



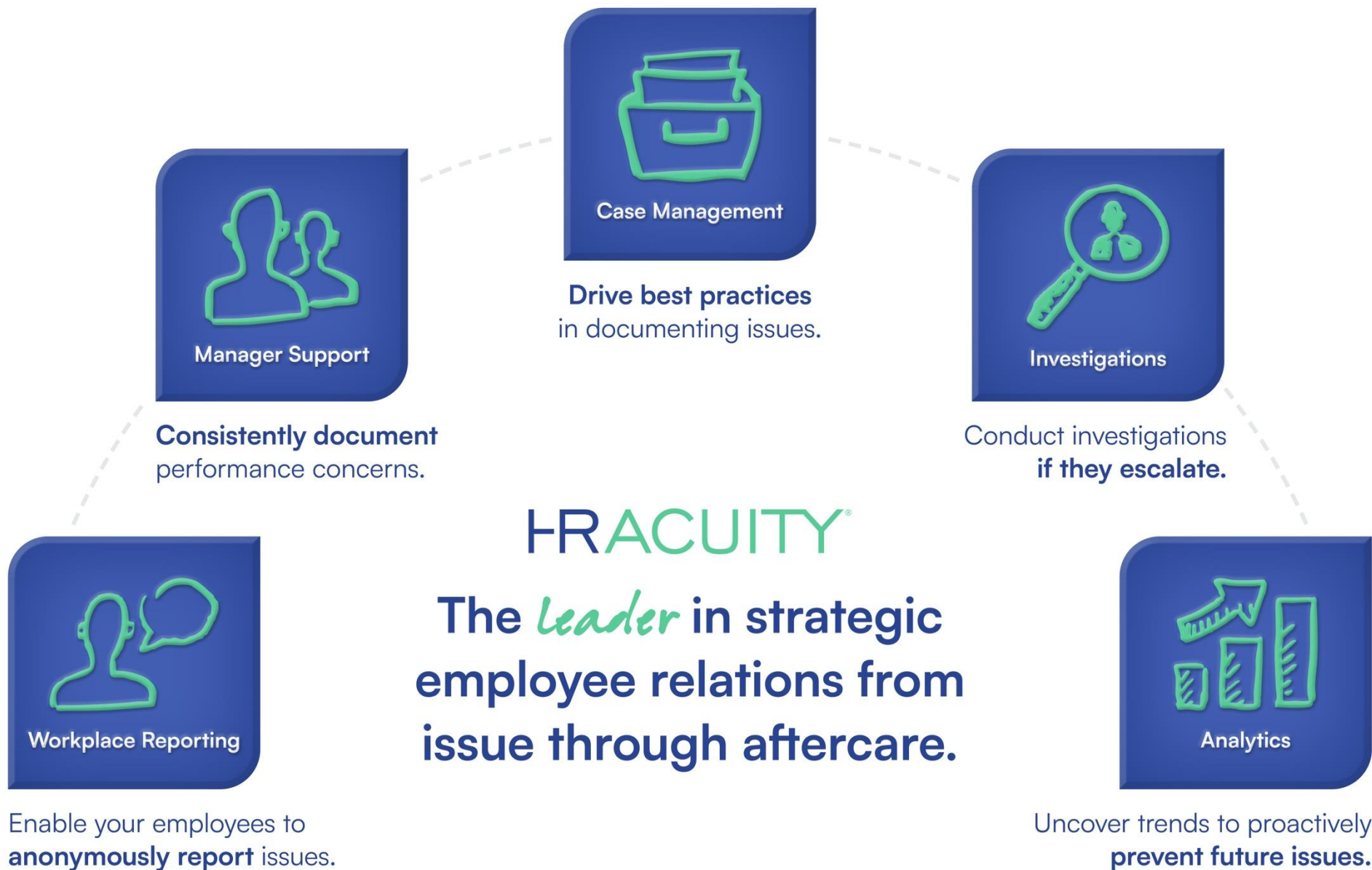
100 Days In: Cutting Through DEI Misconceptions And Mapping What's Next

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The Leader in Employee Relations



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Important Dates & Upcoming Events



April 30

1:00 PM ET



June 12

Virtual Event



May 20

2:00 PM ET



Oct. 28-29

In-person Event

Donation

National Immigration Law Center

- Established in 1979, the National Immigration Law Center (NILC) is one of the leading advocacy organizations in the U.S. dedicated to advancing and defending the rights and opportunities of low-income immigrants and their loved ones.





