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Multi-State Guidance Concerning
Diversity, Equity, Inclusion, and Accessibility Employment Initiatives

The Attorneys General of Massachusetts, Illinois, Arizona, California, Connecticut, Delaware, Hawaii, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, and Vermont are issuing this Guidance to help businesses, nonprofits, and other organizations operating in our respective states understand the continued viability and important role of diversity, equity, inclusion, and accessibility efforts (sometimes referred to as "DEI" or "DEIA" initiatives) in creating and maintaining legally compliant and thriving workplaces.

Our Offices have heard concerns from many in the private sector about the continued viability of diversity, equity, inclusion, and accessibility policies and programming following an Executive Order that purports to target "illegal DEI and DEIA policies" across a wide range of organizations.[1] Importantly, diversity, equity, inclusion, and accessibility best practices are not illegal, and the federal government does not have the legal authority to issue an executive order that prohibits otherwise lawful activities in the private sector or mandates the wholesale removal of these policies and practices within private organizations, including those that receive federal contracts and grants. The Executive Order states what is already the law—that discrimination is illegal—but then conflates unlawful preferences in hiring and promotion with sound and lawful best practices for promoting diversity, equity, inclusion, and accessibility in the workforce. This conflation is inaccurate and misleading. Policies and practices that promote diversity, equity, inclusion, and accessibility are not the same as preferences in individual hiring and promotion decisions that have been found to be unlawful. The Executive Order cannot and does not prohibit these otherwise lawful practices and policies. As such, this Guidance aims to clarify the state of the law for businesses, nonprofits, and other organizations operating in our states.

Employment policies incorporating diversity, equity, inclusion, and accessibility best practices are not only compliant with state and federal civil rights laws, but they also help to reduce litigation risk by affirmatively protecting against discriminatory conduct that violates the law. Effective policies and practices foster the development of inclusive and respectful workplaces where all employees are supported and encouraged to do their best work. When companies have such policies, employees are less likely to be subjected to unlawful discrimination, and companies are less likely to be held liable for such discriminatory conduct. This is in addition to the benefits of well-designed diversity, equity, inclusion, and accessibility practices in improving business performance – making companies that prioritize a culture of

[1] See "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," available at https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/

diversity and equity more dynamic, competitive, and resilient. Companies should be fully confident that they can continue to implement these policies and programs to advance their business objectives and help ensure they remain compliant with state and federal civil rights laws.

Diversity, Equity, Inclusion, and Accessibility Initiatives Help Businesses Prevent Workplace Discrimination:

Employment discrimination is a serious and persistent problem in the United States. Over the last five years, more than 285,000 discrimination complaints have been filed with the Equal Employment Opportunity Commission by employees in our states alone.[2] Combatting continuing discrimination is a strategic priority for our offices.

Each of our states has civil rights laws that prohibit discrimination in the workplace based on race, sex, national origin, disability and other protected characteristics. The protections provided by these laws are generally similar to those provided by Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA); however, protections under some state laws are more expansive than those under federal law. Like Title VII and the ADA, most state laws prohibit employers from (1) intentionally discriminating against employees; (2) taking ostensibly non-discriminatory actions that have an unlawful adverse impact on protected groups; or (3) subjecting employees to harassment that creates a hostile work environment. Importantly, most state laws also hold employers vicariously liable for discriminatory conduct carried out by their employees in some situations. For example, in some states, employers are strictly liable for discrimination and harassment carried out by supervisory employees and may be held liable for the discriminatory conduct of non-supervisory co-workers in many circumstances. Moreover, individual supervisors may, in some cases, be *personally* liable for unlawfully harassing or retaliating against workers. In order to effectively avoid liability for discrimination, employers must therefore take steps to proactively prevent and address discrimination, including by identifying and remediating policies and practices that have an unlawful disparate impact on current and prospective employees.

