

Correspondence from U.S. Senator Tom Cotton to Paul Hastings LLP



United States Senate

July 17, 2023

Tara K. Giunta
Paul Hastings
2050 M Street, NW
Washington, DC 20036

Dear Ms. Giunta,

I write regarding your firm's employment law practice. In recent years, many major corporations have adopted race-based hiring quotas and benchmarks as part of their "Diversity, Equity & Inclusion" ("DEI") initiatives.¹ This is often driven by investment firms like BlackRock that pressure companies to implement DEI hiring policies to satisfy their "Environmental, Social, and Governance" mandates. These initiatives are both unpopular and unlawful. Your firm has a duty to fully inform clients of the risks they incur by making employment decisions based on race.

The Supreme Court recently struck down racial discrimination in college admissions. Though that case focused on colleges, the same principles and indeed the plain text of federal law also cover private employers. Title VI of the Civil Rights Act already prohibits federal fund recipients from discriminating based on race. Title VII likewise prohibits private employers from basing hiring decisions on race, prompting a U.S. Equal Employment Opportunity Commissioner to recently warn that "diversity programs pose both legal and practical risks for companies."²

Federal law has long prohibited treating employees differently because of their race. Employers should take to heart the Supreme Court's recent declaration that "eliminating racial discrimination means eliminating all of it." Congress will increasingly use its oversight powers—and private individuals and organizations will increasingly use the courts—to scrutinize the proliferation of race-based employment practices. To the extent that your firm continues to advise clients regarding DEI programs or operate one of your own, both you and those clients should take care to preserve relevant documents in anticipation of investigations and litigation.

Sincerely,



Tom Cotton
United States Senator

¹ Marin Wolf & Kim Bhasin, *After decades of unmet diversity goals, some major employers turn to hard racial quotas*, CHICAGO TRIBUNE (Sept. 1, 2020), <https://www.chicagotribune.com/business/ct-biz-black-jobs-racial-hiring-quotas-20200901-4c3jln5mzb4bflnm7egljvm7e-story.html>.

² Andrea R. Lucas, *With Supreme Court affirmative action ruling, it's time for companies to take a hard look at their corporate diversity programs*, REUTERS (June 29, 2023), <https://www.reuters.com/legal/legalindustry/with-supreme-court-affirmative-action-ruling-its-time-companies-take-hard-look-2023-06-29/>.