

NAVIGATING DEI AS A PUBLIC EMPLOYER

PRESENTED BY:

THE KRIZNER GROUP

AN EMPLOYMENT LAW BOUTIQUE

JCT
(Bowie)

RTIC DRINKWARE LLC
20702 Hempstead Road, Suite 110
Houston Texas 77065
Copyright © 2015 RTIC Drinkware LLC



DEI Timeline

- 1920 – Congress creates Women’s Bureau of the DOL
- 1948 – President Eisenhower eliminates segregation in armed forces.
- 1961 – JFK establishes Affirmative Action through executive order and establishes Commission on Status of Women
- 1963 – Equal Pay Act
- 1964 – Civil Rights Act
- 1965 – President Johnson issues EO requiring equal opportunity in federal services
- 1967 - ADEA passed

DEI Timeline

- 1973 – Rehab Act
- 1986 – Recognition of sexual harassment by Supreme Court
- 1990 – ADA
- 2014 – President Obama signs EO addressing pay transparency and LGBTQ+ rights
- 2020 – Sexual orientation/identification discrimination affirmed by Supreme Court

What DEI Is – Piece by Piece

- ❑ **Diversity** in this context represents a person's race, gender, religion, sexual orientation, ethnicity or nationality, socioeconomic status, language, (dis)ability, age, religious commitment, or political perspective.
- ❑ **Equity** seeks to produce justice and fairness in outcomes within an organization through the organization's procedures, processes, and/or distribution of resources.
- ❑ **Inclusion** generally means that people of diverse backgrounds are welcome and have participation in important, relevant decisions in the workplace or organization.

Equity versus Equality

- Equality means each individual or group of people is given the same resources from a particular point. Equity recognizes that each person has different circumstances and allocates resources and opportunities in an effort to reach an equal outcome.
- Think of “Equality” as “I see that there are differences in how people are treated and will stop that so everyone has the same opportunity moving forward.”
- Think of “Equity” as “I see there are differences and I am proactively working to rebalance situations based on what I believe is helpful because I do not believe everyone has the same starting point.”

DEI As a Workplace Concept

- As separate concepts or as a combination, DEI generally consists of any policy or practice designed to make people of various backgrounds feel welcome and ensure they have support to perform to the fullest of their abilities in the workplace.

OR

- DEI is an *ethos* that recognizes the value of diverse voices and emphasizes inclusivity and employee wellbeing as central facets of success.

What DEI Is Not

- DEI is not a specific legal requirement.
- DEI is not a quick fix to employment relationship issues.
- DEI is not without risk, both legal and practical.
- DEI is not a guarantee you will avoid lawsuits.
- DEI is cannot guarantee only positive results.

Key Parts of DEI Policies

- Statement of Value of Human Capital
- Recognition of Diverse Backgrounds
- Description of Application or Broadness of DEI Policy
- Conduct Expectations for Employees
- Reporting Process for Violations

Potential Benefits of DEI Policies/Initiatives

- A diverse workforce that creates an atmosphere of greater innovation.
- Better communication with management, leading to better relationships with employees.
- An appearance as a forward-looking, welcoming employer, creating a better candidate pool.

DEI Concerns – Legal Issues

- General Legal Compliance Issues
 - *Strict scrutiny and Equal Protection Act (compelling government interest and narrowly tailored process)*
 - *Potential Affirmative Action Tie-In*
 - *Gutter Case vs. Harvard/UNC Case*
 - *DEI decisions can conflict with general legal decisions*
- Florida's Difference from other States
 - *Individual Freedom Act (Anti-Woke Act) (statute preliminary enjoined – case on appeal)*

DEI Concerns – Non-Legal Issues

- Employee Fatigue – employees do not pay attention to efforts or do not complete training properly or at all.
- Employee Disputes – As a political issue, DEI can generate conflict between employees.
- Perception Problems – Employment decisions are examined under a microscope and an employee may assert violations when not in the employee's favor.

DEI Concerns – Non-Legal Issues

- Follow-Through Problems – Policy creation alone is not sufficient – new policy may create need for additional personnel or job-duties.
- Discipline/Insubordination Issues – New, more inclusive process can be taken advantage of and employees may believe specific job duties are optional or can be debated.
- Unintended Bias Support – DEI initiatives done improperly can create the perception that protected classes actually do need help to meaningfully contribute or succeed in the workplace

Not Going the Extra Mile

Shannon works for a medium-size employer that has a regimented lunch break policy. Shannon selects a 30-minute lunch and is to go to lunch no earlier than 11:00. Shannon starts going to the on-site gym at 10:30 and exercising with a co-worker. Shannon also visits the co-worker in the co-worker's location to discuss workouts, leading to complaints that Shannon is disruptive. Shannon asks to extend her lunch break to allow her to exercise to help with pain from a prior surgery. The request is denied, but alternatives are offered and Shannon rejects the alternatives. Shannon presents a note from her doctor asking for additional time to exercise. Before this is approved, Shannon goes to the gym again early and is caught by her supervisor, told to go back to work, and responds with profanity.

Anger Management

Reginald works in a physically demanding position. He is 68 years old and has been openly proud of how he has historically been able to work circles around what he calls “the less-than-greatest generation.” Over the past two months, however, Reginald has suffered relatively minor injuries to his back, his elbow, and his knee. Reginald has missed about a week for each of those injuries, but refuses to seek more than initial medical treatment. When asked how he is doing by his supervisor, Reginald initially will state he is fine, but has begun getting upset and irate when the question is asked more often, causing team-members not to want to work with him. Then, just yesterday, a team-member saw Reginald fall and drop a heavy package, nearly injuring the co-worker in the process.

It Is Happening to You

Joe, a married man with two daughters, is more effeminate than the rest of the men on his work team. Joe becomes emotional one day talking about a particular issue and his supervisor tells him to “toughen up.” His coworkers then begin referring to him as “Josephine” and ask him when he is going to start wearing a dress. Having had enough, Joe visits the next supervisor up and, while waiting for a meeting, confronts one of his coworkers and threatens to slash the co-worker’s tires.

Think of Your Coworkers

Simone works in mid-level administrative position and shares duties with other employees as a team. Simone announces that she is pregnant and, initially, all is well. Six months into the pregnancy, Simone's supervisor tells Simone that he has concerns about giving Simone new work given the longer term nature of the projects.

Simone protests, files a complaint, and receives two new projects that she does not properly or fully complete while on leave. While Simone is out on leave, the department loses work due to Simone's performance issues.

Familiar Issues

- Protected classes are similar, if not identical, under DEI and discrimination policies.
- Harassment/discrimination reporting policies are similar.
- Legal requirements under applicable state and federal law prohibits discrimination and unfair treatment.
- Employee perception is substantial factor.

Alternative Solutions

- Make the County a desired place to work as a whole.
- Ensure legal obligations related to discrimination and harassment are met – if you have questions, ASK FOR HELP.
- Develop methods to improve communication in the workplace.
- Properly train supervisory personnel (and discipline for supervisory personnel failures).
- Emphasize respectful conduct by employees at all levels.

Reminders

- CDC
- “The way we did it before” is not a valid reason by itself.
- Education, Education, Education

Need More?

THE KRIZNER GROUP

850-386-3747

Jason Taylor

jtaylor@thekriznergroupp.com