

Under the Radar: Visibility and the Effects of Discrimination Lawsuits in Small and Large Firms

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Abstract

Research on how discrimination lawsuits affect corporate diversity has yielded mixed results. Qualitative studies highlight the limited efficacy of lawsuits in the typical workplace, finding that litigation frequently elicits resistance and even retribution from employers. But quantitative studies find that lawsuits can increase workforce diversity. This article develops an account of managerial resistance and firm visibility to reconcile these divergent findings. First, we synthesize job autonomy and group conflict theories to account for resistance that occurs when dominant groups perceive non-dominant groups to be attempting to usurp managerial authority, in this case through litigation. Second, we integrate insights from organizational institutionalism, which suggests that highly visible firms seek to demonstrate compliance with legal and societal norms. Drawing on this theory, we predict that only large, visible firms will see increases in diversity following lawsuits, and, by the same token, that the most visible workplaces of those large firms, their headquarters, will see the greatest changes. We test our hypotheses with data on litigation and workforce composition from a diverse set of 632 firms that were sued by the EEOC between 1997 and 2006. This study shows that understanding the consequences of lawsuits across firms, and across organizations within them, is key to tackling workplace discrimination.

Keywords

civil rights, litigation, race, gender, organizations

Since it was first established in 1965, the Equal Employment Opportunity Commission (EEOC) has been the primary enforcer of employment discrimination law. For the past half century, the EEOC's weapon of last resort has been litigation, which is seen as a crucial outlet for workers to voice their claims, and potentially, receive redress. Yet research on the efficacy of this litigation yields conflicting results (Leonard 1990; Stainback and Tomaskovic-Devey 2012).

A growing body of scholarship, much of it qualitative research on the experiences of

the typical plaintiff, chronicles organizational resistance to, and dismissal of, worker complaints of discrimination (Berrey, Nelson, and Nielsen 2017; Edelman 2016; Green 2016;

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Roscigno 2007). In the wake of lawsuits, managers seldom perceive complaints as indicative of systemic workplace discrimination, instead interpreting them as resulting from a particular “problem” employee. Ultimately, these accounts present a pessimistic outlook on the capacity of lawsuits to bring about the kind of systematic organizational changes necessary to increase diversity and equality of opportunity (Berrey et al. 2017; Green 2016).

At the same time, recent organizational studies—mostly quantitative analyses of high-profile cases against large firms—paint a very different picture of the potential for litigation to bring about change. These studies generally find that lawsuit filings and resolutions generate *positive* effects on workforce diversity, effects that can extend beyond the target employer to others in the industry (Hirsh and Cha 2016, 2018; Kalev and Dobbin 2006; Skaggs 2008, 2009). The focus in this research on large firms and major cases corresponds with the EEOC’s own legal strategy of targeting highly visible companies, where legal action is thought to serve as an example that influences the broader corporate community.

How can we reconcile the finding that, in the average workplace, organizations resist the sort of changes that will increase equality of opportunity with the finding that lawsuits often lead to increases in workforce diversity among large employers? In this article, we develop a theory of organizational resistance and visibility to explain this discrepancy. First, we discuss how resistance to civil rights litigation—and to subsequent organizational change—is anticipated by both group conflict and reactance theories (Blalock 1967; Brehm and Brehm 1981) and law and society scholarship (Berrey et al. 2017; Edelman 2016; Green 2016). Second, we draw on institutional arguments suggesting that large, visible employers are most likely to take the steps to signal their commitment to equality of opportunity (Dobbin, Kim, and Kalev 2011; Edelman, Uggen, and Erlanger 1999; Hirsh and Cha 2018). Taken together, we

argue, these two insights can explain where and when lawsuits will promote organizational diversity. In particular, we suggest that in smaller firms, lawsuit losses will tend to incite organizational resistance to change and, as a result, fail to increase diversity—even potentially leading to retaliation against members of protected groups. In contrast, we expect that in the most visible workplaces—in the largest firms in the United States and particularly in their headquarters—members of protected groups will gain in demographic share following litigation.

To test these hypotheses, we use a national sample of 632 firms that were sued by the EEOC for discrimination between 1997 and 2007. Our analysis focuses on cases in which the EEOC was successful in obtaining some relief for plaintiffs, whether through settlements, consent decrees, or court judgments. These firms are much larger, on average, than the typical U.S. firm, but our sample contains more small and medium-sized firms than samples used in most previous quantitative studies (Hirsh and Cha 2018; Kalev and Dobbin 2006). We use panel-data models with fixed effects to estimate how successful lawsuits affect the share of White, Hispanic, Black, and Asian American men and women among managers and among professionals, two of the more visible and high-status occupational groups within a firm.

We find evidence that Americans indeed work in two very different worlds when it comes to the efficacy of workplace discrimination litigation (Cobb and Stevens 2017; Tomaskovic-Devey et al. 2020). Whereas women and people of color employed by the largest firms—and in particular those employed at their headquarters—are likely to see gains in managerial and professional jobs after their employers lose a case, their peers in smaller firms seldom see positive changes, and sometimes even suffer from retaliation. These findings help reconcile conflicting results from previous studies and contribute to our theoretical understanding of the differential effect of the law based on organizational characteristics (McDonnell and King

2018). Given that 99 percent of U.S. firms have fewer than 1,000 employees—and more than half of the U.S. corporate workforce is employed by such firms (U.S. BLS 2020)—understanding how lawsuit outcomes vary by firm and establishment visibility is indispensable to tackling workplace discrimination.

RESISTANCE TO CHANGE AND THE VALUE OF ORGANIZATIONAL VISIBILITY

A growing body of research on the effect of discrimination lawsuits in workplaces demonstrates that organizations often mount intense resistance to plaintiff complaints. This resistance is not only against the complainant's lawsuit (McLaughlin, Uggen, and Blackstone 2017; Nielsen and Beim 2004; Roscigno 2007), but also against the notion that the lawsuit is indicative of systemic problems within the firm that require increasing diversity and equality of opportunity (Berrey et al. 2017).

Managerial Resistance to Organizational Change

Managerial resistance to lawsuits can be explained, in part, by research on job autonomy and group conflict. First, research on job autonomy within organizations consistently demonstrates that employees oppose managerial efforts to control their behavior, resisting or outright sabotaging management's goals (e.g., Gouldner 1954; Hodson 1991, 1996). Similarly, self-determination theorists argue that individuals tend to resist outside efforts to change their behavior—a form of *reactance* in which individuals perceive external controls as threats to their autonomy and are motivated to subvert or undermine such threats (Brehm and Brehm 1981). Importantly, managers in firms facing a discrimination lawsuit, and in particular those who *lose* a lawsuit, may experience reactance when they perceive the lawsuit as just such an outside effort to control their behavior.

Whereas job autonomy theorists discuss resistance to outside efforts to change behavior in general, group conflict theories suggest resistance will be particularly strong when change is initiated by non-dominant groups. Specifically, group conflict theorists discuss the resistance that results when dominant groups perceive non-dominant groups as attempting to usurp their power in the workplace (Blalock 1967; Livingston, Rosette, and Washington 2012; Ridgeway and Kricheli-Katz 2013). Losing a lawsuit initiated by a woman or by a person of color may evoke strong resistance precisely because it combines reactance with group threat—that is, a subordinate group successfully using the legal system in an attempt to change the workplace (Kawakami, Dovidio, and van Kamp 2007; Silvia 2005).

Indeed, research on discrimination lawsuits consistently finds evidence that employers perceive lawsuits to be external controls that threaten their managerial prerogatives. For instance, interviews conducted by Berrey and colleagues (2017) reveal that managers perceive lawsuits as threats to their autonomy. In one case, a defense attorney described her clients as resisting any effort to change their practices: “The client's goals were to continue doing business in the way that they wanted to do business, and their goals were definitely achieved” (Berrey et al. 2017:158). Likewise, interviews show that even when managers state a commitment to fixing problems, they wish to do so at their own discretion, rather than under a court order: “Our philosophy is if we're wrong, we fix it. . . . And we fix those things, but we don't settle [lawsuits] very often and we don't lose” (Berrey et al. 2017:100). For these managers, losing a case means losing control.

By painting plaintiffs as isolated troublemakers, managers resist the message that plaintiffs hope to send: that the firm has systemic management problems requiring redress. As one corporate counsel recounted, cases are interpreted by employers as “meritless,” and defendants are generally “confident that such [discriminatory behavior] is

rare” (Berrey et al. 2017:189). Although some employers “acknowledged that there may have been a management failure, more often they blame the plaintiff or the plaintiff’s lawyer” (Berrey et al. 2017:105). For instance, in a complaint analyzed by Roscigno (2007:84), a plaintiff’s therapist testified that when the plaintiff complained of repeated sexual touching by a fellow worker, her HR counselor concluded the plaintiff “was part of the problem.” Managerial “dismissal” of “almost every real . . . claim of discrimination” (Berrey et al. 2017:189) results in resistance to organizational change, which undermines the opportunity for antidiscrimination litigation to increase workforce diversity.

