

Google's firing of Damore in 'monoculture' case found legal

February 19 2018, by Josh Eidelson, Bloomberg News

Google's firing of an engineer over his controversial memo criticizing its diversity policies and "politically correct monoculture" didn't violate U.S. labor law, a federal agency lawyer concluded.

Statements in James Damore's 3,000-word memo "regarding biological differences between the sexes were so harmful, discriminatory, and disruptive" that they fell outside protections for collective action in the workplace, an associate general counsel for the National Labor Relations Board wrote in a six-page memo disclosed Thursday.

Damore withdraw his complaint in January and his lawyer has said she's focusing instead on the engineer's lawsuit accusing the internet giant of harassing him and others over their conservative political views.

When he was dismissed in August, Damore accused Google of violating the employee right to engage in "concerted activity" to address workplace issues, a category which the [labor](#) board has found can include forms of activism ranging from lawsuits to strikes to [social media posts](#).

"Much of" Damore's memo was probably protected under the law, the labor board's attorney, Jayme Sophir, said in the Jan. 16 memo. But Sophir went on to find that Google discharged Damore only for his "discriminatory statements," which aren't shielded by labor law.

Because companies have a duty to comply with equal employment laws

and an interest in promoting diversity, "employers must be permitted to 'nip in the bud' the kinds of employee conduct that could lead to a 'hostile workplace,' rather than waiting until an actionable hostile workplace has been created before taking action," Sophir wrote.

The company "carefully tailored" its messages in firing Damore and in addressing employees afterward "to affirm their right to engage in protected speech while prohibiting discrimination or harassment." Google also disciplined one of Damore's co-workers for sending him a threatening email in response to the memo, Sophir said.

Fired Google Engineer Faces Headwinds Seeking Legal Recourse

Google declined to comment on Sophir's memo. Damore's attorney didn't immediately respond to a request for comment.

The labor board lawyer's conclusion is "consistent with board precedent for decades, which has viewed speech which creates a hostile environment likely to produce both discord and divisiveness as unprotected," said William Gould IV, who chaired the board under President Bill Clinton.

"In the course of protesting working conditions you can be profane and aggressive and unpleasant, you can be militant, and it's still protected," Gould said. However, he said, "What separates this is its derisiveness and stereotypical characterization of one gender."

(With assistance from Hassan Kanu and Ellen Huet.)

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