



2024 International Client Seminar

February 29 - March 3, 2024

If it Doesn't Walk Like A Duck or Quack Like a Duck, Can It Still Be a Duck?

Working Collaboratively to Find Resolutions to DEI Issues that Don't "Check the Box"

Dina M. Cox

Moderator

LEWIS WAGNER, LLP
Indianapolis, Indiana
dcox@lawiswagner.com

Monica Garcia

BUTT THORNTON & BAEHR, PC
Albuquerque, New Mexico
mrgarcia@btblaw.com

Microaggressions Defined

Microaggression occurs when someone says or does something that feels offensive or hostile to some aspect of our identity without even realizing it. A microaggression can take the form of an insensitive statement, question, or assumption and can target many aspects of who we are, such as our race, gender, sexuality, parental status, socioeconomic background, mental health, or any other aspect of our identity. While microaggressions are often aimed at traditionally marginalized identity groups, they can happen to anyone. They are based on the simple, hurtful idea, “Because you are X, you probably are/are not or like don’t like Y.”

In the context of discussing microaggressions, one criticism suggests that society has become “hypersensitive.” This critique asks whether casual, “innocent” remarks are blown out of proportion. But research suggests that microaggressions are not so “micro” in the way they impact people. Microaggressions have been shown to negatively impact our physical and mental health, especially when they take place over the course of an entire career, including causing increased rates of depression and stress, as well as headaches, high blood pressure, and sleep disruption. Microaggressions can lead to increased burnout at work and less job satisfaction. They can also affect performance because they require significant cognitive and emotional resources to recover from them.

At their core, microaggressions signal, at best, cultural incompetence and, at worst, disrespect. They often reflect or build upon negative stereotypes and reflect inequality. But regardless of how you view microaggressions, it makes sense to pay closer attention to them in the wake of the Great Resignation of 2021. We have learned from people leaving their jobs in droves that an organization’s culture can strongly influence retention. One study found that 7 in 10 workers reported they would be upset by a microaggression, while half said the action would prompt them to consider resigning. Understanding what microaggressions are, how they show up, and how to respond to them in a productive manner is essential to creating inclusive and welcoming workplaces. The more awareness we have, the more we can work toward decreasing microaggressions in and outside of work. Because we are all human and make mistakes, it is also helpful to know what to do if we witness or commit a microaggression.

Awareness is Key

Because there are many words and phrases in the English language that are rooted in systemically favoring dominant groups in society, parts of our everyday speech have historical roots in racism, sexism, or other forms of discrimination.¹ By way of example, the following terms may be casually spoken in the workplace, but have hurtful connotations:

- “Man up” equates gender with strength or courage.
- “Peanut gallery” referred to the sections of segregated theaters usually occupied by Black people.

¹ Washington, Ella F., Recognizing and Responding to Microaggressions at Work, Harvard Business Review.

- “Blacklist” means a list of persons disapproved of or being punished or boycotted, signaling black as negative and white as positive.

Though it is unrealistic for each of us to know all the cultural or historic minefields that may be embedded in our language, being thoughtful and intentional about the words we use can be a significant part of treating one another with respect. If we become aware of a problematic connotation or history associated with a particular phrase or word, the best practice is to abandon that speech and choose an alternative language. Though it takes some work to unlearn the many fraught words and phrases, most people find it is not that difficult once you set your mind to being more inclusive.

Responding Productively

If you witness a microaggression, you have the option to respond in the moment, respond later, or let it go. There is not one right approach, and the approach you choose will depend on the situation and who is involved. Consider whether you can create a safe space for the conversation. Is it best had in the moment, possibly in front of others, or one-on-one? Do you have a personal relationship with the person such that you could simply point out that a comment they made did not sit well with you? Would it be better if you enlisted the help of a colleague closer to the individual? Do you need to recognize and appreciate that you are not an authority on the subject matter? Whatever you decide, underscore with your audience the difference between intent and impact. While the speaker likely intended no offense with the comment, we should acknowledge the impact of our statements.

