

THE BACKLASH AGAINST THE DIVERSITY BACKLASH

Changes in the American political climate have only strengthened employers' resolve to make their workforces more diverse and welcoming, HR professionals, attorneys, and consultants told Bloomberg Law.

"I've seen a huge uptick in speaking engagements and training," consultant Risha Grant told Bloomberg Law. "People don't know what to do and don't want what happened at Starbucks, Roseanne Barr, and now Papa John's to happen to them."

Debra Squyres, chief client officer at New York City-based online HR platform Namely, also sees a backlash against the diversity backlash. "While the political environment has been quite chaotic, it has spurred conversations in the workplace," she told Bloomberg Law. "We have not seen that it has [depressed] investment in diversity, in fact we see more of it in the mid-market," which Namely defines as employers with 20 to 2,000 employees.

"There is an effort to bring objectivity to hiring by removing personally identifiable information and looking solely at work history and qualifications," she continued. "We also see a rise in local and state level efforts to promote diversity," such as "ban the box" laws that bar asking job applicants about their criminal history until a provisional job offer is extended, and new mandates for paid parental leave.

Consultancy Development Dimensions International Inc. has also seen demand for help with diversifying the workforce rise in recent times. "At DDI, we've seen an increase in clients asking us to help with their diversity and inclusion efforts over the past several years, but many of them are also looking to reframe their efforts to ensure that they aren't alienating people who are worried they'll be overlooked simply because of their background," CEO Tacy Byham told Bloomberg Law.

The underlying reason why all the political brouhaha hasn't stopped the diversity train is that diversity is good for business, Jonathan A. Segal, a partner in Philadelphia-based management-side law firm Duane Morris LLP, told Bloomberg Law. "Clearly there is political debate over diversity; however, in workplaces, diversity is a business reality that employers need to embrace if they wish to succeed. We are seeing greater emphasis on diversity in workplaces due to the business imperatives.

"We also see employers being aware of the degree to which, like anything else, diversity efforts always can improve," Segal added. "So we see an increase to focus on inclusion that focuses on everyone, as opposed to the specific identities which are often associated with diversity initiatives. By definition, no one should be excluded from diversity initiatives. This includes identities that have traditionally not been included, such as older employees."

The question remains, however, what to do about those people who are alienated from the ideal of diversity. “In a professional setting, I haven’t witnessed any hostility toward diversity issues,” Will Hoch, a management-side attorney who is a shareholder and director in the Oklahoma City office of Crowe & Dunlevy, told Bloomberg Law. People who don’t like the idea, he said, “will grumble quietly in a back room to like-minded others. But progressive-minded people see it as more important than two years ago.”

Added his colleague Tanya Bryant, also a shareholder and director in the Oklahoma City office of Crowe & Dunlevy, “Not just antidiscrimination laws but civility in the workplace is involved. Most companies have workplace behavior policies that need to be enforced consistently.”

But consultant Verna Myers told Bloomberg Law that the disaffected can’t and shouldn’t be ignored. It’s true, she said, that “the changes in politics haven’t resulted in less effort” to promote diversity, and that while there is political controversy, “I don’t see it affecting the average employer that is committed to D&I.” At the same time, she added, “they can’t ignore that there is a lot of noise outside their doors because inevitably individuals will walk in with more stress and different experiences and opinions. Their job is to make clear that no matter the controversy, that the cultural values of respect and inclusion still apply.”

Brian Markovitz, a principal attorney at Joseph, Greenwald & Laake in Greenbelt, Md., advises a hard line toward those employees who cross the line from disaffection and backroom grumbling to open prejudice, creating blatant cases of discrimination. People who “crawl out from under the rocks where they belong” to attack others on the basis of their protected characteristics, he told Bloomberg Law, “should not affect what employers do. They’re wrong and they’re violating the law. I recommend to my employer clients they just fire somebody like this.”

That’s what happened, famously, in the case of Google software engineer James Damore. “The Google case is an interesting case because [Damore] made an argument that in his view white men are being left out, but he also expressed it in a way that smacked of misogyny,” Segal said. “The NLRB properly held that his conduct was not protected. The Google memo made it clear he had a right to express his views, but not in a way that was demeaning to women.”

The broader lesson, Segal said, is to “take people where they are. If some white men are feeling left out, take that into account, but you can point out their feeling is how others feel more often,” because they were traditionally discriminated against.

“Diversity is not slowing down,” Segal continued. “Employers may be expressing themselves more because they don’t want to be seen as hostile to diversity.”

Byham suggested that employers can mollify resistance to diversity by demonstrating that no one is excluded. “We advise employers to focus their efforts and communication on how they are creating an environment of workplace fairness,

rather than focusing on promoting specific groups,” she said. “In addition, employers need to focus on creating an inclusive environment that makes people of all backgrounds feel heard.”

“An inclusive approach helps to mitigate feelings that some people are always being given preference over others,” she added.