JacksonLewis

Drive Diversity, Equity, and Inclusion

Achieving a Balance Between Workplace Laws and a Culture of Respect, Performance, and Retention

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Today's Roadmap

- **The Importance of Diversity and Inclusion**

- **Precedent and the Historical Approach**

- **Key Principles for Effective Workplace Communications**

- **Why People Leave and How We Can Get Them to Stay**

- **Unique Role of Upper Management in DEI**

Implicit Bias

If you have a
brain,
you have bias

○ An <u>unconscious</u> inclination or preference either for or against an individual or group that interferes with impartial judgment.

Explicit:

Aware

Intentional

Voluntary

Implicit:

Unaware

Unintentional

Involuntary

How Do We Fill in the Blanks?

Types of Implicit Bias

Confirmation

Halo

Horn

Authority

Stereotyping

Anchor

Affinity

Attribution

Conformity

Status Quo

Microaggressions

- Brief and commonplace daily indignities that communicate hostile, derogatory, or negative slights and insults toward underrepresented persons and/or people perceived to hold less power.

  - **Verbal:** A verbal microaggression is a comment or question that is hurtful or stigmatizing to a certain marginalized group of people.

  - **Behavioral:** A behavioral microaggression occurs when someone behaves in a way that is hurtful or discriminatory to a certain group of people.

  - **Environmental:** An environmental microaggression is when a subtle discrimination occurs within society.

Recruiting Bias

- Who is conducting the interviews?

- What is being said during the interviews?

- Why are you selecting certain candidates (e.g. performance or "good fit")?

- How much of your recruiting is referral-based?

- Implement a structured and intentional recruiting process
    - Define what is a "good cultural fit"
    - Be intentional about where you recruit candidates to increase diversity
    - Identify multiple interviewers
    - Train interviewers
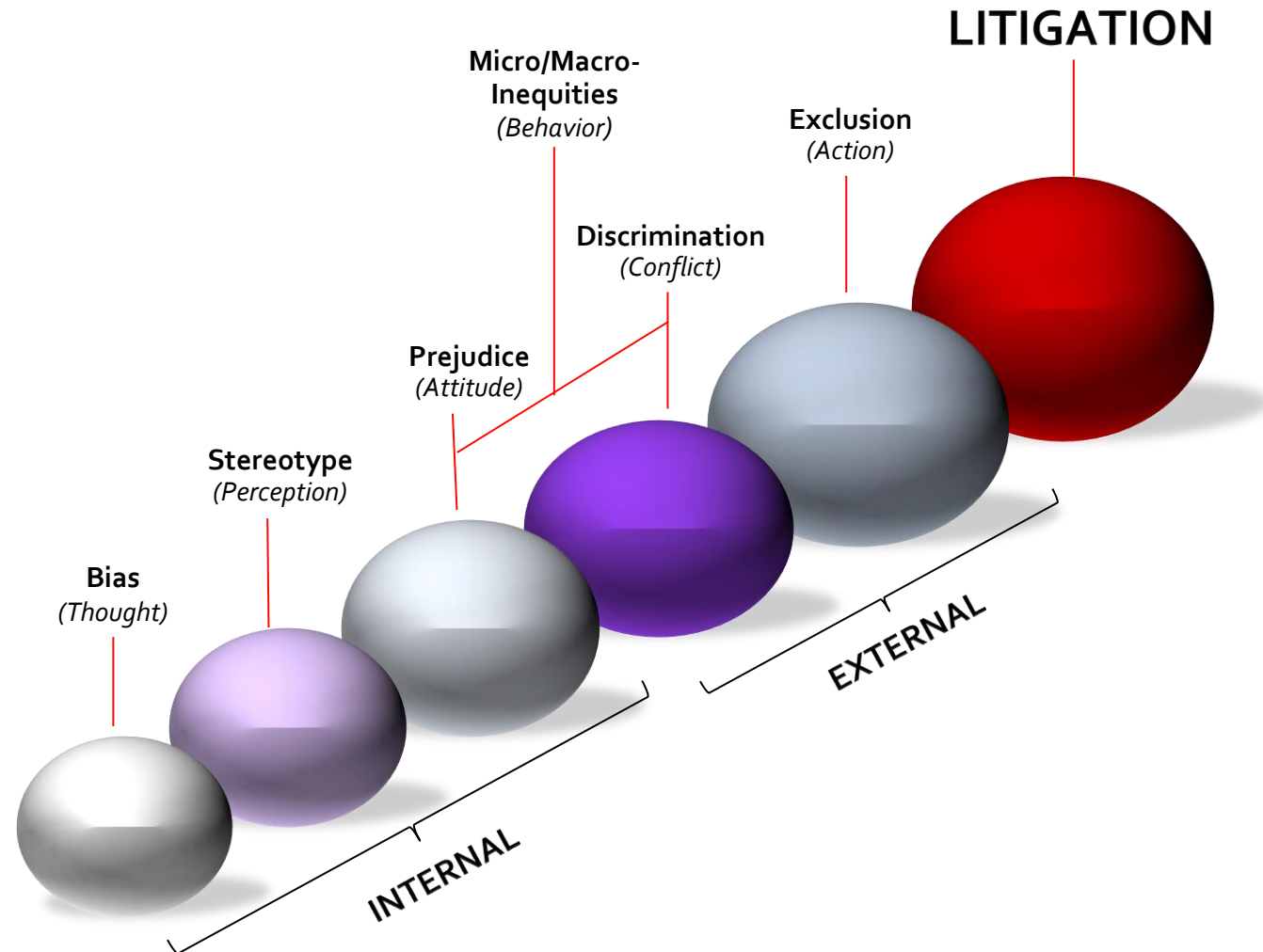
Compensation Bias

