



INSIGHTFUL THINKING. CUSTOM SOLUTIONS. SUSTAINABLE RESULTS.



AVOIDING LAWSUITS IN THE CURRENT CLIMATE

August 23, 2023

About the Founder & CEO – Jen Martinez



- Started “CHRP” in 2018 in Nevada – registered in Florida and Nevada
- We provide strategic and operational HR services across the public sector, private sector and non-profit
- More than 25 years of global and US HR Leadership experience working with premier publicly traded and private equity ownership with revenues from 500M – 3B+
- Partner with companies who care deeply about their people and culture
- Passionate about giving back and volunteering



Discussion

Two quick questions to start...

- What areas of your workforce or your agency's work might you *expect* to see a claim or lawsuit come from?
Over what issue(s)?

And/Or

- If you have experienced a claim or lawsuit, what was the nature of the issue?

Session Topics

- Background on Lawsuits, Claims and Cost to Companies
- Strategies to Avoid or Mitigate Lawsuits
 - Culture Building
 - Prevention
 - Tracking and Monitoring
 - Rapid Response
- Key Takeaways

Top claims reported by EEOC in 2022

- Retaliation
- Race Discrimination
- Sex Discrimination
- Disability
- Religion

In FY 2022, there was a significant increase in vaccine-related charges filed on the basis of religion.

Source: EEOC - 2022

Lawsuits now.

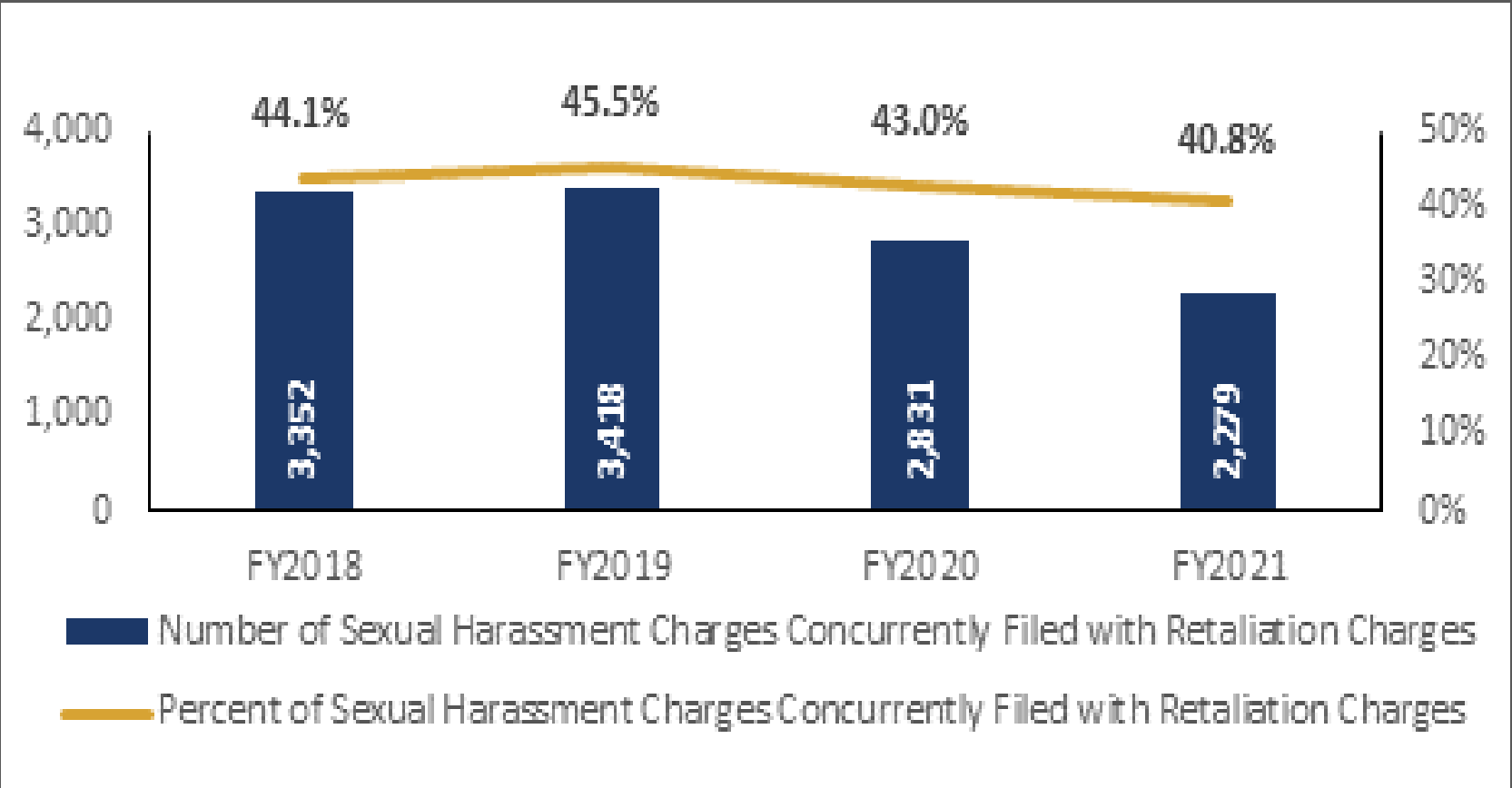
What are organizations getting sued for?

