

JANUARY 2025

Legal DEI Guide for Small Businesses and Organizations:

Understanding the Legal Landscape and Creating an Inclusive, Equitable Workplace




Note: Most of the content of this Guide was prepared prior to the change in Administration, and subsequent executive actions proposed by President Trump may impact some of the analysis. We have updated the Guide to reflect some of the early executive orders, but recognize that more actions are likely forthcoming. We continue to encourage small businesses to prioritize and advance Diversity, Equity, and Inclusion (DEI) practices. It is also important to remain mindful of the evolving legal landscape and potential regulatory changes. We strongly advise maintaining ongoing communication with APR Network and the resources we highlight in this Guide for up-to-date guidance as we transition into the new administration.

Disclaimer: The information contained in this guide is provided for general informational purposes only, and should not be construed as legal advice on any subject matter. Please consult with legal counsel on situation-specific legal questions. If you need legal advice, we recommend looking at the resources at the end of this guide to help find an attorney.

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Acknowledgments

American Pride Rises is a network of organizations committed to protecting pathways to the American Dream, so every community in our nation has the ability to thrive. The movement to be a more equitable and inclusive society has been at the center of progress in our nation – pushing for policies and initiatives that demand America live up to the Constitution’s promises.

Thanks to the teams at Defending American Values Coalition and Deliver the American Dream of the American Pride Rises Network for their support, insight and feedback as we developed this guide.

A special thanks to the legal and academic experts for their valuable insights in shaping the content of this guide.

We would like to express our sincere appreciation to the individuals and organizations that helped us better understand the unique needs of small businesses and organizations committed to advancing DEI through their work. Their insights were invaluable in shaping this guide. We also extend our heartfelt thanks to the legal experts and civil rights leaders who provided thoughtful feedback and direct input during the editing process. Their contributions have greatly enhanced the quality and accuracy of this guide. Special thanks to the following advocates and legal experts for their generous support: the Lawyers’ Committee for Civil Rights Under Law, Freedom Economy Business Association (a partner of the APR Network) and the Global Black Economic Forum. Many thanks to the pro bono team whose legal research was instrumental in drafting this guide.

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Lastly, sincere gratitude to the expert who provided the Spanish translation of this guide.

Please note: Inclusion in the Acknowledgments section does not imply endorsement of the guide.

As noted earlier, this guide is informational and does not constitute legal advice.



Introduction

America stands at a pivotal moment – one where we must choose either to accept and allow our nation’s exclusionary history to persist, or to continue fighting for the true meaning of democracy, one that embraces diversity, equity and inclusion. Recent attacks against civil rights protections for students and employees, affirmative action, the expansion of small business lending and targeting philanthropic efforts aimed at addressing long standing discrimination have undermined the vision of an “America for all.”

Diversity, Equity and Inclusion (DEI) acknowledges the need to create environments where individuals can thrive, make a meaningful contribution, and feel valued – regardless of their background or identity.

DIVERSITY means all people.

- America is, and always has been, made up of people from all walks of life. Diversity is our strength: generating new ideas, boosting our economy and leading to prosperity for everyone in our nation. Organizations that reflect the diversity of America are best positioned to tap into the brain power, resources and cultural capital that each community holds.

EQUITY is fair access to opportunity.

- America was founded on the idea that everyone should have a fair chance at success. Equity repairs historical and ongoing systems of inequality, ensures just access to resources for success, and lays the foundation for a person to achieve their full potential and contribute productively to their families, communities and our nation.

INCLUSION is participating in the American Dream.

- As a nation, we value kinship, community and access to opportunity: American values that many give their lives to protect. We are made stronger when we use our collective knowledge and talents to move our nation forward.

Without diversity, equity, and inclusion, American institutions risk losing top talent, relevance, and competitiveness, while undermining opportunities, progress, and the values that support the American Dream. And despite news headlines to the contrary, companies continue to embrace DEI because it is good for business.

Your commitment to DEI programs that attract and support top talent while expanding equity and opportunity is more crucial now than ever. It is a prudent legal and business strategy to embrace initiatives that will advance your business' goals through DEI initiatives and protect your organization from litigation in the form of discrimination claims.

Reversing course on DEI initiatives not only exposes organizations to legal, reputational, and business risk, but it also undermines the very democracy upon which our businesses and communities rely. Some well intentioned legal counsel may be suggesting reversals on DEI as preparation for a Trump Administration that has embraced the anti-DEI rhetoric without basing these recommendations on any evidence that they will help reduce legal or business risk. Not only does a retreat increase legal risk posed by discrimination claims, "obey(ing) in advance" emboldens authoritarianism. *"Most of the power of authoritarianism is freely given. In times like these, individuals think ahead about what a more repressive government will want, and then offer themselves without being asked. A citizen who adapts in this way is teaching power what it can do."* ²

This guide is designed to help small businesses, including both for-profit and nonprofit organizations, understand their rights and responsibilities regarding DEI. It covers legal requirements, best practices for fostering an inclusive workplace, and the role of government in shaping the DEI framework. Additionally, it provides guidance to support advocacy for DEI.

A FEDERAL POLICY AGENDA TO ATTACK DEI

In recent years there have been ongoing attacks to limit and undermine DEI in several key areas of society including education, economic opportunity, philanthropy, healthcare and voting rights. The idea of scarcity and power dynamics in the United States have prompted legal, political and cultural forces to message DEI to the public as divisive and exclusionary. These false narrative have prompted challenges across the following sectors:

- **Education:** In addition to the Supreme Court's decision on affirmative action with respect to admissions, many states have passed or proposed legislation to restrict DEI-related to curriculum, training, tenure and freedom of speech.
- **Economic Opportunity:** There have been ongoing efforts on the federal, as well as state and local levels to restrict DEI initiatives in diversity targets, DEI training, programming, Employee Resource Groups (ERGs), minority business development and support programs.
- **Philanthropy:** Attacks against philanthropic and nonprofit organizations, that work to support historically underrepresented communities, have aimed to limit charitable funding focused on addressing systemic inequality, racial injustice and social equity.
- **Healthcare:** Although race and gender-based disparities in healthcare are clearly demonstrated by data, making DEI initiatives a matter of life or death, efforts to reduce disparities in access to care, treatment outcomes, and training in medical schools and medical care systems have been met with opposition.
- **Voting Rights:** Efforts to expand voting rights have been met with strict Voter ID laws, purging of voter rolls, reductions of early voting options and gerrymandering.

These attacks have culminated in an anti-DEI agenda that promotes colorblind policies and the dismantling of what is miscategorized to be exclusionary practices.

PROJECT 2025

The 2025 Presidential Transition Project (Project 2025), a conservative agenda authored by the Heritage Foundation outlines a clear policy agenda for restricting opportunities for historically underrepresented communities by attacking DEI. As analyzed by [NYU Law Meltzer Center for Diversity, Inclusion and Belonging](#), the policy recommendations in Project 2025 fall into the following categories:

- **Eliminate DEI offices and personnel within the federal government**
- **End the government’s participation in DEI initiatives**
- **Amend laws to align with a conservative vision of nondiscrimination**
- **Take enforcement action against organizations that implement DEI initiatives**

The threats against DEI reflect a broader effort to foster discrimination and restrict opportunities. Undeniably, there is [a lot at stake](#) for members of historically underrepresented communities, protections of civil rights, and the core values of the nation. It is important to understand the threats being made in Project 2025 and legislation recently introduced such as the [Dismantle DEI Act of 2024](#) and [other legislation](#) that would give unprecedented and largely unchecked power to political appointees to revoke tax exempt status.

While this bill does not address the Office of Federal Contract Compliance Programs (OFCCP) or the affirmative action requirements it enforced under Executive Order 11246, on January 21, 2025, President Trump revoked multiple orders that protect and advance civil rights, including EO 11246. (See [Summary in Legal Protections](#).)

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It is also important to understand the impact of the flurry of anti-equity executive orders issued by President Trump in the early days of his second term. (See, for example, EO 11246 and Threats) However, ceding to these threats only opens the door to further attacks and leaves historically underrepresented individuals vulnerable to increased discrimination. Organizations have a responsibility to uphold pro-DEI values and initiatives, and it remains both lawful and imperative for them to continue to do so.

ENDNOTES

- 1 **Note:** APR’s definition of DEI encompasses accessibility and belonging as core values.
- 2 Timothy Snyder, *On Tyranny: Twenty Lessons from the Twentieth Century* (2017)

UNDERSTANDING THE ROLE OF GOVERNMENT

Levers of Influence, Critical Pressure Points, and Actionable Opportunities

As a small business or organization leader, in addition to addressing the needs of the customers, clients, or communities you serve, you have to navigate a changing political, legal, and regulatory landscape at the federal, state and local level that impacts the work you do every day. As local leaders, you see the impact of changes in the enforcement of existing laws, and have a unique perspective on the need for new legislation or regulation. You are in a powerful position to support or oppose changes in laws and enforcement regimes at all levels of government. This section provides you with an overview of the levers of power in federal, state and local government and opportunities for you to act.



The government plays a key role in shaping the direction of Diversity, Equity and Inclusion (DEI) initiatives. At the federal, state and local levels, the government is responsible for:

- Creating and enforcing anti-discrimination laws
- Implementing policies that encourage DEI
- Promoting equal access to opportunities in education, workforce development, healthcare, housing and social services
- Collecting data to better understand disparities and track progress of address inequality
- Setting workplace standards to ensure non-discriminatory practices
- Incentivizing DEI practices through tax breaks, grants and contracts
- Holding companies and other institutions accountable for upholding DEI standards, implementing policies like data collection and disaggregation, and enforcing penalties for discriminatory practices

When advocating for laws and policies that advance and protect DEI in the United States, it is important to understand the political landscape and to craft a strategic approach accordingly. Among the issues to consider are:

1. **Federal vs. State Laws:** Federal laws are created by the U.S. Congress and enforced by the federal government. Federal laws apply to the entire country and have jurisdiction over all the states. Powers not specifically listed in the U.S. Constitution as federal powers are left to the states. State laws are created by state legislatures and enforced by individual states. State laws are subject to the limits set by the federal government. If there is a conflict between federal and state laws, the Supremacy Clause of the Constitution establishes that federal laws take precedence over state or local laws.
2. **State and Local Laws:** States and localities may have their own civil rights statutes, and many states have their own anti-discrimination laws that may offer broader protection than federal laws.
3. **Potential for Legal Opposition:** It is important to recognize the context in which DEI is being discussed and the potential for legal action, including legal action that could result in the creation of harmful case law – court decisions that could establish a negative precedent for the civil rights protections in that case or in future cases.

In the [Additional Resources](#) section of this document, you will find information about how to access American Pride Rises' model legislation defending and advancing DEI. As someone who understands the importance of DEI in your business and community, you want to connect with trusted state or local government leaders who can introduce or support such legislation.

You can also learn more about the legislative efforts to protect or restrict DEI by visiting [American Ride Rises' Legislative Tracker](#).

➔ Federal Government

The three branches of government – **executive**, **legislative** and **judicial** – each play a distinct role in advancing DEI. Through the enforcement of existing laws, the creation and passage of new legislation, and the interpretation of laws, all parts of the government play a role in ensuring that historically underrepresented communities are protected, treated equitably and continue to have access to opportunities.

THE EXECUTIVE BRANCH

The **Executive Branch** can implement and enforce laws. It can also issue executive orders that promote DEI within the government and private sector.

- The White House consists of the **Office of the President**
 - Roles (as related to DEI): Chief Executive, Crisis Leader, Chief Legislator, Moral Leader, Party Leader, Manager of Prosperity
 - Scope of Authority (as related to DEI):
 - Executive Powers:
 - Appointment of federal civilian employees and top-ranking government officials (i.e., federal judges, cabinet members, head of independent agencies);
 - Power to remove anyone from office who has been appointed by the president (except for Supreme Court Justices)
 - Power to issue executive orders and presidential signing statements
 - Legislative Powers:
 - Can submit or recommend legislative ideas to Congress
 - Power to veto anti-DEI legislation
 - Can call special session of Congress for crucial issues
 - Judicial Powers:
 - Appointment of Supreme Court Justices (subject to approval by the Senate)
- The **federal bureaucracy** is divided into four categories: 1) cabinet department, 2) independent regulatory commissions, 3) independent executive agencies, and 4) government corporations.
 - **The Cabinet**: The most relevant cabinet offices related to DEI are the Department of Education, Department of Health and Human Services, Department of Justice, and Department of Labor. In each agency there currently is a Department of Civil Rights that ensures policies and procedures are aligned with civil rights laws.

- **Independent Regulatory Commissions** affect public policies, including issues of racial and ethnic discrimination.
 - The **Equal Employment Opportunity Commission (EEOC)** is responsible for investigating discrimination complaints that employees bring against their employers. After an employee files a discrimination complaint with the EEOC, the agency offers a neutral third-party mediator to hear both sides of the dispute. This mediation process is entirely voluntary, and the mediator's role is to help both parties reach a resolution, ideally preventing the need for further government intervention.

The EEOC can also issue [guidance](#) on its interpretation of the laws it enforces. This guidance is based on the text of the relevant statutes, legislative history, previous policies and decisions of the Commission, case law, and other legal resources.

The EEOC commissioners are appointed by the President (subject to Senate confirmation) to fixed terms. For more information, visit: <https://www.eeoc.gov/>.

- **Independent Executive Agencies:**
 - The **U.S. Commission on Civil Rights** does not have the authority to enforce civil rights laws. Rather, its primary function is to 1) gather evidence and hold hearings to determine the extent of discrimination, and 2) evaluate the effectiveness of civil rights laws and produce reports based on its findings.

The Commission consists of eight commissioners who serve a six-year term. Half of the commissioners are appointed by the President (not subject to senate confirmation); and the other half are appointed by Congress. For more information, visit: <https://www.usccr.gov/>

The ability of the EEOC and the U.S. Commission on Civil Rights to affect civil rights policy depends on the composition of the Commission. For example, while the Chair of the EEOC can be changed by an incoming President, all five commissioners serve for set terms, and the majority of the EEOC – until July 2026 – will include commissioners who have articulated clear support for DEI and civil rights.

THE LEGISLATIVE BRANCH

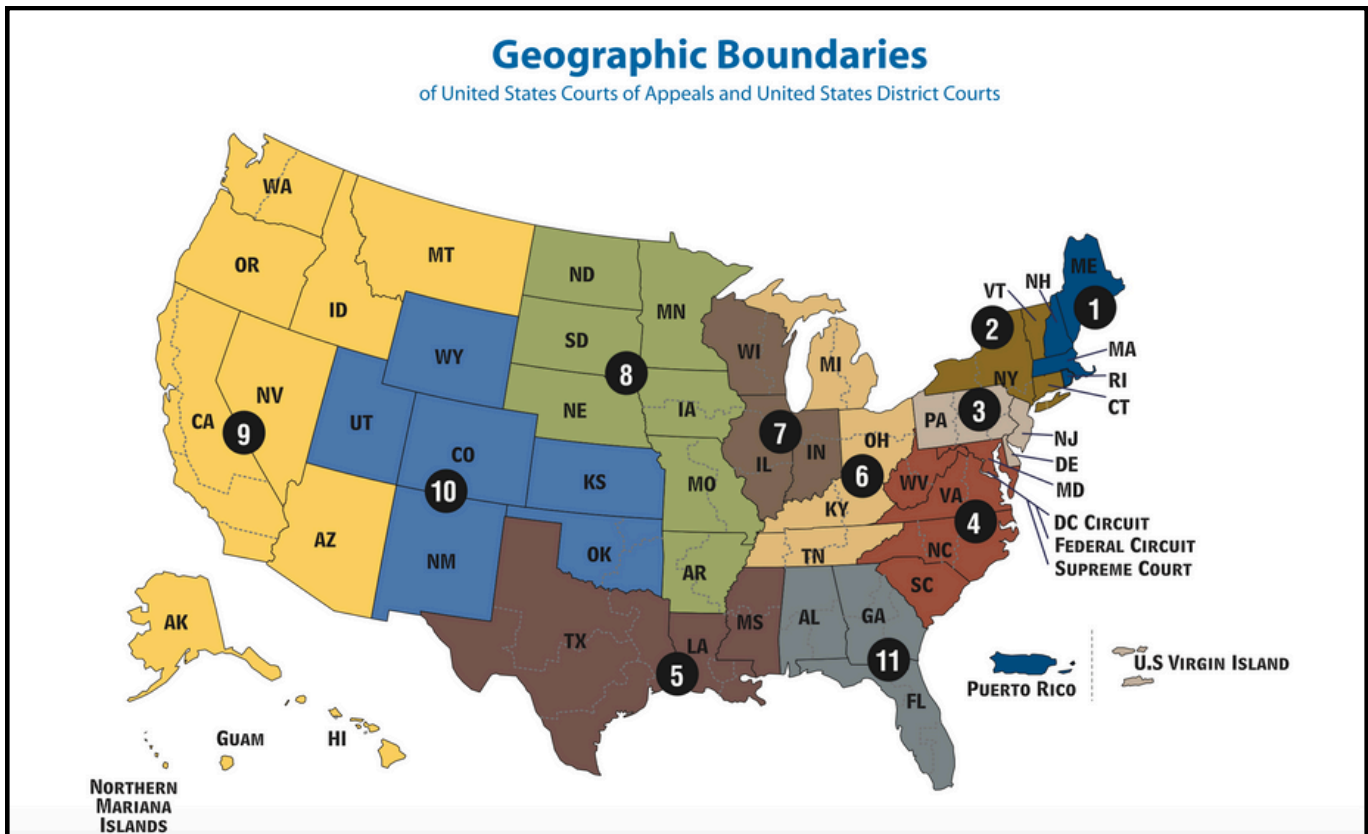
Congress is the legislative branch of government that advocates for their constituents and votes on national issues.

