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The benefits of corporate diversity initiatives continue to be clear, but legal challenges do arise. However, in *Moranski v. General Motors Corp.*, Civil Action No. 05-1803 (7th Cir. 2005), the Seventh Circuit supported private employers seeking to define the types of groups that are eligible for "affinity group" status under a diversity initiative. The court held that denying a religious group status as an affinity group under the company's diversity program did not constitute religious discrimination in violation of Title VII because the program specifically excluded all groups that promote or advocate particular religious or political positions including atheists, agnostics and secular humanists. Employers should use the *Moranski* case to evaluate where they stand in regard to their own affinity groups and to help gauge the legality of their diversity initiatives.

Diversity, Affinity Groups and Religion: *Balancing the Law with the Interests of Diverse Employee Groups*

by Gavin Appleby and Dionysia Johnson-Massie

Most large and many medium- and smaller-sized employers have undertaken diversity-focused business initiatives or programs in an effort to ensure inclusion of varying types of employees in the corporation's culture and success. The results of these initiatives have generally been quite positive. In many workplaces, concepts such as "inclusion" and "acceptance of differences" now mean more than just words.

The significant benefits of diversity aside, diversity-focused business initiatives or programs can inadvertently create significant legal challenges. For example, initiatives that measure progress based solely upon strict numbers of race-, sex-, and national origin-based hires and promotions may create unlawful quota systems. While the law certainly does not, and should not, discourage diversity, employers should always remember that Title VII and other anti-discrimination statutes generally prohibit decisions that are based solely upon certain classifications, such as race, sex and national origin.

The Recent General Motors Case

The Seventh Circuit Court of Appeals recently decided a case (*Moranski v.*

General Motors Corp., Civil Action No. 05-1803 (7th Cir. 2005), where certain elements of General Motors' diversity initiative came under attack by a Christian group. The case arose because GM opted to permit and sponsor a number of "affinity groups." In GM's case, an Affinity Group policy had been created and the company had thus far recognized nine different affinity groups.¹

In light of this background, GM employee John Moranski sought to form a new affinity group, the "Christian Employee Network." The company, however, in its guidelines for affinity groups, had stated that it would not permit or sponsor groups that "promote or advocate particular religious or political positions," including agnosticism, atheism and secular humanism. As a result, there existed no affinity groups that were oriented either around religion or against religion, and Mr. Moranski's application was denied.

Mr. Moranski decided that the rejection of his request constituted religious discrimination and brought suit under Title VII. The 7th Circuit, however, disagreed. Specifically, the court concluded that because GM had not permitted any other group asserting a religious position to formulate an affinity

¹ The sponsored groups were People with Disabilities, the General Motors African Ancestry Network, GM Plus (for gay and lesbian persons), the North American Women's Advisory Council, the GM Hispanic Initiative Team, the GM Asian Indian Affinity Group, the GM Chinese Affinity Group, the GM Mid-East/South-East Asian Affinity Group, and the Veterans Affinity Group.

group, the claim that Christians were being discriminated against could not be made. In response, Mr. Moranski asserted that his proposed affinity group would be non-denominational and that GM's refusal to permit such a group was discriminatory in light of the company's recognition of groups such as the GM Hispanic Initiative Team, the General Motors African Ancestry Network and GM Plus (a gay and lesbian network).

The court was not persuaded, finding that Mr. Moranski's argument assumed that a violation of Title VII existed if one protected classification, i.e., religion, was treated differently than other protected classifications, such as sex and race. The court could find no reason to interpret Title VII in that manner, concluding instead that while GM "does recognize affinity groups based on race, color, sex and national origin, the other categories protected by Title VII,... It does not follow that the Company's decision to exclude all groups formed on the basis of religious positions violates Title VII." Consequently, the court dismissed the plaintiff's complaint of Title VII disparate treatment discrimination for failing to state a claim upon which relief could be granted.²

The Practical Implications of the Issue

In many ways, the GM case highlights some of the legal concerns that relate to diversity-focused business initiatives or programs. A well-run diversity initiative is clearly permitted by law, but the smart employer should be aware of the legal limits of such programs. Because laws like Title VII state that discrimination on the basis of race and sex is prohibited, it is equally unlawful to hire someone solely "because he is African American" or

"because she is a woman" than it would be to hire someone solely "because he is Caucasian" or "because he is a male." While the need for a diverse workforce may factor into the hiring process in a meaningful manner, specific race-based and sex-based decisions are prohibited.

