

NOW & NEXT

DEI Alert

JULY 18, 2022

The shifting legal landscape for DEI training

By Kamau A. Coar, Stacie B. Collier, Kendal H. Tyre, and Rekha Chiruvolu

Employers must navigate dramatic differences in state laws governing workplace DEI practices to implement effective—and compliant—training programs.



What's the Impact?

- / States are inconsistent on the issue—some require implicit bias workplace training while some prohibit discussing bias or systemic discrimination
- / Employers must tread carefully, especially those operating in multiple states
- / Reviewing DEI programming regularly, with the help of an outside consultant, can help accomplish goals and comply with applicable laws

One of the most important (and often overlooked) components of an effective DEI program is comfort that what your company hopes to do is legal. Doing the right thing is one thing; complying with the law in a quickly changing area can sometimes be another. Organizations will not be able to implement meaningful DEI programs unless and until they understand and are comfortable with what they can and cannot do from a legal perspective.

Recent changes in laws nationwide have made this area even more complex, confusing, and in some cases inconsistent for national employers. For example, states that have passed rules or proposed legislation requiring implicit bias workplace training for certain industries include:

STATE	INDUSTRIES REQUIRING BIAS TRAINING
California	Healthcare, legal, and real estate
Connecticut	Law enforcement
Illinois	Healthcare
Michigan	Healthcare
New Jersey	Law enforcement
New York	Healthcare and real estate
South Carolina	Real estate

Several states, including New York, California, Oregon, Minnesota, Maine, Illinois, Florida, Missouri, Oregon, West Virginia, and Texas have also implemented rules mandating continuing education on DEI and elimination of bias for attorneys. At least 17 states have also passed or proposed legislation to expand education on racism, unconscious bias, the contributions of specific racial ethnic groups to US history, or related topics.

On the other end of the spectrum, the Stop WOKE Act recently became effective in Florida, prohibiting employers from requiring training that “espouses or promotes” ideas about systemic racism or implicit bias. Similarly, 36 states have passed or proposed legislation to restrict education on systemic and institutional racism, inherent discrimination, white privilege, unconscious bias, and blaming groups for discrimination because of race or sex.

So what does this mean for your DEI program? We recommend the following:

- / Regularly review your program with an outside consultant to ensure that your goals and methodology are appropriate and legally compliant.
- / Take a comprehensive look at DEI across your operations—beyond just HR. There are numerous areas within your organization that can significantly impact the efficacy of your DEI program: recruiting, learning and development, benefits, supplier programs and procurement, privacy and data governance, communications, ESG and sustainability, compliance, and risk.
- / Your DEI team should work in tandem with your teams responsible for compliance and risk. Your methodologies are intended to identify past diversity, equity, and inclusion imbalances. Your solutions should work to balance mitigation of biases and inequities, while also ensuring that there is no undue harm to non-targeted groups.

Nixon Peabody's DEI Strategic Services Team will continue to monitor developments. Learn more about our [three-phased approach to help clients](#) (1) assess current efforts, (2) address challenges, and (3) guide long-term success.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

[Kamau A. Coar](#)

312.977.4422

kcoar@nixonpeabody.com

[Stacie B. Collier](#)

401.454.1018

sbcollier@nixonpeabody.com

[Kendal H. Tyre](#)

202.585.8368

kyre@nixonpeabody.com

[Rekha Chiruvolu](#)

202.585.8605

rchiruvolu@nixonpeabody.com