DEI bills (such as anti-discrimination laws, equal pay initiatives, and civil rights protections) can be brought either to the House of Representatives or the Senate. In addition to passing legislation, legislators control budgets and can allocate funding to support programs aimed at addressing discrimination and inequities. Legislative bodies can also hold hearings, pass resolutions and create commissions to address DEI and raise public awareness.

THE JUDICIAL BRANCH

Courts play an important role in affirming and/or expanding civil rights protections. Courts have the authority to:

- Review the constitutionality of laws passed by the legislature
- Set legal precedent that influences future cases and laws
- Address discriminatory practices through court cases



Source: https://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf

In the States

During the current era of devolution, power is being handed back to the states. This approach to federalism – the division of power between a central federal government and the states – can have clear advantages, such as encouraging pluralism, creating laboratories of democracy, and ensuring separation of power to prevent tyranny. However, a state-centered approach has historically not fared well for historically underrepresented communities.

While federal protections enforcing anti-discrimination laws are central to the effective enforcement of civil rights protections for everyone in the United States, there are still opportunities to strengthen civil rights protections at the state level. While some states are passing laws targeting DEI, there are many opportunities for states to protect and advance civil rights through legislation and executive actions that advance DEI.

There is no single office that holds sole control of the state’s policy-making. Instead, the governor, legislature, courts, and various agencies each play a role through executive orders, judicial decisions, and administrative regulations. Understanding the levers of power at the state level is crucial when developing a strategy to advocate for DEI.

Note: The duties of state positions and offices vary from state to state. It is important to consult state constitutions for specific details. See the State Data section for summaries of relevant state constitutional law and statutory law from 13 states.

The Executive Office:

Governors are elected officials who serve as the Executive of the state. Their roles and responsibilities include:

- Developing and making public policy
- Marshalling legislative action
- Coordinating intergovernmental relations
- Promoting economic development

The formal powers of the governor are outlined in the state’s constitution. Most governors maintain the power of appointment, power to veto legislation, responsibility for the budget, authority to organize the executive branch, and the authority to hire professional staff.¹

State Legislature:

Each state has a legislative body that is responsible for passing laws. In all but one state (Nebraska) the legislatures are bicameral (consisting of two bodies); with a Senate and House of Representatives/Assembly. Legislatures engage in three primary functions: policymaking, representation and oversight.

Within the legislature, work happens in committees. A committee's primary function is to consider bills before they are presented to the body for a vote. It is important to watch the actions of legislative committees when it comes to DEI. In the committees is where policies are shaped and funding decisions are made that could directly impact historically underrepresented communities and DEI initiatives.

- **Appropriations:** This committee determines the allocation of government funds.
- **Finance:** This committee is responsible for reviewing and overseeing financial policies and the state's overall budget. Decisions made in this committee can determine how resources are distributed to promote equal access to opportunities.
- **Government Oversight:** This committee can ensure DEI policies are correctly enforced, investigate disparities in application of laws, and hold government agencies accountable for discriminatory practices.
- **Health and Human Services:** This committee can help ensure vulnerable populations are included in policy decisions and that equity is prioritized in healthcare funding and services.
- **Labor and Economic Development:** This committee can influence the creation of job opportunities, small business development programs, and investments in underserved communities.
- **Law and Public Safety:** This committee addresses issues of criminal and civil justice, constitution and constitutional law, and civil rights.

State Courts:

Each state has its own court system, with some states having as many as fifty different types of courts. However, all states have at least three levels of courts: a district court, a court of appeals, and a supreme court.

State Attorney General:

The Attorney General serves as the state's chief legal counsel, providing formal written opinions on legal matters, such as the constitutionality of a statute, administrative rule, or regulations. In many states, these opinions carry force of law unless successfully challenged in court. Additionally, the Attorney General has the authority to initiate civil proceedings in most states.

Secretary of State:

The Secretary of the State is responsible for registering corporations, securities and trademarks. In relation to elections, they oversee the eligibility of political parties and candidates, verify initiative and referendum petitions, distribute election ballots to local officials, file campaign reports, and maintain voter registration rolls to prevent fraud. Additionally, the Secretary of State manages state archives, files agency rules and regulations, publishes statutes, and registers lobbyists.

State Treasurer:

The Treasurer is the state's chief financial officer, responsible for managing and overseeing state funds as the official trustee. This includes the responsibility of investing state funds, such as those allocated for state employee pensions.

Labor Commissions:

Labor Commissions are responsible for overseeing the administration of state laws related to labor and the workforce. This may include fair treatment of workers, investigating wage disputes and instances of non-payment, and setting the state's minimum wage.

Civil Rights Department:

In each state, there is a division dedicated to protecting civil rights.

These departments/commissions work to eliminate discrimination by enforcing the state's civil rights laws, especially in the following areas: housing, employment, and public accommodations.

ENDNOTES

1 Powers of governors vary by state. For state specific information on the authority of the governor in your state, visit the state's executive website or ballotpedia.com

Decision Trees: Examples of How to Navigate Efforts to Advance DEI



Workforce

Programming -
Fellowships and
Strategic Plans

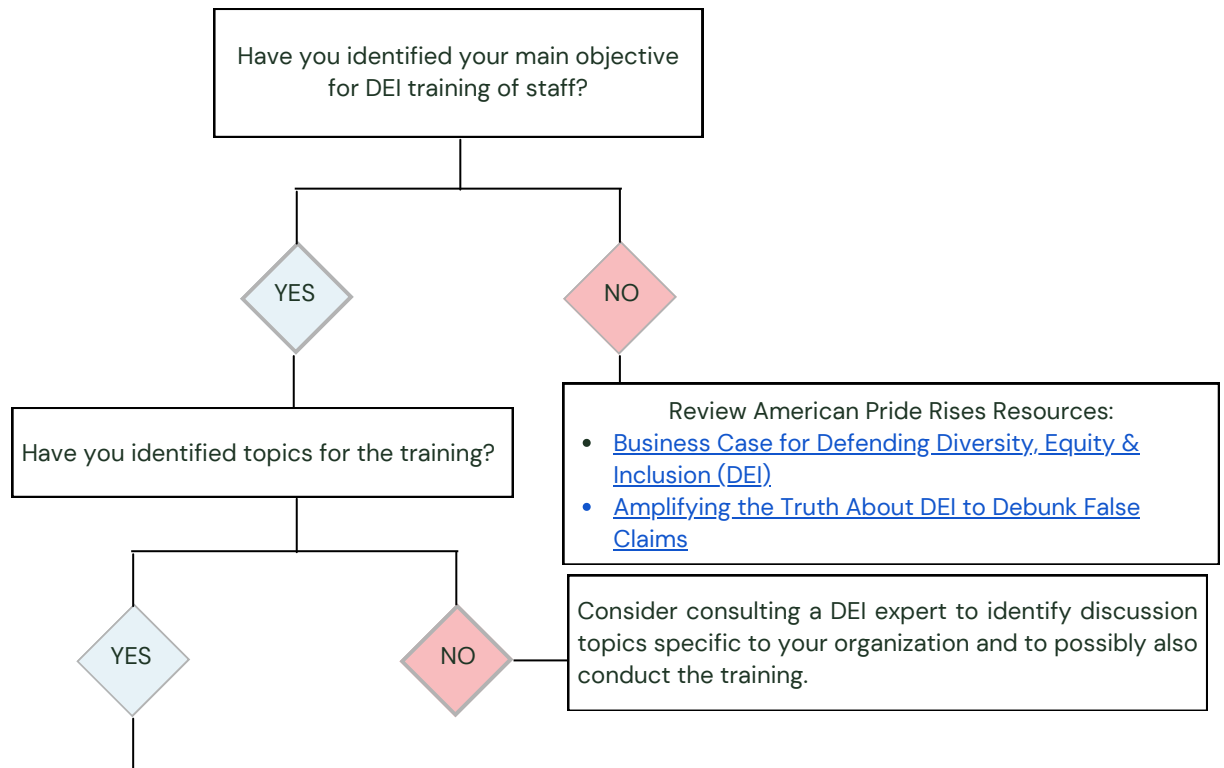
Economic
Opportunity and
Government
Contracts

WORKFORCE

- ➔ I want to promote DEI through training of employees.
- ➔ Can my company or organization start or continue an Employee Resource Group (ERG)?
- ➔ I have been collecting demographic data on my workforce—can I continue doing so? What can I do? (EEO-1, federal contractors, state requirements)
- ➔ I want to diversify my workforce to enhance productivity and profitability by better connecting with and serving the communities we aim to reach.



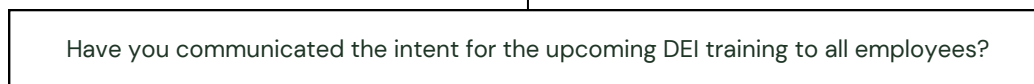
I want to promote DEI through training of employees.



It is important for staff to receive ongoing training to improve job function and employee relations. However, it is crucial that DEI training be specific to the needs of the organization and be conducted by a trained professional.

Tips for Conducting DEI Trainings:

- Trainings should be ongoing for employees throughout their career and not just one off.
- Embed equity throughout the entire employee experience – recruitment, hiring, development, promotion, HR benefits, and succession planning.
- Include a positive foundation that is based on the presumption that participants want to work in an inclusive and respectful environment regardless of background.
- Move beyond awareness to include the development of communication skills that enable employees to have difficult discussions that build relationships and advance work.
- Avoid blaming any particular group for systemic inequalities and focus on what employees can do to create an inclusive and equitable environment for all.



Some employees may be on board while others may push back. While a company can make DEI training mandatory for all staff members provided that it is conducted in a non-discriminatory manner, a more effective approach to a mandate is to communicate the need and benefits of such training to gain buy-in from employees.

Can my company/organization start an ERG/continue an ERG?

YES!

- ERGs can be an important way to promote inclusion and retention of talent, as well as employee personal development, and recruitment.
- Provide ERGs with adequate resources, meeting needs identified by the employees.
- Encourage employees to clarify what they want to achieve and why, with a focus on positive outcomes you want to achieve (versus what you want to avoid). Prepare the business case – What is in it for your organization? How does it align with your overall goals and strategies?
- ERG policies should include the purpose of the ERG as aligned with the business objectives of the company or organization and a prohibition on the exculsion of any employee on the basis of a protected characteristic. A disclaimer denying that ERGs represent employees regarding terms and conditions of employment may be helpful in avoiding confusion and ensuring compliance with the [National Labor Relations Act](#).¹

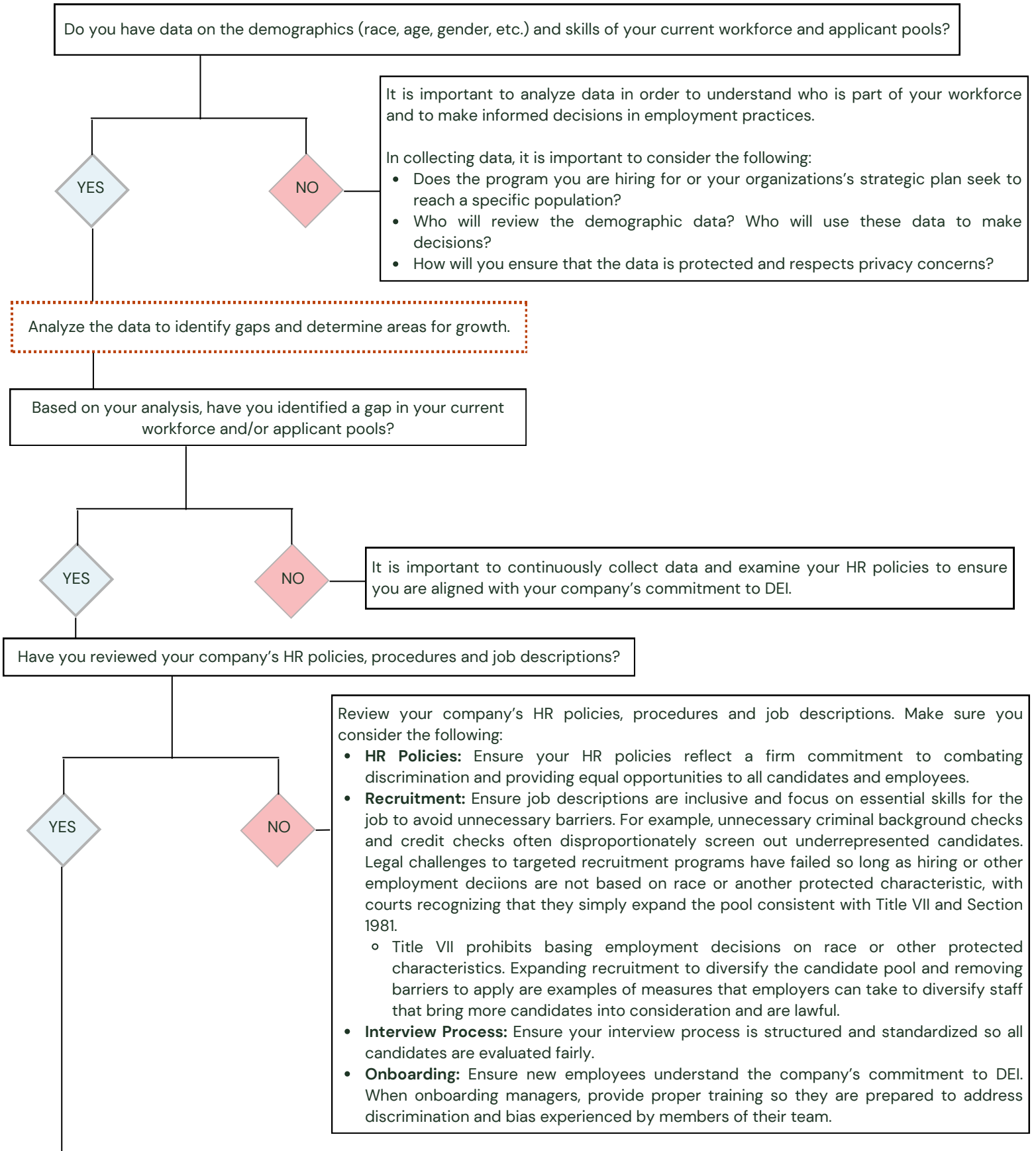
I have been collecting demographic data on my workforce – can I continue doing so? What can I do? (EEO-1, federal contractors, state requirements)

YES! You can continue collecting data.

If you are not currently collecting data – you should consider doing so!

- Collecting relevant demographic data is good for business and, when done through an intentional, inclusive, and equitable process, reduces legal risk.² Some employers are required to track demographic information on applicants and employees,³ but regardless it can help all employers protect against unlawful discrimination claims.
- Demographic data helps identify trends and disparities in hiring, promotions, pay, and employee satisfaction. Data can help you make informed decisions about recruitment, retention, and development practices and improve overall employee engagement and satisfaction. Importantly, collecting and analyzing demographic data helps ensure compliance with equal employment laws and regulations.
- Demographic data collection, analysis, and aspirational goals allow companies to operate with the benefit of information which could reveal discriminatory employment practices. Not having this data would seriously handcuff companies' ability to comply with anti-discrimination laws.

