

CORPORATE COUNSEL

Starbucks 'Race Together' May Brew Up Legal Risk

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March 23, 2015*



Photo: Diego M. Radzinski/NLJ

Customers ordering a latte at their local Starbucks may have seen something more than just their name scrawled on the side of the cup. A new initiative launched earlier this month by Starbucks Corp., at the direction of CEO Howard Schultz, has urged baristas to write “Race Together” on the outside of coffee cups in order to spur conversations between employees and customers about racial difficulties in the U.S.

The move appears to be a genuine attempt by Starbucks to build social awareness, but that doesn’t mean it’s guaranteed to go over well. The campaign has already seen detractors pop up in the media, but trouble of a

legal sort also may be simmering. In this case, the road to lawsuits could be paved with well-meaning corporate social responsibility.

According to Starbucks, Schultz began discussing the issue of race relations at an impromptu internal meeting he called at the company's Seattle headquarters in December. The forums then spread to several other cities, and concerns expressed by employees outside Seattle promoted Schultz to announce the creation of a companywide initiative called "Race Together." The program encourages baristas to start conversations with customers about racial issues through writing the phrase on a coffee cup or adorning it with a "Race Together" sticker. Starbucks has placed ads in major newspapers about the campaign, and partnered with USA Today to publish a special themed newspaper section.

Edward Harold, a partner at Fisher & Phillips and co-chairman of the firm's retail industry practice group, told CorpCounsel.com that although he sees the good intentions behind Starbucks' plans, he also sees the potential for problems. "I have always advised my clients to—just like at the dinner table—try to keep political discussions out of the workplace," he said.

For a barista encouraged to bring up race with customers, part of the issue lies in the fact that it's hard to know what sorts of opinions will come from the other side of the counter. A customer and barista might not agree, and considering how passions often flare around racial issues, the results could get ugly. "You can't expect that because your employees had this great discussion about race [with each other] that other people are going to engage in the same level of intellectual discourse," Harold said.

Furthermore, he said, under Title VII of the Civil Rights Act, employers must prevent harassment based on race and protect their employees from it—even if the people doing the harassing are customers. Some jurisdictions even have separate laws protecting employees from discrimination based on political views and affiliations. And of course, if the discussion escalates from a verbal disagreement about racism in America to a physical confrontation, employers could be facing a lot more trouble.

The issues don't end with customer/employee interactions. Jamie Dokovna, a shareholder at Becker & Poliakoff and a member of the law firm's business litigation practice group, told CorpCounsel.com that while trying to encourage a dialogue around race is an admirable move from Starbucks, it could have other unintentional negative consequences on the relationship between baristas and their co-workers or supervisors.

For example, Dokovna explained, a Starbucks employee might voice a political opinion around race that the supervisor objects to. “What if they start treating the employee differently as a result of it?” she asked. It’s also possible that if the employee gets terminated or put on a less-desirable shift, he or she might incorrectly attribute the action to discrimination—even if it is really attributable to something else, like performance—and that may lead to a lawsuit.

From a more strategic standpoint, there’s the problem of the company’s image. Dokovna said that advocating for better race relations is a definite positive, but it means that Starbucks and others that might try similar campaigns should be ready to have their own diversity practices examined and critiqued. “It also turns the microscope on you and if your company is the model or the standard by which others should be judged,” she said.

Diane Katzen, a shareholder at Richman Greer, similarly praised Starbucks for its decision to take on race, but emphasized that without some directives on how to carry out conversations with customers, the results might not be so beneficial. “There’s a real question about how these baristas will be trained or whether they will be trained to facilitate these conversations and what kind of sensitivity training is going to be in place,” Katzen noted. “One can foresee tempers flaring.”