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Data-based DEI Initiatives in Human Resources

Diversity and Inclusion



Cheat Sheet

- Organizations must take a thoughtful and deliberate approach to diversity, equity, and inclusion (DEI) initiatives.
- DEI initiatives can benefit from a data-centric approach.
- In-house counsel should consider and mitigate the legal risks associated with DEI initiatives.

Using data-based research before starting a diversity, equity, and inclusion (DEI) is essential toward setting the right direction for human resources (HR) from hiring to daily management.

This overview and selection of tips is based on the ACC Webcast “Data-Based Diversity and Inclusion for Law Department Leaders and HR Managers” by [Tim Phillips](#), chief legal & risk officer, assistant secretary, American Cancer Society; [Bernadette Beekman](#), board chair, UPWARD, New York City Chapter; [Annette Tyman](#), partner, labor & employment, co-leader People Analytics Group, Seyfarth Shaw LLP; and [Amy Yeung](#), general counsel & chief privacy officer, Lotame.

Key concepts

Be aware of these key concepts while taking a data-based approach:

- **Benchmark:** A comparison using some external reference, which provides an aspirational comparator.
- **Goal:** A desired outcome for the business that is aspirational and not mandatory.
- **Quota:** A required target that is not optional.
- **Set-aside:** A reserved number of jobs/promotions that are reserved for certain

underrepresented groups.

[Find out how you can initiate a ACC Diversity, Equity, and Inclusion Maturity Model for your organization.](#)

Be mindful, fair, transparent, and empowering — along with using your legal lens

Organizations must be mindful of who they are recruiting; ensure that leadership is empowered to tackle DEI issues and are accountable for doing so; be fair and transparent as to the opportunities available within the organization; and build a culture that promotes openness and welcoming behavior so that the “whole” person can come to work.

In-house counsel are concerned with the legal liability attached with pursuing some DEI initiatives, in addition to concern over the internal or external optics of these programs.

Generally, there is a risk spectrum of DEI programs to keep in mind, listed from least to most risky: creating an inclusive company culture; leadership development & mentoring; targeted recruiting and outreach; [barrier analysis](#); diverse slates of candidates; and [numeric goals selection](#).

Furthermore, there is a risk spectrum of activities for establishing the goals and benchmarks for your DEI initiative, from least to most risky: tracking representation data; reviewing and analyzing representation data; setting benchmarks or goals; and quotas or set asides (highest risk).

Self-assess, set goals, and benchmark

To establish your DEI goals and benchmarks, follow this three-step plan:

1. Conduct a reasonable (privileged) self-analysis;
2. Conclude that DEI action is warranted based on areas of opportunity; and
3. Implement lawful DEI initiatives.

While conducting your self-assessment to determine the current state of your organization, define scope — will you assess the legal department or the organization as a whole?

Consider retaining external counsel to conduct the self-assessment and preserve any findings under attorney-client privilege.

[The ACC Foundation Diversity, Equity, and Inclusion Maturity Model covers goal-setting, strategic planning, and much more.](#)

External counsel can track internal data and benchmark against external sources. This benchmarking gives your organization an idea of where you are in your DE&I journey. Other vendors can provide predictive analytics and additional data-based models.

Once opportunities for DEI programs have been identified, establish your DEI goals. Remember to tailor the program to the problems and factors revealed by your self-analysis; attempt to achieve the stated purpose of any law governing DE&I in your jurisdiction; avoid unnecessary restrictions on employment and promotional opportunities for the workforce as a whole; and be continually monitored for effectiveness.

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