Properly developed and implemented initiatives aimed at ensuring that diverse perspectives are included in the workplace help prevent unlawful discrimination. Decades of research and data – as well as the collective experiences of our offices – demonstrate that these types of policies, procedures, and programming help prevent discriminatory conduct and harassment from occurring. They also help ensure that unlawful conduct is promptly identified, reported and addressed when it does occur. Companies that fail to be proactive in preventing discrimination and harassment expose themselves to greater risk by making it more likely that discrimination will occur and continue over time, which can increase harm to affected employees. Additionally, the absence of policies and procedures may be a factor considered by enforcement authorities and courts. For example, the fact that a company has failed to implement adequate non-discrimination and fair employment policies, procedures, and trainings may be used by our offices or courts to assess culpability and liability for discriminatory conduct.

[2] This information is based upon the most available data from the Equal Opportunity Employment Commission, which is current through FY2023.

Ensuring that a diverse set of individuals meet their full individual potential in the workplace and beyond also benefits customers, employees, companies' bottom lines and company shareholders. When companies embed the values of diversity, equity, inclusion, and accessibility within an organization's culture, they reduce biases, boost workplace morale, foster collaboration, and create opportunities for all employees. Diverse and inclusive organizations that prioritize equitable practices tend to outperform their peers, with higher returns, lower turnover, and a more attractive workplace for top talent. Promoting a diverse and inclusive workforce isn't just the right thing to do—it's also more profitable.

Diversity, Equity, Inclusion and Accessibility Initiatives are Consistent with Federal and State Law:

The Federal Government has recently targeted private sector diversity, equity, inclusion, and accessibility policies and practices through an Executive Order entitled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." The Executive Order directs executive agencies to "combat illegal private-sector DEIA preferences, mandates, policies, programs, and activities." Preferences based on protected characteristics in hiring and promotion have been found to be unlawful under federal law, except under narrow circumstances. In operation, the Executive Order merely restates this legal principle. But by mislabeling these practices as "DEIA," the Executive Order creates confusion as to lawful practices and policies to promote diversity, equity, inclusion, and accessibility. To be clear: the Executive Order cannot and does not prohibit otherwise lawful practices and policies to promote diversity, equity, inclusion and accessibility.

Initiatives promoting diversity, equity, inclusion, accessibility, various skill sets, and different perspectives and experiences in the workplace are not the same as affirmative action and do not involve providing preferences to individuals based on protected characteristics in discrete hiring, promotion, or job retention decisions. Instead, modern best practices focus on ensuring that businesses can recruit, hire, and retain the most qualified employees, and ensure that no one is overlooked or bypassed because of a protected characteristic. Best practices also help ensure that the workplace provides the support needed for employees to continue to develop their skills and contribute to the success of their organizations. Well-designed diversity, equity, inclusion, and accessibility initiatives also call on employers to pay attention to the (intentional and unintentional) impact their policies and practices have on different groups of current and prospective employees. For decades, both state and federal courts have consistently recognized that this does not amount to impermissible discrimination. In fact, employment discrimination laws generally *require* employers to pay attention to the impact their practices have on different groups based on protected characteristics in order to avoid and limit liability for unlawful conduct.

The Executive Order and related federal executive actions do not and cannot overturn these longstanding laws, values, and practices.[3] In addition, they do not and cannot strip

[3] Arguments against diversity, equity, inclusion, and accessibility initiatives also frequently reference the Supreme Court's recent decision concerning college affirmative action programs in *Students for Fair Admission v. President & Fellows of Harvard College*. In that case, the Court decided that the explicit consideration of race as a factor in

employers and workers of their federal and state constitutional rights to speak freely — in their policies, training, and daily interactions — about lawful best practices for growing and supporting private and public sector workforces. Accordingly, companies should continue to implement initiatives aimed at complying with their legal obligations, opening the door for prospective and current employees, no matter their identity or background, to reach their full potential, and ensuring the health of their organizations.

