EXHIBIT A

WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO DEI AT WORK

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on protected characteristics such as race and sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees are harmed. Title VII's protections apply equally to all racial, ethnic, and national origin groups, as well as both sexes.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination and can file a lawsuit under Title VII against businesses and other private sector employers. The Department of Justice can file a lawsuit under Title VII against state and local government employers based on an EEOC charge, following an EEOC investigation.

What can DEI-related discrimination look like?

Diversity, Equity, and Inclusion (DEI) is a broad term that is not defined in the statute. Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action **motivated**—in whole or in part—by an employee's race, sex, or another protected characteristic. In addition to unlawfully using quotas or otherwise "balancing" a workforce by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

Disparate Treatment

DEI-related discrimination can include an employer taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic. Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including:

- Hiring
- Firing
- Promotion
- Demotion
- Compensation
- Fringe benefits
- Exclusion from training
- Exclusion from mentoring or sponsorship programs
- Exclusion from fellowships
- Selection for interviews (including placement on candidate slates)

Limiting, Segregating, and Classifying

Title VII also prohibits employers from limiting, segregating, or classifying employees based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities. Prohibited conduct may include:

- Limiting membership in workplace groups, such as Employee Resource Groups (ERG) or other employee affinity groups, to certain protected groups
- Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources

Harassment

Title VII prohibits workplace harassment, which may occur when an employee is subjected to unwelcome remarks or conduct based on race, sex, or other protected characteristics. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive. Depending on the facts, DEI training may give rise to a colorable hostile work environment claim.

Retaliation

Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing employment discrimination related to DEI, participating in employer or EEOC investigations, or filing an EEOC charge. Reasonable opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.

Who can be affected by DEI-related discrimination?

Title VII protects employees, potential and actual applicants, interns, and training program participants.

What should I do if I encounter discrimination related to DEI at work?

If you suspect you have experienced DEI-related discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000 or by ASL videophone at 1-844-234-5122.

www.EEOC.gov

U.S. Equal Employment Opportunity Commission

What You Should Know About DEI-Related Discrimination at Work

Diversity, Equity and Inclusion (DEI) is a broad term that is not defined in Title VII of the Civil Rights Act of 1964 (Title VII). Title VII prohibits employment discrimination based on protected characteristics such as race and sex. Under Title VII, DEI initiatives, policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's or applicant's race, sex, or another protected characteristic.

1. If I believe I've experienced discrimination related to DEI at work, can I file a lawsuit in federal court alleging a violation of Title VII without taking any other steps?

No. Before you can sue your employer in federal court for a violation of Title VII, you first must file a charge of discrimination (an administrative complaint) with the U.S. Equal Employment Opportunity Commission (EEOC). After you file a charge of discrimination with the EEOC, there are other steps in the administrative process that must be completed before you can file a lawsuit in federal court. To learn more about these steps, please visit: **https://www.eeoc.gov/what-you-can-expect-after-you-file-charge (https://www.eeoc.gov/what-you-can-expect-after-you-file-charge)** . Unless you timely bring an EEOC charge first, you cannot get a "right to sue" letter (also known as a "Notice of Right to Sue") that would allow you to bring a Title VII claim in federal court.**[1]**

2. If I believe I've experienced discrimination related to DEI at work, what federal government entity can help me?

If you are not a federal employee, you first need to file a charge of discrimination with the EEOC (an "EEOC charge"). This is true no matter what type of non-federal employer you work for (a private sector employer, or a state or local government employer). An EEOC charge is an administrative complaint. Unless you timely file a charge of discrimination with the EEOC first, you cannot get a "right to sue" letter (also known as a "Notice of Right to Sue") that would allow you to bring a Title VII claim in federal court.**[2]**

The EEOC enforces Title VII against private sector employers with 15 or more employees, and the Department of Justice enforces the statute against state and local government employers.**[3]** For businesses and other private sector employers, the EEOC both investigates charges of discrimination against these employers and is authorized to bring a lawsuit against them. The EEOC can file a lawsuit after the agency has determined there is reasonable cause to believe that discrimination has occurred, and the agency is unable to resolve the matter through a process called "conciliation."

For state and local government employers, the EEOC is responsible for investigating charges of discrimination against such employers. If the agency determines there is reasonable cause to believe that discrimination has occurred and the agency is unable to resolve the matter through conciliation, the EEOC then refers those charges to DOJ for potential litigation by the Department.

