Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Reverse Bias Rulings Offer Warning About DEI Quotas

By **Noah Bunzl** (July 28, 2025, 4:15 PM EDT)


Noah Bunzl

Under normal circumstances, it can be difficult for nonminority, or so-called reverse, plaintiffs to bring viable discrimination claims based on materially adverse employment actions.

However, several recent holdings confirm that certain types of diversity policies — especially those that promote targeted retention levels or quotas — can substantiate reverse discrimination claims, especially when coupled with an unclear record establishing the basis for the adverse action.

Several district and appellate courts have recently held that a majority group employee's claims — which might otherwise have been nonviable — could survive dispositive motion practices based on the existence of a targeted or quota-based diversity program.

Employers should take note of these rulings, which raise the potential for successful reverse discrimination claims based on adverse employment actions implicating nonminority employees — largely premised on the mere existence of these programs.

Ames v. Ohio Department of Youth Services

These decisions must be viewed in the context of the U.S. Supreme Court's June 5 ruling in Ames v. Ohio Department of Youth Services.

Prior to Ames, several circuits held that reverse plaintiffs were obligated to show an extra burden — i.e., special "background circumstances" — to demonstrate that the defendant is the "unusual employer who discriminates against the majority."

In Ames, the court held that there is no heightened burden for reverse plaintiffs. Ames makes clear that federal courts are required to analyze reverse discrimination claims under the same standards as discrimination claims generally.

Dill v. IBM Corp.

On March 26, in Dill v. IBM Corp., the U.S. District Court for the Western District of Michigan denied IBM's motion to dismiss a lawsuit concerning the termination of a white employee where IBM provided managers with incentives to diversify and set goals for "half of IBM's employees to be women, thirteen percent to be black, and a percentage in the 'mid-teens' to be Hispanics."[1]

The court noted that while the "mere existence" of a diversity policy is not enough to plead a prima facie case of discrimination, the policy here went beyond "aspirational goals" as the CEO set diversity targets and IBM paid incentives to executives that hit the targets.

In addition, the court held that the pleadings suggested that the reasons that IBM gave for the termination were not the real reasons for its actions. Accordingly, the court found that the allegations were sufficient to draw a plausible connection between the diversity plan and the adverse action.

This ruling is significant because the plaintiff's allegations survived a motion to dismiss primarily based on the existence of the diversity plan.

Toney v. The Clorox Co.

On April 25, in Toney v. The Clorox Co., the U.S. Court of Appeals for the Ninth Circuit reversed a summary judgment decision for Clorox in relation to the termination of a male employee.[2]

The court held that a "reasonable jury could conclude that Clorox's reasons for firing [the plaintiff] were internally inconsistent," and that "the company's IGNITE Strategy, which was in effect at around the time of his termination is circumstantial evidence that Clorox had a goal to increase the number of women managers at the company in order to achieve its gender 'representation targets.'"

This was sufficient to defeat the motion for summary judgment, as it raised material questions of fact concerning the basis for the termination.

This is another example of a court holding that a reverse plaintiff's claims survived dispositive motion practices based on the existence of a diversity strategy.

Bowen v. City and County of Denver

On April 14, in Bowen v. City and County of Denver, the U.S. District Court for the District of Colorado allowed claims by a male deputy sheriff to survive judgment on the pleadings where the plaintiff was denied a promotion, even though he had higher assessment scores than relevant female comparators.[3]

Bowen alleged that the department had agreed to participate in the "30x30 Initiative," pledging that "by the year 2030, women will make up 30% of all police recruits."

The court determined that the plaintiff had sufficiently alleged that, but for his status as a man, he may have been promoted.

Again, the plaintiff's failure-to-promote claims survived dispositive motion practice, largely based on the existence of the company's targeted quota for gender-based hiring.

Other Recent Developments

Moving beyond these individual rulings, many readers familiar with this space will be aware of President Donald Trump's administration's stance on diversity, and diversity, equity and inclusion generally.

In March, the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice issued guidance suggesting that, under certain circumstances, diversity training may give rise to hostile work environment claims.

