

Making Equal Opportunity Real: How Diversity, Equity, and Inclusion Efforts Combat Workplace Discrimination



In his inaugural address on January 20, 2025, President Donald Trump declared, “We will forge a society that is colorblind and merit-based.”¹

Subsequently, President Trump issued a series of executive orders aimed at dismantling diversity, equity, and inclusion initiatives within the federal government, major law firms, and the private sector.² Notably, Executive Order 14173, titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” rescinded longstanding affirmative action requirements for federal contractors and directed agencies to combat what it termed “illegal DEI” policies in the private sector.³ The Equal Employment Opportunity Commission (“EEOC”) and Department of Justice (“DOJ”) later put out a “technical assistance” document indicating what the federal government views as “illegal DEI.” Though it points to a few workplace practices that could be unlawful, such as restricting employee resource group membership and separating employees by race or gender in trainings, the implication is that most diversity, equity, and inclusion efforts at the workplace are perfectly legal.⁴ Meanwhile, federal agencies are dismantling offices that enforce civil rights and antidiscrimination laws, thereby weakening the government’s ability to protect workers’ rights.⁵

Unfortunately, the Trump Administration’s approach will actually move us further away from a workplace that is “colorblind and merit-based.” The reason is this: women and people of color continue to face significant biases that prevent them from being judged according to their ability to work hard and do the job well.

Many diversity, equity, and inclusion efforts are designed to overcome biases. Eliminating these initiatives will allow those biases to operate unchecked and expose organizations to legal risks associated with discrimination claims.

This policy brief examines the current state of workplace discrimination and demonstrates how many diversity, equity, and inclusion efforts effectively address these challenges through proven strategies. Diversity, equity, and inclusion initiatives are not only consistent with the law but they are often necessary to ensure compliance with it, as indicated in recent guidance from state attorneys general.⁶ Indeed, many diversity, equity, and inclusion initiatives emerged as measures to address past discrimination and promote equal opportunity.

The Reality of Discrimination in the Workplace

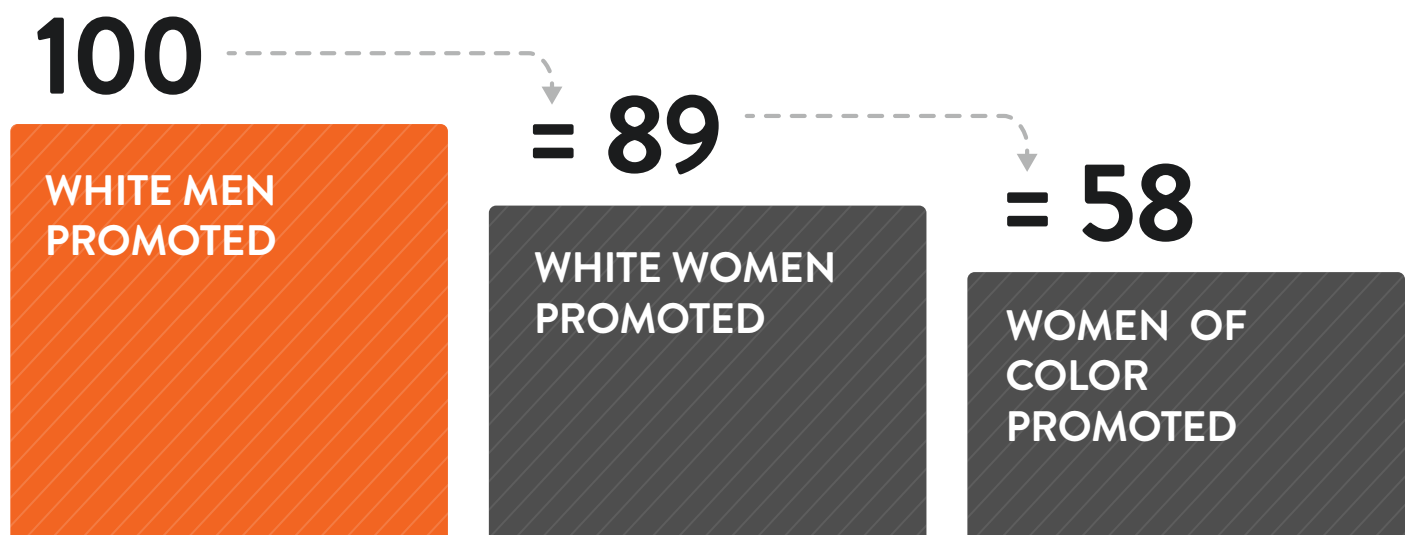
The retreat by companies from diversity, equity and inclusion misses the salience of the following realities that lawyers representing workers see every day:

