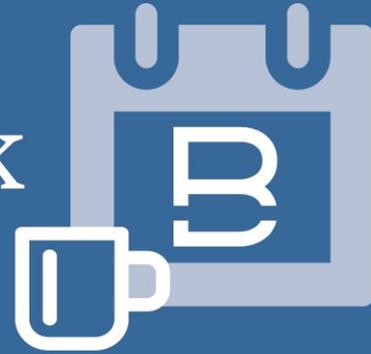


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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The EEOC Cracks Down on Reverse Discrimination: How DEI “Perks” May Create Legal Liability

[Andrew T. James](#)

For years, companies have viewed identity-specific networking events, mentorship programs, and “diversity retreats” as low-risk, high-reward “perks.” But a new wave of enforcement by the EEOC, and recent United States Supreme Court jurisprudence, are turning that assumption on its head.

On February 18, 2026, the Equal Employment Opportunity Commission (“EEOC”) filed a landmark lawsuit against Coca-Cola Beverages Northeast, Inc. alleging that a two-day “female-only” networking trip unlawfully discriminated against the company’s male employees. This high-profile enforcement action evidences a massive shift in how the current administration will prosecute—and potentially how the courts may view—so-called “reverse discrimination.” Combined with a recent Supreme Court victory for majority-group plaintiffs, well-intentioned DEI programs are no longer insulated from legal liability.

The *Coca-Cola* Case: When a “Perk” Becomes a Problem

The facts of the *Coca-Cola* case serve as a warning for any general counsel or HR leader. In September of 2024, the company hosted a two-day retreat at a luxury casino and resort in Connecticut. Approximately 250 female employees were invited to attend, while no male employees received an invite. The event included keynote speakers, professional networking, and team-building exercises. Crucially, the female attendees were excused from their regular duties and paid their normal wages for those two days.

The EEOC's argument in its filed lawsuit is straightforward: By providing paid professional development and networking to one sex but not the other, the company denied male employees the compensation, terms, conditions, or privileges of employment guaranteed under federal law by Title VII. For the EEOC, it does not matter that Coca Cola's *intent* was likely to support underrepresented leaders. Under the current federal enforcement posture, any employment action motivated—even in part—by a protected characteristic is a potential violation of federal law.

The Changing Landscape for Reverse-Discrimination Claims in Light of *Ames v. Ohio Dep't of Youth Services* (Lowered Standard of Proof) and *Muldrow v. City of St. Louis* (Broadened Definition of Adverse Employment Action)

The EEOC's newfound aggression is supported by a major legal pivot from the United States Supreme Court. In June of 2025, the Court issued its decision in *Ames v. Ohio Department of Youth Services*, which fundamentally changed the "reverse discrimination" landscape for employers in the Eighth Circuit (which covers Minnesota) and beyond. We wrote about that decision in greater detail [here](#). Historically, in many jurisdictions, a "majority" plaintiff (such as a white or male employee) faced a higher legal bar to support a viable discrimination claim. They had to show "background circumstances" suggesting their employer was the unusual type that discriminates against the majority. Because "background circumstances" were difficult to establish, companies could more easily secure dismissal of reverse-discrimination lawsuits before they ever reached a jury. This was a sea change for Minnesota employers, as the Eighth Circuit was previously a stronghold for the "background circumstances" defense that often shielded companies from these very claims.

The Supreme Court unanimously rejected that standard last year, holding that Title VII protects the individual, not specific groups. After *Ames*, there is no heightened standard for majority plaintiffs; the law applies exactly the same way to everyone.

Another recent Supreme Court precedent, *Muldrow v. City of St. Louis*, even further amplifies this shift. In *Muldrow*, the Court lowered the threshold for what counts as an "adverse employment action." An employee no longer needs to show a "materially significant" harm (like a firing or a demotion) to sue. They only need to show "some harm."

Considering the Court's holdings in *Ames* and *Muldrow* together, the *Coca-Cola* enforcement action becomes a litigation nightmare. A male employee who is excluded from a high-value networking retreat can now arguably show "some harm" to his career advancement, and he no longer faces an uphill legal battle.

Nor is this a mere blip on the radar. In case there was any doubt about the EEOC's intent, Chair Andrea Lucas erased it on February 26, 2026. She sent a formal "Reminder of Title VII Obligations" to hundreds of Fortune 500 CEOs, general counsels, and board chairs. The message was clear: Race- and sex-based decision-making is an enforcement priority to this EEOC even if the company considered it to be "DEI" or inclusion."

Practical Lessons for Employers

Minnesota has long been a hub for progressive corporate culture, but in this new legal environment, “affinity” must not mean “exclusion.” To mitigate risk, companies should consider the following:

- **Audit and Eliminate Identity-Exclusive Programming:** If your company offers a “Women in Technology” or “Minority Leadership” retreat, ensure it is open to all employees, including those who are interested in the subject matter, without consideration of their sex or race. Transitioning from an identity-exclusive approach to a mission-inclusive approach is the most effective way to de-risk these programs.
- **Focus on Outcomes, Not Barriers:** You can—and should—continue to recruit from diverse pools and conduct outreach to underrepresented communities. Title VII prohibits discriminatory decision-making, not inclusive recruiting.
- **Check the “Perks”:** Consider your company’s formal and informal mentorship programs and employment-related benefits. If a program offers paid time off, access to senior executives, or specific (even informal) training, those are privileges of employment that must be offered on a non-discriminatory basis.
- **Documentation is Key:** Ensure that selection for high-potential programs or leadership retreats is based on documented, job-related, and merit-based criteria.

As federal agencies and courts align on a strict, individual-focused interpretation of Title VII, Minnesota employers must ensure their DEI initiatives are built on a foundation of inclusion—one that does not inadvertently create a path for a reverse-discrimination claim.

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