

- Speaker 1: Welcome to the performance review, Greenburg charts, California labor and employment law podcast, where we discuss a review for the trends and topics for California employers as host Ryan Bykerk and Phillip person.
- Speaker 2: Welcome back to the performance review. Uh, our guest today is Cherise Latortue, associate general counsel with Flynn restaurant group. She's a good friend. She moved to Oakland and she loves it so much. She's we were talking offline [00:00:30] about how there's so much great food for her to eat, but separate from the food she's uh, please describe your role at Flint restaurant group. So I
- Speaker 3: I'm the primary employment counsel at Fenn restaurant group. We have about 1200 restaurants and 33 states, which gives us about 40 to 50,000 employees. And I help the company maintain compliance with regards to all those 50,000 employees in all aspects [00:01:00] of employment. And I'm also litigated and I litigated my current position. I helped the company defend against various losses coming up in the employment context across the nation. Wow.
- Speaker 4: Uh, that's a lot of employees. It sounds like you are plenty busy. So really thank you so much for making time to be on our podcast today. It's it's an absolute pleasure to have you, so thank you. This is part two of a two part series that Phillip and I are doing on, on diversity equity inclusion, social justice. And [00:01:30] since this is the performance review where we talk about all things, California employment, really why all those things matter to California employers. So I think for today's episode, what we want to do is just kind of start with a really big picture. Just kind of, why does this matter? We're going to consider a couple of laws, a piece of legislation and an executive order that's now been repealed, and then we'll transition into maybe discussing employer policies. And then finally about how that impacts company culture, how does the [00:02:00] policy actually turned into a company culture issue? So with that, I guess I'd like to start really just with big picture and get your take. So Cherise and big picture. Why should considerations of diversity, equity and inclusion be on a California employer's radar
- Speaker 3: Should be on every employee is Raider and in California, particularly because employees are human. And I wholeheartedly believe that diversity and inclusion and a focus on social does justice allows [00:02:30] employees to be human in the workplace. And when we allow them to be who they are, and I don't like using the word authentic because I think everyone should come as they are. It's actually, uh, my doormat as calm as you are, it increases profitability. It increases engagement. It reduces employee turnover. And then for my company, particularly in the restaurant industry, turnover is one of our biggest issues. And we want to make sure that want to [00:03:00] stay there. Long-term want to grow with the company, want to be promoted within the company because it makes great profitable business. And so when you allow employees to be who they are, where they are, including in the workplace, it makes a huge difference to the employee morale. And then the bottom line, really for the business. And to add
- Speaker 2: On to what Cherise said, this is the second time we're doing this topic because it was so nice. We had to do it twice, but honestly I echo everything that Cherise said, one, [00:03:30] there's a human aspect to it, right? Everybody wants to be able to work in a

workforce where they can be themselves, but they can also appreciate other ethnicities. Other backgrounds on top of that is it makes financial sense. Not only, no matter what employer you are, you're going to have a more diverse pool of employees and workers working for you, but also your client base there. They're starting to look at you ever since, you know, the social justice movements, [00:04:00] people have been demanding more from their employer and also their, uh, their, uh, servicers. So think about that. And just the benefits that come with being a diverse workforce.

Speaker 3: We are a customer facing industry. Our clients matter, our guests matter. Like we want all guests to have an experience, you know, not just to come in one day or do something and leave. We want them to be coming, [00:04:30] you know, tomorrow on the day after and months at a time. And so we want to be able to cater to a diverse population. It's our customers are not homogenous and all employees should not be homogenous and the company shouldn't be homogenous. Got

Speaker 4: It. So let's maybe look a little bit at those two pieces of legislation that I mentioned earlier, Philip, maybe we could get started with AB 9 79. Last

Speaker 2: Time we discussed AB 9 79. It's a recent legislation requiring a company to meet certain diversity metrics [00:05:00] with respect to its board of directors. In the next couple of years, it really applies to public companies in California. Is that something that has been on Flynn restaurant groups, radar prior to the passage of legislation, even if it doesn't apply to you guys, have you guys thought about that legislation?