I want to diversify my workforce to enhance productivity and profitability by better connecting with and serving the communities we aim to reach.



If you have analyze the data and identified a gap, consider examining your HR/outreach strategy to make sure current job postings are disseminated to platforms and networks that represent diverse job applicants, including:

- Identify diverse colleges and universities, including [minority serving institutions](#), community and professional organizations that support underrepresented candidates to conduct outreach and recruitment efforts.
 - Colleges and Universities: Asian American Native American Pacific Islander-Serving Institutions; Alaska Native and Native Hawaiian-Serving Institutions, Historically Black Colleges & Universities, Hispanic Serving Institutions, Tribal Colleges and Universities.
 - Community Focused Student Organizations, including organizations supporting people of different religions, sexual orientation and gender identities and race, color, or national origin.
 - Community-Specific Professional Organizations, including bar associations and medical societies that are developed to serve the unique needs of diverse communities, including religions, race, and LGBTQ status.

Have you examined your company's workplace culture?

YES

NO

If your company has a demonstrated inclusive workplace environment, continue to provide support and resources to expand inclusion programs.

Consider implementing the following:

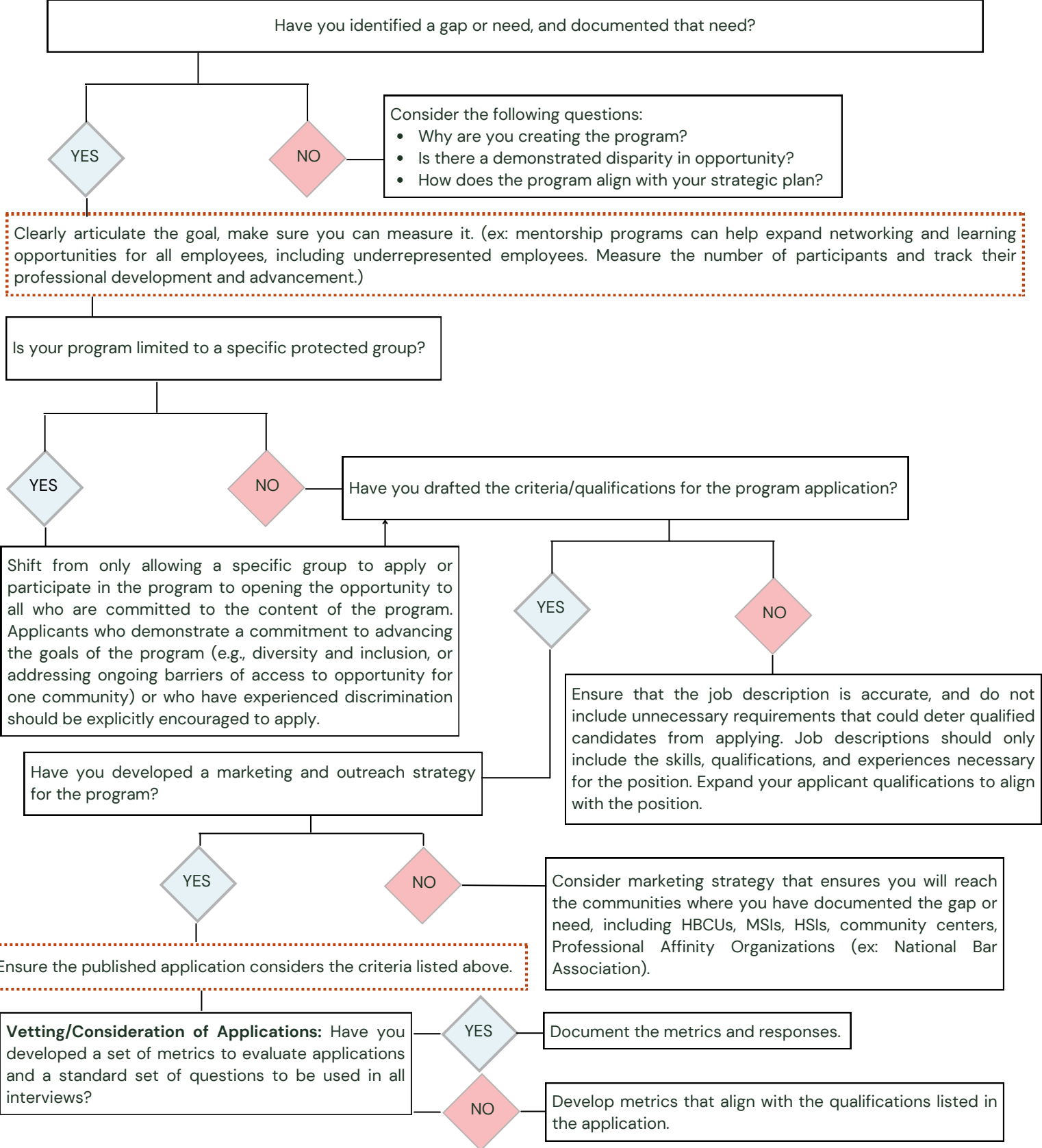
- Physical spaces that make all feel welcome: all gender bathrooms, nursing rooms, equal access to child care.
- Ensure equal access to healthcare, regardless of what the federal government may do with respect to its health care options.
- Support Affinity Groups/Employee Resource Groups (ERG)
- Retention Policies:
 - Develop mentoring and coaching programs open to all.⁴
 - Revamp employee evaluation processes and promotion criteria to remove bias.⁵
 - Promotion processes that rely on objective evidence, including measurable skills and competencies and transferable skills.
 - Develop clear career pathways.
 - Advertise promotions widely.
 - Provide all candidates with information on how to prepare and what criteria will be used to evaluate candidates.

PROGRAMMING – FELLOWSHIPS AND STRATEGIC PLANS

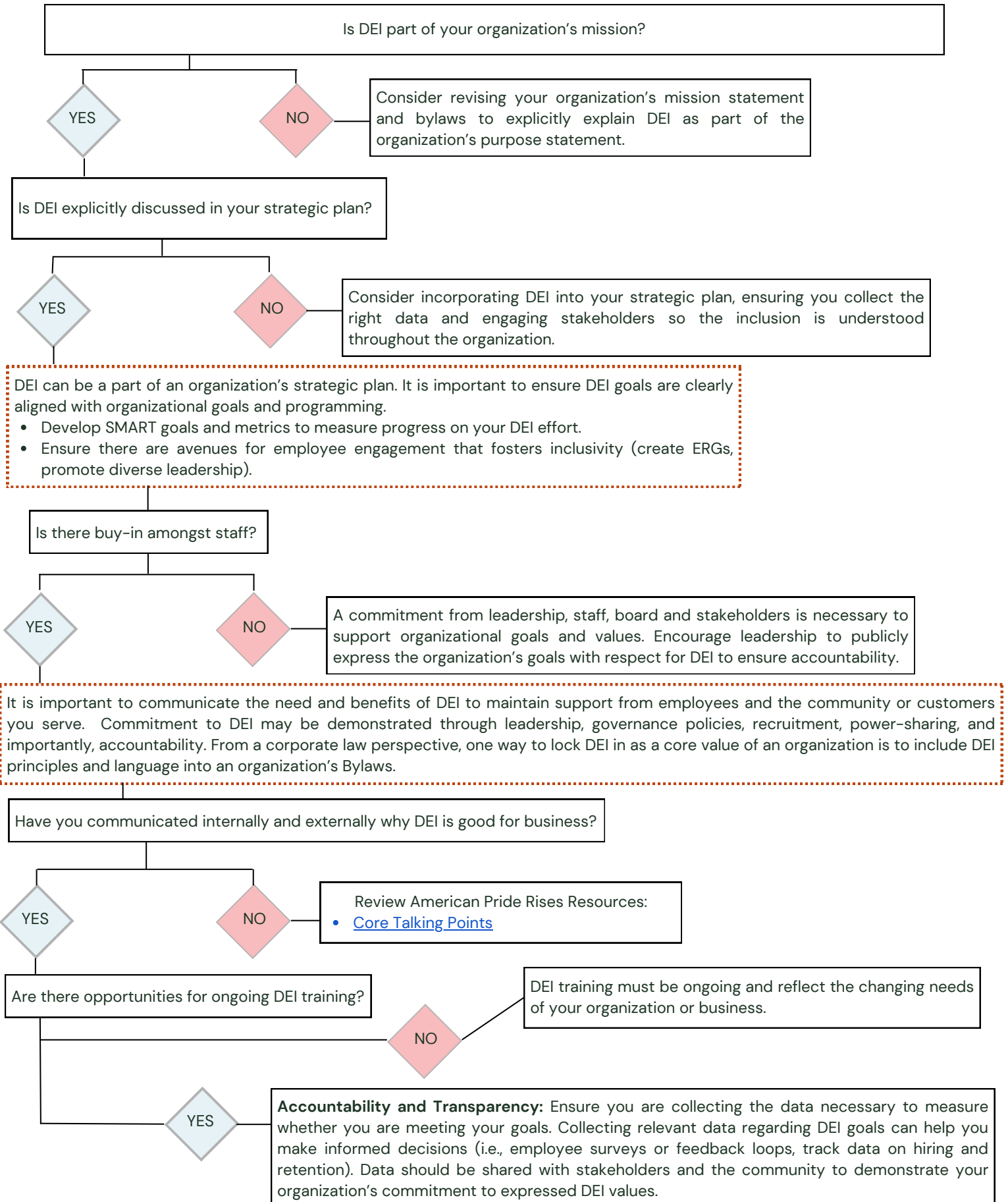
- ➔ I want to create a fellowship/internship/mentoring program or start a scholarship program to increase opportunities for underrepresented communities to work with my business or organization.
- ➔ I value diversity, equity and inclusion, and want that to be part of my strategic plan. How do I do it?



I want to create a fellowship/internship/mentoring program or start a scholarship program to increase opportunities for underrepresented communities to work with my business or organization.



I value diversity, equity and inclusion, and want that to be part of my strategic plan. How do I do it?



ECONOMIC OPPORTUNITY AND GOVERNMENT CONTRACTS

- ➔ I am a small business/organization and I lost a bid for a federal contract. I think I was unlawfully discriminated against in my bid to get the subcontract from a federal contractor. What are my options?
- ➔ I am an employee as a federal contractor or subcontractor working for a federal contractor, and I was discriminated against because of my race, color, national origin, gender, or other protected characteristic. What are my options?
- ➔ I am applying for a government contract or program, and think I may qualify for a minority contracting program. What should I be prepared to show eligibility for the program?
- ➔ I work at a small organization, and I am concerned about some actions that appear to be discriminating against employees on the basis of a protected characteristic.
- ➔ I am at a community organization; can I anonymously contact OFCCP with worker issues or evidence of violations when the violations are allegedly committed by a federal contractor or subcontractor?
(Note: these questions and the responses come directly from the U.S. DOL OFCCP website, [available here.](#))



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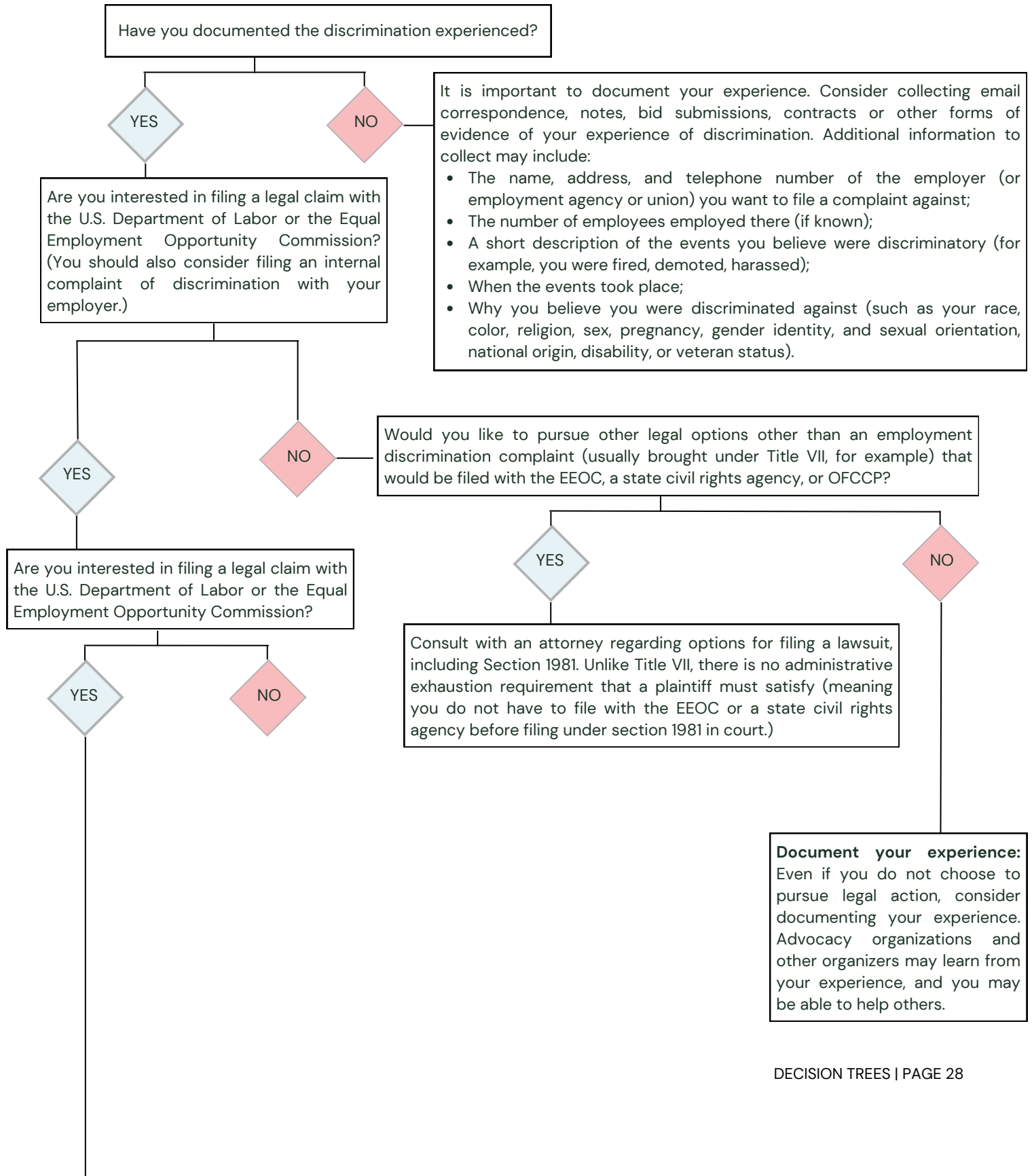
Government contracting is subject to the anti-discrimination laws that apply to contracting generally (ex: Title VI of the Civil Rights Act and Section 1981). Federal contracting is also subject to the requirements of Equal Protection through the due process clause of the Fifth Amendment. Vendors who do not win a bid may file a bid protest for several reasons, including alleged violations of law or regulation in the way in which an agency solicits offers for a contract, cancels such a solicitation, awards a contract, or cancels a contract.

Ordinarily, vendors who lost a bid may file bid protests in any of [three](#) places: (1) the agency that was the procuring agency - the agency you are trying to contract with, (2) the [Government Accountability Office \(GAO\)](#), or (3) the [United States Court of Federal Claims \(COFC\)](#).⁶ A protest may be filed first at the agency, then (if unsuccessful at the agency) at GAO, and then (if again unsuccessful) at COFC.

The options described here are available to any bidder who thinks that the federal agency engaging in the contracting process has not complied with the law or the terms of a solicitation. This applies if you think you were unlawfully discriminated against on the basis of a protected category or for another reason that violates the law or the solicitation terms.

Protesting a bid can be a difficult process. It is important to think about whether there might be any consequences for future bids or ongoing contracts. And whenever possible, hire legal counsel. See the [Additional Resources](#) section below or contact local civil rights organizations or a local bar association to identify counsel.

I am as employee at a federal contractor or a subcontractor working for a federal contractor, and I was discriminated against because of my race, color, national origin, gender, or other protected characteristic. What are my options?



