



PROGRAM MATERIALS

Program #36227

October 26, 2026

How to Implement Legally Sound DEI Programs That Improve Recruitment and Retention

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Today's Agenda

PART 1

The Changing Landscape: Executive Orders, DOJ Investigations & Court Decisions

Understanding what has changed — and what has not — in the federal legal framework governing DEI



Key Executive Orders Targeting DEI (2025)

Merit-Based Opportunity Order

Directs federal agencies to end 'illegal' DEI-based preferences in hiring, contracting, and grants. Does NOT define what constitutes 'illegal DEI' for private employers.

DEI Program Elimination EO

Eliminates federal DEI offices, positions, and training programs. Applies to federal government — private employers are not directly covered.

Gender Policy Order

Directs agencies to recognize only two sexes. Multiple courts have issued injunctions. Distinct from Title VII protections under *Bostock v. Clayton County* (2020).

Executive Order on Federal Contractors

Threatens to rescind contracts of companies with 'diversity-related' hiring. Scope and enforceability remain actively litigated.

"CRITICAL: Executive Orders apply to the federal government and federal contractors. They do NOT automatically change Title VII, the ADA, or other employment laws that govern private employers."

— Key Legal Distinction

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Documentation into DEL Program



Faulk v. Dimerco Express USA Corp. — Discrimination Still Exists

11TH CIRCUIT · APRIL 7, 2026

KEY FACTS

- ▶ A Dimerco management plan proposal explicitly called to 'hire Caucasian Sales & Marketing Manager/VP.' The author was later promoted to company president.
- ▶ An HR manager was instructed that Dimerco would only hire 'white Caucasians' as account executives.
- ▶ The company's president — upon receiving a document identifying applicant Kenny Faulk as Black — ordered his already-extended job offer to be rescinded.
- ▶ The compliance director advised the president to "reword [his] message" out of concern of getting sued.
- ▶ Shortly after rescinding Faulk's offer, Dimerco hired a white man with four misdemeanor convictions for the same account executive role.
- ▶ The 11th Circuit affirmed punitive damages at a 7.69-to-1 ratio, finding Dimerco's conduct 'exceedingly reprehensible' given repeated internal warnings.

CAUTIONARY TALE FOR EMPLOYERS

A senior DEI professional is not unnecessary overhead. They steer organizations away from legal risk and reputational damage.

DIMERCO

Damages Awarded

Lost Wages	\$90,000
Emotional Distress	\$300,000
Punitive Damages	\$3,000,000
TOTAL	\$3.39 Million

11th Cir., April 7, 2026 · 42 U.S.C. § 1981

The Legal Litmus Test: Is Your DEI Initiative Lawful?

A Framework for Distinguishing Preference-Based Programs from Open-Access Equity Initiatives

Not all DEI initiatives carry the same legal risk. The critical distinction under Title VII, § 1981, and current case law is whether a program confers a preference on — or excludes — individuals based on a protected class, versus whether it is open to all with a mission to advance fairness and equal opportunity.

⚠️ Higher Legal Risk

Preference-Based Programs

Programs that restrict eligibility, confer benefits, or make decisions based on race, gender, national origin, or other protected class.

- ✗ Internship or fellowship open only to candidates of a specific race or gender
- ✗ Promotion or bonus tied to meeting race/gender demographic targets (quotas)
- ✗ Training or mentorship program limited to one racial or ethnic group
- ✗ Hiring preference given explicitly to a protected class without open access
- ✗ Scholarship or award restricted to a single nationality or religion

These programs risk Title VII and § 1981 liability — regardless of intent.

✅ Lower Legal Risk

Open-Access Equity Initiatives

Programs open to all employees or applicants, with a documented mission to advance fairness, remove barriers, and expand opportunity — without excluding anyone.

- ✓ Leadership development program open to all, marketed broadly to underrepresented talent
- ✓ Pay equity audit to identify and close compensation gaps across all groups
- ✓ Pipeline partnerships with HBCUs and MSIs, with open application processes
- ✓ ERGs open to all employees with a mission to foster belonging and inclusion
- ✓ Bias awareness training available to all managers and employees

Open access + documented business justification + no quotas = legally sound DEI.

"The question is not whether your organization values diversity — it's whether your program treats any individual less favorably because of their protected class. Design for inclusion, not exclusion."

