




**WHY IS MOVING FROM
DEI TO INCLUSION
SO CRITICAL?**

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www.scottwarrick.com

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**DON'T MISS SCOTT'S LAST
2023 EMPLOYMENT LAW UPDATE!**

FRIDAY, FEBRUARY 16, 2023

**WHAT THE HECK HAPPENED?
2023 EMPLOYMENT LAW UPDATE**

ALL DIGITAL EMPLOYMENT LAW UPDATE ZOOMINAR!

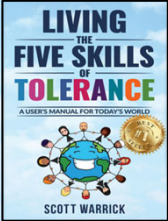
**MOST THOROUGH AND PRACTICAL EMPLOYMENT LAW UPDATE
YOU CAN GET!**

SCOTT WILL GIVE YOU ALL THE FORMS AND CONTRACTS
YOU NEED TO COMPLY WITH THESE CHANGES IN THE LAW!


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TEACHING TOLERANCE FOR 25 YEARS



7 Time
SHRM National Diversity
Conference Presenter
2003, 2006, 2007,
2008, 2010, 2012
&
2023
Attended over
25 DEI Conferences



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Do You Agree?

EVERYONE
should be purposefully included
in your
INCLUSION Program?

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Do You Agree?

You should not use
ILLEGAL TACTICS
in your **INCLUSION Program?**

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Do You Agree?


NO ONE
should be attacked or stereotyped
in your
INCLUSION Program?

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“We are standing at the crossroads of great ***SOCIETAL CHANGE*** and ***INCLUSION.***”

~ Johnny Taylor, SHRM CEO



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“The landscape has **changed**; ignoring these shifts and **continuing with our old methods won't suffice.** We must adapt and evolve.”

We **CANNOT** continue the DEI programming of the past.

~ Johnny Taylor, SHRM CEO




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“Instead of saying DE&I, I’ve purposefully made a shift to the less conventional, but more practical ***IE&D, INCLUSION***, Equity, and Diversity. This change reflects where we’re at in the workplace today and stresses the fact that we **already have diverse workplaces.**”

The key question for HR now is:
“How do we integrate all these people?”

~ Johnny Taylor, SHRM CEO




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DE&I

Focuses on increasing the number of diverse individuals in the workplace.

INCLUSION

“How do we integrate **EVERYONE?**”



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Kiara Alfonseca Max Zahn

ABC News July 7, 2023

“How corporate America is slashing DEI workers amid backlash to diversity programs.”

There are **33% fewer** DEI programs today than in 2020.



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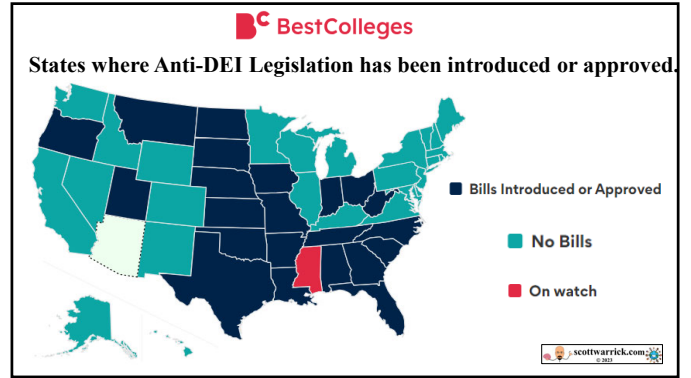


Florida, North Carolina, North Dakota, Oklahoma, Tennessee and Texas have passed laws prohibiting or greatly restricting DEI.

There are more than 40 bills across the country targeting DEI funding, practices, and promotion at schools.

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KEY POINT #1:

Stop Potentially Illegal Tactics

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If The HR Profession Was A Person, The Law Would Be The Feet.

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THE U.S. SUPREME COURT RULES AFFIRMATIVE ACTION AT UNIVERSITIES UNCONSTITUTIONAL




Students for Fair Admissions v. Harvard,
600 U.S. 181 (2023)

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If an Asian American applicant with certain objective characteristics, such as test scores, GPAs, and extracurricular activities, would result in a 25% statistical likelihood of admission, the same applicant, if White, will have a 36% likelihood of admission. Hispanic and Black applicants with the same characteristics will have a 77% and 95% predicted chance of admission, respectively.




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Students for Fair Admissions v. Harvard

In Justice Neil Gorsuch’s concurring opinion, he suggests that the Court’s decision in this case will inevitably influence how private employers structure their DEI practices and policies, even though the decision itself focuses on factors that are distinctively unique to the university admissions context.



