

THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: SEPTEMBER 16, 2022

Services

Labor & Employment
Workplace Diversity,
Equity, & Inclusion

Professional

MELISSA CAULUM
WILLIAMS
MADISON:
608.258.7383
MELISSA.WILLIAMS@
HUSCHBLACKWELL.COM

Starbucks Diversity Policy Challenged in New Lawsuit

Key Takeaways

After pivotal events in 2020 relating to racism in America, many companies implemented diversity policies, enhanced existing policies and/or tied executive compensation to hiring and retaining a diverse workforce.

Such policies are generally well-intentioned but may create legal exposure under federal, state and local civil rights and discrimination laws or in the form of fiduciary claims from shareholders, as well as new union organizing efforts.

Understanding the risks and legal landscape will help companies create successful diversity, equity and inclusion policies and procedures tailored to their diversity goals and risk profiles.

Overview

Do a company's good intentions matter when it comes to policies aimed at increasing diversity? Not according to a new lawsuit challenging Starbucks' policies.

After the pivotal events in 2020 relating to racism in America, many companies implemented diversity policies, enhanced existing policies, and/or tied executive compensation to hiring and retaining a diverse workforce. These actions are aimed at increasing the diversity of employees or vendors/suppliers and in many cases attempting to right the wrongs of corporate America's history of employing, retaining, and advancing low numbers of ethnically and racially diverse employees in years past. However, legal risks lurk within policies that require companies and employees to

consider race, national origin, gender, or any other protected characteristic when making contracting or employment decisions. Understanding and accounting for this is key to developing and maintaining successful diversity, equity and inclusion policies and avoiding unforeseen legal exposure while helping companies meet goals to increase workforce diversity.

Lawsuit

The American Civil Rights Project (“ACR” or “Plaintiff”) sued Starbucks officers and directors in a shareholder lawsuit filed in Washington state court alleging the defendants violated their fiduciary duties in adopting unlawful DEI policies that discriminate based on race by incentivizing officers to establish a more diverse workforce and supply chain. Plaintiff seeks declaratory relief, injunctions, and compensatory and punitive damages.

According to the complaint, the Starbucks policies at issue commit to the following goals:

Achieving Black, Indigenous and people of color (BIPOC) representation of at least 30 percent at all corporate levels and at least 40 percent at all retail and manufacturing roles by 2025;

Increasing diversity on its Board by increasing the number of Black directors;

Nearly doubling spending with diverse suppliers by 2030; and

To ensure top-down accountability, incorporating DEI measurements into its executive compensation programs.

Plaintiff argues that sophisticated companies like Starbucks should know better and alleges that the company’s directors and officers “crafted and publicized these policies with fanfare, preening over the supposed moral virtue their adoption signaled.” The complaint alleges the policies “flagrantly violate a wide variety of state and federal civil rights laws” and allowed Starbucks to “pose as virtuous advocates” of DEI—“even if it harms the company and its owners.” The defendants, the complaint contends, should be stopped from violating the civil rights laws and “from diverting the shareholders’ corporate resources to their personal use in buying themselves social-credit.”

In a March 2022 demand letter, ACR requested Starbucks directors and officers retract the DEI policies because they created legal exposure for the company and Starbucks declined to do so.

ACR alleges the DEI policies violate the following laws and regulations:

42 U.S.C. §1981, codifying the Civil Rights Act of 1866 to prohibit racial discrimination in contracting (the policies require Starbucks to base its contracting decisions on race in that they adopt race-based goals for hiring employees and nominating directors; exclude some employees from career navigation

programs based on their race; base executive compensation on the racial workforce composition; choose suppliers based on the race of their owners; and reallocate advertising funds away from vendors owned by non-minorities toward minority-owned and -targeted media companies)

Title VII's prohibitions on race-based employment decisions

Civil rights laws of multiple states, including Washington, California, New Jersey, and New York

The complaint seeks declaratory judgment that the policies violate these laws, and that they expose Starbucks to material liabilities to private plaintiffs and governmental authorities, including the potential for uncapped damages and punitive damages. The plaintiff also alleges that the D&O defendants breached their fiduciary duties in adopting and implementing the policies because some or all of them knew or should have known the policies were illegal, and any who didn't could only have failed to know by failing to inquire, in breach of their duties of due care. Further, ACR contends the defendants learned the policies were illegal no later than March 2022, when they received the demand letter. Alternatively, the complaint alleges the policies' adoption constituted self-dealing at the expense of Starbucks and its shareholders because the D&O defendants allegedly enjoyed the social benefits of the policies, while the corporation and shareholders will suffer expenses and liabilities.

What this means for employers

If your company has a DEI policy or procedure, consider engaging a legal expert to review it and advise on potential exposure, and/or help develop a holistic DEI legal strategy that meets your company's risk profile and helps ensure success. Husch Blackwell's experienced Workplace Diversity, Equity & Inclusion team is dedicated to establishing and reinforcing our clients' commitment to DE&I through recruitment, strategic planning, data acquisition and retention.

Contact us

Contact Melissa Caulum Williams, a member of the firm's Workplace DE&I Team, or your Husch Blackwell attorney to get started.