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DEI Alert

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DEI as a risk factor for public companies

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Read how your company can understand and mitigate the legal risks related to your DEI initiatives.

What's the impact?

- US public companies have begun to publicly speak about DEI as a significant risk to their operations and brand.
- In 2024, at least ten companies in industries ranging from financial services, healthcare, software services, food and beverage, and airlines, have identified DEI as a significant risk in their 10-K filings.

For several years, companies have publicly identified the importance of diversity, equity, and inclusion (DEI) as an important component of their company values and goals. In recent months, US public companies have also begun to publicly speak about DEI as a significant risk to their operations and brand, creating new legal responsibilities and other issues to navigate.

The Securities and Exchange Commission (the SEC) requires most US public companies to publicly produce a 10-K statement, offering a detailed picture of the company's business, the risks it faces, and the operating and financial results for the fiscal year. Item 1A includes information about the most significant risks that apply to the company or to its securities.

In 2024 alone, dozens of companies in industries ranging from financial services, healthcare, software services, food and beverage, and airlines, including (Target, Sweetgreen, DuoLingo, Inc., KKR & Co., Jet Blue Airways Corporation, and Molson Coors Beverage Company) have identified DEI as a significant risk in their 10-K filings. The statements contained in these public filings include the risk that:

- Increased scrutiny on DEI initiatives may require additional costs or lead to litigation;
- Legal and judicial developments may necessitate changes to employment practices; and
- Varied and evolving views on DEI initiatives may negatively impact their brand, reputation, results of operations, financial conditions, and stock price.

Several companies have noted that some stakeholders could believe that their DEI initiatives were not expansive enough while other stakeholders could believe that the company's DEI initiatives went too far, and that the related risks could lead to wide-ranging issues from the loss of customers, clients, and vendors, as well as the ability to attract and retain talent.

The public identification of risks from companies' DEI initiatives may also create additional responsibilities and considerations for public companies. Key considerations include:

- How is your company keeping up to speed with evolving legal regulation and precedents related to DEI initiatives?
- Does your board and senior management have adequate oversight over your company's DEI initiatives to satisfy their duties regarding enterprise-wide risks?
- How does your company review, quantify, and mitigate not only the risks related to its DEI efforts, but also the risks related to potential inaction?

As DEI initiatives continue to grow for companies as both an aspiration and a risk to mitigate, companies should ensure that their understanding of the DEI legal landscape remains current, and that they undertake a comprehensive review of their DEI initiatives to ensure legal compliance.

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