

Establishing a Culture of Workforce Compliance in Technology Companies

By Krista Stevenson Johnson

In the current job market, many technology sector employers are seeking to recruit and retain top talent by creating a positive workplace culture. For many employers, this also includes efforts to recruit and hire workers from underrepresented groups such as women, African-Americans, and LGBTQ employees. While most companies recognize that diversity is one element of a positive workplace environment, many may not have sufficient compliance programs to ensure that underrepresented groups are supported and provided the opportunity to have their issues addressed. To retain and develop a diverse workforce, it is important for employers to make compliance with employment laws important part of the company culture.

A recent study conducted by the Kapor Center for Social Impact reveals that aspects of company culture may be driving away diverse employees from technology jobs. See Allison Scott, Freada Kapor Klein, Uriridiakoghene Onovakpuri, Tech Leavers Study, Kapor Center for Social Impact (April 27, 2017). This is the case even though many

technology companies already provide diversity or implicit bias training. In the Tech Leavers Survey study, researchers from the Kapor Center surveyed a representative national sample of over 2000 individuals who had left jobs in technology fields or in the technology industry. Women, African-American, Latino, and Native American employees reported dissatisfaction relating to what they identified as a culture of mistreatment and unfairness in their workplaces. Furthermore, these underrepresented groups were more likely to identify workforce treatment issues as primary motivators for dissatisfaction and the decision to leave their employer. In fact, workplace unfairness was reported to be more significant to employee decisions to seek new employment than competing opportunities in the job market. The Tech Leavers Study can be accessed at <http://www.kaporcenter.org/tech-leavers/>.

The findings of the Tech Leavers study should be concerning to company leaders who find value in attracting and retaining diversity. In addition to the numerous business reasons to recruit and keep diverse



Gittings Photography, Rianahlin

SF-based Labor and Employment attorney
Krista Johnson

hires, there are important legal reasons as well. Employer policies or practices that are shown to result in a disparate impact to specific demographic groups, even without any specific intent to discriminate, can be evidence of prohibited discrimination. See *Guz v. Bechtel National*, 24 Cal.4th 317, 354, fn. 20 (2000) (explaining disparate impact discrimination). Similarly, recurring workplace complaints addressing the same conduct or directed at the same perpetrators, can present damaging evidence that a harassing environment is pervasive or that

an employer has failed to take preventive measures to protect employees from harassment, as in *Weeks v. Baker & McKenzie*, 63 Cal. App. 4th 1128 (1998), (employer knew of prior complaints against same perpetrator). Failing to address legal compliance issues can result in costly litigation and, potentially, liability for employment harassment, discrimination, or retaliation.

Technology companies do not need to sacrifice important aspects of a workplace culture to achieve and maintain a fulfilled and diverse workforce. Rather, diversity and job satisfaction can be achieved by establishing a culture of compliance with workplace laws and regulations. Employers should incorporate important legal compliance initiatives alongside their cultural initiatives by enacting and enforcing effective employment policies and practices that address the company's commitment to equal opportunity, compliance with employment laws, and addressing and resolving employee complaints. Such programs should include at least five important components:

- Have Effective and Legally Compliant HR Policies.

It is critical for companies of all sizes to promulgate and enforce effective human resources policies. This must include at a minimum, California-compliant discrimination, harassment, and retaliation policies with detailed complaint procedures. In addition to maintaining

a specific anti-harassment policy, company policies and practices addressing social media, work conduct, company-sponsored social events, and use of technology should address harassment, bullying, and issues of appropriate conduct toward co-workers.

- Implement and Follow Effective Complaint Procedures.

Companies should create and strictly adhere to policies on responding to complaints and investigating misconduct. Investigation procedures must be effective at allowing company managers to make conclusions regarding complaints and to remedy any issues. In some cases, it may be appropriate to hire an outside investigator, for example, where a high-ranking employee is involved as the complainant or the accuser, where the allegations are salacious or sensitive, or in any situation where it is more likely that the complainant or witness will provide candid information to an outside investigator than a company manager. Any policy violations should be addressed immediately, and the company should follow up to ensure the conduct does not recur and there is no retaliation.

- Use Lawful Diversity Initiatives.

Companies should have in place initiatives to increase diversity in hiring, which could include referral programs and recruiting efforts designed to reach diverse candidates. Employers should consult appropriate legal counsel to ensure

that these programs comply with all discrimination laws.

- Train Your Managers.

All company managers should receive training on implicit bias and diversity, how to avoid prohibited harassment, how to respond to complaints, and how to coach employees and manage performance to avoid unconscious favoritism or bias. Companies should evaluate managers on their commitment to and effectiveness at maintaining a diverse workforce and reducing or effectively responding to workplace issues.

- Audit The Effectiveness Of Compliance Programs.

The success of a Company's compliance efforts should be evaluated through audits. Thorough audits, conducted with the advice of qualified legal counsel, will assist in uncovering and resolving potential issues before they become major problems.

For each of these tasks, consultation with legal counsel is recommended to ensure all initiatives are lawful and reflect the most current state of the law. With appropriate compliance programs and follow-up, employers can create a welcoming environment and productive workplace.

Krista Stevenson Johnson is a special counsel in the Labor & Employment practice group in Sheppard Mullin's San Francisco office.