

***Hiring to Firing Podcast — Harassment in the Celebrity Workplace: Insights From It Ends With Us***

**Hosts:** Tracey Diamond and Emily Schifter

**Guest:** Sara Longtain

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[INTRODUCTION]

**Tracey Diamond:**

Today, we're going to talk about the movie, *It Ends with Us* and the lawsuits that the movie has spawned. A note to our listeners that the movie itself contains some really heavy content, and we are playing some short clips that portray some audio of sexual violence, so beware of that. And while the movie does contain very difficult topics, our conversation today is really on the lighter side, and that, what can employers be doing to prevent that kind of inappropriate conduct from happening in the workplace? So, I don't want taking this lightly as any indication that we don't recognize the very serious nature of the underlying conduct.

Now, on a different note, you know, the movie actually started as a book. And I remember that in the *Gilmore Girls* reboot, there was a whole sort of thread through the reboot about the movie wild versus the book wild. There was a whole group of women that were team book, and then another group of women who were team movie. Now, I haven't had an opportunity to read the book, and I've just seen *It Ends With Us* the movie, but Emily has read the book and seen the movie. So, which one are you, Emily? Team book or team movie?

**Emily Schifter:**

I am one of those who is always team book. I think it is so hard, to capture the nuance when you go to a movie but I also think sometimes that the movies can stand on their own. They're their own kind of work. Kind of interestingly here, I think one of the accusations that Baldoni makes to Blake Lively is that she never read the book, which she said was intentional so that she could portray the character kind of fresh without having any preconceived notions. So, I know there are strong feelings either way.

**Tracey Diamond:**

Now, well, listen in for an engaging discussion with our partner, Sara Longtain about *It Ends With Us* and harassment in the workplace.

[EPISODE]

**Tracey Diamond:**

Welcome to *Hiring to Firing*, the podcast. I'm Tracey Diamond, an attorney with Troutman Pepper Locke, and I'm here with my co-host and partner, Emily Schifter. Together, we tackle all employment issues from *Hiring to Firing*. Today, we have another extraordinary employment law partner, Sara Longtain from our Houston office. Great to have you on our show, Sara, and thanks so much for joining us.

**Sara Longtain:**

Thank you so much for having me, Tracy. I'm really excited and I appreciate the invitation.

**Tracey Diamond:**

Why don't we start by giving you an opportunity to tell us a bit about your practice?

**Sara Longtain:**

Sure. I think that most of us who operate in this space know that the employment realm is heavily regulated, both at the federal level, and increasingly so at the state level. So, I liken myself to the Swiss Army knife of employment compliance. I spend the majority of my practice working with employers to aid them in navigating these compliance issues, keeping in mind essentially the goals of the organization and any sort of facts and circumstances arising in that situation. But we all also know that compliance is not black and white, and employment law comes down to people. And where there are people, there are always going to be errors, if not actual, then perceived.

I think, the minor of my practice is really spending time working with employers to navigate any kind of compliance concern. So, that could be an internal investigation, complaints at the EEOC or any sort of administrative stage, and then, naturally lawsuits, not dissimilar from the ones we're going to talk about today.

**Tracey Diamond:**

That's right. Well, Sara is a legacy Locke Lord from our now combined firm, Troutman Pepper Locke. We're so thrilled to have you as a partner, Sara, and to have your Texas expertise as part of our global practice. Today is a really special episode of *Hiring to Firing* because we're changing things up a bit. While we always use a TV show or a movie to kick off a discussion of an employment issue, today, our topic is the movie itself. The movie is none other than *It Ends With Us*, and the lawsuits that they have spawned between the actors off-screen.

We're going to discuss the movie, the lawsuits, which are fascinating behind the scenes glimpse of how the sausage gets made. And most importantly, for our purposes, we're going to discuss important takeaways for employers.

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**Emily Schifter:**

So, to start us off, let's summarize the movie itself. *It Ends With Us*, which is actually based on a book, the best-selling novel by Colleen Hoover, follows the story of Lily Bloom, who is played by Blake Lively, and her relationship with her husband, the character Ryle Kincaid, who is played by Justin Baldoni. As the story unfolds, Ryle becomes psychologically and physically abusive to Lily, hitting her in the face, pushing her down the stairs, using her of an affair with her childhood sweetheart, Atlas, and ultimately, even biting her. So, here's our first clip, where Ryle finds Atlas's phone number in Lily's phone, which leads to him pushing her down the stairs.

