



BARCLAY DAMON LLP

Diversity and Equity Policies

**Human Resources Professionals
Conference for the Disability Provider
Community**

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Diversity in the Workplace





Dramatic Change Since George Floyd's Death

- » An HR Policy Association [survey](#), representing 11 million employees, 85 percent said their organizations expanded inclusion activities and increased C-suite involvement in DEI since George Floyd's murder.
- » Human Resource Executive, [“One Year After George Floyd's Death, What's Changed for HR?”](#)

Corporations Take Action

- » 70 percent increased unconscious bias training
- » 50 percent disaggregate workforce data to provide better picture of employee demographics
- » Organizations shift language: use “structural racism,” “social injustice”



Corporate Acknowledgements: Nike

- » “While we strive to help shape a better society, our most important priority is to get our own house in order,” the letter reads. “Nike needs to be better than society as a whole. ... While we have made some progress over the past couple of years, we have a long way to go,”
- » <https://www.cnbc.com/2020/06/05/nike-ceo-note-to-workers-on-racism-must-get-our-own-house-in-order.html>

»» Words Matter

- » HR Director of Adidas resigned after a protest by 83 Adidas staff who had called for an investigation into her handling of racism, diversity, and inclusion in which she reportedly used the term “noise” at a meeting for employees when referring to the issue of racism.

Source: <https://www.forbes.com/sites/andrewbusby/2020/07/01/human-resources-boss-at-adidas-quits-as-diversity-continues-to-dominate-the-retail-agenda/?sh=76d6f38162c9>

»» Where to Start?

- » Self-assessment
 - » Employee surveys
 - » Committees
 - » Actions
-
- » Responses to complaint

Board of Directors Buy-In

- » Board needs to be comfortable with language and any efforts
- » Not just a statement: action
- » Sustainable, long-term action

»» DEI Statements

» What is it?

Outlines the Agency's commitment to furthering diversity, equity and inclusion in the workplace.

» Unique to the Agency

» Tie it to the mission, Agency's values

Examples: United Way

- » We take the broadest possible view of diversity.
- » **We value** the visible and invisible qualities that make you who you are.
- » **We welcome** that every person brings a unique perspective and experience to advance our mission and progress our fight for the health, education, and financial stability of every person in every community.
- » **We believe** that each United Way community member, donor, volunteer, advocate, and employee must have equal access to solving community problems.
- » **We strive** to include diversity, equity, and inclusion practices at the center of our daily work.
- » **We commit** to using these practices for our business and our communities.
- » Join us in embracing diversity, equity and inclusion for every person in every community.
- » LIVE UNITED
- » *Approved by the United Way U.S.A. Board of Trustees on March 6, 2019*

Examples: NYCON

- » The New York Council of Nonprofits (NYCON) works together with our members, other nonprofits, communities, funders and stakeholders to enrich communities by building the capacity of nonprofits through services and advocacy. We believe our mission is most effectively fulfilled through a commitment to diversity and inclusiveness as a core value and practice.
- » We maintain that building and sustaining diversity requires an ongoing commitment to inclusion that must find full expression in our organizational culture, values, norms and behaviors. Throughout our work, we support diversity across all lines of difference, including age, economic circumstance, ethnicity, sex, race, range of ability, religion, sexual orientation, and gender identity/expression. We aim to lead by example, viewing and encouraging diversity as a fundamental and abiding strength of New York State's nonprofit community.

NYCON Statement Con't

- » NYCON recognizes that its effectiveness will be enhanced and its mission well served when the practice of inclusion is reflected in all aspects of the organization and specifically when:
- » **Board Membership:** Our Board of Directors reflects the rich and growing diversity of our state and its regions, and the 501c3 nonprofit sector.
- » **Programming:** We create and implement programs using our awareness of cultural differences and treat all clients with respect. We seek engagement and input from the board members in our corporate family, employees, members, funders, and other stakeholders to ensure that our programs are aligned with mission, impactful, and inclusive.
- » **Policies and Procedures:** Our commitment to inclusiveness is evident in our organizational policies and procedures, as part of our strategic plan, and within our organizational goals.
- » **Employment:** Our staffing at every level of the organization is reflective of the diversity in the communities we serve. Associated recruitment and hiring practices reflect a commitment to the value of inclusion. We foster a workplace that respects each individual, seeks and values diverse perspectives, and ensures each employee can actively contribute to fulfilling the organization's mission.
- » **Funders and Donors:** We share our commitment to inclusion as a core value and practice with current and potential funders and donors and encourage our contributing to consider and embrace these principles

Your Own Statement

- » Express the Agency's commitment to DEI
- » Publish the statement: Consider giving it its own page on your website
- » Reiterate Agency's commitment in meetings, etc.

»» Culture Assessment

- » The culture may be fostering an atmosphere:
 - › That allows harassment, insensitive comments, jokes, etc.
 - › That discourages reporting
 - › May be in spite of policies and procedures that are in place
- » Note: A cultural audit is different than an investigation that seeks to determine whether a claimed incident of misconduct occurred.