3. What if I am a federal employee and have experienced discrimination related to DEI at work? What is the complaint process?

If you are a federal employee and believe your federal agency employer discriminated against you based on a protected characteristic as a result of, or related to, DEI, you first must contact an EEO counselor at your federal agency employer. Check out **EEOC's overview of the federal sector EEO complaint process (https://www.eeoc.gov/federal-sector/overview-federal-sector-eeo-complaint-process)** for more details and steps.

4. Do Title VII's protections only apply to individuals who are part of a "minority group," (such as racial or ethnic minorities, workers with non-American national origins, "diverse" employees, or "historically under-represented groups"), women, or some other subset of individuals?

No. Title VII's protections apply equally to all workers. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees or applicants are harmed.**[4]** This has been the long-standing position of the EEOC and the Supreme Court.**[5]**

The EEOC does not require a higher showing of proof for so-called "reverse" discrimination claims.**[6]** The EEOC's position is that there is no such thing as "reverse" discrimination; there is only discrimination. The EEOC applies the same standard of proof to all race discrimination claims, regardless of the victim's race.**[7]**

5. Are only employees protected from DEI-related discrimination at work?

No. Title VII protects employees, applicants, and training or apprenticeship program participants.**[8]** Title VII also may apply to interns. Depending on the facts, interns may be covered as employees, as applicants, or as training program participants.**[9]**

A charge of discrimination may be filed with the EEOC by any person claiming to be aggrieved. Additionally, a charge can be brought on behalf of an aggrieved person by a third-party, such as an organization. Finally, a Commissioner of the EEOC may bring a charge.**[10]**

6. Are only employers "covered entities" under Title VII, that is, entities which must comply with Title VII's prohibition on discrimination?

No. Title VII applies to employers with 15 or more employees; employment agencies (including staffing agencies); entities which operate training programs (including on-the-job training programs); and labor organizations (like unions).**[11]** Employers can be liable for the actions of their agents (including recruiters and staffing agencies).**[12]**

7. When is a DEI initiative, policy, program, or practice unlawful under Title VII?

Under Title VII, an employer initiative, policy, program, or practice may be unlawful if it involves an employer or other covered entity taking an employment action motivated—in whole or in part—by race, sex, or another protected characteristic.**[13]**

Among other things, Title VII bars discrimination ("disparate treatment") against applicants or employees in hiring, firing, compensation, or any term, condition, or privilege of employment.**[14]** The prohibition against discrimination applies to a wide variety of aspects of employment. In order to allege a colorable claim of discrimination, workers only need to show "some injury" or "some harm" affecting their "terms, conditions, or privileges" of employment.**[15]** The prohibition against disparate treatment, including DEI-related disparate treatment, includes disparate treatment in:

- Hiring;**[16]**
- Firing;**[17]**
- Promotion;**[18]**
- Demotion;**[19]**
- Compensation;**[20]**
- Fringe benefits;**[21]**
- Access to or exclusion from training**[22]** (including training characterized as leadership development programs);**[23]**
- Access to mentoring, sponsorship, or workplace networking / networks;**[24]**
- Internships (including internships labeled as "fellowships" or "summer associate" programs);**[25]**
- Selection for interviews,**[26]** including placement or exclusion from a candidate "slate" or pool;
- Job duties or work assignments.**[27]**

Title VII also prohibits employers from limiting, segregating, or classifying employees or applicants based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities.**[28]** This prohibition applies to employee activities which are employer-sponsored (including by making available company time, facilities, or premises, and other forms of official or unofficial encouragement or participation), such as employee clubs or groups.**[29]** In the context of DEI programs, unlawful segregation can include limiting membership in workplace groups, such as Employee Resource

Groups (ERG), Business Resource Groups (BRGs), or other employee affinity groups, to certain protected groups.**[30]**

Unlawful limiting, segregating, or classifying workers related to DEI can arise when employers separate workers into groups based on race, sex, or another protected characteristic when administering DEI or any trainings, workplace programming, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources.**[31]**

Employers instead should provide "training and mentoring that provides workers *of all backgrounds* the opportunity, skill, experience, and information necessary to perform well, and to ascend to upper-level jobs."**[32]** Employers also should ensure that "employees *of all backgrounds* . . . have equal access to workplace networks."**[33]**

8. Can an employer excuse its DEI-related considerations of race, sex, or another protected characteristic, provided that the protected characteristic wasn't the sole or deciding factor for the employer's decision or employment action?