- Approximately 70% of all businesses have experienced some type of employment litigation in the past five years.
- Approximately 41% of all EEOC claims are for **retaliation**.
- **Sexual harassment lawsuits** make up about 20% of all workplace discrimination lawsuits.

Source: GITNEX and ZipDoc - 2023

Fact About Workplace Sexual Harassment

Sexual Harassment and Retaliation



SOURCE: U.S. EEOC, Integrated Mission System, Charge Data, FY 2018 – FY 2021

What lawsuits are costing you?

- The average cost for an organization to defend against a single employee lawsuit is **\$160,000**.
- Wrongful termination lawsuits result in an average judgment of **\$2.2 million**.
- **Lawsuits cost time.** The average length of an employment lawsuit is **318 days**.

Culture's is not.



Corporate culture is not blue jean Friday, a cashew nut dispenser, free sparkling water, a foosball table or other perks of the kind.

If that's how you define "culture", then you got it all very wrong. Those are cheap perks that don't ignite people's passion.

Culture is the way people get the work done, how they interact with one another and treat each other, their values, beliefs, norms and behaviors, and everything in between.

With that definition in mind, it's easy to acknowledge that *the positive effects for people and business of a strong and good culture compound much faster to ignite people than adding more meaningless perks.*

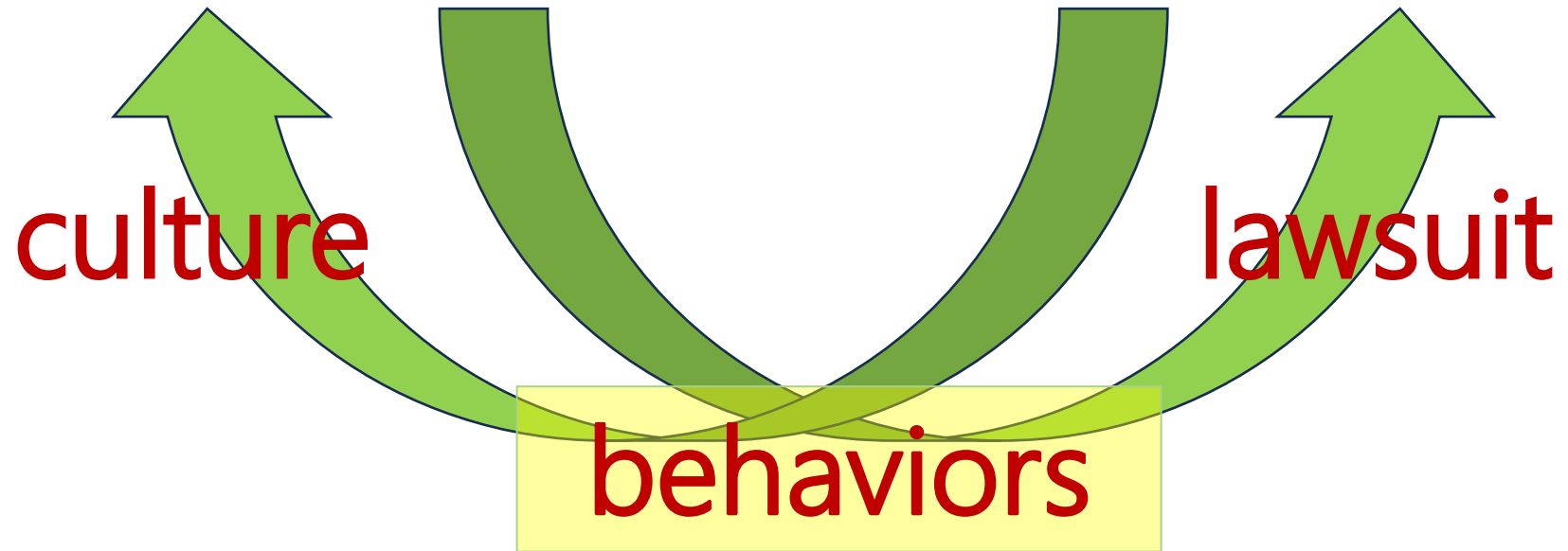
Culture's about....

