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AFFIRMATIVE ACTION PROGRAM

DIVERSITY & INCLUSION IN THE WORKPLACE

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In recent years, campaigns to make organizations and institutions more inclusive have seen a push for greater diversity, along with more access to opportunities for veterans and people with disabilities. Yes, eradicate discrimination; but also include and welcome all members of society.

Additionally, many organizations make a concerted effort to hire members with diverse traits and remove barriers for career progression based on gender, ancestry, religion, and age. The initiative is to hire and engage people based on their knowledge, skills, abilities, and the content of their character. Diversity and inclusion is more than policies, programs, or headcounts; it is values too.

These organizations become a **'great place to work'** and attract top talent to produce successful outcomes. Equal opportunity and compensation strategies have had significant impact to overturn historical injustice toward members of society that have been systematically discriminated.

However, as a nation, we are going to need to get past ingrained human prejudices and bias if we are to realize the potential for equal opportunity. There is no doubt that significant rewards exist for organizations that invest the time, money, and effort into doing so. Not only are workplaces far richer for diversity, but initiatives on that front go a long way with customers too.

In the 21st Century, customers seek out products and services that align with social equality values. Diversity and inclusion in the workplace cause all employees to feel accepted and valued.

Legally, we want the system to be color-blind; we want everyone to have the same rights. But socially we understand that people do not want their racial or gender identities to be ignored. They want them to be recognized and respected. People can take pride in having a diverse and inclusive workplace or institution. The organizational culture is enriched by diversity and inclusion.

It is just that many would rather not contemplate too closely the means used to achieve it.

Affirmative Action policy or program provides advantages for people of a minority group who are seen to have traditionally been discriminated against, with the aim of creating a more egalitarian society through preferential access to education, employment, healthcare, social welfare, etc.

Affirmative action measures are intended to prevent discrimination against employees or applicants for employment, based on color, religion, sex, or national origin. The controversy surrounding affirmative action's effectiveness is often based on the idea of rectifying class inequality in lieu of merit-based action. However, the goal has always been equal opportunity.

Other opponents of affirmative action call it reverse discrimination, saying affirmative action requires the very discrimination it is seeking to eliminate. Equal opportunity is the ultimate goal.

As the government mandated shutdowns and the consequential economic havoc exacerbate disparities, some Socialists realize validation of their support for the government-run programs and social-welfare policies. Most of them believe the government should be doing more to solve problems of inequality. Many organizations are actively recruiting in diverse media and outreach.

A diverse and inclusive workplace is one that makes everyone, regardless of who they are or what they do for the business, feel equally involved in and supported in all areas of the workplace. The **"all areas"** part is important. The HRM function must take the lead and implement strategy.

Employers that implement and fully embrace an **Affirmative Action Program** understand that it can be an effective management tool to move beyond the basics of the regulatory requirements and integrate the program into their workforce management strategy.



U.S. Equal Employment Opportunity Commission

The Civil Rights Act of 1964 was landmark legislation prohibiting employment discrimination by employers based on protected characteristics. Under federal law, protected characteristics include race, color, national origin, religion, gender (including pregnancy), disability, age (if the employee is at least 40 years old), and citizenship status.

Additionally, this act established the Equal Employment Opportunity Commission (EEOC).

Applicants, employees, and former employees are protected from employment discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability and genetic information (including family medical history). Alleged discrimination will be investigated and adjudicated to enforce these laws.

Applicants, employees, and former employees are also protected from retaliation (punishment) for filing a charge or complaint of discrimination, participating in a discrimination investigation or lawsuit, or opposing discrimination. The HRM function should work to ensure compliance.

Legally, we took race and gender out of the equation only to realize that, if we truly wanted not just equality of opportunity for all Americans but equality of result, we needed to put it back in. Our name for this paradox is **'affirmative action'** to supersede human prejudice and bias.

Affirmative Action

Early implementations of affirmative action largely focused on breaking the continued social segregation of minorities from institutions and opportunities. Despite legislation that outlawed biased practices in the United States, tangible change in the status quo was not immediate.

It is the responsibility of the organization to develop comprehensive plans and specific program goals for an initiative to make good-faith efforts to expand employment opportunities. The most effective programs are tailored to accomplish a compelling social interest such as remedying discrimination by focusing attention on **'preferential treatment'** of minorities and women.

The Supreme Court ruled race-conscious affirmative action efforts designed to eliminate a conspicuous racial imbalance in an employer's workforce resulting from past discrimination are permissible if they are temporary and do not violate the rights of white employees.

