

KEY CHALLENGES AND CONSIDERATIONS FOR CREATING EFFECTIVE DIVERSITY INITIATIVES

SHAFEEQA W. GIARRATANI
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, PC
301 Congress Avenue, Suite 1150
Austin, TX 78701
(512) 344-4723
shafeeqa.giarratani@ogletree.com

KEY CHALLENGES AND CONSIDERATIONS FOR CREATING EFFECTIVE DIVERSITY INITIATIVES

Diversity and inclusion (D&I) is increasing in organizational priority and public focus. Those responsible for execution of an organization's D&I plan, however, realize that implementation of a legally compliant and effective D&I initiative is not as easy as it seems. Even the most well-intentioned employers that seek to recognize and encourage diverse and inclusive cultures in their workplaces face challenges, including where to start, what to do, and how to measure the success of their initiatives. This presentation and accompanying materials will provide a road map for designing an effective diversity and inclusion program, practical tips for executing a comprehensive plan, and an analysis of the pitfalls to avoid ensuring D&I becomes a fully integrated, strategic business partner.

I. Understanding D&I and Its Underlying Rationale(s)

It is important to define what a diversity and inclusion or D&I initiative is – and, by implication, define what it is not. And it is equally important to ensure the rationale(s) for having a D&I initiative is clear from the outset.

Diversity and inclusion is now a priority within many organizations. There are many rationales, grounded in research, for why D&I should be an area of focus. Such reasoning includes, but is not limited to: (1) tangible, positive impacts on company bottom line; (2) increased employee creativity and productivity; (3) boosts to workforce retention, development and culture efforts; and (4) expansion into or deepening within new customer markets.

Diversity and/or inclusion programs and initiatives, which are sometimes referred to as “voluntary affirmative action,” are being implemented in order to increase the representation of underrepresented groups and reap the benefits from having a diverse workforce. D&I programs are voluntary, self-directed and, with very limited exception, are not regulated by any outside entity. Thus, organizations are determining what programming to implement and how to implement it.

II. Understanding the Phases of a Well-Executed D&I Initiative

Organizations of any size may fall within one of several phases when seeking to implement a D&I initiative. Those phases include: 1) Assessment/Legal Compliance/Risk Reduction; 2) Program Development and Implementation; and 3) Strategic Business Integration.

A. Assessment, Legal Compliance and Risk Reduction

1. Conduct a Qualitative Organizational Assessment

In order for a D&I program to be successfully developed and implemented, there should be an understanding of the company's D&I needs and goals, its employees, its business and its customers/clients/consumers. This understanding is often developed during the strategic planning phase. However, before each program or initiative is developed and communicated, the assessment process should be revisited. Relevant information for D&I programming purposes may be gathered in the form of a survey, focus group(s), internal data analysis, industry and/or labor market data, another form of assessment, and/or a combination of measures.

- Who are the company's employees and customers?
- What are the company's employees and customers saying about the company's D&I commitments, efforts, and programming (if any)?
- What D&I initiative or program might be most responsive to the articulated needs?

2. Engage in Quantitative Data Collection and Assessment

D&I initiative implementation requires the gathering and analysis of job candidate and/or employee demographic diversity data, among other information. However, increased legal and regulatory focus on data privacy and collection efforts make diversity data gathering a legal and compliance minefield. Organizations are focused on building data privacy structures around data collection, access and storage. They are providing means for job candidates and employees to voluntarily self-identify demographic data, and they are ensuring there are disclosures, notices, and consents in place.

- What information has been collected for the D&I program?
- Who has access, when can it be accessed, and how is it stored?
- How is diversity progress being measured (ensuring there are no quotas)?
- How will diversity data get analyzed (adverse impact, labor pool utilization comparisons, gap analysis, etc.) and how will the data be reported?
- Can any or all of the data collection and analysis efforts be conducted under attorney-client privilege?

3. Identify the D&I Initiative-Related Legal and Compliance Issues

Effective D&I plans begin by contemplating and incorporating legal compliance and risk-reduction measures into the structures of programming as well as company systems and processes. D&I practitioners are navigating complex legal issues involving discrimination/EEO laws, affirmative action/federal contractor reporting, and industry-focused statutory requirements, among other things.

Although D&I initiatives are voluntary and self-directed, there are legal issues that practitioners should contemplate to ensure the program is legally compliant and

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Key Challenges and Considerations for Creating Effective Diversity Initiatives

Also available as part of the eCourse

[2020 Labor and Employment Law eConference](#)

First appeared as part of the conference materials for the
27th Annual Labor and Employment Law Conference session
"Challenges and Parameters of Diversity Initiatives"