- An **atmosphere** of purpose, energy and pace.
- Aligned priorities and values. Clear (and high) expectations.
- **How** people talk and listen to each other, especially, how leaders talk and model core values.
- **Commitment** to learning and development, both formal and informal. A commitment to improvement and learning from mistakes.
- **Openness to feedback** across all levels.
- Acknowledgement/**recognition** of strong performance.
- **Opportunities** to grow (as an individual contributor or management).
- **Fair Policies and Procedures** understood by all employees.
- A genuine focus on **diversity, inclusion** and **creativity**.
- **Teamwork and collaboration** across departments.

The culture – lawsuit connection

Where culture and lawsuits connect is often BEHAVIORS:

Behaviors that interpret and respond to situations or conditions of various kinds.

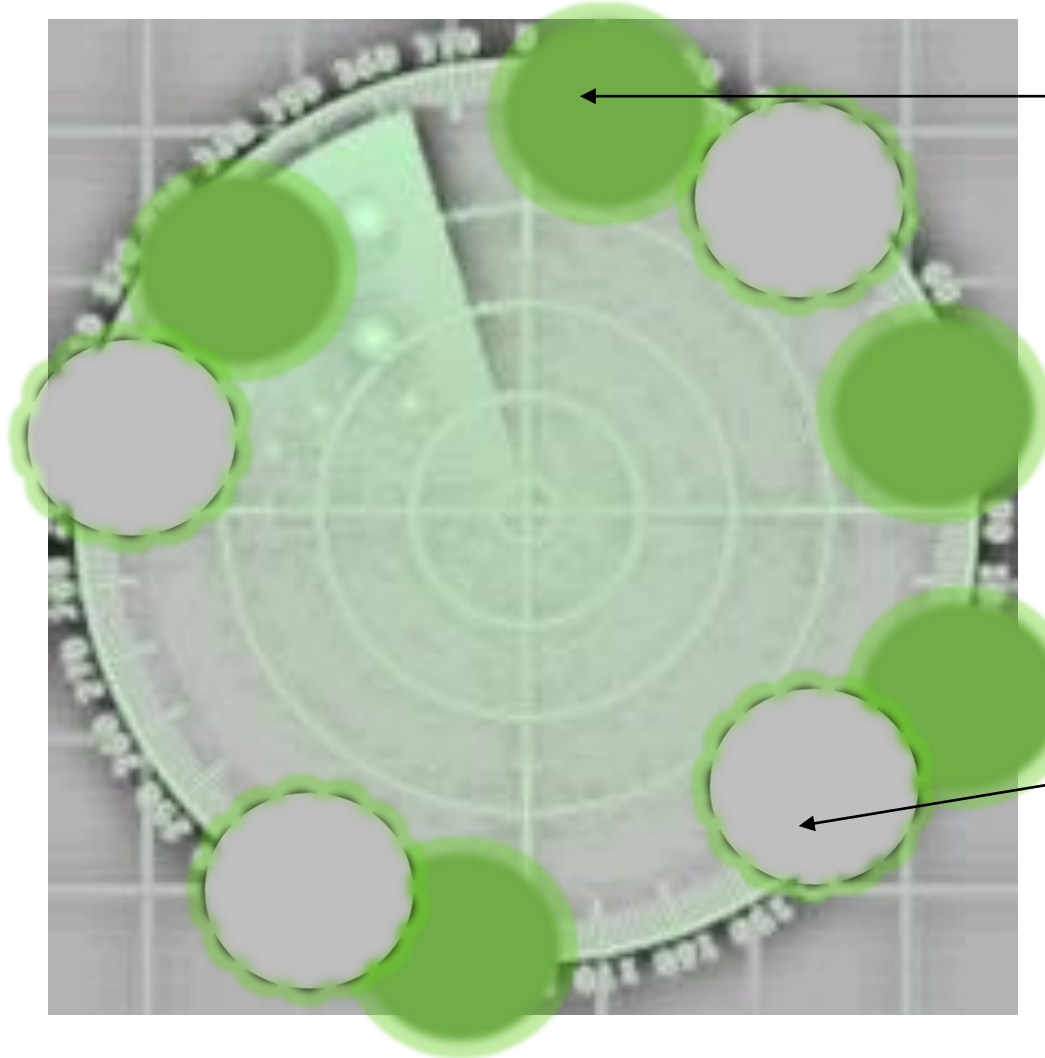


Small Group Discussion

Describe the attributes of a positive workplace culture at your Agency? What does the ideal culture look and feel like?

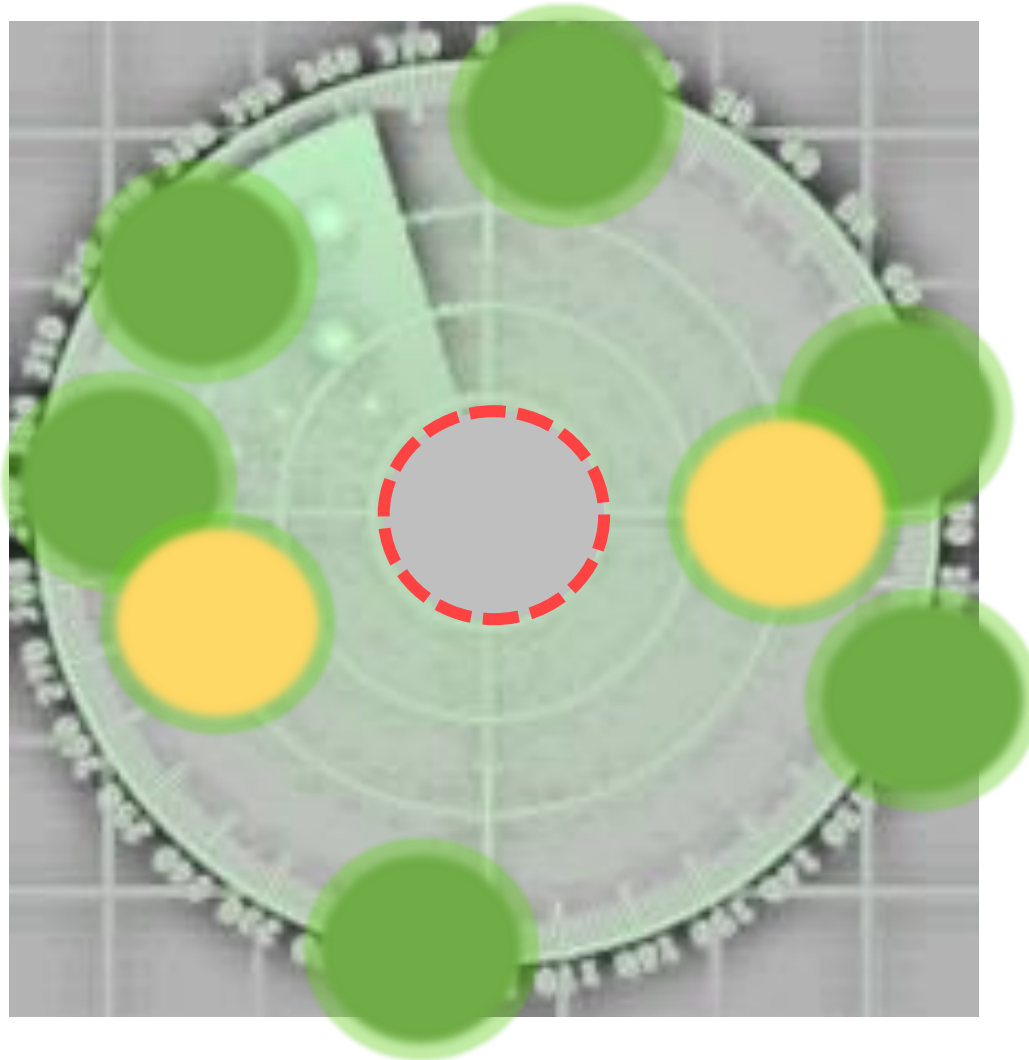


Cultural radar



- ATMOSPHERE
- RECOGNITION
- COMMUNICATION and how people talk and listen to each other
- CORE VALUES and leaders modeling values
- OPPORTUNITIES
- LEARNING
- TEAMWORK AND COLLABORATION