Acknowledging and Apologizing

If someone tells you that you have said or done something offensive, use your emotional intelligence to respond, but first take a moment to pause so that you are not responding defensively or emotionally. We all make mistakes, and we can be grateful for the opportunity to grow or to learn how to treat a colleague with greater respect. If you are uncertain what you said or did to offend, ask for clarification, invite a dialogue, or do your own research. Be sure to truly listen to the other person's perspective, even if you disagree, rather than listening for the opportunity to speak or defend yourself. Remember that committing a microaggression does not mean you are a bad person or that you have evil intent. Whether you lacked understanding of a certain word's history or the insensitive nature of a comment or question, own the offensive impact of the statement or question and apologize for it. Example: “I can now better understand how I was wrong in this situation. I will work to become more aware of [insert the topic on which you need to increase your cultural awareness].”

Leadership

If you are in a leadership role, it is important to model cultural competence. Provide training on how to recognize, avoid, and respond to microaggressions and other issues associated with unconscious or implicit bias. Be sure to correct individuals who commit offenses. You do not want to let microaggressions become part of your organization's culture.

Unconscious Biases

In its simplest form, unconscious biases are social stereotypes about certain groups of people that individuals form outside their conscious awareness. Unconscious bias happens outside of our control; it occurs automatically and is triggered by our brain making a quick judgment. Everyone has biases. Having biases does not make you a bad person or unethical; it makes you human. Instead of spending time attempting to “stop” having biases, your time is better spent (1) understanding you have them; and (2) working to become aware of when you are experiencing these types of biases in hopes of lessening the negative impact they may have.

Affinity Bias

Affinity bias is the unconscious tendency to be drawn toward or get along best with others who are like you or who share similar qualities with you. The main reason one has an affinity bias is because it is simply easier. It is easier to choose to interact with people who are like you because it is comfortable; conversations are effortless. However, affinity biases can have negative consequences in the workplace. Take the following as an example: an employee interviews two candidates—one is like the interviewer (a forty-year-old male with two teenagers) and the other is very different (she is a thirty-year-old single female with no children). The interviewer finds he has more in common with the other male and makes him an offer. One month later, the new male employee must fill a vacancy on his team and again hires someone just like him. Before you know it, the company has built a team of all like-minded people where there is zero diversity to contribute to creative solutions for clients.

To overcome or combat affinity bias, here are a few strategies:

1. Take note of both the similarities and differences you have with the person you are interacting with;
2. When you are deciding whether to engage or hire someone, have a diverse group of people sit in the meeting and offer input. Different perspectives and affinities can help in balancing any decision about the candidate.

Establish clear criteria in advance of making decisions so that bias gets taken out of the decision-making process as much as possible.

Confirmation Bias

Confirmation bias is a type of bias where people seek information that confirms pre-existing beliefs or assumptions. Confirmation bias is a little different than other biases, as it does not directly involve biases for or against people. Instead, it is a bias towards or against certain facts or information. It is the tendency for people to gather information or respond to a circumstance in a way that confirms what they already believe. When we act with confirmation bias, we accept information that confirms what we believe and reject information that conflicts with our established beliefs.

Confirmation biases not only impact how we gather information, but also influence how we

interpret and recall information. People who support or oppose a particular issue will not only seek information to support their position, they will also interpret any information received in a way that upholds their existing ideas. Further, people will only remember details from the information received that reinforce their previous beliefs and attitudes.

Confirmation bias can appear not only in hiring decisions but also employee reviews. According to research published in the Harvard Business Review, confirmation biases often cause bosses to give female employees worse reviews than their male peers.² The subjective nature of performance reviews allows confirmation bias to slip into the process and double standards to flourish.

Here are five ways to minimize the impact of confirmation bias:

1. Take it all in: Don't jump to conclusions.
2. Widen your information channels: Don't only read articles that have opposing views to yours but do your very best to understand the opposing view.
3. Don't always try and be right.

Aim to disprove your hypotheses.

Halo Effect

The "halo effect" is the tendency for positive impressions of a person, company, brand, or product in one area to positively influence one's opinion or feelings in other areas. This bias occurs when your overall impression of a person impacts your evaluation of that person's specific traits. For example, you are attending a conference and one of the presenters is very well-spoken. You automatically believe that same speaker is smart, driven, and successful.

There are several ways the halo effect can influence perceptions of others in work settings. For example, experts suggest that the halo effect is one of the most common biases affecting performance appraisals and reviews. Supervisors may rate subordinates based on the perception of a single characteristic rather than the whole of their performance and contribution. For example, a worker's enthusiasm or positive attitude may overshadow their lack of knowledge or skill, causing co-workers to rate them more highly than their actual performance justifies.

