

5 Discrimination Cases In California To Keep An Eye On

By **Amanda Ottaway**

Law360 (January 6, 2023, 7:11 PM EST) -- Employment discrimination experts say they will be watching a quintet of race bias cases in the Golden State as 2023 moves forward, including three suits accusing Tesla of allowing glaring racism to persist at its Fremont factory.



Vehicles are parked outside the Tesla plant in Fremont, California in this file photo. California sued Tesla Inc. on Feb. 9 over allegations of discrimination and harassment of Black employees at its San Francisco Bay-area factory. (AP Photo/Ben Margot, File)

In addition to suits against the electric carmaker from workers and the California Civil Rights Department, food giant Kraft-Heinz is facing a \$30 million race discrimination suit, and an ex-Apple patent attorney of Asian descent is claiming the tech giant unlawfully fired her for alerting the company that she'd suffered domestic abuse at the hands of a co-worker.

Angela Reddock-Wright, founder and managing partner of the Reddock Law Group in Los Angeles, said that social movements such as #MeToo and Black Lives Matter have helped employees feel more confident in challenging unfair or unlawful workplaces. She added that the cases have also cropped up in what she calls the era of the "activist employee."

"So all of these different movements over the last five years ... are certainly making employees feel more empowered to come forward and to stake their claim. Even in an employee-friendly, 'progressive' state like California. And we certainly have a plaintiff's bar here who's willing to take on these cases," she said.

Here, Law360 breaks down five lawsuits in the Golden State that discrimination lawyers should have on their radar.

Tesla Battles State Watchdog's Suit Over 'Rampant Racism'

The California Civil Rights Department **sued Tesla in February**, alleging widespread, blatant racism at the Fremont facility.

Black workers were frequently subjected to slurs and passed over for promotions, said the CRD, which was previously called the Department of Fair Employment and Housing and sued under that name.

"I would say, you know, where there's smoke, there's fire," said Reddock-Wright. "Even when a company has policies, zero tolerance, et cetera, those policies often do not reflect what's happening on the ground. And this lawsuit seems to be reflective of that."

The CRD's decision to bring a complaint followed years of litigation by individual Black employees who said the working conditions at Tesla's Fremont factory were unbearable, calling it **"reminiscent of the Jim Crow era."**

The fact that such outrageous conduct is alleged in the CRD's suit against Tesla makes it a "big case," said Sanford Heisler Sharp partner Saba Bireda, who is representing the plaintiffs in the suit against Kraft-Heinz.

"DFEH seems really focused both on retaliation that they thought the company took against workers that complained, and just the insufficiency of their human resources [and] anti-discrimination policies and practices," Bireda said. "They just essentially are alleging there was kind of no response, even though they had so, so many complaints."

Tesla countersued the CRD in September, alleging it violated state procedural law.

The automaker didn't respond to requests for comment about any of the three lawsuits mentioned in this article.

A case management conference in the CRD's case is scheduled for Jan. 11.

The case is Department of Fair Employment and Housing v. Tesla Inc. et al., case number 22CV006830, in the Superior Court of California, County of Alameda.

Tesla, Staffing Agency Workers Press Race Bias Class Action

On Jan. 4 a California appeals court **rejected Tesla's bid** to force a proposed class of workers to arbitrate all their race bias claims, giving a green light to a proposed class action that could comprise as many as 5,000 people, according to the workers' lawyer.

The First Appellate District said in its ruling that although two of the plaintiffs had signed arbitration provisions when they signed on as full-fledged Tesla employees at the Fremont factory in August 2017, the pacts didn't preclude court claims stemming from the period before they formally signed on.

The suit, filed in November 2017, claimed its factory is a "hotbed for racist behavior" toward Black employees, and racial epithets were frequent.

The proposed class includes workers who were at Tesla after 2016 for some period of time when they weren't covered by an arbitration agreement.

J. Bernard Alexander, who's representing former Fremont factory elevator operator Owen Diaz in a separate, high-profile race bias case against Tesla, said the company hides its race discrimination against employees with arbitration agreements. He pointed to the Vaughn and Diaz cases as crucial in shining a light on the issue.

"Normal companies — companies that are not run by Elon Musk — would have resolved these cases and fixed their workplace," Alexander said.

A case management conference is scheduled for Feb. 15 at the trial court in Alameda.

The case is Vaughn et al. v. Tesla Inc., case number A164053, in the Court of Appeal of the State of California, First Appellate District. In the lower court the case is Vaughn v. Tesla Inc., case number RG17882082, in Alameda County Superior Court.