- 1 Biases against women, people of color, and others at work persist.
- 2 Diversity, equity, and inclusion initiatives counteract those biases.
- 3 Taking away such efforts will increase discrimination and liability risk.

1

Biases Against Women, People of Color, and Others Persist

Discrimination against women and people of color remains a pervasive issue in the workplace, creating significant barriers to equal opportunity. *Despite existing legal protections and social progress, women and people of color still face discrimination at every stage of their employment.* There is evidence of discrimination against religious minorities, people of certain ethnic backgrounds, and LGBTQ+ individuals as well.⁷ Just last year, the EEOC recovered nearly \$700 million for over 21,000 workers with discrimination claims.⁸



Qualified Black Candidates are Consistently Overlooked

- At the hiring stage, white applicants receive 36% more callbacks than Black applicants and 24% more callbacks than Latino applicants, a disparity that has persisted largely unchanged for 25 years.⁹
- A study of 108 major U.S. employers found that resumes with distinctively Black names received fewer employer contacts, despite having similar qualifications, with 21% of companies showing statistically significant discrimination against Black applicants.¹⁰
- This finding of a penalty for Black applicants corroborates a large body of evidence which compare the success of identical resumes with Black and white names, such as the well-known “Are Emily and Greg More Employable than Lakisha and Jamal?” study.¹¹

Working Mothers Face Discrimination

- Resumes tend to be treated more favorably if they present a male name.¹²
- Parents who take career breaks for raising children often face discrimination when re-entering the workforce, a problem particularly affecting working mothers.¹³



21%

The percentage of companies that show statistically significant discrimination against Black applicants.

Women and People of Color are Less Likely to be Promoted

In addition to the discrimination that can take place at the hiring stage, research shows that discrimination against women and people of color happens at other stages in the workplace as well.

- Women, particularly women of color, experience significant pay gaps and underrepresentation in leadership, even when controlling for other relevant factors.¹⁴
- For every 100 men promoted to manager, only 89 white women and 58 Black women are promoted.¹⁵
- The share of Asian Americans in the workforce also decreases with greater seniority, as does their share of promotions.¹⁶
- Black workers are 23% less likely to receive substantial support for advancement.¹⁷

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Gender Bias Harms Women on Performance Evaluations and Promotions

Objective qualifications cannot explain why women are underrepresented in leadership positions as research indicates that women are promoted less often than men, even when controlling for factors such as education, experience, and hours worked.¹⁸

- Experimental research indicates that when people hear descriptions of leadership behavior, they are more likely to rate the behavior highly if they are told the person is a man.¹⁹ Women face penalties for displaying qualities associated with leadership, like aggression and taking charge, that are praised in men.
- Women report less access to important assignments that could help them grow professionally than men, and this is particularly so for women of color.²⁰
- It is also more difficult for women of color particularly to find mentors or sponsors to help them advance and succeed.²¹
- When reviews occur, managers evaluate workers based on gendered expectations rather than purely on job performance.²²

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2

Diversity, Equity, and Inclusion Initiatives Counteract Known Biases

Many diversity, equity, and inclusion programs directly address these documented patterns of discrimination through evidence-based strategies designed to ensure workplace outcomes are determined by merit and free from bias. This is not to say that all diversity, equity, and inclusion efforts are effective. For example, the evidence supporting diversity or anti-bias training, particularly if delivered on a one-time basis or in isolation from regular workplace practices, is mixed at best.²³ However, *research shows that many diversity, equity, and inclusion initiatives increase fairness and opportunity in workplaces.*

Broad, Skills-Based Hiring Counters Existing Bias

In the hiring process, diversity, equity, and inclusion initiatives often expand outreach and recruitment efforts to reach qualified diverse candidates.²⁴ This often means dedicated staff and the involvement of human resources departments.

