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New ruling revives race-based harassment lawsuit

The latest legal development is a reminder that companies should vet diversity programs

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The U.S. Court of Appeals for the 9th Circuit recently ruled that a White male employee of the city of Seattle was entitled to have a jury decide whether comments made by trainers at workplace trainings under the city's Race and Social Justice Initiative contributed to an unlawfully hostile work environment. Chief Judge Mary Murguia wrote the opinion for the unanimous three-judge panel, reversing summary dismissal of the claim.

Background

In 2013, Joshua Diemert, a White man, started working for Seattle's human services department. He received solid performance evaluations.

Diemert participated in an RSJI training titled "Race: The Power of an Illusion" in 2015 that included discussion of "White supremacy culture." Diemert claimed RSJI was hostile to White employees and that this hostility infected the workplace.

Diemert alleged that in 2015 his manager, Gloria Hatcher-Mays, discouraged him from applying for a supervisory role "because she was looking for someone who was bilingual and who had contacts within one of the marginalized communities." Diemert claimed an unqualified person of color was chosen for the role instead, forcing him to perform many of the position's duties with no change in pay or title. Also in 2015, according to Diemert, another HSD manager asked what he, a straight White male, could possibly offer the department.

Diemert alleged that in 2016, Hatcher-Mays asserted it was impossible to be racist toward White people. In 2017, Diemert claimed a supervisor encouraged him to relinquish his lead role in the department so it could be filled by a person of color.

In November 2019, Diemert attended an RSJI training titled "Undoing Institutional Racism Workshop." Diemert allegedly heard trainers say "White people are cannibals," "racism is in White people's DNA," and that "White people are like the devil."

Diemert claimed that between 2019 and 2020, a supervisor called Diemert a "colonist," accused Diemert of having "White privilege," and informed Diemert he was "to blame for all

injustices in the United States." In 2021, co-workers criticized Diemert for defending critical race theory bans.

Diemert alleged these and other race-related incidents forced him to resign in September 2021. He sued the city in federal court, asserting, among other claims, hostile environment racial harassment, constructive discharge, and racial discrimination in violation of federal and Washington state civil rights laws, Title VII and the Washington Law Against Discrimination, respectively.

Hostile work environment

To establish a claim of racially hostile work environment under Title VII and WLAD, Diemert must prove: (1) he was subjected to verbal or physical conduct because of his race, (2) the conduct was unwelcome, and (3) the conduct was sufficiently severe or pervasive to alter the conditions of his employment and create an objectively abusive work environment. California law applies the same framework to claims of hostile work environment under the state's Fair Employment & Housing Act.

Murguia observed that "workplace training programs designed to address racial barriers are not inherently discriminatory, and nothing in Title VII prohibits employers from either discussing historical and ongoing discrimination against persons of color or seeking to address such discrimination." Nonetheless, the U.S. Supreme Court ruled in 2025 that Title VII prohibits unlawful racial practices against White people and minorities alike. "Accordingly," Murguia wrote, "race-conscious training programs may violate Title VII when they create a racially hostile work environment."

Murguia concluded a jury could find numerous racial incidents by Diemert's supervisors and by RSJI trainers over a five-year period collectively constituted unlawful racial harassment, even if the incidents viewed in isolation might not. Diemert's evidence, if believed, would show he was "subjected to a series of racially offensive statements and generalizations bearing little or no connection to legitimate training efforts, that he was denied or discouraged from pursuing opportunities for advancement on account of his race, and that he received scant support from his superiors when he challenged what he perceived as discriminatory behavior."

The 9th Circuit upheld the district court's summary rejection of Diemert's other claims.

Andrew Quinio, Diemert's attorney, said in an emailed statement Diemert "is ecstatic that the Ninth Circuit recognized that racially discriminatory workplace programs like the one he endured can create a hostile work environment. … He is currently considering the next steps in the case and looks forward to returning to district court, which has not yet set a trial date."

Lesson

The court's conclusion that Diemert's hostile environment claim could proceed to trial means the city faces substantial damages and attorneys' fees if Diemert wins. Prudent employers will choose workplace training and workplace trainers that don't trigger the very liability they are intended to prevent.

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