Recruiting in a Trump Era

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About Me

- Management-side Employment Attorney & HR Consultant
- Human Resources Officer for the U.S. Department of State in Jerusalem & Zambia
- Got the fancy letters
- Started tHRive Law & Consulting
- Adjunct Professor of HR Compliance at Mitchell Hamline
- Compliance doesn't always mean no

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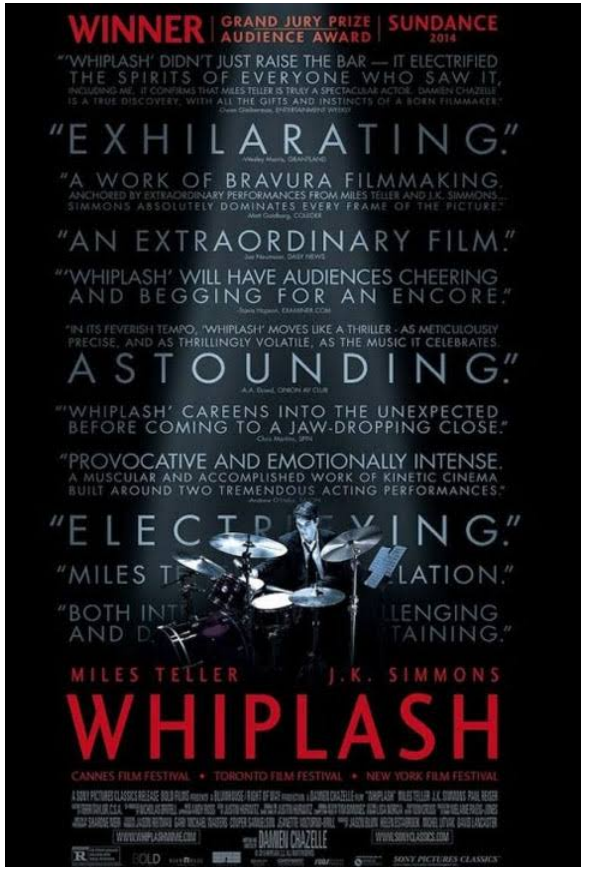
2017 Legal Whiplash

- Sick leave laws in Minneapolis & St. Paul, but the Legislature wants to curtail city power to regulate employers
- OFCCP "blacklisting rule" under review by OMB & House & Senate voted to repeal
- Overtime rule almost enacted, but then an injunction
- DJT promises rollbacks of 2 regulations for every new regulation planned
- New regulations in Philadelphia & Massachusetts prohibiting questions about salary history



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Three Things That Have Changed

- Diversity
- Candidate research
- Salary history

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Diversity Debt

UBER

ebay

facebook

Google

Twin Cities businesses ask why professionals of color leave

Sixty percent of those who took part in recent focus groups said they plan to leave the state in the next three to five years.

ORDWAY 2017.18 SUBSCRIPTIONS ON SALE NOW

By Shannon Prather Star Tribune | SEPTEMBER 26, 2016 — 9:42AM

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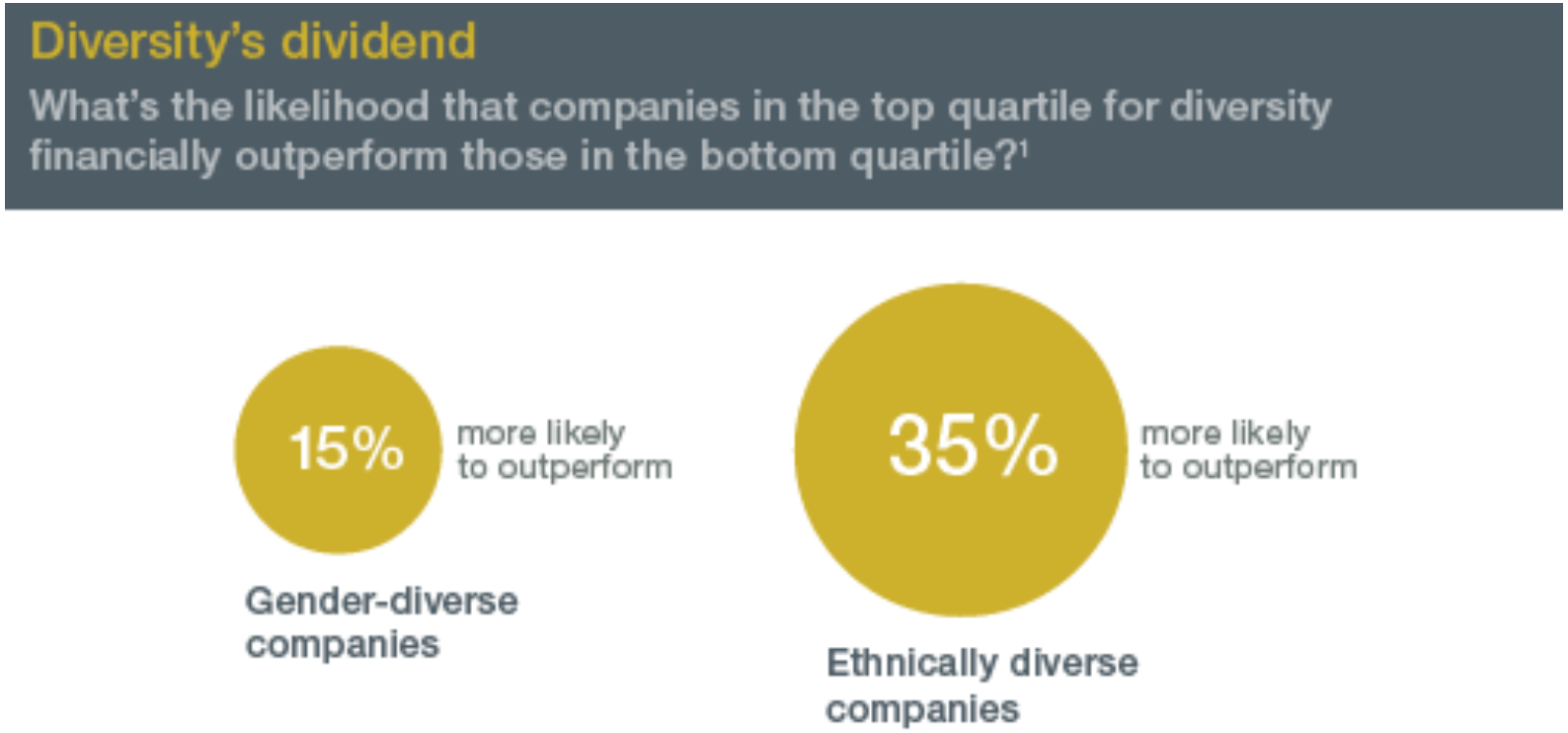
Diversity Matters



