

Climate Surveys: Should You Have a DEI Report Card?

By Monica H. Khetarpal, Michael D. Thomas & Nicholas A. Simpson

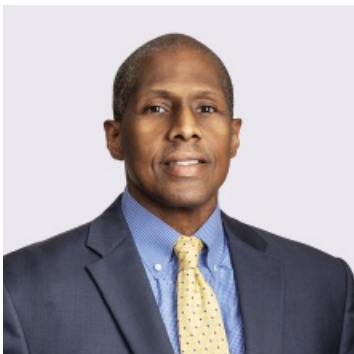
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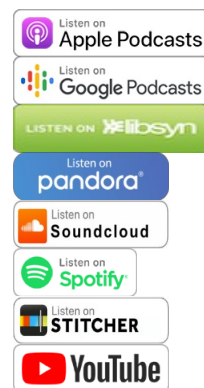
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Details

April 1, 2021

It's 2021 and so many rules of the game have changed. Employers are facing increasing scrutiny on the Diversity Equity & Inclusion front. Some want to get ahead of it, and make sure their DEI programs are current and relevant. Others need to respond to simmering (or exploding!) issues within their workforce. Climate surveys are a new tool in an employer's arsenal that can help you tackle these and other issues in an objective and systematic way.

Jackson Lewis P.C. - Climate Surveys: Should You Have a DEI Report Card?



Takeaways

Climate Surveys: Should You Have a DEI Report Card?

It's 2021 and so many rules of the game have changed. Employers are facing increasing scrutiny on the Diversity Equity & Inclusion front. Some want to get ahead of it, and make sure their DEI programs are current and relevant. Others need to respond to simmering (or exploding!) issues within their workforce. Climate surveys are a new tool in an employer's arsenal that can help you tackle these and other issues in an objective and systematic way.

What Employers Need to Know

- Climate surveys represent more of an informal conversation with participants, not an investigation. Typical questions include:
 - Tell us about your workplace. How has your experience been?
 - Do you have concerns that you feel you haven't been able to raise?
 - Do you feel comfortable raising complaints to your supervisors? Why or why not?
- A climate survey involves:

Related Services

Corporate Diversity Counseling
Employment Litigation

- A comprehensive review of data;
 - What type of claims has this employer received in the past?
 - What does a review of hiring, promotion data reveal?
- Survey formulation and/or one-on-one interviews; and
- Post survey analysis and recommendations.
- Climate surveys may help prevent employees bypassing internal reporting mechanism but rather go to social media or other platforms to air grievances because:
 - Employees may not know about internal reporting mechanisms; or
 - Employees may not feel comfortable with existing reporting mechanisms.
- Benefits of climate surveys include:
 - Building a culture of trust and transparency because employees feel heard;
 - Uncovering the root of a problem not previously known by the employer;
 - Bolstering brand confidence;
 - Serves as an effective response to crisis situations;
 - Attorney-client privileged survey results; and
 - Scalable to issue and budget.
- Post survey recommendations may include:
 - Strategic advice on reporting processes;
 - Personnel and organizational changes;
 - Internal and external communication strategies; and
 - Training and related programming to foster trust and engagement.

Transcript

Alitia ([00:06](#)):

Welcome to Jackson Lewis' podcast, We get work™. Focused solely on workplace issues everywhere and under any circumstances, it is our job to help employers develop proactive strategies, strong policies, and business-oriented solutions to cultivate a workforce that is engaged, stable, and diverse.

Alitia ([00:27](#)):

Our podcast identifies the issues dominating the workplace and its continuing evolution, and helps answer the question on every employer's mind: "How will my business be impacted?"

Alitia ([00:38](#)):

It's 2021. And so many of the rules of the game have changed. Employers are facing increasing scrutiny on the Diversity, Equity, and Inclusion front. Some want to get ahead of it and make sure their DEI programs are current and relevant. Others are responding to simmering issues, or are forced to react to escalating and immediate situations within their workforce.

Alitia ([01:01](#)):

Climate surveys are a new tool in an employer's arsenal that can help you tackle these and other issues in an objective and systematic way. This episode of We get work™ explores climate surveys: what they are, when to use them, and how they

can help your business; hopefully, before issues even arise.

