Recent Settlement Latest in Developing Trend in Reverse Discrimination Cases

Barbara E. Hoey

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It was announced on July 7 that IBM had resolved a former consultant's "reverse" discrimination claim for an undisclosed sum, closing the door on his Title VII race and sex discrimination lawsuit.

This settlement is yet another example of reverse discrimination plaintiffs finding success in both the actual courts and the court of public opinion.

Plaintiff Randall Dill, represented in part by Stephen Miller's conservative group America First Legal, first filed suit against IBM in August 2024 alleging that he was discriminated against on the basis of his status as a white male. Dill claimed that corporate leadership at IBM was financially incentivized to utilize a "diversity modifier" to calculate compensation and encourage a more diverse workforce, and that he was then forced out of the company in favor of "individuals with favored race and sex traits, which did not include whites, Asians, or men."

IBM vigorously denied these claims.

IBM moved to dismiss the case, arguing that Dill was terminated for performance issues and that the allegations in the complaint were insufficient to support his claims that the decision was motivated by his race or gender. The federal judge disagreed, finding that Dill had alleged a plausible claim. The court accepted Dill's allegation that the performance improvement plan he was placed on could have been pretextual and contained unreasonable improvement goals that were not intended to correct performance deficiencies, but were designed to set him up for failure. Dill also alleged in his complaint that executives at the company were encouraged to diversify their departments with monetary incentives, and that terminating a white male would advance those goals.

While the court's decision denying the motion to dismiss does not signal a change in the law, it is part of an emerging trend. In the wake of Donald Trump's executive orders directing an end to corporate DEI programs like the one Dill alleged at IBM, one would expect to see more "reverse" discrimination cases in the future. This development, coupled with the Supreme Court's recent decision in *Ames v. Ohio Department of Youth Services*, a decision that we have previously written about, makes it clear that plaintiffs who are not members of a particular protected class now have an easier time pleading a viable claim that will survive initial pleading hurdles or even continue through the summary judgment stage.

Indeed, America First Legal has previously represented other individuals pursuing "reverse" discrimination claims and filed a brief in the *Ames* case that was cited by Justices Clarence Thomas and Neil Gorsuch in concurrence. We expect well-funded groups such as this to continue bringing such claims.

WHAT SHOULD YOU DO? Anyone working in Human Resources or at a corporate legal department should be aware of these trends and be mindful that **all** adverse workplace actions must now be analyzed equally and should be based on facts and objective criteria. The law has always been clear: everyone is protected from discrimination under the law. However, the time when one can assume that it is ‘safe’ to terminate an individual employee because they are not a member of a traditionally protected class is in the past. All employment decisions should thus be based on merit and not on the basis of any individual personal characteristic.

We will keep an eye on these developments and their impact going forward. In the meantime, watch for updates on our Labor Days blog or contact a partner in our employment law group.