

Affirmative Action: Implications for Workplaces

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Many of you tuned in to our conversation with Alicia Moore, the Diversity, Equity and Inclusion (DEI) program manager at Columbia Sportswear Company, back in June. We talked about shifting trends in DEI, including the unique challenges companies face when implementing DEI strategies.

Soon after the webinar, **the U.S. Supreme Court ruled that affirmative action in college admissions is unconstitutional**. The 6-3 decision effectively ended race-conscious decision making in higher education, overturning more than 40 years of legal precedent. The ruling came in response to a pair of lawsuits accusing Harvard University and University of North Carolina of racial discrimination in admissions.

Companies are still unpacking if – and how – the Supreme Court ruling will disrupt DEI initiatives. HR professionals wonder if it will lead to fewer employment opportunities for people of color if fewer are admitted to colleges because of changes to their admission practices. One leadership consultant told the Society for Human Resources Management that the decision “jeopardizes workplace diversity if employers lean towards hiring individuals from majority groups instead of practicing intentionality to attract and recruit historically underrepresented groups.”

From a legal perspective, Title VII of the Civil Rights Act of 1964 precludes companies from considering race when making decisions around recruiting, hiring, promotion, or termination. That means **employers must cast a wide net to achieve diversity**, rather than relying on preferences or quotas. Efforts to remove obstacles – such as training for managers to lessen unconscious bias – are permissible.

According to *The New York Times*, **companies face a greater threat of litigation over discrimination against members of minority groups than discrimination against White people**, by a factor of nearly 10:1. In 2021, the Equal Employment Opportunity Commission received 21,000 racial discrimination claims from people of color, compared to 2,350 claims of reverse discrimination.

Yet, Edward Blum – who led the legal fight against affirmative action in higher education – said recently he is setting his sights on private companies.

We wonder how this will play out: whether the weight of the Court's affirmative action decision will ultimately change the way employers implement their DEI initiatives. **We also wonder about the implications for workplace culture.** Increasingly, companies are facing political headwinds, with the idea of and need for DEI being called into question.

For some, the open expression of hostility towards race-conscious programs will be interpreted as validation that intentional efforts to include, effect, and promote the success of marginalized populations are unjust. For others, the ruling may be **a clarion call to redouble and communicate their commitment to DEI.**

While the impact remains to be seen, we can all agree: It will take a sustained effort to make American business look like America.