Alitia ([01:22](#)):

Returning to the We Get Work podcast mic today are Monica Khetarpal and Michael Thomas. They are joined by Nick Simpson for the first time. Michael is a principal in our LA office. In addition to defending employers in PAGA cases and in class actions, he is committed to helping clients address the full spectrum of DEI issues they face.

Alitia. ([01:44](#)):

Monica is a principal in our Chicago office, and co-leader of the firm's Higher Education Industry Group. And devotes much of her time to DEI counseling.

Alitia ([01:53](#)):

Nick is an associate who works with Monica in Chicago and on the Higher Education Team, and helps clients on a variety of issues faced by higher education institutions today.

Alitia ([02:04](#)):

Monica, Michael, and Nick. The question on everyone's mind today is: "Will a climate survey be the right choice for my company? And how will conducting a survey impact my business?"

Michael Thomas ([02:17](#)):

Let's kick this conversation off: Monica and Nick, what is a climate study?

Monica Khetarpal ([02:23](#)):

That's a really good question. A lot of people are talking about Diversity, Equity, and Inclusion. And it's hard to say and define what those terms mean.

Monica Khetarpal ([02:32](#)):

Diversity is really your numbers and your demographics. What a climate survey gets to is from diversity, to equity and inclusion. It's a way to measure inclusiveness and how your employees feel about equity within the workplace. It's a little bit of a deeper dive than just an investigation or something like that. Nick?

Nick Simpson ([02:56](#)):

Yeah, one of my favorite uses of a climate survey is to really get down to the things that you don't know. A lot of companies, they enact some great policies or they're in great positions, it seems like. Well, there are things going on that they don't know about. So we come in and do a climate survey.

Nick Simpson ([03:12](#)):

Sometimes the company believes that they've done all that they could. But it turns out that maybe someone isn't implementing their vision the way that they want it to. Or maybe someone is looking past a policy, or letting people get away with

things that need to be discussed.

Nick Simpson ([03:27](#)):

We'll get into what climate surveys involve. Oftentimes we're able to peel back the layers and layers of stuff to really get down to the root of the problem. Because you really get to a situation where people say, "I don't know what happened. How did we get here?" Climate surveys help us figure that out.

Monica Khetarpal ([03:46](#)):

Yeah, Nick and I have done this together many times. I think that we could both say that every single time we do this, we find something that the employer had no idea was going on. Really, some new information and insightful information.

Nick Simpson ([03:59](#)):

And things that if we would have [inaudible 00:04:01] before we started, we would never have been able to guess some of the things that we uncovered as well.

Monica Khetarpal ([04:05](#)):

That's true. Yeah.

Michael Thomas ([04:06](#)):

Well, and I imagine during this time of the pandemic, when there's so many different things that's going on, it's more important than ever for employers to really be on the pulse of their employees.

Michael Thomas ([04:18](#)):

You have employees that are working remotely; you have employees, whether you're in the workforce or out of the workforce, that are dealing with loss or grieving. So you really do want to be on the pulse of what's going on with your employees.

Michael Thomas ([04:32](#)):

Nick, you mentioned this really briefly, so I'm going to go into this right now. What does a climate survey actually involve?

Nick Simpson ([04:39](#)):

It's really interesting now. I want to split it out into two things. One, your traditional climate survey; then two, climate survey during COVID; the changes that we've had to make.

Nick Simpson ([04:49](#)):

Originally, these things looked like a review of different data that may be relevant. Hiring practices, things like that, and different policies that are in place. Also, they can get into surveys of employees, which I think Monica will talk about a little bit more, or focus groups.

Nick Simpson ([05:05](#)):

We really like to do the one-on-one interviews. That's where you actually get to sit down with an employee; virtually these days, but hopefully, in person very soon. But you get to sit down with employees, and we just ask them a broad array of questions. We just really get into things that are very general. So it sounds like a conversation like the one we're having now.

Nick Simpson ([05:26](#)):

We may start with just trying to get to know the employee, so we can figure out where the interview will go. Then it could develop to, "Tell me about the workplace." I think it catches people off guard a lot, but it really is meant to start a conversation, and to have that back-and-forth.

Nick Simpson ([05:44](#)):

I'll let Monica talk about the surveys and focus groups, and I'll come back to the COVID challenges.