In certain cases, organizational resistance to change can turn into retaliation against the plaintiff. As Berrey and colleagues (2017:108) report, workers who sue for discrimination are seen as opponents of management the minute they contact a lawyer. Executives and their attorneys often depict plaintiffs as “greedy,” “crazy,” or “mentally-ill”—“problem employees” who are “unworthy, misinformed, or malicious adversaries” (Berrey et al. 2017:169). Indeed, James and Wooten (2006) find that executives sometimes make public threats against plaintiffs and those who assist them. In a random sample of 2,000 employment discrimination cases litigated between 1988 and 2003, Berrey and colleagues (2017:57) find that retaliation is one of the top two concerns among plaintiffs, regardless of their race, sex, age, disability status, or national origin. Similarly, Byron (2010) shows that across more than 11,000 employment discrimination cases brought in Ohio, discharge is common, including retaliatory firing for filing a charge of discrimination. The EEOC’s own data show that nearly 60 percent of the 67,448 charges it received in 2020 included an allegation of retaliation for the initial complaint. It is not uncommon for employers to fight plaintiffs by retaliating against them, which can lead to decreases in workforce diversity due to the departure of plaintiffs and, potentially, those who sympathize with and assist them.

This research illustrates managerial resistance to taking the complaints of litigants seriously. By deriding, vilifying, dismissing, and, in some cases, even retaliating against plaintiffs, managers avoid acknowledging there is an organizational problem. Thus, the qualitative research on discrimination litigation supports the predictions of job-autonomy, reactance, and group-threat theories: lawsuits, and the change plaintiffs seek, will be met in organizations with resistance rather than reform.

Lawsuits and the Mitigating Force of Visibility

Whereas qualitative research documents managerial resistance to antidiscrimination litigation, many quantitative analyses of antidiscrimination lawsuits show *positive* effects of litigation for women and members of ethnic and racial underrepresented groups (e.g., Hirsh and Cha 2018; Skaggs 2008, 2009). Although many of the practices firms adopt in response to EEO regulations are merely ceremonial (Edelman 2016; Kalev, Dobbin, and Kelly 2006), research shows that lawsuits can lead to actual increases in workforce diversity. For one thing, lawsuits serve as the clearest signal a firm has actually broken the law (McDonnell and King 2018). In addition, employers see lawsuits as incurring significant, and predictable, financial and reputational costs (Edelman 1992; Helland 2006; Kalev and Dobbin 2006; Karpoff 2012), creating an “organizational crisis” (Wooten and James 2004:24) that results in a “big, huge bill” (Berrey et al. 2017:211). Consequently, lawsuits are likely to increase executive sensitivity to future legal risk (Edelman 1992:1550).

We argue that we should expect substantial variation in executives’ reactions to lawsuits, depending on the size of the firm. Research consistently finds that large, visible organizations are most likely to respond to new regulations with compliance measures. Large firms are more likely than smaller firms to install civil rights grievance procedures (Edelman 1990:1427; Edelman et al. 1999:450), hiring

and promotion rules (Dobbin et al. 1993), diversity training and taskforces (Dobbin et al. 2011:398), sexual harassment procedures and training (Dobbin and Kelly 2007), and equal opportunity officers (Dobbin and Sutton 1998).

Studies show that larger firms' greater sensitivity to the legal environment stems from their greater visibility to both civil rights regulators and third parties—including investors, social movement groups, and the media (Edelman 1992; Hirsh and Cha 2018; King and McDonnell 2012). First, the sensitivity of large firms to external scrutiny is not unique to civil rights legislation and has been found across a variety of regulatory arenas—including economic regulations and health and safety regulations (Bradford 2004; Brock and Evans 1986; Pierce 1998). In the case of anti-discrimination law, specific, size-based regulatory requirements render large firms more visible to regulators, and more likely to pay high costs for violations, than smaller firms.¹ For example, the EEOC explicitly focuses its regulatory resources on large firms so as to affect the largest number of workers—both workers at the firms targeted by lawsuits and those at other firms that take target firms as models (Anderson 1996; Blumrosen 1993; Graham 1990). Only firms with at least 100 employees are required to complete the EEOC's annual labor-force composition census, and those with fewer than 20 employees are exempt from most federal antidiscrimination requirements altogether (EEOC 2020a). When it comes to lawsuit damage awards, the Civil Rights Act of 1991 caps punitive damages at different amounts for different firm-size thresholds (EEOC 1991). And because pay-outs tend to be proportional to firm size, potential plaintiffs often have an easier time securing legal counsel for suits against large firms.²

Second, in addition to facing greater regulatory scrutiny, large firms may be more exposed to attention from investors (Carroll and McCombs 2003; Hirsh and Cha 2018). For example, Hirsh and Cha (2016) find that in a sample of 107 large, publicly traded

companies, share price dipped in response to discrimination lawsuits, indicating investor concern about long-term reputational damage. Heightened investor attention to lawsuits against large firms has been found in other realms as well. For instance, research on SEC lawsuits against large and small firms finds that investors and the financial press are more likely to ignore lawsuits against small firms (Elfakhani and Zaher 1998; Karim, Pinsker, and Robin 2013). Thus, in the wake of a lawsuit, executives in large firms may be more worried about demonstrating compliance to mitigate reputational damage.

Finally, large firms get more attention from the media and social movement groups. Large firms, particularly those with good reputations, are most likely to receive media attention for transgressions (Fombrun and Shanley 1990; McDonnell and King 2018). Press coverage can, in turn, draw attention from social movement activists, who tend to focus on big firms even when their transgressions are small (Bartley and Child 2014; King and McDonnell 2012). As King (2011:511) notes, “companies that are highly salient because of their size and reputational ranking, ironically, face the greatest risk of attracting movement attention.” For example, the social movement group Just Capital targets only the 300 biggest firms in the United States, advocating disclosure of workforce gender, race, and ethnic data (George et al. 2020). Large firms may also be more susceptible to internal pressure for equity from employees, as Cobb and Stevens (2017) detail in explaining lesser wage inequality in larger firms. By contrast, smaller firms are much less likely to be in the public spotlight, and thus “the worst offenders can often escape the notice of activists' protests if they are not highly visible” (Jackson et al. 2014:204). Taken together, this research suggests large firms will be more likely than small firms to respond to discrimination litigation by working to expand opportunities for women and workers of color.

We examine how firms respond to losing discrimination lawsuits by looking at changes in the demographic makeup of their

managerial and professional jobs. We focus on managers and professionals for several reasons. First, not only do these jobs tend to receive the most scrutiny from stakeholders and regulators generally, but after a lawsuit, the EEOC, court-appointed settlement overseers, and employers themselves typically focus on managers and professionals (Hegewisch, Deitch, and Murphy 2011; Herman et al. 2006; Williamson et al. 2002). Second, theories of organizational resistance suggest lawsuits will elicit the greatest reaction against women and people of color who challenge White men's dominance, which is more salient in high-status jobs. Finally, increased diversity in professional and managerial jobs is particularly important for diversity efforts more broadly. As prior research notes, women and non-White individuals in positions of power advocate on behalf of others, generating knock-on effects throughout their firms (Castilla 2011; Cohen and Huffman 2007).

Taken together, research on managerial resistance and on organizational visibility suggest firm size will moderate lawsuit effects:

Hypothesis 1: The effects of lawsuit losses on the share of women and people of color in management and professional jobs will depend on firm size; these groups will see gains in share in large firms but not in small firms.

Nevertheless, within large firms, we do not expect a uniform response. The same effect of visibility at play between firms may also be at a play *within* firms, particularly within large, sprawling organizations where enacting uniform policies presents a managerial challenge (Chandler 1977; Wezel and Ruef 2017). In particular, we expect to see different patterns in headquarters and non-headquarters establishments.

A number of factors render headquarters more visible than other establishments. First, headquarters house the most senior and most visible managers and professionals—including all corporate officers from the Chief

Executive Officer to the Chief Diversity Officer. External pressures, such as lawsuit losses, may cause firms to want to symbolize compliance by making visible changes in these more visible positions (Edelman 2016). Mun and Jung (2018), for example, show that pressures from foreign investors lead to increases in gender diversity in Japanese firms' top managerial echelons, most visible to investors, but not in the lower ranks.

Second, headquarters are the most visible establishments *within the firm itself*. New diversity policies and plans to implement those policies originate in headquarters. By contrast, satellite establishments are not only less likely than headquarters to carry out new company-wide personnel policies (Grant et al. 2010; Grant, Trautner, and Jones 2004; Osterman 1995) and pursue the firm's core values (Gupta and Briscoe 2020), they are also less likely to have knowledge of the content, and even existence, of new policies. For instance, some headquarters do not promulgate new company-wide HR policies to satellites; others devote little attention to explaining them (Tsui 1990). Indeed, establishment managers frequently refer organizational survey interviewers to headquarters because they do not know enough about corporate policies that apply in their own establishments (Tomaskovic-Devey, Leiter, and Thompson 1994). In summary, within large firms we expect post-lawsuit organizational efforts to increase diversity to be more effective within headquarters than in satellite establishments.