Justice Neil Gorsuch



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LEGAL/ILLEGAL vs. RIGHT/WRONG

Major Federal Protected Classes

Civil Rights Act of 1964:
Race, Color, Religion, National Origin & Sex
(Now includes Sexual Orientation & Gender Identity)


Age In Discrimination Act of 1967

Pregnancy Discrimination Act of 1978

Americans With Disabilities Act of 1990




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“I only ever hire the person that will put my business in the best position to succeed. And yes, race and gender can be part of the equation. I view diversity as a competitive advantage.”


~ Mark Cuban (@mcuban)
January 28, 2024




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“Unfortunately, you’re dead wrong on black-letter Title VII law.”

“And if he (Cuban) is using it (race or gender) as a factor, and even if it is not the only factor or the dispositive factor, if it is any part of the decision, then it is a motivating factor and that’s illegal.”



~ Andrea R. Lucas, Commissioner



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ILLEGAL PROGRAMMING



“Companies need to establish a mentoring program for Black employees ...”

“You need to form mentorships to help Latino women ...”



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**Shouldn't we adopt Mentoring Programs
for anyone who wants them ...
REGARDLESS of their demographics?**

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Students for Fair Admissions v. Harvard

State Attorneys General in thirteen states sent a letter to Fortune 100 companies **threatening imminent and “serious legal consequences”** for organizations that engage in a laundry list of DEI activities.

The AG Letter explicitly calls into question DEI programs operated by private employers.

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State Attorneys General Letter

Racial Discrimination Is Commonplace

These discriminatory practices include, among other things, explicit racial quotas and preferences in hiring, recruiting, retention, promotion, and advancement. They also include race-based contracting practices, such as racial preferences and quotas in selecting suppliers, providing overt preferential treatment to customers on the basis of race, and pressuring contractors to adopt the company’s racially discriminatory quotas and preferences.

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State Attorneys General Letter

Racial Discrimination Is Commonplace

Accordingly, the Supreme Court’s recent decision should place every employer and contractor on notice of the illegality of racial quotas and race-based preferences in employment and contracting practices.

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**“Quotas”
are illegal
and should not
be used.**

~ Johnny Taylor, SHRM CEO

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ILLEGAL PROGRAMMING

**“Companies need
to establish goals
for hiring more
minorities.”**

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Goals = Quotas

Set goals for establishing
DIVERSE APPLICANT POOLS ...

NOT
for hiring a certain number of minorities.



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Can we set hiring quotas to meet diversity goals?

NO!

Selecting a candidate (and excluding others) based on the candidate's, sex, race, disability or other protected class can result in illegal discrimination. Employers should always seek to hire the most qualified candidate and choosing a less qualified individual over another simply to meet a diversity goal is problematic.

However, employers should seek to increase the diversity of the entire candidate pool by reaching out to groups that are underrepresented in the company and taking intentional actions to encourage individuals from these groups to apply.

<https://www.shrm.org/topics-tools/tools/hr-answers/can-set-hiring-quotas-to-meet-diversity-goals>



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How do you think this goes over with others?

“Gosh, I’m really, really qualified for this job, but I’ve been told I’m not going to get it because this company has an arbitrary number that puts me on the outside looking in.”

~ Johnny Taylor, SHRM CEO



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Students for Fair Admissions v. Harvard



Businesses are trying to avoid any programs that could draw legal scrutiny — any kinds of goals around hiring particular demographic groups are increasingly frowned upon.

“Anything that smacks of a quota” is out.

~ Diana Scott, Human Capital Center Leader, The Conference Board

The Conference Board is the global, nonprofit think tank and business membership organization that delivers Trusted Insights for What's Ahead™



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USA Today reported,
DEI under siege:

*Why more businesses are being accused of
'reverse discrimination'*

Emboldened by Supreme Court decision in Harvard, Stephen Miller and his organization “America First Legal” have taken the position that all DEI programs are illegal.



Stephen Miller



If you teach illegal tactics ...

- The ORGANIZATION itself,
- The BOARD MEMBERS and
- All of the COMPANIES these Board members represent ...

Can ALL be held individually liable.




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KEY POINT #1:

Purposefully Include Everyone




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Whose Job Is It To Speak Up?




President
President Elect

VP Programming
VP DEI


I Am NOT A STEREOTYPE!

ANSWER:
"Because they are **guilty.**"

"I'm sorry you feel that way."



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Are these ALL THE SAME HATE MESSAGES?

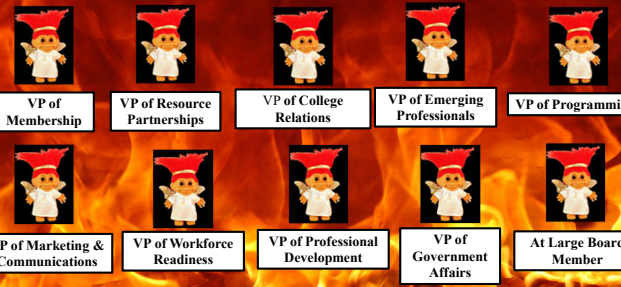
"All White men are guilty..."

