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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




13


PERSONAL LIABILITY IN OHIO

ELUA amended Ohio Revised Code Section 4112 to specifically allows PERSONAL LIABILITY ...

against **anyone** who aids, abets, incites, compels, or coerces an act of unlawful discrimination or retaliation or anyone who **obstructs or prevents any person from complying with ORC Section 4112.** (ORC Section 4112.02(J))




14



“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




15

“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, EEOC Commissioner



16



It is permissible to illegally discriminate against White males in order to make up for the past sins that have been committed against Blacks.



17

ILLEGAL PROGRAMMING

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

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





18



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

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19



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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20



Dorothy:
“How can you talk if you haven't got a brain?”

Scarecrow:
“I don't know... But some people without brains do an awful lot of talking ... don't they?”

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21

USA Today reported,
DEI under siege:
Why more businesses are being accused of 'reverse discrimination'

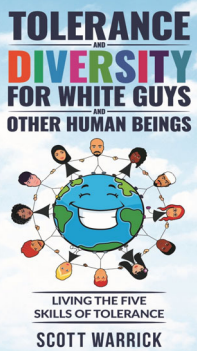
Stephen Miller and his organization “America First Legal” have taken the position that **all DEI programs are illegal.**



Stephen Miller

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22



**TOLERANCE
FOR DIVERSITY
FOR WHITE GUYS
OTHER HUMAN BEINGS**

LIVING THE FIVE SKILLS OF TOLERANCE
SCOTT WARRICK

Ricci, et al., v. DeStefano
557 U.S. 557 (2009)
Disparate Impact



Frank Ricci Ben Vargas

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23

CAUSATION

80 PERCENT RULE CALCULATIONS: LIEUTENANT'S EXAM

STEP 1

Calculate the employer's selection rates for each group:

	TOTAL TAKING THE TEST			
	<u>PASSED</u>		<u>TEST</u>	
Whites	25	divided by	43	= 58%
Blacks	6	divided by	19	= 32%

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24

CAUSATION

80 PERCENT RULE CALCULATIONS: LIEUTENANT'S EXAM

STEP 2

Identify the group with the highest selection rate: Whites, with a 58% selection rate.

STEP 3

Calculate the percentage difference between the selection rates of these two groups:

$$\frac{32\%}{58\%} = 55\%$$



25

CAUSATION

80 PERCENT RULE CALCULATIONS: LIEUTENANT'S EXAM

If the ratio between the two groups is less than **80 percent**, then an ***inference*** of disparate impact exists.

In this case, 55 percent is less than 80 percent, so an ***inference*** that New Haven Fire Department's test for the lieutenant's exam ***may*** have "unintentionally discriminated" against the black firefighters exists under a disparate impact theory.



26

CAUSATION

80 PERCENT RULE CALCULATIONS: LIEUTENANT'S EXAM

If New Haven can show that these tests were valid, which means they were "**job related**," then the black firefighters would have to prove that New Haven had another **alternative employment practice** available that had **less disparate impact** and serves the employer's legitimate needs but it failed to use it.



27

CAUSATION

80 PERCENT RULE CALCULATIONS: LIEUTENANT'S EXAM

Therefore, the final burden of proof lies with the black firefighters to show that another **alternative employment practice** was available for the city of New Haven to use that had **less disparate impact** and still served the employer's legitimate needs. Since no such system existed, the city of New Haven would prevail.



28

CAUSATION

80 PERCENT RULE CALCULATIONS: LIEUTENANT'S EXAM

Of course, once the city found itself in front of the U.S. Supreme Court, the truth of this case came out:

The city argued that it chose to not certify the results of the tests

because it was afraid that it would be sued by the Black firefighters

who did not pass the test under a theory of disparate impact.



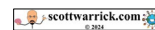
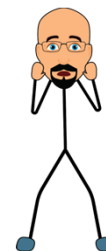
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CAUSATION

80 PERCENT RULE CALCULATIONS: LIEUTENANT'S EXAM

Therefore, the city's position was that ...

