



The Current and Future Status of DEI in the Workplace: Why DEI Still Matters

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Diversity refers to the presence of differences in one another; and recognizing the social complexities that can exist due to our differences and lived experiences.

Inclusion refers to an environment of belonging and respect where everyone can feel valued.

Equity refers to granting access, accommodations, or resources to people who need them.

DEI is Under Attack

In the past few years, there has continued to be misinformation and disinformation in our media about DEI, and it has now become politicized. As a result, there has been a surge in anti-DEI legislation, lawsuits, and corporate response.

- In 2023, the Supreme Court struck down the use of affirmative action in college admissions.
- Since May 2024, 12 states enacted laws focusing on the restriction of DEI training, policies, and roles in governmental entities.
- Increase in reverse discrimination lawsuits and shareholder derivative lawsuits.
- Some corporations have walked away or scaled back from DEI programs such as Zoom, Home Depot, and Wayfair.
- The Society for Human Resources Management (SHRM) announced it would remove the "E" in DEI and encompass it under the "I" for inclusion.

Some Case Study Examples

- Students for Fair Admission, Inc. v. Harvard College and N. Carolina (6/29/23)
- Muldrow v. City of St. Louis (4/17/24)
- Florida "Stop W.O.K.E." Act
- Jeff Vaughn v. CBS Broadcasting, Inc Paramount Global and McMahon (Cal. Distr. Ct. 7/1/24)
- McCreary v. Adult World, Inc. (E.D. Pa. 4/4/24)
- Diemert v. City of Seattle (W.D. 8/28/23)

What Employers Should Do

- Partner with general counsel when working on programs, initiatives, and strategic planning.
- Apply company anti-discrimination policy to all races and protected status to avoid claims of reverse discrimination.
- Be mindful about how you phrase and communicate your action plans.
- Train hiring managers, HR, and DEI professionals on state and federal anti-discrimination laws.
- Keep diversity demographic information about job candidates from decision-makers on hiring.



What Employers Should Avoid

- Avoid numerical caps on the size of interview pools or requirements to interview a “diverse” candidate for every opening.
- Using dashboards/scorecards to meet a quota.
- Setting aside a position based on protected characteristic.
- Deciding on a promotion/hire using in part an individual’s protected status.
- Tie executive compensation to the attainment of diversity goals
- Setting deadlines or unrealistic timeframes for achievement of goals.
- Restricting training or mentorship programs based on protected status characteristics.
- Publishing DEI goals in annual reports, websites, and social media without review and scrutiny for accuracy and potential misinterpretation

What Employers Can Still Do with DEI

- **Diversify your candidate pools.** When you widen your net, you will naturally attract more diversity. When it comes down to making an employment decision, avoid deciding based on a person’s protected class.
- **Require compliance training (e.g., anti-harassment training), but offer optional DEI training.** Employers can still mandate this training as long as state does not prohibit it, but ensure it’s presented in an even-handed manner. If possible, try to encourage DEI training through continuing education credits.
- **Pay equity.** Ensure that your employees are getting compensated fairly. Try a market analysis to help inform you.
- **ADA compliance. Reasonable accommodations for disabled employees.** Ensure that your HR team and people managers are trained in reasonable accommodations. Use resources like the Job Accommodation Network (JAN). Go beyond compliance with the Americans with Disabilities Act (ADA) and offer voluntary training on disability inclusion.
- **Educate recruiters and hiring managers regarding neutral non discriminatory selection process**
- **Train executives and managers about how to discuss DEI**

Why DEI Still Matters

- The data and “business case” still supports DEI in the workplace. For example, 80% of respondents on a BuiltIn survey said they want to work for a company that values diversity, equity, and inclusion.
- DEI promotes psychological safety (the belief that the work environment is safe for interpersonal risk-taking) in the workplace. It is an environment where people can bring their authentic “work selves” to their job without punishment, and feel able to speak up with relevant ideas, questions, or concepts.
- The need for accessibility. One in four adults in the US has a disability. Ensuring that all stakeholders have access to products, services, processes, and systems is a form of inclusion and equity. Accessibility can also mean ensuring that your products and services are in multi-languages if necessary.