

Conducting the Internal DEI Audit and Avoiding the “And No Good Deed Goes Unpunished”

Labor & Employment Law Update

By Julie Proscia on May 25, 2023

While incorporating diversity, equity and inclusion (DEI) into the corporate culture is not something that is new, it is something that has become increasingly important and complex. Activist consumers are leveraging their purchasing power, public and private contractors are requiring DEI efforts, and an increasing amount of legislation is being promulgated to govern employment practices related to compensation, hiring and employment. This trifecta makes navigating internal and external pressures challenging. In order to successfully navigate these waters, more and more companies are conducting internal DEI audits to analyze their culture, processes and procedures and implement targeted improvements when problems are identified. Although conducting internal DEI audits is incredibly important to building an inclusive culture, doing so without the aid of counsel is fraught with risk and can result in a legal nightmare.

What is a DEI audit? The DEI audit is a structured analysis that examines both culture and process – both of which are integrally related and fraught with legal implications. The cultural component of the audit begins with a couple of foundational questions. Who are we as an organization and who do we want to be? These questions are deceptively simple but often elicit divergent responses that have substantial legal ramifications.

Bear with me – if during the cultural component of the audit, you interview your workforce and ask them about their perceptions of advancement opportunities within the organization, and the interviews reveal that many female employees not only feel that they do not have equal access to advancement, but also express that they believe there are gender-based compensation discrepancies within the organization, you have now just delved into allegations of discrimination and the need to engage in a compensation/pay equity audit. Boom – that is legal. Continuing with this example, you then conduct a compensation/pay equity audit and determine that while there is no inequity in pay (phew), there are a disproportionate number of men in management roles. In order to rectify the disparity, the company develops policies and processes that it believes might decrease barriers to the advancement of female talent, like paid maternity leave, child care credits, and flexible schedules. Again, legal

implications.

DEI audits can be narrow, examining one aspect of an organization, or they can span every stage of the employment process from the inception of employment through termination. While some divergence can and likely will occur, the DEI audit's scope should always be determined at the outset. Some of the areas that are frequently covered in internal DEI audits examine possible implicit bias, discrepancies or discrimination in the hiring process, equity in compensation practices, and bias in discipline and termination. Because of the direct and indirect legal implications of the audit, it is imperative to involve counsel from the inception. The rub is that even discussions regarding potential areas of concern can be problematic if articulated incorrectly. As such, the initial determination regarding scope will maximize the audit's effectiveness and mitigate potential legal risks.

How the internal DEI audit is structured and conducted is critical. Poorly conducted and unprivileged audits can expose the company to increased legal risk, a deflated workforce and a PR nightmare. By contrast, a structured internal DEI audit can engage and motivate your employees, increase your ability to attract and retain diverse talent and allow you to engage clients and partners on a different level. In a world where the mantra "no good deed goes unpunished" is prevalent, planning can prevent punishment.

Conducting
the Internal
DEI Audit
and
Avoiding the
"And No
Good Deed
Goes
Unpunished"