



# Non-Competes and Other Changes in Employment Policy

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## Now What Do We Need to Worry About?



I need workers but what do they want?

Effect on workplace due to divisive political and social issues

Will Noncompetes really become unlawful?

If so, how can I protect my investment and trade secrets?

## From Employer's to Employees' Market

2/20

employees

employer



2/25

employee

employers



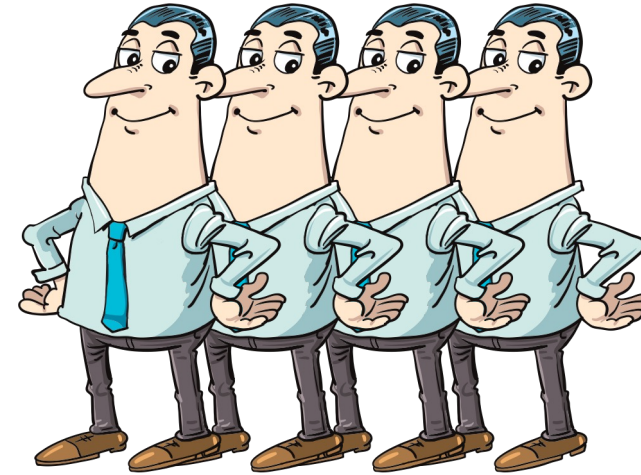
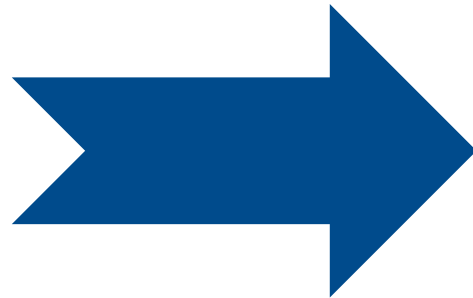


## 40% of Turnover Happens in the First 30 Days





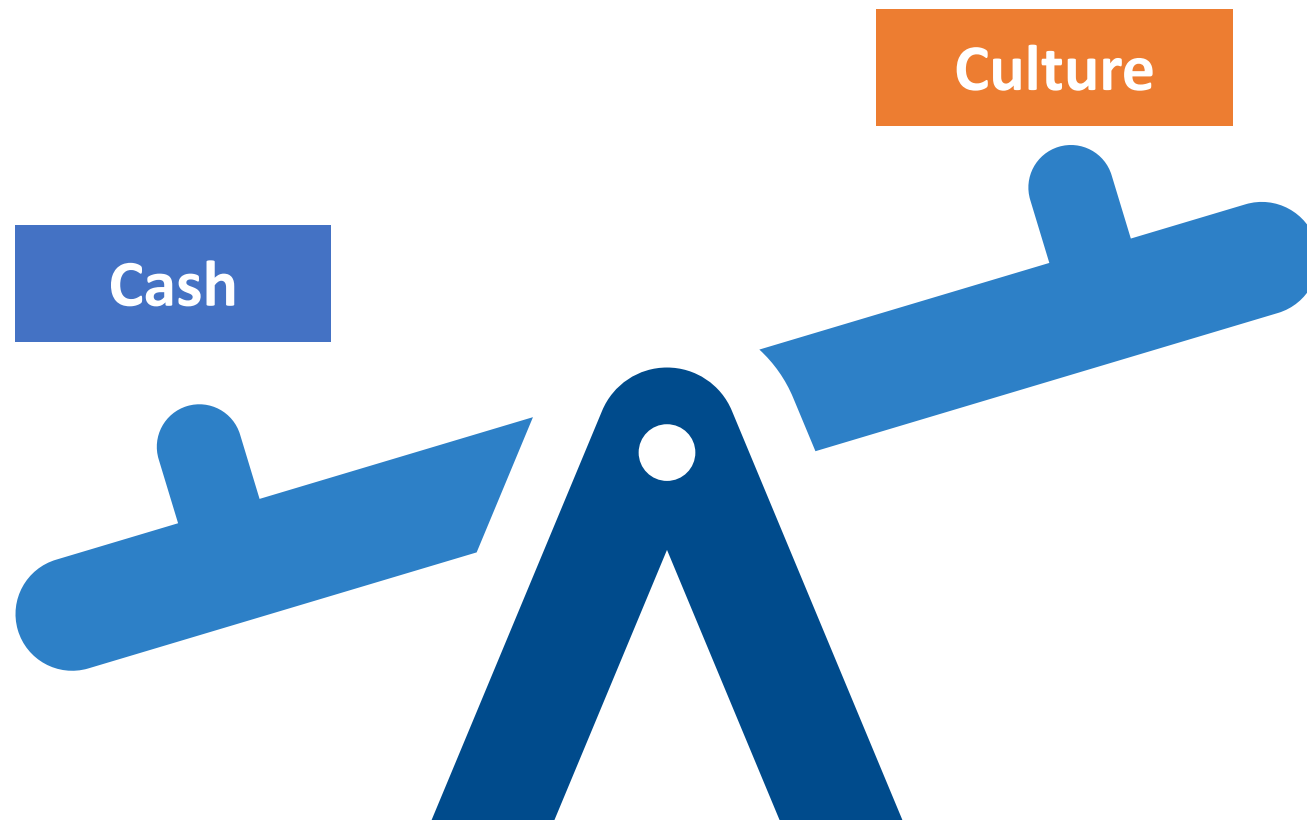
## Replacing an Employee Costs 150% of Their Salary



