



THE CASE FOR INCLUSION

News and Legal Analysis on Issues Related to Diversity and Inclusion

Major Fashion Chain Sued by Attorney for Employment Discrimination

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Ian Miller, who was an attorney for Zara, USA, filed a lawsuit alleging that he was harassed and terminated for being Jewish, American, and gay. Mr. Miller claimed that he was excluded from meetings, given smaller raises than his co-workers, and was subjected to racist, homophobic, and anti-Semitic remarks and actions. According to the complaint, Mr. Miller's partner was even e-mailed a photo of an enormous tattooed penis.

Not surprisingly, Mr. Miller alleges that Zara and the other named defendants created a hostile work environment, engaged in pay discrimination and retaliation, and unlawfully terminated him. He is seeking \$40 million in damages.

Zara USA's parent company, Industria de Diseno Textil, S.A., or Inditex, [said in response to the suit](#), "We do not tolerate any behavior that is discriminatory or disrespectful, but value each individual's contributions to our dynamic organization."

The case is Miller v. Zara USA Inc, New York State Supreme Court, New York County, No. 155512/2015.

Unfortunately, this is not Zara's first rodeo with allegations of offensive conduct. In 2014, Zara introduced a line of children's pajamas that caused an uproar because they were blue-and-white striped and featured a yellow star, closely resembling Nazi concentration camp uniforms. To make matters worse, when the company pulled the product, [the public relations release stated that the shirt would be "exterminated."](#) In 2007, [the company pulled a handbag](#) from its stores after a customer pointed out that the design on the bag included swastikas. Staff had not noticed the swastikas on the bag.

Generally speaking, discrimination laws require employers to treat similarly situated employees the same way. While Mr. Miller's case was brought in Manhattan under New York law, the same types of claims could be made in Massachusetts.

Under Massachusetts General Laws, ch. 151B, an employer is prohibited from discriminating against an employee on the basis of certain protected categories. These categories include sexual orientation and religious affiliation. Depending on the circumstances, federal laws may also apply.

Discrimination claims often arise in the context of a “disparate treatment” scenario or a “disparate impact” scenario. Disparate treatment claims arise where an employer treats an employee differently on the basis illegal considerations (i.e. choosing not to hire a female accountant because the employer believes they are not as good with numbers as men). Based on the allegations above, Mr. Miller’s claims are a form of disparate treatment on the basis of his religious affiliation and sexual orientation.

A disparate impact claim may arise where an employment practice appears neutral and benign on its face, but when applied, the practice creates built-in barriers for protected groups that are not related to their job requirements. For example, a strength requirement might screen out disproportionate numbers of female applicants for a job. These types of scenarios are more subtle and much more difficult to detect than disparate treatment scenarios.

Critical questions to ask before an action is taken or a decision is made are: 1) whether the citation or decision is job-related and 2) is it consistent with prior decisions made under similar circumstances.

The potential impact of a discrimination suit is nothing to scoff at: if an employer is found liable, it could be subjected to treble damages and attorney’s fees under the statute.