

U.S. and International Employers: Now Is the Time to Reaffirm Your Commitment to Diversity and Inclusion

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No doubt walking a difficult line in the wake of the election results, human resources professionals are tasked with cementing their companies' position as equal opportunity employers. At the same time, some female employees, employees with diverse racial and ethnic backgrounds, employees from different countries, and non-U.S. citizens working for U.S.-headquartered companies are feeling intimidated by news reports of hostility in the workplace. Some employees feel silenced and are afraid to take advantage of internal complaint procedures, decreasing the prospect for internal resolution.

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take advantage of internal complaint procedures, decreasing the prospect for internal resolution. Others may feel menaced or threatened by statements or actions.

As a result, employers should consider taking steps to reiterate their commitment to diversity and inclusion and to reassure potential victims of harassment and discrimination. This may include updating or recirculating relevant policies and protocols related to diversity and inclusion, harassment, and bullying, as well as procedures for initiating an internal complaint. Employers that have not developed these policies may view now as the opportune time to do so.

Making a timely statement about diversity, harassment, and/or discrimination risks an interpretation that the company is protesting the new administration. Concerned employers can (1) include disclaimer language to assure employees that reiterating the company's harassment and discrimination policies does not amount to support of either of the presidential candidates' positions; (2) invite questions or discussion about the statement to a specific person in human resources; or (3) frame the statement organically through an existing meeting or policy review that addresses other subjects.

In evaluating your policies and codes of conduct, there are a few considerations (particularly for global employers) to consider.

EEO Policies

Employers may wish to consider a broad policy statement of tolerance and inclusion that encompasses certain categories regardless of local law, such as ethnicity, race, color, gender identity, gender equality, concern about sexual or racial harassment, physical or mental disability, and political ideology. Employers can also consider strengthening language prohibiting bigotry, sexism, racism, homophobia, and xenophobia in action or attitude. Reviewing sexual harassment definitions and examples to ensure they are timely, comprehensive, and instructive is also helpful.

Bullying

"Bullying" or "harassment" not tied to a protected category violates the law in an increasing number of non-U.S. jurisdictions, so global employers may wish to include a general anti-bullying statement in their policies. These may contain a nonexhaustive list of prohibited behavior such as imposing unreasonable deadlines, humiliating workers or third parties, withholding material information to reduce an individual's effectiveness, and blocking training opportunities. Policies prohibiting bullying should make clear that bullying can take place over email, instant message, text message, or social media, as well as in person. Policy owners should remember that bullying that occurs outside the workplace may create risks for employers.

Discipline for Violations

Make clear in the policy that violations will result in discipline up to and including termination.

Investigation Protocols

When overhauling tolerance/inclusion policies, include [investigation protocols](#) in the review—and ensure thoroughness and fairness when [investigating complaints](#). Companies should review their investigation protocol, as well as how it is implemented in various jurisdictions. Call-out provisions in investigation protocols include:

- Look for clauses that may impose undue pressure on employees to resolve issues themselves or that permit employees to raise issues only with their immediate supervisors.
- Observe due process to ensure that discipline will hold up to challenges. Some countries give employees under investigation the right to an accompanying representative during a meeting—management must be aware of all available legal protections.
- To protect companies in situations in which claims are possible on both sides, investigations should conclude with written fact-finding, including credibility evaluations, rather than reaching a legal conclusion, such as “lack of sufficient evidence.”

Non-Retaliation

An audit of retaliation language is critical to your tolerance efforts. Employers have a duty to protect employees from retaliation and to ensure and promote a positive and respectful working environment. Put anti-retaliation language where employees can see it to help foster a culture where they feel safe enough to report violations without reprisal. This not only reduces legal risk, it increases workforce morale.

While no easy answers exist in a divided political climate, the timing is ripe for reflection on and reaffirmation of diversity and inclusion.

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