



When Will Gig Employers Be On The Hook For Discrimination Claims?

Insights

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Just last week, Airbnb, an online marketplace for people to list, find and book lodging around the world, permanently banned a host in North Carolina after the host cancelled an African-American guest's reservation and used racial slurs against her. The host sent messages stating "I hate n-----s" and "this is the south darling." Screenshots of the ugly exchanges were then posted on Twitter by a friend of the guest.

This is not the first time Airbnb has made headlines regarding discrimination against African-American guests. A January 2016 study conducted by Benjamin Edelman, Michael Luca and Dan Svirsky at the Harvard Business School found evidence of "widespread discrimination against African-American guests." Specifically, the study determined that individuals with names perceived to be distinctly African-American names were 16% less likely to be accepted by hosts as identical individuals with distinctly white names.

Just over a month ago, Twitter hashtag #AirbnbWhileBlack went viral, prompting several African-American users to share their failed attempts to secure accommodations on the site. Most recently, on May 17, 2016, Gregory Selden of Washington D.C. filed a class action lawsuit against Airbnb alleging he was racially discriminated against on the site and his complaints were ignored by the company. Selden claims that in March 2015 a host denied his request for lodging due to his race, which was apparent from his profile picture. Selden maintains that once he reapplied for the same lodging using two imitation Airbnb accounts with profile pictures of white men, both accounts were accepted by the host. He is suing Airbnb on behalf of "others similarly situated" whose rights, he claims, were violated under Title II of the Civil Rights Act of 1964, 42 U.S.C. § 1981, and the Fair Housing Act.

This lawsuit certainly highlights the dangers of civil rights and public accommodations claims that gig employers will continue to face in the future. While it is far from clear how courts will apply the existing 20th century civil rights laws to our new gig economy (or whether the legislation will eventually be amended to account for the 21st century economy), one thing is clear: gig employers need to protect themselves from these types of claims.

Implementing an anti-discrimination policy for users, while undeniably necessary, is not enough. Gig employers must evaluate their platform and practices to determine whether their actions actually increase the likelihood of discrimination. For example, companies should assess whether

actually increase the likelihood of discrimination. For example, companies should assess whether requiring users to reveal their names and post pictures of themselves is essential to their business. Moreover, and especially in light of information evidencing certain disparities, gig employers should consider utilizing a system to monitor its users and determine whether any users are discriminating against a certain class of individuals. Most importantly, when complaints are made, gig employers must promptly investigate the situation and take necessary action when the investigation reveals that discrimination occurred.

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