In 2000, the Florida legislature passed **"One Florida"** Plan, banning affirmative action with the recommendation that organizations use affirmative action as a tool ensuring that all qualified individuals have equal access and opportunity to compete based on skill, ability, and merit.

AFFIRMATIVE ACTION

A process where preferential treatment is given to a minimally qualified minority over more qualified candidates.

UNDERSTANDING CRT (CRITICAL THEORY AND CRITICAL RACE THEORY INTERSECTIONALITY)

Critical Theory

Critical Theory is a school of thought that originated in Frankfurt, Germany, right before World War II. The school extended the concept of Marxism beyond economics to address perceived power structures in culture. For example, Jewish people were labeled “privileged” and deemed worthy of persecution.

Critical Theory divides people into two groups: the oppressors and the oppressed. This judgment is not based on individual behavior, but on broad categories like race, sex, gender, and religion. Whether you are an oppressor or the oppressed depends on your group identity.

Critical Theory extends even further. Suppose a person is in one oppressed group like race (black) but also in one of the oppressor groups like gender (male). This is where the term Intersectionality comes into play. According to Intersectionality, black lesbians will have a more profound moral perspective and authority than those who have only one of those characteristics.

To many people in America, intersectionality means that because you are a minority, you get special standards and special treatment. “Intersectionality” was coined in 1989 by professor Kimberlé Crenshaw to describe how race, class, gender, and other individual characteristics “intersect” with one another and overlap. Crenshaw wrote, discrimination remains because of the “stubborn endurance of the structures of white dominance” — in other words, the American legal and socioeconomic order was largely built on racism and continues to perpetuate discrimination.

However, according to Critical Theory, a straight white man can gain back some of his moral authenticity by submitting to the oppressed group and affirming the dogma of the oppressed.

Critical Theory denies that we can have real objective knowledge. Listening is prudent — it expresses love and it aids understanding. But we must be careful never to suggest that one’s race, gender or sociological identity gives them unchallengeable insight into all of reality.

Critical race theorists believed that political liberalism was incapable of adequately addressing fundamental problems of injustice in American society, because its emphasis on the equitable treatment under the law of all races rendered it capable of recognizing only the most overt and obvious racist practices, not those that were relatively indirect, subtle, or systemic.

Leaders must stand against racial injustice and the discrimination of many African American and minorities in this country. We must be committed to engaging and mobilizing people to become agents of change as we continue the unfinished work of the civil rights movement.

In the current workforce strategy, CRT is well-established, driving decision-making according to skin color—not individual value and talent. Racial equality and reconciliation are important.

How to Pursue Racial Justice & Unity

CRITICAL RACE THEORY

Critical Race Theory

Critical race theory (CRT) is an intellectual movement and loosely organized framework of legal analysis based on the premise that race is not a natural, biologically grounded feature of physically distinct subgroups of human beings but a socially constructed (culturally invented) category that is used to oppress and exploit people of color. Critical race theorists hold that employment and institutions in the United States are inherently racist insofar as they function to create and maintain social, economic, and political inequalities between whites and nonwhites.

Many social progressives use the paradigm of critical race theory to share their ideas about racism. However, they do not understand the intellectual roots of that ideology and think that it's the only way to talk about racism. As such, questioning their ideas amounts to tacit support of racism and makes you a racist. You either agree with the CRT worldview or you are an enemy of all that is good. That notion reflects the true nature of all leftist ideology by being ultimately authoritarian in nature.

Critical race theory is presented as the singular lens through which one ought to see the world. Race is a social construct, enforced by those in power (white men), and predetermines someone's role and ability in society. That is particularly damaging on two levels.

First, it precludes any meaningful conversation about racism and race. Second, it creates a chasm between two presumably well-meaning people who most likely agree racism is bad, but disagree on the best way to address it.

CRT is a theoretical framework, rooted in Marxism, that posits individuals as oppressed, or oppressor, based on their skin color.

Critical race theory does not seek equality or justice. Instead, it categorizes people. One's gender, race, or sexual orientation posits you as the oppressed or an oppressor—a status from which you are freed only when all existing societal structures, which are inherently racist, are overthrown.

Leftism does not seek enduring notions of truth, the good, or justice. It seeks only to subjugate the other as a means of overthrowing an existing structure. Once that structure is overthrown, the leaders of the revolution will find someone new to subjugate.

