



June 23, 2023

Ms. Elizabeth M. Cannon, Director
Ms. Roberta Steele, Regional Attorney
U.S. Equal Employment Opportunity Commission
Seattle Field Office
909 First Ave., Ste. 400
Seattle, WA 98104-1061

Investigation Request: Unlawful Racial Discrimination By Nordstrom

Dear Ms. Cannon and Ms. Steele:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write pursuant to 29 C.F.R. § 1601.6(a), providing that “Any person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination” to request that the Equal Employment Opportunity Commission open an investigation into Nordstrom, Inc. (the “Company”) for engaging in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.¹ An unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice. 42 U.S.C. § 2000e-2(m). Here, the Company admits and affirms that it knowingly and intentionally uses race, color, sex, and/or national origin as a motivating factor in its employment practices.

Nordstrom, Inc. is a publicly traded corporation incorporated under the laws of the State of Washington, with its principal executive offices located at 1617 Sixth Avenue, Seattle, Washington, 98101.² It has affirmatively represented to its shareholders, investors, and the Securities and Exchange Commission that it is and will continue favoring certain individuals because of their race, color, national origin, or sex in its employment practices. It further admits to limiting, segregating, or classifying employees or applicants for employment and new business in ways that would deprive, or tend to deprive, white and/or male individuals of employment, training, or promotions because of their race, color, sex, or national origin. For example:

- The Company’s most recent Form 10-K suggests that it is using numerical quotas for hiring, training, and promotion and that the Company has taken

¹ Copies of this letter are also addressed to each Member of the Commission and AFL makes the same request of them pursuant to 29 C.F.R. § 1601.6(a).

² Nordstrom, Inc. 4th Q 2022 Form 10-K at 1 (Mar. 10, 2023), <https://bit.ly/3WWOFmF>.

extraordinary steps to ensure these quotas are embedded deeply in its business operations.³ For example, to “increase representation of Black and Latinx [sic]⁴ individuals in people-manager roles by at least 50% on average” by the end of 2025, the Company “has operationalized diversity, equity, inclusion and belonging through consistent reviews with Erik B. Nordstrom, our Chief Executive Officer, and Farrell B. Redwine, our Chief Human Resources Officer.” Although the word “Latinx” lacks any fixed or discernable legal meaning, and the Company nowhere defines what it means, it appears that the Company is referring to persons with a national origin in a Spanish-speaking nation. Additionally, “Progress toward our diversity, equity, inclusion and belonging ambitions [sic] *is tracked and reviewed regularly by our executive team and Board of Directors.*”⁵ Finally, according to the Company’s “Diversity, Inclusion, and Belonging Fact Sheet,” by the end of 2025, it “*will* increase representation of Black and Latinx populations in people-leadership roles by at least 50%” and through its internship and other early-in-career programs, it “*will* create opportunity for underrepresented populations with an aim of 50% representation.”⁶

- The Company’s self-reported data, if accurate, suggests that its hiring and promotion policies are having, and indeed, are designed to have, a disparate impact on white and/or male individuals. For example, women are substantially overrepresented in the Company’s “leadership.” Also, the Company avers that “People of color,” another term without a fixed or discernable legal meaning, are favored for “leadership” positions.⁷
- The Company affirmatively favors “Black individuals” in hiring, promotion, and training⁸ and apparently has in place recruiting and hiring preferences for individuals based on sexual preference and gender identity.⁹

³ The Company’s illegal conduct also includes hundreds of millions of dollars annually in explicitly race-based procurement and purchasing in violation of 42 U.S.C. § 1981 and analogous state laws. See Nordstrom Now, *Nordstrom Joins Forces with The Folklore Group, Continues Growing Assortment of Black-Owned Brands* (Feb. 28, 2023), <https://bit.ly/3WH1UYd>. Such conduct, however, is beyond the Commission’s jurisdiction.

⁴ The word “Latinx” lacks any fixed or discernable legal meaning, and the Company nowhere defines what it means. It appears that the Company is referring to persons with a national origin in a Spanish-speaking nation.

⁵ Form 10-K, *supra* at 10.