— Title VII Compliance Litmus Test — Natalie Holder, Esq., SPHR

Speaking Inclusively: Language Strategy in a Changing World

Effective DEI communication requires careful word choice that resonates without triggering unnecessary scrutiny. The goal: preserve the intent while adapting the framing.

LANGUAGE TO RECONSIDER

- ▶ "DEI program" → "Culture and Belonging initiative"
- ▶ "Diversity hire" → "Expanded talent pipeline"
- ▶ "Equity" (when used alone) → "Fairness" or "Equal opportunity"
- ▶ "BIPOC-centered program" → "Program open to all, focused on underserved talent"
- ▶ "Anti-racism training" → "Inclusive leadership and bias awareness training"

LANGUAGE THAT WORKS

- ▶ "Programs open to all employees that strengthen our culture"
- ▶ "Inclusive leadership development for all managers"
- ▶ "Talent pipeline partnerships that expand our reach"
- ▶ "Pay equity and compensation fairness review"
- ▶ "Belonging and engagement strategy"

"The phrase 'equal opportunity' is voters' top choice to describe an organization's goals. 'Diversity, equity, and inclusion' tests best among liberals; all other groups strongly prefer 'equal opportunity.'"

— Nxtlevel Diversity, Equity, and Inclusion Messaging Guide 2025

"Panic aggravates problems. Calm, strategic minds solve them. Reframe — don't retreat."

— Natalie Holder, Esq., SPHR

Retention Strategies: Data, Culture & Inclusive Leadership

Retention begins where recruitment ends. The same organizational gaps that create barriers to access also create environments where employees — particularly from historically underrepresented groups — are more likely to exit.

Expand Demographic Data Collection

Continue collecting demographic data but expand beyond race and gender to include: disability status, veteran status, LGBTQ+ identity (voluntary), caregiving responsibilities, socioeconomic background, and generational data.

Stay & Exit Interview Analysis

Disaggregate stay and exit interview data by demographic group. If certain groups are leaving at higher rates, that is actionable intelligence — and evidence of potential legal exposure if unaddressed.

Manager Accountability

Include inclusive leadership metrics in manager performance evaluations. Track promotion rates, project assignments, and sponsorship activity by demographic group.

Pay Equity Audits

Regular pay equity audits remain lawful, essential, and protective. Documented efforts to close gaps are a defense against discrimination claims.

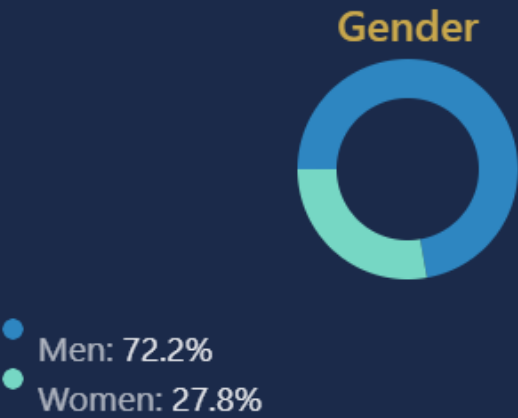
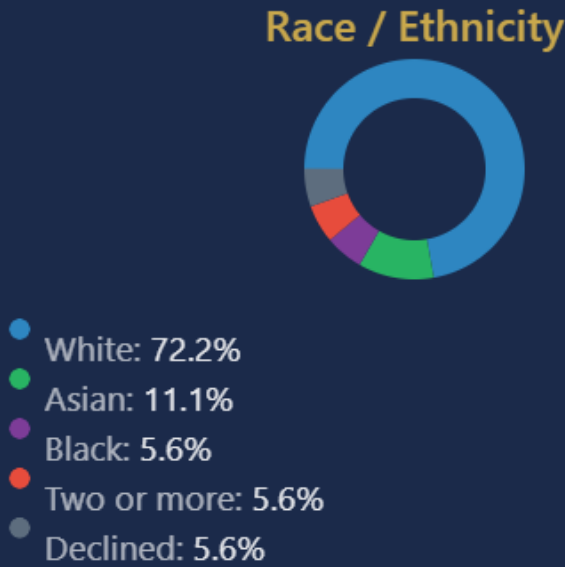
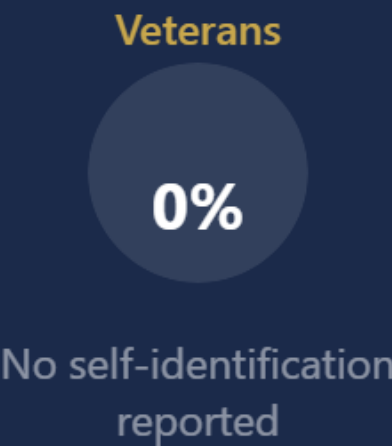
Demographic Metrics in Practice: CDO Report 2024

