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Supporting New Vermonters in the Workplace

Presented by

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Workplace Law Considerations

Laws Protecting Diversity in the Workplace

- Federal and Vermont laws protect people from all different backgrounds, ethnicities, sexes, ages, physical abilities and mental abilities.
- The Equal Employment Opportunity Commission (“EEOC”) is the federal agency that ensures federal laws relating to equal opportunity in the workplace are enforced.
- These laws protect everyone, not just underrepresented groups or foreign individuals.
- It is unlawful for individuals to be discriminated against in the workplace because of their race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age, disability or genetic information.

Federal Laws Protecting Diversity in the Workplace



Equal Pay Act of 1963

Title VII Of the Civil Rights Act of 1964
("Title VII")



More Federal Laws



**Age Discrimination in Employment Act
("ADEA")**

**American with Disabilities Act of 1990
("ADA")**



More Federal Laws



Genetic Information Nondiscrimination Act of 2008 (“GINA”)

Pregnancy Discrimination Act



Vermont Fair Employment Practices Act (“FEPA”)

- Protects people from discrimination based on race, color, sex, sexual orientation, religion, national origin, ancestry or place of birth, mental or physical disability, age, marital status and credit history (though the categories apply differently to housing, employment, and public accommodations).
- Applies to employers with 1 or more employees
- Enforced by the Attorney General’s Office for private employers



No. 17-cv-6748, 2021 WL 5749083 (N.D.Cal.)

Diaz et al. v. Tesla Inc.

Diaz et al. v. Tesla Inc.

Owen Diaz was a black contract elevator operator at Tesla's factory in Fremont, California.

Diaz worked there from 2015 to 2016.

In 2018, he filed a lawsuit alleging that:

- Diaz was told to "go back to Africa" by his coworkers
- Diaz and others were called the N-word by Tesla employees
- Tesla's employees drew racist and derogatory caricatures of African children (i.e., dark-skinned individuals with big lips and bones in their hair).
 - The drawings were typically accompanied with captions such as, "Booo!" supposedly short for "jigaboo."
- These drawings were regularly placed around the factory, in locations where African-American employees would see them.
- The elevator supervisor admitted to drawing a cartoons and stated, "we're just playing, why do you people take things so hard?"

Diaz et al. v. Tesla Inc.



Diaz claimed that he complained about the discriminatory treatment to Tesla and the contracting companies Citistaff and nextSource, but that nothing was ever done to stop it.

The company did terminate two employees and suspend a third, but the racist behavior continued. A witnesses testified that despite the complaints submitted by Diaz, the daily use of the N-word did not stop.

In spring of 2016, Citistaff informed Diaz that he would be demoted from his supervisory position, because he was causing “too much trouble”. Diaz had no negative performance reviews or disciplinary issues.

Diaz et al. v. Tesla Inc.

In May of 2016, Diaz quit his employment.

According to the Complaint, he could no longer bear the abusive, racially harassing treatment he encountered daily at work and that Citistaff, nextSource, and Tesla repeatedly refused to investigate the racist behavior.

On October 4, 2021, a California federal jury awarded **\$137 million** after finding that he had been subjected to a hostile work environment and that Tesla was responsible for the harm he suffered:

- \$6.9 million in compensatory damages
 - \$4.5 million for past emotional distress, and
 - \$2.4 million for future emotional distress;
- \$130 million in punitive damages.

To Create and Maintain an Inclusive Workforce

Best Practices

Understand antidiscrimination federal and state law



- Laws to prevent unfair employment practices are an evolving and moving target.
- Stay up to date with legislative changes and seek legal advice to review your practices to enforce diversity in the workplace.
- Failure to comply with these laws could lead to lawsuits, fines, or other civil and criminal causes of action for unfair and unlawful employment practices.
- When in doubt – seek labor & employment legal counsel.
- EPLI Insurance

Implement a strong Equal Employment Opportunity statement and antiharassment policies

- Create handbook, policy manual or other document to communicate to employees your Company's commitment to implement a strong equal employment opportunity policy.
- This policy should be enforced in all levels of the Company.
- Policy must include a detailed explanation of the prohibited conduct and provide assurances to employees of the employer's commitment to prohibit discrimination and any type of retaliation for reporting discriminatory conduct.
- Policy should list your Company's commitment to take immediate corrective actions when it determines that discrimination or retaliation has occurred.

Review hiring practices

- Look at the language used in job opening descriptions or any other material advertising open positions. Could the language used, discourage candidates from protected groups?
 - Make sure that the standards, requirements, and methods of hiring new employees are clear, neutral, and unbiased.
 - Avoid requirements that could unfairly prejudice a certain group.
 - Ensure that candidates are considered as a whole and not based on a certain protected trait.
- NO ONE should be ever defined or held back because of their differences.

Provide adequate training

- Train managers and supervisors of the contents of the policy and mechanisms of enforcement, providing the tools and information they need to comply with the policies and promote an inclusive workplace.
- Inform managers and supervisors of the standards and expectations required from them.
- Hold everyone accountable for their actions and take appropriate corrective action after a thorough investigation is conducted of violations to the Company's policy.

Display mandatory posters

- “Sexual Harassment Is Illegal” - Mandatory Poster (for all Vermont employers)
- “Accommodations for Pregnant Employees in Vermont” - Mandatory Poster (for all Vermont employers)
- “Employment Protections for Victims of Crimes” - Mandatory Poster (for all Vermont employers)
- “EEO is the Law” Poster (for employers with 15 or > employees)

