

BIAS

**Recognizing and Addressing
Implicit Bias in Legal Practice**

CLE on Elimination of Bias

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Presented to:

 **ACC** Association of
Corporate Counsel

Today's Speakers



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Agenda

- *Understanding Implicit Bias*
- *Implicit Bias and Artificial Intelligence*
- *Implicit Bias in the Workplace*
- *Mitigation and Support*
- *Q&A*



Understanding Implicit Bias

- **Definition:** *Unconscious assumptions influencing behavior and decisions*
- *Can affect:*
 - *Litigation strategies*
 - *Workplace investigations*
 - *Client interactions*
- *Harvard Implicit Bias Test*
 - *Help reveal unconscious biases*



Why This Matters

- *Legal professionals must make consistent, defensible decisions*
- *Bias can influence:*
 - *Risk assessment*
 - *Investigations*
 - *Negotiations*
 - *Client interactions*

CA Rule of Court 9.7: *Every attorney must take an oath to practice law is to conclude with the following: "As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity."*

CA Rules of Professional Conduct 8.4.1: *Generally prohibits a lawyer from unlawfully discriminating in a law firm's operations, in representing a client, and in terminating or refusing to accept a client.*



*Implicit Bias and Artificial
Intelligence*

AI Bias Cases

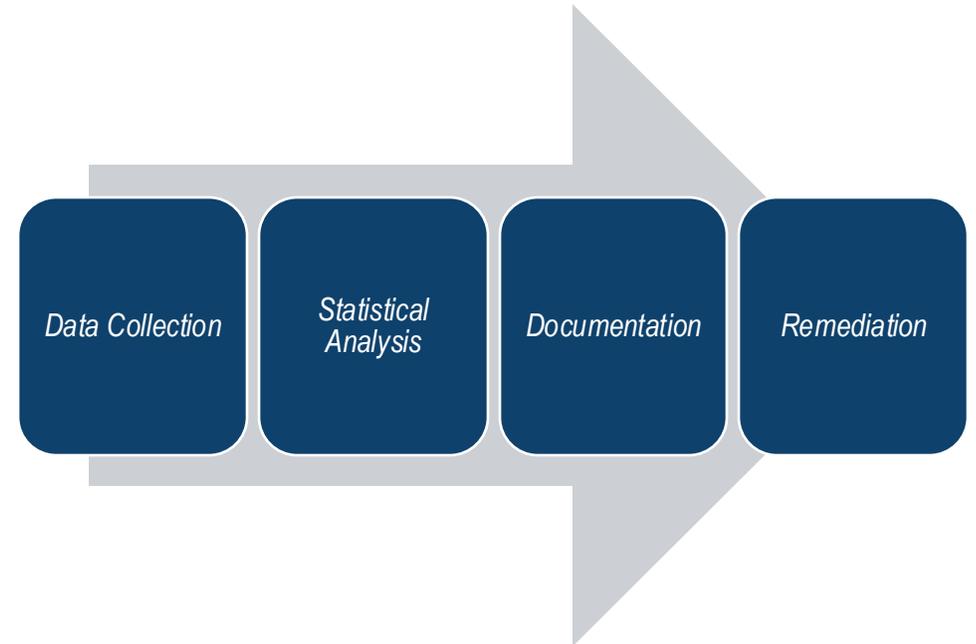
- *AI systems can unintentionally reproduce discriminatory patterns*
- *98.4% of Fortune 500 companies and over 51% of non-Fortune 500 companies use AI in the hiring process*
- *California AB 316: Limits biased AI, mandates bias review*
- *Studies show AI tools exhibit gender and racial bias in resume ranking and applicant selection*
 - **Example:** *AI resume tools favored White-associated names in ~85% of cases vs. non-White names*

California Civil Rights Department Regulations

- *New California Civil Rights Council regulations (effective Oct. 1, 2025) require ADS used in employment decisions to be free of discriminatory impact*
 - *ADS may violate FEHA if it harms protected groups*
 - *Employers must retain ADS decision data for at least 4 years*
- *Liability shifts from intent → outcomes*

