

Podcast

The Ongoing Importance of Inclusion Under Trump 2.0

By Michael D. Thomas & Monica H. Khetarpal

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Transcript

INTRO

While recent executive orders have attempted to dismantle DEI initiatives under the guise of illegality, it is crucial for employers today to understand how to maintain inclusivity across their workforce and support all employees as individuals.

On this episode of We get work[®], we discuss inclusion and equal opportunity: what is legally required as well as what is legally permitted under the new administration and why both matter today more than ever.

Our hosts today are Monica Khetarpal, co-leader of the Education & Collegiate Sports Group, and Michael Thomas, co-leader of the Corporate Diversity Counseling Group, and principals, respectively, in Jackson Lewis's Chicago and Orange County offices.

Monica and Michael, the question on everyone's mind today is: what does inclusion look like now, what do employers need to consider and how does that impact my business?

CONTENT

Monica H. Khetarpal

Principal, Chicago

Thanks everyone for joining us today. My name is Monica Khetarpal. I'm a principal in Jackson Lewis' Chicago office, and I'm joined by my colleague and friend, Michael Thomas. Michael, do you want to introduce yourself?

Michael D. Thomas

Principal, Orange County

Yes, my name is Michael Thomas. I am a principal in Jackson-Lewis's Irvine, California office, and it is always a pleasure to spend time and work with Monica.

Khetarpal

So, there's been a lot of talk about what the Trump administration has been doing to diversity and inclusion initiatives and a lot of questions about where employers and organizations in general go from here.

One thing that a lot of people are focused on is inclusion. So, that's what we're going to focus on during today's episode. What is inclusion? Can I still do it? How is it helpful? What does it mean? So, that's where we're going to go today.

Thomas

Thank you, Monica. Inclusion, as you point out, has come up a lot in recent discussions regarding DEI. So, let's just kick it off. What is inclusion?

Khetarpal

A lot of people make a lot of assumptions about it, especially because it's included in that DEI, diversity, equity and inclusion. But at the end of the day, inclusion is entirely consistent with equal opportunity. It really means that everybody has a seat at the table according to what they bring to a company. It means that everybody has an equal opportunity to compete for jobs, positions and promotions. It means that we're really breaking down any barriers to making sure that the best people get the job, that everybody has that opportunity and that we're broadening that funnel. But it also relates to engagement and how people feel at their jobs as well. But what it doesn't really touch on is protected categories.

Thomas

Thanks, Monica. That's a great explanation, especially if it's really about all employees feeling engaged in the workplace. So often, there seems to be this confusion regarding whether inclusion is lawful or not. So, maybe you can discuss a little bit whether inclusion complies with the law.

Khetarpal

It's fully in compliance with the law. Inclusion means that everybody feels like they are respected at work, that their contributions are important, that they're respected, that the company, their employer or their organization appreciates that they're there and that they have fair opportunities. As I said, there are none of those barriers. So, that applies across the board. It's not just race, gender, age or sexual orientation. It's not just those categories. It really is making sure that everybody feels respected and valued and, frankly, included at work. That's never been unlawful and hopefully never will be.

Thomas

Thanks, Monica. That's really clear, and there is so much about whether inclusion is lawful or not. It really depends on, in part, how your initiatives are drafted, the training that you're providing on your initiatives and how you're actually implementing them to make sure that they are consistent with inclusion of everyone within the workplace, which is your point.

This might be an obvious next question, but I'll ask it anyway. Why is inclusion important?

Khetarpal

You know what? I have seen, you have seen and all 1,000 Jackson Lewis attorneys have probably seen that workplaces that are inclusive do better. Their employees don't leave because they're happy at work, they feel valued and they feel like their contributions are fairly credited. Then, you also become an employer of choice when you maintain an inclusive environment. So, it's really critical, in my mind, to the health of the organization. But that's all really broad.

Michael, you always do a great job of talking more specifically about what inclusion really looks like and why it is so important. Why was it included in the DEI, to begin with? How does that overlap?

Thomas

That's a great question, Monica. So, inclusion looks like a fully engaged workforce for everyone, regardless of what your background might be. Really, when you think about inclusion, it's tied to this concept of everyone feeling like they can show up, fully engage and participate in the workforce and share their unique perspective and voice.

You can think of it as just the opposite. You often will violate Title VII or different forms of employment discrimination laws if your policies, practices or behavior exclude certain people. So, what does that typically look like in the workplace? That looks like groups of employees not feeling engaged and not feeling like they can fully participate. Sometimes, that's based on things that are external or obvious that the employer is doing, like a policy or behavior that people are aware of that excludes certain groups. Sometimes, it's based on subtle things that maybe the employer is doing or decisions the employer has made that impact certain groups more so than others that sometimes the employer is not fully aware of. However, in part, by observing your employees, listening to your employees and some of the basic things that we all should do to be good employers give you clues and information about how to create that inclusive environment.

So, when you ask that question, what does inclusion really look like? It's a fully engaged workforce where people feel like they can participate and feel like the

employer actually values their unique perspective.