Demographic Metrics in Practice

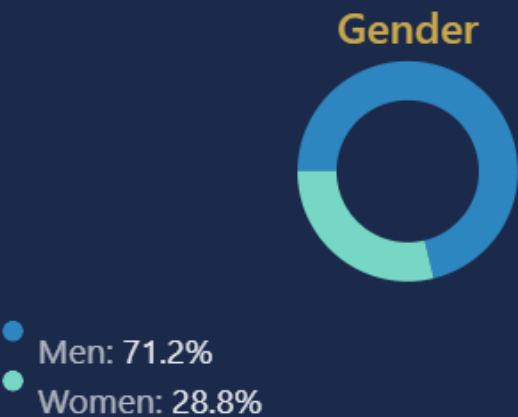
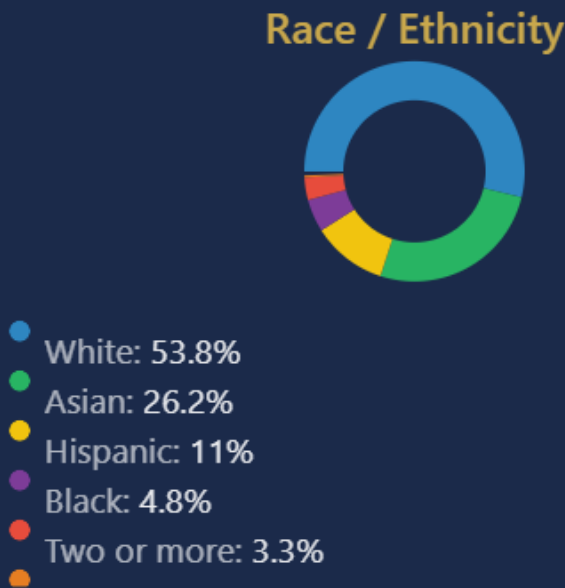
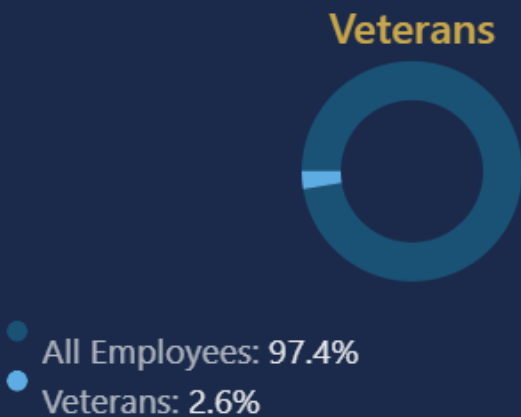
SLAC National Accelerator Laboratory · CDO Report FY24 · Source: Tableau & DOE Data Request

FY25 Opportunity
Expand HRIS demographic
data collections

LABORATORY SENIOR MANAGEMENT TEAM



OVERALL LABORATORY



Employee Resource Groups: Still Permissible & Powerful

Employee Resource Groups (ERGs) remain legally permissible when structured correctly. They are among the most powerful tools organizations have to support retention, culture, and advancement.

ERGS MUST BE:

- ▶ Open to ALL employees regardless of identity (allies, supporters, all welcome)
- ▶ Participation is voluntary — never tied to hiring or promotion decisions
- ▶ Organizationally supported with budget, executive sponsorship, and visibility
- ▶ Documented as professional development and business-aligned groups

ERGS CAN BE LEVERAGED FOR:

- ▶ Retention strategy — community, belonging, and peer networks reduce turnover
- ▶ Focus groups for new policies, programs, and communications

ERG Performance Credit

Credit ERG Work

ERG leadership, facilitation, and contributions should be credited toward performance evaluations

Make It Visible

Signal organizational value by formally recognizing ERG contributions in promotion decisions

Business Alignment

Connect ERGs to business outcomes: recruiting, retention, product feedback, and client engagement

Let's Build Your DEI Strategy Together

Reach out for further questions, legal guidance, or consultation on building, maintaining, and advancing your DEI initiatives in any political climate.



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