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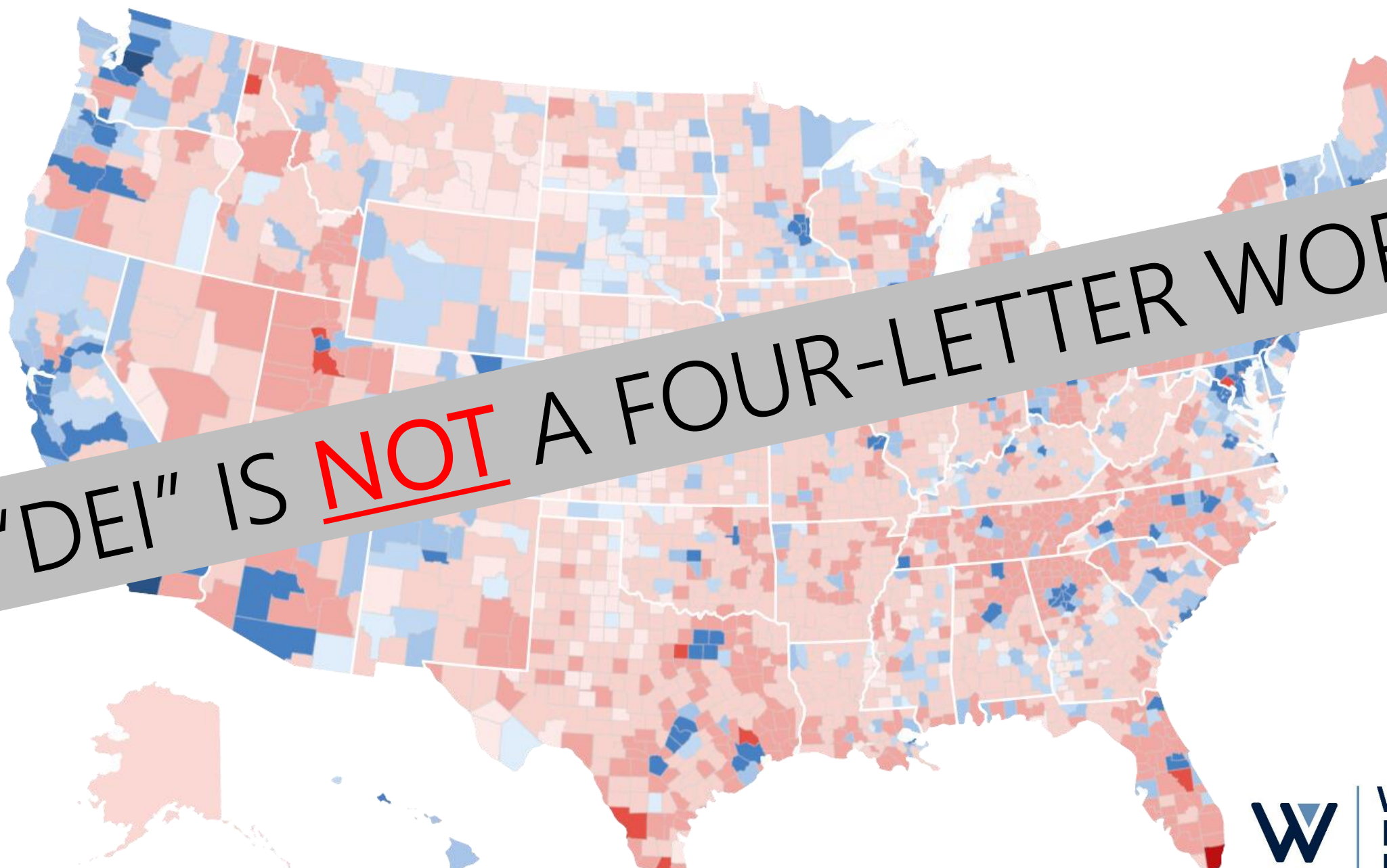
 @thejonhyman



What is DEI?

- Diversity
- Equity
- Inclusion



A map of the United States, including Alaska and Hawaii, is shown in the background. The map is colored in a pattern of red and blue, with red being the dominant color in most areas. A diagonal grey banner with black text is superimposed over the map. The text reads: "DEI" IS NOT A FOUR-LETTER WORD. The word "NOT" is written in red and is underlined.