No. For there to be unlawful discrimination, race or sex (or any other protected characteristic under Title VII) does not have to be the exclusive (sole) reason for an employer's employment action or the "but-for" (deciding) factor for the action. An employment action still is unlawful even if race, sex, or another Title VII protected characteristic was just one factor among other factors contributing to the employer's decision or action.**[34]**

9. Can an employer justify taking an employment action based on race, sex, or another protected characteristic because the employer has a business necessity or interest in "diversity," including preferences or requests by the employer's clients or customers?

No. Employers violate Title VII if they take an employment action motivated—in whole or in part—by race, sex, or another protected characteristic.**[35]** Title VII explicitly provides that a "demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination."**[36]**

In particular, client or customer preference is not a defense to race or color discrimination.**[37]** Basing employment decisions on the racial preferences of

clients, customers, or coworkers constitutes intentional race discrimination. Employment decisions based on the discriminatory preferences of clients, customers, or coworkers are just as unlawful as decisions based on an employer's own discriminatory preferences.**[38]**

Title VII allows employers to raise a bona fide occupational qualification (BFOQ) as an affirmative defense in very limited circumstances to excuse hiring or classifying any individual based on religion, sex, or national origin. The exemption applies where religion, sex, or national origin is a bona fide occupational qualification "reasonably necessary to the normal operation of that particular business or enterprise." However, this very limited carve-out for BFOQ excludes race and color. **[39]**

Title VII does not provide any "diversity interest" exception to these rules. Nor has the Supreme Court ever adopted such an exception. No general business interests in diversity and equity (including perceived operational benefits or customer/client preference) have ever been found by the Supreme Court or the EEOC to be sufficient to allow race-motivated employment actions.**[40]**

10. Can an employer's DEI training create a hostile work environment?

Title VII prohibits workplace harassment, which may occur when an employee is subjected to unwelcome remarks or conduct based on race, sex, or other protected characteristics. Harassment is illegal when it results in an adverse change to a term, condition or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive.**[41]**

Depending on the facts, an employee may be able to plausibly allege or prove that a diversity or other DEI-related training created a hostile work environment by pleading or showing that the training was discriminatory in content, application, or context. In cases alleging that diversity trainings created hostile work environments, courts have ruled in favor of plaintiffs who present evidence of how the training was discriminatory (for example, in the training's design, content, or execution) or, at the motion-to-dismiss stage, who make plausible allegations that explain how the training was discriminatory.**[42]**

11. Does Title VII protect employees who oppose unlawful policies or practices, including certain DEI practices or trainings?

Title VII prohibits employers and other "covered entities" from retaliating because an individual has engaged in protected activity under the statute.**[43]** Generally, protected activity consists of either participating in an EEO process (such as an employer or EEOC investigations or filing an EEOC charge) or opposing conduct made unlawful by Title VII. Depending on the facts, protected opposition could include opposing unlawful employment discrimination related to an employer policy or practice labeled as "DEI.".**[44]**

As previously noted by the Commission, courts have held that opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.**[45]**

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[1] 42 U.S.C. § 2000e–5(e)(1), (f)(1).

[2] 42 U.S.C. § 2000e–5(b), (f)(1); 29 CFR § 1601.28.

[3] 42 U.S.C. 2000e-5(f)(1).

[4] Title VII prohibits, among other things, employers from "fail[ing] or refus[ing] to hire or . . . discharg[ing] *any individual*, or otherwise . . . discriminat[ing] against *any individual* with respect to his compensation, terms, conditions, or privileges of employment *because of such individual's* race, color, religion, sex, or national origin;" and "limit[ing], segregat[ing], or classify[ing] his employees or applicants for employment in any way which would deprive or tend to deprive *any individual* of employment opportunities or otherwise adversely affect his status as an employee, because of *such individual's* race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1)-(2) (emphases added).