Hypothesis 2: Lawsuit losses will lead to larger increases in the share of women and people of color in management and professional jobs in headquarters than in satellite establishments.

DATA AND METHODS

To estimate changes in the gender, race, and ethnic make-up of managerial and professional employees following discrimination lawsuits, we combine a dataset on

discrimination lawsuits with annual data on firms' workforce composition.

Litigation Data

Generally, if an employee desires to bring a charge against her employer, she must first file a complaint with the EEOC. Based on the merits of the case, the EEOC may attempt conciliation. If that fails, the EEOC may provide the employee with a right-to-sue letter, initiate a suit, or join a suit brought by the employee and a private attorney. Importantly, the EEOC only files or joins cases it judges to have merit and views as potentially having broad effects (Schlanger and Kim 2014). Few charges eventuate in lawsuits—on the order of .2 percent (EEOC 2018).

The EEOC Litigation Database provides detailed information, collected by Pauline Kim, Margo Schlanger, and Andrew Martin, on 2,316 federal court cases initiated by the Equal Employment Opportunity Commission between October 1, 1997, and September 30, 2006 (Kim, Schlanger, and Martin 2013). The database contains the full universe of EEOC lawsuits that were intended to benefit more than one employee ($n = 1,406$) and a random sample of the remaining EEOC cases ($n = 910$). It includes detailed information on case characteristics and litigation events coded from case documents—including dockets, consent decrees, and other files. For our purposes, what is particularly relevant is that the database contains more small and medium-sized defendants than have typically been analyzed in studies of antidiscrimination lawsuits.

The EEOC Litigation Database is largely composed of cases in which plaintiffs obtained relief of some kind (about 85 percent of cases).³ We therefore focus only on the subsample of cases that resolved in favor of the plaintiff, which we define in either of the following two ways. First, a case can resolve in favor of the plaintiff when there is a settlement; that is, when the defendant agreed to provide some relief to the plaintiff. A settlement can be agreed on by the parties out of

court or can be reached in court, in the form of a consent decree, where the court may maintain supervision over the implementation of the decree. Second, a case can resolve in favor of the plaintiff with a court judgment.

In our sample, consent decrees make up the majority (about 80 percent) of defendant losses. Another 16 percent of losses were settled out of court, and 3 percent were resolved in a court judgment against the defendant. Results are generally robust to analyzing the two most common types of losses separately (settlement and consent decree) (for details on outcome types, see Part A of the online supplement).

EEOC Workforce Composition Data

To analyze the effects of EEOC-initiated anti-discrimination lawsuits on workforce diversity, we merge the EEOC Litigation Database with data on defendant firms' workforce composition from the EEOC's EEO-1 database. Since 1966, the EEOC has required all employers with more than 100 employees, and government contractors with more than 50 employees, to file annual EEO-1 reports detailing the number of employees by sex, race, and ethnicity across nine broad occupational groupings. As discussed earlier, we focus on managerial and professional occupations. By the EEOC's definition, managerial occupations include officials, executives, and middle managers—everything above first-line supervisor. Professional occupations usually require a bachelor's degree and relevant experience, and sometimes require certification (EEOC 2020b).

We matched the two datasets using a fuzzy merge of firm names and headquarter addresses. We compared firm names from the EEOC Litigation Database to those from the EEO-1 database using a Levenshtein distance score. We took all perfect name and address matches and had research assistants manually verify matches among companies that had a combined Levenshtein distance score greater than .9. Possible reasons for failure to find matches include change in ownership

and reduction in workforce sufficient to put a firm below the size threshold for reporting workforce composition to the EEOC.

After matching firms' workforce reports to their lawsuits, we matched the establishment workforce reports associated with these firms, based on a common identifier. Cases are litigated at the firm level, but to account for establishment-level changes over time, and to identify effects in headquarters and satellite establishments as predicted in Hypothesis 2, we perform the analyses at the establishment level.⁴ To create a baseline for each establishment, and maximize post-lawsuit observations, we follow establishments from 1987 to 2012 where data are available. Results were substantively similar when we truncated data at three or five years after the lawsuit was resolved (for results, see Part B of the online supplement). We limited the dataset to cases with data for at least one year before the case began or one year after the case was resolved. We model only the first lawsuit observed in the period for each firm, and we control for subsequent cases. Across the 632 firms in our data, 16 percent experienced more than one case in the period we observed.

In the main analyses presented here, we drop outliers. Over the 25-year observation period, a number of firms in our sample underwent major structural changes of the sort that can rapidly alter demographic makeup. For instance, when a firm in which 35 percent of managers are women acquires a competitor twice its size, in which 10 percent of managers are women, gender composition changes overnight. To ensure our results are not skewed by extreme values, we drop two types of outliers. First, we drop firms that experienced unusual size volatility over the panel—those with coefficients of variation larger than one. Second, we drop firms with highly unusual changes in group share over time—firms that had very large increases or very large losses in log odds of representation for a given group. For both management and professional models, we drop firms in the bottom .5 percentile of losses and firms in the top .5 percentile of gains; we exclude firms

that experienced these outlier gains or losses for *any* demographic group.⁵ Importantly, our results are robust to different cutoffs for excluding outliers, as well as to not excluding outliers at all; results from alternative outlier definitions are in Part D of the online supplement.

The final dataset used in the main analysis spans the years 1987 to 2012. For our analysis on managers, this includes 632 firms, 87,051 establishments, and 824,906 establishment-years. Because fewer firms and establishments employ professionals, models predicting changes in professional ranks are estimated on 594 firms, 56,746 establishments, and 489,242 establishment-years.

Demographics, Lawsuits, and Visibility

To estimate changes in the demographic makeup of the managerial and professional ranks, we model the log odds of White, Hispanic, Black, and Asian American men and women among managers and among professionals. Because the percentage of some groups can be very small, estimating the log odds helps mitigate the influence of extreme values (Fox 1997:78).⁶

Our key independent variable is a binary measure of a lawsuit, indicating the year when a lawsuit begins and all following years. We analyze all cases that defendants lose, regardless of the basis of alleged discrimination (e.g., race, gender). Our robustness analyses (detailed further below) indicate that although there is some variation in results, our general pattern of results obtains irrespective of the type of discrimination being alleged (e.g., race or gender).

We expect visibility to moderate the effects of lawsuit losses, and we operationalize visibility in two ways. First, we predict that among the largest firms, losing a lawsuit will lead to increases in the share of women and non-White workers in management and professional jobs. To measure size, we use a time-invariant categorical indicator of a *firm's size quartile* based on the number of

Table 1. Firm-Size Quartiles

	Mean	SD	Minimum	Maximum
Size Quartile 1	338	177	65	706
Size Quartile 2	1,797	808	712	3,459
Size Quartile 3	8,976	4,213	3,583	17,711
Size Quartile 4	68,917	77,174	18,439	742,860

Note: $N = 632$ firms. Firm-size quartiles are assigned based on a firm's number of employees during the year the firm's case began.

employees in the firm in the year the lawsuit began. Our results remain robust when we use a continuous measure of size. Second, we predict the positive effects of losing a lawsuit on workforce diversity will be most pronounced in *headquarters*, the most visible and closely tracked business unit, as compared to other establishments. We code an establishment as either a headquarters or satellite establishment using information reported on the EEO-1 form.

Table 1 presents the distribution of the number of employees in each firm-size quartile, based on a firm's size when a case began. The quartile of smallest firms range from 65 to 706 employees, the second quartile from 712 to 3,459 employees, the third quartile from 3,583 to 17,711 employees, and the largest quartile of firms have 18,439 to 742,860 employees.

Table 2 presents the percent of each of the eight demographic groups we examine in managerial jobs and in professional jobs, for all firms and by quartile of firm size. Note that the sample size of firms is slightly different across quartiles due to dropping outliers. As noted, the general pattern of results is not sensitive to the way we measure size, or to whether we drop outliers.

Controls

We include control variables for a number of time-variant firm and establishment features associated with managerial and professional workforce composition.

Firms that have *federal contracts* are required to create annual affirmative action

plans for preventing discrimination (Anderson 1996; Graham 1990), and these have been shown to affect diversity (Kalev et al. 2006). We therefore include a binary indicator of whether a firm holds a government contract.

To control for structural changes in a firm, we add a binary variable each time there is a major change in the size of a firm's managerial or professional ranks over the course of the panel, which may be an outcome of mergers, acquisitions, or other structural changes. These *firm change* indicators are coded 1 after a firm's managerial or professional ranks experience a year-over-year percentage change of over 100 percent. Around 18 percent of firms experience at least one such event. In addition, we control for the *number of establishments* in a firm each year, logged.

