Good™ FOR Business

DISMANTLING DEI AND EMBRACING EQUAL OPPORTUNITY

An “Equal Opportunity for Everyone” Program Playbook

EXECUTIVE SUMMARY

Diversity, Equity, and Inclusion (DEI) programs that hire, retain, reward, promote, or otherwise treat people differently because of race, color, sex, national origin, or religion are inherently discriminatory. Depending on how they are implemented, these programs may be illegal under federal and/or state laws. While DEI programs have operated for years under the guise of making up for past injustices by promoting individuals of a certain race, color, sex, or national origin, in reality, most DEI programs are institutionalized discrimination because they seek to retain, hire, and promote individuals (and thereby discriminate against others) based not on merit, but on race, color, sex, and national origin. Employers competing for the top talent needed to succeed in today's competitive environment are best served by dismantling their DEI programs and instead focusing on equal opportunity and access—a better approach that avoids division, politicization, and legal risk, while ensuring their employees feel valued for their unique attributes. Doing so will lead to greater unity in the workforce and better results for the bottom line.

INTRODUCTION

Employees perform at their best when they are engaged and feel a sense of belonging in their workplaces. Many companies try to accomplish this through DEI programs. However, recent studies reveal that DEI programs have the opposite effect. DEI fosters division and hostility within the workplace by labeling individuals as "oppressed" or "oppressors" based on their immutable characteristics, posing a long-term threat to the health of a business, including in the areas of employee recruitment, retention, and innovation. Furthermore, most DEI programs are structured in ways that create legal exposure under anti-discrimination laws. For companies today, this means that DEI programs are filled with potential pitfalls that can lead to reputational harm, and may result in the loss of business, particularly for those companies that contract with the federal government. As a result, employers who are fighting for talent and want to create truly welcoming workplaces should dismantle their DEI programs and instead prioritize merit-based employment systems and promote respect and equal opportunity for each individual.

As companies evaluate their own DEI programs, this does not mean that ensuring that individuals have equal opportunity or access in the workplace is not important – it is. DEI programs, however, needlessly bucket people into narrow categories, oftentimes based on immutable characteristics. That not only creates needless division, but, ironically, it also perpetuates unhelpful stereotypes. Therefore, now is a good time to remember the lessons taught for so many years by Fred Rogers—of Mr. Rogers' Neighborhood fame—that everyone is unique and brings something important to the table. That uniqueness is not limited to race or sex—characteristics that are often the key focus of DEI programs—but is the sum of each individual's characteristics, values, beliefs, talents, and traits. The employer's goal should not be to ensure that a certain quota of individuals of a certain color, sex, or race are hired or promoted, but to ensure that all who cross the threshold of their business are treated with respect and given an equal opportunity to succeed, irrespective of their color, sex, or race.

The best workplaces have a strong mission, vision, and values that generate unity and create an environment where people are developed to perform at high levels, feel a sense of belonging, and are empowered to bring their talents to contribute to the overall success of the enterprise. To do this, employers should dismantle their DEI programs and instead return to common sense meritocracy, which will undoubtedly consider important attributes like experiences, skillsets, values, viewpoints, and education, as well as the many other characteristics that make each person unique.

Employers who want to build the strongest teams should focus on hiring and promoting the best candidates for each role. In doing so, employers will be placing the needs of their business first and avoid the legal landmines inherent in DEI programs.

This resource examines the legal landmines inherent in DEI programs and provides practical steps employers can take to develop a program that focuses on equal opportunity and access, which is what the law requires, and creates a sense of belonging among all their employees, so each individual feels valued and respected. Done right, such a program will reduce legal risk, drive employee engagement and unity, and help employers find and retain the best talent, so they can win in the marketplace.

LEGAL CONSIDERATIONS & RISKS ASSOCIATED WITH DEI

Title VII has for decades provided comprehensive protections against discrimination in the workplace. It prohibits not only individual instances of discriminatory hiring, firing, and compensation, but broader employment actions related to these practices. The Supreme Court's 2023 decision in *Students for Fair Admission v. Harvard* sent shockwaves through corporate America and, in conjunction with the 2024 Supreme Court case *Muldrow v. City of St. Louis*, has called into serious question the legality of all sorts of "race conscious" DEI programs. Additionally, in December 2024, the U.S. Court of Appeals for the Fifth Circuit struck down a Nasdaq rule imposing diversity quotas on all Nasdaq-listed company boards. And in June 2024, in *American Alliance for Equal Rights v. Fearless Fund Management, LLC*, the U.S. Court of Appeals for the Eleventh Circuit held that a grant program limited to black females was substantially likely to violate 42 U.S.C. § 1981 because it discriminated on the basis of race in contracting with individuals.

Furthermore, in a series of executive orders enacted immediately upon his inauguration, President Trump introduced a new level of risk for companies with DEI programs by prohibiting federal contractors from illegal DEI practices and encouraging civil investigations for private and publicly traded companies that insist on treating some employees worse than others based on race or sex under the DEI banner.