It categorizes people based on race and gender, and assumes that people have (or don't have) abilities based on those categories. It leaves no room for meaningful discourse. CRT promises liberation for the oppressed, but it falls short in explaining or solving our current human problems.

If we want to fight prejudice, then let us shape the conversation around our freedom to celebrate diversity, the inherent dignity of every person, the goodness we feel, and truth.

We don't invent truth, we observe and respond to it. This conviction has been our heritage for centuries. The knowledge of objective truth became the basis of the Scientific Revolution, medicine, the curing of disease, artistic genius, and the creation of free, human cultures.

Systematic Racism and Discrimination in America

Interpersonal Racism

Interpersonal Racism (also called individual racism or personally mediated racism) - occurs between individuals and is what most people think of when using the term racism.

The beliefs, attitudes, and actions of individual that support or perpetuate racism. Individual racism can occur at both an unconscious and conscious level and can be both active and passive.

Individual racism refers to an individual's racist assumptions, beliefs or behaviors and is a form of racial discrimination that stems from conscious and unconscious, personal prejudice. This form of racism can be intentional or unintentional, examples include telling a racist joke, believing in the inherent superiority of white people, crossing the street to avoid passing a Black man, etc.

Systematic Racism and Discrimination

Systematic discrimination, also called institutionalized discrimination, refers to a method of discrimination which occurs regularly in the workplace as an inherent part of the organization through interactions and processes creating a disadvantage for people with common set characteristics such as race, gender, and disability over a long period of time.

The EEOC defines systemic cases as “pattern or practice, policy and/or class cases where the discrimination has a broad impact on an industry, profession, company or geographic location.”

‘Systemic’ has also been defined to mean ‘bias that is built into systems, originating in the way work is organized’ and ‘refers to structures that shape the work environment or employment prospects differently for different types or workers.’

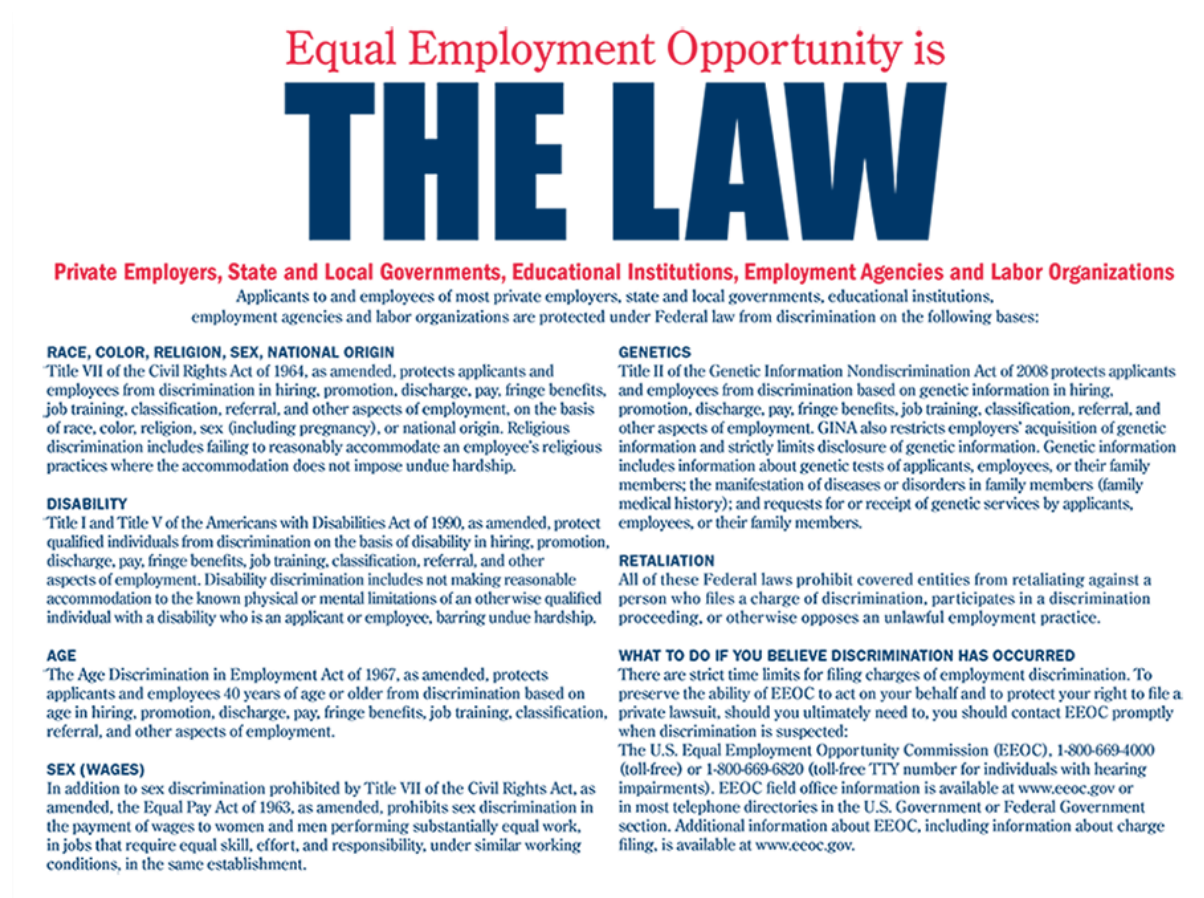
As part of its enforcement, the EEOC uses administrative and litigation mechanisms to identify and pursue discriminatory policies and practices that the EEOC identifies as “systemic”.