## Most Employees Take Between One and Two Years to Be Fully Productive



## Workplace Culture Is the Principal Reason Why Employees Quit and Matters More Than Salary





**Politics/Social Issues/  
Foreign Policy!!**





## Hire Carefully



But how far to go in hiring???

## Misrepresentations and Lies

- 40-70% applicants “enhance” their personal work histories
- 31-43% report lying on a resume
- 53% lie about their resume in some way
- Discrepancies found on about 48% of all job applications
- Resumes posted on LinkedIn contain fewer lies about work experience than traditional, paper copies of resumes

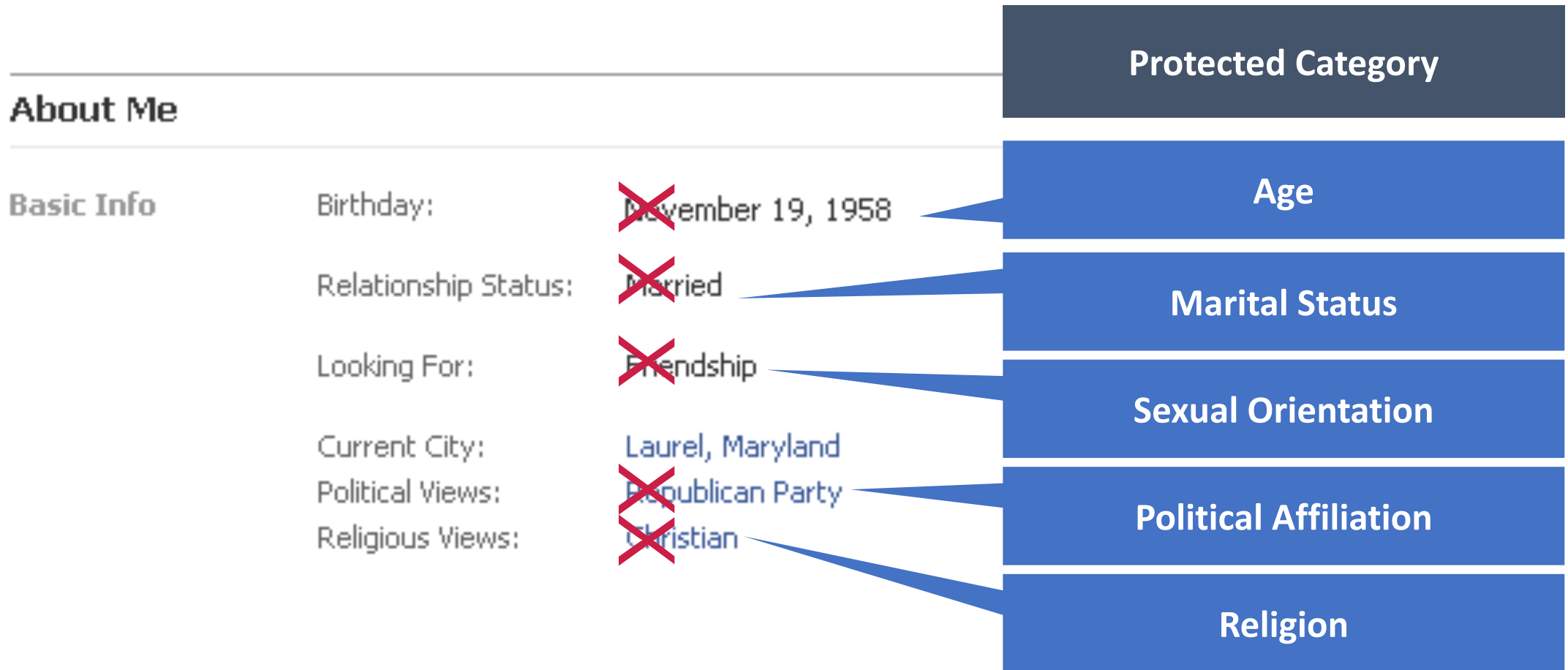


## Risk

**Protected  
category  
information**

**Hiring  
decision-  
makers**

## Facebook = TMI



# Background Checks and Ban the Box Laws



**BAN** the

**BO** ~~BOX~~

37 states, D.C. and 150 cities  
have Ban the Box laws.