- Conduct a compensation analysis (under privilege)
  - Obtain detailed information regarding the reason for differences in pay between similarly situated individuals of different protected characteristics
- Pay Transparency
- Implement a compensation strategy
  - Eliminate prior salary
  - Set clear expectations for compensation
  - Value all work
  - Limit discretion available in setting pay
  - Minimize/Prohibit "exceptions" to the strategy

Performance Bias

- Set specific performance expectations and goals for each position
  - Value all elements of the position/work
- Train all individuals that conduct performance reviews to improve consistency
  - Different biases that appear in performance reviews
  - Rating system used by the company
- Require employees conducting reviews to take an implicit bias test
- Work Assignments – rotation and accountability
- Use HR as a "constant" in the review process

Implicit Bias & Litigation

LITIGATION

Micro/Macro-
Inequities
(Behavior)

Exclusion
(Action)

Discrimination
(Conflict)

Prejudice
(Attitude)

Stereotype
(Perception)

Bias
(Thought)

EXTERNAL

INTERNAL

Tactics to Interrupt or Combat Biased Decision-Making

1 Remind yourself about the impact of implicit biases

2 Slow down decision-making

3 De-stress

4 Add structure to processes

5 Embed bias-busters

6 Add in oversight

LEGAL FRAMEWORK

- Discrimination
- Harassment
- Retaliation
- Abusive Conduct
- Equal Pay

Reviewing and Refreshing DEI Efforts

1 Reexamine and Clarify DEI Means for Your Organization

2 Institute Measured Targets Toward Updating Definitions and Goals

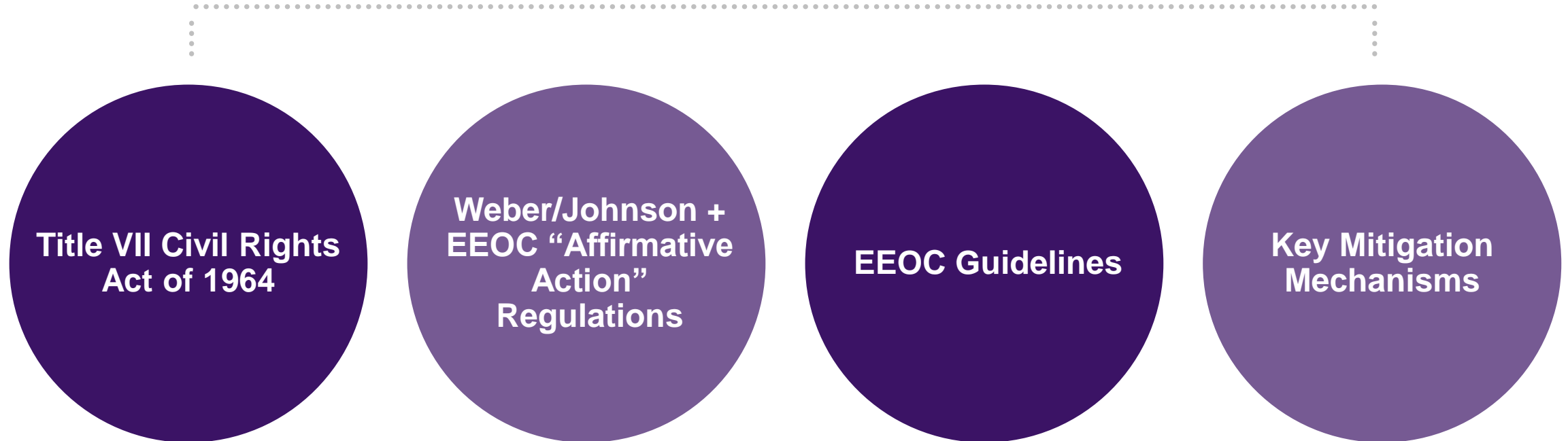**3** Formal Mentorship or Sponsorship Programs

4 Adding DEI responsibilities and accountability metrics in management job descriptions

5 Informal Dispute Resolution Systems for Discrimination and Harassment Grievances

Legal Considerations for DEI Programs

Key Areas of Potential Risks

Title VII Civil Rights Act of 1964

Weber/Johnson + EEOC "Affirmative Action" Regulations

EEOC Guidelines

Key Mitigation Mechanisms

At the core of diversity, equity, and inclusion is the concept of creating a workplace that leverages everyone's unique identities and makes them feel part of the whole.

Best Practices for ERGs

- Clearly identify ERG Mission and Primary Objectives
- Standard Approval Process for New ERGs
- Bases for ERGs: Permissible and Impermissible
- Establish Operating Guidelines
  - Voluntary / "Opt In"
  - All who support mission may participate
- Create Governance Structure

ERG "Traps for the Unwary"

