

From the *Top 10 Risk & Compliance Trends for 2021* eBook

Diversity, Equity, and Inclusion: More Transparency and Accountability

By: Chai Feldblum & Emily Cuneo DeSmedt

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Perhaps no year has forced employers to re-examine their work environments more than 2020. While COVID-19 has thrust upon us a workplace that is physically amorphous, the Black Lives Matter movement has also created an unprecedented urgency for a more genuinely diverse and inclusive workforce.

Of course, most employers have long accepted the benefits of diversity in the workplace, and many have devoted significant resources to diversity, equity, and inclusion (DEI) initiatives. But, because employers risk liability under Title VII when they take race, gender, and other protected characteristics into account in employment decisions, employers have historically tiptoed around more aggressive DEI approaches and designed their DEI programs around indirect strategies.

Only this year, under the spotlight of the #BLM movement, have employers collectively acknowledged that their existing methods have simply failed to produce sufficient representation and inclusion of Black employees, women, and other underrepresented minorities throughout their organizations.

Over the past year, employers have largely answered the call to reexamine their pursuit of diversity, equity, and inclusion and embraced the introspection that is necessary for meaningful change. In 2021, we expect a trend toward a more comprehensive approach to DEI to include input and collaboration of their Human Resources, legal, ethics, and compliance teams. We anticipate trends in the coming year around increased transparency, better leadership buy-in, and increased accountability and enforcement for managers.

Increased Transparency

While employers have historically collected and maintained varying degrees of demographic data about their employees, many have shied away from sharing that information with their workforce or the public.

2021 PREDICTION

We expect a more comprehensive approach to DEI that includes HR, legal, ethics, and compliance teams. We anticipate increased transparency, leadership buy-in, and increase accountability and enforcement.

More recently, however, some employers have published descriptive demographic data about their workforce to make their commitment to DEI more transparent. While employers should work with counsel to understand the risks associated with publishing data, when done carefully, publishing descriptive demographic data can encourage employee dialogue about DEI efforts and identify root causes of underrepresentation in the employer's workforce.

Leader Buy-in and Employee Engagement

Employers are acknowledging that it is unacceptable and ineffective to compartmentalize their DEI efforts - or to expect their diverse employees to shoulder the responsibility of advancing DEI. It is critical that the employer's most senior executives demonstrate their personal commitment to moving the needle on diversity. Employers will implement mechanisms to engage a range of employees, develop ideas for greater DEI, and implement those ideas across the entire enterprise.

To do so, we encourage employers to create an employee-driven DEI council, as well as an executive-led DEI council, with clear communication lines between the two groups. This can ensure that DEI is implemented into the annual targets of each component of the enterprise.

Increased Accountability

As employers embed DEI initiatives across their organizations, many are also implementing new mechanisms to hold employees, and particularly managers, accountable for diversity and inclusion. Those mechanisms include:

- Performance reviews that require managers to provide concrete examples of their efforts, to make their teams more equitable and inclusive, and develop diverse members.
- Policies that demand civility, ensure consistent consequences for uncivil behavior, and empower bystander engagement and reporting.
- Programs that require managers to regularly review and hold each other accountable for their respective DEI efforts.



Steps You Can Take

Most employers were already seeking diverse slates of candidates for their open positions and promotions, but many still need to implement more thoughtful and intentional diverse recruiting. Some strategies that we are encouraging employers to implement include:

1. Examine the schools or groups with which you advertise your positions. Do those schools include Historically Black Colleges and Universities (HBCUs)? Is your organization attending recruiting events held by diverse organizations and affinity groups?
2. Review your job descriptions to make sure a commitment to diversity and inclusion is an essential requirement of every position. Do your job requisitions make clear that you expect all employees to promote a diverse and inclusive work environment?
3. Reconsider your referral sources. Are your organization's female and Black employees referring their contacts and colleagues for open positions at the same rate that their male and/or White employees are referring them?

4. Train your hiring managers on strategies to check implicit biases. If your hiring managers believe particular candidates do not demonstrate the skills or commitment for particular roles, are they trained to question whether they would come to the same conclusion if the candidates were of a different race, or gender, or age?
5. Ensure that your hiring and interviewing team is as diverse as possible. Does the slate of interviewers and decision-makers for each role convey to candidates that the team takes diversity seriously?

These are only a few examples of the many new strategies employers are implementing as they re-examine their existing DEI efforts and acknowledge that simply prohibiting employers from considering race, gender, and other protected characteristics is not enough to achieve meaningful diversity and inclusion in the workplace. While some of the changes to the work environment that we have seen in 2020 might be temporary, we are optimistic that employers' collective effort to improve diversity, equity, and inclusion will only grow in 2021.

About the Authors

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