Speaker 3: I've been thinking, not specific about the legislation because we're not a public corporation, but the political environment, social environment has made its way to the top executives [00:05:30] in the company. And we've been thinking about ways and how we can engage our employees top to bottom in a way that they feel comfortable and what are the company's areas of opportunities. So I think it was an outcome of the black lives movement in the past couple of years where the executives, including Greg Flynn opened up a town hall where all employees were encouraged to attend and I'm talking restaurant level employees not look above store level employees. [00:06:00] And he listened and I mean really listened to what employees wanted to see in the company and what he walked away from that town hall with was we need to increase diversity at the general manager level and above because we want employees to see the people that they want to aspire to be, to be in those positions, to be general managers, to be area directors, to be executives.

Speaker 3: And we saw an area of opportunity within the company itself. And so [00:06:30] the VP of HR, um, Betsy Macado, they put together a fly program, which is the Flint leadership initiative, which specifically targets are under-representative communities in the country, which are, um, Hispanic, Latinos and all black employees, and specifically train them into leadership positions. So they can be promoted within the company because we realized that that was an area of opportunity and it starts at the restaurant level, but it goes all the way up. Like I, myself, [00:07:00] I identify as a black Caribbean woman who now lives in California, practicing law. And so those things are important to me because I, now I am now in a position where I am vocal about what our company looks

like, but also what our partners, our external partners look like. So yes, it's been on our radar for quite some time.

Speaker 4: And Cherise, you talked a little bit about this, even in that answer, right. About why does diversity at the board of directors level is important? Because in part, I think [00:07:30] you mentioned it gives the rest of the organization. There's like an aspirational element, right? Where you can look up to these people who are leading now to show how other people who identify within those same groups can sort of rise into leadership levels. Are there any other benefits to having really that top level board of diversity or starting that top level? Um,

Speaker 3: Yes.

Speaker 4: Yes. You're anticipating my question. What, what are those benefits? [00:08:00] And thank you

Speaker 3: Only for the inspirational and motivational aspect, but in order to operate in the interest for like a board of directors, you know, their interest, their job is to the shareholders. They do the customer, the clients. If you don't have a diverse board, you're not going to have diverse thinking. You're not going to have innovative thinking and you're not going to keep up with the technological and social changes that are going on in the marketplace. And as a restaurant company, we want to make sure that [00:08:30] we're moving in the same time with what our customers and what our clients are asking for. Right. But if you don't have that level of thinking that diverse and cultural thinking at the top level, then you're not going to be in a position to change and move as quickly as the market is moving, especially with the advent of social media where, you know, guests will come on social media in a heartbeat before they even call like the hotline to complain about something, they will go immediately to social media. We need to have the people at the [00:09:00] top level. We're thinking about those things anticipating and making, implementing the policies and procedures that will be able to address those issues before they come up. Got

Speaker 4: It. Yeah. Thank you for that answer. And for throwing me a lifeline on my terrible question,

Speaker 2: That's what Cherise here for. She fixes everything. And in that same, in that same vein of you fixing everything I want to ask, this is how do companies make systemic changes to include more individuals from [00:09:30] underrepresented communities in leadership positions? So fix that,

Speaker 3: Isn't that the, the decade old question or decades old question that we've been battling with, like I've been practicing law for 10 years or so. And I feel like we are having the same conversation. Yeah. Is the question, um, to be quite frank, I think we need to be deliberate and definitive define in very specific terms. [00:10:00] What does diversity mean? And it can't just stop at diversity. Like you can't just say, oh, we're going to recruit from underrepresented communities. And now our percentages look good. Right? It has to be that inclusion aspect that making everyone feel like what they bring

to the table matters. What do you consider to be a qualified candidate, right. Conscious look at, you know, your job experience because that is not the same across the board for everyone, especially in underrepresented communities, what are the qualifications? What are the experience?