Monica Khetarpal ([05:49](#)):

Yeah. First, we like to start with doing a deep dive into the data. We want to see what type of claims has this employer received in the past? What is their hiring data? What's their promotion data in terms of demographics?

Monica Khetarpal ([06:06](#)):

Then the other piece of data we do is we formulate surveys. Those can be fill in the blank or bubble scantron, something like that. Then we also have sections where people can record narrative responses.

Monica Khetarpal ([06:20](#)):

We have an in-house staff of statisticians who can do the numbers, which we lawyers can't do. It spits it out and tells us where there may be some concerns in the employee population that maybe we don't know about. We don't even know to ask those questions. So we take all that information, then we start on either focus groups or the one-on-one interviews.

Monica Khetarpal ([06:42](#)):

As Nick mentioned with that, we really try to take our lawyer hat off and build rapport with people. We've had a lot of success with just having people tell us about themselves, and tell us about what's going on in their workplace in a less formal and less intimidating environment. And it really gets to the root of what may be going on within a workplace.

Michael Thomas ([07:05](#)):

I think a lot of what both you and Nick are talking about sounds like an investigation. But I know it's broader than an investigation, having done some climate surveys myself. Maybe you can talk about how is this different than a regular investigation?

Monica Khetarpal ([07:20](#)):

A regular investigation really focuses on one question or a small group of questions, something discreet. Somebody has come to you with a particular complaint, and you need to know the who-what-when-where-why of that complaint; get to the bottom of it, and spit out a legal answer.

Monica Khetarpal ([07:37](#)):

What is your legal risk? How are you going to mitigate it? What do you need to do to make sure you don't get sued? If you're going to get sued, how are you going to defend yourself?

Monica Khetarpal ([07:45](#)):

But a climate survey is broader. It really takes the pulse of the organization. In that way, as Nick said, we ask really general questions. "Tell us about your workplace. How has your experience been? Do you have any concerns that you feel like you haven't been able to raise? Do you feel comfortable raising complaints to your supervisors? Why or why not?" We get all sorts of information from that, right Nick?

Nick Simpson ([08:10](#)):

Yeah. We get more than, I think, people would suspect. I'm thinking about how broad these things can be. Michael, when we do these investigations on a normal basis, it really gets down to that core issue that maybe there was a complaint filed about.

Nick Simpson ([08:25](#)):

But here in the climate surveys, I mean, we've seen these claims start as maybe some racial unrest, which involves way more than race. We start to peel it back a little bit, and it gets into gender concerns. You get to sexual orientation issues. You can also just get to plain old, "I don't like this person and no one else does. That's why you're seeing so many complaints."

Nick Simpson ([08:49](#)):

Maybe it's not a policy issue, it's a personality issue. And we're able to deal with all of that in one, oftentimes before litigation even starts, which is a great tool for people to use.

Michael Thomas ([09:02](#)):

That's a great point, Nick. One of the few climate surveys that I've done started off with the employer being concerned about a rise in complaints by African-American employees. Their initial response was, "We're going to implement all these strategies and programs to promote African-American employees."

Michael Thomas ([09:20](#)):

But when you actually looked at what the root cause was, the root cause was the issue that the African-American employees did not feel included within the

workplace. So if you just throw these new programs in and they [inaudible 00:09:33] don't feel included, you haven't solved the problem. You're still going to have those ongoing complaints.

Michael Thomas (09:38):

But to your point, the climate survey actually lets you get to the root causes, and actually use your resources a lot better. With that in mind, when would an employer decide to do a climate survey?

Nick Simpson (09:52):

There are a few different scenarios. One of the ones that is popping up a lot now; I would say since last summer, was George Floyd happened, and there was a lot of unrest.

Nick Simpson (10:04):

It's people going into the media and complaining directly, instead of maybe filing a complaint first with their employer. You have people who could take straight to social media. Because maybe in the past they felt that the company wouldn't respond, or maybe it was just a way to get some quicker resolution.

Nick Simpson (10:20):

There are times where we've started a climate survey when something started in social media. And the institution decided that they needed to do a climate survey to find out what was happening, because people start to piggyback on that first social media claim.

Nick Simpson (10:35):

You start to get maybe a few different people complaining about the same area at an institution or employer, or complaining about the same person. It can be used in that way as well, whether it's with social media or not.