Consider filing a complaint regarding discrimination on the basis of a disability or veteran status with the US Department of Labor's Office of Federal Contract Compliance Programs (OFCCP).⁷ OFFCP enforces Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. (Until January 21, 2025, OFCCP also enforced Executive Order 11246.) The EEOC enforces several federal workplace discrimination laws including Title VII, which covers additional forms of discrimination; if you file with either the EEOC or the OFFCP, it will generally be considered "dual-filed" – as if you filed with the other agency as well.

- **You can file a complaint alleging discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, or based on compensation inquiries, discussions, or disclosures, or based on retaliation for filing a claim, for reporting discrimination or providing information as a witness, with the EEOC ([portal here](#)) or your state civil rights department ([find the state agency to file a claim here](#)).**
 - Remember, states and local governments also have anti-discrimination laws. If the discrimination breaks both a state and federal law, the state agency will also send your complaint to the EEOC.
 - In general, you need to file a charge within 180 calendar days from the day the discrimination took place. The 180 calendar day filing deadline is extended to 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis. If your complaint alleges a violation based on disability or status as a protected veteran, it must be filed within 300 days unless the time for filing is extended for good cause shown.

Learn more about the process [here](#). OFCCP has a pre-complaint step whereby a complainant would be able to lay out basic allegations to allow OFCCP to make an initial assessment on whether the complaint would be proper and would be worth investigating.

Note: OFCCP may investigate individual complaints alleging discrimination on the basis of veteran's status or disability status. It generally did not investigate individual complaints under EO 11246.

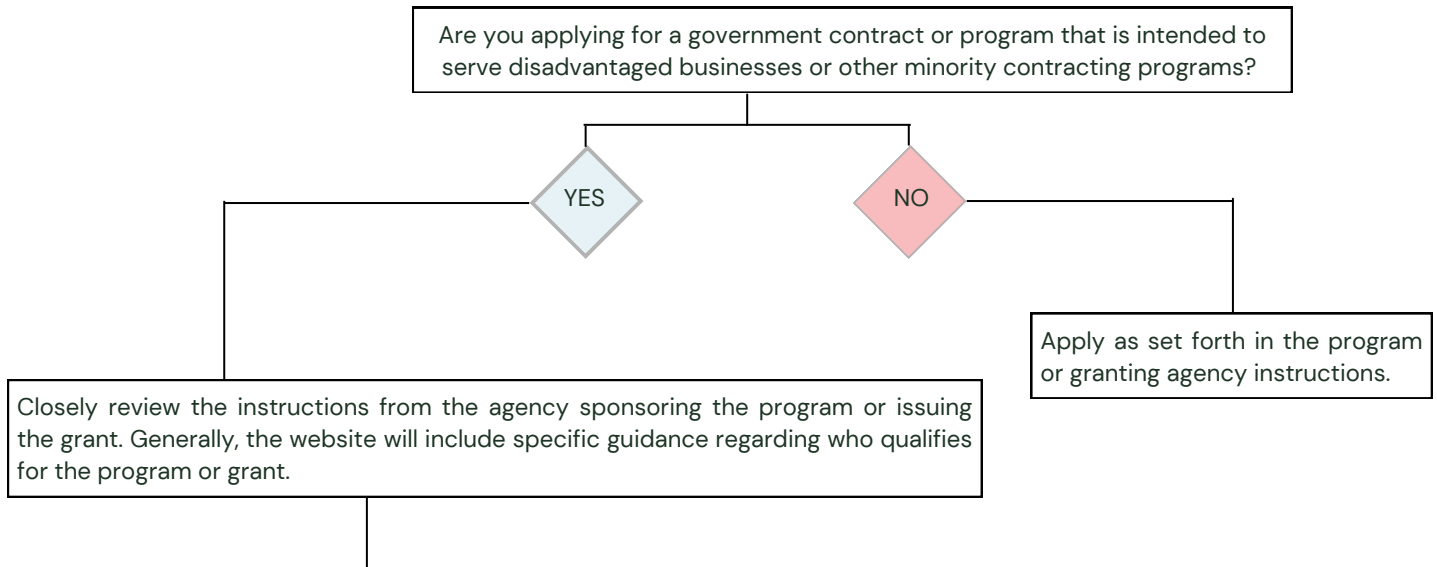
The Department of Labor's OFCCP enforces discrimination protections for employees of federal contractors and subcontractors. Before President Trump's revocation of EO 11246, this included protections against discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin under EO 11246. After the revocation of EO 11246, OFCCP still enforces protections against discrimination on the basis of veteran status and disability.

Employees can still file employment discrimination claims with the EEOC or their state civil rights agency. Claims with the EEOC can be based on: race, color, religion, sex, sexual orientation, gender identity, national origin; compensation inquiries, discussions, or disclosures; retaliation for filing a claim, for reporting discrimination or providing information as a witness.

Note: Most contractors are also subject to the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA) and Section 503 of the Rehabilitation Act, which prohibits discrimination on the basis of protected veteran status and disability.

Under previous administrations, if OFCCP received a complaint of employment discrimination over which it does not have jurisdiction, but EEOC may, the OFCCP would generally transfer the complaint to the EEOC, notifying the complainant and the contractor/respondent of the transfer, the reason for the transfer. The date the complaint is filed with the OFCCP will be considered the date the charge is filed with the EEOC for statute of limitations purposes. Similarly, a complaint that is transferred to the EEOC from the OFCCP because the allegations of discrimination implicate an employer that is not a federal contractor subject to OFCCP jurisdiction will be considered filed as of the date it was received by the OFCCP.

I am applying for a government contract or program, and think I may qualify for a minority contracting program. What should I be prepared to show eligibility for the program?



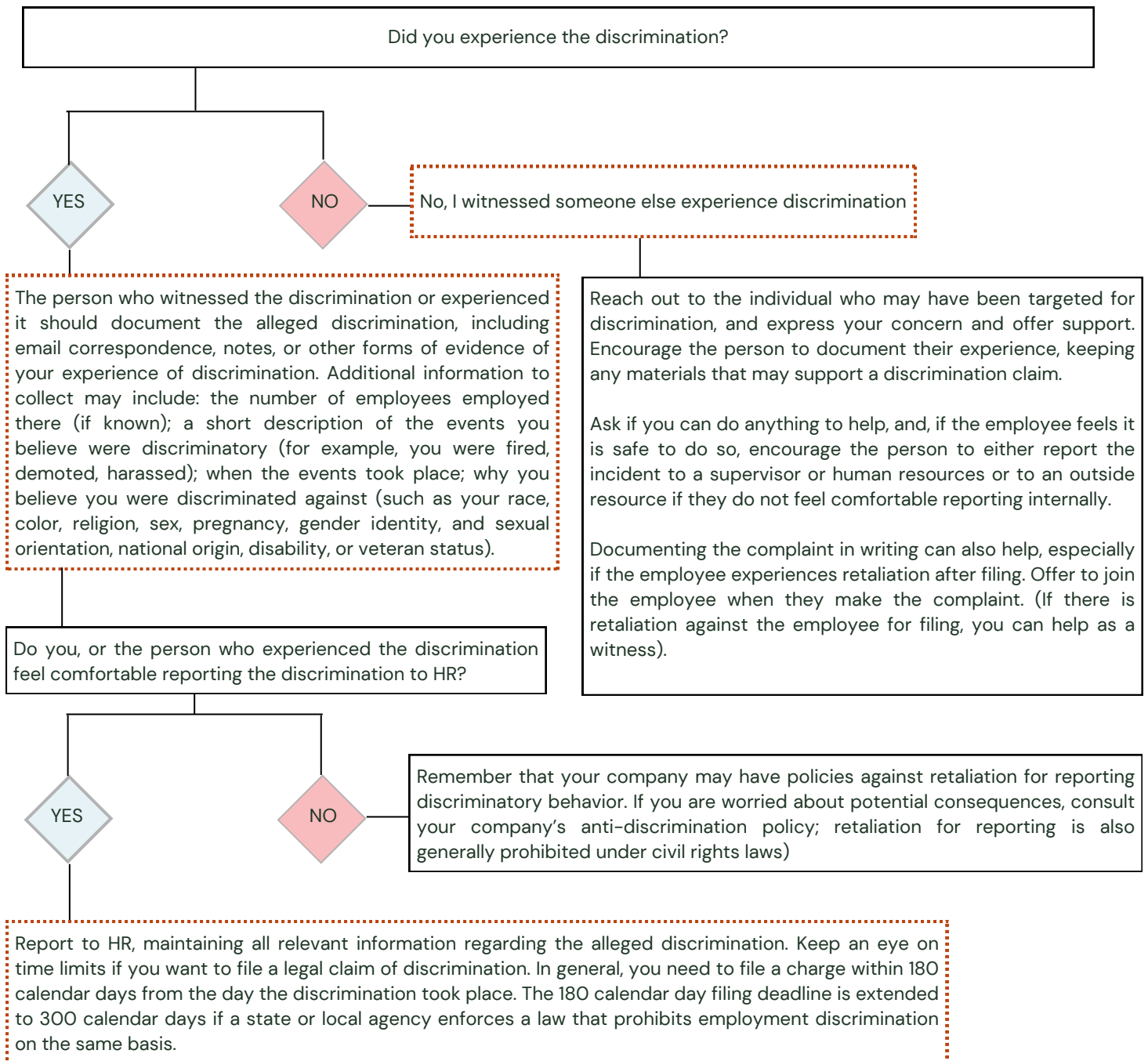
Federal and state minority contracting programs continue to expand opportunities for small businesses across the country. Recent litigation has altered the application process for some of the programs, in some cases removing “presumptions” that racial or gender minorities are disadvantaged following recent litigation, but agencies continue to operate the programs.

- For example, some agencies may request the following kind of information and narratives to demonstrate that an applicant qualifies for a minority contracting program. Each program and agency is different, so look to the agency that is issuing the program or grant opportunity for details.
 - **Social Disadvantage Narratives**, including “who,” “where,” “when,” and “what” questions to demonstrate their social or economic disadvantage. This may include an indication of which identity or identities is/are the basis of social disadvantage and descriptions of incidents in which bias or discrimination has occurred.
 - The Small Business Administration has [drafted a guide](#) for writing a social disadvantage narrative.
- [The U.S. Department of Transportation Disadvantaged Business Enterprise Program](#) that applies to federal transportation funds spent by state and local highway departments, transit authorities and airports is still fully in effect. (In recent litigation, a Court barred use of the rebuttable presumption of social disadvantage in a DBE program but limited its ruling to the two contractor plaintiffs in that case, and did not order a nationwide injunction.) The U.S. Department of Transportation, individual state departments of transportation, and most transit authorities and airports have websites and staff available to help businesses navigate the program.

I work at a small organization, and I am concerned about some actions that appear to be discriminating against employees on the basis of a protected characteristic.

(For example, some people are being assigned projects based on racist or gender stereotypes or people are not receiving equal pay for equal work.)

Several federal laws prohibit workplace discrimination and harassment against protected classes of individuals, including [Title VII of the Civil Rights Act of 1964](#), the Americans with Disabilities Act of 1990 (ADA), and the Age Discrimination in Employment Act of 1967 (ADEA) These laws apply to employees or applicants.



Do you work for a government contractor OR a private employer with 15 or more employees?

YES

NO

Consider consulting an attorney. Many state or local discrimination laws protect employees who work for smaller employers (under 15 employees); furthermore, federal civil rights protections under Section 1981 and the Equal Pay Act (EPA) protect people working for employers with under 15 employees. (Under the EPA, people have two years to go to the court or to the EEOC to allege wage discrimination based on gender, including gender identity.)

If you work for a government contractor, consider filing a claim with the U.S. Department of Labor's OFCCP or the EEOC or your state civil rights department. If you work for a private employer that is not a contractor with 15 or more employees, consider filing with the EEOC ([portal here](#)) or your state civil rights department (you can find the [state agency to file a claim here](#)). Remember, states and local governments also have anti-discrimination laws. If the discrimination breaks both a state and federal law, the state agency will also send your complaint to the EEOC. In general, you need to file a charge within 180 calendar days from the day the discrimination took place. The 180 calendar day filing deadline is extended to 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis.

In either case, you can consult an attorney about a potential state lawsuit or a federal lawsuit alleging discrimination on the basis of protected categories, including race, color, national origin, gender, gender identity, sexual orientation, religion or disability. Remember, you also may have additional state civil rights claims.

I am at a community organization; can I anonymously contact OFCCP with worker issues or evidence of violations when the violations are allegedly committed by a federal contractor or subcontractor?

YES! There are four ways to contact the OFCCP regarding a worker issue, complaint, or information related to a potential violation involving a federal contractor and/or subcontractor:

- Pre-Complaint Inquiry
- Complaint
- Complaint filed by an authorized representative
- Information/evidence without a formal complaint

As noted, while President Trump rescinded Executive Order 11246, an order addressing discrimination in federal contracting that was previously enforced by OFCCP, OFFCP still enforces Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974.

Important Note: A complaint should never or rarely be filed on behalf of employees without the consent of the employees. Doing so without their knowledge and consent can lead to retaliation against the employees and even physical violence if the employer suspects that employees have spoken to you.

For additional information, please visit the [U.S. Department of Labor Office Federal Contract Compliance Programs website](#).

ENDNOTES

- 1 [SHRM | Employee Resource Groups: A Critical Resource for Unionized Workforces](#)
- 2 [LinkedIn | DEI Data Collection: A How-to-Guide](#)
- 3 Employers with 100 or more employees are required to file an EEO-1 report with the Equal Employment Opportunity Commission. Some smaller government contractors must also file an EEO-1 report.
- 4 [Harvard Business Review | How to Do Sponsorship Right](#)
- 5 [Harvard Business Review | How One Company Worked to Root Out Bias from Performance Reviews](#)
- 6 At least one day prior to filing a bid protest, the protestor's attorney must file a pre-filing notice to the COFC, the awardee, the Department of Justice ("DOJ"), and the procuring agency's contracting officer.
- 7 OFFCCP has jurisdiction if the prime or main contract you are working on amounts to \$10,000 or will (or can reasonably be expected to) accumulate to more than \$10,000 in any 12-month period.

WHY SMALL BUSINESSES SHOULD EMBRACE DEI:

Unlocking Economic Opportunity and Growth

Efforts to undermine diversity, equity and inclusion (DEI) practices in small businesses have been persistent. However, it is important businesses continue to embrace DEI, and stand strong on their commitment to contributing to a more equitable and just society.

➔ DEI IN NUMBERS

Challenges and attacks on DEI have forced many employers to reconsider their approach, or at least how they publicly communicate their efforts to expand opportunity for their employees. However, the core business objectives – reaching a broader customer base and retaining top talent – continue to align with the goals of DEI programs. As a result, employers continue to seek opportunities to expand effective DEI programs.



It is crucial to amplify the truth about DEI – not only clarifying what it is and what it is not, but also highlighting the benefits of DEI initiatives. Despite high-profile legal and social challenges, including reports of companies scaling back or going “underground” with DEI efforts, recent surveys show continued commitment to DEI initiatives. In [Littler’s 2024 Inclusion, Equity and Diversity Report](#), employers’ responses demonstrated an ongoing commitment to DEI.

- 57 percent of employers reported growing their DEI efforts over the previous year, despite the fact that 59 percent reported some backlash since the SFFA decision.
- Of the C-suite executives surveyed, 91 percent said their prioritization of DEI initiatives was not affected by the Students for Fair Admissions (SFFA) decision.

Organizations are either doubling down or others who were never serious to begin with might be abandoning DEI altogether. According to [Workday’s Global Blueprint for Belonging and Diversity](#):

- 97 percent of companies have at least one DEI initiative
- 85 percent have a dedicated DEI budget
- 82 percent of U.S. organizations are measuring the business impacts of DEI
- 78 percent prioritized DEI more than the previous year, with 45 percent foreseeing increasing their DEI budget in the next financial year (up from 35 percent in 2023)

Nonprofit organizations have enhanced their effectiveness through DEI programs. In [Blocking the Backlash: The Positive Impact of DEI in Nonprofit Organizations](#), the Building Movement Project analyzed survey data to assess the impact of DEI on respondents and their nonprofit organizations. The study found that between 2019 and 2022, BIPOC and White respondents at nonprofits rated their work experience more positively – especially in retention and voice – when their organizations employed five or more DEI strategies.

[Research](#) demonstrates that DEI helps individuals, businesses, and stockholders:

- **Engagement:** Employees who strongly believe the company values diversity are 84 percent engaged; those who strongly disagree are 20 percent engaged.
- **Stock Price:** Companies that value diversity have a 6.8 percent higher stock price than those that do not.
- **Turnover:** Employees who strongly believe the organization does not value diversity are more than three times more likely to leave in a 12-month period.