Speaker 3: Can they bring to the table [00:10:30] that will help the company move forward? Um, and then be deliberate, understand that there's a long way to go and make a deliberate effort to get there. Like, I think there's a lot of the, how we approach diversity and inclusion, how companies have been approaching it, uh, in the past, as long as I've had a career is it's almost apologetic. Like I am sorry that we have to talk about this and it shouldn't be apologetic. It should be deliberate. It should be frank. It should be open, should be honest. [00:11:00] And it should make those who are in a status quo positions, uncomfortable. If you're not uncomfortable, in my opinion, you're not doing it right.

Speaker 2: I think that's the quote for the episode. If you're not uncomfortable, you're not doing it. Right. Uh, and, and, and on top of that too, is not only just recruiting them, it's also keeping them there so that they are feeling that they are contributing to the organization, but it's just my 2 cents. Right. And that's

Speaker 3: Where the inclusion comes in. There'll be tension [00:11:30] part. I think we've been focusing so long on the recruiting that we've lost sight of the retention.

Speaker 4: Yeah. Okay. Well, well, well put, and we're always looking for a S put stuff to put on t-shirts, that's, that's another one. I mean, I think you really summed that up. Well, so on our last episode, we discussed, uh, president Trump's executive order 13, 9 50, that president Biden has now repealed. And we're not going to go into big in-depth discussion of that. If you want more on that, that's on our prior episode, but just generally speaking, that order prohibited the federal [00:12:00] government and federal contractors from providing certain types of training, as it related to race and gender, including unconscious bias training, and a lot of other, uh, just sort of related types of training. And we, we know Phillip and I, and just from talking to employers that that's an order that caused employers to ask a lot of questions. Like, can we, can we train on unconscious bias?

Speaker 4: Can we train or discuss, you know, microaggressions, cultural differences? You know, the extent to which the playing level is, you know, the playing field is level or extremely tilted or [00:12:30] otherwise. Um, so I, I know it's an executive order that caused a lot of people, um, just to really discuss all these issues. I don't know that the order directly impacted Flynn restaurant group, cause you may not be a federal contractor. Right. But is that something that you discussed and, and frankly, even if you didn't, we'd, we'd just love to get your thoughts on that order. Um, and well, and the fact that it's now of course been repealed,

Speaker 3: Never had to discuss it. Um, we do not, as you mentioned, we do not [00:13:00] have any federal, uh, contracts currently, but had I, if I were to face this issue, I would have advised our HR managers as well as our operations, um, executive order aside, there are

also state laws that would require anti-discrimination anti harassment training. And a good training is one that touches on unconscious bias and systematic discrimination. I've had the pleasure [00:13:30] of having to train employees in states where the laws are not as strong if you will, as California. And I am able to talk about these things, particularly in the restaurant industry, where a lot of our employees do come from underrepresented communities, and we want to make sure that they feel comfortable in the workplace. And to have that conversation with their managers where, you know, the first thing out of their mouth would be, well, I didn't mean to be racist [00:14:00] or I am not racist, or I'm not discriminatory.

Speaker 3: And in my role, not just as the company's attorney, but also the company's advisor and how to create a better workforce, a more comfortable workforce is being able to tell that manager that it's not necessarily that you intended it, but how, what you're seeing comes from a place of privilege comes from a place of discrimination. You don't know how the person, the other end is receiving it. So a short answer to a very, [00:14:30] uh, long and complicated. And so that if we had more time, of course, we can talk about this for hours at a time, I would have ignored such an executive order because it beholds the company to make sure that the workplace is safe and not subject to hostility. And you can talk about intentional discrimination, but that doesn't really get to the root of a lot of the issues that we're seeing in the workplace.

Speaker 3: It's these microaggressions, [00:15:00] it's the unconscious bias that the person who may be inflicting the harm and not be aware of it. So I, you know, I would, you can fold it in, into training. You can fold it in to how you performance manage and employee based on what it is you're seeing in them. Like, are you saying that they're not a hard worker because they're not coming to work all the time? Well, did you ask them why they're not coming to work all the time? Did you ask them if there's some issues at home that they're dealing with? Uh, it could be that they are responsible [00:15:30] for taking care of their elder parents or an extended family, ask these questions and get more information from them, as opposed to immediately discount them as a lazy worker or someone who may be on drugs. Like we get that a lot instead of asking the real questions. Because again, like I've said, I think the common theme with all my answers, employees are human and we need to always reach the human aspect of our labor force. And

Speaker 2: That fight has been going on for awhile in relations to these [00:16:00] types of trainings. And your, your last response may have touched on this already about why it's important, but can you talk a little bit more, I know you said you can go for hours, but we don't need hours about the benefits of such training. Yes.