It should be allowed to discriminate against the Hispanic and White firefighters who scored the highest on the examinations in order to avoid getting sued by the Black firefighters.



30



31

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.

32

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.

33

DEI QUOTAS

34

LEGAL QUOTAS

Grutter v. Bollinger, 539 U.S. 306 (2003)

35

Grutter v. Bollinger, 539 U.S. 306 (2003)

“We expect that 25 years from now, the use of racial preferences will no longer be necessary.”

36

ILLEGAL QUOTAS
Gratz v. Bollinger, 539 U.S. 244 (2003)

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37

ILLEGAL PROGRAMMING

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

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38

ILLEGAL PROGRAMMING

“Don’t set hiring quotas. You set goals!”

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39

Goals = Quotas

Set goals for establishing
DIVERSE APPLICANT POOLS ...
NOT
 for hiring a certain number of minorities.

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40

AFFIRMATIVE ACTION

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41

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

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

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42

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.

43

Roberts wrote that the Equal Protection Clause of the Fourteenth Amendment applies “without regard to any difference of race, of color, or of nationality” and thus must apply to every person. As such, “Eliminating racial discrimination means eliminating all of it”, adding that:

“For ‘[t]he guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color.’”

44

TOLERANCE
V.
ACCEPTANCE

45

U.S. COURT OF APPEALS SIXTH CIRCUIT
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
SEAL OF THE SUPREME COURT OF THE UNITED STATES

TOLERANCE IS NOW A LEGAL TERM

46

The EEOC’s 2016 Harassment Training Guidelines

TOLERANCE

- CONFLICT RESOLUTION
- DEFINE “BULLYING”
- SOCIAL MEDIA
- BYSTANDER INTERVENTION

47

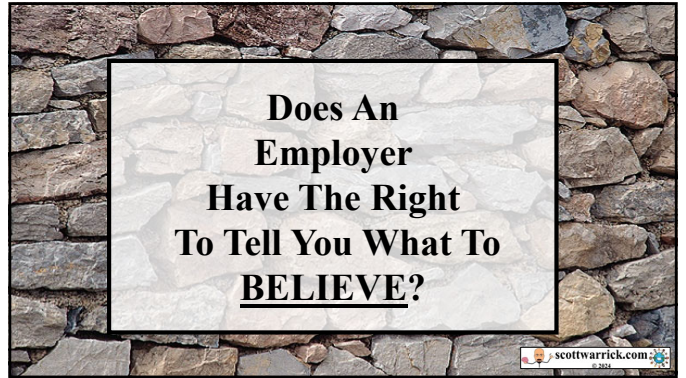
What Is
TOLERANCE?
NOT
Persecuting Those Who Are Different!