In the GM case, had the company supported a specific group advocating a religious position, it likely would have been required to support any other religious affinity group that applied to be part of the program. In effect, GM opted not to support any group organized for the purpose of advocating a religious position. However, by supporting other race-based, sex-based, and sexual orientation-based diversity groups, the company leaves itself open to challenge by some potentially unexpected groups of other persons. By supporting an African-American Affinity Group, for example, GM or any other employer would potentially be subject to an obligation not to discriminate against a "White Americans" Affinity Group. Presumably, however, a similar claim by an actual organization, such as a neo-Nazi group, would have no legal impact unless the employer supported a specific "related by classification" organization, such as the Black Panther Party. Arguably, GM's policy against permitting affinity groups on the basis of political positions also would prohibit the formation of the aforementioned groups.

Recommendations for Employers

Fortunately, the decision in the GM case is probably overall neither harmful nor helpful to diversity-focused business initiatives or programs. However, for employers interested in sanctioning

affinity groups based on the unique needs of its workforce and in balancing the financial aspects of supporting such programs, the GM case is beneficial. The Seventh Circuit's analysis also underscores the need to maintain common sense and respect for the law in creating and implementing a diversity initiative. In light of this background, we recommend the following:

1. Any employer that does not have a diversity-focused business initiative or program (whether or not it includes as a component the formation of affinity groups) should consider one. While legal issues can occasionally create problems in such programs, the benefits of diversity outweigh those obstacles.
2. Employers who have diversity-focused business initiatives or programs, or are considering them, should ask counsel to evaluate the legality of their potential plans. By clearly articulating the criteria both for applying for affinity group status and for excluding certain groups and ensuring consistent application of the same, an employer may reduce its exposure regarding these Title VII disparate treatment claims. Additionally, it is possible that diversity-focused business plans or programs that are not carefully crafted could create possible complications under the discrimination laws.
3. Educate, educate, and educate some more about the importance of diversity, inclusion and respect for differences and train, train, and train some more about the legal requirements of Title VII and other laws. Managers and employees should receive both diversity training and EEO law training so that they clearly understand conduct that may be offensive to another employee's

² Arguably the court's decision may apply only to private employers because, after noting that General Motors is neither a federal or state actor, the court specifically indicated that "Under the First Amendment to the United States Constitution, a government body may not be able to open a forum for private speech and exclude from that forum speech regarding the entire subject matter of religion." (Moranski, n. 3) Additionally, the court did not analyze this case on the basis of either a disparate impact or religious accommodation theory.

religious beliefs and what the law mandates under Title VII and any other applicable laws. Employers that have not trained employees and managers specifically on religious discrimination, harassment and accommodation issues (including prohibitions against retaliation) in the last 2 years would be wise to do so promptly.

4. Recognize, when considering whether to permit a certain group to be designated as an affinity group, that all groups are not created equally. Employers are permitted to customize the affinity groups that may be formed at work based on an employer's unique employee issues. The Christian group in the GM case presumably meant well, but their "we want recognition too" philosophy is not necessarily the intention of diversity efforts. In fact, some may argue that affinity groups may ultimately be as harmful as they are helpful to the concept of true diversity. However, others posit that in the transition from a world of discrimination to a world of truly accepted diversity and inclusion, affinity groups fill a legitimate need.
5. Finally, when thinking about the implications of excluding certain Title VII categories (religion, for example) from receiving affinity group status in the context of a company's diversity efforts, employers would be wise to ensure that managers and employees do not consider the exclusion as "evidence" that the group is less valued or entitled to lesser workplace protections under Title VII. Some efforts that an employer can make to offset this perception are to be certain that its representations made elsewhere (for example in Diversity and EEO policies and statements) are consistent and Title VII compliant.

Managers and employees must continue to abide by the company's prohibition against religious discrimination, harassment and retaliation. Managers must still accommodate an employee's religious beliefs, provided that doing so does not create an undue hardship for the employer.

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