cultural radar



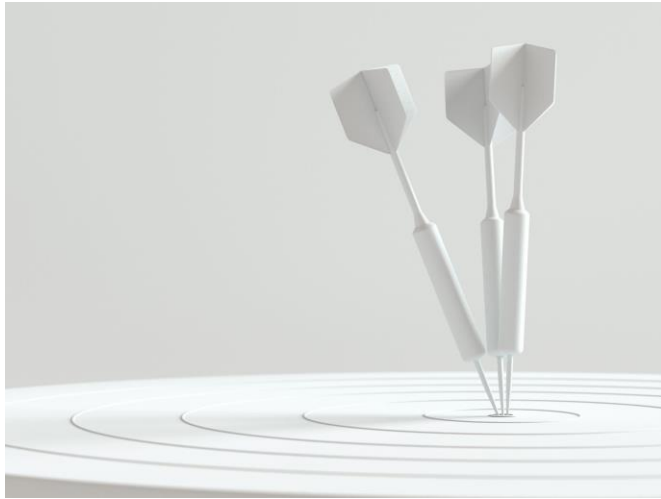
There are likely stronger and weaker (less developed) areas of your agency's workplace culture.



Healthier aspects of your workplace culture pose less risk—but **don't eliminate it.**

“Weaker” aspects or areas of workplace culture put you at greater risk of generating complaints, and worse.

Cultures have to be developed, tended and maintained. Culture requires continuous attention—this is where **STRATEGY** comes in.



Strategies that build and strengthen culture: three types

- Prevention
- Tracking - Monitoring – Assessing
- Rapid Response

Prevention

- Create a positive workforce culture built on **RESPECT AND FAIRNESS**.
- Foster an **OPEN-DOOR POLICY** and open communication. Encourage employees to **REPORT** and **SPEAK UP!**
- Stay **UP-TO-DATE** with local, state and federal employment laws.
- Ensure you have clear and consistent policies/procedures that are maintained especially related to **EEOC**.
- To tie all of the above together, and communicate it: develop and maintain a culturally-friendly **EMPLOYEE HANDBOOK**.
- **TRAIN LEADERSHIP** on topics like preventing harassment, discrimination and retaliation.
- Ensure consistent application of the agency **CORRECTIVE ACTION** policy and procedures.
- **TAKE ALL** employee issues seriously and address issues promptly—even issues that have not been formally documented as complaints.

Prevention

Stand-alone EEOC policies will...

- Clearly define the legal definitions of harassment, discrimination and retaliation.
- Provide a clear statement of your position against sexual harassment, discrimination and retaliation.
- Promote compliance and prevention by defining responsibilities.
- Describe the process for reporting claims.
- Protect your rights and foster respect for all.

Prevention

Manage and follow through on a **Company Corrective Action Policy**

Set Clear
Expectations

Training

Coaching

Constructive
Feedback/
Counseling

Prevention

Managing and following through on a Company Corrective Action Policy



- Steps will vary based on offense
- Extreme issues may result in termination
- Best Approach: Deal with Issues EARLY and INVOLVE HR
- REMEMBER TO DOCUMENT – DOCUMENT - DOCUMENT

Documentation

What?

- Any corrective actions signed by employee and manager
- Training records
- Incident reports, especially health and safety
- Updated policies and procedures including the Employee Handbook
- All employee related documents across the employee lifecycle (offer letter, performance reviews, status change letters)

Where?

- Preferably all electronic using an HR System
- Personnel/Confidential files

Prevention

The employee handbook...

- Serves as a resource for employees to check dress codes, vacation and sick leave policies, timekeeping policies, EEOC related policies, code of conduct, etc.
- Allows you to formalize your employment policies and procedures, keeping them consistent and ensuring all team members are on the same page.
- Decreases the risk of employee complaints and lawsuits, e.g., employees claiming you did not tell them about their workplace rights.

