

Insights

DEI TRAININGS TAKE CENTER STAGE IN LITIGATION ACROSS THE COUNTRY

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With the start of fall, many employers are once again launching annual workplace campaigns, including those related to benefits open enrollment and annual compliance certifications. Given the [executive orders](#) from earlier this year, one area that will receive attention from employees and advocacy groups alike is diversity, equity, and inclusion (“DEI”)-related trainings. Such trainings have already been at the center of several discrimination cases pending across the country, and the relevant courts have so far offered differing opinions.

Below, we identify three of the more significant DEI training-related cases pending before appellate courts. As these cases demonstrate, the lower courts have been relatively consistent in rejecting hostile work environment claims based on DEI trainings; however, a recent opinion from the U.S. Court of Appeals for the Second Circuit indicates that such holdings are not guaranteed to survive appellate scrutiny.

- *Chislett v. New York City Department of Education*: Last month, the U.S. Court of Appeals for the Second Circuit reversed a lower court’s decision to grant summary judgment against the plaintiff’s Section 1983 hostile work environment claim, which was based in part on the plaintiff’s participation in mandatory implicit bias training. Specifically, the plaintiff, a white supervisor, alleged that she complained multiple times to the defendant that she was subjected to harassment from co-workers of color who borrowed language from DEI trainings regarding her white privilege and white supremacy. In reversing the lower court, the Court of Appeals noted that while such training is not per se illegal, when it discusses a particular race “with a constant drumbeat of essentialist, deterministic, and negative language,” it can give rise to liability. While Section 1983 applies to state and local officials, the case nonetheless offers insight into how courts may analyze similar claims in the private sector.
- *Diemert v. City of Seattle*: Pending before the U.S. Court of Appeals for the Ninth Circuit, this case focuses on, among other things, whether an employer’s requirement that employees complete two DEI-related trainings or activities per year gives rise to a hostile work environment under Title VII of the Civil Rights Act of 1964 (“Title VII”) and similar state law. The plaintiff, a white employee, alleged that in addition to the trainings themselves being

offensive, they also prompted comments by his co-workers and supervisors regarding white privilege and white supremacy that he found offensive. In granting summary judgment against the plaintiff, the lower court rejected the plaintiff's argument that DEI trainings are per se unlawful.

- *Young v. Colorado Department of Corrections*: Pending before the U.S. Court of Appeals for the Tenth Circuit, this case focuses in part on whether an employer's mandatory DEI training gives rise to hostile work environment claims under Title VII and/or Section 1981. The plaintiff, a white employee, alleged that the trainings directed insults at and stigmatized white employees. In granting the defendant's motion to dismiss, the lower court rejected the plaintiff's argument that a single DEI training could create a hostile work environment.

In addition to litigation, employers should remember that guidance from both the [Equal Employment Opportunity Commission](#) ("EEOC") and [Department of Justice](#) ("DOJ") has specifically identified workplace trainings as a source of DEI-related discrimination. With the U.S. Senate's recent confirmation of Brittany Panuccio as an EEOC Commissioner, the agency now has a quorum to publish official guidance under a Republican majority. As such, it is more important than ever that employers evaluate their DEI-related trainings to ensure they understand not only what trainings are available, but how those trainings are implemented and received. This includes carefully reviewing the content of the training, ensuring that those leading the training are equipped to do so, and immediately following up on any concerns that are raised regarding the content or delivery of the training.

BCLP has a team of knowledgeable employment lawyers and other professionals who are monitoring developments in this area and can help employers review their DEI activities. If you or your organization would like more information on this or any other employment issue, please contact any attorney in our Employment and Labor Practice Group.

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