Bottom line – [people care about DEI](#). Ongoing investment in DEI initiatives makes sense, as it has consistently been shown that diversity drives innovation and benefits business.

Strategies for Expanding Opportunity and Promoting DEI

Lead By Example: It is essential that organizations remain committed to DEI by modeling inclusive practices internally and speaking out publicly about its benefits. Business should actively promote DEI values and support initiatives that foster inclusivity in the marketplace.

Strengthen Existing DEI Policies: Organizations should regularly review their DEI policies to ensure their practices align.

Allocate Resources to Promoting DEI Initiatives: Workplace diversity programs, such as employee resource groups (ERGs) and training, should be viewed as vital to the businesses' success, with dedicated resources allocated to fostering an inclusive environment where employees feel a sense of belonging and their voices are valued.

Collect Data: It is important to collect workforce data to track diversity and ensure inclusive practices. Additionally, organizations should document instances of discrimination in both internal practices and external contracting. Building a record of such incidents will support reviews of HR policies, strengthen the case of DEI initiatives, and provide evidence when reporting externally to seek relief.

Tell Your Story: Stories are powerful tools for making the case for DEI. Contributing to the broader conversation helps to advocate for DEI, challenge the status quo and educate others on its positive impact. Raising awareness humanizes DEI, fostering connections that can lead to coalition-building and collective action.

Hold Elected and Government Officials Accountable: It is crucial to understand both federal and state laws may affect your business. Research the government entities responsible for addressing rollbacks on DEI in relation to your specific issue. Develop a strategy to influence change, advocating for a more equity-centered approach. Your efforts can encourage policymakers to adopt solutions that reflect America's core value of opportunity and promote inclusion.

Organizing and Advocating:

Influence those in positions of power to enforce pro-DEI policies. Hold individuals and institutions accountable.

Voting:

Make sure elected officials share your same values and are willing to protect DEI.

Reshape Public Opinion:

DEI benefits everyone! Help to reshape the narrative about what DEI is and the benefits to creating a more equitable and just society.

Set the Standard:

Discuss with your organization's leaders and key stakeholders about how they can continue to implement DEI policies within the organizations and publicly.

➔ Talking Points ¹

- DEI drives innovation and growth.
- Diverse, equitable and inclusive workplaces are better positioned to attract and retain top talent.
- Making and maintaining DEI commitments can have a positive impact on your business' reputation.
- DEI promotes diverse perspectives and engagement; dismantling it would reduce innovation and weaken America's competitiveness.
- There is no legal precedent that prohibits organizations from aligning their missions and goals with diversity; current protections for diverse employees remain in effect.

➔ Confronting Opposition

The consequences of dismantling DEI will be far-reaching. From the business perspective, rolling back or completely abolishing DEI practices would deepen economic and social disparities, particularly for historically underrepresented groups. Specifically, it would also reduce access to economic opportunities, making it more difficult for many to achieve the American Dream. It would also increase legal liability with respect to discrimination claims.

It is necessary for businesses to develop strategies that:

1. Anticipate potential legal challenges;
2. Advocate for accountability and adherence to the current law; and
3. Spread awareness of the benefits of DEI initiatives.

Organizations hold a responsibility to be inclusive, equitable and non-discriminatory in the workplace. There are current legal protections in place that secure those rights.

The next section will provide you with the context to understand and prepare for the potential legal challenges.

ENDNOTES

1 For additional context, review APR's ["The Business Case for Defending Diversity, Equity & Inclusion \(DEI\)"](#)



LEGAL PROTECTIONS

Understanding the Law, Potential Legal Risks, and How DEI Helps Businesses Fulfill Legal Obligations

Diversity, equity, and inclusion (DEI) programs used by successful organizations and businesses include efforts to build diverse candidate pools, remove barriers to hiring from underrepresented groups, and ensure inclusive and supportive work environments for employees of all backgrounds.

- These DEI activities were legal before the Supreme Court decision striking down affirmative education in higher education and remain legal today. Indeed, under existing civil rights laws, including the Civil Rights Act of 1964, employers are affirmatively required to eliminate practices that create unfair barriers to employment.
- Many programs associated with DEI can be used to help meet these legal obligations. Employers have a duty under federal law to create a safe work environment free from discrimination, harassment, and intimidation. DEI initiatives and programs help employers fulfill this legal obligation by identifying and addressing discrimination that creates barriers to equal opportunity.
- Many small businesses and organizations are leading critical external work advancing civil rights through initiatives that are focused on communities of color, the LGBTQ community, women, immigrants, religious minorities, people with disabilities, and people who confront discrimination based on many different aspects of their identity. **This work remains protected under the law.**

This section of the guide provides a summary of recent attacks on this work, and how to navigate the legal and political climate to advance these programs that expand opportunity and equity.

While most recent legal challenges and attacks on organizations implementing DEI initiatives have proven hollow or were quickly dismissed in court on procedural grounds, such threats and litigation can still create chilling effects that divert attention and resources from an organization's core mission.

A small number of cases challenging DEI initiatives have been successful. Business and organization leaders who understand the benefits of DEI initiatives are seeking guidance with respect to how to navigate an environment in which these initiatives are increasingly under attack – whether through litigation or targeted rhetoric that misrepresents its true purpose.

This legal summary is designed to provide leaders and employees of small to mid-sized organizations and businesses with valuable information so you can understand the actual legal risks associated with diversity related initiatives and the greater risks that come with abandoning these efforts. This section includes:

- examples of diversity, equity, and inclusion practices that remain legally protected and have proven benefits for businesses and organizations; and
- a summary of practices that could increase your risk of being targeted by anti-equity advocates or other opposing forces, along with strategies to mitigate that risk.

As always, every decision is fact-specific. This summary does not constitute legal advice. Review the Additional Resources section for information on how to access personalized legal advice and obtain additional resources.

The Law Continues to Support and Protect Most Diversity, Equity, and Inclusion Initiatives: Separating the Fear Mongering from the Law

Please note that this is general guidance to small organizations and other employers as they navigate the current legal landscape amid attacks on diversity related initiatives. This guide does not constitute legal advice. If you need legal advice, we recommend reviewing the resources at the end of this guide to help find an attorney.

The Lawyers' Committee for Civil Rights Under Law's [Protecting and Advancing Diversity, Equity, and Inclusion Pro Bono Initiative](#) provides legal advice, and in some instances, representation to private, nonprofit, and government entities concerned about their diversity, equity, and inclusion or race-conscious programs. The Lawyers' Committee works with partner law firms to ensure entities will not have to sacrifice crucial programming focused on combating racial disparities in opportunity and outcomes. Through their intake process, applicants start by completing their [initial intake form](#) to acquire preliminary information and for them to complete an initial conflict check.

This guide also highlights critical resources from civil rights leaders at the NAACP Legal Defense and Education Fund, Inc. (LDF), including fact sheets and extensive legal briefing defending and advancing DEI associated with [LDF's Equal Protection Initiative](#), The Leadership Conference on Civil and Human Rights, and the NYU Law Meltzer Center for Diversity, Inclusion, and Belonging's [Advancing Diversity Initiative](#). The Advancing DEI Initiative features the most comprehensive [DEI litigation tracker](#), along with insightful summaries of data, and practical articles and explainers. Democracy Forward's [Safeguarding and Strengthening Diversity, Equity and Inclusion \(DEI\) Initiatives Report](#) provides a useful summary of some of the individual cases challenging DEI, along with a path forward.

Additionally, organizations such as the Freedom Economy Business Association offer support to investors and organizations engaged in impact investing and diversity-related initiatives (see www.freedomeconomy.org). Similarly, the Global Black Economic Forum supports businesses in implementing their diversity related initiatives (see www.gbef.com).

Overview of Relevant Diversity, Equity and Inclusion Laws: Title VI, Title VII, 1st Amendment, 14th Amendment, 42 U.S. Code §1981

While a wide variety of laws have been used to attack and defend diversity, equity, and inclusion practices, the most widely used are anti-discrimination laws at the local, state and federal level, as well as amendments to the U.S. Constitution. **In cases attacking diversity related initiatives, longstanding civil rights protections are often being upended, with applications that contradict both the text of relevant statutes and their intended purpose of safeguarding civil rights and promoting equal opportunity for all.**

Because of the misuse of these statutes, advocates and attorneys seeking to support DEI programs must be careful about how they choose to defend the programs from attack. What may work as a defense in one particular case or as a communications strategy could come back to harm the ability to implement and expand diversity programs in other cases. Coordination across different jurisdictions and industries will be important to ensure that efforts to defend a program from attack does not inadvertently make it harder to defend other programs.

➔ **Title VI of the Civil Rights Act of 1964 ("Title VI").** This law prohibits discrimination based on race, color, or national origin in the context of federally funded programs.

Title VI is one of the main civil rights protections used in schools of all levels, including colleges and universities. It also applies to a wide range of federal government departments and agencies that disburse funding to recipients. This includes for-profit and nonprofit organizations, as well as state and local governments that receive federal financial assistance, such as federal grants.¹

➔ **Title VII of the Civil Rights Act of 1964 (“Title VII”).** This law prohibits employment discrimination on the basis of race, color, religion, sex (including sexual orientation, pregnancy, and gender identity), and national origin. It only applies to employers with 15 or more employees (in the case of age discrimination, a minimum of 20 employees). Title VII prohibits disparate treatment (treating employees differently based on race or another protected characteristic) as well as disparate impact (policies or practices that may appear neutral but result in unjustifiable discrimination). People bringing Title VII claims must first file a claim with the Equal Employment Opportunity Commission (EEOC) or a state agency that accepts these claims before filing a lawsuit.² Many DEI programs are designed to help employers comply with Title VII’s mandate to reduce barriers to equal employment opportunities.

In addition to diversity programs, under Title VII some employers may implement affirmative action programs that consider race or another protected characteristic as one factor in employment decisions. In very general terms, this is permissible in limited circumstances (and is very dependent on the specific facts of a particular case) to “correct the effects of past discrimination and to prevent present and future discrimination.”³

Absent a policy that expressly treats people differently based on their race or another protected characteristic, an applicant or employee bringing a claim of employment discrimination would need to prove, through evidence, that the protected characteristic was at least a motivating factor that prompted the employer to take an adverse employment action against them. For example, statements indicating a preference for hiring staff from a certain racial group by recruiters, hiring managers, or others involved in making hiring decisions could constitute evidence of intentional discrimination were an employee or applicant to bring such a claim. However, the claimant would need to meet the other elements for a successful claim, including that they suffered an adverse employment action, or that they were subjected to unwelcome, offensive statements or acts that were so “severe or pervasive” that they constituted a “hostile work environment.”

➔ **42 U.S. Code §1981 (“Section 1981”).** This law prohibits race discrimination in the making and enforcement of contracts, including (but not limited to) employment contracts. Section 1981’s contract clause provides that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and territory to make and enforce contracts . . . as is enjoyed by white citizens.”⁴ This law was originally enacted as Section 1 of the Civil Rights Act of 1866 immediately after the Civil War to ensure that newly freed enslaved African Americans received the same rights as other Citizens. Section 1981 was passed pursuant to the Thirteenth Amendment in order to eliminate discrimination against newly-emancipated Black people who were unable to successfully build lives post-slavery because of their race. Section 1981’s relatively recent weaponization against Black people – the very communities it was intended to protect –

and other communities of color is therefore directly contrary to the text of the statute. To bring a Section 1981 case, a person must show: 1) they are a member of a protected class; 2) the defendant intended to discriminate because of their race or ethnicity (and that but for their race or citizenship they would not have been discriminated against; and 3) the discrimination interfered with the equitable making or enforcement of a contract.⁵ It is important for organizations and donors to remember that Section 1981 only applies to contracts.⁶

- ➔ **42 U.S. Code § 1983 (“Section 1983”).** This law provides the right under federal law to sue state employees or any others acting “under color of state law”. Under the color of law” refers to when a person is exercising the authority given to them by the government and the action is taken with the appearance that the government authorized it, even if they are abusing that authority.
- ➔ **42 U.S. Code § 1985 (“Section 1985”).** This law prohibits conspiracies to interfere with civil rights. Generally, this means two or more people had an agreement – or a meeting of the minds – to act together to violate civil rights.
- ➔ **Executive Order 11246.** [RESCINDED BY PRESIDENT TRUMP 01/21/25] President Trump revoked Executive Order (EO) 11246 on the second day of his Administration via a new EO entitled “[Ending Illegal Discrimination and Restoring Merit-Based Opportunity.](#)” Under President Trump’s EO, contractors “may continue to comply with the regulatory scheme” – or comply with the existing regulations implementing EO 11246 – until April 21, 2025.

EO 11246 prohibited discriminatory practices in hiring and employment in government contracting. EO 11246 was administered by the Office of Federal Contract Compliance Programs (OFCCP) at the Department of Labor. Under EO 11246, OFCCP could ask the U.S. Department of Justice (DOJ) Civil Rights Division to bring a lawsuit to enforce alleged violations of discrimination.

For 60 years across Republican and Democratic administrations, EO 11246 reflected a recognition of the government’s interest in ensuring that it is contracting from the largest possible pool of qualified candidates to ensure that the United States got the best possible services and products.

While this latest EO will mean that OFCCP will likely suspend all pending compliance evaluations with respect to EO 11246, and will likely not pursue litigation or administrative enforcement actions based on a violation of EO 11246, OFCCP still enforces compliance with other civil rights protections. Additionally, none of the requirements of EO 11246 conflict with Title VII. Title VII remains good law, and alleged discrimination under EO 11246 was analyzed consistent with the principles of Title VII.⁷

- Nothing in the Trump EO prevents contractors from continuing to monitor their workforce diversity or evaluating their employment practices to ensure they are free from discriminatory effects.
- The U.S. EEOC and state fair employment agencies maintain jurisdiction over employers with respect to discrimination claims, and individuals can file claims under Title VII and other laws.
- Furthermore, OFCCP will continue to enforce compliance with Section 503 of the Rehabilitation Act and the Vietnam Era Veterans' Readjustment Assistance Act. These statutes require covered federal contractors to engage in affirmative action outreach efforts for protected veterans and individuals with disabilities, as well as creating affirmative action plans. Employers may still use race-conscious and race-neutral tactics that are not employment decisions (like targeted recruiting) to ensure equal opportunity is provided.⁸

➔ **The Equal Protection Clause of the U.S. Constitution.** This constitutional provision states that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause applies to state and local governments, and through the 5th Amendment to the U.S. Constitution, also applies to the federal government.

➔ **The First Amendment to the U.S. Constitution.** The First Amendment protects freedom of religion, speech, press, assembly and petition. In some cases, the First Amendment has been used by people attacking equity initiatives - claiming that some DEI programs amount to compelled speech or required speech.⁹ These cases have failed. In other cases, the First Amendment has been used to protect the free speech rights of corporations dedicated to advancing DEI.

Note: State Civil Rights Protections may differ. In some states, there are greater civil rights protections under state law. While in others, state law may make it harder to enforce civil rights protections. When a state law is in direct conflict with a federal law, the federal law prevails; state laws can afford more rights, but cannot reduce or restrict the rights of a person under U.S. law.

Understanding the *Students for Fair Admissions* and *Fearless Fund* Cases – These Cases Do Not Change the Laws Regarding Diversity, Equity, and Inclusion Practices in Businesses and Organizations

Supreme Court Decision in *Students for Fair Admission* – Impact On College Admissions Under Title VI and Equal Protection Clause – Does NOT Impact Employer Diversity Related Initiatives.

NAACP LDF provides [a comprehensive summary of *Students for Fair Admissions*](#). For additional summaries of the litigation and efforts to use the decision to target diversity, equity and inclusion initiatives more broadly, please contact the APR network at info@aprnetwork.org.

➔ American Alliance for Equal Rights v. Fearless Fund Management LLC

While it is important to understand the litigation targeting the Fearless Fund, a venture capital fund that invests in startups led by under-resourced entrepreneurs, including women of color, it is also important not to overstate the limited impact of this case.

Alphonso David, co-lead counsel to the Fearless Fund and president and CEO for the Global Black Economic Forum, has summarized the impact of the case in an [interview with Forbes](#) and in the article, [The Fearless Fund Remains Open for Business](#). Other organizations have provided [FAQs](#) regarding the settlement as well.