⁶ NORDSTROM, INC., Diversity, Inclusion and Belonging Fact Sheet at 2, <https://bit.ly/42EeuZX> (last visited Jun. 9, 2023) (emphasis added); see also NORDSTROM, INC., Diversity at Nordstrom (FAQ), <https://bit.ly/3IX8MeG> (last visited Jun. 9, 2023); see also NORDSTROM, INC., Diversity Inclusion & Belonging, <https://bit.ly/3OWbKDW> (last visited Jun. 9, 2023).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at “We Support Our Employees”.

Racial, ethnic, and sex-based “balancing” in hiring, training, compensation, and promotion is patently unlawful. *See* 42 U.S.C. §§ 2000e-2(a), (d).¹⁰ Therefore, the Company’s admissions strongly suggest that it is knowingly and intentionally violating 42 U.S.C. §§ 2000e-2(a) and (d). If the Company is engaged in such conduct, then it is knowingly and intentionally violating federal civil rights laws. If the Company is not engaged in such unlawful conduct but merely pretending to do so, then it is cynically and intentionally misleading customers, workers, and investors. There is no third alternative.

The company’s employment practices, as described herein, are unlawful.¹¹ They are also deeply harmful. Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.”¹² More broadly, the discrimination highlighted in this case necessarily foments contention and resentment, it is “odious and destructive.”¹³ It truly “is a sordid business, this divvying us up” by race or sex.¹⁴ A Commissioner charge should issue here.

Thank you in advance for your cooperation.

Sincerely,

/s/ Reed D. Rubinstein

America First Legal Foundation

CC: The Honorable Charlotte A. Burrows, Chair
The Honorable Jocelyn Samuels, Vice Chair
The Honorable Keith E. Sonderling, Commissioner
The Honorable Andrea R. Lucas, Commissioner

¹⁰ *See, e.g., United Steelworkers of Am. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621-641 (1987); *see also Bostock v. Clayton Cnty.*, Georgia, 140 S. Ct. 1731 (2020).

¹¹ *Bob Jones Univ. v. United States*, 461 U.S. 574, 593 (1983) (“racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals”).

¹² *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

¹³ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

¹⁴ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

APPENDIX

Diversity, Inclusion & Belonging

WE'RE COMMITTED TO CHANGE DIVERSITY, INCLUSION & BELONGING

We've long believed that we're all made better by the diversity that exists within our communities. Our values are centered on the notion of creating a place where every customer and employee is welcome, respected, appreciated and able to be themselves.

We've spent a lot of time exploring what diversity, inclusion and belonging (DIB) should mean at Nordstrom. Our research has included in-depth interviews and workshops with our leadership teams, a deep dive into data that helps us understand the makeup of our workforce, and meetings with employees across roles, business units and regions to gain insights and perspectives at the individual level.

Our Goals

Where We Stand

Diversity, Inclusion & Belonging

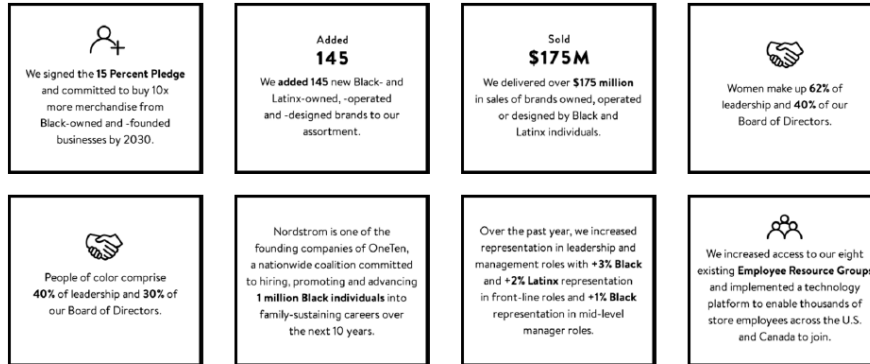
Asian & Pacific
Islander Owned or
Founded Brands

Black Owned or
Founded Brands

Latinx Owned or
Founded Brands

OUR PROGRESS

In 2021, we made steady progress toward our goal of setting future-oriented leadership expectations and a shared culture that drives our business ambition. We are actively improving our strategy for listening to employees and working to ensure we're acting on the feedback we receive.



[Read Our Full 2021 Impact Report](#)

EMPLOYEE REPRESENTATION (as of 2019)

We've made great strides in recruiting qualified and enthusiastic candidates with diverse backgrounds and experiences.