"DEI" IS NOT A FOUR-LETTER WORD



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What is Diversity?

Diversity in the workplace means your workforce is made up of people of different races, sexes, ethnic groups, sexual orientations, gender identities, ages, religions, (dis)abilities, and additional background factors.



Diversity ≠ Quotas or Preferences

"Title VII permits diversity efforts designed to open up opportunities to everyone. For example, if an employer notices that African Americans are not applying for jobs in the numbers that would be expected given their availability in the labor force, the employer could adopt strategies to expand the applicant pool of qualified African Americans, such as recruiting at schools with high African American enrollment."

EEOC [2006 Compliance Manual on Race and Color Discrimination](#)



Diversity ≠ Quotas or Preferences

Hiring as a *Funnel*

- At the top? All the people who hear about your job and might apply.
- The middle? Those who actually apply and are qualified.
- The bottom? Where hiring decisions are made.



Diversity ≠ Quotas or Preferences

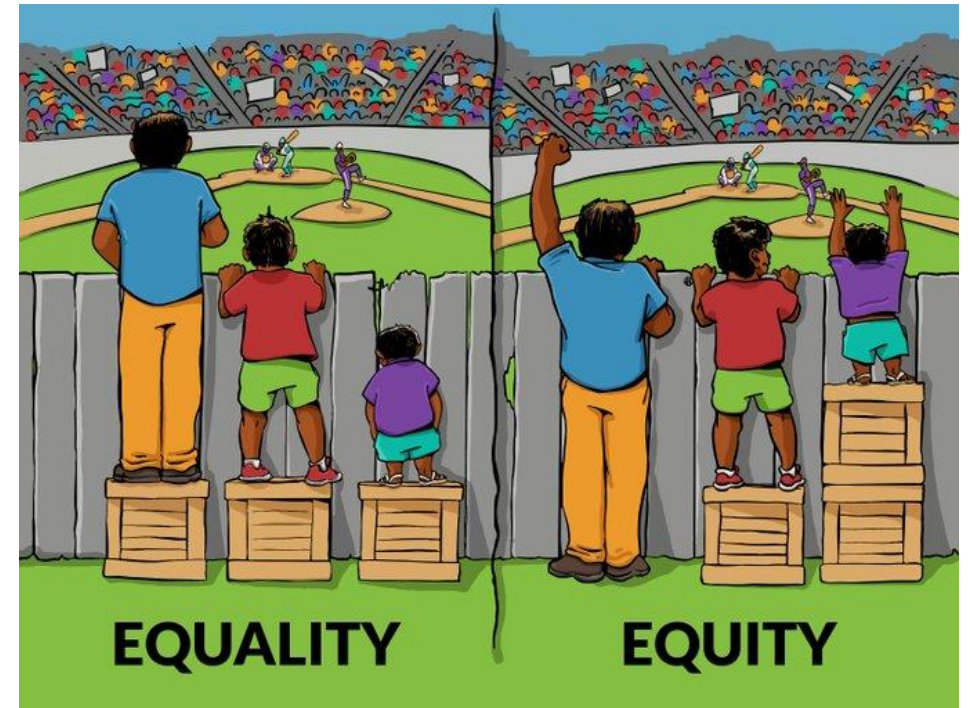
How to *widen* the funnel's top?

- Recruit at HBCUs
- Advertise in community publications
- Partner with organizations that support candidates of color
- Community outreach efforts



What is Equity?

Equity in the workplace means all employees are treated in a fair and just way. A crucial part of equity is ensuring that every individual employee has what they need to succeed and opportunities to do so.



What is Inclusion?

Inclusion in the workplace means creating an environment where groups who may have been historically excluded due to race, sex, LGBTQ+ status, disability, etc., are actively included and valued for their different perspectives.



Employee Resource Groups

- An employee resource group (ERG) is an employee-led group that fosters inclusivity and builds community. These groups are usually formed around specific social identity groups. For example, many companies now have a Black professionals' or an LGBTQ+ employee resource group.
- ERGs have several benefits. For example, they help promote awareness and create a safe space for members to discuss issues they may be experiencing related to their identity.

Employee Resource Groups

What are the benefits of ERGs?