[5] *See, e.g.,* EEOC, Section 15 Race and Color Discrimination, Compliance Manual § 15-II, EEOC-CVG-2006-1 (Apr. 19, 2006) ("EEOC Race Discrimination Guidance"), available at https://www.eeoc.gov/laws/guidance/section-15-race-and-color-discrimination ("Congress drafted the statute broadly to cover race or color discrimination against anyone – Whites, Blacks, Asians, Latinos, Arabs, American Indians and Alaska Natives, Native Hawaiians and Pacific Islanders, persons of more than one race, and all other persons."); *see, e.g., McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 280 (1976) (holding that Title VII protects all races, including white employees, from employment discrimination and observing that the EEOC "has consistently interpreted Title VII to proscribe racial discrimination in private employment against whites on the same terms as racial discrimination against

nonwhites"); U.S. Br. at 8-9, 12-13, *Ames v. Ohio Dep't of Youth Services* (No. 23-1039) (Dec. 16, 2024), available at **https://www.eeoc.gov/sites/default/files/2024-12/Ames%20v%20Ohio%20Dep%27t%20of%20Youth%20Services%20SCt%20am-brf%2012-24%20jlg.pdf (https://www.eeoc.gov/sites/default/files/2024-12/Ames%20v%20Ohio%20Dep%27t%20of%20Youth%20Services%20SCt%20am-brf%2012-24%20jlg.pdf)** (the EEOC unanimously voted to join the United States' amicus brief).

[6] In the current Supreme Court term (OT 24-25), the Supreme Court is considering a case, *Ames v. v. Ohio Department of Youth Services* (No. 23-1039), regarding whether the claims of "majority-group" plaintiffs must meet a "heightened" evidentiary standard (the "background circumstances" test) in order to prevail on a Title VII claim. The EEOC unanimously voted to join an amicus brief (a "friend of the court" brief) on behalf of the United States government before the Supreme Court, arguing that the "'background circumstances' requirement has no basis in Title VII's text, contradicts this Court's precedent, and frustrates the proper administration of the McDonnell Douglas framework." U.S. Br. at 21, *Ames*.

[7] See EEOC Race Discrimination Guidance, Part 15-II (noting the Commission "applies the same standard of proof to all race discrimination claims, regardless of the victim's race or the type of evidence used"); *McDonald*, 427 U.S. at 280 (holding "Title VII prohibits racial discrimination against the white petitioners in this case upon the same standards as would be applicable" if the petitioners were Black) (emphasis added); U.S. Br. at 10-11, 13, 19, *Ames* (observing that "[c]onsistent with *McDonald*, the EEOC has long understood Title VII to require that the claims of minority and majority-group plaintiffs be assessed in the same fashion").

[8] *See* EEOC, Section 2 Threshold Issues, Part 2-III(A), available at https://www.eeoc.gov/laws/guidance/section-2-threshold-issues (EEOC Threshold Issue Guidance) (covered individuals include "[e]mployees and applicants for employment," "[f]ormer employees," and "[a]pplicants to, and participants in, training and apprenticeship programs"); 42 U.S.C. § 2000e-2(a); 42 U.S.C. § 2000e–3(a); 42 U.S.C. § 2000e-2(d) (protecting applicants to, and participants in, training programs, regardless of whether the individual is an employee).

[9] *See* EEOC Threshold Issues Guidance, Part 2-III(A)(1)(c) ("volunteers", including unpaid interns, "may also be covered by the EEO statutes if the volunteer work is required for regular employment or regularly leads to regular employment with the same entity," as "[i]n such situations, discrimination by the respondent operates to

deny the charging party an employment opportunity"); EEOC Information Discussion Letter, Federal EEO Laws: When Interns May Be Employees (Dec. 8, 2011), available at https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-231; 42 U.S.C. § 2000e-2(d) (protecting applicants to, and participants in, training programs, regardless of whether the individual is an employee).

[10] 42 U.S.C. § 2000e-5(b); *see also* EEOC, Commissioner Charges, available at https://www.eeoc.gov/commissioner-charges.

[11] 42 U.S.C. § 2000e-2(a) (employers); § 2000e-2(b) (employment agencies); § 2000e-2(d) (training programs); § 2000e-2(c) (labor organizations).

[12] *Burlington Indus. v. Ellerth*, 524 U.S. 742, 754 (1998) ("[T]he term 'employer' is defined under Title VII to include 'agents.'" (citing 42 U.S.C. § 2000e(b))); EEOC, Notice No. 915.002, Enforcement Guidance: Application of EEO Laws to Contingent Workers Placed by Temporary Employment Agencies and Other Staffing Firms, at 2260 (1997).