Prevention

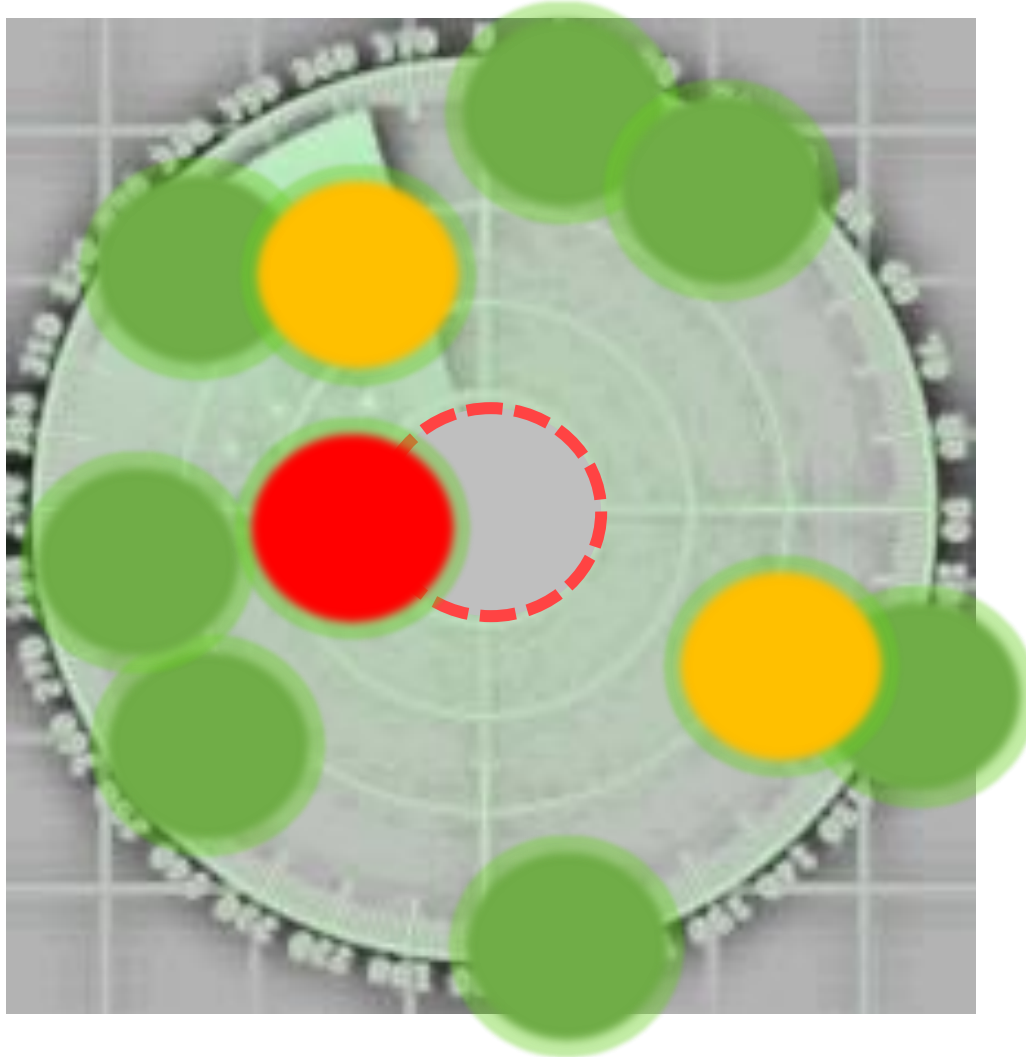
The handbook, **activated**

Is your handbook activated—updated, mentioned, referenced in day-to-day communication?

Does your handbook's content and format enable you to use it to best advantage?

What's missing? What parts need updating? What's not clear to someone not familiar with the content?