Systematic discrimination is not apparent at first sight, but is actually systematic in its application of policies and practices. Systemic discrimination tends not to be a matter of intent or deliberate action. It is rooted in the way organizations go about their day-to-day business as policymakers, employers, or service providers. It is a product, usually inadvertent, of the systems, structures, and cultures organizations have developed and unconsciously deploy in their work.

Suspect Practices: According to the EEOC, there are a variety of practices that the systemic program seeks to investigate and eliminate. These include alleged:

- Discriminatory barriers in recruitment and hiring.
- Discriminatory access to management trainee programs and executive positions.
- Exclusion of qualified women from traditionally male-dominated work and visa-versa.
- Disability discrimination in the form of unlawful pre-employment inquiries.
- Age discrimination in reductions-in-force and retirement benefits.
- Compliance with customer preferences that result in discriminatory assignments.

The law requires an employer to post a notice describing the Federal laws prohibiting job discrimination based on race, color, sex, national origin, religion, age, equal pay, disability, or genetic information. The **"EEO is the Law"** poster is prepared by the EEOC for employers to download and print or order for postal delivery.

The poster features the title "Equal Employment Opportunity is THE LAW" at the top, with "THE LAW" in large, bold, blue letters. Below the title, it lists the entities covered: "Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations". A paragraph states that applicants and employees of these entities are protected from discrimination. The poster is divided into two columns of text, each starting with a bolded category: RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN; DISABILITY; AGE; SEX (WAGES); GENETICS; and RETALIATION. Each category is followed by a brief explanation of the law. At the bottom, a section titled "WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED" provides information on filing a charge with the EEOC, including the EEOC's contact information and website.

Equal Employment Opportunity is
THE LAW

Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN
Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY
Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

AGE
The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

SEX (WAGES)
In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

GENETICS
Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

RETALIATION
All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED
There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:
The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at www.eeoc.gov or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.

Disparate Impact

Disparate impact refers to the result of the application of a standard, requirement, test, or other screening tool used for selection that—though appearing neutral—has an adverse effect on individuals who belong to a legally protected class. The U.S. Congress has incorporated disparate impact concepts in anti-discrimination laws, including statutes dealing with employment.

This standard also is adopted in laws and regulations addressing discrimination on the basis of additional characteristics including sex, sexual orientation, gender identity or expression, religion, age, military status, equal pay, pregnancy, disability, or genetic information.

Both disparate impact and disparate treatment refer to discriminatory practices. Disparate impact is often referred to as unintentional discrimination, whereas disparate treatment is intentional. The terms adverse impact and adverse treatment are sometimes used as an alternative.

Disparate treatment is intentional employment discrimination. For example, testing a particular skill of only certain minority applicants and not all the applicants is disparate treatment.

The EEOC will investigate alleged discrimination in four main areas:

1. Hiring/Promotion/Assignment/Referral

- Criminal/credit background checks.
- Steering of applicants to certain jobs or assignments based on race or gender.
- Historically segregated occupations or industries.
- Job ads showing preference (“young”, “energetic”, “recent graduate”, “men only”, etc.)
- Customer preference.
- Algorithms to sort through applications.
- Personality or customer service tests; physical ability or capacity tests; cognitive tests.

2. Policies/Practices

- Mandatory religious practices by employers who do not qualify as religious organizations.
- Paternal leave policies that do not give the same benefits for men and women.
- Mandatory maternity leave.
- Fetal protection policies.
- English language only rules.
- Age-based limits on benefits or contributions to pension or other benefits.

