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What Employers Need to Know Today About Diversity, Equity & Inclusion Initiatives — Moving Away from Numbers and Toward Structural Changes, Inclusive Leadership and Psychological Safety

Introduction

Meaningful, effective, and enduring diversity, equity, and inclusion (DEI) initiatives require an organization-specific approach. Such initiatives require inclusive leadership (enacting change from the top down), structural changes (including examining the many ways unconscious bias can affect your organization's functions) and psychological safety (to create a workplace where everyone, regardless of background, feels comfortable to speak up and share their ideas).

U.S. Census Bureau results for 2020 confirm what every HR leader knows: our nation is aging and becoming more diverse. Both trends continue to impact markets and businesses around the globe significantly, given the associated shifts in health, consumerism, and employment. In the United States, many companies are advancing DEI initiatives to better align their organizations with changing social norms, markets, labor pools, internal employee well-being and employer brand goals. In a recent study of 553 companies, the Women Business Collaborative found that 90 percent of the employers studied publicized at least some data about the diversity of their workforce, with nearly half publishing a full EEO-1 report. With employers more transparent than ever, companies must not only support DEI initiatives in theory but also in practice, and they must make meaningful and structural changes toward advancing DEI.

Beyond the core goal of serving as a socially just employer, many business reasons now spur organizations to get DEI right. Examples include becoming an employer of choice, ensuring customer alignment, and strengthening community stakeholder support. At the same time, there is a rise in "reverse discrimination" lawsuits and class actions. Moreover, some employees assert that change has not occurred or not occurred fast enough.

ISSUE #1 Inclusive Leadership

WHAT YOU NEED TO KNOW — THE BOTTOM LINE:

Inclusive leadership is critical to the success of DEI initiatives. Inclusive leadership includes reinforcing DEI values in each management decision, communication, promotional message, public speaking engagement, sales conversation and hiring decision.

WHY YOU NEED TO KNOW — INFORMATION AND ANALYSIS:

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Below are strategies that leaders can use to promote DEI values on a leadership level:

- Creating a diversity strategy and organizational blueprint for the future;
- Making decisions about organizational career paths and reward structures: health benefits, financial benefits and compensation programs to support DEI;
- Setting the tone by modeling behavior; and
- Ensuring leaders and managers support the goals and outcomes of the strategy.

Further, leaders can demonstrate an ongoing commitment to the organization's diversity strategy in several important ways:

- Owning and celebrating DEI successes and progress while acknowledging missed opportunities and correcting errors;
- Not tolerating individual or small group actions and communications not aligned with the organizational strategy, goals, mission and vision;
- Promoting periodic look-back communications highlighting the changing face and social fabric of the organization;
- Setting measurable goals for diversity and inclusion and consistently measuring performance in these areas;
- Modeling inclusive behaviors and practicing inclusive leadership; and
- Embedding DEI strategies into the organization to foster wide-ranging career and organizational well-being.

NOW THAT YOU KNOW — KEY TAKEAWAY(S)

Leadership plays a critical role in shaping a company's DEI journey. Although leaders alone cannot turn an organization in a new direction, they can steer teams and processes toward the goal.

ISSUE #2: Structural Changes

WHAT YOU NEED TO KNOW — THE BOTTOM LINE:

Structural changes are also essential for enacting meaningful and lasting DEI initiatives. Enacting structural changes involves examining the many ways unconscious bias can affect the way your organization functions.

WHY YOU NEED TO KNOW — INFORMATION AND ANALYSIS:

The following are examples of structural changes organizations can enact to eliminate unconscious bias and bolster DEI initiatives:

- **Remove bias from job descriptions.** Ensure all qualifications relate directly to the duties performed on the job.

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- **Expand talent sourcing networks.** Connect with diversity-oriented job groups, partner with diversity organizations and reach out to diversity-oriented groups at universities. Develop outreach programs with educational institutions beyond elite universities and include a focus on under-represented groups.
- **Realign employment practices.** Human Resources staff can evaluate and update practices and procedures around employee attraction, recruitment, development, and retention to reflect contemporary employee needs.
- **Update training and development curriculums.** How is your organization preparing leaders to lead diverse teams? Does your organization focus on developing competencies like cultural intelligence and inclusive leadership as well as the skills necessary to both develop and model inclusive behaviors?
- **Restructure compensation and benefits.** Review platforms for equity and make any appropriate adjustments.
- **Pay transparency.** Failing to disclose salary ranges can make it difficult to uncover practices that contribute to inequality. Pay transparency allows organizations to examine whether salary differences are skill driven or the product of unconscious bias.
- **Support better work-life balance.** Managers and teams can discuss remote work, paid family leave and other tools and benefits to enhance career well-being.
- **Maintain an open-door policy.** Leaders and managers can institute virtual office hours and truly listen to employee feedback. After gathering input, leaders must implement identified action items.

NOW THAT YOU KNOW — KEY TAKEAWAY(S)

Many systems and people must work together to change an organization. With clear leadership and coordinated effort, signs of a positive new direction will emerge with DEI-related changes on a structural level.