The administration has also issued executive orders limiting DEI training in the federal workforce and by federal contractors. Further, employees have brought claims stemming from objections to workplace trainings and related tensions with their employers.[4]

Employers should also be mindful of the Supreme Court's 2023 decision in Students for Fair Admissions v. President and Fellows of Harvard College, which imposed strict limits on affirmative action in the college admissions context.

Key Takeaways

In each of the cases focused on here — Dill, Toney and Bowen — a majority plaintiff was terminated or overlooked for promotion without a clear record substantiating the action.

Under normal circumstances, this may not be enough for a claim to proceed in the absence of other indicia of discriminatory attitudes, policies or practices.

These cases support the premise that the mere existence of a targeted diversity policy, coupled with an adverse action, can be sufficient to allow the claims to proceed.

Notably, Ames does not alter the holdings discussed above, which upheld reverse discrimination claims even under the pre-Ames standard.[5] Rather, Ames enhances risks from reverse claims, as the decision eases the burden on plaintiffs in circuits that previously required a showing of background circumstances.

How should employers interpret and act on these decisions? First, employers should distinguish generic policies that state intentions and goals from targeted policies that quantify specific outcomes or results.

For instance, the court in Dill, quoting prior precedent, noted that "'the mere existence of a diversity policy, without more,' is insufficient to make out a prima case of discrimination."[6]

Employers should take special caution with policies that: (1) define specific quotas for hiring or retention, (2) refer to hierarchical preferences for certain groups, (3) provide detailed plans for how goals are to be accomplished and (4) pressure managers to increase minority percentages.[7]

Employers should not offer financial incentives for managers to achieve diversity targets, as in Dill.

Additionally, employers should be cautious with the implementation of any plan to the extent that it can be linked to any adverse action for any individual employee.

Taking all of this into consideration, including the larger climate, employers have numerous reasons for caution with respect to the implementation of diversity and DEI policies.

Conclusion

While the broader discussion of diversity and DEI in the workplace is evolving, the cases discussed in this article provide specific guidance.

Employers should take care before implementing targeted or quota-based diversity policies, which can pose litigation risk in the form of reverse discrimination claims.

Employers should also take this opportunity to review all diversity and DEI policies, initiatives and public statements to ensure that they are in line with the current law and best practices.

Noah H. Bunzl is counsel at Tarter Krinsky & Drogin LLP.

[1] Dill v. IBM Corp., No. 1:24-cv-852, 2025 WL 913744 (W.D. Mich. Mar. 26, 2025).

[2] Toney v. Clorox Co., No. 24-2567, 2025 WL 1201881 (9th Cir. Apr. 25, 2025).

[3] Bowen v. City and County of Denver, No. 24-cv-00917, 2025 WL 1101152 (D. Colo. Apr. 14, 2025).

[4] See, e.g., De Piero v. Pa. State Univ., No. 23-cv-2281, 2025 WL 723029 (E.D. Pa. Mar. 6, 2025) & 2025 WL 1139260 (Apr. 16, 2025) (granting summary judgment to university in connection with hostile work environment and retaliation claims asserted by white professor stemming from his complaints about anti-racism and diversity trainings and resulting corrective action by the university).

[5] Toney arose in the Ninth Circuit, which did not require a showing of background circumstances. Dill and Bowen arose in the Sixth and Tenth Circuits (which required a showing of background circumstances) and the courts permitted the claims to proceed under the pre-Ames standard.

[6] For an example of allegations that were insufficient to support a reverse discrimination claim, see Jones v. Bernanke, 493 F. Supp. 2d 18 (D.D.C. 2007) (dismissing claim on summary judgment based on failure to promote older male employee notwithstanding employer concession that promoting younger woman was "one of the objectives of the diversified workplace" and "something we try to accomplish" which demonstrated "at most . . . a concern for diversity in the workplace").

[7] See generally Bradley v. Gannett Co., No. 1:23-cv-1100, 2024 WL 3905817 (E.D. Va. Aug. 20, 2024) (granting motion to dismiss class claims premised on "vague and aspirational" "Inclusion Report" and distinguishing between various types of diversity initiatives).