Nick Simpson (10:47):

Maybe someone's complaining about the same supervisor or high-profile member of the company. So there are a few different ways. I would say also if you see a cluster in the same department; maybe there's an EEOC charge, or maybe an informal complaint filed against the head of one department.

Nick Simpson (11:05):

Then you would jump in there and say, "Okay, we can litigate these claims, but we should also find out what's going on in our workplace. Because if it keeps happening this way, there's a chance that we just keep getting more claims." And there's obviously a cost associated with that. Versus being able to jump in and really show your employees they care.

Nick Simpson (11:25):

We've seen that with employees, where they have been very responsive to doing

these climate surveys. They feel like they're able to be heard. And it really goes a long way into how they feel about the company.

Monica Khetarpal ([11:37](#)):

Yeah, I think that's right. Even just doing the climate survey, we've seen has had a really beneficial impact on the culture of the company. Because it does make employees feel like they've been heard. I think the point is that it's also proactive and it's reactive.

Monica Khetarpal ([11:52](#)):

You may be in a situation where, like Nick said, you're facing some sort of social media challenge or some real media scrutiny, and you're really under fire. So this can be a way to respond to that. And we do it a couple of ways.

Monica Khetarpal ([12:05](#)):

Internally, like I said, the employees feel like they've been heard when we engage in this type of survey. But then we can also help craft messaging that's outward facing. "Yes, we had this issue. Yes, it was reported in the media, and this is what we've done about it." So we can assist with that.

Monica Khetarpal ([12:22](#)):

Then on the other hand, it's proactive because you have the potential to discover latent claims before they hit the media. Or before they hit, hopefully, the court docket. So it can be used both proactively and reactively.

Nick Simpson ([12:35](#)):

Monica, that point makes me think about one of the recommendations that we always give. It's about the reporting process. Now we always find out that no one likes having their dirty laundry aired out on social media, whether it's true or not.

Nick Simpson ([12:49](#)):

What we found out through this process is a lot of people just don't have good reporting mechanism; or employees don't know how to use them. So that has been one of the recommendations that I think: one, helps to keep things off social media; but two, helps employees feel that they can be heard. And starts to bring a better feeling in the department, or a better feeling about the employer.

Monica Khetarpal ([13:11](#)):

Yeah. Sometimes employers think they have a great reporting mechanism because it checks all the legal boxes. Well, this is intended to discover whether it's checking the practical boxes.

Monica Khetarpal ([13:23](#)):

Are your employees comfortable using your reporting mechanism? Why aren't they? Is there a problem with a reporting chain, and they feel like, "Oh, somebody else is going to find out if I report to the HR person"? Is there some other

impediment to doing so? So this is really a practical solution to a legal problem.

Nick Simpson ([13:42](#)):

On that point ... I can't let this one go. This was just an investigation, but it gets to this point.

Nick Simpson ([13:48](#)):

There was a sexual harassment claim. And one of our angles was that the employee never reported it. Angle that we all look into. Well, it turned out that the person, the one person she could report to, was the guy's wife.

Nick Simpson ([14:02](#)):

So there was a clear issue. Yes, they had the mechanism in place where she could have; in theory; been able to report it. But there were practical reasons why that couldn't happen. We really like to do important dive with life lessons from some of the cases in our past, so we can really help with those kinds of practical issues.

Michael Thomas ([14:23](#)):

Well, I think it also sounds like there's branding in some ways; resource allocation benefit to do on the climate survey as well. In part, employers want to promote this image that their environment is inclusive; partially it helps them retain talent.

Michael Thomas ([14:39](#)):

But you want to find out: Is that how employees are actually experiencing the workplace? Or do you need to utilize your resources to do something differently? Again, it sounds like a practical solution to legal issues before they actually become legal issues.

Michael Thomas ([14:55](#)):

So let's dig right into that question. What really are some of the benefits of doing a climate survey? Specifically, doing a climate survey with a law firm?

Monica Khetarpal ([15:04](#)):

The biggest advantage of doing it with a law firm is attorney-client privilege. Oftentimes these things involve highly sensitive issues, whether they're a media nightmare in the making or a media nightmare in actuality. Or some very high-ranking senior official within your organization is being accused. Regardless, this is the dirty laundry.