ISSUE #3 Psychological Safety

WHAT YOU NEED TO KNOW — THE BOTTOM LINE:

Effective DEI initiatives can make a workplace more psychologically safe for everyone, regardless of background, to feel comfortable speaking up and sharing their ideas.

WHY YOU NEED TO KNOW — INFORMATION AND ANALYSIS:

Psychological safety in the workplace is characterized by a shared belief held by members of a company, department, or team that the team is safe for interpersonal risk-taking.¹ This means the belief that you will not be punished or humiliated for speaking up with ideas, questions, concerns or mistakes. A psychologically safe workplace benefits both the employee and employer: it reduces stress and promotes candor in the workplace, leading to better performance and improved problem-solving.²

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A psychologically safe and inclusive environment also contributes to lawyer well-being, which is directly related to lawyer competence and reducing stress.

Well-being directly relates to the first rule of professional conduct: competence. The Model Rule states:

ABA Model Rule of Professional Conduct 1.1: Competence “Client-Lawyer Relationship — A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”³

An unwell lawyer risks contravening this rule, particularly as it relates to thoroughness and preparation. The human brain is not very good at distinguishing between real and imagined danger.⁴ Numerous studies confirm that chronic stress negatively affects brain functioning.⁵ For example, chronic stress impairs memory, language processing, attention, concentration, problem-solving and overall learning.⁶ These mental functions are obviously critical for a good, competent lawyer.

Chronic stress affects the body beyond the brain and mental functioning. Stress also takes a physical toll on the body. For example, the body reacts to stress by increasing the flow of blood and oxygen to muscles.⁷ In the short term, this is useful. It helps lawyers think and act quickly to address urgent legal problems. However, once the emergency has subsided, if the stress continues and becomes chronic, this leads to an increased risk of hypertension, heart disease, digestive disorders, headaches and susceptibility to infection.⁸ In addition, anger, which arises more frequently among lawyers as compared with other professionals, increases blood pressure, which has well-known adverse health impacts.⁹ Anxiety, also prevalent among lawyers and coincident with stress, damages arteries, kills brain cells, increases risk for osteoporosis and suppresses the immune system.¹⁰

NOW THAT YOU KNOW — KEY TAKEAWAY(S)

Effective DEI initiatives foster psychological safety for employees, which in turn creates a better and more productive workplace.

ISSUE #4 Organizational Wellbeing

WHAT YOU NEED TO KNOW — THE BOTTOM LINE:

Meaningful DEI initiatives contribute to organizational well-being, or the organization’s ability to promote and maintain the well-being of its employees at all levels and for every job.

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WHY YOU NEED TO KNOW — INFORMATION AND ANALYSIS:

Organizational well-being can take many forms. Organizations that put the time and energy into creating and advancing a clear DEI strategy will see many benefits. Among the many benefits are a healthier and more inclusive workplace, improved psychological safety for all employees, a stronger employer brand, better recruiting and retention outcomes and less risk of discrimination complaints or other compliance issues.

All these factors work together to enhance financial success. In turn, customers, clients, and prospective employees will support businesses that align with their values. In the current competitive market for top talent, a DEI orientation can offer a competitive edge for talent attraction and retention. On the flip side, some organizations have made a show of supporting DEI with messaging during times of high-profile events such as those related to social justice issues. Those same organizations then fail to authentically demonstrate their commitment with policies, promotions, and hiring. Such performative actions can serve to drive away top talent and damage the organization's success and reputation.

Encourage employees to bring their whole selves to work. When colleagues and leaders build a sense of belonging, they drive connectedness. Such connectedness reinforces resiliency and trust, which in turn can reduce the risk of burnout. Strengthening the cultural glue across an organization can foster many positive outcomes. Teams will discover new professional friendships and the ability to respectfully address different points of view, and they may even create unexpected innovation. When leaders commit to embedding DEI to drive career and organizational well-being, the positive outcome can be surprising. Trust and openness can also mitigate the risk of litigation and compliance issues because employees feel comfortable bringing a discrimination or reverse discrimination concern to HR or leadership.

That being said, reverse discrimination lawsuits, including single-plaintiff actions, class actions and shareholder derivative actions, are real and must be considered.¹¹ As a result, understanding *why* you are advancing DEI and *how* you implement your initiatives are critical. Quotas and hiring preferences that exclude groups based on race or sex generally are illegal under Title VII of the 1964 Civil Rights Act.¹² But diversity efforts, when done correctly, do not need to be abandoned because of the fear of potential reverse discrimination liability. Companies also risk claims of discrimination, inequality and bias from women and minorities if they do not take steps to address systemic issues in the workplace.

NOW THAT YOU KNOW — KEY TAKEAWAY(S)

Discern relevant opportunities. DEI initiatives are not one-size-fits-all. The first step toward effecting meaningful DEI initiatives in the workplace is discovery. Rather than setting an agenda or duplicating diversity initiatives that seemed effective for other organizations, each organization must first look inward. Each organization must gain awareness of the types of diversity within and across groups and the context in which

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diversity, equity, and inclusion play out for individuals, teams, and the organization as a whole.