Specifically, Executive Order titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," ordered the Department of Labor to cease (i) promoting diversity, (ii) requiring federal contractors and subcontractors to engage in affirmative action; and (iii) "[a]llowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin." The order also (i) requires each federal agency to include a term in every government contract acknowledging that noncompliance with federal anti-discrimination laws will affect the government's payment decisions and certifies that the counterparty does not have DEI programs that violate federal law and (ii) tasks agency heads and the U.S. Attorney General with identifying ripe targets for investigation among American corporations and institutions that persist in unlawful DEI practices.

On February 5, 2025, the Attorney General of the United States of America, Pam Bondi, issued a memorandum putting American companies and institutions on notice that in accordance with President Trump's executive orders, the Department of Justice's Civil Rights Division will "investigate, eliminate, and penalize illegal DEI . . . preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds."

The new Acting Chair for the Equal Employment Opportunity Commission, Andrea Lucas, has also made her stance against DEI clear, writing in her online biography that "[s]he prioritizes evenhanded enforcement of civil rights laws for all Americans, including by rooting out unlawful DEI-motivated race and sex discrimination . . ." In light of the Students for Fair Admissions ruling, Lucas previously warned that the Court "rejected diversity, nebulous 'equity' interests, or societal discrimination as justifying actions motivated—even in part—by race, sex, or other protected characteristics. Companies continuing down this path after today may violate federal antidiscrimination laws." Lucas has also observed Muldrow calls into serious question not just hiring and recruitment quotas, but many "soft" DEI programs like scholarships, mentorships, and other initiatives that discriminate against employees based on race, sex, or other protected classes.[1]

Furthermore, on March 19, 2025, the EEOC and the DOJ issued joint guidance on DEI-related discrimination in the workplace,[2] informing employers and employees alike of the types of DEI-related discrimination that the EEOC and the DOJ are working to end. In line with recent court decisions, those resources note that DEI-related discrimination is prohibited at all stages of the employment relationship, including hiring, firing, promotion, demotion, compensation, fringe benefits, exclusion from training, exclusion from mentoring or sponsorship programs, exclusions from fellowships, and selection for interviews (including placement on candidate slates). As a result, DEI programs, including affirmative action plans that seek to hire more underrepresented minorities, have become legal landmines—landmines that need to be defused through careful and intentional actions.

Employees who suffer discrimination (including being paid lower salaries, denied promotions and opportunities, etc.) and applicants who are not hired because they are not underrepresented minorities can be plaintiffs in federal and state employment discrimination litigation. They can bring individual Title VII claims seeking compensatory damages (for back pay, other harm, and reinstatement) and punitive damages. Punitive damages are also available under Section 1981 for race discrimination and many state and local anti-discrimination laws. Substantial punitive damages have been awarded in egregious cases of racial or religious discrimination, including discrimination against white employees, males, and Christians. For example, a Starbucks discrimination lawsuit awarded a white female supervisor $25.6 million in damages for Starbucks' firing her to replace her with a person in an "underrepresented" race to ameliorate its image.[3] The decision heightens the risk large companies face in intentionally discriminating.

While the cost of litigation can be a deterrent for many potential litigants, the fee-shifting provision of Title VII removes this barrier. Title VII provides for attorney's fees to plaintiffs who prevail, meaning that discriminatory actions can be costly. Also, the employment plaintiffs' bar typically works on contingency—meaning that clients often do not have to pay fees upfront. So even the most resource-constrained employee or applicant with a meritorious claim can still bring suit.

The financial risk to companies increases when these individual claims are consolidated into a class action, particularly if the class is certified. While rare in the past, changes in the legal landscape have put sweeping and broadly applicable DEI programs in the crosshairs. For example, DEI programs that systematically favor one category over another could make it easier to get class certification. This could result in expensive class actions targeting a company's entire approach to diversity.

Additionally, with the change in policy articulated in President Trump's new administration, it's reasonable to factor in the risk of federal regulatory action if a company engages in discrimination under the guise of DEI. While private litigants' disputes can be limited in scope to the facts of the plaintiff's employment, regulatory inquiries can be broad and deep, extend over years, and be both resource-intensive to defend and operationally disruptive.

Specific risks of liability are present throughout the life cycle of employment. Attached as **Appendix A** is a DEI legal risk checklist that illuminates the various risks of DEI throughout the life cycle of employment.

As noted above, businesses put themselves at significant risk of liability for discriminatory practices they implement even beyond the hiring and firing stages of the life cycle of employment. Programs and initiatives such as employee trainings rife with Critical Race Theory concepts (e.g., "white privilege," "intersectionality," etc.), incentives for managers achieving hiring and retention goals based on race, ethnicity, and/or gender benchmarks (i.e., quotas), and advancement or internship programs limited to persons based on certain protected characteristics (e.g., race, gender, etc.) are currently under heightened legal scrutiny. Businesses that implement and conduct these programs and initiatives are more likely to face allegations such as racial discrimination, compelled speech (e.g., forced preferred pronoun usage), and the creation of a hostile work environment in a post-*SFFA* world.

