

Misconceptions v. Reality: A Primer on the Work of DEI

June 20, 2024

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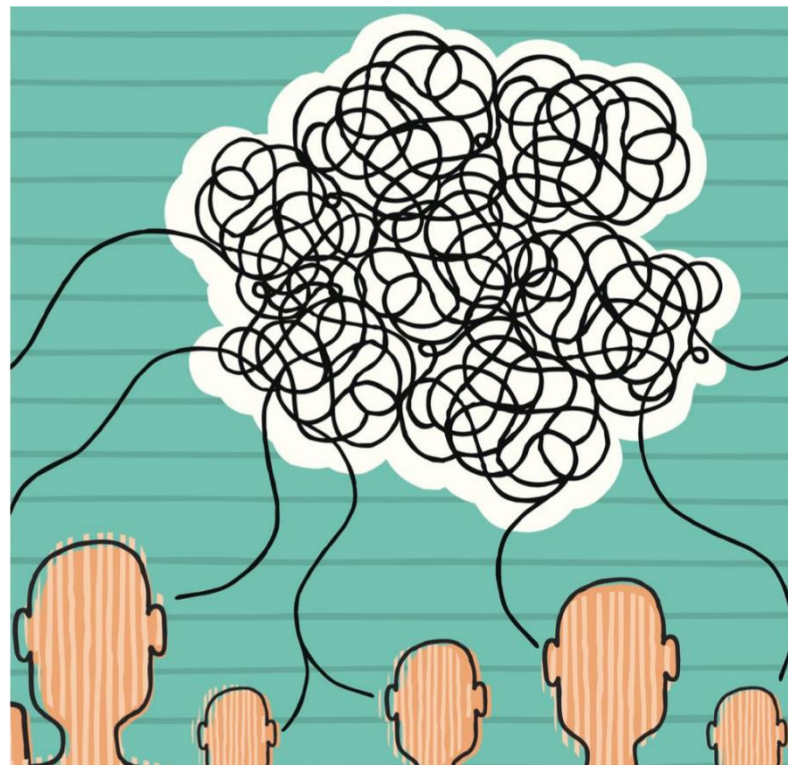


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Agenda:

1. Introduction
2. Review recent case law
3. Identify common misconceptions about the work of DEI
4. Provide some insight into the actual work DEI practitioners engage in



Introduction

Partner-in-Charge, DEI Policy and Strategy
Eversheds Sutherland (US) LLP

- Partner-in-Charge DEI Policy and Strategy
- Litigation partner
- Lifelong involvement in DEI movement and initiatives



Recent Case Law

Students for Fair Admissions v. President and Fellows of Harvard

Students for Fair Admissions v. University of North Carolina



The Law

Relevant language from the Constitutional and statutory framework used by the Supreme Court in its decision:

Title VI of the Civil Rights Act of 1964

“No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.”

The Equal Protection Clause of the Fourteenth Amendment

“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Schools of Thought

1. Anti-classification: Racial classifications are presumptively wrong, no matter the purpose
2. Anti-subordination: Racial classifications are allowed if they advance the equal status of historically oppressed groups

Schools of Thought

Justice Ketanji Brown Jackson



Revisiting the Law

Relevant statutory language *unrelated* to the decision:

Title VII of the Civil Rights Act of 1964

"It shall be an unlawful employment practice for an employer:

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to **discriminate** against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in a way which would deprive or tend to **deprive any individual of employment opportunities** or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

42 U.S. CODE § 1981

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to **make and enforce contracts**...and to the full and equal benefit of all laws...as is enjoyed by white citizens."

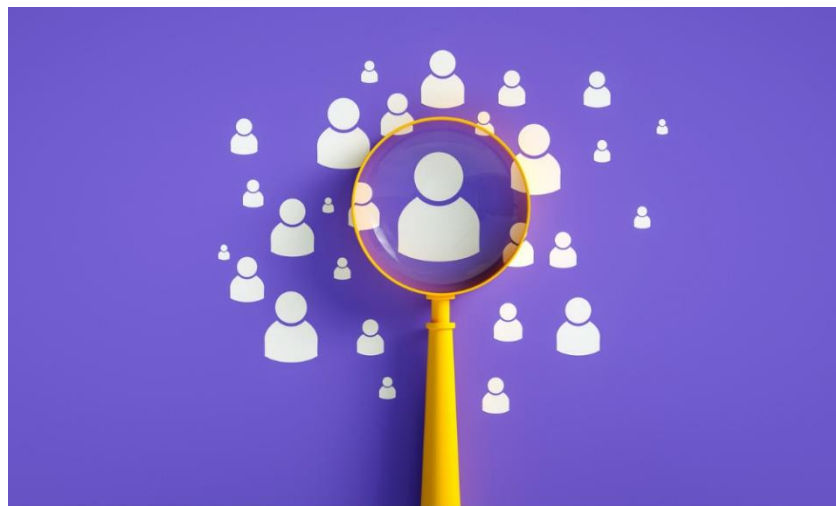


Identifying and Eliminating Barriers

Hiring/Promotions

Misconceptions:

- DEI puts quota systems in place when it comes to hiring to make sure a certain percentage of all hires are people of color
- If I am up for a promotion against a person of color, I will lose because of diversity
- DEI efforts overlook merit when it comes to hiring and that means that the best candidate won't get the job or, said another way:
- That person got the job because they are a diversity hire



Identifying and Eliminating Barriers

Evaluation/Review/Compensation/Work Allocation Processes



Misconceptions:

- DEI programs give people from underrepresented backgrounds opportunities I do not get
- People from underrepresented backgrounds get special treatment
- People from underrepresented backgrounds are not held to the same standards

Reshaping Organizational Culture to be More Inclusive

Misconceptions

- We spend too much time on cultural/heritage month celebrations
- DEI training is a waste of time! I've heard all this stuff before and I shouldn't be expected to attend if I don't agree
- No one can be expected to keep up with all of the DEI terms and people's pronouns! It's impossible!
- All of this DEI stuff is pointless. People should just try to fit in and be professional.





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