"All Hispanic men are guilty..."

"All Black men are guilty..."




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VP of Membership **VP of Resource Partnerships** **VP of College Relations** **VP of Emerging Professionals** **VP of Programming**

VP of Marketing & Communications **VP of Workforce Readiness** **VP of Professional Development** **VP of Government Affairs** **At Large Board Member**

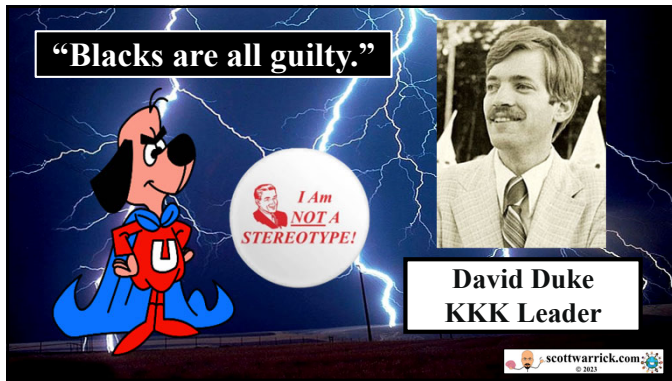
... and NO ONE spoke up.



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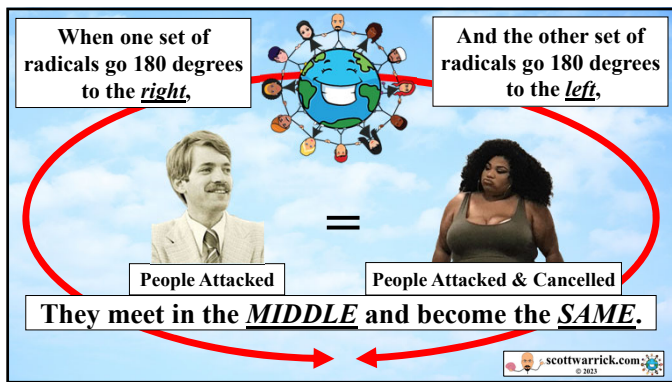