[VIDEO CLIP PLAYS]

**Lily:**

Who is it?

**Ryle:**

You promised me.

**Lily:**

I know.

**Ryle:**

I would never lie to you.

**Lily:**

I know, it's nothing.

**Ryle:**

It's nothing?

**Lily:**

Yeah. Yeah.

**Ryle:**

It's nothing?

**Lily:**

Yes, yes, I promise. Yeah. Okay.

**Ryle:**

It's nothing.

**Lily:**

Okay. Ryle, my baby – promise, I didn't mean to see him.

**Ryle:**

Stop. No, no, no, no, no, no, no. Lily, stop.

**Lily:**

No, please just listen to me, please.

**Ryle:**

You promised me, Lily.

**Lily:**

I didn't know he was coming.

**Ryle:**

Stop.

**Lily:**

Just talk to me.

**Ryle:**

Stop. Stop.

**Lily:**

Can you please just stop. You stop.

**Ryle:**

Stop.

[VIDEO CLIP ENDS]

**Emily Schifter:**

Ultimately, Lily ends up leaving Ryle, and soon after, learns that she is pregnant. After giving birth, Lily tells Ryle she wants a divorce to put an end to the cycle of abuse. Let's take a listen.

[VIDEO CLIP PLAYS]

**Lily:**

I want a divorce.

**Ryle:**

Hey, let's not.

**Lily:**

Hey, yes. Yeah. Yeah. It's not for you or me, it's for her. Yeah, you know. Look at her. What if one day she came to you and said, "My boyfriend hit me." What would you say to her? Or if she said, "Daddy, my husband pushed me down the stairs, but he said it was an accident, so it's fine." She said, her husband held her down, and she begged him to stop. But he swore he'd never do it again. What would you tell her? It's the person she loved was hurting her, what would you say to her?

**Ryle:**

I would beg her to leave him.

[VIDEO CLIP ENDS]

**Tracey Diamond:**

So, that, in a nutshell, is the movie, which is a topic that, of course, is gut -wrenching. But what has occurred behind the scenes with the celebrities in real life has been even more dramatic and has resulted in several lawsuits. So, let's start with the suit that was filed by Blake Lively on Christmas Eve, 2024, against the movie studio, Justin Baldoni and others. The 111 -page complaint claimed that Mr. Baldoni and others engaged in numerous inappropriate sexual comments and conduct during filming of the movie, leading to an all-hands meeting in early January 2024, where terms were agreed to between the parties before Ms. Lively would resume and complete filming. Including that Mr. Baldoni would refrain from various lead behavior and there would be an intimacy coordinator on set for all sex and sexually violent scenes.

Lively claimed that after the film was released, Baldoni retaliated against her for complaining about sexual harassment by engaging in what she called, social manipulation, planting false posts on social media to shut down any discussion in the public about Baldoni's inappropriate behavior on set, and instead, to destroy her reputation. The lawsuit includes screenshots of numerous text messages between Baldoni and his team about wanting to "bury her" on social media. As alleged in the complaint, "The Baldoni public attack of Ms. Lively was the intended result of a carefully crafted, coordinated, and resourced retaliatory scheme to silence her and others from speaking out about the hostile environment that Mr. Baldoni created."

#### **Emily Schifter:**

And not to be outdone, two weeks after the new year, Baldoni and his studio sued Lively in a 179-page complaint for, among other things, civil extortion, defamation, false light, invasion of privacy, interference with contract, and prospective economic advantage. In this suit, Baldoni claimed that Lively exceeded her role in the film, essentially taking control of the entire film production from writing to editing, and then attempted to destroy his reputation and livelihood. When her poor attempts, as he characterized them at marketing the film fell flat.

He claims that Lively's claims of sexual harassment are false and that she cherry-picked text messages between them and others, culminating in a false story that was fed to The New York Times and meant to harm him. He seeks \$400 million in damages.

#### **Tracey Diamond:**

So, you know, it really doesn't get juicier than this. Sara, let's turn to you. As an employment attorney, what human resources and employment law compliance issues can employees take away from all of this?