Tesla Faces Damages Retrial After \$137M Award Nixed

Owen Diaz, the ex-Tesla subcontractor who sued for race bias and won a staggering \$137 million jury verdict in 2021 but **later saw that amount slashed** to \$15 million, **is set to get a damages retrial in 2023.**

No matter what the final award ends up being, Reddock-Wright, who works as a mediator, said Diaz's case has already made waves.

"I know that verdict and others have gotten the attention of corporate America. And when I'm in a mediation, often a company might, their attorneys at some point might say, 'Well, this is no Tesla case,'" she said.

"So I definitely know the litigation in this area is making a difference," Reddock-Wright continued, adding that attorneys and companies tend to measure the issues alleged in their own cases against Tesla's as if with a yardstick. "I see it making a difference in mediation and settlements every day."

Diaz's retrial is scheduled for March and will be before a new jury. Though Tesla had also tried to get a retrial on the liability issues in his case, U.S. District Judge William H. Orrick denied the request.

Diaz had sued in 2017, saying he felt threatened while working at Tesla's factory in Fremont, California, after a supervisor said a racial slur more than 60 times and told him to "go back to Africa."

The case is Diaz et al. v. Tesla Inc. et al., case number 3:17-cv-06748, in the U.S. District Court for the Northern District of California.

Ex-Kraft Heinz Workers Say They Faced Years Of Racism

In August 2021, a trio of ex-employees at a Kraft Heinz Foods Co. plant in California **filed a federal lawsuit** seeking at least \$30 million in damages for what they said was years of racist taunts, threats and discrimination at the hands of their co-workers and management.

The case is currently in discovery, with a pretrial conference scheduled for January 2024. Sanford Heisler Sharp and Bireda are representing the workers.

The plaintiffs, all of whom are Black or of mixed race with Black heritage, claimed they were repeatedly victimized in numerous ways at the company's Tulare plant, including being called the n-word in written notes, receiving death threats, and having their cars vandalized and swastikas drawn on their lockers.

Plant managers, corporate management and the human resources department repeatedly declined to initiate meaningful investigations of the incidents, according to the suit.

Travis Gemoets, a partner at Jeffer Mangels Butler & Mitchell LLP, said the takeaway from the Kraft-Heinz case for employers is to take allegations seriously, and in the case of big companies like Kraft-Heinz, to bring in a third party for an investigation.

"Especially if you've got multiple people making claims of the same sort of discriminatory and harassing conduct taking place in the same facilities, you have to do your investigation," he said.

When complaints were made, the workers were told "keep their heads down or else they could join the unemployment line," according to the complaint, which also alleged that the plaintiffs were denied promotions and subjected to heightened scrutiny and less desirable assignments after they complained about the incidents.

Kraft-Heinz did not respond to a request for comment.

The case is Alex Horn et al. v. Kraft Heinz Food Co. LLC, case number 1:21-cv-01258, in the U.S. District Court for the Eastern District of California.

Ex-Apple Lawyer Sues For Unfair Firing After Co-worker's Alleged Threats

A former Apple patent lawyer **sued the tech giant in December 2022** alleging the company unlawfully fired her, an Asian woman and single mother with severe anxiety, after she reported a previous relationship with a white male co-worker who became abusive and made death threats.

Jayna Richardson Whitt started as Apple patent counsel in 2006 and worked her way up to Director of IP Transactions in 2012, according to her complaint, filed Dec. 20 in California state court. She lodged a host of claims, including race, gender and disability discrimination and a hostile work environment in violation of California's Fair Employment and Housing Act; whistleblower retaliation; and wrongful termination.

Whitt's complaint said she experienced extreme domestic abuse at the co-worker's hands. At one point, Whitt had provided her employer "a video of her abuser putting a Glock to his head along with other chilling evidence of death threats and terrorization," she said. Whitt didn't name the co-worker, whom she said was also a lawyer for Apple.

In April 2021, Whitt told her manager she was facing "digital terrorization" and that private company information might be at risk. But Apple failed to adequately investigate and even shared her complaints with her alleged abuser, she said.

The investigation "essentially consisted of interrogating the male colleague and Plaintiff, only to report that Plaintiff's situation was not Defendant's concern," Whitt said.

Gemoets said that while Apple has dealt with discrimination claims before, the Whitt case is different.

"The notion or the allegation that Apple didn't do anything to protect her – and in fact sort of punished her, is what she alleges — is what makes this particular lawsuit against Apple unique in many ways," he said.

"You've got two coworkers, one coworker alleging misconduct against another coworker — that's the company's problem. You know, they can't just say, 'Well, you guys were in a personal relationship, so you guys figure it out,'" Gemoets added.

An initial hearing in the case has been scheduled for April 24, 2023.

Apple didn't respond to requests for comment.

The case is Jayna Richardson Whitt v. Apple Inc. et al., case number 22CIV05369, in California Superior Court, San Mateo County.

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