For additional summaries of the litigation and efforts to use the decision to target DEI initiatives more broadly, please contact the APR Network at info@aprnetwork.org.



Questions to Consider:

➔ How can you prepare for increased scrutiny of diversity, equity, and inclusion initiatives, despite the fact that these programs remain legally protected?

The individuals and organizations alarmed by the intentional inclusivity of programs designed to offer opportunities to all people – especially people of color, women, and other historically underrepresented individuals – have developed a scattershot approach to targeting diversity related initiatives and programs in the business and nonprofit sectors. In addition to litigation, letters threatening vague legal action to corporations and federal agencies have been drafted by Republican state attorneys general and private entities. More than a dozen conservative attorneys general issued letters to Fortune 500 companies threatening legal action over their DEI efforts. These letters appear to include relatively hollow threats, but in conjunction with online trolling by right wing influencers, have been effective in convincing some risk averse attorneys advising businesses and organizations.

How to Prepare:

I. Understand the law. Review the statutes and civil rights protections described above. When considering risks related to diversity, equity and inclusion initiatives, do not underestimate the legal risks of retreating from these efforts. As noted below, DEI programs help employers comply with existing civil rights obligations, including Title VII.

The EEOC offers practical legal analysis regarding DEI for employers as well as [promising practices](#) to advance equity. [EEOC guidance](#) also addresses key legal issues, including how “Title VII permits diversity efforts designed to open up opportunities to everyone.”

NYU Law Meltzer Center for Diversity, Inclusion and Belonging offers expertise at the intersection of DEI and the law. Their [Advancing DEI Initiative](#) includes the most comprehensive DEI litigation tracker as well as helpful data summaries and practical analysis and recommendations for employers and others.

II. Conduct an internal assessment. Whether you have received attention or criticism or are anticipating scrutiny in the next Administration, conduct an internal review to identify which of your programs, practices or communications could be more vulnerable to legal challenge.

Consider the following:

- What DEI programs exist?
- What documents exist and what are retained?
- What is your document retention policy?
- How do you communicate about “DEI” internally and externally?

Note: Resources from APR are particularly helpful to develop clear talking points you can use internally with staff and externally with the public.

A key difference between organizations and businesses that implement diversity related initiatives in a way that provides legal protection and those that may increase risk is proactive communication about the values of diversity and equal opportunity to both the public and employees.

- A comprehensive implementation of DEI principles and initiatives protects you from litigation. Diversity, equity, and inclusion initiatives include protections to:
 - Ensure that workers do not lose their jobs if they become pregnant and can access reasonable accommodations during their pregnancy;
 - Ensure that businesses and services are accessible to people with disabilities; and
 - Expand recruiting efforts to reach people who have demonstrated the skills and determination necessary to accomplish your organization’s goals.

These and other DEI initiatives help people who have traditionally had fewer connections or less access to opportunities get the chance to be considered and, if chosen, feel comfortable and supported once they are there.

The vast majority of businesses engaged in “DEI work” will not be challenged by anti-equity advocates or the government.

If you do receive an inquiry from any government entity or notification of a lawsuit, contact an attorney.

- If you do not have an attorney, review the [Additional Resources](#) section – some of the top civil rights lawyers in the country are working on these issues, and there are programs that can provide you with legal counsel at no cost.
- Listen to your attorney; common actions when expecting a lawsuit, investigation, or regulatory inquiry include issuing a legal hold over relevant employee documents and reviewing record retention policies to make sure that all responsive documents are retained. A legal hold – or litigation hold – means businesses or organizations must keep any emails, documents, or other data relevant to a possible lawsuit or investigation.

Diversity, Equity and Inclusion Programs that are Lawful Now and will be for the Foreseeable Future

While anti-equity advocates have tried to argue that recent court decisions changed the landscape for employers and funders large and small, the actual impact on the law was not nearly as significant as recent rhetoric would suggest.

- Title VII has always prohibited employers from using race or other protected characteristics as criteria for employment decisions like hiring, promotions, pay, or firing, except to address discrimination through an affirmative action plan under very narrowly prescribed circumstances.
- Diversity, equity and inclusion programs that focus on inclusivity rather than exclusivity, and are not perceived as giving a preference to a legally protected group (such as race, national origin, gender, religion), carry little risk.

The following practices pose very little to almost no risk of liability (despite the filing of frivolous lawsuits), and are promising practices that you are either already implementing or plan to adopt. These actions do not use race or another protected characteristic as a criteria for hiring, promotion, pay or any hiring decision. However, they do address barriers to equal opportunity for all and advance the critical business interests in recruiting and retaining the best talent through diverse pipelines and inclusive practices.

Diversity, Equity, and Inclusion are often central to your mission, and as an employer, central to your success. (See APR's [The Business Case for Defending DEI](#))

- **Review Recruitment and Interview Process to Expand the Pool of Candidates and Ensure All Are Treated Fairly**
 - Targeted Recruitment: Ensure job descriptions are inclusive and focus on essential skills for the job. For example, unnecessary criminal background checks and credit checks often disproportionately screen out underrepresented candidates. Targeted recruitment to diversify the candidate pool, ensuring the inclusion of more candidates without disadvantaging others, is considered lawful. Legal challenges to targeted recruitment programs have failed, with courts recognizing that they simply expand the pool consistent with Title VII and Section 1981.
 - Use scholarships and community based programs that support other small businesses to expand opportunities and reduce unnecessary barriers for people from under-resourced communities, including communities of color and the LGBTQ community.
 - Identify diverse colleges and universities, [including minority serving institutions](#), as well as community and professional organizations that support underrepresented candidates to conduct outreach and recruitment efforts.¹⁰
 - Colleges and universities, including Asian American Native American Pacific Islander-Serving Institutions; Alaska Native and Native Hawaiian-Serving Institutions, Historically Black Colleges & Universities, Hispanic Serving Institutions, Tribal Colleges and Universities.

- Community focused student organizations, including organizations supporting people of different religions, sexual orientation and gender identities and race, color, or national origin.
 - Community-specific professional organizations, including bar associations and medical societies that are developed to serve the unique needs of diverse communities, including religions, race, and LGBTQ status.
 - Structured Interview Process: A structured interview process can help ensure all candidates are treated fairly throughout the interview process. A structured interview process includes a standardized list of questions related to job requirements, and includes a consistent scoring system that enables you to evaluate responses consistently. Ensure that candidates are asked the same questions in the same order, and encourage interviewers to take notes during the interview.
- **When Advertising Positions, Fellowships or Scholarships, Focus on the Goal/Content of the Program**: Fellowships and scholarships that promote diversity, equity and inclusion and expand the pipeline in a field where a community has historically been excluded are critical to the success of any business or organization. These programs have recently been targeted for lawsuits, but the cases have settled. The following approach has been accepted by all parties to the lawsuits, including anti-equity organizations that targeted the programs:
 - Open the application to all who are committed to the content of the program. Applicants who demonstrate a commitment to diversity and inclusion, for example, should be explicitly encouraged to apply. [Rather than focusing on the identity of the individual applying](#), highlight a demonstrated commitment to diversity, equity and inclusion.¹¹
 - **Invite interviewees to share how their individual characteristics affected their life**: How did their race affect their life through discrimination, inspiration, or otherwise in a way that would help the candidate fulfill their role?
 - **Use language that accurately describes your goals with respect to your work in an inclusive manner**: e.g., “serving under-resourced communities, including Black women”, “expanding the pipeline of qualified candidates who are under-estimated or experience discrimination, including LGBT individuals.”
 - **Review Employee Benefit Policies to Ensure Applied Equally**: Ensure that your benefits policies, including health and child care benefits, are open and accessible to all employees. This may mean surveying your employees to see who may be confronting barriers to access to benefits. Due to a current shortage of mental health providers, this may include improving access to telehealth coverage for mental health services so everyone can access them regardless of whether they are in urban or rural areas. Establish policies to ensure pay equity within your company – equal work deserves equal pay regardless of an employee’s race, gender, national origin, age, religion or other non-job-related factors. Other forms of health care needed by women or others may also require travel and other related costs to access care. This may also include ensuring that LGBTQ employees and their families are able to access health insurance services just as others are able to access them.

- **Trainings For All Employees:** Enhance a welcoming work climate for all. Employee education/training on bias, inclusive leadership are all smart business practices, and most challenges to training have been resoundingly rejected by courts.¹²
- **Foster Inclusive Work Environments That Retain Talented Employees:**
 - Construct physical spaces that make all feel welcome by creating all gender bathrooms, nursing rooms, and equal access to childcare.
 - Ensure equal access to healthcare, regardless of what the federal government may do with respect to its health care options.
 - Invest in community-based initiatives that expand the pipeline of potential employees and business partners, including mentorship programs and incubator programs open to all.
 - **Affinity Groups** - Encourage employees to create Employee Resource Groups (ERGs), even in small organizations, and ensure they have adequate institutional/organizational support - this can be for religious groups, intersectional groups, others.¹³
 - Encourage employees to clarify what they want to achieve and why, with a focus on positive outcomes you want to achieve (versus what you want to avoid); prepare the business case (what is in it for your organization, and how it aligns with its overall goals and strategies).¹⁴
 - **Develop Mentoring And Coaching Programs Open To All:** ¹⁵ Formal mentoring programs can enable employees from diverse backgrounds with organization and business leaders that will foster innovation and retention of talent. Effective mentorship programs identify goals, provide training for mentors and support for mentors and mentees throughout the program.
 - **Revamp employee evaluation processes and promotion criteria to remove bias for all:** ¹⁶
 - Promotion processes that rely on objective evidence, should include measurable skills, competencies and transferable skills.
 - Develop clear career pathways.
 - Advertise promotions widely.
 - Provide all candidates with information on how to prepare and what criteria will be used to evaluate their application.
- **Collect, Analyze and Act on Demographic Data:** Collecting relevant demographic data is good for business and, when done through an intentional, inclusive, and equitable process, reduces legal risk.¹⁷ Data helps ensure pay equity across multiple characteristics. Some employers are required to track demographic information on applicants and employees,¹⁸ but regardless it can help all employers protect against unlawful discrimination claims.

Demographic data helps identify trends and disparities in hiring, promotions, pay, and employee satisfaction and shape organizational strategy accordingly.

Data can help you make informed decisions about recruitment, retention, and development practices and improve overall employee engagement and satisfaction.

- Data helps measure progress towards goals that reduce barriers to equity rather than representing the end goal.
- Collecting and analyzing demographic data helps ensure compliance with equal employment laws and regulations.
- The **Additional Resources** section includes helpful and practical guides regarding how to collect data in a way that will advance your organization's goals and mission.

The collection and analysis of demographic data allows companies to capture information that could identify potential discriminatory employment practices, enhancing compliance with long-standing anti-discrimination laws.

- Effective data collection will enable you to tie DEI efforts to measurable improvements in outcomes central to your mission and work, such as improved retention rates.
- Breaking down data regarding turnover rates across different demographics enabled a company to compare turnover rates and understand if people from certain groups are leaving at a higher rate than others and address the causes of this turnover.
- Collecting data on pay across different demographics will enable you to identify any pay gaps or disparities and address them and potentially avoid litigation.

Data collection and accountability measures can be structured to advance business goals and not influence any employment decisions, including hiring, firing, or promotion.

- **Set Numerical Targets/Aspirational Goals to Improve Equity and Inclusion:** Set aspirational goals to improve equity and inclusion. Use the goals as benchmarks to measure progress towards reaching the goal, and perhaps to adjust recruitment strategies or how to expand the pool of potential vendors. These aspirational goals should not be used in employment decisions like hiring, promotions or with respect to setting compensation. These **are not quotas – quotas have been unlawful and continue to be unlawful.**
- **Simplify Processes for Sourcing, Sub-grants, or Other Opportunities to Engage with Other Vendors:** If you fund smaller organizations or hire subcontractors or vendors, simplify your application process for funding to reduce burdens on smaller organizations applying and expand your sourcing options. For example:
 - Review your application process to ensure that you have updated requirements regarding the submission of printed materials when digital submissions would enable you to review the work product just as well. Unnecessary printing costs may dissuade smaller vendors from applying.
 - Include a FAQ section on the application if you have identified questions that potential vendors often have regarding submission requirements. This will ensure that you are not putting up unnecessary barriers to vendors and others who might provide the best services but do not have experience navigating application procedures.
- **Speak Out:** As a business and organization leader, speak out about how diversity, equity and inclusion helps advance your mission, and why expanding opportunities for underrepresented groups helps benefit the entire business.

How Diversity, Equity, and Inclusion Initiatives Reduce Legal Risk

Inundated with anti-DEI rhetoric, some well intentioned legal counsel may recommend reversing on diversity, equity and inclusion initiatives to protect a company or organization from legal risk, when in fact, they are exposing their clients to greater risk. Anti-discrimination laws permit and in some cases require employers to take action to advance equal opportunity in the workplace. Many “DEI” programs are designed to help employers comply with Title VII’s mandate to reduce barriers to equal employment opportunities. These diversity-related initiatives, like the ones described above, also reduce the potential for litigation in the form of traditional discrimination claims. Rolling back DEI programs could mean that an employer faces challenges in meeting their existing legal obligations under Title VII.

Employers still have Title VII obligations to root out discrimination, including eliminating unfair barriers. If an organization or company rolls back the existing programs, they risk erecting new barriers to equal employment and generating Title VII claims. Again, under Title VII, it does not matter if the employer intended to discriminate – if it has unjustified disparate impact, an employer may be found liable under a traditional discrimination lawsuit. Furthermore, while there have been failed shareholder lawsuits targeting companies for implementing DEI initiatives, there are some shareholder lawsuits that are moving forward against companies for failure to implement diversity related initiatives to address discrimination.

Diversity, Equity and Inclusion Initiatives that May Increase Legal Risk

Generally, actions that confer a preference to a legally protected group and relate to a benefit such as a job, promotion, pay raise, or a work assignment increase risk and could be misinterpreted.

These actions could increase litigation risk – the risk that an anti-equity organization may sue and some could increase liability risk – the likelihood that a court would decide against you and require you to pay damages or make changes to your operations:

- **Quotas:** Hiring quotas are unlawful and have been unlawful. (Quotas are not DEI initiatives, but anti-equity groups may suggest that they are.) Remember, quotas are not the same as legally permissible numerical aspirational goals. You can use aspirational goals.
- **Using Protected Characteristics to Make Employment Decisions:** Decisions made using a protected characteristic to “break the tie” increase legal risk. Do NOT make employment decisions based on race or another protected characteristic.
- **Using Protected Characteristics to Limit Applicant Pools:** Internships that are group-specific and limit applicant pools based on a protected characteristic increase legal risk. Instead, open program applications to all individuals who, for example, demonstrate a commitment to the program’s goals or to all individuals who may be under-resourced – including those from legally protected groups.
- **Programs that Make Assumptions that People with Protected Characteristics Meet Neutral Criteria:** Recent lawsuits targeting federal programs have challenged assumptions that people who belong to a protected category will necessarily meet neutral criteria regarding poverty or a lack of resources. This can be addressed by simply removing presumptions about who will meet the neutral criteria.

Removing the presumption does not change the reality that systemic racism and other forms of discrimination harm many protected categories of people; it requires that they take extra steps to document the harm.

- **Piecemeal and Superficial DEI Efforts:** Incomplete and fragmented DEI policies that lack accurate internal and external communication about how DEI initiatives advance business interests are less effective and create greater legal risk. Alternatively, comprehensive DEI policies and practices accompanied by an investment in resources in measuring and properly implementing these programs, are less effective and riskier.

Note: Under Title VII, an affirmative action plan for employment may be lawful if there is a specific remedial justification. This would include a written affirmative action plan that meets the requirements of Title VII.

➔ Should I be concerned about the threats from the incoming Administration to “eliminate” Diversity, Equity, and Inclusion?

Flurry of Executive Orders Attacking Civil Rights

Incoming Administration officials have touted their opposition to diversity, equity and inclusion programs and promised to take actions against DEI inside and outside of the government. And among the executive orders¹⁹ and related guidance issued by President Trump in the first several days of this second term. For example:

- Trump [has rescinded EO 11246](#) – the EO signed by President Lyndon B. Johnson in 1965, requiring federal contractors to ensure equal opportunity. Administered by the Office of Federal Contract Compliance Programs (OFCCP) at the Department of Labor, the EO was recognized by Republican and Democratic administrations alike as vital to advancing national security by ensuring the government contracts with the broadest possible pool of qualified candidates.
- Guidance related to the new Trump executive orders also calls for the cancellation of any DEI related training and the termination of contracts related to DEI. (It should also be noted that in a dramatic twist, the [Trump Guidance](#) calls on staff to report if they suspect that any such program has been “disguised” under different terminology or face “adverse consequences.”)