At the establishment level, growth in the *managerial ranks* or *professional ranks* may provide an opportunity for new hires. In the management models, we include a measure of the percent of workers who are managers; in the professional models, we include a measure of the percent of workers who are professionals (Baron, Mittman, and Newman 1991; Konrad and Linnehan 1995; Leonard 1990). Workforce diversity is also shaped by external and internal labor pools (Cohen, Broschak, and Haveman 1998). To control for each gender-by-racial/ethnic group's *external labor pool*, we measure the percentage of workers from that group in the national industry workforce (using two-digit SIC codes) and in the state workforce. These measures are calculated using the entire EEO-1 datafile for each year. We include the state-level unemployment rate from the Bureau of Labor

Table 2. Percent of Demographic Group in Management and Professional Jobs, by Size Quartile, for Establishment-Years

	Overall	Quartile 1	Quartile 2	Quartile 3	Quartile 4
Management					
White men	53.8	66.1	60.8	63.9	52.3
Hispanic men	4.5	3.7	3.9	4.9	4.5
Black men	4.7	2.4	3.6	4.8	4.7
Asian men	1.4	1.1	1.7	1.3	1.4
White women	28.3	22.5	23.0	19.9	29.5
Hispanic women	2.3	1.3	1.9	1.6	2.4
Black women	3.5	1.6	3.2	2.2	3.6
Asian women	.8	.5	1.1	.7	.8
N (Firms)	632	133	154	173	172
N (Establishments)	87,051	349	2,189	10,694	73,819
N (Establishment-years)	824,906	3,903	19,134	88,133	713,736
Professionals					
White men	44.2	54.7	52.9	50.7	43.0
Hispanic men	2.3	2.2	2.5	2.9	2.2
Black men	2.8	2.1	2.7	3.0	2.8
Asian men	3.0	2.3	2.6	2.4	3.0
White women	36.9	31.2	31.7	32.2	37.8
Hispanic women	2.2	2.0	1.6	2.2	2.2
Black women	4.0	3.1	3.4	3.8	4.1
Asian women	3.9	1.8	1.9	2.3	4.2
N (Firms)	594	113	141	167	173
N (Establishments)	56,746	252	1,432	7,291	47,771
N (Establishment-years)	489,242	2,707	12,294	58,396	415,845

Note: Descriptive statistics refer to the sample after dropping outliers, therefore size quartiles differ in the number of firms. Not all firms in our sample employ professionals, so the sample sizes for these analyses are smaller.

Statistics, as labor queues during periods of high unemployment tend to favor White men (Reskin and Roos 1990). To control for the demographic composition of the *internal labor market*, in the management models we measure the focal group's representation in non-management positions. For professionals, we include a measure of the focal group's representation in management, to capture variation in the composition of the internal labor market of highly educated workers.

We control for *firm growth* and *establishment growth* using continuous, time-varying measures of the total employees in a firm (logged) and the total number of employees in an establishment (logged), respectively. By using both a time-invariant measure of firm size when the lawsuit began (firm-size

quartiles) and time-variant measures of firm and establishment growth, we can estimate the moderating effect of a firm's size at the time of the lawsuit, while controlling for changes in firm and establishment size.

Finally, we include a binary variable that accounts for *subsequent lawsuits*, coded 1 to indicate years that a firm experiences any case after the focal lawsuit—the first observed in the data. Table 3 presents descriptive statistics for these controls.

Methods

Our analysis proceeds in three main steps. First, we establish a descriptive pattern wherein post-lawsuit gains in diversity vary by firm size using simple, bivariate

Table 3. Descriptive Statistics for Control Variables

	Mean	SD	Min.	Max.
Establishment size	240	607	1	72,750
Number of establishments ^a	116	383	1	8,491
Federal contractor	.60	.49	0	1
Percent managerial jobs	9.3	8.1	0	100
Percent professional jobs	6.7	15.2	0	100
State unemployment rate	6.0	2.0	2.3	13.8
Subsequent case indicator	.25	.43	0	1
Percent focal group in industry				
White men	34.5	12.6	12.7	89.2
Hispanic men	6.5	4.4	.1	49.4
Black men	6.5	2.4	.2	30.7
Asian men	1.8	1.1	.1	11.1
White women	35.3	11.8	4.4	61.9
Hispanic women	5.1	2.6	.1	26.7
Black women	7.6	2.9	.2	25.7
Asian women	1.8	1.0	0	7.1
Percent focal group in state				
White men	37.8	6.9	22.8	61.0
Hispanic men	6.4	5.4	.1	20.8
Black men	6.2	3.7	.1	20.4
Asian men	2.2	2.1	.1	8.4
White women	32.5	7.0	18.8	56.1
Hispanic women	4.8	4.3	.1	21.9
Black women	7.3	4.5	.1	23.3
Asian women	2.0	2.0	.1	8.0

Note: $N = 824,906$.

^aNumber of establishments in a firm is reported at the firm level. All other controls are reported at the establishment level.

correlations between firm size and changes in a group's share. Here, we measure change in a group's share as the difference between the average log odds of a group in an occupation (e.g., Black women in management) before and after a case.

Second, we move to our panel models with fixed effects. Descriptive results do not account for changes within firms and within establishments or for general demographic trends over time. We use a set of panel models to estimate the change in the log odds of each demographic group in management or professional jobs following a lawsuit. All models are based on OLS estimates, with robust standard errors clustered at the firm level, and all models include establishment and year fixed effects. Establishment fixed

effects account for variance from unobserved characteristics that are constant over time, helping ensure that changes in workforce composition after a lawsuit reflect within-establishment changes (Morgan and Winship 2007). Year fixed effects account for unobserved environmental shifts that affect all establishments alike. All models include the control variables discussed earlier. We lag the lawsuit variable and the control variables by one year to allow time for organizational processes to materialize.

Our first set of models estimates baseline changes in group share following lawsuits, across all establishments, irrespective of the size of the firms in which they are embedded. To examine whether lawsuit effects vary by firm size, we then split the sample into four

subsamples, each representing a size quartile. Our results are robust to using a pooled sample with interactions between lawsuit and size quartile (see Figure E1 in the online supplement). To examine whether the effects of lawsuits vary by establishment type, we add an interaction between lawsuit and headquarters status in each size quartile subsample. This interaction provides a test of whether the estimated effect of the time-variant variable (lawsuit) differs across categories of the time-invariant variable (headquarter status) (Giesselmann and Schmidt-Catran 2020).⁷

Finally, we conclude with additional subsample analyses to examine the robustness of our results to two possible sources of effect heterogeneity. The first concerns heterogeneity by case type. Our main analysis examines all lawsuit losses, irrespective of whether the suit was filed for discrimination by race, ethnicity, gender, religion, age, or disability. Yet, effects may differ across groups depending on the type of discrimination being alleged (e.g., sex discrimination cases may only affect women). In the Robustness Tests section, we examine sex and race discrimination cases separately to determine whether they have heterogeneous effects. The second possible source of effect heterogeneity concerns variation in the particulars of settlements. Results of the robustness analyses show that although settlement features do indeed matter for some establishment types, the general pattern of lawsuit effects is robust across settlement features.

FINDINGS

We first examine descriptively whether there is a relationship between a firm's size and change in its demographic composition following a lawsuit. Figure 1 presents bivariate correlations between a firm's size (logged) and the change in the share of women and managers of color following lawsuit losses. For ease of interpretation, we label the *x*-axis using the number of employees in the firm, corresponding to the log values.

Here, we see a positive correlation between a firm's size and the change in the managerial representation of Hispanic men and women, Black women, and Asian American men and women. For Black men, there is a much weaker positive correlation, and for White men a slight negative correlation; there is no correlation for White women.

Figure 2 presents these bivariate correlations for professionals. As with managers, we see strong positive correlations between a firm's size and post-lawsuit increases in the representation of professionals of color. As with managers, for White women and men there is little evidence that post-lawsuit changes in the composition of professionals vary by firm size.

Overall, these descriptive patterns indicate a positive relationship between a firm's size and change in its non-White representation in professional and managerial jobs after the onset of a lawsuit. However, they do not account for the myriad ways firms themselves and the establishments within them may also be changing, nor do they account for general trends in the labor force over time. To address this, we now shift to multivariate analyses using fixed-effects models.

Antidiscrimination Lawsuits and Firm Size

Table 4 presents results for the baseline models, which estimate the average change in the share of each demographic group in management and professional jobs following a lawsuit. In line with results from previous quantitative analyses, we find a positive main effect of lawsuits on managerial diversity (top panel). By contrast, we see no significant results for diversity in the case of professionals (bottom panel).