- In 1988, 15.7% of Nordstrom managers were people of color.
- In 2019, of our company's total employment, 53% were people of color and 68% were women.

Our Employees

- 23% Hispanic or Latino
- 19% Black or African American
- 11% Asian/Pacific Islander
- 41% White
- 7% Other

- 68% women
- 32% men

Our Leadership

Frontline Managers

- 21% Hispanic or Latino
- 13% Black or African American
- 7% Asian/Pacific Islander
- 53% White
- 6% Other

- 65% women
- 35% men

Mid-Level Managers

- 8% Hispanic or Latino
- 4% Black or African American
- 13% Asian/Pacific Islander
- 72% White
- 4% Other

- 66% women
- 34% men

Executives

- 1% Hispanic or Latino
- 5% Black or African American
- 11% Asian/Pacific Islander
- 77% White
- 7% Other

- 57% women
- 43% men

Nordstrom Celebrates Pride Month

It's June and we're celebrating Pride month and our ongoing commitment to the LGBTQIA+ community. This Pride, we are continuing to champion the visibility of LGBTQIA+ owned and founded brands both in-store and online, support Pride festivals nationwide, and continue our long-standing relationships with partner organizations including The Human Rights Campaign, Trans Lifeline and The Hetrick Martin Institute.

"Our values are centered around creating a welcoming environment for every customer and employee – one where everyone feels supported, uplifted and comfortable being their most authentic selves," said Colleen Mitchell, head of diversity, equity, inclusion, belonging and culture at Nordstrom. "This Pride month Nordstrom is pleased to continue our long history of advocacy, inclusivity and visibility for our LGBTQIA+ partners, customers and employees."

Giving Back: Non-Profit Organizations That Provide Meaningful Support

Nordstrom has developed and continually nurtured long-standing partnerships with LGBTQIA+ community organizations that aim to provide support and resources for this community. For the past several years, we've annually contributed nearly \$1 million to support the work of these organizations and are grateful to sustain this momentum this year.

Nordstrom's partner organizations include:

- [The Human Rights Campaign](#) envisions a world where every member of the LGBTQ+ family has the freedom to live their truth without fear, and with equality under the law. Nordstrom has earned a 100% rating on HRC's Corporate Equality Index since 2005. Through event sponsorship and annual financial contributions, Nordstrom supports the organization's advocacy on behalf of the community.
- [The Hetrick-Martin Institute \(HMI\)](#) for LGBTQIA+ youth provides community, basic needs, health, education and career services to thousands of community members aged 13-24 every year. This is Nordstrom's fifth year partnering with HMI, committing annual financial support, board leadership placement, event sponsorship and employee volunteerism to help support HMI in providing meaningful services.
- [Trans Lifeline](#) is dedicated to improving the quality of trans lives by responding to the critical needs of the trans community with direct service, material support, advocacy, and education. Their organization is run by and for trans people. Nordstrom has partnered with Trans Lifeline for three years, providing financial support to help the organization answer crisis calls and offer microgrants to trans people to change their name or gender marker on their ID.

Nordstrom.com/diversity webpage

Employee Diversity

What does your employee representation look like today?

Our people are the foundation of who we are as a company. Attracting, hiring and retaining diverse talent enables us to be more innovative and better serve our employees, customers and communities. Each year, we issue an impact report that outlines our progress in many areas, including diversity, inclusion and belonging and corporate social responsibility. See a breakout of our representation [from our 2021 impact report](#).

How much diversity do you have on your board of directors?

Our commitment to diversity at all levels of our company extends to our board of directors. We have 11 people on our board; four of them are women and three are people of color. [Learn more about our board of directors](#).

What are you doing to attract and hire diverse talent?

We've set clear, measurable goals for ourselves: By the end of 2025, we will increase representation of Black and Latinx populations in people-leadership roles by at least 50%. Through our internship and other early-in-career programs, we will create opportunity for underrepresented populations with an aim of 50% representation.

Now that we've set these goals for ourselves, we're working across the organization to come up with plans that will get us there. That includes identifying the best way for us to find and connect with the diverse talent we need to hire to best serve our customers. In addition to being in the right places to meet the right candidates, we need to ensure our hiring managers are trained to identify and mitigate bias during the hiring and promotions process. We're rolling out updated learning in 2022 to address issues of conscious and unconscious bias.

