ACC NCR – Richmond

Legal and Business Case for Diversity and Inclusion

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II. Risks of Poor D&I Performance Programs
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I. Legal Case for Effective D&I Programs


1. Require written voluntary affirmative action plan (“VAAP”) to take remedial race-conscious action.

2. Must satisfy requirements: (a) “manifest imbalance,” (b) “do not unduly trammel rights” of non-protected class, and (c) temporary.

3. Most programs use effective race and gender-neutral programs.
I. Legal Case for Effective D&I Programs

   1. “Reasonable self-analysis.”
   2. “Reasonable basis.”
   3. “Reasonable action.”


E. Federal / State regulatory and legislative focus on pay equity beginning with 2009 Lilly Ledbetter Act – emphasize importance (a) analyzing race / gender compensation disparities, and (b) remediying “gaps” before Federal / State agencies get involved.
II. Risks of Poor D&I Performance Programs

A. Plaintiffs’ Attorneys Claim Equal Access to “Justice”: Major Public Corporate Discrimination Settlements

<table>
<thead>
<tr>
<th>Amount</th>
<th>Basis</th>
<th>Year</th>
<th>Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>$250 Million</td>
<td>Gender</td>
<td>2010</td>
<td>Pharmaceuticals</td>
</tr>
<tr>
<td>$192 Million</td>
<td>Race</td>
<td>2002</td>
<td>Beverages</td>
</tr>
<tr>
<td>$185 Million</td>
<td>Pregnancy</td>
<td>2014</td>
<td>Retail – Automotive Parts</td>
</tr>
<tr>
<td>$176 Million</td>
<td>Race</td>
<td>1996</td>
<td>Energy</td>
</tr>
<tr>
<td>$160 Million</td>
<td>Race</td>
<td>2002</td>
<td>Insurance</td>
</tr>
<tr>
<td>$160 Million</td>
<td>Race</td>
<td>2013</td>
<td>Financial Services</td>
</tr>
<tr>
<td>$90 Million</td>
<td>Gender</td>
<td>2004</td>
<td>Manufacturing-Aircraft</td>
</tr>
<tr>
<td>$80 Million</td>
<td>Race</td>
<td>2005</td>
<td>Catering/Hospitality</td>
</tr>
<tr>
<td>$54 Million</td>
<td>Race</td>
<td>2007</td>
<td>Package Delivery</td>
</tr>
<tr>
<td>$52 Million</td>
<td>Age</td>
<td>2017</td>
<td>Manufacturing-Defense</td>
</tr>
<tr>
<td>$31 Million</td>
<td>Gender</td>
<td>2016</td>
<td>Retail</td>
</tr>
</tbody>
</table>

Source: DiversityInc (2006); “Morgan Stanley-Settles Gender Bias Case for $46M,” Money (Apr. 24, 2007); other media reports.
II. Risks of Poor D&I Performance Programs

B. Adverse Impact of Public Diversity Crises
   (Beyond Legal Liability)

   1. Damage to brand and corporate reputation.
   2. Loss of customers (informal and formal boycotts).
   3. Losing War for Talent (best & brightest come in many forms).
   4. Major distraction to management / workforce.
   5. Poor employee morale, productivity, retention.
   6. Increased scrutiny: enforcement agencies / plaintiffs’ attorneys.
   7. Market capitalization drop (e.g., Texaco: $1 Billion in one week).
   8. Supervisory paralysis / fear of discipline / claims of retaliation.
III. Business Case for Effective D&I Programs

A. *Diverse U.S. Population:*
Changing Demographics of the Workplace

1. **Women** in workforce - 47% - rising over next 10 years.
2. **Hispanic Americans** projected 20% of workforce by 2024.
3. **African American** representation increasing, with growing emphasis on senior management and Board.
4. **Minorities** will become majority of "American working class" (no college degree) by 2032.
5. **No majority race or ethnic group** in U.S. workforce by 2042.

*Sources:* "People of Color Will Be a Majority of the American Working Class in 2032: What This Means for the Effort to Grow Wages and Reduce Inequality," Economic Policy Institute (June 9, 2016); Census.gov.
III. Business Case for Effective D&I Programs

B. Serving a Diverse Public: U.S. Buying Power

1. Total Minority Buying Power: $4.0 trillion (2018 est.) (138% gain since 2000).

2. Hispanic American Buying Power $1.7 trillion; African American $1.3 trillion; Asian American $1.0 trillion.


4. African American, Hispanic American, Asian American, LGBTQ Buying Power each exceeds GDP of all but 14 nations.

5. Women drive 70-80% of all consumer purchasing.

C. **Diversity Initiatives: Recent Trends Pushing D&I**

1. **CEO Action for Diversity and Inclusion.** 600+ CEOs.

2. “Best Company” Listings: (e.g., *Fortune*, *Working Mother*) – increasingly important for branding, recruitment, and reputation.

3. **Empirical Research Demonstrates Value:**

   “Diversity is a competitive differentiator shifting market share toward more diverse companies.”

Competitive Advantages of Effective D&I Initiatives

1. Avoid diversity crises: Class-action discrimination lawsuits, negative media coverage, social media dissemination, major reputational damage.

2. Increase sales and profitability.¹

3. Enhance market penetration and customer retention.

4. Win “War for Talent:” expand access to best & brightest.

5. Enhance employee retention / reduce turnover.


Conclusion

Employers increasingly seek to reflect growing diversity of customers, suppliers, shareholders, talent pool, and communities in which they do business.

D&I programs are consistent with the law, decisions, and regulations.
Thank You

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