

Why Hire Diversely

I am a lawyer, this is not to be interpreted as an admission of guilt in any context, I specifically disclaim any liability for any guilt implied or by law, including but not limited to warranties of merchantability or fitness for a particular purpose. I am a lawyer, my Mom loves me, my family bears with me, and they even hear: “As propounded by you last night...” and “Pursuant to our last conversation.”

Not only am I a lawyer, I am an employment lawyer. What’s the difference between a lady lawyer and a pit bull? Lipstick and mine’s red.

I can be your worst enemy as an opponent, but that does not have to be, not unlike OSHA, work with me, and I can be your biggest asset. I am not out to get employers. My goal is to represent and enforce the rights of my clients, many of whom represent the most diverse of populations: women, minorities, and the disabled.

Thus the question comes up: wont I increase my chance of being sued if I hire diversely. Quite the opposite, lets say management desires to have only white, American males under the age of 40. Well let’s say that is the fastest way to insure I’ll be knocking on your door! If you do not hire my client, you will have no database on which to defend yourself: you will be prime bait for me, and my keyboard. A clear defense to any discrimination lawsuit or complaint is to have the same representatives in all areas of your business. I cannot so easily claim you discriminated against my client because he is disabled when you have many disabled employees, and you have otherwise treated my client fairly. The same analysis holds true for age, sex, and racial discrimination as well as ethnic.

I speak purely from a legal perspective; there are many reasons to hire diversely beyond your liability. But with my introduction in mind, that I accept no liability, I can assure you that from a legal perspective if you hire and maintain the diverse, you win.

What is diversity law? There really is no body of law in this area, however loosely it can be categorized as follows:

1. Discrimination
2. Unjust Termination
3. Federal Funding and Contracts

More Specifically, there is State law as administered by our Commission for Human Rights, Labor Department and under federal law there is the Civil Rights Act of 1964, Title VII, the American with Disabilities Act of 1990, and the Rehabilitation Act of 1973. And there is the Age Discrimination in Employment Act (ADEA)

We are an employment at will State, and this means precisely that: an employee can be fired at will for no reason or any reason, as long as that reason was not due to improper, illegal or malicious motive. If we were truly employment at will, I wouldn’t, I couldn’t be an employment lawyer. I look to see why you terminated my client, is it because

he/she was a member of a diverse population? If I think I can show a nexus between my client's termination and the employer's motive? Well then I can make money, and do what's right for my client. I can file with our State Human Right's Commission, I can file with the EEOC, I can file with Office of Civil Rights, I can file with the Office of Federal Contract Compliance, in certain cases of gender discrimination, I can also file with our state Labor Commission, I can double the damages there too. There are minimum requirements to all these avenues, and if none of them is available, I can file a wrongful discharge suit in State Court.

Now what is it that I can file on behalf of my client in the private sector? I file under Employment Discrimination law. These laws seek to prevent discrimination based on race, sex, religion, national origin, physical disability, and age by employers. There is also a growing body of law preventing or occasionally justifying employment discrimination based on sexual orientation. Discriminatory practices include bias in hiring, promotion, job assignment, termination, compensation, and various types of harassment. The main body of employment discrimination laws is composed of federal and state statutes.

Title VII of the Civil Rights Act of 1964 prohibits discrimination in many more aspects of the employment relationship. It applies to most employers engaged in interstate commerce with more than 15 employees, labor organizations, and employment agencies. The Act prohibits discrimination based on race, color, religion, sex or national origin. Sex includes pregnancy, childbirth or related medical conditions. It makes it illegal for employers to discriminate in hiring, discharging, compensation, or terms, conditions, and privileges of employment. Employment agencies may not discriminate when hiring or referring applicants. Labor Organizations are also prohibited from basing membership or union classifications on race, color, religion, sex, or national origin.

I am a lawyer, amazing cosmic powers, itty-bitty living space. Just because I can file doesn't mean I should file. If the employer is willing to work with me, more than likely I wont need to file.

I said earlier that I can be your best asset, now that I have given you a few examples of what I can do, lets talk about what you can do to avoid me and how I can help you.

David asked that I give you some war stories. As the next section of this presentation is to discuss what an employer can do wrong, I will start with a case I recently became involved with. I received a call from a Client with a disability; she had been out on the FMLA for a period of time. Upon her return she had been cleared to work part time, and her employer accepted her back into the work force. Then she got clearance to work full time. However she believed that her employer would not allow her to be full time, so she sought my assistance. Ah ha I thought, this should be an easy one, my client only wanted to be treated "just like anyone else." Many times I can call up an employer, point out the employee's concerns and bingo I am done. This time was different, the employer was outright angry that the employee had sought legal assistance, and told me so. I did not come off as the pit bull, that is so rarely necessary, I was just playing Beaver Cleaver:

“Gee Wally, lets get together and help Mom.” Well Mom was so angry and threatened my client’s termination just for seeking legal assistance. Well, I am of course summarizing, but in essence that’s what happened, I was stunned, this was a first. I had made no threats, as there were none to make, I was seeking a cooperative resolution and had told the employer that. Guess what, we filed.

Work with the law, it is not your enemy, start a war and you will get a war, attempt resolution and you will see the last of me.

Now, are you more likely to incur legal liability if you hire the diverse? If you act with common sense and treat all your employees equally, you are less likely in my estimation. One of the very worst mistakes an employer can make is to not allow resignation of an employee when “things aren’t working out.” Here the employer is not helping it or the employee. I have represented employers who have told me they do not want to fire someone; instead they will set them up. Don’t do it! Your employees need credit, they can figure out something is wrong, where once they were treated as an asset, suddenly they are left out and excluded, this is the slow torture technique. It is sure to buy trouble. The employer figured that if they just waited the employee would quit. Nope, in reality the employee may go get help from his psychiatrist, suddenly they are disabled where once they were not, and the ADA kicks in. I represented a client who had worked for his employer for over 20 years, he got on someone’s bad side, and at the same time he was diagnosed with multiple disabilities. He called me up, but I was just to downright busy and important to help him. However there was something in his voice that caused me to ask if this was an emergency: “Well yes, I think they are going to fire me tonight.” I listened to his story, we had to buy time; sure he had a great legal complaint, but he also had a family to support. I called up the President of the company and suggested that if this gentleman was terminated without allowing for intervention as well as allowing for reasonable accommodations, well WE had a big problem. The president intervened and what followed was a series of attempts to obtain accommodations so that my client could do his job, a job, which he had done superbly for over 20 years. It worked.

Employers should:

1. Be Honest with themselves and their employees.
 - A. Things aren’t working out
 - B. There are 50 ways to leave your Lover
 - C. Face the music
 - D. Document the File
2. Know the Law Abide by it
3. Allow Resignation with honor-in turn get a general release

A word about “overkill”. When you fire an employee, do it the right way, let them go with dignity. For some reason the last several years have bought the overkill. Employers claim major horrendous crimes, horrible accusations. These are not a shield; in fact that is when the suspicion arises. If the employer is so right in termination, why is there an excuse that arises to a crime where an employee did nothing other then to make someone

mad? It is obvious that it is done to be the fait accompli; in reality it is the siren that is the downfall.

You are all good employers, you would not be here if you did not want to do the right thing. But? Can you speak for your company, can you sing the tune, wear the shoes, and walk the mile. Hey a reminder to us all: it can happen to you to. Be honest fair and treat others, those who are diverse, and those who are not equally, honestly—allow dignity and grace, and you wont see me, and if you do, I'll be easy to get rid of.