- Indeed, a recent study of major employers found that employers with more centralized points of contact during the hiring process were less likely to discriminate by not interviewing qualified Black candidates.²⁵
- Research shows that after employers began specific efforts at broad-based recruiting, representation in management showed statistically significant increases for white women, Black men and women, Latinas, and Asian American men and women.²⁶
- Employers with employee resource groups are even more effective at recruiting qualified candidates from diverse backgrounds, as these groups take charge of making sure recruitment happens.²⁷
- Furthermore, hiring practices structured to emphasize necessary skills and qualifications, rather than subjective impressions, maximize the chances that selections are fair.²⁸

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Diversity Officers Help Minimize Discriminatory Hiring

- To reinforce these efforts, the appointment of diversity, equity, and inclusion officers promotes accountability for anti-discrimination practices across an organization.²⁹
- Research shows that diversity managers and diversity, equity, and inclusion task forces are some of the most effective mechanisms for driving fair workplace reforms.³⁰



Research demonstrates that more formal programs lead to significant increases in the representation of Black women, as well as Latino and Asian American men and women, in management positions.

Pay Audits and Structured Evaluations Can Remedy Bias

- Regular pay audits are also essential for identifying compensation disparities, particularly those based on gender and race.³¹ These audits are particularly important as discriminatory practices can compound over time through biased performance evaluations.³²
- Women at work are in a “double bind”: they are penalized more than men for being too aggressive, and yet also penalized for not being aggressive enough.³³
- Organizations should implement structured evaluation systems that use clear, job-specific criteria and emphasize measurable contributions over subjective assessments.³⁴

Formal Mentorship Programs Help Prevent Discrimination in Promotions

- Women and people of color are at a disadvantage in getting promotions because they are less likely to be sponsored by white men in senior positions.³⁵
- Research demonstrates that more formal programs lead to significant increases in the representation of Black women, as well as Latino and Asian American men and women, in management positions.³⁶
- In-house management training programs and transparent nomination processes further enhance workforce diversity and increase diverse representation in leadership roles.³⁷
- Additionally, tracking the distribution of high-impact projects and leadership opportunities ensures fair access to career advancement.³⁸
- Furthermore, inclusion efforts encompass a wide range of practices such as providing physical accommodations like ramps, offering parental leave policies, and creating spaces for religious practices like prayer rooms. These measures both support workers and help an organization comply with equal opportunity laws.

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3

Ending Diversity, Equity, and Inclusion Initiatives Will Increase Discrimination and Liability Risk

Removing diversity, equity, and inclusion initiatives allows biases to operate unchecked, increasing the likelihood of discriminatory practices and thus the risk of legal liability. Moreover, the activities around walking back such initiatives themselves may be used as evidence against employers in discrimination litigation, as illustrated by the examples below.

Evidence of Discriminatory Intent or Causation

Plaintiffs' attorneys may use corporate decisions to abandon diversity, equity, and inclusion efforts as evidence of bias or discriminatory intent. Consider, for example, a case where a company ended a program to recruit from historically Black colleges and universities shortly before they declined to interview a well-qualified candidate from such a school. If that candidate were to bring a Title VII disparate treatment claim, they would have a strong claim that the decision to end the program is evidence of racial bias.

Executives questioning the value of diversity, equity, and inclusion initiatives may also signal bias, allowing a jury to infer that an employment decision was made “because of” race, gender, or another protected trait.