## Never Thought it Would Happen Here... Damned if You Don't

What happens if you do nothing?

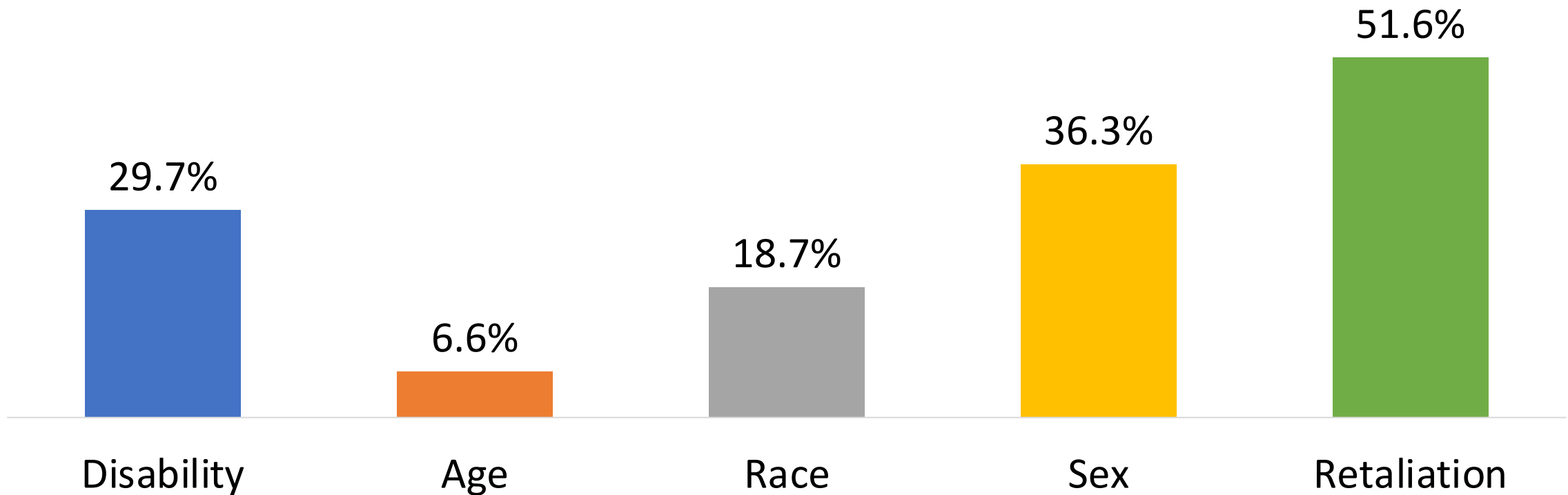
- Sued for Negligence in:
  - Hiring
  - Retention
  - Supervision
  - Failure to Warn

**Protect your  
Employees,  
Protect your  
Company**

# Where Are the Legal Landmines?



## FY 2022 EEOC Charges by Type of Discrimination



Source: Charge Statistics from the U.S. Equal Employment Opportunity Commission (2022)





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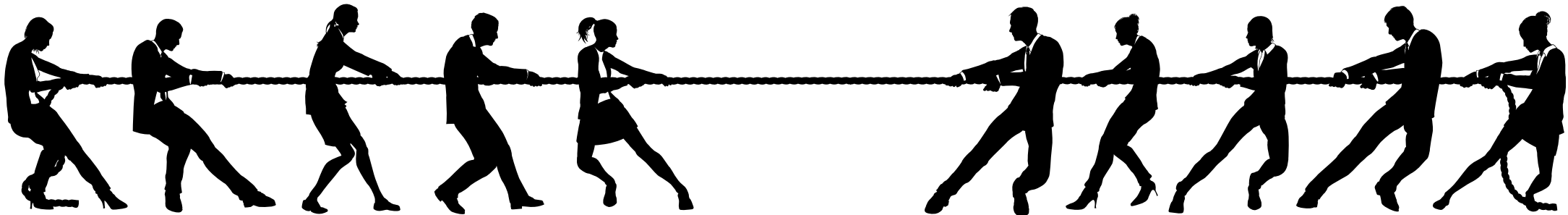
**OLA**  
Online Lenders Alliance