- Violations of Company Policy
- Inadvertent Disclosure of Confidential Information
- Involving ERGs in Complaint Intake and Resolution
- ERG "Negotiation" of Terms and Conditions of Employment
- Failure to Distinguish Voluntary ERG Activities from Paid Work
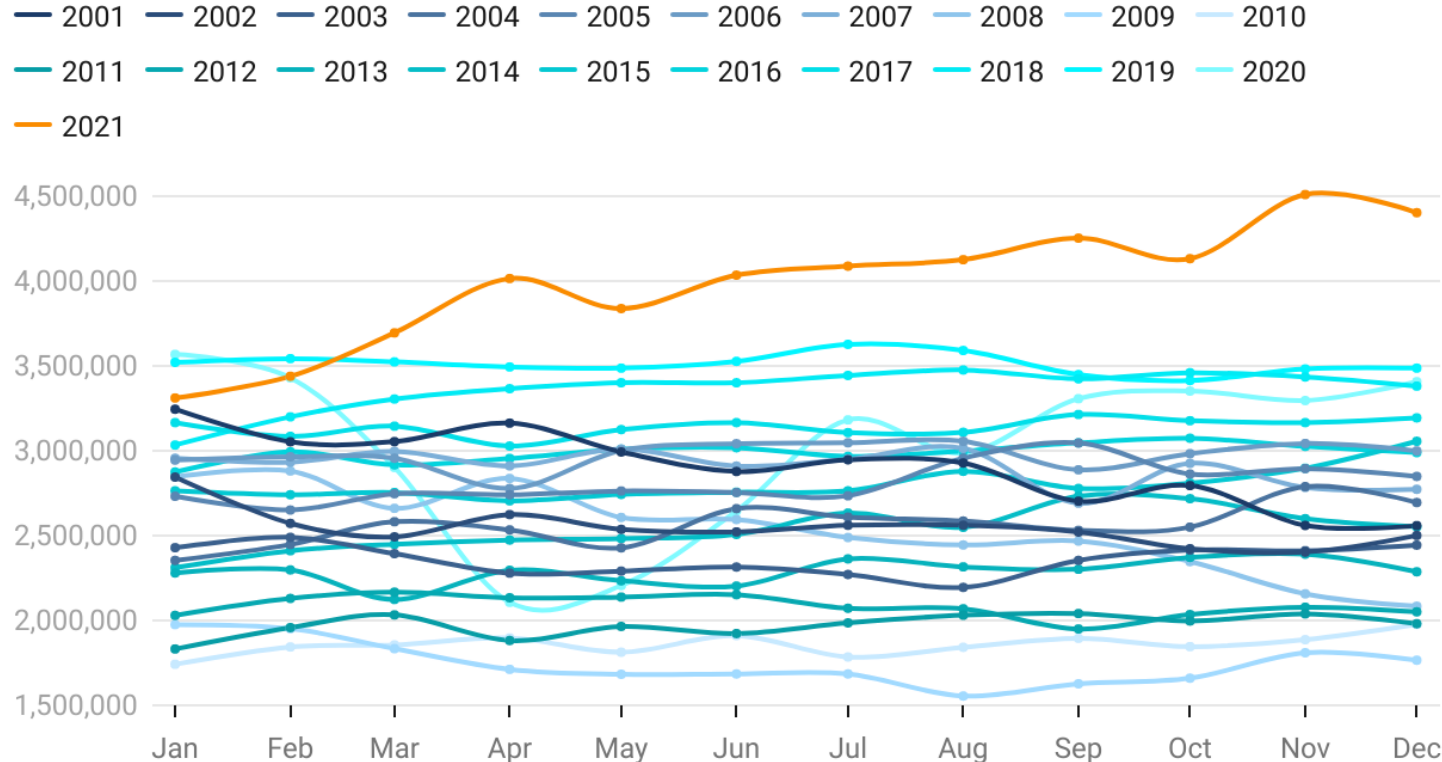
How can we get people to stay?