Employee trainings that purport to be focused on addressing ideologically rooted concepts like unconscious/implicit bias and/or systemic racism often utilize methods that address just one race (often white) or gender (often men). For example, a training focused on the concept of white privilege and/or that attributes negative traits to white people based on their race alone is not only divisive in a workplace but creates a hostile work environment and is grounds for litigation.

Businesses that incentivize managers with bonus compensation for meeting certain race or gender quotas are at risk for claims of unlawful hiring practices under Title VII. Even where specific benchmarks are not tied to a manager's compensation expressly, it is common practice in business that managers seeking to be rewarded with solid performance reviews or promotions will manage their departments based on what the company prioritizes and/or measures. For example, in June 2024, the Attorney General of Missouri sued IBM for, among other things, allegedly providing compensation incentives for executives hiring new employees based on race.[4]

Internships and on-the-job opportunities that are not open to all applicants but instead focus on a particular race, gender, or ethnicity are likely discriminatory on their face. Businesses providing these opportunities based on anything but merit and an equal opportunity to applicants (or would otherwise be interested in applying) are increasing their litigation risk.

These litigation risks are present not only under federal law but also under state laws, and the awards under some state laws can mirror or exceed federal remedies. For example, penalties under the California PAGA scheme can easily reach into the millions. Certain states protect conscience objectors as well.

Businesses also must understand that they may face enormous financial losses and reputational harm even if a lawsuit is never filed. Social media campaigns exposing the discriminatory programs and initiatives being conducted by some businesses and forced on the employees can lead to consumer boycotts, plunging stock prices, and public relations nightmares. Conservative influencer Robby Starbuck has exposed the DEI-laden initiatives at major companies such as Tractor Supply, Caterpillar, Harley Davidson, and Ford, which resulted in wholesale changes to the way those companies, and numerous others, approach these divisive topics. This has positively led to many companies stepping away from contentious political issues while respecting all employees regardless of immutable characteristics, faith, or other protected categories, and focusing instead on providing exceptional products and services.

CREATING AN EQUAL OPPORTUNITY FOR EVERYONE PROGRAM

Naming and Branding Considerations

With the increased scrutiny now on DEI programs, it is vital to name and brand your Equal Opportunity for Everyone ("EOE") program in a way that unifies rather than divides and focuses on driving success for the company. In doing so, consider an approach that spotlights the unique talents and attributes each person brings to the organization and how those qualities support the company's success and core mission. Conversely, it can also make sense not to have a separate program and simply include equal opportunity and access concepts in your overall talent management or employee engagement strategy.

If you do want to have a specific EOE program, consider the company's core mission and try to tie the program's name to the company's values, products, or key identifiers. Also, ensure it focuses on the value each person can uniquely contribute to the company instead of focusing only on sex or skin color. Examples could look like – "Equal Opportunity: People, Potential & Performance" or simply "People First." Whatever avenue you choose, the important thing is to ensure that equal opportunity, excellence, and business results are emphasized.

In terms of wording, it is necessary to recognize that in the current legal, cultural, and political environment, the terms you select can have a profound impact both from a legal and reputational standpoint. For example, the term "equity" indicates a preference for a specific demographic outcome rather than "equality," which communicates a commitment to opportunity or access regardless of demographic categories. Also, if you choose to use the term "diversity," it is important to explicitly point out that it is being used in its broadest sense to encompass the uniqueness of each individual. Terms and phrases such as "equal opportunity," "access," "belonging," "inclusive," "performance," "merit," "excellence," and "eliminating barriers" are more likely to resonate positively with a broader share of the workforce and avoid legal risk-laden DEI.

Expand Your Talent Pool by Eliminating Unnecessary Job Requirements

When looking to hire the best talent, ensure you do not exclude top candidates by requiring qualifications that are unnecessary to successfully perform the job. Therefore, it is important to understand what qualifications must be required (versus preferred) for each role in your organization. As an example, many companies for years have required managerial employees to have a college degree. Some companies even simply default to requiring a college degree for any exempt-level role. Often, however, requiring a degree is unnecessary. There are many individuals who have picked up these same skills in other ways, such as through military experience or working their way up through an organization. Thus, requiring an unnecessary college degree can result in a company missing out on the best candidate.

Other qualification obstacles that limit hiring the best talent include things such as demanding more years of experience than necessary or an inflated GPA, requiring a specific type of education or certification when the skills can be acquired on the job, or listing physical requirements that exceed those actually needed. Additionally, when possible, consider whether the role can be done on a part-time or flexible schedule basis. Adding flexibility extends the candidate pool to those unable to work more traditional hours.

Therefore, as part of a successful EOE program, an important step is updating job descriptions and postings that limit required qualifications to those truly necessary to perform the position. This will lead to a wider candidate pool from which to find the best candidate to hire.