**AAAAAAAAAAAA!!**

## Employer's Duty To...

create secure workplace



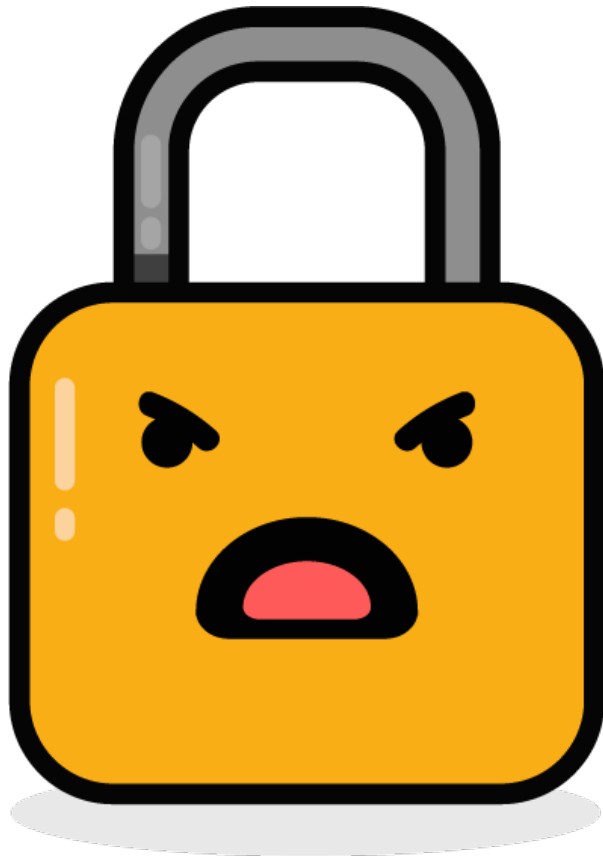
respect employee privacy



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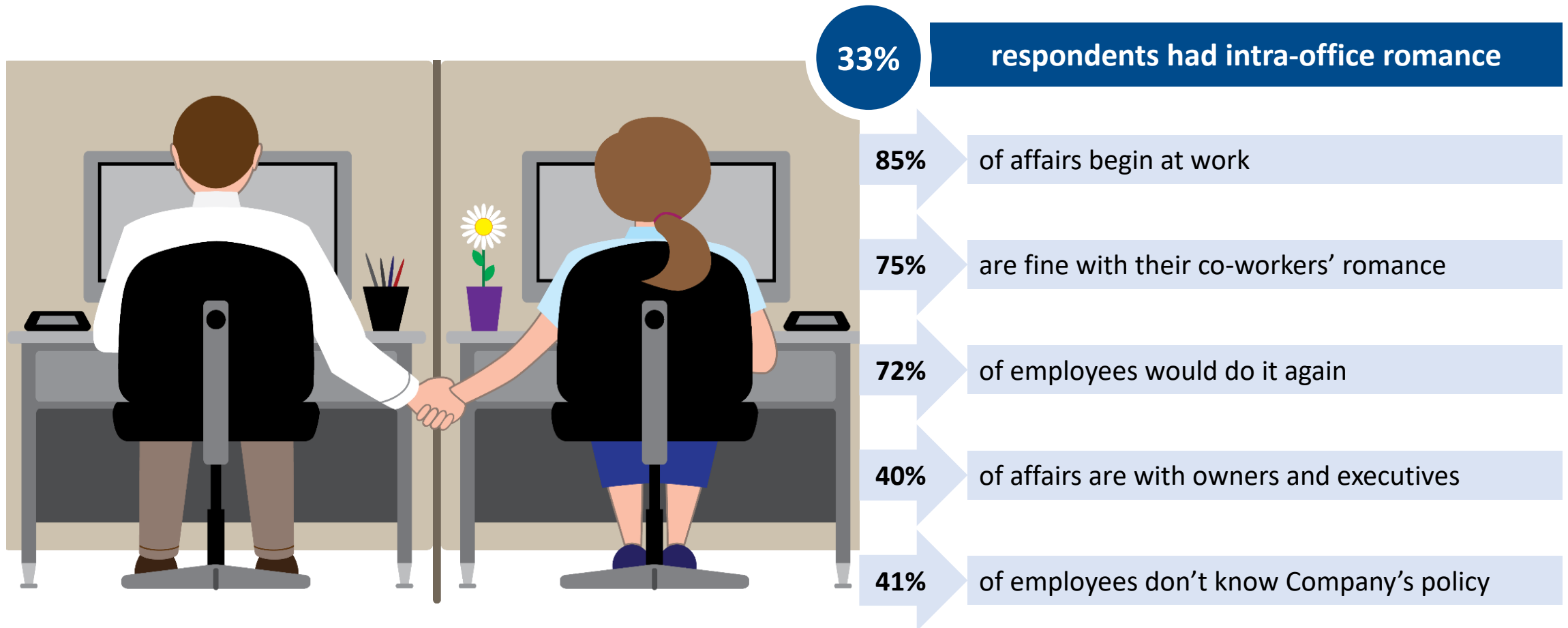