Minimizing the halo effect can be achieved by doing the following:

1. Give your first impressions a second chance: It is almost impossible to keep yourself from making a first impression of someone you've just met but try to be critical of the first impression that you get. Try to back up your feelings toward someone with

² Cecchi-Dimeglio, Paola. "How Gender Bias Corrupts Performance Reviews, and What to Do About It." *Harvard Business Review*, 19 Nov. 2018, <https://hbr.org/2017/04/how-gender-bias-corrupts-performance-reviews-and-what-to-do-about-it>.

real data. If you have a tough time finding a reason you like or dislike someone, give them a second chance.

2. You are also prejudged. Reflect. If you are lucky, you also produce the Halo Effect. If you are not so lucky, you might fall victim to the Devil Effect. Take some time to reflect on the image that you project, because it is easier to see the fault in others before you see your own faults.

3. Be coherent. Coherence, or being loyal to your morals, code of ethics, likes, and hobbies, is essential for boosting the Halo Effect. You are coherent when you say what you think, and you do what you say you'll do. If you project an incoherent image, your Halo Effect will be noticeably reduced, because the other person will see a cheater or liar, and you might end up being judged by the Devil Effect.

4. Be aware of your non-verbal language. More than 70% of what the other person perceives comes from non-verbal language. The way you move, your tone of voice, looking the person in the eyes or shying away, nodding, and other small body language cues give off much more than you might think.

5. Ask yourself questions. Question yourself. Every time you pass a judgement about a person or object, ask yourself honestly if the answer would be different if its image was different.

6. Avoid negative (and positive) generalizations. Do not let yourself get carried away by other people's opinions. Consider only the recommendations that come from people who really know what they are talking about. If they have some kind of authority over a given subject, take their advice into consideration when making a decision. If they do not know what they're talking about, don't take their word as fact.

7. Learn how to use your intuition well. Finally, the most important thing in life is balance. After reading this article, don't doubt yourself and your intuitions, because they might be right! Can you imagine the number of friends you've missed out on, of the places you've never seen, or the things you haven't tried, just because of a first impression?³

Attribution Bias

Attribution bias is the tendency to have a different rationale for your own behavior versus that of others. When talking about attribution biases, many scholars focus on something called the fundamental attribution error. This is our tendency to attribute another's actions to their character, while attributing our own behavior to external situational factors. Take the following as an example: one of your

³Minchew, Molly. "The Halo Effect: 10 Tricks To Successfully Manage It." *CogniFit's Blog*, 14 May 2018, <https://blog.cognifit.com/halo-effect-10-tricks-successfully-manage/>.

“disorganized” employees was late to a meeting. That same day, you are late to a different meeting, but proceed to make an excuse for your tardiness. You have cut yourself a break, while holding others 100% accountable for their actions. The fundamental attribution error exists because of the way in which we perceive the world. While we have at least some idea of our own character, motivations, and the situational factors affecting us day-to-day, we rarely know all of the things going on with someone else. In working with our colleagues, for example, we form a general impression of their character based on pieces of situations, but never see the whole picture. While it would be nice to give them the benefit of the doubt, our brains use limited information to make judgments.

Because it can be at the root of any misunderstanding when human motivation has the potential to be misinterpreted, attribution bias can have devastating impacts on an organization. It can cause arguments, fuel terminations and resignations, or lead to ruptures in organizational culture.

An antidote to attribution bias is gratitude. If you become resentful toward someone for a bad “quality” they demonstrate, make a list of five positive qualities the person demonstrates to help balance your perspective. You can also develop and cultivate your emotional intelligence by practicing self-awareness, empathy, self-regulation, and other methods of becoming more objective in the service of your long-term interests and the interests of others.

Here are a few ways to overcome attribution biases:

1. Try to see the big picture. There is usually more to a story or to someone’s actions than what is immediately in front of you. Take a second to think about what else might be going on.
2. Education on Attribution Biases. Let people know about the kinds of bias that may be affecting their thinking.
3. Focus on Resolving the Issues Not Who to Blame. Once people are in problem solving mode and focused on resolving the problem rather than working out who’s at fault, they are more likely to be able to resolve the issues).