

WHY REDUCING IMPLICIT BIAS IS ESSENTIAL TO YOUR BUSINESS

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As thoroughly discussed in a recent two-part ADSC Wednesday Webinar presented by Benesch Law, that also included David Peitsch, Esq. and P.E., Keller's Chief Legal Officer, as well as its Ethics and Compliance Officer, implicit bias can impact every stage of the employment lifecycle, including recruitment, hiring, orientation, mentoring decisions, job assignments, promotions, performance reviews, marketing campaigns, discipline and termination. Implicit bias can be exercised at all levels of an organization, from the senior leadership to the most junior employee. All of your employees are at risk of perpetuating these biases.

This is a common example of how unconscious bias can lead to imperfect decisions in the workplace not based on facts, but based on preconceived views of general characteristics. Implicit bias does not necessarily stem from a person's intention. An employer may intend to make employment decisions based on facts and yet still perpetuate preconceived and inaccurate assumptions. This can have consequences on the performance of a business on several levels.

In the example above, when the employer rewards the younger employee with an important project—not because of that employee's actual skill set but based on an assumption—the employer risks a poor outcome if the younger employee lacks the needed skills. The employer also has lost out on the wisdom and experience the older employee may have brought to the project alongside the technical skills that employee may very well possess. The employer has now fostered a work environment in which stereotypes instead of merit impact employees' career paths. The perception or reality that the workplace does not evaluate based on ability or results can have a negative impact on morale and productivity.

Why is it important to disrupt these biases? Because they create barriers to opportunity for those who could benefit your business. Study after study has shown that diverse perspectives lead to more profitable strategies and better business. Also, government agencies and courts recognize the role of implicit bias in evaluating cases involving claims of discrimination based on protected characteristics such as age, race, religion, national origin, gender, and sexual orientation. The Equal Employment Opportunity Commission has defined illegal discrimination to include "unconscious stereotypes regarding the abilities, traits or performance of individuals belonging to certain racial groups." Some courts have held that discrimination can be shown through unconscious prejudice. In those instances, even good intentions do not matter.

We all have inherent biases; learning to recognize and control unintended outcomes of those biases is the challenge we face. For example, imagine that an employer has a high profile project that requires skills in technology. Faced with choosing between two employees, a Baby Boomer and a Gen Xer, the employer may opt for the younger worker, assuming his or her age makes them more likely to be comfortable with technology.

Implicit bias affects our perception of others and of reality, and that impacts our decision-making about the particular aspects of people's work we pay most attention to, how actively and openly we listen to ideas, and how much we affirm work and skills. These small daily decisions shape the paths of employees' careers, enabling some to move forward while causing others to stall out. Most employers have no intention of creating this result.

In today's environment, employers are even more focused on ensuring racial and gender equities in the workplace. In order to ensure that your company maintains a diverse and inclusive workforce and positive morale, disrupting implicit bias is essential.

How do we reduce the impact of the inevitable bias that comes into our workplace? There are three top actions every company should take now:

First, examine and reevaluate the language used in recruiting materials, internal communications and company handbooks. Make sure these documents are current on the law and that they are as free as possible

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from bias. Have a lawyer review the policies in conjunction with the business people implementing the policies. Find out how these policies have been and are being actually implemented in the workplace.

Second, pay special attention to the performance review process. Are the assessments strictly limited to job duties and performance, or are they overly broad in ways that might reward some employees and penalize others based on personal characteristics that do not involve merit? Take steps to ensure that the reviews are complete and honest and tied to the particular job duties of the position involved. Pay particular attention to how the reviews affect promotions and raises and the general progression of employees at your business.

Third, invest in good training by an outside professional. Look for someone with experience and make sure the training is customized for your business. Live and interactive trainings are most effective and provide employees with the opportunity to ask questions and follow up when needed. Make sure that employees at every level of your business attend the training. Top level employees are important role models and set the tone for

your entire business. If they take implicit bias seriously, others will.

Making an effort to reduce bias ensures that employment decisions are more consistently made based on the reality of and needs of the workplace, thereby increasing productivity and profitability and reducing potential legal liability. Recognizing that implicit bias affects every employer is the first step in ensuring that this bias is not holding back your employees or your business. Reducing implicit bias now will help further and improve your workplace for the future. ▲

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