Do you have an anti-discrimination policy?

Yes. We are committed to an inclusive, supportive environment. Nordstrom doesn't tolerate discrimination of any kind. We ask that employees and customers let us know if they experience or observe behavior they believe is discriminatory or harassing so we can address it immediately.

HideSupplier Diversity

How much business do you do with Black-owned companies or other underrepresented groups? Will you commit to doing a certain percentage of your business with these types of companies?

We can and will do better in offering Black-owned or -designed brands, along with those created by all people of color. We want to do this the right way so we can create meaningful and successful partnerships with these brands. We are committing to delivering \$500M in retail sales from brands owned by, operated by or designed by Black and/or Latinx individuals by the end of 2025. We are also renewing our Supplier Diversity program, which will track and support diverse-owned suppliers across all areas of our business.

How do I learn more about and/or participate in your Supplier Diversity program?

We're in the process of renewing this program and setting long-term goals. We'll post more details about how vendors can participate in the program at a later date.

What are you doing to increase diversity in the collaborations you do with your private-label brands?

We need to improve here, and we're looking into opportunities to partner with diverse influencers on future Nordstrom Made exclusive collections. In 2020, we launched the [BP. Be Proud](#) collection, which was our first gender-inclusive collection, featuring a range of silhouettes for people of all gender identities. In 2021, we continued our progress with our partnership with Hilal Ibrahim of Henna & Hijabs to launch our first collection of designer hijabs. This is just the start—we're working on more collections and are excited to take feedback from our customers as we do that.

What are you doing to make sure there's more diversity in your marketing campaigns (website, ads, catalogs, social media platforms, etc.)?

This has been a focus for quite some time. The amount of diversity we include in our marketing campaigns and catalogs exceeds the level of diversity we see in North America. We must better reflect this diversity in our styling, music, copy and ongoing social media conversations, including vastly improving representation in our influencer partnerships. We've also formed a Diversity Marketing Panel comprising Nordstrom employees representing a variety of visible and invisible identities. Their insights help shape our strategy, using identity and equity at every touchpoint.

OUR GOALS

OUR PILLARS

We believe we must be focused on the opportunities we have to make Nordstrom a better place for our employees and our customers. Over the past few months, we've done a lot of listening, and we've heard from employees, customers, our board of directors and Nordstrom partners. These conversations have been humbling and educational, and we've taken the insights away to help inform our path forward.

Our diversity, inclusion and belonging (DIB) strategy is focused on four pillars: Talent, Culture, Marketplace and Leadership. Each of our new goals aligns with one of these pillars.



TALENT

We will increase demographic diversity in all our corporate and leadership positions to better reflect the North American population.

By the end of 2025, we will increase representation of Black and Latinx populations in people-manager roles by at least 50%.

We will leverage our internship program and other initiatives that help us reach qualified candidates early in their careers, with a goal on average of at least 50% of participants in these programs coming from underrepresented populations.

We're revisiting our practices and the training resources we offer for all customer-facing roles to ensure they include anti-racism and anti-bias content.

We will strengthen belonging and address favoritism through greater consistency, collaboration, communication and connection.

Our Voice of the Employee survey will be our benchmark for success in this area, and we're working to improve our Inclusion and Belonging Index score by 8 points and Favoritism Index score by 6 points by 2025.



We will serve customers on their terms, through a lens of anti-racism, identity and equity at every touchpoint.

We're committing to deliver \$500M in retail sales from brands owned by, operated by or designed by Black and/or Latinx individuals by the end of 2025.

We are also renewing our Supplier Diversity program, which will track and support diverse-owned suppliers across all areas of our business.

We will declare and commit to compelling, future-oriented leadership expectations and shared culture that will drive our business ambition.

We will measure our leaders on their performance in this area through the Inclusion Index and feedback from their teams and coworkers. We will double our charitable giving to nonprofit organizations that promote anti-racism, bringing that total to approximately \$1M per year for the next five years.

We have joined a multiyear corporate partnership with the National Urban League, a historic civil rights organization dedicated to economic empowerment, equality and social justice.

