

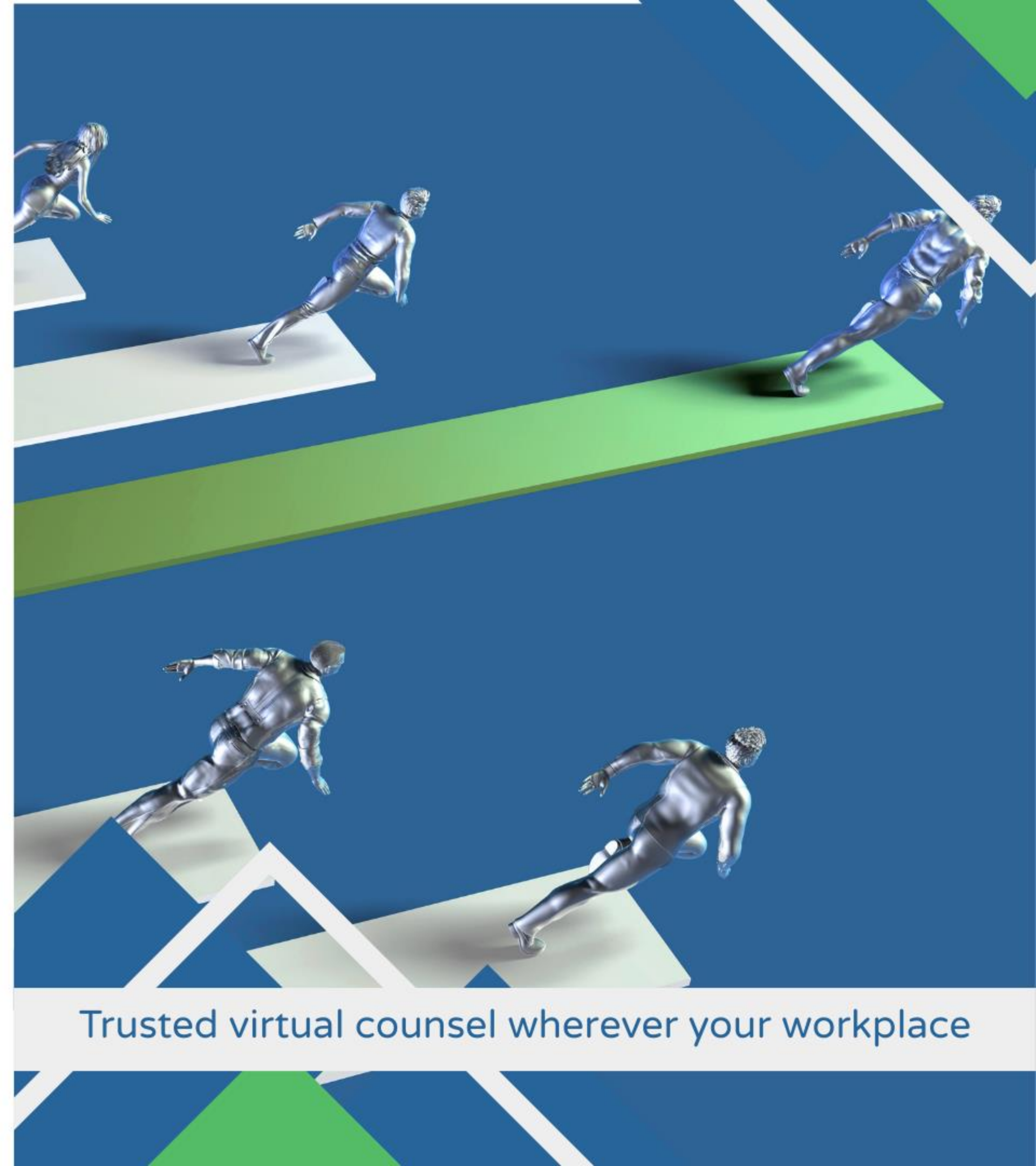
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Performance Management, Terminations & Severance: What Employers Often Get Wrong

EP 69

Wednesday, April 15th, 2026
10:30 a.m. E.D.T.