Scout Talent Broadly to Hire the Best

Once you know what you need in a candidate to help the team win, it is necessary to find that person. In doing so, it is not uncommon for many employers to recruit from the same places where they previously found talent. This can look like going back to the same few schools or competitors where other top talent graduated from or previously worked. While there is nothing wrong with going back to the well, the key is not to stop there. Limiting your recruiting scope can lead to a workforce with too many similar experiences and backgrounds that can lead to groupthink or create a workplace culture that does not feel welcome to candidates with other backgrounds.

Accordingly, consider broadening where and how you search for candidates. For example, the top student at a lower-ranked local school may make a far better employee than the candidate with fair grades from a top school. Likewise, finding talent at different companies and in different industries than you normally recruit from may result in a better pool of candidates.

In addition to looking at new schools and companies to recruit from, consider advertising and posting open positions to different communities via social media platforms and additional media channels. Posting and advertising in multiple languages is also an option to find new talent when you are looking to add multilingual employees to the team, or if the role requires the candidate to speak certain languages. Again, the key is to broaden the candidate pipeline so you can make the best hire.

Create a Consistent Process to Review Applications and Resumes

When filling an open role, it is important to have a process in place that leads to hiring the best candidate. Accordingly, at an early stage, when reviewing candidates' resumes or applications, a number of companies choose to remove candidates' names before advancing them to managers and key decision-makers. They do this to take the focus off a candidate's physical characteristics (e.g., gender, race, and ethnicity) that have no bearing on their ability to perform the role and prioritize a focus on the qualifications needed to succeed in the position. Some companies go further and remove additional information, such as addresses to avoid potential hometown favoritism or the names of a candidate's university if there is a concern that certain schools carry unnecessary bias, either positively or negatively, because of the school from which the hiring manager or other company leadership graduated.

Whether a candidate's name itself can actually lead to bias, as some studies have suggested, the key is—once again—to focus on hiring the best candidate.

Standardize the Interview and Promotion Process to Find the Best Talent

The Interview Process

To ensure a consistent interview process, standardize the questions and format of the process for each role. For example, if you are hiring a sales manager, make sure each candidate is asked the same questions by their interviewers, so an "apples-to-apples" comparison can be made when evaluating candidates. Also, to the extent possible, have the same slate of interviewers meet each candidate. This will minimize subjectivity, such as when interviewers ask questions off the cuff and focus on who they best "vibed" with during the process. As you did in making sure the job description focused on the actual qualifications needed for the role, the questions asked should determine which candidate's skills and experience best fit the current need.

When possible, use behavior-based questions where the candidates describe their experiences to see how they align with duties required by the position and to ensure they will thrive in your organization's performance-based culture and support its core mission.

Final Candidate Slates

If you require a final panel containing a certain number of job candidates (e.g., three candidates make the final round), do not place identity-based requirements on who must be included. For example, requiring the final slate to include one or more individuals who are part of a legally protected class likely violates federal, state, or local law since you selected or excluded individuals based on their protected characteristics. Moreover, this should be unnecessary because, if you implement the recommendations outlined above, you will often be considering candidates from a talent pool broad enough to find the best candidate.

Transparent Promotion Process

Likewise, for promotions, ensure you have a transparent process. Avoid the practice of pre-selecting individuals and foregoing the interview process. When promotions are made without an open process, it can lead to low morale from those not considered and can look like favoritism towards the selected individual. Instead, a better approach is to post promotional opportunities so other interested internal candidates can apply.[5] Then you can use your standardized interview process to identify the best candidate.

Another benefit to this open approach is that you may find other employees who will be promotion-ready after receiving additional development or mentorship. This process should also include feedback for those not selected as that is a form of developing individuals so they can identify areas for improvement that will lead them to career growth.

Onboarding for Long-Term Success

Use the onboarding process to highlight and gain buy-in for your EOE program and the culture of your organization. As new talent is brought into your enterprise, these individuals will come from a variety of places and have varying views on workplace culture. Accordingly, this “honeymoon” phase is the ideal time to instill in your new employees the vision and goals of your workplace as well as demonstrating the benefits of an EOE program focused on hiring the best, getting results, and unifying the workforce by valuing and respecting what each person brings to the team to help it win in the marketplace.

Design Training & Development Programs That Drive EOE

The training and development of a company's employees are a necessary part of any EOE program. As an employer, to remain competitive in the marketplace and retain your talent, it is vital to have a continuous improvement mindset. When designing programs to train and develop your people, do not limit programs to those of certain protected classes, as doing so can violate anti-discrimination laws and sap morale from those excluded. A better approach is creating programs that benefit groups with common experiences and needs. Examples might include mentoring or training programs for the following:

- Those entering the private workforce after military service,
- First-generation college graduates,
- High potential talent, or
- First-time managers of people.

Avoid training programs that shame, guilt, or seek to convince people that they are inherently biased toward other protected classes. These types of programs can result in resentment and do not lead to greater unity. Rather, focus training on the legal obligation to avoid discrimination and harassment, and instead to treat each employee with respect as an individual with unique backgrounds and experiences to contribute. Training that teaches your employees how they can collectively use their unique experiences and talents to work together to succeed is a far more productive and unifying exercise.