Deloitte Consulting did a really interesting study many years ago on these concepts of covering and passing. Covering and passing is ultimately when an individual disassociates or does not identify with some aspect that is unique to their identity. An example of that could be an employee experiencing something in the workplace that suggests the workplace is not welcoming for members of the LGBTQ+ community. That employee, in response, will think critically about whether I can put pictures of my partner and myself up in my office, whether I can wear a pride shirt when I come to work or think about what background they have for their Microsoft Teams call; Can that show pride, or do they have to think about their background and remove things that are unique to who they are? So, part of that concept of covering and passing and how that relates to DEI and inclusion is that during this timeframe, many employers are thinking, should I make changes to my DEI initiative and strategies?

Obviously, we're working with many employers to do that analysis and try to keep them legally compliant or help them into legal compliance. But part of that challenge is that as you're making those changes, you know this because you do a lot of communications work--- there has to be a communication strategy. So, if you're not effectively communicating/engaging those employees who could be impacted by your changes, then they are going to observe your changes and draw their own conclusions. So, it touches upon the concept of covering and passing. For example, if you make some change to a policy that I perceive as impacting my race, I'm going to question whether it's safe to show up in the workplace and share my perspective. Again, to your point, it doesn't always deal with protected categories. It can be a political opinion.

Khetarpal

Yes!

Thomas

If the employer does something or makes a decision that suggests they have one certain political philosophy and I have a different belief, I might spend time and energy in the workplace wondering if I am outed for having my certain political belief.

Engaging in these concepts of covering and passing, inclusion means you have an engaged workplace where instead of people spending that time and energy being distracted and worrying about whether they are going to be treated differently or not welcome in the workplace based on who they are, they're fully engaged. You might lose 30 % of their focus if they are distracted, but you now have that 30%.

Khetarpal

Absolutely. It's how much time you spend worrying about how I am showing up to work and what people think of me. Should I raise my hand and give this opinion? What are people going to think of me? Instead of just feeling safe to say, hey, I have an idea, or I am going to focus on my work and not on all these other peripheral things.

We're lawyers, and we're supposed to talk about the law. People think it's dry and detached, but in this area, it's really not. We talked a lot about how people feel, how that overlaps with inclusion and how inclusion overlaps with the law. But what does inclusion have to do with physical, mental and emotional wellness, and that whole component?

Thomas

Something that many employers often overlook is that inclusion is intimately tied to someone's sense of physical safety. Also, there's a sense of mental wellness to show up in the workplace. Because, again, if I'm worrying about those other things, that's increased stress and anxiety. There's a physical component to that. At the same time, you're not fully well to fully participate in the workplace because you're worried about these other different things. What that ultimately means is inclusion fundamentally attacks this concept of trust. Because you're questioning your employer's behavior, you do not actually trust the decisions your employer makes.

So, one of the things that we talk about to create inclusion is consistency in your policies, your practice implementation and all those different kinds of things that create inclusion also create trust. I know what to expect from my employer. When you lose inclusion, you fundamentally lose trust. What that ultimately means is that if something comes up in the workplace, as an employee, I'm more comfortable talking to the union, a potential union representative or an outside lawyer. I don't trust you as an employer, so I'm going to some third party.

How this really intimately ties in with what we do as employment and defense lawyers is it helps our clients to have that engaged workplace where they can just focus on the work that they're doing, the product that they have, what they sell, the people they service and what their jobs are. Inclusion actually drives their ability to do that in a more focused way.

Khetarpal

It's really important to prioritize inclusion, especially right now.

Thomas

It's important to prioritize inclusion. It is important to listen to your employees and understand their perspectives. We talk about this all the time: engaging your internal and external stakeholders helps you drive what inclusion looks like for

your workforce because it's not a one-size-fits-all approach. It's very unique to who you are.

So, Monica, we talked a lot about inclusion, what inclusion is and why it's important. But what should employers do to ensure EEO compliance and inclusion during this period of DEI challenges?

Khetarpal

That trust element overlaps with the communications part, and we help employers with that all the time as well. When you're taking stock of whether your DEI initiatives comply with the law, especially as it may be changing, you should ask where are you in your own risk tolerance, and do your policies and procedures comply with your risk tolerance? How should you create an inclusive environment to continue to have the workforce that you want? One thing you have to look at is how you communicate with your employees. To the extent you're making any changes, before you make those changes, talk to your employees about why. So that, again, they feel included in those decisions, and they have a level of trust that their employer is making the right decision, keeping them in mind and that they are not just the bottom line. That's really what it's about: making your employees feel valued as people and contributors to their workplace.

Thomas

That's spot on, Monica, in terms of what we should be advising our clients as to what employers should be doing.

So, thank you, Monica. I always appreciate the conversation, and I always learn a lot. We've talked a lot about inclusion, what inclusion is and what inclusion looks like in the workplace. Most importantly, inclusion done well is really EEO compliance, where everyone feels engaged and fully able to participate in the workplace. That point sometimes gets lost, but it's important.

So, thank you all. We appreciate you listening to this We get work podcast and look forward to the next one.

Khetarpal

Thanks, Michael. To wrap up here, if you want additional information and legal updates from Jackson Lewis, you can go to www.jacksonlewis.com/subscribe, where you will be able to select the type of legal updates you'd like to receive. Also, stay tuned for additional podcasts that we're constantly putting out, which are all available where you get your podcasts, including a monthly series specific to higher education. Thanks.

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