A clear recent example is Meta's CEO Mark Zuckerberg who—at a time when he was rolling back diversity, equity and inclusion initiatives—said publicly that he thought companies had become “culturally neutered” and needed more “masculine energy.”³⁹

Undermining “Reasonable Care” in Harassment Claims

Under Title VII, employers are required to demonstrate that they exercised reasonable care to prevent and correct workplace harassment, or else face liability. The case law underscores that the overall work environment is crucial; a retreat from diversity, equity, and inclusion initiatives can signal a decline in workplace culture, much like how the court found the employer’s superficial anti-harassment policy in *Faragher* inadequate despite having a policy.⁴⁰

- Eliminating employee resource groups that provide critical support and information to people who may be reluctant to complain can be evidence of a lack of reasonable care. These groups contribute significantly to workplace inclusion by fostering community-building and trust among workers.⁴¹ Moreover, they often provide safe spaces for women and workers of color to voice concerns, fostering trusting relationships, and, when necessary, help raise awareness of harassment policies among individuals who may be hesitant to report misconduct, even when directly affected.⁴²
- Some companies have stopped submitting information to public indexes to benchmark their progress on diversity, equity, and inclusion related goals. This could also be used as evidence of a lack of reasonable care.

For example, the Human Rights Campaign Foundation reviews policies designed to promote workplace equality, such as whether companies include sexual orientation and gender identity in their nondiscrimination policy. If companies stop participating and that leads to not taking certain measures to prevent discrimination and harassment, that would be important evidence for an LGBTQ+ employee to show that the employer failed to use “reasonable care” to create a safe and inclusive work environment.



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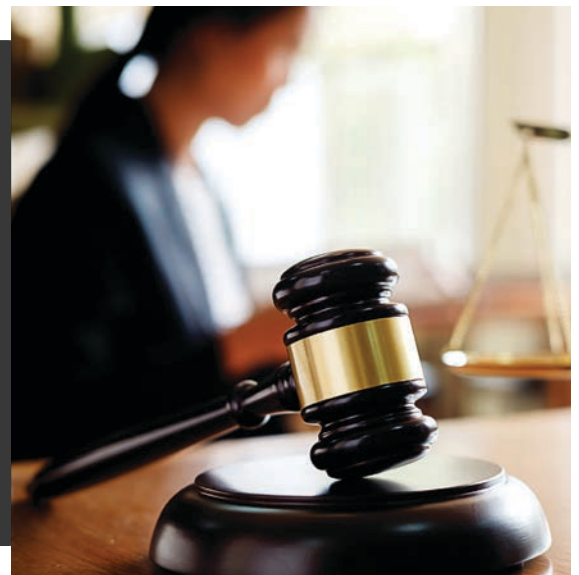
Settlements Often Include Equity and Inclusion Measures

Recent settlements illustrate a critical point: if companies walk back diversity, equity, and inclusion measures, they may be compelled to reinstate or expand such initiatives as part of future settlements—but only after paying significant damages for the discrimination that takes place in the interim.

- For example, in 2023, a judge approved a \$215 million settlement against Goldman Sachs in a sex discrimination case stemming from the company's use of biased evaluation metrics. As part of the settlement, Goldman Sachs was required to revise its performance evaluation and promotion processes by measures such as requiring that managers discuss job-relevant criteria for promotion with vice presidents who report to them, mandating written manager feedback for all employees, and conducting an annual pay equity analysis overseen by an independent labor economist—initiatives that fall squarely under the diversity, equity, and inclusion umbrella.⁴³
- Similarly, Disney agreed to a \$43.3 million settlement in 2023 to resolve gender pay discrimination claims and the equitable relief included retaining a labor economist to analyze and address pay equity.⁴⁴

By proactively maintaining robust diversity, equity, and inclusion programs, employers can avoid the costly and disruptive process of being ordered to implement these measures under legal scrutiny.

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Conclusion

From structured hiring processes and formal mentorship programs to pay audits and employee resource groups, many diversity, equity, and inclusion initiatives provide essential tools for creating fair and legally compliant workplaces. As attempts to restrict these programs increase, it is crucial to recognize that diversity, equity, and inclusion practices work to counteract biases against qualified women, people of color, and others that would otherwise prevent them from being considered on their merits.

The EEOC and DOJ have recently issued guidance that implicitly acknowledges that most such efforts are perfectly lawful. So rather than abandoning these efforts, organizations should strengthen them, knowing that they are both legally sound and smart business. The path to truly merit-based workplaces includes active measures to ensure all qualified individuals have genuine opportunities to contribute and succeed.

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