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- Dace Blaskovitz: Welcome back to Money and Politics in Delaware. Katherine Witherspoon Fry, local attorney. Offit Kurman is the firm she's affiliated with. All right, we tackled Women's U.S. Soccer. We're doing SAT scores. I said UNC. It was not UNC. It was the lawsuit around UNC that revealed Asians and Asian-Americans have to have an SAT score allegedly of 1431, whites 1360, blacks 1229. From that, higher education did a massive trendline away from using race into what's called a diversity index. Then now, there's another chapter that says using only the SAT doesn't generate enough diversity.
- Dace Blaskovitz: All right Katherine Witherspoon Fry, you've got three to five minutes here. Tell the story.
- Katherine W.: So there are increasing numbers of lawsuits by these minority students, or organizations acting on their behalf, I should say, maybe spearheaded by one actual case, and it's gone after Harvard. We're still waiting on that decision, unbelievably after all this time. The trial was done in 2018. And then UNC is sort of in the midst of it right now, a big case against them.
- Katherine W.: So what's really going on is that colleges are realizing that this isn't a good idea just to consider race as the factor. So what the college board has come up with to keep themselves relevant, I believe, to keep themselves in the game and say, well you still have to take the SAT, and you still have to keep us involved. They've decided to create this score from a range of 1 to 100 points. 100 points means you've had the most adversity, and 1 point means you're totally good, you're all privileged.
- Katherine W.: And they have done a pilot program with 150 schools, last year. No, that's not true. They did a pilot program of 50 schools last year, and they're going to do 150 this fall. And among them was Yale, that's already been done, and Florida State. They both claim that the diversity of the classes increased. And Yale says that 20 percent of its students now, as of last admission season, are people of first generation college attendees, or they are in a poverty range.
- Katherine W.: So this score is going to look at things like where do people live, because it's going to look at crime rates of their neighborhoods. It's going to look at whether it's a single parent household. It's going to look at income. It's taking these things that have traditionally stood in for race in a way to make diversity, and trying to use that instead.
- Dace Blaskovitz: Okay, but smarty-pants, hang on. I live in a nice zip code, hypothetically, and have abusive parents. Or I go to an empty house in a poverty area, and use it as a mailing address. It seems like an invitation for the smart or greedy, to circumvent a system if they know what the system is. Seems like a lot of holes in this diversity index. Naïve or true?

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- Katherine W.: I think there are certainly holes. I mean, you're not going to look and see if somebody's really faced adversity in the alcoholic parent, or the mental illness, or this kind of thing, unless they write about it in their essays. I mean, some of these things are already included in essays. I'm the first person, I'm sure. I'm the first person in my family to go to school. This percentage of people are super poor, and we're all getting free lunch. I mean, I'm sure some of it's already worked in.
- Katherine W.: I do think this is a better idea than just using straight-up race, because that doesn't account for people of minority races who are wealthy and privileged. It doesn't account for all the different variations that there may be within racial groups. And this is an effort. It's a good idea. And you can't say that these are protected interests, protected classes. Whether you live in a bad neighborhood, is not a protected class, and you can discriminate against someone for living in a good neighborhood. As the law stands now, you can discriminate as much as you want against rich people, because that's not a protected class, how much money you make.
- Dace Blaskovitz: Gee whiz. Tick tock on that clock. Five minutes left. Because we're friends, we're chatting, I thought this Delaware HR law would be leprosy plague. I thought, ooo, get away from me. Instead, in our conversation, the light bulb went off. You are the messiah. Everybody wants to talk to you. So therefore, what is the new Delaware HR law, and why is it suddenly so popular?
- Katherine W.: So it's a new sexual harassment law that became effective the first of the year. It requires employers who have 50 or more employees in Delaware, to train, every two years minimum, everyone on sexual harassment prevention.
- Katherine W.: So not only does the law set forth the definition of sexual harassment, under Delaware law, which closely parallels federal law, case law, it also requires this training.
- Katherine W.: And so what I'm doing is I'm going into employer's workplaces and I'm giving this training. They're two levels required. For staff, you have to give a certain level of interactive training. And for supervisors you have to give additional training on prevention and detection of harassment, and on retaliation for prohibitions on retaliation, of course, and what constitutes retaliation.
- Katherine W.: And employers are using interactive methodology because they are required to. The statute says interactive. You can't just sit your people in front of a computer anymore and have them answer questions, nor just view a video. You actually have to have a real person there.

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- Katherine W.: And what my clients are finding is that bringing in a lawyer increases the gravitas of the situation, impresses people more. It's not just their own HR person doing yada, yada, yada. It's somebody who is an expert and hopefully can have a very meaningful conversation about the legal nuances, and there are a lot of nuances.
- Dace Blaskovitz: And let's do that. There's two that's going to jump out. And again, we've got time constrains. But if I understood our conversation yesterday, hypothetically, I could ask a co-worker out on a date once, but twice would be a violation. Did I get that correct?
- Katherine W.: Here's the thing. What I tell people is that there's a rule used by Facebook and Google, that I endorse. I call it the one-ask rule. And you ask someone out once, and when they say "No," that's the end of it. You need to stop asking them out. What could constitute harassment, would not probably be just a second time. It would be somebody who pursues this person, and persists in asking them out, and pursing a relationship with them.
- Katherine W.: And what I also point out though, is that this counts if you're off-campus. If you are at a bar, you're at a restaurant, you see this person socially on a frequent basis. If you're doing something that can be considered sexual harassment, including asking them out over and over, propositioning them, and you're bringing that back into the workplace, that's sexual harassment. A lot of people don't understand that.
- Katherine W.: I had a case where the head chef of a company, of a restaurant, was texting his prep cook, over, and over, and over again, all these suggestive things, and propositions. And you know, maybe he just didn't think that that was wrong, because it was outside of work. But I'm there to clarify that for people, that if you bring something into the workplace, that that's going to constitute sexual harassment. Also, be aware that you can subpoena the phone company and get every single text you ever wrote.
- Dace Blaskovitz: Let's do one more. We're going to run out of time. You've got one minute on this, no more. But I believe I was told. I do not know, but I was told, Christiana Care instituted a policy where you can't say anything. For instance, "You look nice today." Or you come in with a new hairdo, "You look nice." The problem I have with that one is, the minute you don't enforce it, then everything goes out the window, because then it becomes selective enforcement. You have not more than 45 seconds. What do you say?

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Katherine W.: Right. The policy that I say, is that you're allowed to have comments about people's appearances. But keep it reasonable. If you would say that to them when their mother was standing next to them, then say it, that's fine. What's really important is don't institute a policy that you're not prepared to enforce.

Dace Blaskovitz: With that said, Katherine Witherspoon Fry, she's a regular. You hear from her regularly. Let's give her a plug. I have the home number. I certainly don't want to give that out, so what's the work number quickly?

Katherine W.: Work number is 302-351-0902. Thanks a lot.

Dace Blaskovitz: Absolutely. When we come back from break, Charlie Copeland on fire today. Hold on, we will be right back.