

## Tesla Race Bias Cases Highlight Risk Of Follow-On Claims

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In the last several months, two individuals were awarded huge damages awards in California employment cases against Tesla Inc. related to practices at its Fremont, California, factory. Shortly thereafter, plaintiffs have filed multiple individual employment actions and one putative class action regarding the practices at the same Tesla factory.

As this illustrates, individual employment cases, especially when they result in significant awards, often result in follow-on cases—individual and class actions—against the same defendant.

Likewise, a perception that a jury pool is willing to make significant awards can increase the odds of litigation against other employers. It is thus important for employers to take stock of the lessons to be learned from significant verdicts.

### Allegations of Racial Discrimination Against Tesla

Tesla recently faced two individual race discrimination lawsuits. In the first, Owen Diaz, a former elevator operator at Tesla's Fremont factory, alleged that he endured harassment and racial slurs.[1]

Diaz testified that he was excited to work at Tesla because he wanted to be a part of a team dedicated “to mak[ing] the earth a little bit better for the next generation.”[2] But once he began working at the factory, he found that the working conditions were so physically demanding and unacceptable that many Black employees quit.

Moreover, he alleged widespread racial discrimination and animosity, including racial epithets “scrawled throughout the bathroom stalls,” supervisors using racial slurs when addressing him and other workers, and a failure of the company to respond to complaints or undertake any investigation of the alleged racial abuse.[3]

Diaz further asserted at trial that when his direct supervisors failed to investigate any of these issues and he raised them to a more senior Tesla manager,[4] he was promptly fired.[5]

Diaz's case rang true with the jury. In October 2021, it awarded Diaz \$6.9 million for emotional distress and \$130 million in punitive damages. Credit for this result may be attributed to a jury moved by Diaz's testimony and case.

However, it should be noted that in an arbitration over a similar case alleging that Tesla failed to stop supervisors from using racist epithets, the arbitrator awarded the former employee, Melvin Berry, more than \$1 million. The award became public after Berry's attorney filed a petition in court to enforce the arbitrator's order in May 2021.[6]

## Problems Multiply

Repeat claims, especially those generating large headlines, can lead to additional lawsuits and class action claims, especially for companies that position themselves as a desirable place to work or as dedicated to a better future.[7]

In the case of Tesla's Fremont factory, which employs around 10,000 workers, it has faced several individual lawsuits and proposed class actions in the last few years. Indeed, little more than a month after the Diaz verdict, in November 2021, Jessica Barraza filed suit in California's Alameda County Superior Court alleging "nightmarish conditions of rampant sexual harassment" at the same Fremont factory.[8]

Just one month later, in December 2021, six more women filed separate complaints against Tesla with similar sexual harassment allegations.[9]

Likewise, that same month, Ashley Kosak, a former engineer at SpaceX—another company that touts itself as dedicated to bettering the future[10]—published an essay with an attention-grabbing headline that read: "At SpaceX, we're told we can change the world. I couldn't, however, stop getting sexually harassed." [11] Elon Musk is a founder of both SpaceX and Tesla.

These types of headlines and lawsuits can lead to others, including government agencies, taking notice.

On Feb. 9, 2022, the California Department of Fair Employment and Housing sued Tesla for allegedly discriminating against its Black workers after receiving hundreds of complaints.[12] The department also asserted that it found evidence that the Fremont factory is a racially segregated workplace, including that the factory's Black workers are subjected to racial epithets and slurs and are discriminated against for job assignments, discipline, pay and promotion.

Notably, the complaint references both Diaz's and Berry's lawsuits and awards in support of the department's allegations.

## Lack of Diversity May Be a Driver

Racial discrimination and sexual harassment can occur at any place of work. But when the workforce lacks robust representation from diverse demographic groups, hostile work environments are more easily created for minority and female employees.

In 2018, the Center for Employment Equity examined 177 leading Silicon Valley technology firms as to the makeup of executive, managerial and professional[13] employment shares by race and gender based on data reported to the U.S. Equal Employment Opportunity Commission in 2016.[14]

According to the center's research, lack of diversity is a widespread problem in Silicon Valley firms:

- Around 70% of total managers and professionals in large Silicon Valley technology firms are men, and over 80% of executives are white men across all large Silicon Valley firms.
- On average, Black men make up less than 2.7% of employees in the largest firms, and make up only 1.8% of professionals, 1.5% of managers and only one out of 100 executives.
- Latinos make up only 7.3% of employees in the largest firms. Latino men make up only 3.4% of professionals, 3.6% of managers and 2.1% executives, but the center also found it was common to have no Latino employees in

executive jobs.