What Does a Cultural Audit Involve?

- » Components of a cultural audit:
 - › Buy-in needed from the top
 - › Review of all relevant documents to include:
 - Board bylaws
 - Offer of employment letters
 - Employee handbooks (all versions)
 - Training documentation
 - › Interviews, in person if possible, to include:
 - A cross section of current employees from all departments and at all levels (full and part time)



What Does a Cultural Audit Involve? (Cont.)

- Possible former employees, if relevant
 - Department heads
 - Top management
 - Not-for-profit board chair and board members who lead relevant committees, such as human resources and compensation
- › Tour of physical space
 - › Analysis and recommendations

»» Why Involve the “Top”?

- » Buy-in from the top
 - › Essential for legitimacy of the audit and cooperation from all employees
 - › Otherwise a waste of time and money
 - › The “top” can be the employer organization’s CEO or the board of directors

»» Why Involve the “Top”? (Cont.)

- » Especially important if the audit is prompted by an incident involving upper management (think Fox News)
- » Designation of your contact within the organization
 - › To provide the information essential to the audit: Documents, names, and contact information for interviews
 - › With the authority to provide introductions to the interviewees



What Documents Should Be Reviewed?

- » Board bylaws
 - › Role of board in event of misconduct by highest level of management
 - › Description of Human Resources Committee, if any
 - › Potential other relevant board committees



What Documents Should Be Reviewed? (Cont.)

- » Offer of employment letter
 - › May contain a requirement for arbitration of any dispute
 - › May contain reading and acknowledgment of policies as a condition of employment



What Documents Should Be Reviewed? (Cont.)

- » Employee handbooks
 - › Why “handbooks” plural? Policies may have changed over different versions without retraining.
 - › Where in the handbook is the policy against sexual harassment? Is it buried in a list of general policies?
 - › Are policies compliant with statutes, regulations, current common law, and best practices?

»» What Training Is Required?

- » Training requirements and documentation
 - › Are there statutory training requirements related to when, how often, and who?
 - › Does the organization require training “gold standard”: Annual training of all employees, not just supervisors, including top management, in person?
 - › Is there documentation of training that has occurred, including for online training?

»» Whom Do You Interview?

- » Cross section of current employees, from all departments at all levels, including department heads and top management
- » Include full- and part-time employees
- » Former employees who may have relevant information and experiences
- » Board chair and board members who lead relevant committees, such as the board's Human Resources Committee

»» What Do You Ask in Interviews?

- » Role in organization, how long, title and duties, current and prior
- » Familiarity with employee handbook, policies against sexual and other harassment
- » Training: when and by whom
- » Familiarity with incident(s) that prompted audit, own experience



What Do You Ask in Interviews? (Cont.)

- » If uncomfortable, to whom would you go? Would you expect to be heard?
- » To anyone in a supervisory position: What would you do if you saw or heard inappropriate conduct?
- » Open ended questions: goal is to elicit the source of any dissatisfaction the employee may have

Physical Setting

- » Depending on the nature of the employer, tours of physical space could be of:
 - › Corporate office layout
 - › Department spaces
 - › Manufacturing floor
 - › Shipping
 - › Specific location of precipitating incident

End Result

- » Analysis and recommendations
 - › These obviously depend on outcome of document reviews and interviews

Discriminatory Practices

- » Can be claimed in any or all of these areas:
 - › Recruitment
 - › Skills testing/assessing
 - › Use of company facilities
 - › Training and apprenticeship programs
 - › Fringe benefits
 - › Pay, retirement plans, and disability leave
 - › Other terms and conditions of employment

Internal Checking and Training

- » Consistency
- » Review or self-audit
- » Train
- » Communication

»» Possible Recommendations

- » Clarifying reporting structure, including at the board level
- » Improving the handbook structure
- » Expanding mandatory training
- » Improving communication among departments and between the board and staff
- » Improving the human resources operations
- » Changing the location of the human resources office
- » Providing feedback to complainants following misconduct investigations

»» Chief Diversity Officers

- » CDOs are in a leadership position that is responsible for a very wide range of equity, diversity, and inclusion initiatives.
- » Develop organization-wide strategies, policies, and training programs for these issues
- » Oversee and evaluate their impact on an ongoing basis and act as a champion for diversity at all levels of the company

Making the Efforts Count

- » Highlight improvements
- » Periodically reevaluate/reassess
- » Include all stakeholders

»» Responding to Complaints

- » Respond professionally (avoid being defensive)
- » Investigate thoroughly (determine whether independent investigator is necessary/helpful)

Complaints

- » Learn from complaints, regardless of the legal merits
- » Improve

Conclusion

- » Organizations, whether for-profit or not-for-profit, are workplaces, not families.
- » Successful workplace culture requires that unacceptable conduct by anyone is not tolerated.
- » In that culture, employees feel safe, appreciated, respected, empowered, and rewarded.

Additional Questions?



»» Thank You!



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