

## DE-FENSE! Initial Takeaways for Employers from the *Flores v. NFL* Class Action Complaint

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With Super Bowl LVI fast approaching, football is a hot topic in workplaces across America. While fans are focused on the Los Angeles Rams and Cincinnati Bengals matchup, employers also should consider other recent front-page NFL news.

A landmark [class action suit](#) was filed against the NFL and three of its teams on February 1, 2022 in the Southern District of New York. Brian Flores sued the NFL, Miami Dolphins, New York Giants, and Denver Broncos claiming racially discriminatory hiring and retention policies in violation of Section 1981 of the Civil Rights Act of 1866 (“Section 1981”) and New York and New Jersey state and local anti-discrimination laws. This lawsuit is the first of its kind against any NFL team.

Flores, as the representative for a proposed class of Black NFL head coaches, offensive and defensive coordinators, quarterback coaches and general managers, alleges the teams fail to hire and retain Black candidates, who are facially underrepresented among the existing filled positions. Flores’s complaint illustrates that while over 70% of NFL players are Black, only one of 32 NFL teams has a Black head coach and six of the 32 teams have a Black general manager. At the supporting coaching staff levels, only four teams employ a Black offensive coordinator, eight employ a Black special teams coordinator, and three employ a Black quarterback coach.

Flores further alleges the NFL has not appropriately utilized its own long-standing “Rooney Rule,” a measure approved by team owners in 2002 to promote and strengthen workplace diversity and inclusion by NFL teams by committing to interviewing Black candidates for open head coach, general manager, coordinator and other front office and assistant coach positions. However, Flores claims this rule has generated only a “check the box” requirement to teams’ hiring process, resulting in interviewing, then passing over, Black candidates for these positions. Flores acknowledges, of course, that NFL teams have the right to hire the best candidate for the position, but contends that Black candidates are not given a “fair and legitimate chance.”

This lawsuit is an important reminder to all employers to be engaged in their own recruiting (whether internal or through an agent or agency), hiring, evaluation, promotion and retention policies, practices and actions. Employers should review their policies, practices and strategies and utilize proper training to ensure they are providing appropriate and equal opportunities for candidates regardless of their race, national origin or membership in any legally protected classification. Whether the NFL is ultimately successful in defending against Flores’s allegations, the lawsuit illustrates that simply enforcing a policy requiring a diverse pool of candidates is not, in itself, an effective way to ensure diversity and inclusion in the workplace.

**If you have any questions about your company’s hiring and retention policies  
or would like to discuss effective strategies to address the issues discussed in this piece,  
please contact a member of Freeborn’s [Labor and Employment Practice Group](#).**