

Ten DEI Steps Employers Should Consider Now

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The U.S. Supreme Court held the use of race in university and college admissions is unconstitutional in its *Students for Fair Admissions, Inc.* decisions on June 29, 2023. The Court's ruling **directly addresses only the admissions decisions of educational institutions** that accept "federal financial assistance" based on an analysis under Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. Employers have been wondering what, if any, impact the ruling will have on employer diversity, equity, and inclusion (DEI) initiatives.

Many DEI initiatives remain lawful and must be carefully designed, documented, and implemented to comply with applicable law. Following are 10 simple steps employers should consider taking now.

1. Inventory DEI Initiatives

Inventory DEI initiatives already underway and those considered for implementation to understand their purpose and operations. Employer DEI initiatives range from commitments and goals to interviewing processes to promotion processes to mentorship programs.

2. Conduct a DEI Diagnostic

Seek to understand the objectives of the organization's various DEI initiatives and whether they are being achieved. Carefully analyze available data regarding employee populations, promotional practices, and other trends. Do the organization's DEI initiatives address fact-based gaps?

3. Review DEI Communications and Operations

Review internal and external DEI-related communications and understand how they are being implemented. Keep in mind that the universe of communications is large and includes everything from internal messages to reports to leadership and boards to training documents and messages within and relating to Human Resources and management processes. Do such communications accurately reflect how the initiatives are implemented? Do they reflect a commitment to equal employment opportunity?

4. Ensure Collaboration Among Internal Stakeholders

As with any employee-relations initiatives, ensuring executive buy-in remains critical. Moreover, in any DEI initiative, there are multiple players, such as DEI officers, Human Resources professionals, executive leadership, legal professionals, managers, and others. Implement a process structure to ensure buy-in, understanding, and consistent operations.

5. Be Thorough About Documentation

Comprehensively document the bases for decisions.

6. Train Leaders on Lawful Decision-Making and Bias

Training is a critical, but often overlooked, component of any DEI initiative. Employers should educate and re-educate Human Resources professionals, managers, and other operations stakeholders on applicable legal parameters.

7. Audit Practices for Structural Barriers to Inclusion

Employers should review Human Resources practices for structural barriers to inclusion. Consider, for example, how job transfers, promotions, compensation, mentorship, and work assignment decisions are made. Review job announcements and descriptions to ensure they are not unintentionally limiting the pool of candidates considered for the position. Remove requirements or processes that may disadvantage the universe of those qualified. Focus on lawful, good-faith efforts.

8. Take Complaints Seriously

Ensure Human Resources professionals and others charged with handling internal complaints are ready to process, investigate, and address effectively and promptly discrimination and retaliation issues. Take steps to ensure that equal employment opportunity, anti-harassment, anti-discrimination, and anti-retaliation policies are consistently enforced and applied.

9. Review and Update

Implement a process for periodic review and update of policies and practices for compliance with applicable law. Several states and localities have their own anti-discrimination laws, many of which prohibit discrimination based on characteristics such as family status, caregiver status, and socioeconomic status not covered by federal law. More recently, some states have enacted “anti-DEI” statutes, such as Florida’s “Stop Woke Act” (House Bill 7), which prohibits teaching about certain concepts related to race, color, national origin, or sex. Such measures are themselves the subject of litigation. Many states have enacted laws intended to push DEI forward (*e.g.*, the CROWN Act, pay transparency laws, and regulation around data privacy and collection). Implement a process for the periodic review of applicable policies and practices.

10. Focus on Inclusion, Psychological Safety, and Wellness

Cultivate an inclusive environment in which all employees feel they belong and are comfortable contributing their unique perspectives. As some groups ask for more recognition, others may feel that they are losing something. Placing inclusion at the core of an organization’s collective purpose can help mitigate risk and promote open channels for communication.

Please contact a Jackson Lewis attorney with any questions.

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