[13] *See* 42 U.S.C. § 2000e–2(m) (An "unlawful employment practice is established" if "race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.") (added to Title VII in the Civil Rights Act of 1991).

[14] 42 U.S.C. § 2000e–2(a)(1).

[15] *See Muldrow v. City of St. Louis, Missouri, et. al.*, 144 S. Ct. 967, 974 (explaining that "terms [or] conditions" should be interpreted broadly).

[16] 42 U.S.C. § 2000e–2(a)(1) ("hire").

[17] *Id.* ("discharge").

[18] *See, e.g.*, EEOC Enforcement Guidance on Terms, Conditions, And Privileges of Employment, Part § 613.6(a) ("The opportunity to advance in a job is also a term, condition, or privilege of employment."), available at https://www.eeoc.gov/laws/guidance/cm-613-terms-conditions-and-privileges-employment.

[19] *Malin v. Hospira, Inc.*, 762 F.3d 552, 558 (7th Cir. 2014) ("demoting or failing to promote an employee is an adverse employment action that can give rise to liability under Title VII.").

[20] 42 U.S.C. § 2000e–2(a)(1) ("compensation").

[21] EEOC Race Discrimination Guidance, Part 15-VII(B)(6) ("Employees must receive compensation without regard to race. All forms of compensation are covered, such as salary, overtime pay, bonuses, stock options, expense accounts, commissions, life insurance, vacation and holiday pay, and benefits.").

[22] 42 U.S.C. § 2000e–2(a)(1) ("privileges of employment"); 42 U.S.C. § 2000e-2(d) (barring discrimination in training programs, "including on-the-job training programs"); *see, e.g.*, EEOC Race Discrimination Guidance, Part 15-VII(B)(3) ("As with other aspects of the employment relationship, race cannot be a factor in who receives training and constructive feedback."); EEOC Enforcement Guidance on Terms, Conditions, And Privileges of Employment, Part § 613.6(a) ("The opportunity to advance in a job is also a term, condition, or privilege of employment."), available at https://www.eeoc.gov/laws/guidance/cm-613-terms-conditions-and-privileges-employment; EEOC Compliance Manual Section 2 Threshold Issues, Part 2(II)(B)(1) (listing training as a term, condition, or privilege of employment), available at https://www.eeoc.gov/laws/guidance/section-2-threshold-issues; EEOC, CM-618 Segregating, Limiting, and Classifying Employees, EEOC-CVG-1984-2, Part 618.1(b) (Oct. 1983), available at https://www.eeoc.gov/laws/guidance/cm-618-segregating-limiting-and-classifying-employees ("job-related courses on company time and at the company's expense . . . constitute a term, condition, or privileges of employment").

[23] EEOC Race Discrimination Guidance, Part 15-VII(B) ("Employers cannot permit race bias to affect work assignments, performance measurements, pay, *training*, *mentoring or networking*, discipline, *or any other term, condition, or privilege of employment*.") (emphases added).

[24] *Id.*, Part 15-VII(B) ("Employers cannot permit race bias to affect . . . mentoring or networking . . . or any other term, condition, or privilege of employment."); *id.*, Part 15-VII(B)(4) ("Workplace networks. Informal workplace networks can be just as important to an organization as official job titles and reporting relationships. Thus, an employee's success may depend not only on his or her job duties, but also on his or her integration into important workplace networks. Employers cannot allow racial bias to affect an employee's ability to become part of these networks.").

[25] 42 U.S.C. § 2000e-2(a); 42 U.S.C. § 2000e–3(a); 42 U.S.C. § 2000e-2(d) (protecting applicants to, and participants in, training programs, regardless of whether the

individual is an employee); EEOC Threshold Issues Guidance, Part 2-III(A)(1)(c) ("volunteers", including unpaid interns, "may also be covered by the EEO statutes if the volunteer work is required for regular employment or regularly leads to regular employment with the same entity"); EEOC Information Discussion Letter, Federal EEO Laws: When Interns May Be Employees (Dec. 8, 2011), available at https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-231.