In Hypothesis 1, we predicted that firm size would moderate the effect of lawsuit losses on the share of women and people of color in managerial and professional jobs. To test for effect heterogeneity by firm size, we split our sample into four subsamples based on firm-size quartile. Because quartiles are defined by *overall* firm size, the largest

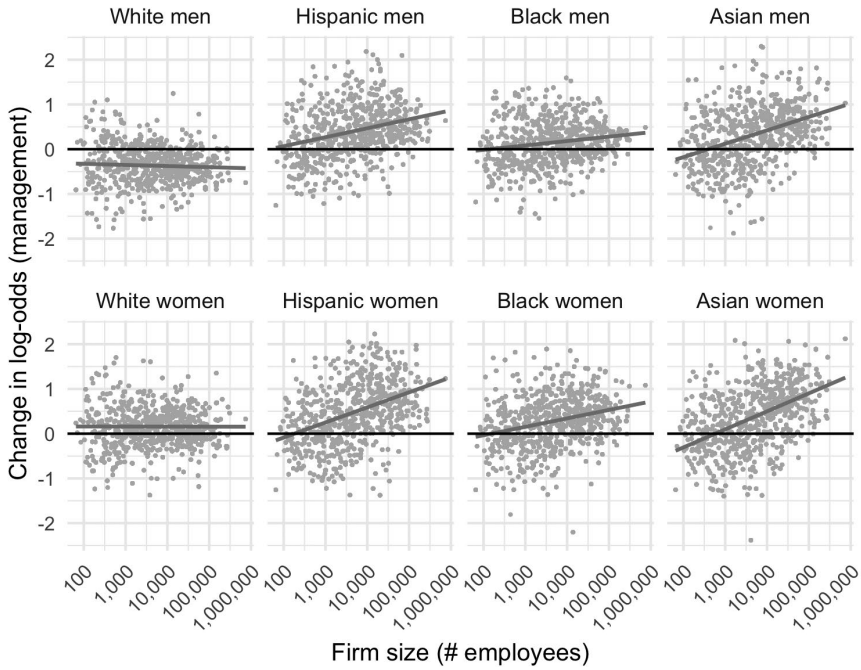


Figure 1. Bivariate Correlation between Firm Size and Change in Group Share in Management Following Lawsuit Losses

Note: Change is calculated as the difference in log odds before and after the case. Log odds is calculated as $\log(p/(1 - p))$, where p is the group proportion in management.

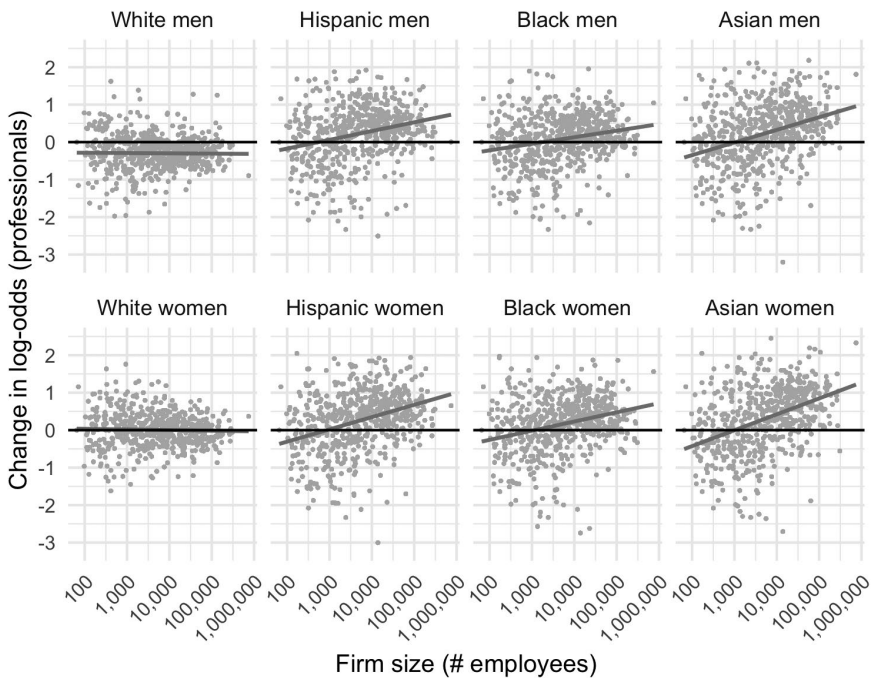


Figure 2. Bivariate Correlation between Firm Size and Change in Group Share in Professional Jobs Following a Lawsuit Loss

Note: Change is calculated as the difference in log odds before and after the case. Log odds is calculated as $\log(p/(1 - p))$, where p is the group proportion in professional jobs.

Table 4. Establishment-Level Estimates of Changes in Group Share in Management and Professional Jobs Following a Lawsuit from Fixed-Effect Models

	White Women	Hispanic Women	Black Women	Asian Women	White Men	Hispanic Men	Black Men	Asian Men
Managers								
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Lawsuit Onset	-.014 (.016)	.074*** (.021)	.067*** (.020)	.090*** (.026)	.039* (.017)	.078** (.025)	.060** (.022)	.091*** (.026)
Adj. R-squared	.71	.81	.77	.83	.73	.79	.73	.79
Professionals								
	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
Lawsuit Onset	-.006 (.026)	.014 (.037)	-.018 (.034)	-.021 (.036)	.042 (.027)	.019 (.037)	-.011 (.036)	-.016 (.037)
Adj. R-squared	.70	.85	.81	.83	.72	.85	.83	.82

Note: Results presented are coefficients with standard errors clustered by firm. All models control for firm size (logged), establishment size (logged), the number of establishments (logged), whether the firm is a government contractor, the percent of the establishment that holds managerial occupations (in management models) or the percent of the establishment that holds professional occupations (in professional models), state-level unemployment, the proportion of the focal group in non-management, the proportion of the focal group in the firm’s industry, and the proportion of the focal group in the establishment’s state. All models also include dummies for subsequent cases, major firm changes, and year fixed effects. Managerial models are based on 632 firms, 87,051 establishments, and 824,906 establishment-years. Professional models are based on 594 firms, 56,746 establishments, and 489,242 establishment-years.

* $p < .05$; ** $p < .01$; *** $p < .001$ (two-tailed tests).

firm-size quartile has a much larger number of establishments than does the smallest quartile, as larger firms have more establishments, on average. By splitting the sample in this way, we ensure that results for the average establishment are not driven by larger firms with more establishments.

Figure 3 presents point estimates and 95 percent confidence intervals for the post-lawsuit changes in the representation (log odds) of each demographic group in managerial or professional occupations across firm-size quartiles. Full model results are available in Parts F and G of the online supplement.

These results indicate that the effect of losing a lawsuit does vary by firm size. Examining the top panel (managers), in the smallest quartile of firms, only White men see an increase in management representation following a lawsuit. Coefficients for all other groups are negative, though they only reach

statistical significance ($p < .05$) for Hispanic women, Black men, and Asian American women.

In the second and third quartiles, there is no evidence that lawsuit losses lead to significant changes in the representation of women or people of color in management. It is only in the largest quartile that significant changes appear. Here, all non-White groups see increases in their representation following a case. White men also see a small, marginally significant increase, whereas for White women the coefficient is negative but not statistically significant. For professionals, the results are similar to those in the baseline model presented in Table 4, with no evidence of consistent positive or negative effects for women or people of color.

To ensure the lack of results in smaller quartiles is not driven primarily by larger standard errors due to splitting the sample, we

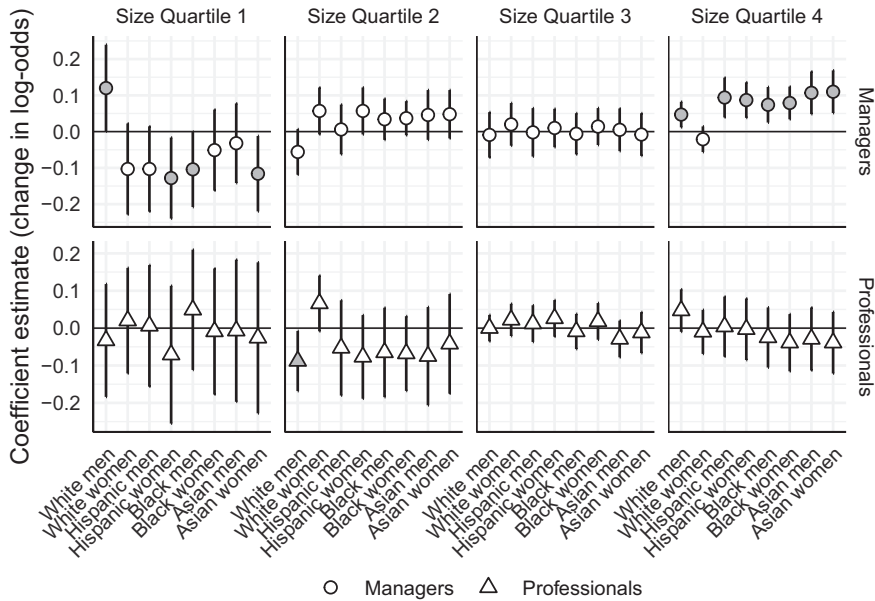


Figure 3. Estimated Change in Log Odds for Eight Groups in Management and Professional Jobs, Following a Lawsuit Loss, by Firm Size

Note: Coefficients represent the average marginal change in log odds following lawsuits. Models are run on each firm-size quartile separately (the sample is split by quartile). All models include all control variables, establishment and year fixed effects, as well as robust standard errors clustered at the firm level. Bars indicate 95 percent confidence intervals; shaded points represent estimates significant at $p < .05$ or better. Full model results are available in Parts F and G of the online supplement.

replicate our analysis using a pooled model with quartile interactions. These results largely reproduce the pattern seen here: null or negative effects for women and people of color in the smallest quartile, and consistent positive effects among managers only in the largest quartile (see Figure E1 in the online supplement).⁸ Taken together, these results indicate that non-White groups experience significant positive results only in the managerial ranks of the largest quartile of firms.