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Meet Your Presenters

Jessica Paglia

Employment, Labour, Litigation & Contracts Lawyer

Lisa Stam

SpringLaw's Managing Partner



Jessica Paglia



Lisa Stam

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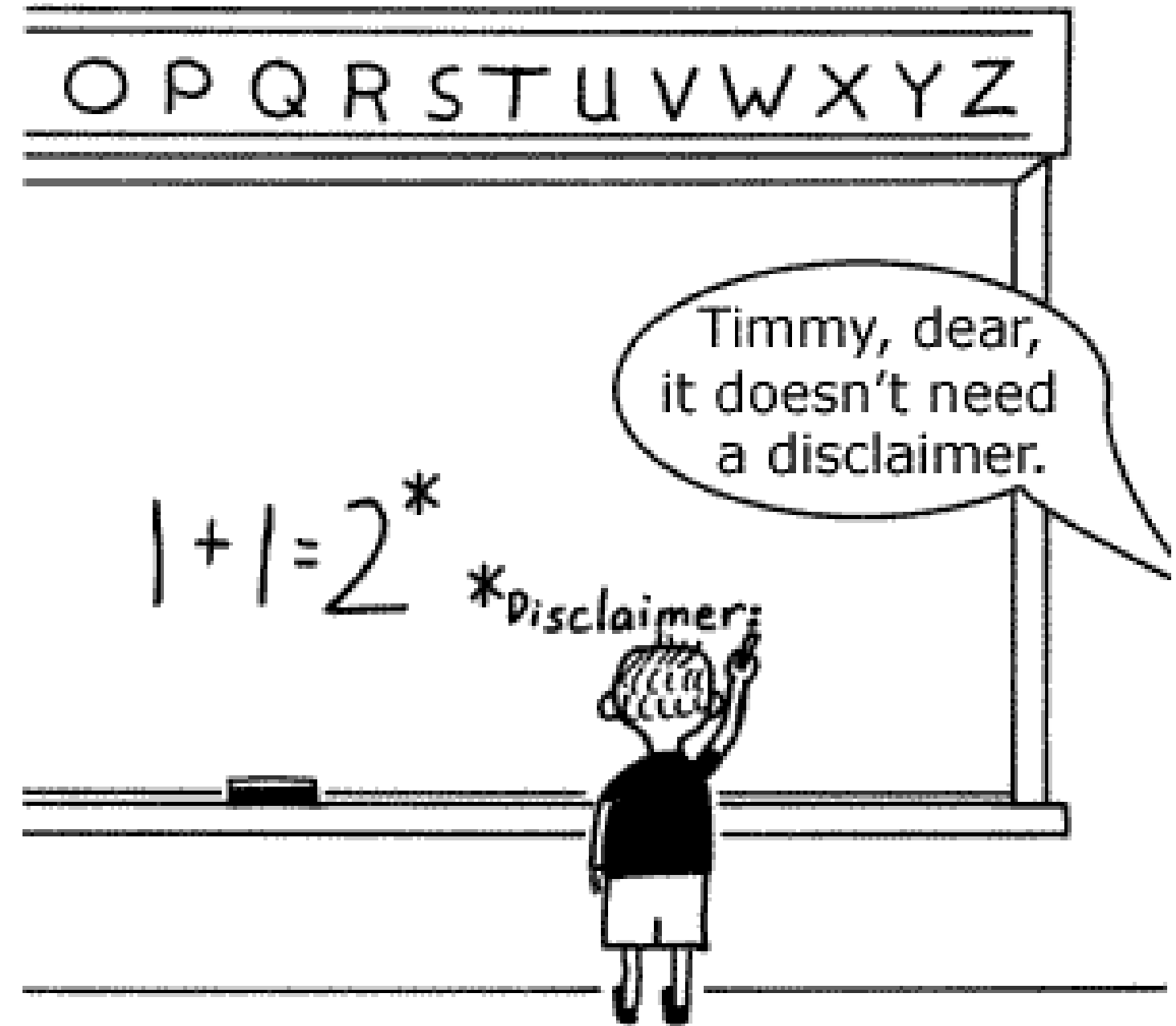
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We recognize that Indigenous Peoples lived and thrived here long before the arrival of settlers, and we acknowledge the lasting impacts of colonialism. As part of our commitment to truth and reconciliation, we strive to learn, unlearn, and understand the history and effects of these wrongs.