Speaker 3: A couple of things like the bottom line for the company. If you want to talk in a language that makes sense to the company profitability, like if you have high turnover and you have a high, um, [00:16:30] percentage of workers comp claims because of stress induced by a hostile work environment, because of these macroaggressions, these things that will eat away with, at you on a little bit every day, which I was at a conference, a webinar the other day, and someone referred to, you know, those microaggressions as racial abuses, like those little things that knicks away at you every

day, it may not be in a, in a vacuum. It may be enough, but those little microaggressions eat away with you every day, create [00:17:00] stress in your personal life and in your work life. And it hits the company where it hurts money. You invest all this money into a recruiting and training.

Speaker 3: And within a few months, employees are leaving and they're going to work for your competitors, right? There's a brain drain, there's a talent drain. So if you don't address unconscious bias, you're not really creating a safe and healthy work environment for your employees, which means that you're going to end up losing money. If it's not with inability to [00:17:30] attract the client base that you want in ability to attract the customers or reach a vocal marketplace, that's changing every day, or it could be lawsuits, let's be real losses. I'm a lawyer. This is what I deal with every day. You're going to end up losing money. If you don't address these in the beginning and systematically Cherise,

Speaker 4: Do you think that there are some biases that are maybe industry specific? So for example, if I'm an employer looking at the different types of trainings to provide, are there maybe some that for Flynn restaurant [00:18:00] group are just going to be front and center, but may not be as important in a different industry?

Speaker 3: I will say yes, but with a small why? Because I think that all sorts of, uh, discriminatory or harassment training is necessary in the workplace, regardless of what industry you're in, in my professional career, I've seen a significant rise of sexual harassment or sex, gender related claims in the restaurant industry, which I think can be attributed to several factors, but I will touch on too one employees. [00:18:30] And the in restaurant industry, um, tend to be low, uh, wage earners, and they come from marginal underrepresented or vulnerable communities. So there's less willingness to come forward and report any concerns in the workplace. And relatedly, there's a power dynamic at play that can lend itself to intimidation. That say, for example, uh, you have a company that's operating 24 hour restaurants where they are gravy at shifts, and they're only two employees working those shifts, um, particularly where [00:19:00] one of the employees is a manager in that situation.

Speaker 3: There's high opportunity for inappropriate and unwelcome conduct or comments to go and report it, particularly without proper training time of management and employee oversight. Um, and, and, and for the reasons that I've listed this before, this is where, you know, we can see a lot of these issues coming up, um, given the, the position of power that the manager may hold, whether impliedly [00:19:30] explicitly, um, the employee in that situation may not feel comfortable speaking up about inappropriate comments or conduct. And these are type of issues have been prevalent in the restaurant industry. I've been practicing for about 10 years now. They're not talked about as much particularly during the me too movement. Um, but, uh, they are there as indicative by the numbers and types of losses popping up all over the country. For example, you know, UBC what McDonald's had been facing in the past couple of years, this is [00:20:00] why I think there's been a push in several states, including California, Illinois, to make sexual harassment training specific to the industrial Misha company operates. But more than that, regardless of the legal obligation to do so, I think it would

be in company's best interest to take a look at their written policies and their training to make sure that it truly captures the unique issues that may be specific to the environment in which the company operates to make sure that they're addressing concerns [00:20:30] that the employees may be facing.

Speaker 2: Another issue to talk about is that I've noticed that some employers face resistance from people who either don't believe in implicit bias or feel marginalized by such trainings. Do you have any strategies or solutions for employers facing such hurdles or how to respond to that?

