Meaningful diversity and inclusion efforts in the workplace have evolved from being the right thing to do to being the smart thing to do—and now they are quickly moving toward being the essential thing companies must do to ensure success.

As of this writing, more than 300 chief executive officers and/or senior executive officers of well-known companies with global footprints have signed the CEO Action for Diversity and Inclusion pledge. By signing this pledge, they have committed to forming and/or revitalizing corporate diversity and inclusion (D&I) efforts by, among other things, creating structures to hold their organizations accountable for achieving meaningful advancements and results in diversity initiatives. Signing the pledge has demonstrated that a shift has occurred in employers' understanding of D&I initiatives and it is evident that cultural competence, diversity, and inclusion are now key business requirements that can have a real impact on organizations' bottom lines.

As a result, significant attention and emphasis is being placed on organizations' diversity initiatives—and companies without diversity programs are facing competition from rivals that are publicizing their D&I efforts in the media. Moreover, customers and vendors are increasingly demanding D&I initiatives from the companies with which they work.

From the worker's perspective, employees of organizations without meaningful D&I programs may think that their employers do not value diverse workforces or inclusive corporate cultures—and that, as employees, they are less protected from unlawful discrimination, harassment, or other illegal action. Such thoughts over time may cause these employees to resign, file more internal complaints, or even file lawsuits for innocuous behavior that is simply misperceived. For these reasons and others, prudent employers seeking to implement at least some strategic diversity and inclusion efforts (and, in so doing, perhaps reduce the risk of employment litigation) should keep in mind the following principles.

**Representation matters.**

(1) Employers may want to have a full-time executive focused on diversity and inclusion efforts within the organization and ensure that this person's role is visible to all stakeholders in the organization.
These roles may have any number of titles, including director of diversity and inclusion; chief diversity officer; director of inclusion; director of equity and community; director of multicultural affairs; director of diversity and professional development; diversity and inclusion manager; or chief culture officer. In some situations, depending on factors such as the size of the company, this person would have a team of individuals who serve as liaisons to several or all of the major departments within the organization.

(2) Employers may want to establish a diversity committee with participation from individuals at different levels of the organization.

The committee should include a range of team members from entry-level staff and rank-in-file employees to supervisors, managers, and senior executives. It is important to have executive participation because if a diversity committee lacks people with significant power or respect within an organization, this omission could send a signal that the committee is just for show and that the organization has no real investment in its success. In addition, key leaders and managers in the organization who will be responsible for implementing certain committee objectives must really buy in to D&I initiatives and set the tone for inclusion by taking ownership over their part.

(3) The executive diversity officer and the diversity committee should work together to identify strategic goals for the organization (perhaps using metrics to determine areas of weakness or areas for specific growth).

They must pay attention to the company’s existing D&I reputation and understand the corporate culture, because perception can often reveal where an organization has its strengths and where it needs to focus more attention.

**Hire diverse talent, but don’t stop there.**

Many employers make the mistake of trying only to recruit diverse talent without considering the other ways organizations can demonstrate their commitment to fostering an inclusive culture.

Successful diversity and inclusion programs recognize that diversity impacts various divisions of an organization. A few areas where diversity programs can have a direct impact on the bottom line of a business include:

- procurement, supply chain, vendors, and overall business development;
- recruitment and hiring;
- professional development and retention; and
- community outreach and involvement.

Companies may want to ensure that they not only have a diverse hiring pool, but that they also consider the vendors they utilize when setting forth D&I goals. For example, some companies are now starting to engage more minority- and women-owned businesses and small business enterprises as vendors. In addition, companies are partnering with various community organizations to do outreach such as supporting internship programs, sponsoring local school initiatives, engaging with veterans’ organizations, and providing college scholarships.
Professional development's connection to diversity is a key driver of success within organizations. This is because recruiting alone, without retention efforts, is futile; a revolving door within an organization can cause tremendous financial impact. Some examples of productive professional development within D&I programs include increasing the diversity within project groups or work teams; instituting mentoring programs; and offering employees continuing education courses, training programs, and the opportunity to attend industry group conferences. Companies will want to ensure that all employees have access to such programming. Another popular component of D&I programs is unconscious bias and sensitivity education training for managers. Unconscious bias trainings help ensure that key decision-makers regularly engage in self-examination so that decisions about who to staff on what projects, who to hire, and who to promote are not unduly influenced by deeply rooted implicit bias or stereotypes.

Understand that diversity encompasses racial and ethnic inclusion but so much more.

Most employers understand that Title VII of the Civil Rights Act of 1964 protects employees from discrimination, harassment, and retaliation on the basis of race, color, religion, national origin, or sex. In the last few years, the U.S. Equal Employment Opportunity Commission (EEOC) has argued that Title VII's prohibition on sex discrimination also forbids employment discrimination based on gender identity or sexual orientation. In addition, employment discrimination on the basis of pregnancy, genetic information, or disability is forbidden by, respectively, the Pregnancy Discrimination Act, the Genetic Information Nondiscrimination Act, and the Americans with Disabilities Act. Finally, the Age Discrimination in Employment Act (ADEA) and Older Workers Benefit Protection Act (OWBPA) prohibit discrimination the basis of age for individuals over the age of 40.

Some employers have limited their D&I efforts to these protected categories. As a result, if a situation involved an issue that was not on the EEOC charge form or intake questionnaire, then there is a possibility that the organization did not invest in it. Employers have found that this approach to D&I efforts will not suffice as diversity is a multifaceted issue.

Certain nuanced issues—such as navigating multigenerational issues within the workplace—require specific inclusion and integration efforts on the part of employers. For example, while the ADEA and OWBPA are designed to protect employees 40 years of age and older from discrimination, these statutes do not address the unique concerns of millennials and Generation Z, some of whom have brought claims against employers for reverse ageism. These employees have found that although they may have equal or more advanced skills in certain situations, they are still not being promoted and are more likely to be let go in the event of a layoff. In addition, millennials are demanding diverse, collegial, and inclusive work environments, and studies show that they are more likely to change employers until their work needs are satisfied. Accordingly, some employers have created anonymous employee engagement surveys to obtain feedback about employee attitudes or morale in the workplace. Employers have also strived to bridge generational gaps by providing opportunities for team-building activities and ensuring that various internal committees reflect the entire range of generations in the workplace. As a part of D&I efforts, employers can facilitate business resource groups (BRGs), employee resource groups (ERGs), or affinity group meetings as safe spaces for employees who identify with certain groups or for those who do not, but just want to learn.
Because employment laws are expanding to cover nuanced forms of discrimination, it is becoming increasingly important to have an expansive diversity and inclusion program that focuses on multiple forms of diversity and inclusion because focusing on a single issue or protected class is not sufficient and may be illegal.

**Conclusion**

In sum, the business case for diversity is perhaps stronger now than it has ever been. Significant data shows that workplaces strengthened by various forms of diversity are more productive, more innovative, and, overall, more successful than those that are not. Moreover, due to social media and the Internet, D&I successes or failures can become global news in an instant, creating positive or negative public relations for organizations. Employers cannot ignore this reality, but instead must adapt to a changing business community that requires meaningful D&I goals to be incorporated into corporate cultures to reduce reputational and legal risk while improving employee retention and productivity.

Notwithstanding the business case for D&I programs, there are legal risks associated with incorporating or in failing to update D&I plans. These risks include, but are not limited to, reverse discrimination lawsuits and certain D&I audit information becoming discoverable in future litigation. Prudent employers should evaluate the potential risks as well as the benefits prior to rolling out any D&I initiatives.