It's not just about money anymore…

- **Flexibility**

- **Enhanced Benefits**

- **Safety**

- **Diversity, Equity, and Inclusion**

The Great Resignation. The Big Quit. The Great Reshuffle…

Quitter's Market

Many factors have led to the historic quits levels—the ongoing pandemic, vaccine mandates and a strong candidate's market are just some considerations that may be leading more workers to put in their notice. The last 10 months of 2021—since March—saw the largest exodus of employees on record. **Hover over each line to see more details about the year and how many workers quit each month.**
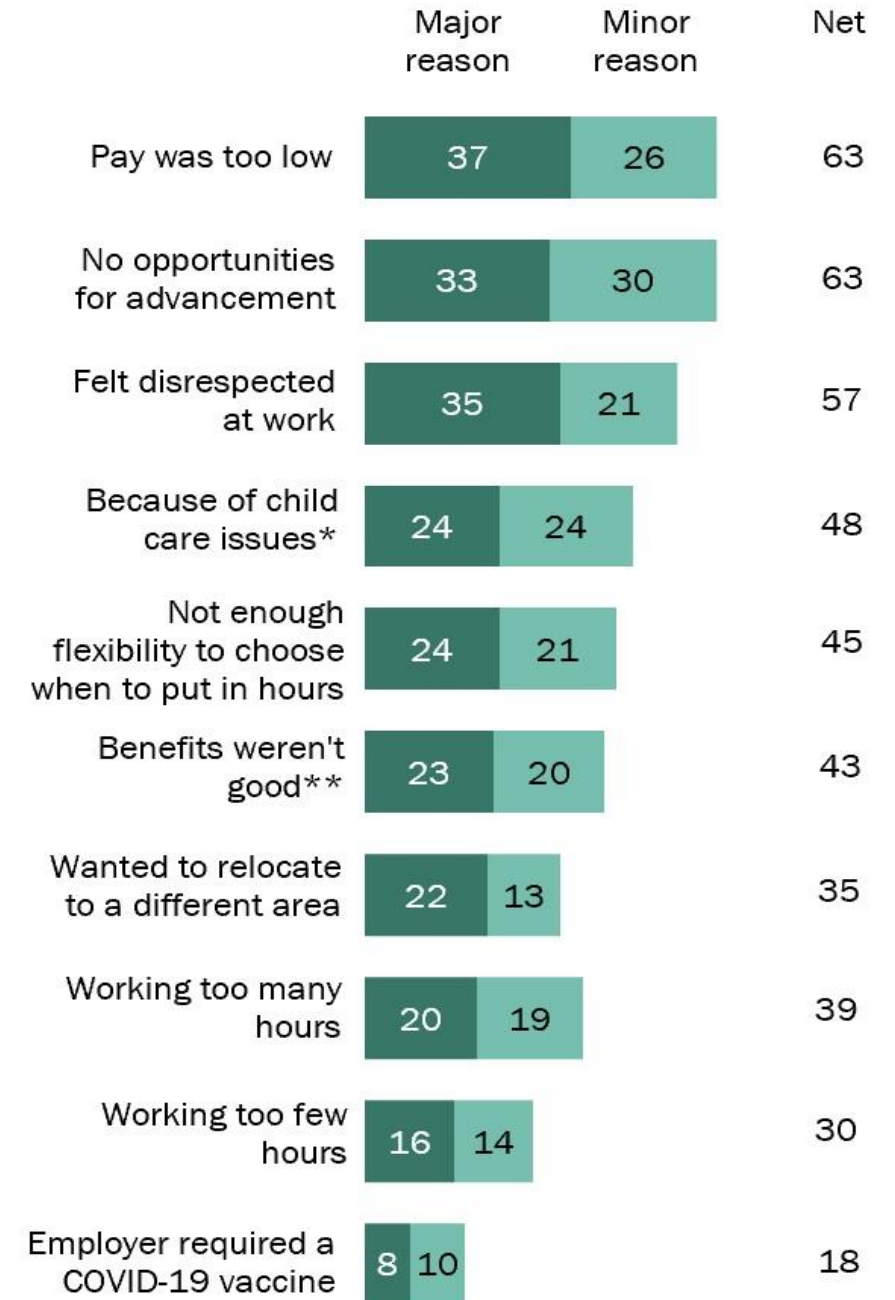
Legend: 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021

Chart: Mauro Whiteman • Source: U.S. Bureau of Labor Statistics, Job Openings and Labor Turnover Survey. • Created with Datawrapper

Why is everyone leaving?

COVID

- Remote school
- Working from home
- Workplace safety

Social Justice

- Voting with your feet
- Generational differences

	Major reason	Minor reason	Net
Pay was too low	37	26	63
No opportunities for advancement	33	30	63
Felt disrespected at work	35	21	57
Because of child care issues*	24	24	48
Not enough flexibility to choose when to put in hours	24	21	45
Benefits weren't good**	23	20	43
Wanted to relocate to a different area	22	13	35
Working too many hours	20	19	39
Working too few hours	16	14	30
Employer required a COVID-19 vaccine	8	10	18