Speaker 3: Do you want my blunt take on it? Short answer is yes. Yeah. [00:21:00] Yes. So the implicit bias trainings that I have attended, and I, that I've thought failed significantly of those that do not address the issue head on, and they cater to what I like to call. And, you know, a term within all communities is white fragility. You don't address that head on you, you approach. And I think I mentioned, it's kind of, you know, you approach it with, I'm sorry, I have to do this. I'm sorry we have [00:21:30] to talk about this, but it's one of the things we need to talk about. Let's just check that box and keep it moving. That is where implicit bias trainings fail and those who don't believe in it. I think that there should be some dig deep enough to why they're with the company in the first place, right?

Speaker 3: You need to face these things head on, especially if you want your company to grow and move in the new millennial, like the, your customer base changing your clients are changing. Look at the movements, right? People are very vocal about what [00:22:00] it is they want to see in their personal life, what they want to see at work. Implicit bias training. We'll do a lot with law enforcement. So you don't have this, you know, like I have two boys, two black boys, I'm afraid every day when they go out into the street, because they might be, you know, considered criminals right now. They're cute. They're small, they're young, they're cute. And a couple of years they could be considered criminal just because they have a hoodie on that's implicit bias. Why do you think that black and brown [00:22:30] bodies are inherently criminal, even though you say that you're not racist, so we need to address the issues head on. And if you're getting pushback one as an employee consider, do you want to even work with a company like that? You vote with your voice, but you also vote with your money, take your business elsewhere, take your talent elsewhere. And if the company sees that and they're losing employees and they're not addressing the issues head on, eventually it will hurt them where it matters in their purses.

Speaker 4: Thank you for that Cherise, [00:23:00] you know, as you point out, we could probably talk about this for four hours. We certainly could. I, I want to talk, uh, like kind of transition and just talking policies and practices. So, um, does plan restaurant group have some policies and practices that are specifically aimed at fostering diversity and inclusion? And if so, are there a couple you could highlight to say these have been our most successful initiatives?

Speaker 3: Um, yeah, so we've, I know this podcast is really about California employment [00:23:30] and, you know, there are so many laws in California. Um, it's not just about

what the law requires. Um, but what's, what's good and what's right for the company. So, you know, you have the anti-discrimination policies, you have the anti harassment policies, you train on them and you make sure that on a day-to-day basis, managers and employees, a board adhering to those policies. Um, well, one thing we've had to implement in the recent years that is not necessarily [00:24:00] required in states outside of California, but which we do anyway, because it's the right thing to do. Um, we've been seeing a lot of, uh, an uptick in matters with regards to transgender or transgender employees, especially when they're going through, you know, the agenda changes, um, something as simple as can I change the name on my name tag?

Speaker 3: And we had seen like the legal department, I say we build legal department. We had seen, um, some pushback from management [00:24:30] because you know, they're in this, uh, I don't want to say bubble, but it's like, you're in this box where you apply to the company using this name. This is your government name. This is the name on your ID. Why do you want to change your name? And so we've put together like a step-by-step process of how to respond to those kind of questions, how to respond to LGBTQ plus community, um, and how best to make sure that we are the place, the premier employer in [00:25:00] the, in the market. Um, and, and that's how I'd been working. This has been working because we are able to then respond to the employee in a way that's human and respectable, but also show the manager, like, why would you want to lose an employee because of who, how they identify, like that's talent going out the door and going to work for your competitor. It makes no sense to do so. Um, so it's been working for us. It's still a work in progress, but it's getting there.

Speaker 2: Definitely understand. Um, I think [00:25:30] we also need to talk about the culture here. Uh, does he agree, Ryan?

Speaker 4: Yeah, for sure. And, and, and we draw a little bit of a line here, but it's a soft line, right? Because there's a feedback loop between policies and culture, of course, but just talking a little bit about culture. I think some companies do have good intentions, but they don't end up actually crossing the finish line there. They fail to either implement policies or the implement them and they aren't successful. Could you talk for just a little bit about what are maybe some of the reasons policies with perhaps [00:26:00] good intentions don't ultimately end up being successful?