Analyze talent practices. Talent processes reflect and create norms and can be levers for system-wide change. Review systems and practices related to recruiting, hiring, and promoting talent. Audit compensation data. Examine employee development practices, and ask tough questions about access to needed assessment, challenge, and support, such as:

- Who has access to opportunities, including information about upcoming opportunities?
- Who has access to on-the-job learning and key assignments?
- Who is tapped for training or leadership experiences?
- Who is receiving coaching, mentoring and sponsorship?
- What assumptions are being made about individuals' current capability and future potential?
- Are different standards applied to some people or groups?
- Organizations should also help managers and teams evaluate the practices and policies that create the structures for how work gets done and shape the employee experience — and look for ways that bias creeps in. Are there ways to move beyond bias at your organization? Consider unspoken norms, scheduling, networking opportunities and work arrangements — all are potential areas for rethinking and improvement.

Elevate equity. To make progress on DEI, senior leaders first need to recognize that organizations rarely provide a level playing field, often inadvertently. For example, information is often not equitably available to all. Do all employees know how to get promoted? This might require the employer to acknowledge societal inequities that make their way to the workplace because the workplace is often a microcosm of society.

People enter the world of work and advance through their careers with the unevenness of advantage, education, access to information, opportunity, and power — so what is “fair opportunity” is not the same for everyone. When organizational leaders express their motivation and acknowledge any barriers for countering inequity, set clear goals toward greater equity and then act, they signal a commitment that becomes the foundation of the organization's diversity and inclusion efforts.

Activate diversity. Understand that diversity is a process that involves recognizing and engaging differences within the employee and customer base. It equips managers and teams to explore the impact of diversity on perspectives, assumptions and approaches and identify ways to enhance the contribution of all. It includes defining expectations or metrics and setting clear goals.

Lead inclusively. Inclusion requires active, intentional and ongoing efforts to promote the full participation and sense of belonging of every employee, customer and strategic partner. It involves policies and practices but also the ability to envision and enact new ways of leading. Across levels and functions, leaders need to learn what is now required,

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interpreting inclusive leadership for their various groups or for different roles. They also need tools, resources, and support as they improve their ability to identify and mitigate bias, respect differences, build empathetic relationships, foster allyship, manage conflict and bring out the best in others.

¹ Shane Snow, *How Psychological Safety Actually Works*, FORBES (May 4, 2020), <https://www.forbes.com/sites/shanesnow/2020/05/04/how-psychological-safety-actually-works/?sh=590f4181f864>.

² Amy C. Edmondson & Per Hugander, *4 Steps to Boost Psychological Safety at Your Workplace*, HARVARD BUSINESS REVIEW (June 22, 2021), <https://hbr.org/2021/06/4-steps-to-boost-psychological-safety-at-your-workplace>

³ MODEL RULES OF PROF'L CONDUCT r. 1.1 (Am. Bar Ass'n 2018).

⁴ See *Chronic Stress Puts Your Health at Risk*, MAYO CLINIC (July 8, 2021), <https://www.mayoclinic.org/healthy-lifestyle/stress-management/in-depth/stress/art-20046037>.

⁵ *Id.*

⁶ *Id.*

⁷ Ann Pietrangelo, *The Effects of Stress on Your Body*, HEALTHLINE (Mar 29, 2020), <https://www.healthline.com/health/stress/effects-on-body>.

⁸ *Id.*

⁹ See Louise B. Miller, Ph.D., *What Causes Anger & How It Affects the Body*, PSYCHOLOGY TODAY (July 16, 2020), <https://www.psychologytoday.com/us/blog/the-mind-body-connection/202007/what-causes-anger-and-how-it-affects-the-body>.

¹⁰ See Cherney, Kristeen, *Effects of Anxiety on the Body*, HEALTHLINE (Sept. 22, 2022), <https://www.healthline.com/health/anxiety/effects-on-body>.

¹¹ See, e.g. *Groves v. South Bend Cmty. Sch. Corp.*, No. 21-3336 (7th Cir.) (alleging “reverse racism” against Indiana public schools); Anne Cullen, *5 Cases Discrimination Lawyers Should Watch in 2023*, LAW360 (Jan. 2, 2023) (discussing *Students for Fair Admissions Inc. v. Harvard*, No. 20-1199, and *Students for Fair Admissions Inc. v. UNC*, No. 21-707, both pending in the U.S. Supreme Court, and predicting that the outcome in those cases could “really fuel a pushback on affirmative action in employment, and create a large increase in reverse discrimination cases.”).

¹² See *United Steelworkers v. Weber*, 443 U.S. 193, 208 (1979); *Kirkland v. New York State Dep't of Corr. Servs.*, 520 F.2d 420 (2d Cir. 1975), *cert. denied*, 429 U.S. 823 (1976).