3. Layoff/Reduction in Force/Discharge policies

- Mandatory retirement.
- Layoffs, reorganizations, and RIFs (disparate treatment and disparate impact based on a protected characteristic).
- Waivers that may prevent employees from filing complaints or assisting the EEOC.
- Waivers that do not comply with the Older Workers Benefit Protection Act.

4. ADA/GINA

- “No fault” attendance policies.
- Non-accommodation for medical leave.
- Light duty policies for only work-related injuries.
- 100% healed return-to-work requirements.
- Pre-employment medical inquiries.

Affirmative Action Program as Part of the Workforce Management Strategy

Affirmative Action Program

Many large organizations and institutions have affirmative-action or diversity officers. Their job is to insure not only that hiring and promotion are handled in a color-blind manner but that good-faith efforts are made to include racial minorities and women or veterans or disabled persons in the hiring pool, and, if they are qualified, to attempt to recruit them.

In this context, “**affirmative**” means: demonstrate that you did your best to find and promote members of underrepresented groups. **You do not have to give them preferential treatment.**

One of the keys to incorporating an Affirmative Action Program (AAP) into your workforce management strategy is getting buy-in from your management team. The program must be developed so that it becomes a useful and effective tool for your managers. And the executive management team must clearly demonstrate commitment to the program and hold each member accountable to meeting the goals defined in for your program.

As part of this commitment, organizations need to include AAP goals in their manager’s annual performance review. Each manager’s annual performance must be evaluated based on achieving their AAP goals, and merit increases should be impacted based on achievement of those goals.

There is also the catch-22 that affirmative action leads to condescension for those benefiting from affirmative action. That is, some people may be accused of getting a job or promotion due to their ethnicity or gender, versus qualifications. Affirmative action is a delicate balance of promoting a diverse workplace without resentment.

Best Practices

There are many ways a company can remain out of the EEOC’s line of sight. Although there is no guarantee that a company will be able to avoid an EEOC visit, the following practices will certainly help avoid large public exposure and possible liability:

Audit your policies and procedures to ensure that none are “one size fits all.” An easy target for EEOC systemic investigations are long-standing nondiscriminatory company policies that the agency believes could have a disparate impact on protected classes.

A policy that requires employees to pass a computer test before being promoted to a supervisor position may not, on its face, seem discriminatory. However, the EEOC might investigate whether the test has a disparate impact on certain racial or ethnic groups. Similarly, the agency will undoubtedly consider whether a blanket policy that requires an employee to be terminated after a one-year leave of absence violates the requirement that a request for a reasonable accommodation be reviewed on an individual basis.

The company should also consider whether policies routinely exclude or hurt certain classes of employees, even unintentionally. If an audit suggests that the policies are "uniformly applied" without regard to the needs of an individual employee or that such policies adversely affect certain categories of employees.

The critics of affirmative action point to several perceived failures in its policies; including the cost of the programs, the risk of hiring less qualified candidates, and lack of historical progress in changing the representation of targeted groups with a belief that affirmative action forces the populace to make unwarranted accommodations. Opponents of affirmative action frequently call these efforts a collective failure, citing the tiny changes to the status quo.

Furthermore, critics of affirmative action might claim that little to no bias exists in current society, at least from their perspective. In addition, it has been argued that affirmative action has, in some cases, led qualified candidates to be overlooked in favor of hiring less qualified candidates that meet affirmative action standards.



Diversity and Inclusion

Diversity and inclusion are two interconnected concepts—but they are far from interchangeable. Diversity is about representation or the make-up of an entity. Inclusion is about how well the contributions, presence, and perspectives of different groups of people are valued and integrated into an environment.

Diversity and inclusion is more than policies, programs, or headcounts. Equitable employers outpace their competitors by respecting the unique needs, perspectives, and potential of all their team members. As a result, diverse and inclusive workplaces earn deeper trust and more commitment from their employees.

The goal of the Diversity and Inclusion approach is to create a consistently high-trust workplace experience for everyone, no matter who they are or what they do for the organization.

Technological and social changes continue to alter the landscape in every industry. Organizations will need the human judgment and empathy in the complexities of today's work environment, leaders must tap into the collective intelligence to maximize the potential of every person.

“A diverse mix of voices leads to better discussions, decisions, and outcomes for everyone.” — Sundar Pichai