Speaker 3: If the reason for the policy says to check off a box, good intentions aside, if it's just to check off a box and say, I comply with the law, it's not going to get very far because a policy is one thing. How do you enforce that policy? Is that policy enforced consistently? Is it enforced across the entire company? Not just at a certain level and not in a certain department, but top down, right? And this is where it comes back, full circle to [00:26:30] your leadership and your board of directors need to live what it is they're preaching. You can't just put a policy together, have an employee sign off on it and expect miraculously that things would change. Then you have to live by that policy. And so when issues come up, whether you think it's minor or not, you treat that issue with respect. You ask the questions you need to ask and make sure that one, your policy is actually addressing the issue that you wanted to address, because sometimes it doesn't [00:27:00] right, all these issues that are concerning to your employees. And if not, can

you change the policy and change the culture and change the people that you're hiring in these managerial positions, in these leadership positions who will actually get the company to where you want it to be. And again, don't be apologetic about it, state your purpose, state your mission, and live by it.

Speaker 2: And I agree with not being apologetic about it, and I'm not going to be apologetic about this next question, because it's going to be pretty tough. [00:27:30] So a lot of companies, they struggle with retention despite having these diversity and inclusion policies and programs. That seems like every company has social Reece since you know everything, and I'm not apologizing for it. What can employers do to encourage retention of diverse employees?

Speaker 3: Um, I, I will speak from a personal space here. Um, why I like working at this company, um, create [00:28:00] a safe environment where employees can be who they are. Like, I don't have to leave my personal life at the door, right? When I come into work, when, you know, black lives movement was at a height, and I'm not saying that it's over, but when it was at its peak where every all eyes were on the black lives movement, and I was able to come to work and say, this is affecting me as a black woman. This affects me as a mother of two [00:28:30] black boys. This affects me and have been able to have that conversation with my colleagues, whether they understand or experience what I'm experiencing or not the fact that they listened, they responded and they responded with compassion and empathy made a huge difference.

Speaker 3: I didn't feel like I had to put on a different face when I went into the office. Um, especially, you know, during the pandemic, when you're working from home, there's no separation between home life and work life. [00:29:00] I can still be myself. And I think that companies who want their, you know, their D&I inclusion, their D&I policies to work on one, to change the culture. Again, it goes back to not just writing something on a piece of paper and distributing it to your employees, make sure that you're living by what it is you say your, your mission statement is or what your goal is. And that comes back again. I think we can, you know, it always comes back to, are you, does your company reflect [00:29:30] what it is you want your company to be, or what your senior your company is? If you're saying black lives matter, but then you look up the leadership chain. There are no black leaders then does it really matter? Oh,

Speaker 4: Well, well put Cherise in fact, so, well, put, you actually answered the question I was going to ask next. So I'm going to, I, I don't know how you did that, but no, I'm gonna, I'm gonna pass it to Phillip to sum us up, Phillip. Yeah.

Speaker 2: Quick summary of what we talked about. We talked about AB 9 79, [00:30:00] which requires publicly held corporations to have a certain number of diverse board members talking about it on the previous episode. And talk about it again today. We also talked about executive order 13, 9 50, which is now repealed, but it previously impacted how federal government and contractors provided diversity trainings. Like I said, it's been rescinded. So for those living under a rock, here's your update. Then we talked about various policies and initiatives and we really picked [00:30:30] Cherise's brain. And she gave us the answers to all the hard questions about implementing diversity policies and

programs, and really how to foster a culture where people can feel like they are included in the, uh, can be their, their, their selves at work. Um, and I think that's pretty much the summary right there.

Speaker 4: I think that that covers it well. And thank you. [inaudible] so much for being on this episode with us. We've absolutely just, it's been a pleasure having you on, so thank you for joining us. [00:31:00] Um, and really just on behalf of Phillip and I thank you all for listening. We appreciate you. Please join us on the next performance review podcast.

Speaker 1: [inaudible] this content is for informational purposes only and does not contain legal or other advice and or opinions [00:31:30] for more information, please visit B I T dot L Y slash GT law disclosure.