We are grateful to live and work on this land.

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but we do...



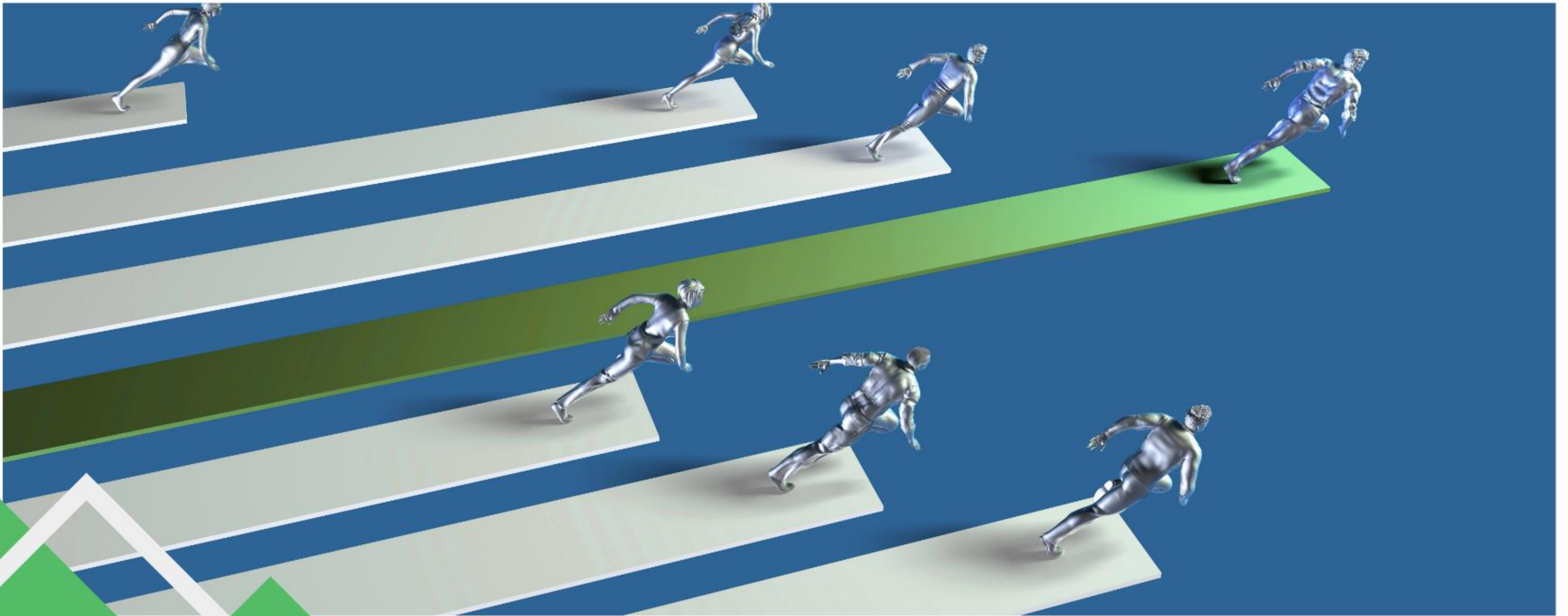
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WHAT WE'LL COVER TODAY



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What We'll Cover Today

- Why Terminations Go Sideways
- Performance Management
- Terminating Employees the Right Way
- Severance, Contracts & Enforceability: What's Changed
- High-Risk Scenarios Employers Underestimate
- Practical Takeaways You Can Use Immediately

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WHY TERMINATIONS GO SIDEWAYS



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Where terminations go wrong

- Most employers aren't trying to “cut corners”
- Legal risk usually comes from process, not your intent
- Small missteps → expensive outcomes
- Issues compound quickly once lawyers get involved

Performance Based Terminations



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Performance based terminations

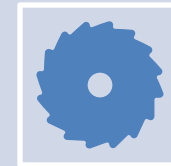
Performance Management



Termination Decision



Exposure



Most employers aren't trying to "cut corners"



Legal risk usually comes from process, not your intent



Small missteps → expensive outcomes



Issues compound quickly once lawyers get involved

The Employer Myth



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The Employer Myth

“We can terminate without cause, so performance doesn’t matter.”