As with many of President Trump’s executive actions, this and many of the executive orders and related guidance targeting DEI are likely to be challenged in court. For example, in the Executive Order rescinding EO 11246, President Trump calls on the Attorney General to take “all appropriate action” to combat DEI in the private sector, calling on agencies to provide a list of DEI practitioners and steps to deter these programs. The EO specifically calls on each agency to identify “up to nine potential civil compliance investigations” of large corporations, bar associations, medical associations, and institutions of higher education.

This contains elements similar to an EO that he tried to issue in his first term and was successfully stalled. In 2020, President Trump issued an executive order aimed at banning federal contractors from conducting what was termed as “divisive” DEI training. **This executive order was challenged on constitutional grounds in several cases, and one court issued an injunction, halting its implementation.** Shortly after taking office, President Biden revoked the order. The First Amendment clearly prohibits implementation of an Executive Order that would ban “promotion” of DEI. Florida’s effort to create a state law that would have prohibited employers from advancing a number of DEI concepts was swiftly blocked by a federal district court, finding that provisions of the Act that would have banned mandatory workplace training violated the First Amendment. This decision was upheld by the federal court of appeals.

- The EO includes a provision that purports to protect First Amendment free speech rights: “This order does not prevent State or local governments, Federal contractors, or Federally-funded State and local educational agencies or institutions of higher education from engaging in First Amendment-protected speech.” It is unclear how this provision would be interpreted in the context of an order that also requires that federal contracts and grants include a “term requiring . . . recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination law.” Again, DEI initiatives do not violate anti-discrimination law, but the prohibition on “promoting DEI” is vague and could be interpreted as prohibiting free speech.

Executive orders like EO 11246 helped protect and advance civil rights, and their revocation will lead to changes with respect to enforcement protocols. However, fundamental protections against discrimination remain in Title VII.

Note: OFCCP will continue to enforce compliance with Section 503 of the Rehabilitation Act and the Vietnam Era Veterans’ Readjustment Assistance Act.

- On January 20, 2025, President Trump also issued an Executive Order that promotes sex discrimination, declaring that the U.S. government will recognize only two sexes, male and female, and that “these sexes are not changeable and are grounded in fundamental and incontrovertible reality.” As of January 22, 2025 it is unclear how the Trump administration will enforce this order. However, Executive Orders cannot change laws passed by Congress nor protections guaranteed by the Constitution. *Bostock v. Clayton County, Georgia* (2020) was a U.S. Supreme Court case in which the Court ruled that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on sexual orientation and gender identity.

Other Potential Threats – and the Laws that Continue to Protect People from Discrimination

- During President Trump’s first Administration, he ended the EEO-1 data collection, and he very well may try to do so again. As of the date of publication, he had not done so yet; and, as noted above, employers of all sizes should continue to collect and maintain EEO-1 data because it is good for business and will help reduce legal risk.
- Over the last several years, the EEOC has been an important and authoritative voice with respect to the legality of DEI initiatives, emphasizing their critical role in addressing discrimination in the workforce. Anticipating efforts by anti-equity organizations to mis-apply the Supreme Court decision regarding college admissions, the Chair of EEOC stated almost immediately following the decision that it “remains lawful for employers to implement DEIA programs to ensure all workers have equal opportunity.” The Trump Administration will certainly seek to steer the EEOC away from its robust support for DEI programs and may seek to reverse protections for LGBTQ and pregnant workers. However, the Administration will be limited in the changes it can make until the middle of 2026 because of the composition of the Commission.

- While President Trump has already named a new Chair of the EEOC, the majority of the Commission will remain pro – DEI until July, 2026, when the term of the Vice Chair will end and the President will be able to fill her position with an anti-Equity candidate. This means that the Commission will not have the votes to reverse recent EEOC policy actions like the expansion of protections recently provided under the Pregnant Workers Fairness Act rules or LGBTQ protections in the anti-harassment guidance. While policies will be difficult to reverse until 2026, the chair and general counsel can change the course of what cases are considered for EEOC litigation. However, they will still require a majority vote to be filed by the EEOC in court.

On January 21, 2025, EEOC Commissioners Burrows, Samuels and Kotagal released the following statement on some of these most recent executive orders and rescissions issued by President Trump reminding workers of the protections that persist and that...

“[T]he United States is a nation of laws, and those laws protect the workers – including federal workers – who drive our modern economy. . . [C]omplying with workplace civil rights laws requires employers to make proactive efforts to address barriers to equal opportunity. Common sense practices, such as monitoring hiring and promotions decisions, skills-based hiring, standardized interview practices, and robust recruitment, remain lawful and important ways to promote the goals of our nation’s laws and founding principles. These and other diversity, equity, and inclusion and accessibility practices seek to include all workers according to their talents and abilities. Significantly, these practices exclude none – they simply give all workers a fair shot to succeed. Barring adoption of these practices can only result in legal risk to employers and lost opportunities for vulnerable communities.”

While it is impossible to predict exactly how the incoming Administration and other anti-equity actors will seek to implement all of its anti-equity rhetoric, longstanding civil rights protections and recent litigation testing discrimination safeguards show the power of individuals, organizations, and states to protect and advance civil rights through advocacy and litigation.

Turn to trusted leading civil rights organizations like the NAACP Legal Defense and Education Fund, Inc. and academic institutions like the Advancing DEI Project at NYU Law Meltzer Institute, as well as Lawyers’ Committee for Civil Rights Under Law and its program providing counsel to non-profits navigating the attacks on DEI for additional guidance.

Also, note that there are many partners in these spaces including the Freedom Economy Business Association and the Global Black Economic Forum who can provide resources and support.

ENDNOTES

- 1 Note that federal financial assistance does not include contracts in which goods or services are sold or purchased by the government at fair market value.
- 2 EEOC Frequently Asked Questions (including information about the claim filing process), available at: <https://www.eeoc.gov/youth/frequently-asked-questions#Q3>
- 3 29 CFR § 1608.1(c). See also *Johnson v. Transp. Agency*, 480 U.S. 616, 628–29 (1987); *United Steelworkers of Am. v. Weber*, 443 U.S. 193 (1979)
- 4 42 U.S. Code §1981 (a). In *McDonald v. Santa Fe Trail Transportation Company*, 427 U.S. 273 (1976), the Supreme Court held that people of any race may bring claims under Section 1981.
- 5 With respect to employment discrimination claims, Section 1981 prohibits disparate treatment (treating employees differently based on race or another protected characteristic) in adverse employment decisions, but, unlike Title VII, does not prohibit disparate impact (policies or practices that may appear neutral but result in unjustifiable discrimination).
- 6 Organizations may receive gifts that are not contracts and not subject to Section 1981. In law, a contract is generally understood to be an agreement between parties that includes the following elements: 1) Consideration - a legal term meaning that something of value is given to someone in return for goods, services, or some other promise; 2) Mutual Consent - both parties agree; and 3) Mutual Obligation - both parties have an obligation to do something or pay something (or not to do something.) Courts will often refer to a “bargained for exchange of value” as indicating that something is a contract.
- 7 EEOC FAQ, available at: <https://www.dol.gov/agencies/ofccp/faqs/Religious-Exemption-Final-Rule#Q2>
- 8 The EEOC has identified promising practices to help employers expand the pool of qualified applicants during recruitment, as well as practices to help employers advance DEIA and address barriers to racial equity in recruitment and hiring through their [Hiring Initiative to Reimagine Equity](https://www.eeoc.gov/building-dr-kings-legacy-launch-hire-hiring-initiative-reimagine-equity-virtual-roundtable-key), available at: <https://www.eeoc.gov/building-dr-kings-legacy-launch-hire-hiring-initiative-reimagine-equity-virtual-roundtable-key>.
- 9 Other recent litigation brought by school employees arguing that required attendance at DEI training or the requirement that they draft a DEI statement violated their First Amendment Rights have failed. Courts have ruled in favor of the school districts on multiple grounds including standing (Plaintiffs are found not to have suffered an “injury in fact,” for example), or that there was simply no First Amendment violation. (*Henderson v. Springfield R-12 School District*, No. 23-1880 (8th Cir. 2024) (agreeing that the plaintiffs did not establish an injury in fact; the plaintiffs’ purported fear of punishment for their speech during the training was speculative and not objectively reasonable; also concluding that the plaintiffs’ completion of online modules did not constitute a First Amendment injury.)
- 10 Equal Emp. Opportunity Comm’n, Section 15 Race and Color Discrimination, in Directives Transmittal: (EEOC No. 915.003) 15-31 (2006), https://www.eeoc.gov/sites/default/files/migrated_files/policy/docs/race-color.pdf.
- 11 Kenji Yoshino and David Glasgow, New Paradigm Shifts DEI From Box-Checking to Mindset-Building, Bloomberg Law, at <https://news.bloomberglaw.com/us-law-week/new-paradigm-can-shift-dei-from-box-checking-to-mindset-building>
- 12 There is some case law with language suggesting some training could contribute to a hostile work environment in some situations, and a very small number of cases where perceived anti-white language in training was used as evidence of discriminatory motive in disparate treatment situations.
- 13 Source: <https://hbr.org/2023/07/how-to-secure-support-for-your-ergs-initiatives>
- 14 To reduce any risk, Affinity groups can be inclusive of all who would like to join the group, including allies. As of right now, there hasn’t been case law saying that excluding non-members from affinity groups can support a discrimination claim. The Supreme Court case [Muldraw vs. City of St. Louis](https://www.supremecourt.gov/opinions/23-0001) expands what constitutes actionable discrimination but still requires that the plaintiff show some harm. Opening affinity groups to all definitely reduces the risk of a discrimination claim but businesses should weigh that against the value of keeping these spaces as reserved for employees who are members of the protected groups.
- 15 Source: <https://hbr.org/2022/11/how-to-do-mentorship-right>
- 16 Source: <https://www.linkedin.com/pulse/5-tips-removing-bias-from-promotion-process-woudstra-van-grondelle/>; <https://hbr.org/2021/04/how-one-company-worked-to-root-out-bias-from-performance-reviews>
- 17 Source: <https://www.aihr.com/blog/dei-data/>; <https://www.shrm.org/executive-network/insights/people-strategy/data-driven-approaches-to-diversity-equity-inclusion>
- 18 Employers with 100 or more employees are required to file an EEO-1 report with the Equal Employment Opportunity Commission. Some smaller government contractors must also file an EEO-1 report. The report tracks the race and gender information of employees but not applicants, and should be collected after hiring. It is voluntary for the employee, and can be used to determine if unlawful employment practices are being used. Even if the EEO-1 reporting process ends, this data helps employers in the event of discrimination claims. Federal contractors with affirmative action requirements must collect data on applicants, including race, gender, disability and veteran status depending on the act under which the employer is required to collect the information. When collected to meet regulatory requirements, this information can be collected pre-hire on all qualified applicants, but it must be voluntary on the part of the applicant. Federal contractors must also invite applicants to self-identify as a protected veteran post-offer as well as pre-hire.
- 19 Andrew Restuccia, Vivan Salama, and Rebecca Ballhaus, *Inside Trump World’s Prep for a Second Term*, The Wall Street Journal (Oct. 24, 2024), available at <https://www.wsj.com/politics/elections/inside-trump-worlds-prep-for-a-second-term-fc5b27cc>

Engaging State Government



It is important to understand the structure of state government when advocating for Diversity, Equity and Inclusion (DEI). Knowing the responsibilities of elected and appointed officials, as well as the power held in their offices, helps develop strategies to: identify opportunities for input, engage with key decision-makers and hold them accountable.

Understand Levers of Power: Within state governments there is a hierarchy of influence, with each office holding different powers and responsibilities. It is important to understand the political structure of the state, who is likely to support or restrict DEI, and where an individual (or organization) can seek relief when they have experienced discrimination.

Additionally, understanding the background of individuals within state government (elected, appointed and key civil servants) is necessary for identifying potential allies as well as opponents.

Tailor DEI Initiatives to State Specifics: Each state has their own laws and regulations that will dictate opportunities for DEI initiatives.

It is important to analyze the specific needs of historically underrepresented communities within the state. The nuances within the state should be taken into consideration when developing a legal strategy for protecting DEI. While diversity, equity and inclusion should be universal aspirations for every state, the demographic makeup within a state will influence the level of DEI interventions needed.

Assess Resources: Most states have offices or departments dedicated to advancing civil right protections and diversity programs. It is necessary to know the positioning of these offices within the larger state government structure as well as resources available (monetary and venues for potential support).

Understand Mechanisms for Policy Implementation and Enforcement: There are various mechanisms for promoting DEI initiatives on a larger scale (i.e., executive orders and administrative action, legislative action, and judicial oversight). Creating long-term structural changes that are centered on the values of diversity, equity and inclusion may require a multi-layered strategy that is collaborative across state agencies.

Partners can contact APR at info@aprnetwork.org to get additional information for select states, including summaries of: **State Constitutional Provisions on Civil Rights, State Civil Rights Statutes that Could Advance DEI, State Anti-DEI Legislation, and Current State Government Officials with the Ability to Impact DEI Policies.**

For specific information on state governments officials and upcoming elections, visit [Ballotpedia](#).

Additional Resources

➔ [Fact Sheets and Q&As](#)

➔ [Communication Resources](#)

➔ [Guidance Documents and Toolkits](#)

➔ [Templates and Other Resources](#)

➔ [Legal Briefs and Legal Analysis](#)

➔ [Resource Websites and Organizations](#)

➔ [Government Resources](#)

Fact Sheets and Q&As

Organization

Resource

American Pride Rises

[FAQs for Diversity, Equity & Inclusion \(DEI\) Champions](#)

American Pride Rises

[FAQs for Higher Education Diversity, Equity & Inclusion \(DEI\) Champions](#)

American Pride Rises

[FAQs for Philanthropists to Defend Diversity, Equity & Inclusion \(DEI\)](#)

The Lawyers' Committee for Civil Rights Under Law

[Advancing Equal Employment Opportunity: Putting the Affirmative Action College Admissions Cases in Context](#)

The Lawyers' Committee for Civil Rights Under Law

[Five Things You Can Do to Advance and Protect Diversity and Racial Equity](#)

NAACP Legal Defense and Education Fund, Inc.

[The Importance of Educating and Employing a Diverse Workforce](#)

NAACP Legal Defense and Education Fund, Inc.

[Supreme Court's Affirmative Action Decisions Explained: SFAA v. Harvard and SFFA v. UNC](#)

National Women's Law Center

[Legal Help for Sex Discrimination or Harassment in the Workplace, at School, or When Receiving Health Care](#)

U.S. Equal Employment Opportunity Commission (EEOC)

[Fact Sheets](#)

U.S. Equal Employment Opportunity Commission (EEOC)

[Frequently Asked Questions](#)

Communication Resources

Organization

Resource

American Pride Rises

[Amplifying the Truth About DEI to Debunk False Claims](#)

American Pride Rises

[Core Talking Points](#)

American Pride Rises

[Defending Diversity, Equity & Inclusion in Arts & Entertainment](#)

The Leadership Conference
Education Fund

[Reality Check: Polling Analysis Shows a Broad and Deep Appreciation of Diversity and Inclusion Practices](#)

NAACP Legal Defense and
Education Fund, Inc.

[Talking Points for the Business Community](#)

NYU Law Meltzer Center for
Diversity, Inclusion and Belonging

[The Law of Diversity, Equity and Inclusion](#)

Raben

[Diversity, Equity and Inclusion Messaging Guide](#)

Guidance Documents and Toolkits

| <u>Organization</u> | <u>Resource</u> |
|--|--|
| Academy to Innovate HR | DEI Data: Use Data to Achieve Your DEI Objectives |
| American Bar Association | A Call to Action for DEI Success: An ABA Toolkit for Advancing DEI in the Workplace |
| American Pride Rises | Business Case for Defending Diversity, Equity & Inclusion (DEI) |
| Democracy Forward | Safeguarding and Strengthening Diversity, Equity and Inclusion (DEI) Initiatives |
| Factorial | DEI Dashboard: Benefits, Metrics and Best Practices |
| Harvard Business Review | How to Best Use Data to Meet Your DEI Goals |
| The Leadership Conference Education Fund | Disaggregation Nation: A Landscape Review of State Race & Ethnicity Data Collection |
| The Leadership Conference Education Fund | What is Data Disaggregation? |
| Mercer | Why DEI Data Collection Drives Successful Business Strategies |
| Movement Advancement Project | Dismantling DEI A Coordinated Attack on American Values |
| NAACP Legal Defense and Education Fund, Inc. | The Economic Imperative to Ensure Equal Opportunity: Guidance for Employers, Businesses, and Funders |
| NAACP Legal Defense and Education Fund, Inc. | The Importance of Educating and Employing a Diverse Workforce |

Guidance Documents and Toolkits (cont.)