Bias Audits for AI

- *Bias audits: Assess whether ADS decisions disproportionately exclude protected groups*
- *Audits should measure outcomes by race, gender, age, disability, etc.*
- *Document methodology and results to defend against disparate impact claims*
- *Frequency: Regular intervals or when system changes*



Automated Hiring Decisions - Compliance

- *ADS tools include resume parsers, interview bots, video screening with emotion analysis, etc.*
- *Disparate impact liability applies even without intent; measurable outcomes matter*
- *Employers must consider reasonable accommodation when screening tools disadvantage applicants with disabilities*
- *Legal risk: Failure to audit → liability regardless of intent*



Implicit Bias in the Workplace

Anonymous Resume Review

- *Resume Whitening: removing racial/identity cues from applications can increase callback rates*
- *Research shows racial minority applicants more than double callback likelihood after “whitening” resumes v. un-whitened versions in the same context*
- **Implementation tips:** *Anonymize resumes; standardized evaluation criteria*



Invisible Disabilities

- *Invisible disabilities include chronic pain, autoimmune conditions, mental health, and neurodiversity*
- *Disclosure is voluntary, but employers must provide accommodations when requested*
- *Failure to provide reasonable accommodation can violate ADA and state law*
- **Guidance:**
 - *Encourage voluntary disclosure*
 - *Provide reasonable accommodations*
 - *Avoid assumptions*

Political Affiliation Bias

- *Personal cues (e.g., bumper stickers, social media likes) can trigger assumptions*
- *Professional impact: Filtering decisions or evaluations based on assumptions*
- **Best Practice:** *Focus on behavior and performance, not perceived affiliations*



U.S. Cultural Bias

- *Terms like “foreign” vs. “international/localized” can convey an exclusionary tone*
- *Consider cultural nuance: Time zones, idioms, holidays, communication norms, and cultural references can unintentionally bias decisions*
- *Inclusive language increases comfort and reduces unintended “othering”*
- **Tip:** *Review language in policies and client communication*



Communication Styles Across Cultures

- *High context vs. low context communication*
- *Misinterpretation can cause bias or misjudgment*
- **Tip:** *Ask clarifying questions; avoid assumptions based on accent or style; confirm understandings in writing*



Remote Work / Camera Bias

- *Seeing personal spaces can influence perception*
- *Potential bias: Judgment on socioeconomic status, culture, home environment*
- **Best practices:** *Optional cameras, neutral backgrounds, policies for equity*



Return-to-Office (RTO) Policies

- *Risk of Bias: Ageism, generational assumptions, caregiving responsibilities*
- *Legal implication: consistent application of policy and documentation when exceptions are needed is critical*
- **Tip:** *Apply policies consistently; document RTO exceptions and rationale*





Mitigation and Support

Practical Bias Mitigation Strategies

- *Structured decision frameworks*
- *Diverse review panels*
- *Regular bias and AI audits*
- *Documented rationale for hiring, promotions, accommodations*
- *Training for human reviewers*
- *Pause and reflect before key decisions*

 *Audit*

 *Panel Review*

 *Documentation*

Resource Groups & D&I Climate

- *Employee Resource Groups (ERGs) provide support and insights*
 - *Participation open to all employees*
- *Legal teams should:*
 - *Understand D&I initiatives*
 - *Collaborate for fair policies*
- **Metrics:** *Representation, engagement, inclusivity feedback*

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Raising Concerns

- *Reporting bias/discrimination: Clear policy & escalation path*
- *Legal considerations: Confidentiality, anti-retaliation*
- **Example:** *Anonymous hotline or internal HR reporting*



Exceptions & Flexibility

- *Exceptions necessary for: Disabilities, caregiving, religious observances*
- *Document reasoning to maintain defensibility*
- **Tip:** *Standardize exception request process; maintain confidentiality*



Actionable Takeaways

- *Bias is subtle but impacts legal risk and outcomes*
- *Regular audits, structured processes, and D&I collaboration reduce risk*
- *Encourage ongoing reflection and learning*





Questions?

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Thank You

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