#### **Sara Longtain:**

I'd say there's really two very clear takeaways for employers that arise from these lawsuits. What we're really talking about here is a hostile work environment, harassment claim. In the context of federal law, you do have the opportunity in some cases to have a defense. That defense, in part, is really focused on two key components. One is, the importance of your harassment policies and training, and then, also the importance of ensuring you have a very clear reporting mechanism.

The element of this defense that's so key for employers is the idea that they can demonstrate that they've exercised some reasonable care to prevent and promptly correct any harassing behavior. Well, one way you demonstrate that reasonable care is by having a policy, disseminating it widely, and ensuring that those who are subject to it understand it and know how to use it. No policy is really effective if you don't have a reporting mechanism that allows the employees to come forward in a space that they feel comfortable and free to do so without retaliation.

One of the issues that comes up in the allegations of this lawsuit is, that the individuals that were being complained about were actually the main employer. So, it is not just a coworker or

an actor. Baldoni is actually one of the owners of the studio and the complaints are against not just him, but another partner there, and also the producer on the film. So, the complaint that's made or the allegations are made is that, originally, there wasn't an opportunity to have a complaint be made outside of this channel, and it really left those who are making the complaint with a lack of real aid or ability to bring forward those issues.

**Tracey Diamond:**

That is a really interesting concept of ownership and at the highest level here, both the complainant and the respondent. I want to flesh that out a bit, because I think sometimes, there's this misconception that, if it's at the highest levels, if the person making the complaint is at the highest level, that they don't have an avenue to complain. Is that true?

**Sara Longtain:**

Well, I mean, I think the reality is, you should make sure that you clearly do have an avenue to complain. I think the problem is, that employers have to not just say so in a policy, but effectively provide that avenue. So, if it is the CEO, what is the avenue? Is the avenue the VP of HR? Is the avenue the board? If the issue is a complaint against the direct supervisor, typically, you can go to HR. You can go to someone that is above that individual. But I think the fear or the problem is, is it clearly defined? Do employees know what to do when it is the individual that is in control of the situation or at least appears to be?

**Tracey Diamond:**

Some of my smaller employers really struggle with trying to figure out who they should use as the alternative avenues of where an employee can go to complain, because there's just not that many employees in the organization. And so, I think it's important here to stress that even if the organization is small, they really should have more than one avenue, because the person you're complaining about might be the person who you're designating as the person to complain to.

**Sara Longtain:**

Absolutely. I mean, that comes up even in the context of the HR department, which is the department that is supposed to be the third party that can kind of come in and operate in that way. But if it is an HR department where those individual employees are complaining within that group, it's a challenge too that comes up.

**Emily Schifter:**

Another thing that's interesting in this case is just how opposite the two complaints are. We've got two very different versions of the story. And of course, we always see that when we've got the plaintiffs going to put their best version of the facts forward. But really, any harassment situation involves an element of, he said, she said. How do you see employers dealing with that when they're trying to get to the bottom of what someone's alleging in an investigation?

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**Sara Longtain:**

So, I mean, I think the best approach is to ensure that you are undertaking an unbiased and third party in the sense of someone who's not involved in the allegation's investigation. So, I think, this comes down to the importance of following through on all leads that come through, and taking each complaint seriously, and ensuring that you explore it, even to the furthest extent. It's important to give people an opportunity to speak their truth, and then you really have to have somebody who is in the position to make essentially credibility calls, and determined based on what's being told, what can be supported and what seems to be the most likely situation. There's always three versions to a story, and the truth is, it's definitely only one of those.

**Emily Schifter:**

That's right. Here, a lot of the complaints, they included screenshots of text messages. So, at least there's something a little more concrete, although there's allegations about whether there's were cherry picked. But I know, increasingly, our clients are seeing text messages, or Teams, or emails, Slack messages being used as a communication tool in the workplace. So, harassment allegations can certainly encompass things that are communicated in that way. Do you see dangers in the use of text messages in particular as a means of workplace communication?

**Sara Longtain:**

Yes. I mean, I have seen – we work a lot in the energy space and there is a significant uptick in the use of text messages as a regular means of communication in the workplace. I think if you go back historically, we've moved from letters to emails to text messages to, like you said, Slack, Teams, some IMs or instant messaging and chats. I think that naturally, as the method of communication moves from formal to informal, so does our ability to police ourselves. I think that people let their guard down when they are on text message in particular because we use text message in our normal daily lives using our personal phones, et cetera. It's difficult when switching back and forth for people to be mindful of the conduct and the context in which they're sending those messages.