- Foster inclusion and belonging
- Promote awareness
- Drive innovation
- Increase engagement and retention
- Should be voluntary

Employee Resource Groups

BUT... Beware Creating an Employer-Sponsored Labor Union

- ERGs cannot work bilaterally with management to address employee issues.
- Instead, they must use unilateral means to present any issues (e.g., suggestion boxes, brainstorming groups, or information offloading)

Employee Resource Groups

BUT... Beware Exclusionary Groups

- ERGs must be open to all employees, regardless of race, sex, etc.
- EEOC: "Title VII also prohibits employers from limiting, segregating, or classifying employees ... based on ... protected.... In the context of DEI programs, unlawful segregation can include limiting membership in workplace groups, such as Employee Resource Groups (ERG), Business Resource Groups (BRGs), or other employee affinity groups, to certain protected groups." EEOC, What You Should Know About DEI-Related Discrimination at Work, <https://www.eeoc.gov/wysk/what-you-should-know-about-dei-related-discrimination-work>.

DEI in the Courts

Students for Fair Admissions v. Harvard, 143 S. Ct. 2141 (2023)

- HELD: Race-based affirmative action programs violate the Equal Protection Clause of the Fourteenth Amendment
- "Eliminating racial discrimination means eliminating all of it. Accordingly, the Court has held that the Equal Protection Clause applies 'without regard to any differences of race, of color, or of nationality' — it is 'universal in [its] application.'"
- "Because Harvard's and UNC's admissions programs lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points, those admissions programs cannot be reconciled with the guarantees of the Equal Protection Clause."



DEI in the Courts

National Center for Public Policy Research v. Howard Schultz
(Spokane County, Wash. Superior Ct. Case No. 22-2-02945-32)

- In 2020, Starbucks decided that it needed a greater representation of BIPOC (Black, Indigenous, People of Color) employees.
- As a result, it announced a policy that aimed to increase company-wide BIPOC representation to at least 30% in five years.
- Its efforts included implementing a leadership accelerator program for BIPOC employees, linking executive compensation to meeting DEI goals, and granting funds to community nonprofits.

DEI in the Courts

Natl. Ctr. for Pub. Policy Rsch. v. Schultz, E.D.Wash. No. 2:22-CV-00267-SAB, 2023 U.S. Dist. LEXIS 161680 (Sep. 11, 2023)

- National Center for Public Policy Research, which owns around \$6,000 in Starbucks stock (0.000005%), sued, claiming those policies require the company to make race-based decisions in violation of state and federal civil rights laws.
- Explaining the lawsuit, the NCPPR said that setting "goals for the number of 'diverse' — meaning not-white — employees it hires ... is outright racial discrimination."

DEI in the Courts

Natl. Ctr. for Pub. Policy Rsch. v. Schultz, E.D.Wash. No. 2:22-CV-00267-SAB, 2023 U.S. Dist. LEXIS 161680 (Sep. 11, 2023)

- U.S. District Judge Stanley Bastian dismissed the lawsuit as frivolous.
- "Plaintiff is apparently unhappy with its investment decisions in so-called 'woke' corporations. This Court is uncertain what that term means but Plaintiff uses it repeatedly as somehow negative. This Complaint has no business being before this Court and resembles nothing more than a political platform. Whether DEI and ESG initiatives are good for addressing long simmering inequalities in American society is up for the political branches to decide. If Plaintiff remains so concerned with Starbucks' DEI and ESG initiatives and programs, the American version of capitalism allows them to freely reallocate their capital elsewhere."
- The judge also barred the NCPPR from refiling its complaint and is permitting Starbucks to seek recovery of its attorneys' fees.



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Executive Orders Targeting DEI

- March 2025: Trump signs executive order banning federal contractors from requiring DEI training for employees.
- The order defines DEI training as “divisive” or “ideological” if it mentions systemic racism, white privilege, or gender identity.
- Penalties include cancellation of federal contracts and potential debarment.



The EEOC's Role: Andrea Lucas Takes Aim

- April 2025: Lucas sends letters to 20+ major law firms demanding documents on DEI hiring practices.
- Allegation: Some DEI programs may violate Title VII by prioritizing race or gender.
- Firms targeted for offering fellowships, internships, or training reserved for underrepresented groups.
- Signals shift from enforcement of discrimination against minorities to perceived discrimination against white applicants.

WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO DEI AT WORK



Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on protected characteristics such as race and sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees are harmed. Title VII's protections apply equally to all racial, ethnic, and national origin groups, as well as both sexes.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination and can file a lawsuit under Title VII against businesses and other private sector employers. The Department of Justice can file a lawsuit under Title VII against state and local government employers based on an EEOC charge, following an EEOC investigation.

What can DEI-related discrimination look like?

Diversity, Equity, and Inclusion (DEI) is a broad term that is not defined in the statute. Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's race, sex, or another protected characteristic. In addition to unlawfully using quotas or otherwise "balancing" a workforce by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

Disparate Treatment

DEI-related discrimination can include an employer taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic. Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including:

- Hiring
- Exclusion from training
- Firing
- Exclusion from mentoring or sponsorship programs
- Promotion
- Exclusion from fellowships
- Demotion
- Selection for interviews (including placement on candidate slates)
- Compensation
- Fringe benefits

Harassment

Title VII prohibits workplace harassment, which may occur when an employee is subjected to unwelcome remarks or conduct based on race, sex, or other protected characteristics. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive. Depending on the facts, DEI training may give rise to a colorable hostile work environment claim.

Who can be affected by DEI-related discrimination?

Title VII protects employees, potential and actual applicants, interns, and training program participants.

What should I do if I encounter discrimination related to DEI at work?

If you suspect you have experienced DEI-related discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000 or by ASL videophone at 1-844-234-5122.



www.EEOC.gov

Limiting, Segregating, and Classifying

Title VII also prohibits employers from limiting, segregating, or classifying employees based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities. Prohibited conduct may include:

- Limiting membership in workplace groups, such as Employee Resource Groups (ERG) or other employee affinity groups, to certain protected groups
- Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources

Retaliation

Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing employment discrimination related to DEI, participating in employer or EEOC investigations, or filing an EEOC charge. Reasonable opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.

EEOC on DEI-Related Discrimination

- Title VII applies equally to all workers; there is no such thing as “reverse discrimination.”
- A business interest in “diversity” does not justify an employment action based on race, sex, or another protected characteristic.
- “DEI training” can create a hostile work environment.



DEI Training as Harassment

- *Diemert v. City of Seattle*

- “DEI programs aimed at addressing racial inequalities against Black people and other minorities are not by their very nature discriminatory against whites.”
- “Exposure to material that discusses race does not by itself create an unlawful hostile-work environment.”
- “Training on concepts such as white privilege, white fragility, implicit bias, or critical race theory can contribute positively to nuanced, important conversations about how to form a healthy and inclusive working environment.”



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A Coordinated Campaign Against DEI

- Messaging frames DEI as “woke ideology” infiltrating government and business.
- GOP-aligned think tanks pushing litigation against corporate DEI pledges.
- Federal funding restrictions for schools or nonprofits engaging in DEI education.
- Outcome: Chilling effect—many companies scaling back programs out of legal fear.



DEI: Fiction vs. Fact

- The reality, however, is that no matter what six Justices said about affirmative action in college admissions, no matter what Andrea Lucas says about DEI in employment, and no matter what President Trump says, there is **nothing illegal** about corporate DEI programs.
- DEI programs encourage the representation and participation of diverse groups of people within companies, including racial minorities.
- They are neither quotas nor race-based hiring decisions ... which have always been, and remain, illegal.



The DEI Disconnect

80%

of employers

agree that DEI improves
workplace performance

BUT
ONLY

40%

of employees

report seeing their bosses setting and
communicating DEI goals

90%

of employees

see DEI as a top priority

YET

34%

of employers

see DEI as a strength in their workplace

Why is DEI Important?

- **It enhances communication.** DEI programs help employees with different backgrounds, lifestyles, values and opinions communicate and collaborate better.
- **It empowers your team.** DEI programs create an environment where people from underrepresented groups feel empowered. All employees are given equal access to growth opportunities. This means your business doesn't miss out on some of its best talent. Plus, an empowered employee is an engaged employee.
- **It improves your business's reputation.** Employees want to work for a company they can believe in, so prioritizing DEI can help you attract and retain talent. It also sends a message to consumers that your company's values align with theirs — which can lead to increased sales and build customer loyalty.