**My private life is  
not your business**



## 2023 SHRM Workplace Romance Survey





**Don't talk about  
your personal opinions  
at work...v "bring your  
whole self"**



**is written in permanent ink**



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# Flip Off Motorcade During a Bike Ride...



... lose your job.

# Bloomberg Law<sup>®</sup>

## Franklin Templeton Prevails in 'Central Park Karen' Bias Appeal

A White woman couldn't convince the Second Circuit to revive claims her former employer Franklin Templeton discriminated against and defamed her after a video showing she had called the police on a Black birdwatcher in Central Park went viral.

## The New York Times

### *She Was a Candidate to Lead Levi's. Then She Started Tweeting.*

Jennifer Sey left Levi's after her advocacy against school closures and mask mandates for children gained attention. She says it's a matter of free speech. The company disagrees.





'Chilling effect': People expressing pro-Palestinian views censored, suspended from work and school

**NYU law student has job offer withdrawn after posting anti-Israel message**

**Palestinian journalist fired from CTV for pro-Palestine activism**



**Dance like  
no one  
is watching**



**Email/post like it  
may one day be  
read aloud in a  
deposition**

Is it Obnoxious... or Unlawful?



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employer



clients/vendors/industry



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Online Lenders Alliance



## Beware of Disability Traps



## Mental Health

Pandemic caused

- 53.2 million cases of major depression disorder and
- 76.2 million cases of anxiety disorder

**g l o b a l l y**





**Employee's personal life is  
personal –  
they don't have to tell you**

# Focus on Performance Regardless of the Person



# Don't Speculate On Cause of Conduct

**Just Focus on**

**Conduct**





# The Less You Know, the Better



# Don't Fear the Consequences of Feedback



## Retaliatory Motive

- Motivation can be judged by timing
- A short time between protected activity and adverse action can show motivation
- Adverse action that was planned before protected activity and carried out after ≠ retaliatory motive





## Write it Down



Worry About Being

Honest



Not About Being

Well-liked



Not gonna lie.  
I was both.  
jk LOL 🦴  
#blessed

You Have to Know This or It Doesn't Work!





## Good Management Is Based on Building Blocks



Thanks for adding  
to my worries ...





# FTC Final Rule on Non-compete Clauses



- Effective 120 days after being published in the Federal Register (fall 2024)
- Over 25,000 comments before the Rule was finalized
- Currently in litigation by several states and the U.S. Chamber of Commerce
- At least one court has entered a limited injunction and others are still considering national relief

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## SUBSTANCE OF THE RULE



- Non-compete clauses are an unfair method of competition
- Existing non-compete clauses for covered entities are unenforceable
- You must provide notices to your employees that the non-competes are unenforceable
- Only covers businesses that the FTC regulates---banks are not covered

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## EXCEPTIONS TO THE RULE



- “Senior executives” —someone earning more than \$151,164 per year and with “policy-making authority”
- FTC Rule does not apply to non-compete clauses in the bona fide sale of a business
- Probably will not cover non-solicitation and trade secret protections

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# Ryan LLC, et al v. Federal Trade Commission---Northern District of Texas



- Finding that FTC exceeded its statutory authority in implementing rule
- Noncompete rule was “arbitrary and capricious” because not specifically targeted and didn’t consider less disruptive alternatives
- Injunction serves the public interest
- Only applies to the Plaintiffs in that specific case

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# How Does the Injunction Affect Everybody Else?



- Short answer: so far, it doesn't
- Still scheduled to go into effect on September 4, 2024
- Other litigation still pending
- Wait and see?

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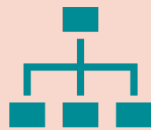
## WHAT TO DO?



Review existing non-compete agreements to see if they are covered



Prepare a notice to employees



Put Senior Executives under a non-compete



Questions?

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