



The DEI Journey: Top 5 Considerations Employers Need to Keep in Mind

The focus on diversity, equity and inclusion (DEI) in the workplace has grown immensely in the United States, with many organizations finding themselves at different points in their DEI journey. It is imperative to start by finding out what, if any, diversity, equity and inclusion efforts an organization already has in place and be mindful of key legal risks along the way that could hamper even the best-intended DEI efforts.

1. Know that DEI Is Not Optional

It is a critical component of achieving a successful and dedicated workforce. The more that employers are inclusive, give opportunities to a diversified employee population and treat employees with respect, the less likely discrimination claims will arise. Organizations need to conduct regular anti-harassment and anti-discrimination trainings for all employees and leaders, whether or not the trainings are legally mandated in the employer's geographic location.

In addition, they must educate all personnel about how language, gestures, microaggressions and more subtle behaviors can detract from an inclusive workplace environment and increase the likelihood of both loss of key talent, and of harassment and discrimination claims.

2. Hire Carefully and Smartly

Employers need to make sure to stay in compliance with equal employment opportunity laws. Federal, state and local anti-discrimination laws prohibit engaging in hiring practices that consider candidates' protected characteristics, such as race, national origin, gender, disability and religion, among others. Companies should not have any job postings or practices seeking to hire candidates only from particular backgrounds or with particular characteristics, even if the impetus is to diversify the workforce.

Unsuccessful candidates can allege "failure to hire" discrimination claims if they believe that they were not hired, even in part, because of one of their protected characteristics. Over the last year, there has been an uptick in these types of claims alleged by Caucasian candidates in response to many companies' efforts to diversify their employee populations.

3. Don't Assume

Every employee may not want to join an affinity group/employee resource group just because they are a member of a protected class that is the group's focus. Conversely, employers also need to ensure that their policies permit any employee to join any affinity group/employee resource group, regardless of whether they are a member of a particular protected class on which the group is intended to focus.

4. Assign Work Carefully

Many companies are facing pressure from clients, customers and other third parties to diversify their teams in order to get or retain business. As a result, some employees of color have expressed frustration that they believe they are being staffed on matters because of their protected characteristics, rather than because they are being recognized for their skillset and merit. This concept is called "tokenism," which, if unaddressed, can lead to an allegation of discrimination.

Remember that under equal opportunity employment laws, employers cannot make employment decisions based on employees' protected characteristics. Clarify to employees that staffing is based on merit, skillset and/or for other business reasons unrelated to protected class status.

5. Mentor and Promote

Employees in many industries report that they do not feel like they have a future at their company because no one "looks like them" at the top. Mentoring can go a long way toward addressing the dearth of representation in leadership by supporting a diversified group of employees, some of whom, historically, have not been given the same opportunities for advancement.

Companies should focus on giving all employees such opportunities and support them along the way, which will result in retaining key talent and reducing the risk of discrimination claims.

For More Information

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