Best Practices for Diversity, Equity, Inclusion, and Accessibility:

Effective diversity, equity, inclusion, and accessibility practices are lawful, help ensure legal compliance and promote organizational success. They focus on supporting all employees and removing barriers that unnecessarily limit opportunities for underrepresented groups. Organizations should develop practices specific to recruitment and hiring, professional development and retention, and assessment and integration.

Recruitment and Hiring:

People opposed to programs supporting diversity, equity, inclusion, and accessibility claim that the programs involve hiring less qualified candidates. On the contrary, companies that value diversity, equity, inclusion, and accessibility promote the American dream, and related programs help to attract and retain top talent from all backgrounds to ensure that companies hire and retain the best candidate for each position, making companies more profitable. A study by a top research firm in the U.S. found that companies in the top quartile for diversity were 35% more likely to have financial gains above their respective industry median.[4] Best practices for recruitment and hiring include:

- Prioritizing widescale recruitment efforts to attract a larger pool of applicants from a variety of backgrounds.
- Using panel interviews, which ensure that multiple people are involved in a hiring or promotion recommendation, helping to eliminate bias in the hiring process, and to ensure fair and objective decisions.
- Setting standardized criteria for evaluating candidates and employees, focused on skills and experience to ensure that hiring is based on merit rather than subjective and biased judgements that can lead to discriminatory outcomes.
- Ensuring accessible recruitment and hiring practices and protocols, including reasonable accommodations as appropriate.

Professional Development and Retention:

Implementing professional development and retention strategies is also critical to the long-term sustainability and viability of an organization's success. And such strategies should

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making individual admissions decisions by higher education institutions that receive federal funding is unconstitutional. But neither the case – nor the principles it decided – have any application to properly designed and implemented diversity, equity, inclusion, and accessibility initiatives in the workplace.

[4] McKinsey & Company, *Diversity Wins: How Inclusion Matters*, May 19, 2020, https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters#/

support everyone, including groups that are underrepresented or historically marginalized in the workplace. Best practices for professional development and retention include:

- Ensuring equal access to all aspects of professional development, training, and mentorship programs that provide clear pathways for career growth. Such programs not only minimize turnover rates, but also expand pipelines, and strengthen the overall organizational culture.
- Setting up Employee Resource Groups ("ERGs") to create an inclusive and supportive space where employees of particular backgrounds or common experiences feel valued and heard. When employees feel that their identity is recognized and supported within the organization, they're more likely to stay long-term. For example, a major U.S. Department of Veterans Affairs study identified veteran ERGs as vital tools for expanding recruitment of skilled workers, training the next generation of workplace leaders, and increasing morale and retention of veteran and non-veteran employees.[5]
- Conducting training on topics such as unconscious bias, inclusive leadership, and disability awareness to improve employee confidence and create a shared understanding around cultural norms.
- Ensuring equal access to all aspects of employment, including through reasonable workplace accommodations.

Assessment and Integration:

Ensuring adequate assessment and integration of diversity, equity, inclusion, and accessibility practices helps to ensure maximum success of the programs and implementing companies. This includes:

- Monitoring the success of policies and practices in attracting and retaining qualified talent, ensuring an inclusive, accessible, and collaborative environment, and meeting other related goals.
- Creating clear protocols for reporting discrimination or harassment and more general communication and feedback loops for employees to provide information about their experiences in the workplace.
- Establishing work groups to research, collaborate, pilot, and actively participate in crafting strategies that support more inclusive behaviors and practices.
- Integrating principles and practices promoting belonging and unity into an organization's everyday way of doing business.

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The Attorneys General of Massachusetts, Illinois, Arizona, California, Connecticut, Delaware, Hawaii, Maine, Maryland, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, and Vermont stand ready to support organizations in our respective states as they continue to build and sustain successful and inclusive workplaces by implementing robust diversity, equity, inclusion, and accessibility policies consistent with their obligations under our laws.

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[5] Department of Veterans Affairs, *Veterans in the Workplace Final Report* 9. 39-40 (2013). https://www.va.gov/vetsinworkplace/docs/veterans_in_workplace_final_report.pdf