Lawsuit Effects in Headquarters and Non-headquarters

Next, we test Hypothesis 2, which focuses on heterogeneity across establishment types. Because headquarters are the most visible establishments, we expect to see greater diversity gains in headquarters than in non-headquarters. To test this, we add to the

models in Figure 3 a two-way interaction between lawsuit onset and a binary indicator for headquarters. To aid in interpretation, we present average marginal effects by establishment type, with all other controls set to their mean values. Results reflect the predicted change in group share among managers (Figure 4) and professionals (Figure 5) in each quartile by headquarters and satellite establishments. Full model results are reported in Parts H and I of the online supplement.

As predicted in Hypothesis 2, Figure 4 shows that among large firms, post-lawsuit increases in the share of non-White managers are significantly larger in headquarters than in non-headquarters. As in Figure 3, post-lawsuit changes vary across quartiles, with estimates largely increasing along with increases in quartile size. Beginning with the largest quartile of firms, in headquarters, all racial and ethnic minority groups—and White

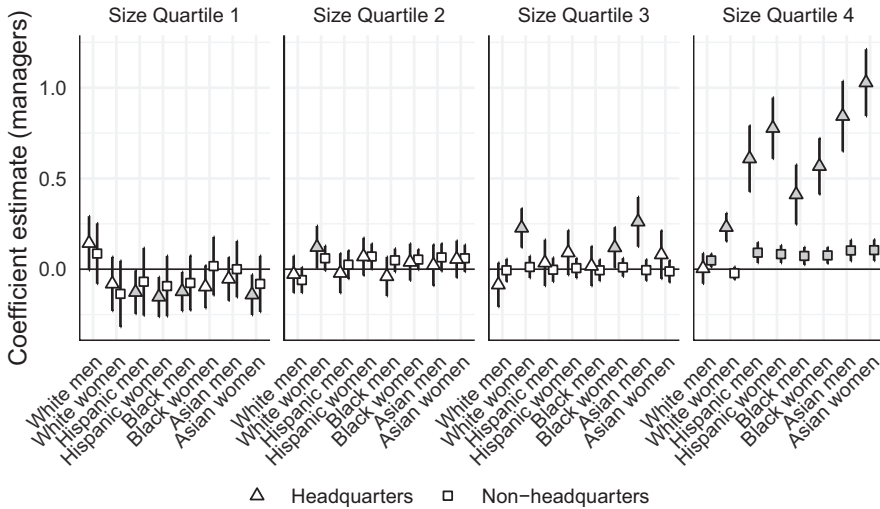


Figure 4. Estimated Change in Log Odds for Eight Demographic Groups in Management, Following a Lawsuit Loss, by Firm Size and Establishment Type

Note: Coefficients represent the average marginal change in log odds following a lawsuit by establishment type. Models are run on each firm-size quartile separately (the sample is split by quartile). All models include all control variables, establishment and year fixed effects, as well as standard errors clustered at the firm level. Bars indicate 95 percent confidence intervals; shaded points represent estimates significant at $p < .05$ or better. Full model results are available in Part H of the online supplement.

women—experience significant increases in demographic share following lawsuits. By contrast, in non-headquarters, all non-White groups see markedly smaller gains, White women see no gains, and White men see very small gains. Thus, the fourth-quartile increases in non-White groups following lawsuit losses seen in Figure 3 mostly reflect these groups’ gains in headquarters.

Next, among the headquarters of third-quartile firms, we see much weaker evidence of positive effects for non-White groups, with only Black women, Asian American men, and White women gaining in share following a case. Among second-quartile firms, there are fewer significant effects, with only White women increasing in share. Finally, in the smallest set of firms, we find some evidence of backsliding in headquarters, with Hispanic men, Hispanic women, Black men, and Asian American women all experiencing significant declines following a case.

Turning to professionals, we find a broadly similar pattern. Whereas our previous

analysis showed no increase in diversity in professional jobs, the results in Figure 5 reveal effect heterogeneity across size quartiles and establishment type. Among headquarters of firms in the fourth quartile, we see increases for all men and women of color. In the third quartile, we see significant increases for Asian American men and women, Black women, and Hispanic women. By contrast, in the satellite establishments of third- and fourth-quartile firms, coefficients are near-zero or negative and non-significant.

Among smaller firms—those in the first and second quartiles—we see no evidence of gains and even some evidence of backsliding. There are no significant changes in the representation of non-White men and women in the headquarters of first- and second-quartile firms following cases. In satellite establishments, in second-quartile firms, coefficients for non-White groups are generally negative, although only statistically significant for Black women. Among first-quartile firms, we see no significant evidence of changes

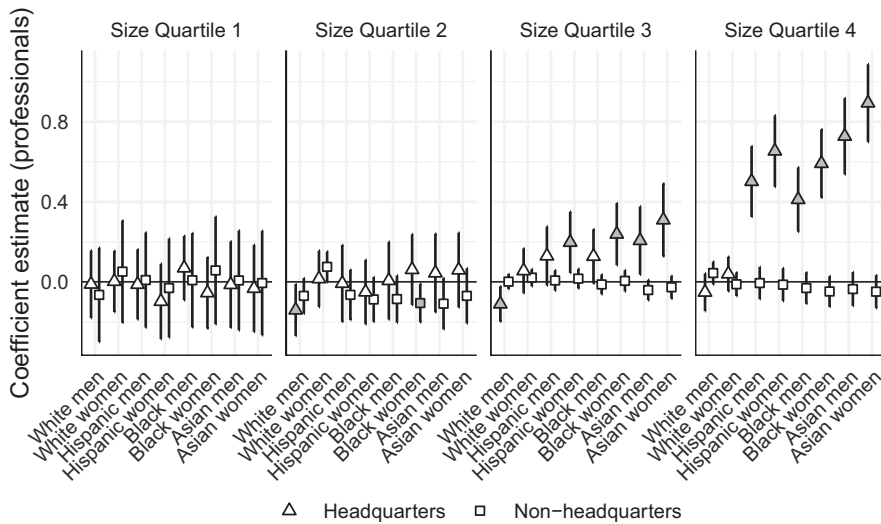


Figure 5. Estimated Change in Log Odds for Eight Demographic Groups in Professional Jobs, Following a Lawsuit Loss, by Firm Size and Establishment Type

Note: Coefficients represent the average marginal change in log odds following a lawsuit by establishment type. Models are run on each firm-size quartile separately (the sample is split by quartile). All models include all control variables, establishment and year fixed effects, as well as standard errors clustered at the firm level. Bars indicate 95 percent confidence intervals; shaded points represent estimates significant at $p < .05$ or better. Full model results are available in Part I of the online supplement.

following a case. Taken together, the findings in Figures 4 and 5 support Hypothesis 2: lawsuit losses appear to have greater effects on the share of underrepresented groups in headquarters than in satellite establishments.

To interpret the magnitude of these changes, Table 5 presents the estimated differences in group share for each of the six non-White groups in management and professional jobs before and after a case.⁹ We present results only from the fourth quartile, as that is where we see the largest effects (we do not present changes for professionals in non-headquarters because these effects are not significant).

Among the non-headquarters establishments of the largest firms, non-White groups in management experience statistically significant, but numerically small, gains. Compared with headquarters, men and women of color who work in satellite establishments typically make up slightly larger percentages of substantially smaller management teams (with an average size of 23 managers per

establishment). Following lawsuits, members of these groups in satellite establishments experience very small gains in share. For example, Hispanic men increase from about 3.3 to 3.6 percent of the management team, on average, and Black women rise from 3.0 to 3.2 percent. These small gains are consistent with establishments adding just a token employee of color to their management teams. However, given that large, fourth-quartile firms can have many establishments—about 300 establishments on average—small average changes in individual establishments can translate into real firm-wide gains.

By contrast, among the headquarters of the largest firms, we see much more substantial changes. For instance, following a lawsuit, the proportion of Hispanic men in management increases by about 85 percent—from 1.3 to 2.4 percent. In the average headquarters, with 416 managers at case onset, this translates to an increase from 5.4 to 9.0 managers.