Organization

Resource

NAACP Legal Defense and
Education Fund, Inc.

[Talking Points for the Business Community](#)

Public Equity Group

[The Supreme Court Ended Race-Based Affirmative Action in Higher Education Admissions: How Might the Court's Decision Impact the Workplace, and What Can Organizations Do to Protect Workplace Diversity Programs?](#)

U.S. Equal Employment
Opportunity Commission
(EEOC)

[Tips for Small Businesses](#)

Work Day

[Global Blueprint for Belonging and Diversity](#)

🔗 Templates and Other Resources

Organization

Resource

American Pride Rises

[Legislative Tracker: The State of DEI Legislation](#)

The Lawyers' Committee for Civil Rights Under Law

[Webinar | Ensuring Equal Employment Opportunity: Supreme Court Affirmative Action Decisions and the Workplace](#)

National Women's Law Center

[Webinar | The Rise of Anti-DEI Litigation and Legislation and Its Impact on Employment Law](#)

U.S. Department of Commerce

[Sample Diversity, Equity, and Inclusion Interview Questions](#)

U.S. Equal Employment Opportunity Commission (EEOC)

["Know Your Rights" Workplace Discrimination is Illegal" Poster](#)

➔ Legal Briefs and Legal Analysis

Sponsored Firm/Organization(s)

Lawyers' Committee for Civil Rights Under Law, Minority Business Enterprise Legal Defense and Education Fund, LatinoJustice PRLDEF, Public Counsel, NAACP, and Lawyers' Committee for Civil Rights of the San Francisco Bay Area (represented by Lawyers' Committee for Civil Rights Under Law and Crowell and Moring LLP)

Lawyers' Committee for Civil Rights Under Law

Lawyers' Committee for Civil Rights Under Law, NAACP Legal Defense and Education Fund, Inc., and 14 Organizations as Amici Curiae (represented by Crowell and Moring LLP)

Link to Brief or Legal Analysis

[Amicus brief in *Alexandre et. al v. Amazon*](#): Defends a private grant program designed to reduce barriers to entry for Black, Latinx and Native American entrepreneurs. Brief highlights how programs like this grant program strengthen Black citizens' and other communities of color's rights to participate equally in the marketplace, furthering the intent and purpose of Section 1981 of the Civil Rights Act of 1866. Congress explicitly designed the Act to further the aims of the Thirteenth Amendment by creating a remedy for discrimination that hampered Black Americans' ability to enter into contracts and fully participate in the nation's economy.

Input on Draft Business Diversity Principles (BDP): Provides an excellent explanation of how DEI measures expand opportunity and an analysis of why DEI initiatives remain lawful in the workplace and beyond.

Amicus brief in [American Alliance for Equal Rights vs. Fearless Fund](#):

Amicus brief defending remedial programs designed to combat longstanding, systemic discrimination and pushing back on claims that such programs constitute unlawful racial discrimination against White business owners. Provides clear history of Section 1981, designed to further the aims of the 13th Amendment by creating a remedy for discrimination against Black people that hampered their ability to enter into contracts and fully participate in the nation's economy.

➔ Legal Briefs and Legal Analysis (cont.)

Sponsored Firm/Organization(s)

Link to Brief or Legal Analysis

Freedom Economy Business Association

(Guidance for Investors and Funders can be accessed by visiting: <https://freedomeconomy.org/join/>).

Global Black Economic Forum

[The Fearless Fund remains open for business](#), by Alphonso David (op-ed from the Atlanta Journal Constitution)

National Bar Association, National Native American Bar Association, National Association of Women Lawyers, National Asian Pacific American Bar Association, National LGBTQ+ Bar Association, Hispanic National Bar Association, National Association of Blind Lawyers, South Asian Bar Association of North America

[Six Years Later, DEI Advances the Ongoing Work of the Civil Rights Act of 1964; Bar Association Presidents from Across the Nation Call on Leaders to Double Down on DEI](#)

NAACP Legal Defense and Education Fund, Inc.

[Amicus Briefs and Documents in the Students for Fair Admissions v. Harvard case](#)

NAACP Legal Defense and Education Fund, Inc., Asian Americans Advancing Justice - AAJC, LatinoJustice PRLDEF and Ballard Spahr LLP representing Amici Curiae Montgomery County Branch of the NAACP, Montgomery County Progressive Asian American Network, Asian American Youth Leadership Empowerment and Development, Identity, Inc., and Casa, Inc.

[Amicus Brief - Association for Education Fairness v. Montgomery County Board of Education, et al.](#)

Lawsuit alleged that race-neutral and evidence based changes to the admissions policy for magnet middle schools are unconstitutional. Amicus brief argues among other things that the correct interpretation of the Equal Protection Clause rejects the plaintiff's arguments. The judge in this case dismissed the amended complaint for failure to allege disparate impact and failure to allege discriminatory intent.

➔ Legal Briefs and Legal Analysis (cont.)

Sponsored Firm/Organization(s)

NAACP Legal Defense and Education Fund, Inc.

NAACP Legal Defense and Education Fund, Inc., Asian Americans Advancing Justice - AAJC, LatinoJustice PRLDEF, Arnold and Porter Kaye Scholer LLP representing Amici Curiae TJ Alumni for Racial Justice, Virginia State Conference of the NAACP, Casa Inc., Hispanic Federation, Asian American Youth Leadership Empowerment and Development, and Hamkae Center

Link to Brief or Legal Analysis

[Amicus Brief in Alliance for Fair Board Recruitment v. SEC:](#)

Defends Nasdaq's SEC-approved Board Diversity Rule, requiring Nasdaq-listed companies to disclose aggregate, voluntarily disclosed demographic information about their board of directors and sets optional objectives for board diversity as consistent with the 5th Amendment's Equal Protection guarantee. NASDAQ adopted the rule in response to demand from investors, who understand that there is well-documented evidence that companies with a diverse group of leaders yield better economic returns. On December 11, 2024, [the U.S. Court of Appeals for the Fifth Circuit rejected the rules](#), holding that the SEC exceeded its authority in approving the rules. The majority opinion noted, however, that companies are not prevented from voluntarily disclosing their directors' social, demographic, political or any other characteristics, and if particular investors seek such information, "companies can choose to disclose it."

[Amicus Brief - Coalition for TJ vs. Fairfax County School Board:](#)

The Coalition for TJ challenged the constitutionality of the race-neutral admissions policy of the Thomas Jefferson High School for Science and Technology ("TJ").

Amicus briefs in [March 2022](#) and [May 2022](#) urged the district and appellate courts to declare that a race-neutral policy designed to equalize access to TJ was legally permissible. The U.S. Court of Appeals for the Fourth Circuit agreed. The U.S. Supreme Court declined to review the Fourth Circuit's decision.

➔ Legal Briefs and Legal Analysis (cont.)

Sponsored Firm/Organization(s)

National Association of Black Military Women, American Civil Liberties Union, NY Civil Liberties Union, and NAACP Legal Defense and Education Fund, Inc.

Link to Brief or Legal Analysis

[Amicus Brief in SFFA vs. U.S. Military Academy at West Point](#)

Explains why developing a diverse officer corps is imperative to confronting discrimination and ensuring equal opportunity in the military, and the unique role of service academies in developing officers and generals capable of leading a diverse military.

[Amicus Brief in SFFA vs. U.S. Naval Academy, et al.](#)

Explains why the Naval Academy's consideration of race within its admissions process serves the "military's unique and compelling interest in national security," highlighting the U.S. Supreme Court's recognition of the interests that separate the U.S. military academies from other colleges.

NOTE: The federal district court agreed with amici in a decision that is a powerful defense of DEI initiatives generally and the consideration of race with respect to admissions in military academies specifically, holding "Defendants have proven that the Naval Academy's limited use of race in admissions has increased the racial diversity of the Navy and Marine Corps, which has enhanced national security by improving the Navy and Marine Corps' unit cohesion and lethality, recruitment and retention, and domestic and international legitimacy."

➔ Resource Websites and Organizations

American Pride Rises (APR) Network

- Website: www.aprnetwork.org
- Summary of Resources: APR offers fact sheets and Q&As, model legislation, a legislation tracker, communication guidance and state-specific research for advancing DEI.

American Civil Liberties Union (ACLU)

- Website: <https://www.aclu.org/>
- Summary of Resources: The ACLU's work combating efforts to censor classroom instruction on racism and sexism in court and through legal advocacy in the courts and beyond includes [helpful analysis](#) to combat attacks on DEI and defend civil rights.

Association of Black Foundation Executives (ABFE)

- Website: <https://www.abfe.org/affirmative-action>
- Summary of Resources: ABFE's Racial Equity Advancement and Defense Initiative (READI) Resource Bank offers tools and resources to nonprofits engaged in race-explicit grant making or programming and helping them navigate the legal and social landscape. ABFE also provides financial support to nonprofits facing legal challenges due to their grant making or programming so they have access to necessary legal counsel.

California (CA) Black Freedom Fund

- Website: <https://lead.cablackfreedomfund.org/>
- Summary of Resources: The CA Black Freedom Fund's LEAD for Racial Justice is leading legal experts, advocates and philanthropic leaders to offer strategic guidance to CA organizations and foundations. The initiative provides in person and virtual training for organizations and opportunities to request pro bono support for attendees. [If you are in CA and interested in accessing these resources, sign up here.](#)

Freedom Economy Business Association

- Website: <https://freedomeconomy.org/>
- Summary of Resources: The Freedom Economy Business Association is a centralized membership organization led by a coalition of best-in-class investors with an extensive network of values-aligned legal professionals. DEI, ESG and impact investors can [access legal resources and community support by reaching out to the network here.](#)

➔ Resource Websites and Organizations (cont.)

Global Black Economic Forum (GBEF)

- Website: <https://www.gbef.com/>
- Summary of Resources: GBEF is dedicated to elevating and advocating for Black and marginalized communities throughout the world. Find [practical analysis](#) of what is at stake with attacks on DEI in [articles](#) as well as a clear analysis of recent [Fearless Fund litigation](#). With Korn Ferry, GBEF released a [2024 Report on the Evolution and Effectiveness of Diversity Efforts - From Moment to Movement: DEI at the Tipping Point](#) - identifying DEI's evolution and effectiveness.

The Lawyers' Committee for Civil Rights Under Law | Protecting and Advancing Diversity, Equity and Inclusion Pro Bono Initiative

- Website: <https://www.lawyerscommittee.org/>
- Summary of Resources: In addition to coordinating and drafting amicus briefs in support of critical DEI programs and initiatives, the Lawyers' Committee leads the **Protecting and Advancing Diversity, Equity and Inclusion Pro Bono Initiative**. This Initiative provides legal advice, and in some instances, representation to private, nonprofit, and government entities concerned about their diversity, equity, and inclusion or race-conscious programs. If you need legal representation, fill out this [initial intake form](#).

Minority Business Enterprise Legal Defense and Education Fund (MBELDEF)

- Website: <https://mbeldefwatchdog.org/>
- Summary of Resources: MBELDEF provides expert non-partisan legal advocacy and other assistance and research to businesses, legislatures, and executive branch officials at the highest level of federal, state, and local government to promote fair and effective minority business enterprise policies.

National Women's Law Center (NWLC)

- Website: <https://nwlc.org/>
- Summary of Resources: NWLC fights for gender justice in the courts, public policy, and society. NWLC has expertise in the EEOC and its enforcement role, including [enforcement guidance](#) as well as information on the [importance of data collection through the EEO-1](#).

NYU School of Law's Meltzer Center for Diversity, Inclusion and Belonging

- Website: <https://advancingdei.meltzercenter.org/resources/>
- Summary of Resources: NYU Law Meltzer Center for Diversity, Inclusion and Belonging offers expertise at the intersection of DEI and the law. Their [Advancing DEI Initiative](#) includes the most comprehensive DEI litigation tracker as well as helpful summaries of data and thoughtful and practical articles and explainers.

Government Resources

Local or State Civil Rights Commissions: Check with your state or local agency for additional DEI resources and guidance specific to your region.

Small Business Administration (SBA): Provides resources to help small businesses implement inclusive practices.

- Website: www.sba.gov

U.S. Department of Labor: The webpage from the U.S. Department of Labor offers resources and guidance for employers on creating inclusive workplaces, including best practices, tools, and legal requirements.

- Website: <https://www.dol.gov/agencies/odep/program-areas/employers/diversity-inclusion>

U.S. Equal Employment Opportunity Commission (EEOC): Offers resources and guidelines on compliance with federal anti-discrimination laws.

- Website: www.eeoc.gov

Glossary of Legal Terms

42 U.S. Code §1981 (“Section 1981”): This law prohibits race discrimination in the making and enforcement of contracts, including (but not limited to) employment contracts.

42 U.S. Code § 1983 (“Section 1983”): This law provides the right under federal law to sue state employees or any others acting “*under color of state law*”.

42 U.S. Code §1985 (“Section 1985”): This law prohibits conspiracies to interfere with civil rights.

Affirmative Action: Corrective programs or policies aimed to remedy past discrimination in education and the workplace.

Civil Rights: Protections against individual or group discrimination or unequal treatment that are guaranteed by the government.

Color of Law: When a person uses the authority granted to them by the government and takes actions that appear to be authorized, even if they are abusing that authority.

Contract: An agreement between parties that includes consideration, mutual consent and mutual obligation.

Discrimination: Unequal treatment of a person or group of people.

Disparate Impact: Policies or practices that may appear neutral but result in unjustifiable discrimination

Disparate Treatment: Treating employees differently based on race or another protected characteristic.

Equal Protection Clause (of the 14th Amendment): This constitutional provision states that “*No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.*”

Executive Order: A rule or order issued by the president with force of law.

Executive Order 11246: Issued in 1965, this law prohibits federal contractors and subcontractors who do over \$10,000 in government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. [President Trump rescinded this Executive Order on January 21, 2025.](#)

Federalism: The distribution of authority between the national government and state and local governments.

The First Amendment to the U.S. Constitution: A constitutional amendment that protects freedom of religion, speech, press, assembly and petition.

Injunction: A court requiring a person to continue to – or cease – doing a specific action.

Legal hold (or litigation hold): Legal requirement that businesses or organizations must keep any emails, documents, or other data relevant to a possible lawsuit or investigation.

Nonpartisan Position: Nonpartisan positions are not affiliated with any political party. People who fill nonpartisan positions may identify as a Democrat or Republican, but the appointment or election to the position is nonpartisan.

Preliminary Injunction: A temporary court order.

Protected Characteristic: A personal attribute or trait that is safeguarded by law from discrimination or unfair treatment. Such characteristics may include: race, color, religion, sex (including sexual orientation and gender identity), national origin, disability, religion, and veteran status.

Remedial Program: Programs that seek to address manifest racial imbalances without creating an absolute bar to the advancement of others.

Standing: The right or capacity to bring an action or to appear in a court.

Strict Scrutiny: The highest level of judicial review, requiring the government to prove a law serves a compelling interest and is narrowly tailored, especially in cases involving equal protection or fundamental rights.

Title VI of the Civil Rights Act of 1964 (“Title VI”): This law prohibits discrimination based on race, color, or national origin in the context of federally funded programs.

Title VII of the Civil Rights Act of 1964 (“Title VII”): This law prohibits employment discrimination on the basis of race, color, religion, sex (including sexual orientation and gender identity), and national origin.

With Prejudice: Final and binding legal action; the plaintiff cannot file the legal claim again.

DIVERSITY

INCLUSION

EQUITY

HONESTY

BELONGING

TRUST

RESPECT

Speak Up. Stand Firm. Stay In Touch.

For more information go to www.aprnetwork.org or contact: info@aprnetwork.org