Monica Khetarpal ([15:26](#)):

There's never a promise of attorney-client privilege. I'm a lawyer, so I have to give the caveat that rules by jurisdiction vary. But we craft the process that we use in a way that ensures attorney-client privilege everywhere that's possible. And the oral conversations, especially with in-house counsel, are privileged. By cloaking it in privilege, we can control that.

Monica Khetarpal ([15:49](#)):

Now, we also have the understanding that a lot of times, there could be litigation on the back end. You could have a simmering issue, and you could try to control it with the climate survey. But that doesn't always work, and somebody files a lawsuit anyway.

Monica Khetarpal ([16:02](#)):

Your climate survey may have revealed that there really wasn't a whole lot going on from a DEI perspective. I've done these, and it turns out actually that it's more of a management problem, a communication problem, not a legal problem. That doesn't mean that you don't want to fix it. And we certainly have resources that we offer our clients to help them in those areas. But it is a defense to a lawsuit.

Monica Khetarpal ([16:25](#)):

What we can do is, for example, I sometimes craft a privileged document, or have a privileged conversation with a control group. But then also craft a second report, with the intention that that would be used defensively and proactively in the case of litigation. That goes hand-in-hand with something that you would use proactively in the media, to quell questions and whatnot.

Monica Khetarpal ([16:50](#)):

The other benefit of a climate survey is that it's really scalable to the issue and to the budget. I really believe that some DEI; Diversity, Equity, and Inclusion; help is better than no DEI help. And organizations have a wide range of budgets and just bandwidth to deal with these issues.

Monica Khetarpal ([17:10](#)):

The way we do these is we really structure them to exactly what issue may be percolating, or may be on HR's mind. Or somebody has a gut feeling that there's a problem. But we can do this in as large or small of a way to get the information that we need in an efficient manner. So that's a really good benefit of a climate survey, as opposed to a very targeted investigation.

Nick Simpson ([17:34](#)):

We end our climate surveys oftentimes with these detailed recommendations. I don't think we've ever ended one with saying, "Everyone's doing a great job here. Keep up the good work. Your employees are just soft."

Nick Simpson ([17:45](#)):

Even when the employers are doing great things, there are other things that can be done. We look to give actual recommendations, whether that's unconscious bias training. Then we follow it up with, "These clients had done unconscious bias training." Different diversity and inclusion efforts, as far as helping with the hiring process or coming up with solutions to help retain talent.

Nick Simpson ([18:07](#)):

I'm a big fan of, "In order to recruit top talent, you have to retain top talent. Because people want to be able to see that you still have those diverse employees

there to make it seem like there's a place for them."

Nick Simpson ([18:18](#)):

Also things like different trainings, on age bias or different things that you can do. Different generational diversity trainings that really assist there. Because you may have just a question of how the different generations handle the same situation that could be causing the issue. So there are a lot of things.

Nick Simpson ([18:36](#)):

Once we talk to employees and actually hear from them and look at them; whether it's across the room or in person or on Zoom, we can actually start to figure out what those issues are. So we can have actual recommendations that help, versus some cookie-cutter thing that we just hand out to every employer.

Michael Thomas ([18:54](#)):

Yeah. I think one of the benefits that I've seen; and part of my practice also involves doing a lot of class actions; is that there's huge benefits in doing climate surveys for class actions.

Michael Thomas ([19:04](#)):

Because one of the challenges plaintiffs' lawyers have in bringing a class action that's based on a protected category like race, is how do you identify a common policy that applies to this large group of employees? Versus having a policy that only becomes discriminatory when individual managers interpret that policy?

Michael Thomas ([19:25](#)):

What a climate survey lets you do is really assess, "Is there a widespread common experience by a large group of employees?" For example, if 80% of your white employees are satisfied with the workplace, but 75% of your African-American employees are not, there could be some commonality there that could be a concern that could manifest itself in a class action.

Michael Thomas ([19:50](#)):

So Nick and Monica, you both mentioned some traditional and unique solutions that you use in doing the climate surveys. But what are some creative solutions that maybe you have come up with in your various experience?

Monica Khetarpal ([20:04](#)):

Yeah, as we had alluded to, oftentimes there's this hesitancy to report things. So we give strategic advice on reporting processes. And sometimes we can refer to outside entities that can serve as neutral third-party receivers of reports, things like that. Look at it structurally to make sure there's no conflict of interest that nobody really caught onto, which is very common.