I think that, with informal, you become familiar. And with familiar, you are saying and doing things you would not say and do if you were looking the person in the face necessarily, or it was going to be put into an email, or in some form of written communication where you could see it in front of you or posted in front of you.

**Tracey Diamond:**

I 100 % agree with you, Sara. The other thing for employers to consider with text messages from a litigation standpoint is that, while they can be collected and we do that regularly, it involves imaging phones. Oftentimes, the phone is actually owned by the employee and not by the company, which makes some issues of custody and chain of custody complicated. Whereas, emails are usually more squarely company owned, and used, and a little easier to collect. So, before an employer just sort of wholesale allows their employees to communicate via text message, they should think about that in terms of if there is a litigation, will there be issues with collecting the data that they're going to be required to collect.



**Sara Longtain:**

Absolutely.

**Tracey Diamond:**

In addition to text messages, other terms were used in the Lively and Baldoni complaints that are specific to the digital age. For example, the Lively complaint accuses Baldoni's team of "astroturfing," which is the practice of engaging in a marketing or public relations campaign by pretending to be members of the public, providing solicited comments in the media, which frankly seems really scary to me. What other ways are you seeing the digital media being used to engage in harassment and other improper conduct?

**Sara Longtain:**

You know, it's so funny. Thinking about this, there are a lot of new terms, I think new to at least some of us as to the type of conduct that's being engaged in. But a lot of this, I'm seeing even in my junior high age children, and their use in the communities that they're in, and the use of the apps that they're on, but explicit images are readily available on social media. Cyberstalking is the idea of sending an unwanted, threatening, or obscene message, tracking someone's online activity, creating fake accounts. My sister's a therapist, and this is very common among teenagers to avoid their parent knowing what they're up to, but creating fake accounts to follow someone when they don't know, hacking into someone's device or using GPS.

Again, this came up in the teenage context where there's using like this Life app that's tracking people to know where a girlfriend was. I mean, if it's happening at the seventh-grade level, I think that it's also happening in the adult world. There's another concept of doxing, so collecting and sharing someone's personal information online without their consent, intending to embarrass, intimidate, or cause harm. Then, cyberflashing, we're all familiar with what physical flashing is, and cyber flashing is the same concept, but sending images of one's private parts unsolicited and without the individual who's receiving them about their consent. In all of these ways, this is clearly conduct that can give rise to, in the appropriate circumstances, the potential for a harassment claim.

Tracey Diamond: Yes. I was watching an old episode of, do you guys remember the show, *Newsroom* with Jeff Daniels?

**Sara Longtain:**

Yes.

**Tracey Diamond:**

It was popular around 2010, 2011, 2012.

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**Sara Longtain:**

Great.

**Tracey Diamond:**

There was a whole storyline where one of the newscasters, Sloan Sabbath, had posed for some nude pictures with her, then boyfriend, she then turned around, and put the photos on revengeporn.com. I just thought it was so interesting that that show is now, about 13, 14, 15 years ago, and that was closer to the beginning of the Internet age than where we are now, and we're starting to see some of that come up. And now, look at all those terms that you just mentioned, Sara, in terms of what bad behavior can look like on the Internet.

**Sara Longtain:**

No doubt. It's amazing. It's one of the best parts, I think, of our HR employment law world, is that we're always learning about whatever's happening outside of work, coming into work, but it's also such a challenge to stay one step ahead of the seventh graders out there who are outside.

**Emily Schifter:**

A bunch more technologically adept than the rest of us.

**Sara Longtain:**

Thank we are, right.

**Emily Schifter:**

Exactly. One of the many interesting aspects of these cases is that much of the conduct that is the subject of these lawsuits, at least in terms of the retaliation claims, actually took place well after filming ended, which is a little bit atypical for what we see for a retaliation claim. But is there a word of warning for employers to think about with that kind of an allegation?