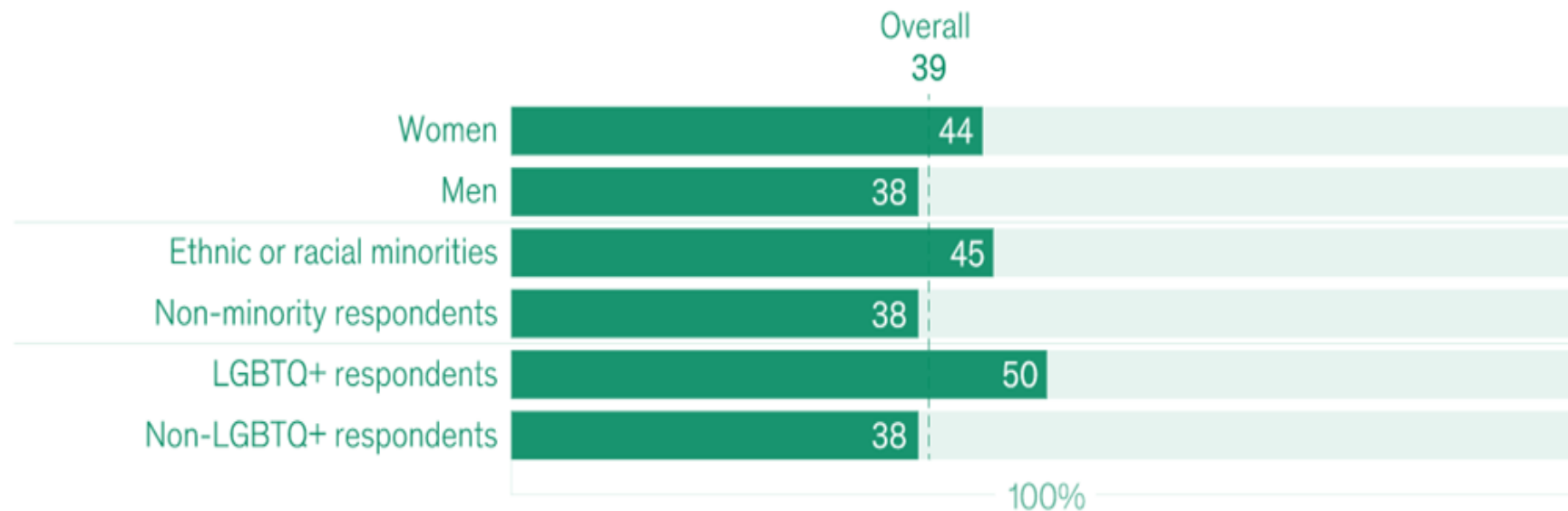# Benefits of Respectful & Effective Leadership

————

- Sense of fairness throughout workplace.

- Increased retention of talented employees.

- Stress reduction for both managers and employees.

- Increased productivity and better results.

- Minimizing costly legal claims.

Importance of Positive Diversity Profile

39% of all respondents say they've turned down or decided to not pursue a job because of a *perceived* lack of inclusion at an organization.

% of respondents who say they have decided against pursuing or accepting a position because they believed the organization would not be an inclusive place to work[1]
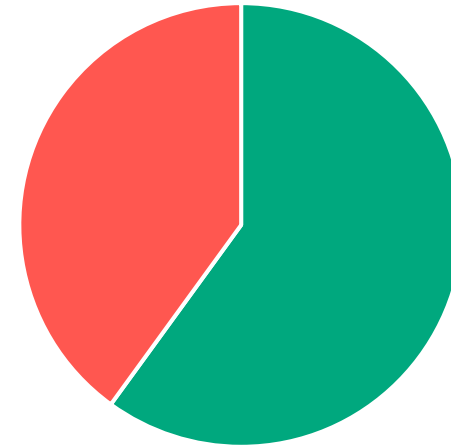
Overall 39

Women	44
Men	38
Ethnic or racial minorities	45
Non-minority respondents	38
LGBTQ+ respondents	50
Non-LGBTQ+ respondents	38

100%

Better Engagement

Millennials report higher levels of engagement
when operating in an inclusive culture.
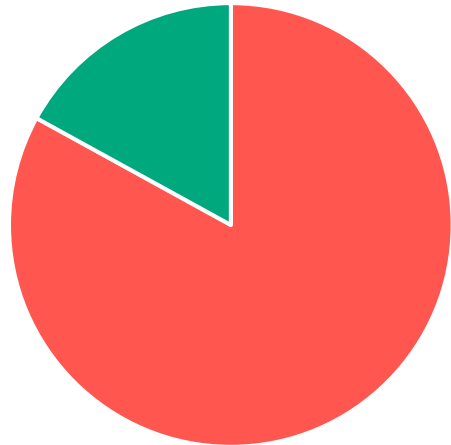
83% of millennials are *actively engaged* when they believe the organization *fosters* an inclusive culture

60% of millennials are *actively engaged* when they believe the organization *does not have* an inclusive culture

Source: Smith, C. & Turner, S., "The Radical Transformation of Diversity and Inclusion: The Millennial Influence", Deloitte University Leadership Ctr for Inclusion (2016)

