

Legal Update Article

Construction Contractors Ramping Up Diversity Efforts

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September 18, 2020

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In the aftermath of the killing of George Floyd and the resulting Black Lives Matters protests, many companies, including construction companies, issued public statements decrying racism and asserting their support for improvements in diversity and inclusion in their companies, their industry, and the country.

Based on conversations with African American employees in construction and other industries, these declarations are being met with skepticism. Many view such public statements as “check the box” exercises that are more about image than reality.

This summer has witnessed a number of racist incidents on construction jobsites, some of which have resulted in national media attention because they involved nooses or particularly vile graffiti.

Industry publication *Construction Dive* surveyed its readers about their experiences. According to the report, 65% of the respondents said they had witnessed a racial incident on the jobsite, with racist graffiti being the most common (42%), followed by verbal abuse/racial slurs (38%), refusal to hire a worker because of their race (25%), and nooses or other racial objects on the jobsite (25%).

The worst of these incidents can lead to criminal penalties and typically involve police investigations. Minority workers targeted by such incidents can sue for damages pursuant to Title VII of the Civil Rights Act of 1964. Even “minor” incidents can give rise to legal liability under the theory of hostile work environment.

To protect themselves, construction employers must be alert to potential problems and respond promptly and effectively to reported incidents. Unfortunately, that does not appear to be the case in many workplaces; 77% of *Construction Dive* survey respondents reported that “nothing was done to address the incidents they witnessed.”

Of course, there are many more reasons to deter and respond to racial incidents than legal liability. At the National Institute of Building Sciences’ Building Innovation Conference in August, a senior representative of one of the construction industry’s largest customers used her keynote address to call on the industry to root out racism and racist actions.

Nancy Novak, Chief Innovation Officer, Compass Datacenters, said that improvements in diversity and inclusion should be business-driven decisions. She noted that if businesses are not successful in becoming more inclusive, “they will become irrelevant. And the reason for that is there’s so much talent out there, you can’t leave this much talent on the sideline.”

Construction workers are watching closely to see whether their employers are serious in their commitment to diversity and inclusion. Those employers that do not improve their performance in this regard will continue to struggle to recruit and retain engaged and productive workforces, and will lose workers, and business, to those that follow their public commitment statements with visible action and leadership.

For additional guidance on this issue, please contact a Jackson Lewis attorney.

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