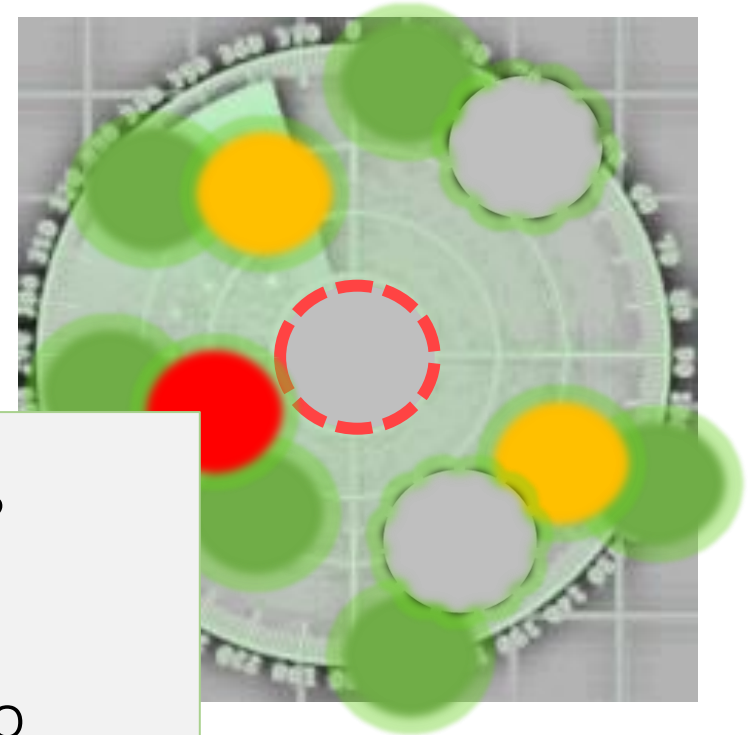
Tracking and Monitoring status—just checking



Solo Activity - Worksheet

Your screen—check it out.

- What are you reading on your culture radar?
- Where are the threats?
- Where are areas of your culture vulnerable to going yellow or red?
- Do you have a lawsuits pending or in progress?
- What are your first/next steps for dealing with the threat?



Debrief

Where to start—questions and actions to take tomorrow?

- Don't ignore it. Don't wait to see if the signals become stronger. Don't file it away with the receipts from last night's dinner.
- Check for documentation around the problem. Talk to manager/supervisors closer to the situation.
- Review background material as it currently reads in your handbook.
- Check in with advisors—HR and others.

Rapid Response

Complaints—not to be dismissed If you're asking for feedback, listen to it.

- Some complaints might be nuisance. But pay attention anyway.
- Do you have an internal process for reporting and addressing complaints, especially the ones that say, "Call HR Now?"
- Has your agency adopted an anonymous 800 hotline provider through a third-party?
- Involve HR early to investigate or engage third-party person to investigate.

Rapid Response

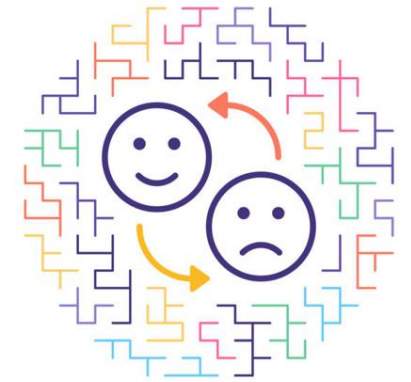
From time to time, take the pulse(s)

- Pulse Surveys
- Engagement Surveys
- All Hands Meetings
- 1:1 check-ins or the annual review
- Skip level meetings

Key Point: Remind employees of agency's "Open Door" policy

Example Pulse Survey

1. Do you enjoy the work you are doing?
2. I feel supported by ADD COMPANY in balancing my life.
3. I am clear on my job description and what is expected of me in my role at ADD COMPANY?
4. How effective are the company policies and procedures at ADD COMPANY?
5. Are you aware the ADD COMPANY open door policy?
6. Did you receive the necessary on-the-job training and/or resources you need to perform your job? If not, what additional training or resources do you need or recommend to management?
7. Career growth opportunities and promotions exist at ADD COMPANY.
8. Employees are treated fairly and equitably at ADD COMPANY.
9. How well does ADD COMPANY encourage open and honest communication between employees and managers?
10. Has the ADD COMPANY implemented the required health and safety protocols in our work location for our industry?
11. How well does the company encourage open and honest communication between employees and managers?
12. ADD COMPANY is taking proactive measures to improve diversity, equity and inclusion at ADD COMPANY.
13. What, if anything, can the ADD COMPANY do to help you feel more supported during this time?
14. Our culture at the ADD COMPANY is important to us in support of our values. We'd love to hear your suggestions in ways we can enhance our culture or improve employee engagement at ADD COMPANY.



Rapid Response

If you receive an EEOC claim...