Mental Health Resources

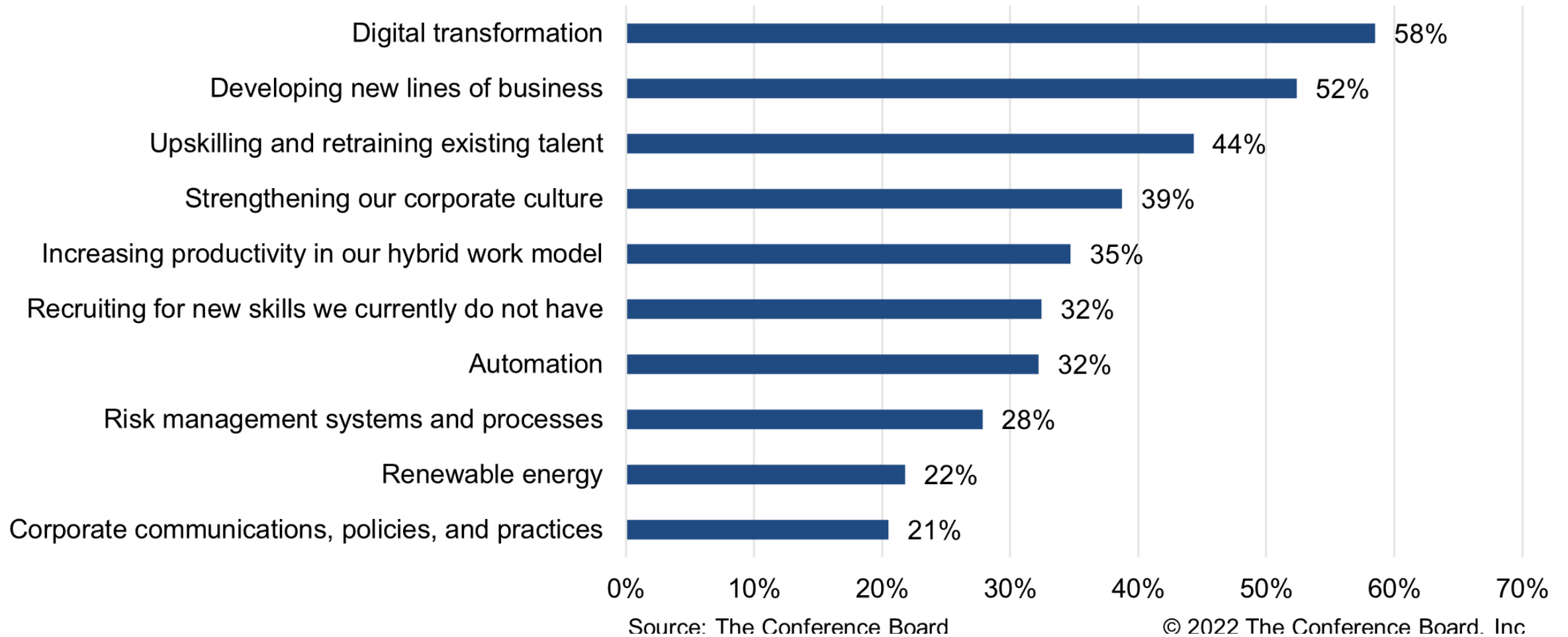**88%** of HR professionals believe offering mental health resources can increase productivity

86% of HR professionals indicated that offering mental health resources can increase employee retention

72% of HR professionals think offering mental health resources can attract new talent

Future Growth

Where do CEOs plan to invest to ensure future growth?

Category	Percentage
Digital transformation	58%
Developing new lines of business	52%
Upskilling and retraining existing talent	44%
Strengthening our corporate culture	39%
Increasing productivity in our hybrid work model	35%
Recruiting for new skills we currently do not have	32%
Automation	32%
Risk management systems and processes	28%
Renewable energy	22%
Corporate communications, policies, and practices	21%

Source: The Conference Board

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Source: Understanding organizational barriers to a more inclusive workplace, 06/23/2020 Survey, McKinsey & Company

Questions?

Thank you.

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