**Sara Longtain:**

I definitely think so. I think it's important to kind of remind ourselves of the standard for retaliation. So, we're talking about any materially adverse action that might well dissuade a reasonable person from engaging in protected activity. So, I mean, the goal of the retaliation claim, the idea of making it available is to ensure that employees feel free to come forward without risk of retaliation. So, conduct that can occur outside of the workplace can easily cause harm. Even though, technically, a former employee is not an employee and not covered by a statute, the reality is, actions that occur after employment has ended that could give rise to that harm that would prevent that former employee from coming forward and making a complaint can still result in a retaliation claim.

I think it's also important to think about actions that you take against someone who you are, the individual that's associated with. So, like in this instance, one of the allegations that's being made is that, Baldoni's team was taking action not just against Blake Lively, but also her husband, Ryan Reynolds. So, that's a whole world with stars involved. It takes it a little bit outside of the normal course of our private employment world, but it's really the same concept that if you engage in activity that could harm someone who's closely related, a fiancé, a husband to the person who would be making the complaint, that is actionable. So, you definitely need to be mindful, this conduct is not just simply that you've fired someone.

**Tracey Diamond:**

Also, if the retaliation happens during employment, but also continues post-employment, it could go to damages. Because if that makes the person unable to get alternative employment, they've now not been able to mitigate their damages and it could increase damages to the person who engage in the inappropriate activity. So, it's not just necessarily about liability, but it's also about damages.

**Sara Longtain:**

Yes, absolutely. I mean, even just taking a look at the EEOC guidance out there, talking specifically about that instance. The idea that if you engage in some activity that would prevent the employee from moving forward with another employer, that is something that would be to a reasonable person, would keep them from wanting to make a complaint. There's also these activities that are very present in the allegations in these complaints, but it can include filing a lawsuit. It can include making false reports about a person disparaging them in the public. All of those things are the types of activities that can give rise to a retaliation claim.

Again, they're activities that are not necessarily taking place within the workspace, but they can still harm the person and create harm outside of the workspace, and that is enough in the context of a retaliation claim.

**Tracey Diamond:**

It's interesting, you brought out this concept of making derogatory statements about someone. We're also seeing defendants fighting back using defamation claims. I think that's a relatively new defense that I actually have been seeing anyway. That's happening here, but this isn't the first time that we've seen a celebrity who's accused of sexual harassment, use a defamation claim to take back the narrative. So, of course, I'm talking about the Johnny Depp-Amber Heard case in which Depp sued Heard after she wrote an op-ed piece in the Washington Post claiming that she was a victim of domestic abuse. Depp ultimately won that case at trial and actually earned \$15 million in damages. Now, what do you guys think about defamation as a defense or a counterclaim in or to a harassment lawsuit?

**Sara Longtain:**

From my perspective, the Amber Heard-Johnny Depp situation, I feel like it's a little different in the sense that Johnny Depp was not her employer. I definitely understand, especially in these

very public-facing lawsuits where these individuals are part of our public persona, that everyone knows and feels like they have access to. It makes a lot of sense because of the fact that there is such a great risk to these individuals' ability to continue to get hired on jobs. I mean, the way they are perceived is a key element to their future employment and to their success generally.

But I would say, for our private employer clients, it is important to be mindful of the fact that a civil lawsuit in response to someone reporting allegations of this nature can give rise to a retaliation claim. So, it is being certain that this is the avenue that's worth taking. I think most of our lawsuits, while they are public filings and while they are out in the public, at best, they might get picked up by a legal publication. But of course, there are higher profile defendants and the higher profile defendant, where there's a risk that their public image, both from a corporate perspective and an individual perspective are put at risk. It's something that can be considered. I would just do so with exercising a little bit of caution to ensure that there is true validity and strength behind the complaint because it does give me some concern around the retaliation aspect.

**Emily Schifter:**

I completely agree. We now and then, we'll have a client, especially when they've got, they'd be an individual supervisor named if there's a claim that allows that where they say, "We want to counter sue" or "I want to be really aggressive here because the allegations are just so ridiculous." Sometimes, it does take that thought of it, how confident do we really feel in this? Is it really worth the risk? Because to your point, I think, people can sometimes forget, it's not just things that happen in the workplace and during employment that can give rise to retaliation claim and make the whole lawsuit messier, and did more difficult to defend for everybody involved.

**Tracey Diamond:**

And kind of to that point, some of the allegations here and the complaint relate to Baldoni's use of a crisis management PR team, and kind of trying to use it offensively as well as defensively. Do you think there's a role for a PR team in this type of a case?