- Legally allowed ≠ low risk
- Courts do care about fairness and credibility
- The paper trail always matters – so make sure you have one!

PERFORMANCE MANAGEMENT



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Performance Management

WHY IT MATTERS

- It may shape how a termination is judged
- It determines leverage in negotiations
- It affects credibility with courts and counsel
- It often decides whether a claim settles or escalates

Common Performance Management Failures



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Common Performance Management Failures

- Issues raised too late
- Vague or inconsistent feedback
- No written follow-up
- Over-reliance on “informal” conversations
- No ‘support’ inquiries or effort to train

The “Nice Review” Problem



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The “Nice Review” Problem

- Overly positive performance reviews
- Inflated ratings to avoid conflict
- No mention of concerns until termination (or after)
- **Result:** credibility problems later on.

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Consistency Is Everything



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Consistency Is Everything

- Similar issues should be treated similarly from employee to employee
 - This helps to avoid any 'discrimination' or 'reprisal' claims
- Exceptions need clear justification
- Inconsistent enforcement weakens your position fast

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Remote & Hybrid Work Risks



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Remote & Hybrid Work Risks

- More informal (and so harder to prove) coaching and support
- Monitoring ≠ performance management
- Silence gets interpreted as approval

Termination Decisions: The Real Question



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Termination Decisions: The Real Question

Not just:

“Can we terminate?”

But also:

“Should we terminate now?”

Rushed Terminations Create Liability



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Rushed Terminations Create Liability

- Emotional or reactive decisions
- Poorly planned exits
- No internal alignment
- Weak messaging

These are the terminations that turn into claims.

The Reprisal & Bad-faith Trap



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The Reprisal & Bad-faith Trap

- Timing looks suspicious
- Language doesn't match the story
- Internal emails contradict the rationale
- “Without cause” doesn't shield bad behaviour

What Breaks An Otherwise Defensible Termination



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What Breaks An Otherwise Defensible Termination

- Sloppy communication
- Over-explaining the reason
- Inconsistent documentation
- Poorly drafted termination letters
- Saying more than you need to say

Termination Messaging: Less Is More



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Termination Messaging: Less Is More

- Clear
- Neutral
- Consistent
- No performance editorializing
- No unnecessary legal positioning

Termination Basics – What The Law Requires



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Termination Basics – What The Law Requires

- Written notice or pay in lieu (after 3 months) paid in lump sum
- Minimums set by the Employment Standards Act (ESA)
- Absent valid contractual language limiting entitlements to ESA minimums, employees may be entitled to common-law notice

Willful Misconduct Vs. Just Cause



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Willful Misconduct Vs. Just Cause

WHAT'S THE DIFFERENCE

- Willful Misconduct (ESA) - deliberate wrongdoing
- Just Cause (Common Law) = serious misconduct
- Most cases do not meet the ESA threshold

Why Termination Clauses Fail



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Why Termination Clauses Fail

- ESA compliance errors
- Benefit continuation mistakes
- Over-restrictive language
- Outdated templates

Many employers think they're protected when they're not.

“Esa-only” Language: Not A Safe Bet



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“Esa-only” Language: Not A Safe Bet

- Courts scrutinize closely
- Small drafting errors = clause fails
- Risk shifts entirely to the employer
- Often increases settlement pressure

Severance Pay – Who, When And How Much?



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Severance Pay – Who, When And How Much?

