



## A Robinson+Cole Legal Update

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### Employers and Diversity, Equity and Inclusion: Getting it Right in 2021

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During 2020, many employers faced a call for action to clearly state their positions on the social justice and civil rights issues of the day. The days of employers comfortably remaining silent appear to be gone as employees are poised to take employers to task because of their silence, or even to change employers based on their disagreement with their employer's position on an issue. This has left many employers wondering how best to respond. For some, it is particularly difficult to know where to start as this may feel like the first time they have been asked to do so, and they may be ill-prepared, though well-intentioned. There are many best, or even good, practices for cultivating a workplace that promotes a culture of diversity, equity, and inclusion and supports employers' overall business objectives.

Ideally, getting diversity, equity, and inclusion (DEI) right in 2021 is a priority for every employer, though what that might look like will likely vary. For many employers, considering the following questions will help:

- Where are we now? What DEI metrics do we currently collect and what are they telling us?
- What are our goals and how will we hold ourselves accountable? Where will we memorialize our goals, e.g., a DEI Action Plan?
- Do we want to be an employer-of-choice for DEI issues or are we satisfied to simply stay out of the news and off social media in terms of negative press?
- Based on our goals, what internal and external resources will we need?
- Which leaders will drive our DEI initiatives?
- If a public statement needs to be made, who will make it? If a statement needs to be made internally, who will make it?
- Do our current leaders have the skillset necessary to speak competently on DEI issues?
- What is our baseline knowledge across the enterprise? Is there training that should occur? How will this occur and who will participate?
- Should we have a DEI Committee and/or Affinity/Employee Resource Groups?

#### **Necessary Core Components for a Strong DEI Program**

Keeping in mind the following components will allow employers to plan for success in implementing their respective DEI programs in 2021:

- Consider training all employees, not just leaders and managers. Some states may have certain training requirements for anti-discrimination training. However, consider whether such trainings are sufficiently robust to meet any DEI goals. For example, a typical training may include an overview of internal policies, relevant employment laws, and appropriate workplace behavior. The reality is that a workplace in 2021 may need training to cover implicit bias, micro-aggressions, and the bystander conundrum. Further, the most successful training programs often utilize a live and/or interactive element and involve or even feature senior leaders.
- Consider conducting a DEI audit and/or needs assessment, which will allow for a better understanding of what is in place and whether it is working, in addition to helping to shape any goals for the future.
- To the extent that the DEI program is being driven by someone other than the CEO, consider how the CEO and any other relevant senior leaders will “show up.” Ideally, all senior leaders will publicly and frequently express support for the program in word and in deed.
- Consider looking at retention just as closely as hiring. Looking at hiring is critical; however, without assessing retention and looking for trends, the metrics around hiring may be more challenging to analyze.
- Consider reporting key DEI metrics, initiatives, and trends periodically to the board of directors. Any director would be well-served to keep a keen eye on DEI issues in 2021, as such issues could easily impact 2021 performance.
- Consider whether a DEI committee would best support business initiatives related to DEI. If it would be helpful, then subsequent considerations will include which employees to include, which leaders to include, what metrics will be shared with the committee, what the ground rules will be for discussions, and how best to track progress, among many other factors.
- Consider whether Affinity/Employee Resource Groups would support DEI goals. Such groups often include members who are linked by a common social identity, life experience or characteristic, such as race, gender, age, or sexual identity. An employer may create these groups to provide support for its employees and to help promote mentoring and networking opportunities for its employees, which can help increase employee satisfaction and support recruitment and retention of diverse employees.

## Conclusion

Getting DEI right in 2021 is achievable, and employers that engage and involve employees across different levels and departments - while keeping in mind the considerations outlined above - will be ahead of the curve. Competent legal counsel can be a helpful resource for employers in creating, expanding, or restructuring their DEI initiatives to achieve positive results and stay compliant with relevant laws.

## FOR MORE INFORMATION

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