**Sara Longtain:**

Again, I think that the average Joe is not hiring a PR team to defend them in this situation. But we definitely have clients that do have higher-level public personas. So, while I think there could be a role for a PR team, I think the key issue here is the focus not on tearing down the complainant, but the idea of managing the public image, and the profile as a result of the allegations that come out against that defendant. I think that what distinguishes the conduct as alleged in this lawsuit from just a typical PR campaign is that it is at least alleged to be targeted at bringing the person down and otherwise trying to attack the complainant, and that feels retaliatory. That doesn't feel like an effort by a defendant to protect their own image, but instead, to attack someone else's.

So, I don't expect we'll see a lot of our private employer clients hiring PR firms to manage this, but it's definitely in a large crisis situation where you have a huge explosion or you have other issues that are giving rise to national news media coverage. It is important to have somebody

who is skilled in that environment that can help you manage that not necessarily for purposes, again, of attacking the other components, but putting forth the appropriate foot. You want to put your best foot forward in those situations.

**Tracey Diamond:**

Yes. And keep in mind, if you do go that route, that there's privilege issues or lack thereof. So, unless there's an attorney sort of coordinating those communications, they may be discoverable by the other side. In the case of like Lively's lawsuit against Baldoni, she actually used communications between Baldoni and his team, and the PR team that he hired against him, and used them as part of her allegations in the complaint. So, kind of backfired from a PR perspective, for sure.

Last question is really about sort of sexual content. This movie is about sex, it's about abusive sex. That meant that the actors had to engage or act out sexual conduct as part of the filming process. Is there anything that an employer can do to protect itself when they are in an industry where the employees necessarily are going to be exposed to sexual content as part of their work or content, for that matter, based on other protected categories?

**Sara Longtain:**

The way I think about this, especially in the context of harassment, is when you're evaluating a claim for harassment, the standard is, around what is objectively and subjectively hostile. So, to the objective piece, I do think that the objectivity must be established and determined based upon the perspective of a reasonable person, and in this particular situation, and within the context of what's happening.

While it may not be an active step that an employer would take to protect themselves, understanding when someone is in an environment where the work environment inherently includes some sort of imagery or some sort of content that would otherwise be maybe outside of the normal professional environment. When someone is accepting that job and understands that the role includes that, I think that changes the realm of what the reasonable person in that particular position would be deeming to be hostile.

So, that doesn't mean that in those spaces, there is not an avenue by which someone could take what is the standard in that context and bring it to something that is unreasonable, that is hostile. So, it is going to be – it's all about

how it's how it's managed. If an employee raises that, raises an issue, even though it's in the context of an environment that is inherently sexual or whatever the particular issue is, as an employer, you have to be mindful and you have to be conscious of the fact that that means that individual is expressing from a subjective perspective, their own sensitivity to it, and maybe there is something in their personal life or something that's been their experience that create a greater level of hostility than maybe the next person.

I think that we just have to, again, go back to where we started from, which is the idea of having an appropriate reporting mechanism, having an appropriate procedure, a policy, a practice, and

informing your employees and knowing that you have to be willing to take an unbiased look at the complaint, and review it, and take appropriate steps to manage that for any situation when the allegations are raised.

**Tracey Diamond:**

The elusive, reasonable person, Sara.

**Sara Longtain:**

I know, right?

**Emily Schifter:**

Well, such an interesting conversation. and so much to unpack with this and more to follow as we continue to follow the headlines and what happens with these cases.

**Sara Longtain:**

Another lawsuit was filed yesterday, I believe, in Texas.

**Emily Schifter:**

So, the drama will continue.

**Tracey Diamond:**

It kind of makes you wonder, at the end of the day, are either of them going to survive this? It's starting to reflect poorly on everybody concerned.

**Emily Schifter:**

Well, Sara thank you so much for joining us. This is such an interesting conversation. To our listeners, thank you so much for tuning in, and we hope that you will check out our other podcast episodes wherever you get your podcast, and also check out our blog on [hiringtofiring.law](http://hiringtofiring.law). If you have suggestions for topics, or movies, or TV shows for us to feature, we always want to hear them. Thanks so much as always for joining us.

**Sara Longtain:**

Thank you.

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