[26] *See, e.g.*, EEOC Race Discrimination Guidance, Part 15-VI(A)(4) ("The process of screening or culling recruits presents another opportunity for discrimination. Race obviously cannot be used as a screening criterion."). Executing "diverse slate" policies also can require employers to ask or otherwise obtain pre-employment information about race, or another protected characteristic. "[P]re-employment questions about race can suggest that race will be used as a basis for making selection decisions. If the information is used in the selection decision and members of particular racial groups are excluded from employment, the inquiries can constitute evidence of discrimination." EEOC, Facts about Race/Color Discrimination, available at https://www.eeoc.gov/laws/guidance/facts-about-racecolor-discrimination.

[27] EEOC Race Discrimination Guidance, Part 15-VII(B)(1) ("Work assignments are part-and-parcel of employees' everyday terms and conditions of employment.").

[28] 42 U.S.C. § 2000e–2(a)(2).

[29] EEOC, CM-618 Segregating, Limiting, and Classifying Employees, EEOC-CVG-1984-2, Part 618.4 ("Segregated Employee Activities") (Oct. 1983), available at https://www.eeoc.gov/laws/guidance/cm-618-segregating-limiting-and-classifying-employees.

[30] *Id.*; *see* EEOC Race Discrimination Guidance, Part 15-VII(B)(4) ("Informal workplace networks can be just as important to an organization as official job titles and reporting relationships. Thus, an employee's success may depend not only on his or her job duties, but also on his or her integration into important workplace networks. Employers cannot allow racial bias to affect an employee's ability to become part of these networks."); *see also id.*, Example 25 and n. 150.

[31] 42 U.S.C. § 2000e-2(a); *cf. United States v. Int'l Longshoremen's Ass'n*, 460 F.2d 497, 500 (4th Cir. 1972) ("Racial segregation limits both black and white employees to advancement only within the confines of their races.").

[32] EEOC Race Discrimination Guidance, Part 15-IX (Proactive Prevention).

[33] *Id.*

[34] *See* 42 U.S.C. § 2000e–2(m) (providing for liability "even though other factors also motivated the practice"); EEOC Race Discrimination Guidance ("Title VII is violated if race was all or part of the motivation for an employment decision.").

[35] EEOC Race Discrimination Guidance, Part 15-V.A.1.

[36] 42 U.S.C. § 2000e-2(k)(2) ("A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination").

[37] *See* EEOC Race Discrimination Guidance ("Title VII also does not permit racially motivated decisions driven by business concerns – for example, concerns about the effect on employee relations, or the negative reaction of clients or customers. Nor may race or color ever be a bona fide occupational qualification under Title VII.") (citing *International Union, UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 199 (1991)); *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 668-69 (1987).

[38] *Id.*; *see also* EEOC, "Questions and Answers about Race and Color Discrimination in Employment," EEOC-NVTA-2006-1 (April 2006), available at **https://www.eeoc.gov/laws/guidance/questions-and-answers-about-race-and-color-discrimination-employment (https://www.eeoc.gov/laws/guidance/questions-and-answers-about-race-and-color-discrimination-employment)** .

[39] *See* 42 U.S.C. § 2000e-2(e) (providing a limited exception permitting disparate treatment "on the basis of [an individual's] religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise").

[40] *See* EEOC Race Discrimination Guidance, Part 15-VI(C) (observing as of 2006, the "Supreme Court has not yet ruled on whether an "operational need" or diversity rationale could justify voluntary affirmative action efforts under Title VII"). The Commission did not take a position on this issue in its race discrimination guidance, nor has it since then. *See also id.* ("caution[ing] that very careful implementation of affirmative action and diversity programs is recommended to avoid the potential for

running afoul of the law," but stating "Title VII permits diversity efforts designed to open up opportunities to everyone" and approving of "workforce diversity efforts . . . under which employers voluntarily promote an inclusive workplace" and "create a culture of respect for individual differences") (citing *Frank v. Xerox Corp*., 347 F.3d 130, 137 (5th Cir. 2003) (a jury could consider Xerox's "Balanced Workforce Initiative" (BWF), in which Xerox identified explicit, specific racial goals for each grade and job level, to be direct evidence of discrimination against Blacks in light of evidence that Blacks were considered to be "over-represented" and Whites "under-represented," and managers were evaluated on how well they complied with the BWF; thus "a jury looking at these facts could find that Xerox considered race in fashioning its employment policies and that because Plaintiffs were black, their employment opportunities had been limited"); *Taxman v. Board of Education of the Township of Piscataway,* 91 F.3d 1547, 1557-58 (3d Cir. 1996) (holding that where Black employees were not underutilized or under-represented, school district conducting reduction in force could not choose to retain a Black employee instead of a White employee of equal seniority, ability, and qualifications, solely on grounds of diversity)).