- Termination Pay and Severance Pay are two separate entitlements under the ESA
- In addition to termination pay, an employee may also be entitled to severance pay if:
 - Employee has 5+ years of service, AND
 - Employer has +2.5 million payroll
 - OR, in a mass termination, if +50 employees terminated within 6 month
- 1 week per year of service up to 26 weeks
- Lump sum, though can agree to installments

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Settlement Strategy: What Actually Works



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Settlement Strategy: What Actually Works

- Reasonable opening positions
- Clean, neutral documentation
- Consistency across communications
- Knowing when to stop arguing

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Reference & Confirmation Letters

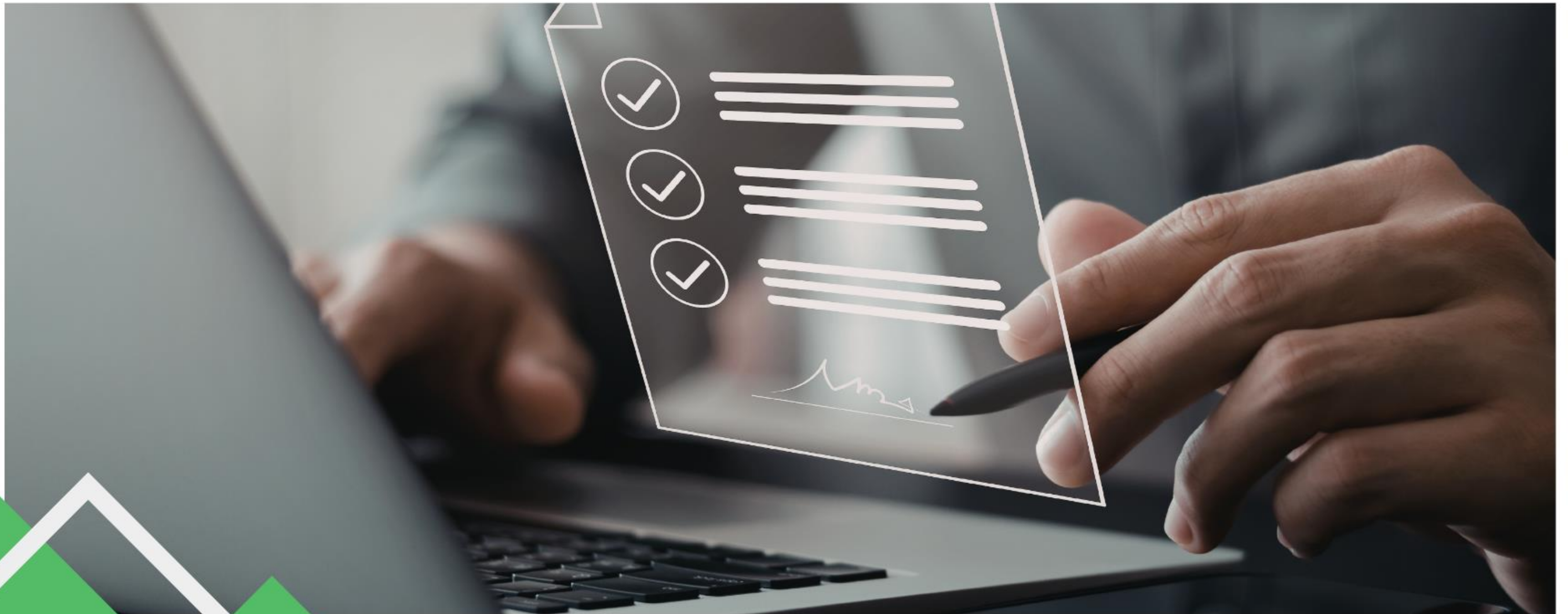


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Reference & Confirmation Letters

- Stick to neutral facts
- No opinions or performance assessments – but be positive where you can
- Align with termination rationale
- Avoid creating new risk post-exit

A Defensible Employer Checklist



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A Defensible Employer Checklist

- Address issues early
- Document consistently
- Think about timing
- Plan terminations before acting
- Don't rely blindly on contracts

If You Remember Nothing Else



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If You Remember Nothing Else

- Most risk is self-created
- Process matters more than intent
- You can't fix it all at termination
- Small improvements = big risk reduction

Questions



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Performance Monitoring & AI in the Workplace: What Employers Need to Know

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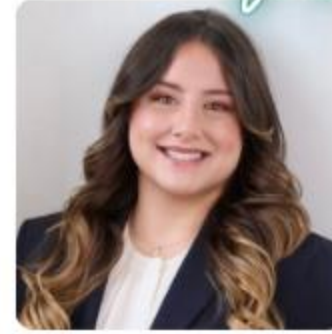
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