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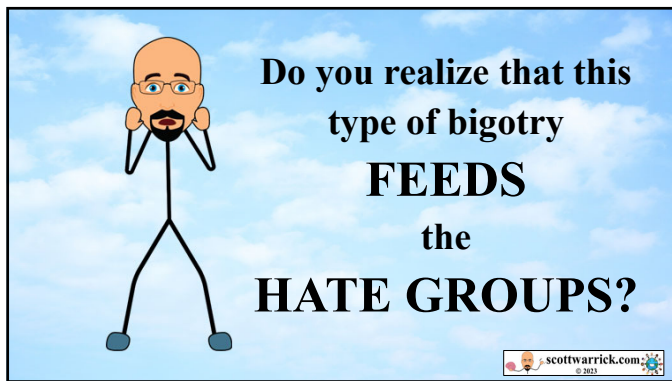
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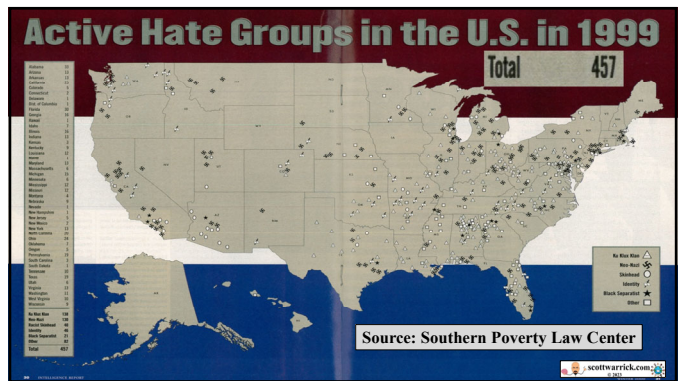
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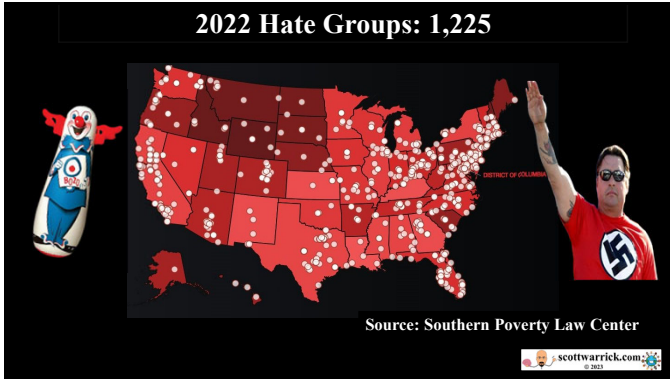
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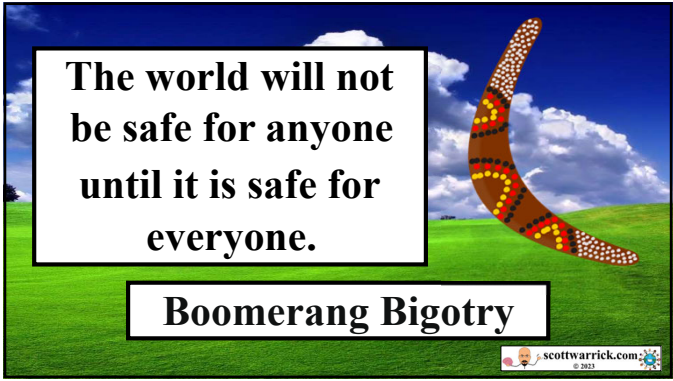
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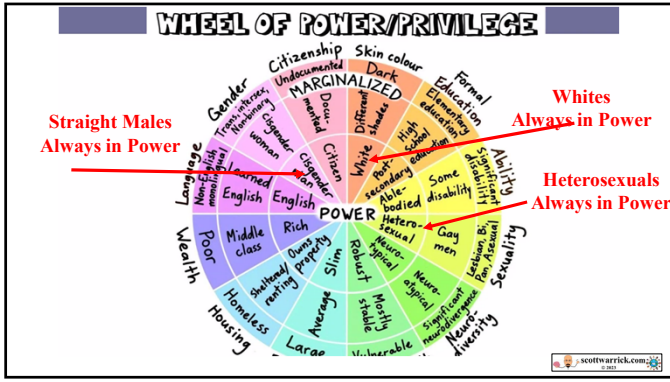
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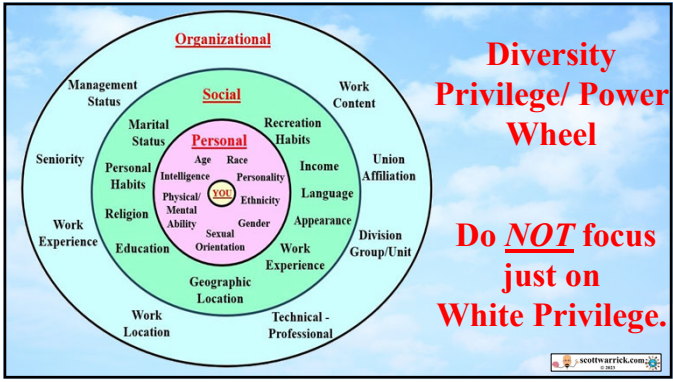
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The EEOC's 2016 Harassment Training Guidelines


- TOLERANCE
- CONFLICT RESOLUTION
- DEFINE "BULLYING"
- SOCIAL MEDIA
- BYSTANDER INTERVENTION

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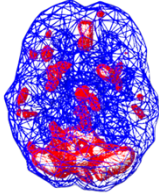
STOP BULLYING & HARASSMENT NOW!

EEOC COMPLIANT HARASSMENT TRAINING


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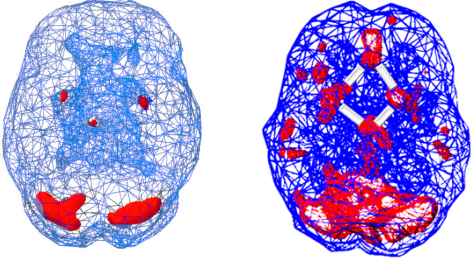
Intolerance Damages Brain Circuits



Richard Sima,
Washington Post,
February 16, 2023




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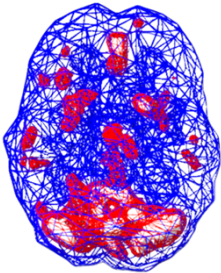
“Normal”
Healthy Brain

Brain With Depression, OCD,
& Panic Attacks = PTSD

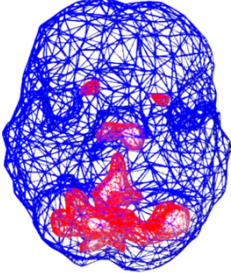



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2008



2020

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Sign Up For Scott’s
FREE LUNCH & LEARNS





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HRCI Program ID: 659120

**WHY IS MOVING FROM
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Start Date: 2/9/2024
End Date: 12/31/2024

1 Recertification Credit Hours: General

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SHRM Activity 24-6NWED

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1 Recertification Credit Hours: General

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