[41] *See* EEOC Race Discrimination Guidance, Part 15-VII(A); *see also Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761–762 (1998) ("A tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."); *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986) (actionable harassment "must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.") (cleaned up).

[42] *See* Brief of the Equal Employment Opportunity Commission As Amicus Curiae in Support of Neither Party, *Vavra v. Honeywell International, Inc.*, No. 23-2823 (7th Cir. Feb. 6, 2024) at 21 ("In discrimination cases involving anti-discrimination trainings, courts have ruled in favor of plaintiffs who present this type of evidence" of "how the training could be discriminatory – for example, in design or execution," "or, at the motion-to-dismiss stage, who make plausible allegations that explain how the training was discriminatory.") (citing *Hartman v. Pena*, 914 F. Supp. 225 (N.D. Ill. 1995); *De Piero v. Pa. State Univ.*, No. 23-cv-2281, 2024 WL 128209, at *7 (E.D. Pa. Jan. 11, 2024)).

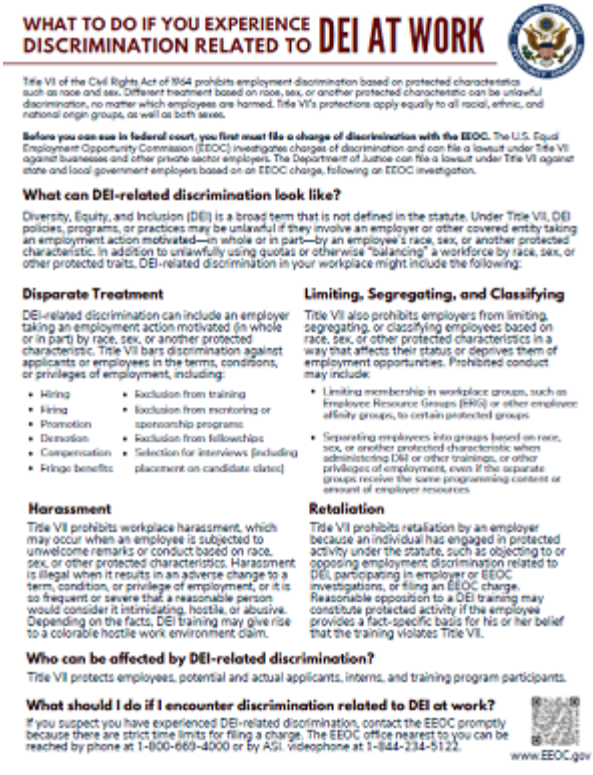
[43] *See* EEOC, Enforcement Guidance on Retaliation and Related Issues, Part I.A, https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues.

[44] *See id.*, EEOC Race Discrimination Guidance, Part 15-VII(C) (Retaliation).

[45] Brief of the EEOC as Amicus Curiae in Support of Neither Party, *Vavra v. Honeywell International, Inc.*, No. 23-2823 (7th Cir. Feb. 6, 2024) at 20 (opposition to DEI-related training, "such as unconscious bias training, may constitute protected activity where the plaintiff provides a fact-specific basis for his belief that the training violated Title VII")

For More Information:

What To Do If You Experience Discrimination Related to DEI at Work (https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work)



WHAT TO DO IF YOU EXPERIENCE DISCRIMINATION RELATED TO **DEI AT WORK**

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on protected characteristics such as race and sex. Different treatment based on race, sex, or another protected characteristic can be unlawful discrimination, no matter which employees are harmed. Title VII's protections apply equally to all racial, ethnic, and national origin groups, as well as both sexes.

Before you can sue in federal court, you first must file a charge of discrimination with the EEOC. The U.S. Equal Employment Opportunity Commission (EEOC) investigates charges of discrimination and can file a lawsuit under Title VII against businesses and other private sector employers. The Department of Justice can file a lawsuit under Title VII against state and local government employers based on an EEOC charge, following an EEOC investigation.

What can DEI-related discrimination look like?