Similarly, Hispanic women, Asian American women, and Asian American men more

Table 5. Predicted Change in Group Proportion in Management and Professional Jobs in Largest Quartile of Firms

	Proportion before Lawsuit	Predicted Proportion after Lawsuit	Percent Change in Proportion	Number from Group before Lawsuit	Predicted Number from Group after Lawsuit	Proportion before Lawsuit	Predicted Proportion after Lawsuit	Percent Change in Proportion	Number from Group before Lawsuit	Predicted Number from Group after Lawsuit
Non-headquarters										
<i>Management</i>										
(Average number of managers before lawsuit: 23)										
Hispanic Men	3.3	3.6	9%	.76	.83	1.3	2.4	85%	5.4	9.0
Black Men	4.1	4.5	10%	.94	.99	1.8	2.7	50%	7.5	10.1
Asian Men	1.0	1.1	10%	.23	.24	1.2	2.7	125%	5.0	10.1
Hispanic Women	1.6	1.7	6%	.37	.37	.7	1.5	114%	2.9	5.6
Black Women	3.0	3.2	7%	.69	.70	1.8	3.1	72%	7.5	11.6
Asian Women	.58	.6	3%	.13	.13	.7	1.9	171%	2.9	7.1
<i>Professionals</i>										
(Average number of professionals before lawsuit: 50)										
Hispanic Men	2.0	2.0				1.4	2.3	64%	5.7	9.4
Black Men	2.5	2.5				2.1	3.1	48%	8.6	12.6
Asian Men	2.0	2.0				2.3	4.6	100%	9.4	18.8
Hispanic Women	1.8	1.8				1.4	2.7	93%	5.7	11.0
Black Women	3.6	3.6				3.5	6.1	74%	14.3	24.9
Asian Women	2.3	2.3				2.1	5.0	138%	8.6	20.4

Note: Predicted proportions are calculated based on coefficient estimates from quartile-four firms presented in Figures 4 and 5.

than double their share in management. At the same time, there are important group-based differences in estimated gains, with Black women and Black men experiencing smaller increases compared with other groups. We observe similar patterns of change for professionals in headquarters. Together, these analyses suggest that large, significant changes to firm demography occur mainly in the headquarters of the largest firms.

ROBUSTNESS TESTS

To increase our confidence in the results, we conducted several analyses that examine additional sources of effect heterogeneity. We focus here on how effects differ by the basis of the alleged discrimination that led to the case and by the type of case settlement. Because the strongest effects were found among the largest set of firms—the fourth quartile—we focus our robustness analyses on those models.

Basis of Discrimination

First, we break down the analysis of lawsuits by the type of allegation, distinguishing race discrimination lawsuits from sex discrimination lawsuits. Thus far, our analyses pooled all lawsuit losses, irrespective of discrimination allegation (race, sex, ethnicity, religion, age, or disability), which may lead us to underestimate the (positive or negative) effects of cases addressing a particular type of discrimination. For instance, sex discrimination cases may affect women but not men, and race discrimination cases may affect people of color but not White women. Because most of the cases in our sample are for sex or race discrimination, this robustness analysis focuses on the effects of these two kinds of allegations.

Figure 6 presents results from models for sex discrimination cases and race discrimination cases in the largest quartile of firms. In these models, we break down cases by lawsuit basis: race, sex, and other (a small category that includes age, religion, and so

on). Importantly, lawsuits can have more than one basis, so a given case could be coded as both a sex and a race discrimination case. Full results are available in the online supplement, Table J1.

For simplicity, we look at sex cases brought by women and race cases brought by Black plaintiffs, which are the vast majority of these cases. As Figure 6 demonstrates, headquarters experience similar increases in diversity in management following a lawsuit loss, irrespective of whether the case is based on race or sex discrimination allegations. That is, sex cases brought by female plaintiffs are followed by increases in the share of White women, as well as women and men of color. Similarly, race cases brought by Black plaintiffs are followed by increases in the share of Black, Hispanic, and Asian American managers, as well as White women.

Among non-headquarters, results are markedly different. Here, increases in the share of all non-White groups are significant in sex cases but not in race cases, and White women see no gains regardless of the type of allegation. These results suggest that while the type of allegation does not appear to matter in the headquarters of very large firms, it does matter in these firms' other establishments. In non-headquarters, sex cases, but not race cases, appear to lead to modest increases in managerial diversity.

Settlement Features

Second, we examine the possibility that lawsuits' effects are dependent on the type of settlement. To examine this, we look at differences in settlement requirements among the largest set of firms. Among firms in the fourth quartile, most settlements required either monetary or injunctive relief. Out of 172 cases, 116 required monetary relief and 112 were required to enact policy changes, with the majority of cases requiring both. Only 48 cases did not require either monetary relief or policy changes. These include settlements for which we know there was no relief or where the docket does not describe specific

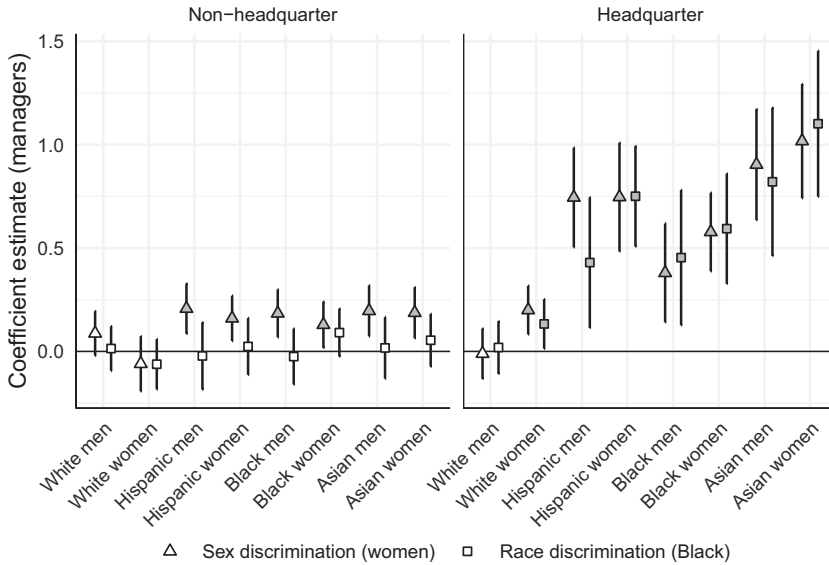


Figure 6. Estimated Change in Log Odds for Eight Demographic Groups in Management, Following a Lawsuit Loss, by Alleged Type of Discrimination

Note: Model is estimated on the largest set of firms (fourth quartile) and includes an interaction between type of alleged discrimination (sex or race) and establishment type. All models include standard errors clustered at the firm level. Bars indicate 95 percent confidence intervals; shaded points represent estimates significant at $p < .05$ or better. Full model results are available in Part J of the online supplement.

relief, leading us to suspect there was neither monetary nor policy relief. Thus, these estimates should be interpreted with caution, because they are based on a small sample of cases. Nevertheless, they do provide some evidence of how firm responses may vary by settlement features.

Figure 7 presents results from a model that includes two separate indicators for lawsuit onset: lawsuit losses that require monetary relief or policy changes and those that require neither form of relief. As with previous models, we interact the onset of a lawsuit with establishment type (full model results are reported in the online supplement, Table K1).

Figure 7 demonstrates that, in headquarters, cases have a similar effect regardless of settlement features. By contrast, in non-headquarter establishments, there is some evidence of sensitivity to settlement type. Here, cases with monetary relief or policy changes are followed by significant increases in the representation of people of color, though we see evidence of declines for White women.

By contrast, following lawsuits without such relief, we see no evidence of increases in the share of employees of color; only White women see increases in share. While these estimates are based on a small sample, the coefficients for changes in the share of employees of color following lawsuits without relief are near zero, providing some evidence that the small positive effects we observed in non-headquarters establishments are more likely to occur when the case resolution requires a firm to pay monetary damages or implement policy changes.