- Preserve all documentation related to the claim
- Notify your EPLI carrier
- Contact your employment counsel to help draft response
- Respond in a timely manner to all requests through direction from employment counsel

Key Takeaways

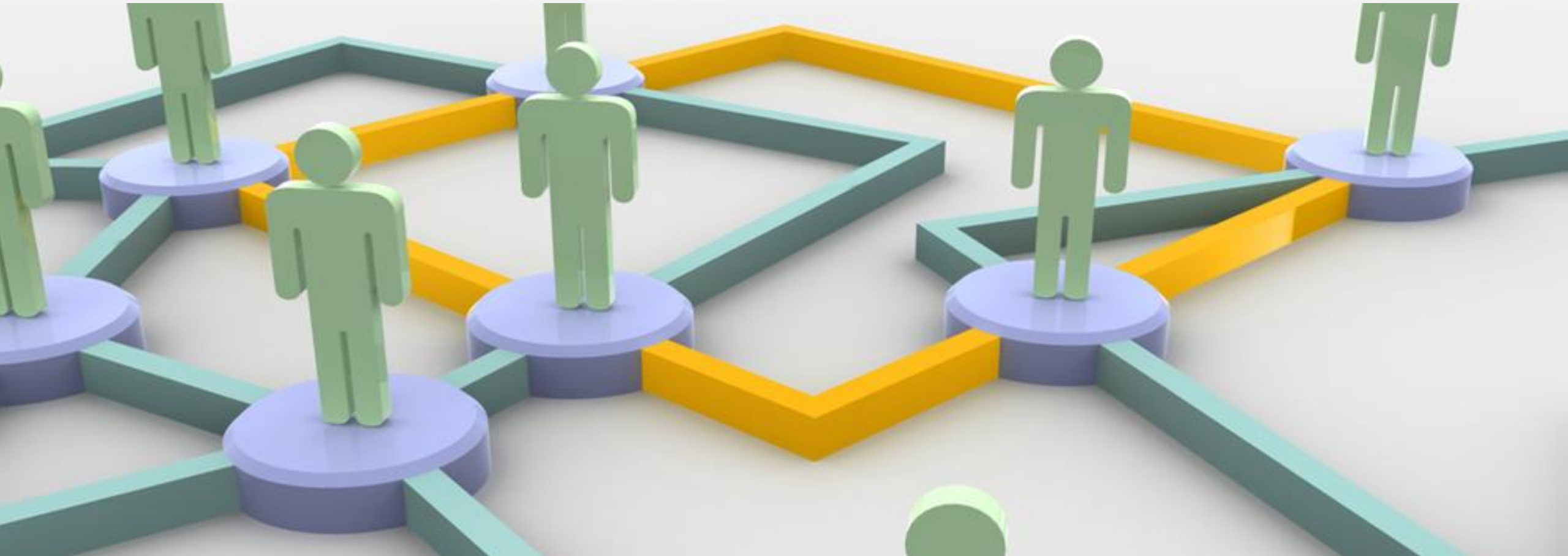
- **Apply strategies** focused on developing a positive workforce culture, a culture where there is trust in leadership, fair treatment, and open communication. Open communication means, among other things:
 - Employees are encouraged to speak up
 - Two-way feedback is the norm
- **Take all complaints seriously.**
- **Take all claims seriously.** Consult with the appropriate experts (HR and Legal) to help navigate through the situation.
- Follow through on **corrective action(s).**

More Takeaways

- Invest in training at all levels of management in the areas of employment laws and leadership skills to mitigate risk.
- Remember to document.
- Also, **don't ignore** the area that you think is least at risk
- Keep your radar screen on!

THANK YOU

Q&A'S



Core, Proactive Solutions



- STRATEGIC ORGANIZATION DESIGN
- LEADERSHIP/EMPLOYEE TRAINING AND DEVELOPMENT
- TALENT ASSESSMENT AND SUCCESSION PLANNING
- PERFORMANCE MANAGEMENT
- EMPLOYEE ENGAGEMENT AND RETENTION
- HR SURVEYS AND ASSESSMENTS
- HR PROGRAM DEVELOPMENT ACROSS THE EMPLOYEE LIFECYCLE
- EXECUTIVE SEARCH, TALENT ACQUISITION & ONBOARDING
- TOTAL REWARDS (COMPENSATION, BENEFITS & WELLNESS)
- INTERNAL COMMUNICATIONS & EMPLOYMENT BRANDING
- DIVERSITY, EQUITY AND INCLUSION STRATEGIES
- M&A DUE DILIGENCE AND INTEGRATION PLANNING