Monica Khetarpal ([20:29](#)):

We make personnel recommendations if there's a bad actor. At heart, we're still

employment lawyers. And we can tell you, "I've been doing this for 17 years. And there's a certain amount of just a gut check that you get with 17 years of litigating and advising on employment issues, where I can say, 'This person is not going to work out.' So you need to do XYZ to resolve the situation." Then we can help again with internal- and outward-facing communications.

Monica Khetarpal ([20:57](#)):

We really pride ourselves in not being a cookie-cutter approach. We are not going to tell you, "Do these three trainings and you'll be on your way, and everything's good." This is a process. There's no light switch for diversity and inclusion. It's not just a, "Check this box, hire Jackson Lewis or anybody else. Now you're good to go." It is always a work in progress. We really realize that. And I think that's especially important this day and age. I'll let Nick comment as well.

Monica Khetarpal ([21:26](#)):

But from my perspective, I really have heard a lot of employees say that they want to address the social justice issues that have been going on in the world. They want their employers to acknowledge them and understand how that impacts the workplace. And this is one of the ways that employers can really do that, and affect meaningful change.

Nick Simpson ([21:47](#)):

Yeah, that's the point I was going to make. You can't just expect your employees to come to work anymore and not talk about these issues. As much as you may want that; as much as an employer-sided lawyer, I may want that. You see it on the news all day, every day, and we can't get it out of our minds. People are talking about the things, especially the ones that go on in their communities.

Nick Simpson ([22:08](#)):

Sometimes just opening it up and having a space for a forum. Or an employee who really thinks about these things who could talk to them about the issues. Or just listen; that has helped in a lot of different places.

Nick Simpson ([22:21](#)):

Because some employees; and maybe you guys have seen throughout the media over the last year or so; they're just upset that their employer didn't respond fast enough to some of the issues that were going on. Or just at least put out a statement to say, "This was wrong. It happened. We're with you. And we're going to take a stance." It's just walking through those solutions as well.

Nick Simpson ([22:41](#)):

Again, maybe you didn't have a lawsuit coming from those things. But wouldn't you want your employees to feel like they might come in to work and that you had their back? And they could feel that they trust you when these things happen.

Monica Khetarpal ([22:53](#)):

Yeah, we really love doing this work. Because although we all have a fire in our

belly for litigation; that is the bread and butter of what we do. But you know what? Nobody walks away from litigation happy. Even if you win, you just spent a bundle of money.

Monica Khetarpal ([23:08](#)):

This is something that every time we walk away, we feel like, "Okay, you know what? I moved the needle a little bit. I helped move the needle." And I think our clients feel that way as well.

Michael Thomas ([23:19](#)):

Those are all really powerful points. I think one other point to add is that climate surveys help build employee trust. And that employers are going to make mistakes. You're going to try to make a statement, and maybe you'll make the right statement.

Michael Thomas ([23:30](#)):

You might have DR-related data; maybe the DR-related data is not great. But do employees really trust that you're going to try and do the right thing? Or engage in good-faith efforts? And I think the climate surveys actually help build that trusting relationship with employees.

Michael Thomas ([23:47](#)):

So we're coming near the end of the podcast; which, the podcast was not cookie cutter. This was definitely a unique and amazing experience. I know I've learned a lot. Monica, Nick, any final thoughts on climate surveys?

Monica Khetarpal ([24:00](#)):

Oh no, you're putting us on the spot here. I feel like we already poured our hearts and souls out. No, I just really think this is an innovative tool that a lot of employers can really benefit from. And again, that can be scaled to fit every organization.

Michael Thomas ([24:15](#)):

Yeah. I know this is a podcast, so no one can see your faces. But you can tell, just based on the passion that everyone's talking about this subject on this call, that it means a lot. That it's something that you're really committed to, and it can make a big difference.

Michael Thomas ([24:27](#)):

Thank you all. I thank the audience. Again, thank Jackson Lewis. And we hope everyone has learned something from this very powerful, meaningful, and timely podcast.

Alitia ([24:38](#)):

Thank you for joining us on We get work™. Please tune in to our next program, where we will continue to tell you not only what's legal, but what is effective.

Alitia ([24:48](#)):

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Alitia ([25:06](#)):

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