DISCUSSION AND CONCLUSIONS

Research on the efficacy of antidiscrimination lawsuits has thus far yielded mixed results. On the one hand, quantitative, organizational analyses of firm demography largely demonstrate that litigation can increase workforce diversity. On the other hand, research on employee experiences—much of it qualitative—shows

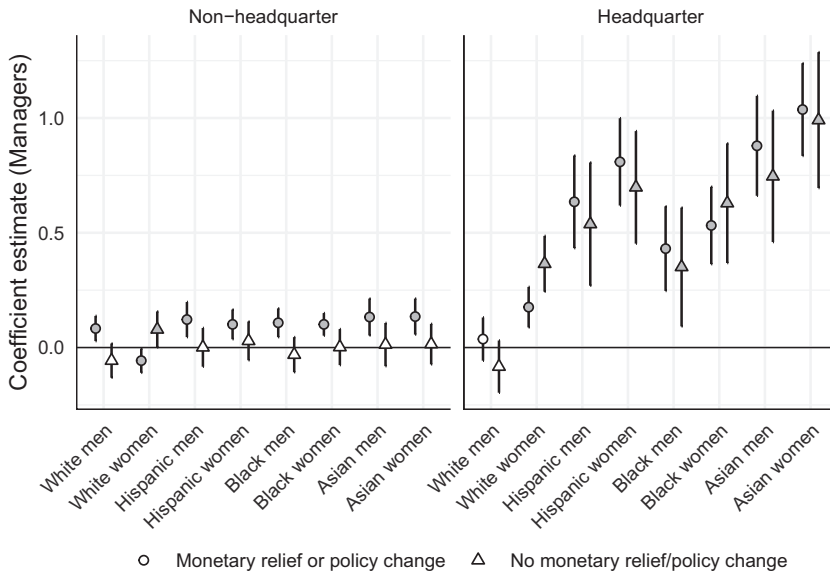


Figure 7. Estimated Change in Log Odds for Eight Demographic Groups in Management, Following Lawsuit Losses, by Settlement Requirements

Note: Coefficients represent the average marginal change in log odds following a lawsuit. Model is estimated on the largest set of firms (fourth quartile) and includes an interaction between settlement requirements (monetary relief/policy change or no such relief) and establishment type. Bars indicate 95 percent confidence intervals; shaded points represent estimates significant at $p < .05$ or better. Full model results are available in Part K of the online supplement.

how antidiscrimination lawsuits can trigger resistance among firm leaders, leading management to dismiss the seriousness of the allegations and, in certain cases, even retaliate against complainants. In this article, we suggest we can reconcile these disparate findings by investigating how organizational visibility shapes where we expect to witness resistance to increased diversity and where we expect to see change. Drawing on theories of reactance and group threat, we argue that lawsuit losses are likely to trigger resistance because managers may perceive them as encroachments that threaten their managerial prerogative. We also draw on institutional theory to hypothesize that organizations may seek to overcome resistance under conditions of high visibility. We argue that because pressure faced by large, high-profile firms is so different from that faced by small firms, we do not expect lawsuits to exert a uniform influence across organizations.

Our results largely support our theory. In line with the rich evidence from studies of

antidiscrimination law, we find that in the majority of establishments, lawsuits do not generate positive results. Instead, we find that gains in managerial diversity are isolated to only the largest firms following lawsuit losses and, among these firms, accrue mostly in headquarters. In additional analyses, we also find that this general pattern of results—wherein the positive effects of lawsuits are largely concentrated in headquarters of the largest firms—are not dependent on whether the plaintiff charged sex or race discrimination, or on whether the case ended with monetary relief or required policy changes. By contrast, the small increases we observe in satellite establishments stem mainly from suits claiming sex discrimination and from resolutions requiring monetary relief or policy changes. Organizations with different degrees of visibility, we find, react to lawsuit losses in markedly different ways.

Our findings have implications for three separate literatures. First, our findings have implications for institutional theories of legal

regulation, which have long held that a firm's response to regulation depends on pressures from its political, legal, regulatory, and market environments. Here, our results suggest these pressures may be more salient in some kinds of firms and establishments than in others. The headquarters of large, visible firms seem to respond to litigation, but small firms and less visible establishments may fly under the radar, effectively evading regulatory pressure. This result is distressing given that the vast majority of firms have fewer than 1,000 employees, and half of private-sector workers are employed at small firms. In investigating responses to institutional pressures, we must be sensitive to such differential firm and establishment effects.

Second, our findings about firm-level heterogeneity fit into a broader literature on between-firm inequality and stratified workplaces (e.g., Autor et al. 2017; Cobb and Lin 2017; Cobb and Stevens 2017; Tomaskovic-Devey et al. 2020; Wilmers 2018). Wage inequality is lesser in large firms than in small firms, particularly when there are many employees of the firm in a state, suggesting large firms are more susceptible to internal pressure for equity and wage compression (Cobb and Stevens 2017). Furthermore, sociologists and economists are turning their attention to how income inequality is largely the result of *between-firm* rather than *within-firm* differences—with the largest and most profitable firms driving the growing wage gap. Our findings provide a regulatory angle on such between-firm heterogeneity. If lawsuits produce disparate organizational changes across different kinds of organizations, then anti-discrimination law may act as a mechanism through which between-organization gender and racial inequality is reproduced. We show it is primarily White women and people of color in the headquarters of the largest firms that see positive gains following lawsuits; their peers employed elsewhere either experience no gains or suffer from backlash. These findings suggest the regulatory enforcement system contributes to between-firm inequality. Large, high-profile firms are often the subject of public scrutiny following discrimination

lawsuits, but smaller, inconspicuous firms also merit increased attention.

Finally, our findings address the question of how to foster large-scale organizational change. Our main result—that only the largest firms and the most visible locations within them change following lawsuits—attest to the strong role of visibility, and the social accountability it creates, in promoting organizational change. Our additional analyses suggest that in the most visible locations (i.e., large firms' headquarters), increases in diversity are observed regardless of whether the settlement terms require the company to pay monetary damages or change their policies. Punishment seems to be less effective than the social accountability engendered by visibility (see also Hirsh and Cha 2018). Additional research is required to examine differences in visibility within size strata. For instance, among large firms, prestigious companies may be more visible to external audiences than their less esteemed peers (McDonnell and King 2018). And among smaller and medium-sized firms, well-known, local establishments or customer-facing companies may enjoy more visibility than firms of similar size with weaker reputations or smaller customer bases. Furthermore, firms can create visibility voluntarily. Steps taken by large employers to publish data on their workforce composition, largely in response to pressure from Black Lives Matter and other social movements, may be effective in promulgating change because they create social accountability.

Our study has a number of limitations that warrant consideration, and that also open avenues for future research. First, our findings are limited to instances in which plaintiffs obtain some form of relief, either through settlements, consent decrees, or court judgments. Yet, as we noted earlier, among employees who initially file a claim against their employer, the percentage who manage to reach this relatively positive outcome is vanishingly small. Due to the features of our sample, we are unable to systematically examine whether lawsuits would produce positive outcomes in large firms under different litigation outcomes, particularly those

in which plaintiffs lose. Further research is necessary to better untangle the scope conditions of the patterns observed here.

In summary, our analysis illustrates the variable efficacy of litigation. In an economy characterized by growing between-firm inequality, with the returns to working for a large firm increasing, attention to between-firm heterogeneity in litigation effects is essential. Our analysis demonstrates that an unfortunate consequence of focusing research and EEOC litigation on cases that have the highest stakes, and that sit most prominently in the public eye, is to perhaps provide an overly sanguine picture of the effects of litigation. In demonstrating that the effects of litigation are contingent on firm visibility, our findings reveal the need for increased scholarly attention to the role of small businesses in shaping the consequences of antidiscrimination law.



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Notes

1. For example, federal statutes such as the Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act of 1996 require exceptions or reduced standards for businesses under a certain size.
2. There is some evidence that larger, more visible firms may receive more severe penalties from

cases resulting in jury trials. McDonnell and King (2018:62) examine a set of very large firms and find that prestigious firms are less likely to be sued, but once they are found guilty, they have more severe financial penalties.

3. We have a much smaller sample of cases where the plaintiff obtained no relief, compared to the population of antidiscrimination lawsuits. Separate analyses on this smaller set of cases suggest a broadly similar pattern, but with weaker effects for women and minority groups. Yet, data limitations preclude drawing robust inferences from this small sample. These analyses are available from the authors by request.
4. Our results are robust to the choice of level of analysis. We present establishment-level results here because they provide more conservative estimates for small firms (results available from the authors by request).
5. For management models, this meant dropping 99 firms (79 firms in which any demographic group experienced unusual demographic changes and an additional 20 firms with high volatility). For professional models, this involved dropping 96 firms (72 firms in which any demographic group experienced unusual demographic changes and an additional 24 firms with high volatility).
6. Where the proportion of a group in management or professional jobs was 0 (where log is not defined) or 1 (where odds are not defined), we substituted $1/(2N)$ for 0 or $(1 - (1/2N))$ for 1, where N represents the total number of managers or professionals in the firm (Reskin and McBrier 2000). Results are robust to other substitutions (see Figure C1 in the online supplement).
7. As Giesselmann and Schmidt-Catran (2020) describe, in a fixed-effect regression model, one can test for effect heterogeneity by estimating an interaction where one variable has intra-unit variation (lawsuit) and one variable does not (headquarter status). Here, the coefficient of the interaction estimates how the within-unit effect varies according to between-unit characteristics.
8. This pattern, wherein positive effects for managers are limited to the largest quartile, is robust to dividing the sample in different ways, including estimating firm size as a continuous variable or splitting the sample based on firm-size terciles or firm-size quintiles. Results are available from the authors upon request.
9. We follow Petersen (1985) and calculate the change in demographic group share P in response to a lawsuit loss with coefficient B as

$$\Delta P = \frac{\exp(P_1)}{1 + \exp(P_1)} - \frac{\exp(P_0)}{1 + \exp(P_0)}, \text{ where } P_0 \text{ is the}$$

log odds of the initial group proportion and P_1 is the logit of the initial group proportion plus the coefficient B .

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