Also, consider using cross-training or rotational programs in your EOE program to expose your strong performers to different parts of the business. This allows these individuals to meet leaders from other parts of the business and gain new experiences that result in personal growth for them and make them more valuable and skilled for the enterprise as a whole. Further, as automation may impact certain types of positions in the future, develop re-skilling programs for those in potentially affected roles.

Additional training and development programs that can fit into an EOE program might include financial planning training, English as a Second Language (ESL) courses, or degree and certification programs for your employees to learn new skills.

Design a Performance Management Program that Supports EOE

Design a Performance Management Program (PMP) that supports equal opportunity and access by establishing and effectively communicating performance expectations early and often, checking for employee understanding, providing employees with the training and resources they need for success, developing employees beyond their day-to-day duties, and providing ongoing coaching. A few keys to a successful PMP are as follows:

- The PMP program should be mission and values aligned,
- The PMP program should support the company's culture, and
- The PMP program should identify and support top performers.

The PMP program should also align with the company's rewards system to promote success. Tangible rewards should be tied to performance and behaviors in the form of merit increases, performance bonuses, and/or other long-term incentives.

In recent years, some companies tied leader compensation and bonuses in their PMP to DEI outcomes. This approach creates significant legal exposure and needs to be avoided.

Determine How ERGs Fit into the Program

Employee or business resource groups ("ERGs") can be an important part of a Company's EOE program but must be structured to take advantage of the benefits these groups provide and mitigate their potential downsides. At best, ERGs can bring people together, drive employee belonging and engagement, support professional development, and help with employee retention. However, they can also lead to division, negatively impact a company's brand, and result in significant legal exposure.

Here are practical steps to making ERGs a value-add to an EOE program:

- **Open Membership:** ERGs should be inclusive and not limit membership to those belonging to a certain protected class as this can create division; rather all company employees should be permitted to belong to and attend any ERG's event.
- **Focus on Professional Development:** ERGs should go beyond just being supportive social communities. They are also an excellent vehicle for employees to network in a more casual worksite setting and can lead to potential mentoring opportunities.
- **Permit Faith-Based Groups:** If you are going to tell your employees to bring their "authentic self" to work it makes sense then that doing so requires that individuals can bring their faith into the workplace as a person's spiritual beliefs are often foundational to who they are as a person. This includes faith-specific groups such as Christian or Jewish ERGs rather than only generic "Faith ERGs."
- **Celebrate and Educate:** Since ERGs center around individuals with common experiences or backgrounds, they are in an excellent position to educate and support celebrations that align with the ERG. As noted in a recent DOJ memo, while DEI initiatives are being targeted in an effort to eliminate illegal discrimination, "educational, cultural, or historical observances-such as Black History Month, International Holocaust Remembrance Day, or similar events-that celebrate diversity, recognize historical contributions, and promote awareness without engaging in exclusion or discrimination" are permissible.[6]
- **Avoid Political & Social Activism:** When it comes to politics, ERGs should remain neutral and not take stands on hot-button topics or jump into the culture wars of the day, nor should they push the company to take such positions. Unfortunately, at the height of DEI, these groups were pushing companies to take stands that had the potential to alienate large swaths of their workforce and consumer base.
- **Fund on Even Footing:** Ensure no ERG is improperly excluded from corporate funding available to other ERGs. Consider creating a rotating committee composed of cross-functional leaders, such as from HR, Legal, and Finance, to evaluate ERG funding requests.

Using Community Involvement and Philanthropic Activities for Positive Impact and Creating Long-Term Talent Pipelines

As the expression goes, it's a long game, so it is important not to limit your EOE program to those currently in the workforce. If aligned with your company mission, there is a great opportunity for companies to create a long-term talent pipeline through their community involvement and philanthropic giving. Investing in children growing up in economically distressed areas or situations can be a great apolitical way to make a difference and help ensure the next generation has the talents necessary to fill the roles companies will be recruiting for years down the road.

Childhood reading programs are a great example. Studies show the importance of children being able to read at grade level by third grade and how that milestone impacts the rest of their lives, and society as a whole. Additionally, programs that focus on teaching teens how to use technology or gain experience in a trade are highly valuable for their future professional prospects. These are areas where companies can make a positive difference both to their communities and to themselves by helping create a larger and stronger future pipeline of talent.

Other programs include healthy childhood eating programs or programs that assist families in need of stable living situations. Both programs are aimed at increasing a child's chances of success as they grow up, which is a win-win for any company that uses its philanthropic resources to give back to the community.

Additionally, many companies encourage their employees to engage in philanthropy through company match programs that financially increase their employees' giving power to the organizations they are passionate about. Unfortunately, these programs often exclude religious organizations from eligibility. This is a form of discrimination and is a common occurrence when companies rely on third-party vendors such as Benevity, Cybergrants, or YourCause.

Companies have two easy ways to protect charitable choice for their employees:

1. Rely on IRS 501(c)(3) status for charity eligibility. With over 1.5 million registered non-profits in the U.S., the Internal Revenue Service grants 501(c)(3) tax-exempt status to organizations that meet a number of key requirements, including limitations on political involvement, private enrichment, and annual transparency reporting.

