Associates' Marjorie Mesidor.

The Workplace Bullying Institute defines **bullying** as “repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators that takes one or more of the following forms: verbal abuse, offensive conduct/behaviors (including nonverbal) which are threatening, humiliating, or intimidating; or work interference – sabotage – which prevents work from getting done.”

Make sure you know your rights!

We had the wonderful opportunity to speak with Marjorie Mesidor a Partner at Phillips & Associates. Marjorie is recognized for her outstanding service to clients who have been subjected to sexual harassment or discrimination based on race, gender, disability, and other protected characteristics. Ms. Mesidor regularly prosecutes employment actions against Fortune 500 companies and smaller organizations accused of discrimination including claims of sexual misconduct. She has had overwhelming success in achieving significant awards and settlements for her clients. Ms. Mesidor rose to notoriety in 2013 when she procured a unanimous jury award in Johnson v. STRIVE, a landmark case decidedly settling the issue of whether those of the same race can discriminate against one another. In addition, her work against the disparate impact of “poor door” policies on rent-stabilized tenants has earned her recognition by the Office of the Public Advocate.

Ms. Mesidor has been a Guest Legal Correspondent appearing on WPIX Morning News, WBLS “Cafe Mocha” and 103.9 Long Island News Radio “On the Docket”, Guest Legal Correspondent. Marjorie is one of the National Black Lawyers’ Top 100 Black Lawyers, a “Rising Star” and “Top Woman Attorney” by New York Super Lawyers every year since 2013. As recently 2018, Ms. Mesidor was named CRAIN Magazine’s Top Women Attorneys in New York City. She has been a continuing legal education panelist for the National Bar Association’s Labor and Employment Section and NELA NY on various topics in trial advocacy, punitive damages, and jury awards. She authored an op-ed article published in the online publication, Motto, from the editors of Time® Magazine.

With over 13 years of experience practicing before both state and federal courts, Ms. Mesidor understands the stress and fear that workers experience when their jobs are threatened by a co-worker or employer’s inappropriate conduct. She handles complex employment law matters in these areas at all stages of the litigation process, serving as

a forceful advocate at the negotiating table, and a formidable opponent in the courtroom.

When we learned that it was National Bullying Month, we decided to ask the expert a few questions.



Marjorie Mesidor Esq. PHILLIPS & ASSOCIATES

Can you describe what defines verbal abuse in the workplace from your superior? Verbal abuse in the workplace can be any oral communication that is insulting, degrading or condescending that is rooted in hostility. It can be as simple as being called inappropriate names or being spoken to in a patronizing manner. Under New York Law, if verbal abuse in the workplace touches upon one of your protected classes (gender, race, religion, sexual orientation, etc.) it can be illegal.

When is it considered harassment? Verbal abuse is considered harassment when the actions are done for the purposes of annoying, alarming or threatening someone. In the employment context, if it does continually over time or if it is severe in nature it can create a hostile work environment, making it a violation of various discrimination statutes. The law recognizes that under certain circumstances, a single severe act, like a supervisor calling an employee the n-word, can cause a hostile environment.

Is it illegal? Civilly, verbal abuse is only illegal if the comments include one of your protected traits: gender, race, sexual orientation, religion, disability, national origin, etc. Criminally, if it rises to the level of a threat or is continuous placing you in fear of danger it can also be a violation of the penal code. The type of verbal abuse that is actionable does not include comments made by “bad bosses” or “mean coworkers”. For example, general yelling and sarcastic commentary are not illegal in and of themselves. A key is if comments are only made to people who share the same protected categories or if they reinforce offensive stereotypes.

What’s the first step one should take in the office if, in fact, this is happening to you? If you work outside of the five boroughs, in order to preserve your claims, it is important that you avail yourself of the process that your employer has established to notify them that the verbal abuse is going on. So the first step is to check your employee handbook to see what is the official reporting procedure. Next, you should follow that procedure closely by complaining in writing. If there is no procedure in place, you should object to the verbal abuse, placing the harasser on notice that the comments, tone or language is offensive. Let them know that you don’t want to be spoken to in that manner. It is important to document each incident of verbal abuse in writing with dates, times, places and possible witnesses. This will help to establish a pattern if and when your complaint is investigated. Be sure to be cooperative with your employers’ efforts to investigate. If you work within the five boroughs, it is not a legal requirement that you complain of verbal abuse by a supervisor. The law deems the Company on notice if the verbal abuse comes from someone who can hire, fire or set the terms and conditions of your employment.

If I complain I will lose my job? New York is an “at will” employment state. This means that either the employee or the employer can leave the employment relationship without notice. As such, absent a contract of employment, your employer can terminate you at any time for any reason or no reason. Complaining of verbal abuse that is rooted in discrimination is a protected activity; meaning if you have a good faith belief that you are being discriminated against, complain and are subsequently fired- it can be

considered retaliation. However, complaining that you do not like a supervisor or colleague's tone, the way they speak to you or the fact that they yell is not protected under the law. There is always a possibility that when you complain that you could lose your job. However, if your work environment has become unbearable complaining may be your best chance to get the abuse to stop. Again, consult your employee handbook and follow its procedures. Complaining in writing via email or facsimile is best.

Employee concerns? One of the biggest concerns that clients' express is whether they will lose their jobs. This concern is followed by how will litigation affect their ability to find future employment. A) Do they remain at their job during the process? It is important to note that if you are performing well in your position and would like to remain at your job, you can continue to work there while your complaints are being investigated or during the litigation process. You are not obligated to leave your position. However, depending on the size of the company and the nature of work, your environment can become increasingly more uncomfortable. During this period of time, you should be careful not to do anything that would give your employer cause to fire them. It should be noted, however, that should you resolve your claims via settlement your resignation and process to not reapply may be a term of your settlement. Though this is a common term in settlement agreements, each case is different. B) Will this hurt them in their respective industry with future employment elsewhere? (Many use the term blackballed from their industry) This depends largely on how your claim is litigated, what stage it is in when it is resolved and the respective industry. It is no secret that once you file a lawsuit it is a public record and anyone can "google" your name and find it. However, a skillful attorney can assist you in resolving your claims in ways that eliminate or otherwise diminish any probability of being blacklisted. There are many steps that can be taken to pursue and resolve your claims before it is filed in court. private mediation, arbitration, and filing with an administrative agency, like the EEOC, are not a public record. If you arrive at a settlement, our firm can negotiate favorable terms including a neutral-reference, confidentiality, and non-disparagement to help assure that the company cannot speak negatively about you. C) Are they able to work for other companies while the suit is going on? A lawsuit is not an outright bar to reemployment. A number of our clients have gone on to work for other companies during litigation and beyond. We provide guidance to our clients as to what kind of information can be shared with new employers. You should expect that your attorney will protect not only your claims but your ability to maintain and find work after the suit is over.

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