Diversity, Equity, and Inclusion (DEI) is a broad term that is not defined in the statute. Under Title VII, DEI policies, programs, or practices may be unlawful if they involve an employer or other covered entity taking an employment action motivated—in whole or in part—by an employee's race, sex, or another protected characteristic. In addition to unlawfully using quotas or otherwise "balancing" a workforce by race, sex, or other protected traits, DEI-related discrimination in your workplace might include the following:

Disparate Treatment

DEI-related discrimination can include an employer taking an employment action motivated (in whole or in part) by race, sex, or another protected characteristic. Title VII bars discrimination against applicants or employees in the terms, conditions, or privileges of employment, including:

- Hiring
- Firing
- Promotion
- Demotion
- Compensation
- Fringe benefits
- Exclusion from training
- Exclusion from mentoring or sponsorship programs
- Exclusion from fellowships
- Selection for interviews (including placement on candidate slates)

Limiting, Segregating, and Classifying

Title VII also prohibits employers from limiting, segregating, or classifying employees based on race, sex, or other protected characteristics in a way that affects their status or deprives them of employment opportunities. Prohibited conduct may include:

- Limiting membership in workplace groups, such as Employee Resource Groups (ERGs) or other employee affinity groups, to certain protected groups
- Separating employees into groups based on race, sex, or another protected characteristic when administering DEI or other trainings, or other privileges of employment, even if the separate groups receive the same programming content or amount of employer resources

Harassment

Title VII prohibits workplace harassment, which may occur when an employee is subjected to unwelcome remarks or conduct based on race, sex, or other protected characteristics. Harassment is illegal when it results in an adverse change to a term, condition, or privilege of employment, or it is so frequent or severe that a reasonable person would consider it intimidating, hostile, or abusive. Depending on the facts, DEI training may give rise to a colorable hostile work environment claim.

Retaliation

Title VII prohibits retaliation by an employer because an individual has engaged in protected activity under the statute, such as objecting to or opposing employment discrimination related to DEI, participating in employer or EEOC investigations, or filing an EEOC charge. Reasonable opposition to a DEI training may constitute protected activity if the employee provides a fact-specific basis for his or her belief that the training violates Title VII.

Who can be affected by DEI-related discrimination?

Title VII protects employees, potential and actual applicants, interns, and training program participants.

What should I do if I encounter discrimination related to DEI at work?

If you suspect you have experienced DEI-related discrimination, contact the EEOC promptly because there are strict time limits for filing a charge. The EEOC office nearest to you can be reached by phone at 1-800-669-4000 or by ASL videophone at 1-844-234-5122.

www.EEOC.gov

(https://www.eeoc.gov/what-do-if-you-experience-discrimination-related-dei-work)

Section 15 Race and Color Discrimination | U.S. Equal Employment Opportunity Commission (https://www.eeoc.gov/laws/guidance/section-15-

race-and-color-discrimination)

Facts about Race/Color Discrimination | U.S. Equal Employment Opportunity Commission (https://www.eeoc.gov/laws/guidance/facts-about-racecolor-discrimination)

Section 2 Threshold Issues | U.S. Equal Employment Opportunity Commission (https://www.eeoc.gov/laws/guidance/section-2-threshold-issues)

EEOC Informal Discussion Letter | U.S. Equal Employment Opportunity Commission (https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-231)

CM-613 Terms, Conditions, And Privileges of Employment | U.S. Equal Employment Opportunity Commission (https://www.eeoc.gov/laws/guidance/cm-613-terms-conditions-and-privileges-employment)

CM-618 Segregating, Limiting, and Classifying Employees | U.S. Equal Employment Opportunity Commission (https://www.eeoc.gov/laws/guidance/cm-618-segregating-limiting-and-classifying-employees)

Questions and Answers about Race and Color Discrimination in Employment | U.S. Equal Employment Opportunity Commission (https://www.eeoc.gov/laws/guidance/questions-and-answers-about-race-and-color-discrimination-employment)

Enforcement Guidance on Retaliation and Related Issues | U.S. Equal Employment Opportunity Commission (https://www.eeoc.gov/laws/guidance/enforcement-guidance-retaliation-and-related-issues)

Amicus Brief of the United States, _____ (https://www.eeoc.gov/sites/default/files/2024-12/Ames%20v%20Ohio%20Dep%27t%20of%20Youth%20Services%20SCt%20am-brf%2012-24%20jlg.pdf)