2. Adopt a policy that expressly protects religious charities from exclusion. The First Amendment, Title VII, and many other laws protect the freedom of religious organizations to select employees based on their religious beliefs. Corporations should respect these freedoms by adopting policies that acknowledge religious organizations' freedom to hire based on religion and ensure that they can participate on equal footing with nonreligious charities. Language provided by the Viewpoint Diversity Score model policy[7] will help ensure charitable choice is protected for religious recipients.

Standardize Contracting with Vendors and Suppliers

Similar to hiring the best person for each position, from an EOE program perspective, it makes sense to do likewise when selecting a vendor or supplier. This includes designing a standardized merit-based procurement process that focuses on objective qualifications. As you did with job descriptions, outline clear selection criteria for your vendors and suppliers, such as those related to quality, reputation, price, expertise, ability to meet requirements, etc. This should include removing unnecessary barriers to contracting with your company and aiming for a large vendor pool from which you can select the best option.

This contrasts with DEI proponents, who over the past several years suggested creating sex- and race-based quotas or placing an emphasis on making contracting decisions based on the protected classes of the owners or employees. The DEI approach carries with it legal risks whereas the EOE approach leads to better business outcomes as it relies on non-discriminatory selection criteria. Ironically, selecting the best candidates based on merit, talent, and job fit typically results in a larger pool of candidates who represent a much more representative cross-section of the population.

Create a Strategy for Responding to External Surveys and Scorecards

As part of the EOE program, it is important to have a strategy related to the several external surveys your company may be requested to complete by various organizations that then create scorecards that are publicized. These surveys tend to focus on DEI or environmental, social, or governance (ESG) topics and generally seek to influence companies to take certain actions aligning with the priorities of the organization behind it. Often, over time, to continue to score well, companies need to take further actions that support the survey sponsor's goals.

Therefore, it is important to remember that these external surveys reflect the priorities of the organizations that created them and may not align with the best interests of your corporation. Further, they can often lead corporations to take political positions on issues that tend to divide – both workforces and consumer bases, which can have financial consequences. Moreover, as more organizations create these surveys across the political spectrum, it is difficult to make everyone happy and score well on them all without upsetting other organizations, and potentially your employees and customers.

To address this, several corporations are deciding to simply stop taking the surveys or only taking those surveys that align with the corporation's priorities. For example, the Viewpoint Diversity Score Business Index evaluates a company's respect for fundamental freedoms such as free speech and religion in the workplace, and Alliance Defending Freedom, which runs the index, will come alongside an organization to help ensure its policies protect religious freedom and freedom of speech. In that regard, the Viewpoint Diversity Score Business Index can assist your organization in creating policies that help to build a workplace culture that is respectful of all employees, regardless of race or sex.

Whatever approach you decide to take, now is the time to deliberate and decide upon a strategy. In doing so, focus your strategy on what is in the best interest of your company and its shareholders, employees, and customers.

Keep in mind that participation in external surveys is not required but should be considered to the extent the survey aligns with your company's strategy and values and will complement that strategy and those values. For example, a company with a predominantly local footprint may choose to participate in a local "best companies" list survey, but not a national one, or your organization may wish to appear in a list of best companies in your industry because it is more applicable to the talent you are intending to attract.

ROLLING OUT AN EQUAL OPPORTUNITY FOR EVERYONE PROGRAM

Successfully implementing an Equal Opportunity for Everyone (EOE) program requires a thoughtful, organization-specific strategy that aligns with your company's mission and addresses the needs of its leadership and workforce. This section provides a practical roadmap for rolling out the EOE program, emphasizing stakeholder engagement, tailored communication, and measurable progress. By replacing divisive DEI initiatives with an equal opportunity approach, this program reduces legal risks, enhances employee engagement, and drives business success. This section will outline the first three key steps, supported by checklists and actionable ideas.

1 | Assess the Playing Field

Understanding your organization's readiness for change shapes the rollout approach. For example, you may want to informally survey key leaders to gauge sentiment and tailor the strategy accordingly. Other considerations include factoring in whether HR will be supportive or resistant, if they hold power in the organization, and how to proceed wisely with that knowledge.

If leadership and employees are relatively open to adopting an EOE approach you can craft an accelerated implementation plan aimed at producing immediate, visible wins. If, on the other hand, your assessment finds more skepticism to moving away from DEI to EOE, you will want to proceed gradually, emphasizing education and benefits like legal risk reduction and workforce unity.

Benefits to Highlight:

- Mitigates legal exposure from discriminatory DEI practices (e.g., post-*Students for Fair Admissions* and other court rulings, Presidential Executive Orders, and EEOC enforcement initiatives).
- Builds a merit-based culture that values individual contributions over immutable traits.
- Enhances unity by eliminating divisive labels like "oppressed" or "oppressor."

Key Assessment Questions:

- What are current pain points in our DEI practices?
- How are existing programs performing?
- What metrics show success/failure?
- What legal considerations exist?
- What resources are available?