DEI = Good Business

- **Diversity can boost profits.** According to a 2020 diversity report by McKinsey, organizations with the highest levels of gender diversity are 25 percent more likely to have above-average profit margins. The rate is even higher — 36 percent — for ethnically and culturally diverse companies.
- **Diversity boosts productivity.** Diversity doesn't just make a company more profitable; it makes individual employees more productive. Inclusive teams are over 35 percent more productive and generate 2.5 times higher cash flow per employee.

DEI = Good Recruiting and Retention

- **Diversity affects job candidates' decisions.** According to Glassdoor's Diversity and Inclusion Workplace Survey, 76 percent of respondents said diversity is a top factor when deciding where to work. Additionally, 1 in 3 people would actually refuse to work at a company that isn't diverse — and this rate is even higher for underrepresented groups.
- **DEI is becoming increasingly important to job candidates.** As more diverse, younger generations comprise a larger workforce share, DEI will continue to become more important. Millennials and Gen Zers expect companies to foster diverse, inclusive workplaces. (83% of Gen Z workers prioritize diversity when choosing an employer.)

Why Invest in DEI?

- Employees will have higher levels of trust in the organization
- Employees will be more comfortable in the work environment
- Higher employee satisfaction
- May foster better teamwork amongst employees
- May provide a morale boost to employees

What happens when you don't invest in DEI?

- Lack of variety in input, opinions, experience, etc.
- Employees will not feel welcome, accepted, or included which can lead to lower job performance thus less revenue
- Poor public perception
- Boycotts and lost revenue
- Higher turnover rates within the organization
- Potential for lower employee satisfaction
- Lawsuits!!!

5 Steps to Build Your DEI Strategy in Your Business

1. Define the DEI purpose, mission, and values.

Identify why the DEI strategy is being developed. This should be in alignment with your organization's strategic plan, mission, vision, and values.

5 Steps to Build Your DEI Strategy in Your Business

2. Establish a governance structure. Who is responsible for DEI strategy, oversight, and tracking? The DEI governance body should represent diverse perspectives and be empowered to institute organization-wide change. The governance body will define the DEI lexicon for the initiative and establish accountability measures.

5 Steps to Build Your DEI Strategy in Your Business

3. Define leadership roles and expectations. For a DEI strategy to work, leadership has to model the behavior, values, and norms that foster an equitable and inclusive workplace. In addition to the governance body, every employee will have their own role in ensuring accountability for the implementation and success of the DEI strategy; however, the leadership team has the ultimate accountability.

5 Steps to Build Your DEI Strategy in Your Business

4. Empower leaders as diversity champions. Ensure leaders have the tools they need to make change happen. These tools include education on creating a diverse, equitable, and inclusive environment, as well as additional resources. Cultivating a curriculum for learning and education that supports leadership commitment is ideal. Consulting external resources and experts will likely be required so there should be a designated budget for this work.

5 Steps to Build Your DEI Strategy in Your Business

5. Identify metrics to evaluate outcomes and progress. To ensure accountability and transparency, you must identify metrics to track the outcomes of the DEI strategic plan. Metrics may include: targeted efforts to increase representation at multiple levels of the organization, training development, promotion opportunities for underrepresented groups, and equitable and inclusive workplace culture practices.

The Future of DEI in the Workplace?

- Integrate DEI into core business practices instead of a separate initiative.
- Reframe DEI language.
- Focus more on "inclusion" and "belonging" and less on "diversity" and "equity".
- Leverage data to demonstrate impact and compliance.
- Engage in community and stakeholder dialogue.

The Future of DEI in the Workplace?

- Align DEI goals with business outcomes.
- Provide manager-level training on inclusive practices.
- Audit job descriptions/hiring practice.
- Establish cross-functional DEI councils.
- Create (or update) values-based codes of conduct.
- Shift to "opportunity" equity framing.
- Continue to monitor legislative and other legal changes.

The Future of DEI in the Workplace?

- Risk: Employers may retreat from inclusive hiring and retention efforts.
- Legal limbo: Courts now grappling with whether DEI = discrimination.
- Public response: Some companies doubling down, others quietly walking back.
- Key question: Can DEI survive as both a moral commitment and a legal risk.



Call to Action

Business and HR leaders must speak up—not just to comply with law, but to stand for what is right and just. If you don't, who will?

Questions?