- White women account for 13.8% of professionals. Representation of white women varies widely among companies—in some, none of the executives or managers were white women, but in a handful of companies, White women make up more than 25% of managerial, executive and professional roles.
- More than 37% of the companies have no Asian female executives, and several have no Asian women in management.
- Black women and Latinas were found to be rare in all professional, management and executive roles.

Interestingly, the center found that firms with more white men in executive roles employ fewer Asian men and women in professional jobs. On the other hand, firms with more white women in management roles employ more professional-level Black women and Latinas.[15]

Racial and sexual discrimination in the workplace are not simple issues to navigate. Companies trying to protect their employees from such treatment must be vigilant and responsive, and even then, likely cannot stop all misbehavior.

Lack of diversity within the workforce, especially in higher managerial and executive levels, can create environments that are at the very least difficult for those in minority communities, and at worst can raise the risk of fostering hostile work environments that can lead to discrimination-based lawsuits.

If such lawsuits are successful and gain media exposure, further lawsuits from current and former employees, and possibly class actions, are likely to follow.

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[1] Diaz v. Tesla, Inc., No. 3:17-CV-06748 (N.D. Cal.).

[2] Id., Dkt. 321 at 9-13.

[3] Id.

[4] Id.

[5] Id.

[6] See Berry v. Tesla, Inc., RS21104057 (Superior Court of Cal., Alameda County 2021).

[7] See <https://www.tesla.com/careers> (promoting statements for careers at Tesla such as “[i]t doesn’t matter where you come from, where you went to school or what industry you’re in—if you’ve done exceptional work, join us to rethink the future of sustainable energy and manufacturing” and “[s]olve the next generation of engineering, manufacturing and operational challenges as we work to secure a clean energy future”).

[8] <https://cdn.arstechnica.net/wp-content/uploads/2021/11/barraza-vs-tesla-lawsuit.pdf>.

[9] See Brooks v. Tesla, Inc., 21CV004015 (Superior Court of Cal., Alameda County 2021); Curran v. Tesla, Inc., Case No. 21CV004040 (Superior Court of Cal., Alameda County 2021); Blickman v. Tesla, Inc., Case No. 21CV004025 (Superior Court of Cal., Alameda County 2021); Mederos v. Tesla, Inc., Case No. 21CV004036 (Superior Court of Cal., Alameda County 2021); Sheppard v. Tesla, Inc., Case No. 21CV004031 (Superior Court of Cal., Alameda County 2021); Brown v. Tesla, Inc., Case No. 21CV004029 (Superior Court of Cal., Alameda County 2021).

[10] <https://www.spacex.com/careers/>

[11] <https://www.lioness.co/post/at-spacex-we-re-told-we-can-change-the-world-just-don-t-try-to-stop-the-sexual-harassment>.

[12] <https://ca-times.brightspotcdn.com/e8/c4/932fafa44013b4e7a4bc082b9615/dfeh-tesla-complaint.pdf>.

[13] The center used EEOC definitions when conducting its analysis:

- Executive/Senior Level Officials and Managers: Individuals who plan, direct and formulate policies, set strategy and provide the overall direction of enterprise/organizations for the development and delivery of products or services, within the parameters approved by boards of directors or other governing bodies.
- First/Mid Level Officials and Managers: Individuals who serve as managers overseeing the delivery of products, services or functions at group, regional or divisional levels of organizations. Also, individuals who report directly to middle managers.
- Professional: Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background.

[14] [https://www.umass.edu/employmentequity/sites/default/files/CEE\\_Diversity+in+Silicon+Valley+Tech.pdf](https://www.umass.edu/employmentequity/sites/default/files/CEE_Diversity+in+Silicon+Valley+Tech.pdf).

[15] In 2020, Tesla published its first Diversity, Equity and Inclusion Impact Report at <https://www.tesla.com/sites/default/files/downloads/2020-DEI-impact-report.pdf>. It included that 34% of its U.S. workforce was White, but 59% made up the leadership roles. Further, 79% of the U.S. workforce was male, while 83% of those in leadership positions were male.

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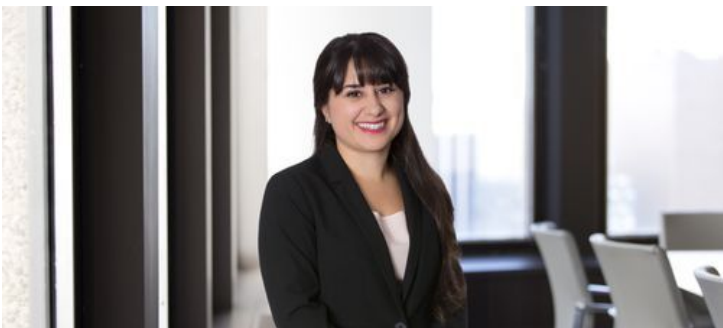
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