2 | Initiate the Conversation

Start with informal discussions to introduce the EOE concept and address concerns. Use evidence to reinforce its value:

Conversation Starters:

- “How can we align our talent strategy with legal compliance and merit?”
- “What risks (legal and internal cultural) do we face by retaining current DEI frameworks?”

Key Discussion Points:

- Business Impact:
  - Legal compliance benefits
  - Improved talent acquisition
  - Cost savings
  - Enhanced decision-making outcomes
  - Mission-aligned company culture
  - Business performance and metrics
  - Effects to culture of innovation within company
- Employee Benefits:
  - Improved trust
  - Clear advancement criteria
  - Fair evaluation processes
  - Merit-based opportunities
  - Enhanced job satisfaction
  - Better work environment
  - Professional development
  - Equal access to resources

Supporting Articles:

- Views of DEI have become slightly more negative among U.S. workers (*Pew Research*)

- All the Major Companies and Orgs Dumping Their DEI Programs (*Forbes*)

- Big Banks are Scrubbing Their Public Mentions of DEI Efforts (*Wall Street Journal*)

- Instructing Animosity: How DEI Pedagogy Produces the Hostile Attribution Bias (*Network Contagion Research Institute*)

These resources provide credible backing to ease leadership into the shift. You can use these conversations to identify individuals to create your engagement team.

3 | Engage Stakeholders

Engaging stakeholders in a deliberate sequence ensures buy-in and alignment. Start internally to build a solid foundation, then expand to external parties. Here's a sample list of who to approach and why. Depending on your organization's posture, the sequence may make sense to vary:

Orientation	Stakeholder	Order	Purpose
Internal	**HR Department**	1	Collaborate on policy design and employee implementation
Internal	**Legal Team**	1	Ensure compliance with employment laws, including anti-discrimination laws (e.g., Title VII, § 1981)
Internal	**Department Heads**	2	Gain support and endorsement
Internal	**Employee Resource Groups**	2	Gather input and alignment
Internal	**CEO, Executive Leadership**	3	Secure top-level support and align with strategic vision
External	**Board of Directors**	4	Gain formal approval and align with governance priorities
Internal	**Managers**	5	Train and inform on new practices
Internal	**Employees**	5	Full program rollout
External	**Major Clients**	6	Inform of changes as relevant
External	**Suppliers/Vendors**	6	Inform of changes to procurement and align expectations

- **Internal First:** Create a small team to ensure forward progress (2-3 people). Begin with the HR, legal, and other key department heads to outline the plan and policies and mitigate risks, then consider gathering input from ERGs before presenting to CEO/ executives to establish leadership commitment.

- **External Next:** Engage the board for oversight and suppliers/vendors to ensure contractual alignment with EOE principles.

Now What?

Now that you have a clear picture of where you are and who will be alongside you in the rollout and journey, where do you go from here? The path ahead may not be linear, but this is a space where you can experiment. Make sure to include the workforce and introduce changes in a way that makes sense to the business and employees. Keep the momentum going by listening to key voices within the workforce and adapting your approach to address concerns while you work toward lasting change.

Next Steps

Based on what you learn through the conversations and stakeholder engagement, you may decide to start small or large. You might choose to deploy varied channels to ensure the EOE program resonates across the organization. Some examples include:

Internal:

- Company-wide emails to announce the shift and its benefits.
- Departmental meetings to detail implementation and gather feedback.
- Training sessions to educate on equal opportunity principles.

External:

- Press releases to signal a commitment to stakeholders and the public.
- Website updates to reflect the new strategy.

Pro Tip: Use this as an opportunity to gain feedback and employee buy-in by including teams in crafting how they may want to steward or champion initiatives.

Implementation Checklist: Small Wins for Momentum

Track progress with achievable milestones to demonstrate value and build support:

Immediate Actions (First 30 Days):

- Draft and finalize EOE policies with HR and Legal input
- Secure CEO and board approval for the EOE program
- Form implementation team
- Review existing policies
- Identify necessary changes
- Create communications plan
- Develop training materials

Short-term Actions (60-90 Days):

- Update hiring processes
- Revise performance metrics
- Train HR and managers
- Launch pilot program
- Establish feedback channels

Long-term Actions (90+ Days):

- Full program implementation
- Regular assessment
- Continuous improvement
- Success measurement
- Stakeholder feedback

Early successes—like streamlined hiring or positive employee responses—prove the program's worth and encourage broader adoption.

Why This Matters for Your Organization

This rollout plan is adaptable to your company's unique context, balancing sensitivity to leadership priorities with the need for change. By prioritizing merit and equal opportunity, the EOE program:

- **Reduces Legal Risk:** Reduces litigation risk tied to discriminatory DEI quotas or preferences.
- **Drives Engagement:** Fosters a unified workforce where talent—not identity—defines success.
- **Boosts Performance:** Attracts top candidates by broadening access and focusing on results.

Tailor this framework to your business, leveraging the outlined steps to avoid DEI pitfalls and embrace a strategy that wins in today's competitive landscape.