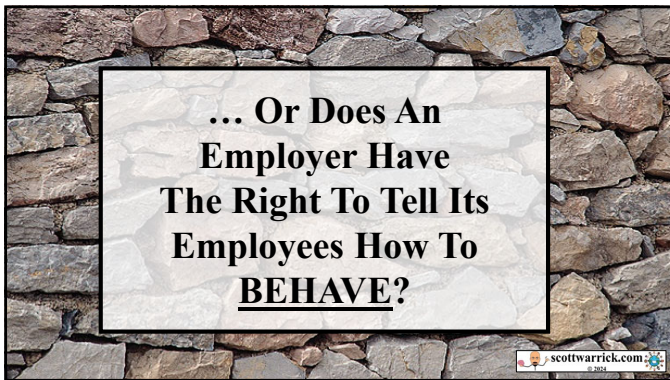
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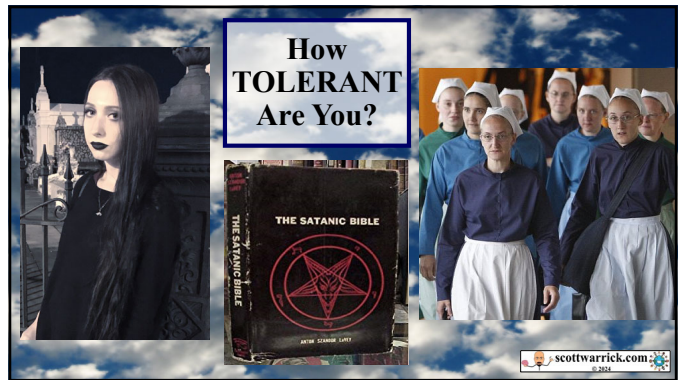
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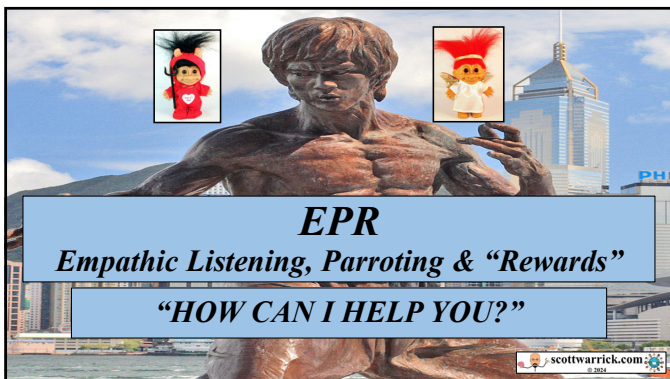
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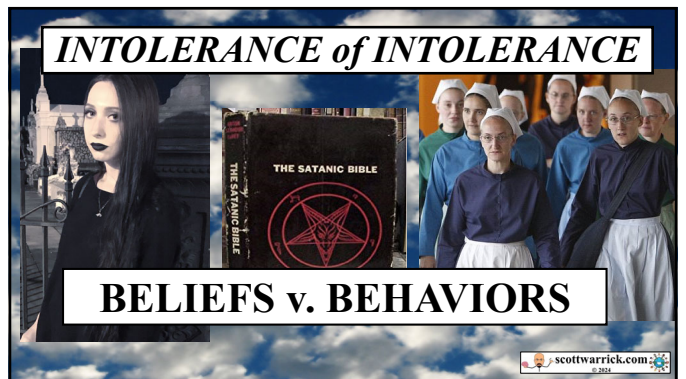
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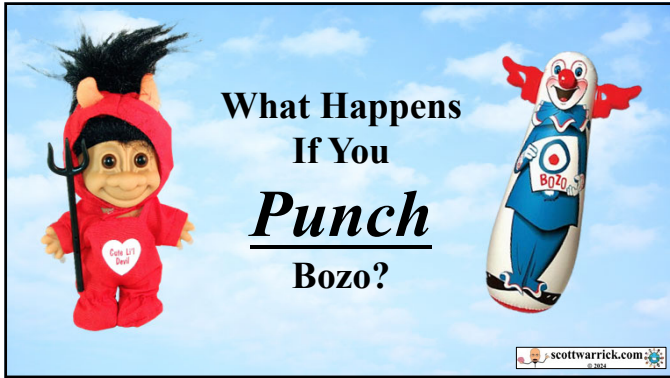
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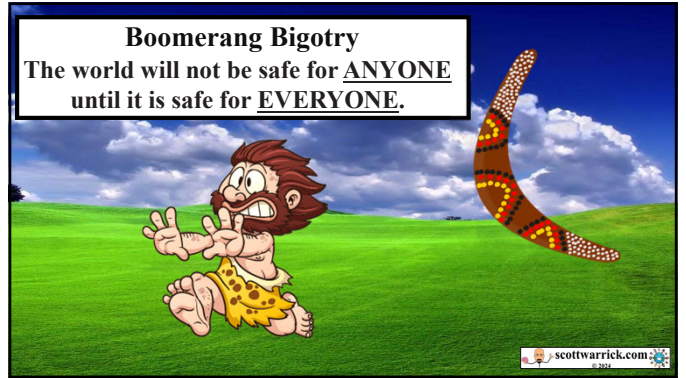
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56



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58

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59

KNOW THE LAW REGARDING DEI

Start Date: 10/25/2024
End Date: 12/31/2024

HRCI Program ID: 684035
SHRM Activity 24-NDPU5

1 Recertification Credit Hours: General

60

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61