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Trump Administration

- Has not taken a specific position on diversity issues
  - Acting EEOC Chair voted against the EEO-1 reporting & supports a review by the Office of Management & Budget
  - Has been hostile to diversity issues – "Hire American"
- One of the largest employer with one of the most diverse employee population – the federal government
  - Hiring freeze affecting veterans & minorities
  - Pulling guidance on transgender bathroom use
- Possibility of pulling out of litigation

Forbes

Tech Firms Facing Antidiscrimination Lawsuits May Have An Easier Time With Trump's Labor Department

Matt Drange, FORBES STAFF

I write about technology and money + power in Silicon Valley. FULL BIO

With cloud,

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Reduce Reliance on Referrals

- "[D]iscriminated systematically against Asian job applicants in its hiring process and selection procedures." DOL alleged that Palantir "hired 14 non-Asian applicants and 11 Asian applicants from a pool of more than 1,160 qualified people, 85 percent of whom where Asian."
- DOL's Oracle suit alleges the tech giant favored Asian applicants over another ethnicity due to "referral bonuses that targeted its heavily Asian workforce to recruit other Asians…"

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Ramp Up Diversity Efforts

- Use your data
- Wade into all sorts of applicant pools
- Train managers
  - Your policies & your affirmative action plan
  - Unconscious bias
- Don’t focus on specific minorities
- Recheck your data

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Bad Candidate Conduct in the Past

- Remember this guy?
- Amit Singhal, SVP of Engineering @ Uber
- Former SVP of Search @ Google (15 years!)
- “Retirement” from Google
- Sexual harassment allegations lead to that “retirement”
- Revelation after Susan J. Fowler posted her blog post on what it is like to work @ Uber
- And, after 100 female engineers met with CEO Travis Kalanick

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Candidate Research

- Not doing research on a candidate can lead to
  - Negligent hiring claims
  - Poor morale
  - Poor performance
  - All sorts of other kinds of claims
- Obligation to do something

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What Should You Do?

- Background checks
  - Yourself
  - Third-party vendor
- Social media checks
- Good behavioral interviews
- Post-interview questions
- Ask the receptionist, Recruiting Coordinator

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Social Media Checks

- If you're going to review social media…
  - Set criteria that would disqualify a candidate
  - Identify who will handle
    - NOT the hiring manager
    - Someone in HR preferably
  - Late in the process
  - Ask the candidate
- Setting the roles & responsibilities of recruiter, HR & hiring manager

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Salary Histories

- Effort to stop perpetuating the wage gap – Pew Research
  - 82¢ for white women
  - 65¢ for black women
  - 58¢ for Hispanic women
- Prevent HR from asking about salary histories
  - Massachusetts
  - Philadelphia
  - Expect more in 2017
- Allowed to ask about salary expectations

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Takeaways

- We don't know enough about the Trump Administration to predict what they'll do
- Expect loosening of regulations
- Less money for enforcement
- Plaintiff's bar generally picks up the slack
- Pay attention to diversity issues & ramp up efforts into more candidate pools
- Research candidates as much as you can & carefully
- Consider whether salary history is a question you need

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Questions?

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