Appendix A | DEI Legal Risk Checklist

Questions	Answers
1. DEI Initiatives (Talent Acquisition Stage):	
Does the company engage in "targeted recruitment" or "diversity sourcing," meaning the company or a recruiter seeks or screens candidates motivated by their race, sex, or sexual orientation?	
Does the company mandate a specific number or percentage of candidates with certain characteristics over others (e.g., candidates who are female and or are of a racial or ethnic minority group, or so-called "under-represented minorities")? If so, what measures are in place if the required candidate threshold is not met?	
Does the company have a preference (based on race or sex) for candidates with certain characteristics over others to be selected for interviews or recruiting initiatives?	
Are hiring managers required to justify why a diverse candidate is not select-ed for a role?	
Are hiring decisions ever overturned or challenged based on a candidate's race, gender, or other diversity, equity, and inclusion (DEI) characteristics?	
Are those with hiring responsibilities ever directed to include "diverse" candi-dates in the final round of interviews, regardless of their qualifications?	
Does the company offer diversity internships?	
Does the company offer diversity scholarships?	
Does the company offer diversity-accelerated interview processes?	
2. DEI Initiatives Involving Current Employees	
Does the company require employees to attend DEI trainings? If so, what topics are covered in these trainings (e.g., unconscious bias training, cultural competency training, general overviews of DEI concepts, or trainings incorporating more controversial and ideological topics like critical race theory, criticism of any racial groups, white privilege, etc.)? Does training ask how employees would behave in certain situations, such as, "Will you use the preferred pronouns of your coworkers, yes or no?" And is there a consequence (i.e., if a person can't complete the training) until a person responds "correctly"?	

Appendix A | DEI Legal Risk Checklist

Are employees required to sign or make a statement of commitment to DEI principles?	
Are employees discouraged or penalized for questioning DEI policies or training content?	
Are employees instructed to introduce themselves with pronouns or to adopt gender-neutral language in their communications?	
Does the company ever separate employees into race-based groups for trainings or events? Specifically for DEI trainings, does the company conduct DEI training sessions where employees are separated by race, with each group receiving identical or parallel training?	
Have employees reported feeling that DEI policies have led to preferential treatment for certain groups?	
Does the company create an environment where employees feel comfortable opting out of DEI initiatives without fear of backlash?	
Do employees feel that DEI efforts have improved workplace culture, or do they believe these initiatives have created a sense of division or favoritism?	
Does the company restrict access to training, leadership development, or mentorship programs based on race or sex? Some companies will have such programs limited to only women, Blacks, Hispanics, etc.	
Does the company have workplace affinity groups organized around race or sex? If so, does the company promote one "group" over another (e.g., "gay pride")? If so, is participation optional, considered mandatory, or strongly encouraged in a way that feels coercive?	
Does the company advertise the gay or trans flag on LinkedIn?	
Does the company's promotion of LGBTQ+ Pride initiatives create an environment that could be perceived as hostile or exclusionary by employees with religious beliefs, such as Christians or Muslims?	

3. DEI Involving Management, Corporate Accountability & Reporting Around DEI "Progress"	
Does the company have goals for percentages or numbers of "diverse" employees? Companies often have separate goals for workforce representation of Black, Hispanic, Native American, and sometimes Asian employees. If yes, are those goals at different levels of management or for everyone?	
Does the company track the percentages of applicants, new hires, current employees, management, or promotions by race and sex?	
Does the company include diversity activities in its annual performance reviews? Some companies will have managers or employees report on progress or achievement of goals like participating in a certain amount of DEI trainings or events, mentoring "diverse" employees, and other actions demonstrating a commitment to DEI. Does this happen at the company?	
Does the company tie compensation to diversity representation goals? For example, a number of companies have tied incentive compensation for executives, and sometimes managers or other employees, to the company achieving diversity goals like workforce race or sex representation numbers.	
4. DEI Policies at End of Employment Cycle	
Has the company considered race or sex when determining whether to fire someone?	
Has the company considered race or sex when determining whether to select an employee for a restructuring, reduction in force, or voluntary or involuntary separation programs?	
5. Additional Questions	
Are employees allowed to participate in any of the growth/development programs listed in diversity, inclusion, and belonging programs? Are there general DIB programs for everyone? Are there sessions where employees are told to admit their own racism/privilege?	
Does the company staff work for federal or state actors differently to meet certain diversity benchmarks? Do the company's DEI policies control this?	

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[3] https://apnews.com/article/starbucks-racism-philadelphia-manager-lawsuit-bfa9cd9a897dff402f8547f167455d10

[4] https://ago.mo.gov/attorney-general-bailey-files-suit-against-ibm-for-violating-the-missouri-human-rights-act

[5] There are instances where this approach does not apply such as inline promotions where there is no open position, but a promotion is warranted based on skill set or workload, such as a move from Financial Analyst I to Financial Analyst II.

[6] https://www.justice.gov/ag/media/1388501/dl

[7] https://www.viewpointdiversityscore.org/resources/workplace-resource-donation-policy-for-religious-charities-employee

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